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NO. A04-599

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State of Minnesota  
 In Supreme Court

Arturo Camacho and Kristi Camacho,

*Appellants,*

vs.

Todd and Leiser Homes,

*Respondent.*

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**BRIEF OF *AMICUS CURIAE*  
 MINNESOTA HOMEOWNERS' ALLIANCE  
 IN SUPPORT OF APPELLANTS**

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**TABLE OF CONTENTS**

TABLE OF AUTHORITIES ..... ii

INTEREST OF AMICUS CURIAE ..... 1

SUMMARY OF THE ARGUMENT..... 2

ARGUMENT ..... 2

I. The Court of Appeals’ Decision Threatens to Completely Eliminate the  
Protections Afforded By Minn. Stat. Ch. 327A for Current and Future  
Homeowners..... 2

II. The Court of Appeals’ Decision Leaves Certain Homeowners Without Any  
Remedy Against a Builder Who Violated the Building Codes and Negligently  
Constructed Their Home. .... 5

CONCLUSION ..... 7

**TABLE OF AUTHORITIES**

**CASES**

Koes v. Advanced Designs, Inc., 636 N.W.2d 352, 359 (Minn. App. 2001) ..... 7

**STATUTES**

Minn. Stat. § 302A ..... 4  
Minn. Stat. § 326.975 ..... 5  
Minn. Stat. § 326.975, subd. 1(a)(2) ..... 6  
Minn. Stat. § 326.975, subd. 1(a)(3) ..... 6  
Minn. Stat. Ch. 327A ..... 1,2, 5, 7

## INTEREST OF AMICUS CURIAE

The Minnesota Homeowners' Alliance (the "Alliance") is a non-profit corporation organized to protect the interests of and provide a voice for individuals and families that own single-family homes in Minnesota.<sup>1</sup> The Alliance was organized to be completely member-supported and endeavors to educate Minnesota homeowners regarding the many construction-related problems and issues that can arise in the context of home ownership. The Alliance represents its member homeowners in discussions with government agencies and homebuilder trade organizations regarding quality-control and warranty issues and concerns.

At issue in this case is a homeowner's right to rely upon and avail himself of the protections set forth in the new home construction and remodeling warranties of Minn. Stat. Ch. 327A. The Alliance has an interest in ensuring that its members, and all homeowners across the State, are afforded the substantial protections granted by the Minnesota statutory new home construction and remodeling warranties. These warranties provide homeowners a substantive right against shoddy and defective workmanship and a builder's failure to comply with the minimal standards set forth in the applicable building codes. The Alliance has a significant and special interest in any elimination of or limitation upon a homeowner's right to assert a claim for breach of these warranties.

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<sup>1</sup> No party or other entity made any monetary contributions to the preparation or submission of this brief.

## SUMMARY OF THE ARGUMENT

The Alliance agrees with and supports the arguments of Appellants in seeking reversal of the Court of Appeals' decision in Camacho v. Todd and Leiser Homes. The Alliance's brief demonstrates how the Court of Appeals' decision, 1) threatens to completely eliminate the protections afforded by Minn. Stat. Ch. 327A for current and future homeowners, and 2) leaves certain injured homeowners with no remedy against builders who have violated the building code and negligently constructed their homes.

## ARGUMENT

### **I. The Court of Appeals' Decision Threatens to Completely Eliminate the Protections Afforded By Minn. Stat. Ch. 327A for Current and Future Homeowners.**

In holding that the corporate dissolution statute precluded the Camachos' claims against Todd and Leiser Homes, the Court of Appeals effectively held that a corporate residential building contractor may unilaterally terminate the legislatively mandated statutory new home construction and remodeling warranties simply by dissolving the corporation. Such a prospect is not merely an imagined scenario, but is actually being suggested by attorneys representing builders in the residential construction industry. For example, recently the owner

of Reliable Homes, Inc.,<sup>2</sup> Rick Toston, was deposed in the context of a moisture intrusion and home defect case. (Amicus Appendix (“Amicus App.”) 1). Mr. Toston testified that he had been advised by a lawyer that in order to avoid liability for warranty claims, Reliable Homes, Inc. should dissolve. (Amicus App. 3). Fortunately for homeowners and his customers, Mr. Toston has not heeded the advice he was given and has not dissolved the corporation because he believes in honoring the warranties he promised to provide to homeowners. (Amicus App. 3). However, it is likely that given the number of moisture intrusion and home defect claims, the magnitude of the cost involved in repairing homes with such damage, and the ease with which builders are able, under the Court of Appeals’ decision, to avoid the claims by simply dissolving their corporation, many builders will not be as honorable or concerned as Mr. Toston, or will put the interests of their insurance companies ahead of the interests of their customers.

Also recently, Minnesota lawyers have become vocal about suggesting and advocating for corporate dissolution in order to shelter builders (and their insurers, to whom builders paid significant premiums to provide coverage for these types of claims<sup>3</sup>) from moisture intrusion and home defect claims. For example, in an

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<sup>2</sup> Reliable Homes, Inc. was a prominent builder of stucco homes in the 1990s in Woodbury. (Amicus App. 4-5).

