

The builder of a new house sold the house to a buyer, conveying it to the buyer by warranty deed. One year later, the buyer sold the house to a woman for \$50,000 more than the buyer had paid, conveying it to the woman by a quitclaim deed.

Four months after moving in, the woman discovered a number of latent defects in the foundation that caused the house's basement to take on water during heavy rains. The woman contacted the builder about the problem. Toward the end of their heated conversation, the builder yelled at her, "So get it fixed!"

After the woman had the foundation repaired by a cement contractor at a cost of \$25,000, she successfully sued the builder to recover that amount from him.

What is the most likely reason that the woman was successful?

- A. The court found an implied warranty of habitability from the builder to the buyer that was enforceable by a subsequent buyer.
- B. The court found that by paying the buyer \$50,000 more for the house than the buyer had paid the builder, the woman did not get the benefit of her bargain.
- C. The court found that by yelling at the woman to "get it fixed," the builder had committed himself to paying for the repair.
- D. The court found that the defects in the foundation were a breach of the covenant of further assurances in the warranty deed from the builder to the buyer.

## Explanation:

### Implied warranty of habitability

(ie, implied warranty of fitness or suitability, quality, workmanlike construction)

Implied promise by builder, developer, or other commercial seller of *new* house that house was built in reasonably workmanlike manner & is suitable for living

Builder, developer, or other commercial seller liable for defects that interfere with buyer's ability to live in home

Buyer's damages based on cost of repairs to bring house into compliance with warranty

Under the **implied warranty of habitability** (ie, implied warranty of fitness or suitability), the **builder of a new home** impliedly guarantees that the home is **habitable** and **fit for its intended purposes** when sold. This allows buyers to recover damages for losses caused by the builder's **defective construction or poor workmanship**. And in most jurisdictions, this warranty extends to **subsequent purchasers** as to **latent construction defects**.

Here, the buyer purchased a new home from the builder and later sold it to the woman. After moving in, the woman discovered latent defects in the foundation that caused the house's basement to take on water during heavy rains (habitability concerns). Therefore, the most likely reason that the woman was successful against the builder is that the court found an implied warranty of habitability that was enforceable by her (a subsequent buyer).

**(Choice B)** Damages for breach of the implied warranty of habitability are based on the cost of repairs to bring the home into compliance with the warranty. Therefore, the additional \$50,000 the woman paid to the buyer for the home does not affect her ability to recover \$25,000 in repair costs from the builder for breach of this warranty.

**(Choice C)** The builder did not commit to paying for the repair by telling the woman to "get it fixed." Instead, he must pay for the repair because he is liable for latent construction defects under the implied warranty of habitability.

**(Choice D)** A warranty deed contains certain **covenants of title**, including the covenant of further assurances—ie, the grantor's promise to take any actions reasonably necessary to cure defects in title. But since defects in the foundation affect the physical condition (not title) of the property, this covenant does not apply.

### Educational objective:

The implied warranty of habitability guarantees that a new home is habitable and fit for its intended purposes. This allows buyers to recover for losses caused by poor workmanship and, in most jurisdictions, allows subsequent purchasers to recover for losses caused by latent construction defects.

**References**

13 Am. Jur. 2d Building and Construction Contracts § 10 (2018) (duties implied by law).

Copyright © 2019 by the National Conference of Bar Examiners. All rights reserved.

Copyright © UWorld. All rights reserved.