

The logo consists of two squares, one light green and one dark green, stacked vertically.

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McKenzie Rhody & Hearn Wins Second Important Supreme Court Victory

The Supreme Court has declined to review a Court of Appeals ruling that upheld a homeowners association's right to litigate its construction defect claims against a builder and general contractor in court. By declining to review the lower court decision, the Supreme Court let stand the lower court's conclusion that the homeowners association could not be forced into arbitration by the defendants.

“The Court of Appeals ruling is an important victory for homeowners associations and individual homeowners because it protects their right to have their day in court,” according to R. Christopher Rhody, a partner in the law firm of McKenzie Rhody & Hearn, who represented the Eagle Ridge Condominium Association in the trial and appellate courts. “We are pleased that the Supreme Court let this ruling stand.” The case is captioned *Metropolitan Builders, et al. v. Eagle Ridge Condominium Association*. As a result of the Court's action, the homeowners association will now return to Denver District Court to present its case against the builder and general contractor.

In the underlying case, the association's bylaws contained a provision requiring it to submit construction defect claims against the builder to arbitration. The builder, who initially created the association, inserted this provision into the bylaws before any of the units were sold to the public.

Prior to filing suit, however, the association amended the bylaws to delete this restriction. The association then filed suit and the builder and general contractor moved to compel arbitration. They argued the association could not delete the bylaw provision without their approval. They also argued that the association was forced to arbitrate because at least one homeowner in the community signed a purchase contract with the builder containing an arbitration provision. The trial court denied the motion, and the builder and general contractor appealed.

The Court of Appeals also ruled against the builder and general contractor. The Court upheld the bylaw amendment. In addition, the Court ruled that the association was not bound by the arbitration provision in the homeowner purchase contract. The Court reasoned that the association's claims against the builder, while possibly subject to arbitration because of the purchase contract, were inseparable from its claims against the general contractor. Because the general contractor was not a party to the purchase



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contract, forcing the association to arbitrate its claims would risk undue delay, and more importantly would infringe on the association's right to have its claims decided in court.

The builder and general contractor then appealed to the Colorado Supreme Court. The Court initially undertook a review of the case, however, upon further review of the record and the presentation of argument, decided to let the Court of Appeals ruling stand without further comment.