<sup>3</sup> One tangential issue involved in the matter at hand is the question of who actually benefits from the Court of Appeals’ decision. The most obvious answer is builders. However, undoubtedly if the Court of Appeals’ decision is left to stand, homeowners faced with mounting repair bills will seek other avenues of recovery. One of the avenues may be commencing suit against the officers, directors or shareholders of dissolved corporate builders. Consequently, principals of the

article recently published in Minnesota Defense, two Minnesota attorneys serving as Chair and Vice Chair of the Minnesota Defense Lawyers Association's Construction Law Committee, chronicle a builder's fictitious, but instructive question and answer session with his lawyer as the builder is faced with a moisture intrusion and construction defect lawsuit. (Amicus App. 6). The last section of the article explores what options the builder has to best protect himself from claims. The builder's lawyer informs him that:

“...under Minn. Stat. § 302A and a recent appellate decision in *Camacho v. Todd & Leiser Homes...*, if you have paid or provided for all known claimants when your articles of dissolution are filed, a claimant who fails to file a claim or pursue a remedy within two years after the filing of your notice of intent to dissolve the corporation is barred from suing on that claim.”

(Amicus App. 12).

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corporate builders may be held personally responsible, which may afford homeowners no benefit if the principal is judgment proof, or which will certainly serve as a significant drain on the personal financial well-being of the principals. In either case, the entity paid handsomely to provide financial protection to the builder in circumstances such as these (the insurer), is allowed to avoid all of its obligations and responsibilities. Knut Horneland, a former principal of the now dissolved residential building contractor Landico, Inc., has testified explicitly that when Landico, Inc. dissolved, its expectation was that its insurer, to whom Landico, Inc. had paid premiums for many years, would cover all outstanding warranty obligations. (Amicus App. at 15-16).

As Mr. Toston pointed out in his deposition, unless Reliable Homes, Inc. remains incorporated, Reliable Homes, Inc.'s insurers, to whom Reliable Homes, Inc. paid significant premiums, will have no obligation to defend or indemnify the corporation. The real benefit of the Court of Appeals' decision, therefore, is reaped by the insurance industry providing coverage to corporate builders. The insurance industry will reap these benefits at the expense of builders, and most importantly, the class of individuals the legislature sought to protect by enacting the statutory new home warranties – homeowners.

If the Court of Appeals' decision stands and, consequently, corporate builders are permitted to dissolve their corporations in order to terminate their statutory home warranty obligations, current and future homeowners will not have the guarantees afforded by Minn. Stat. Ch. 327A that their homes will be free from defects due to violations of building code for the first year, and free from major construction defects for the first ten years. Given the advice builders already appear to be receiving, homeowners likely will immediately be faced with this predicament.

**II. The Court of Appeals' Decision Leaves Certain Homeowners Without Any Remedy Against a Builder Who Violated the Building Codes and Negligently Constructed Their Home.**

Even assuming that, despite the Court of Appeals' decision, builders do not rush to dissolve their corporate entities in an effort to avoid their statutory warranty obligations, some builders undoubtedly have or will dissolve their corporate entities for legitimate reasons. The Court of Appeals' decision leaves homeowners with homes built by these builders (and builders who dissolve for the illegitimate purpose of avoiding their statutory warranty obligations) without any recourse.

The most obvious potential source of recovery for homeowners whose builder has dissolved is the Contractor's Recovery Fund provided by Minn. Stat. § 326.975. However, the Contractor's Recovery Fund requires that a final judgment

must be obtained against the contractor in order for a claimant to be entitled to compensation. Minn. Stat. § 326.975, subd. 1(a)(2). The Camachos, and other similarly situated homeowners, however, will never be able to obtain a final judgment against their builder, as any claim, pursuant to the Court of Appeals' decision, will be barred by the corporate dissolution statute of limitations.<sup>4</sup>

As set forth in footnote 3 *supra*, homeowners may have a claim against the officers, directors or shareholders of a dissolved corporate builder. However, with such a claim, homeowners are faced with the practical difficulty, if not the impossibility, of collecting a judgment from an individual. Further, whether a judgment can be collected assumes that homeowners actually can assert a claim against the officers, directors or shareholders of a dissolved corporate entity. Assuredly, principals will oppose these claims even more vehemently than builders are currently opposing homeowners' claims, in an effort to protect their personal assets.

Even if homeowners could recover from the Contractor's Recovery Fund or could assert a direct claim against the officers, directors or shareholders of a dissolved corporate builder, to force homeowners to take such complicated, time-

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<sup>4</sup> Additionally, pursuant to Minn. Stat. § 326.975, subd. 1(a)(3), "nothing may obligate the fund for more than \$50,000 per claimant, nor more than \$75,000 per licensee...." As is evident from the Camachos' repair estimates from Scandia Stucco for \$205,840.00 and Winge Construction, Inc. for \$193,250.00 (A. 50-51), even if homeowners could recover from the Contractor's Recovery Fund, such a recovery would do little to compensate homeowners for the actual cost of repair, and one homeowner could more than exhaust the Fund's limit for a particular builder.

consuming and costly steps does not comport with the policy behind providing the statutory new home warranties: “the protection of buyers of new homes.” Koes v. Advanced Designs, Inc., 636 N.W.2d 352, 359 (Minn. App. 2001). As the chance for a meaningful recovery from an alternative source is uncertain at best, and impossible at worst, the Court of Appeals’ decision should be reversed.

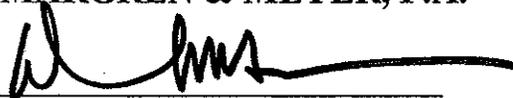
### CONCLUSION

For the reasons set forth above, and the reasons set forth in Appellants’ brief, the Minnesota Homeowners’ Alliance respectfully requests that this Court reverse the decision of the Court of Appeals and conclude that a corporate builder cannot dissolve and unilaterally shorten or eliminate the legislatively mandated statutory warranties contained within Minn. Stat. Ch. 327A.

Respectfully Submitted,

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The appendix to this brief is not available for online viewing as specified in the *Minnesota Rules of Public Access to the Records of the Judicial Branch*, Rule 8, Subd. 2(e)(2) (with amendments effective July 1, 2007).