

**IN THE COURT OF APPEALS OF IOWA**

No. 9-544 / 08-1813  
Filed September 2, 2009

**JERRY'S HOMES, INC.,**  
Plaintiff-Appellant,

**vs.**

**WILLIAM E. WALTERS d/b/a**  
**WALTERS CONSTRUCTION SERVICES,**  
Defendant-Appellee.

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Appeal from the Iowa District Court for Polk County, Donna L. Paulsen,  
Judge.

Jerry's Homes, Inc. appeals from the district court's grant of a directed  
verdict in favor of defendant on its claim against its subcontractor for breach of  
implied contract. **AFFIRMED.**

Jonathan M. Barnhill and Kathryn S. Barnhill of Barnhill & Associates P.C.,  
West Des Moines, for appellant.

John B. Grier of Grier Law Firm, Marshalltown, for appellee.

Considered by Vogel, P.J., and Potterfield and Mansfield, JJ.

**POTTERFIELD, J.****I. Background Facts and Proceedings**

This case arises out of a dispute between a general contractor, Jerry's Homes, Inc. (hereinafter JHI), and a subcontractor, William E. Walters d/b/a Walters Construction Services. JHI hired Walters as a subcontractor to perform concrete work in various developments in the Des Moines area from 2002-2006. Walters poured garage slabs, adding a raised edge or lip at the edge of the slab to prevent water from flowing into the garage. Walters discussed the installation of the lip with Jeffrey Grubb, an employee of JHI who was overseeing the project. Other than the addition of the lip, Walters constructed the slabs according to the plans and specifications drafted by JHI. The plans and specifications did not require the installation of an expansion joint, an optional joint sometimes placed between a garage slab and the concrete driveway to allow for independent movement and expansion of the two surfaces without structural damage.

For each job, Jeffrey Grubb, as superintendent of the jobs on which Walters worked, signed a document certifying that the job had been completed in a satisfactory manner. After this document was signed, JHI would pay Walters for his work. Walters was paid for all of the garage slabs he poured for JHI.

Over time, the lips began to crumble, and the garage slabs experienced scaling, chipping, and cracking. JHI filed this lawsuit against Walters, claiming: (1) Walters breached the contract for the installation of garage slabs by failing to perform the work in a good and workmanlike manner according to industry standards and (2) Walters breached an implied warranty that the structure would be constructed in a good and workmanlike manner. After the close of evidence

at trial, Walters made a motion for directed verdict. The district court granted the motion for directed verdict as to the claim of breach of implied warranty, but submitted the breach of contract claim to the jury. The jury returned a verdict in favor of Walters on the contract claim. JHI appeals, arguing the district court erred in granting Walters's motion for directed verdict on the implied warranty claim and declining to submit the issue to a jury.

## **II. Standard of Review**

We review the district court's grant of a directed verdict for correction of errors at law. *Felderman v. City of Maquoketa*, 731 N.W.2d 676, 678 (Iowa 2007). We also review challenges to jury instructions for correction of errors at law. *Boyle v. Alum-Line, Inc.*, 710 N.W.2d 741, 748 (Iowa 2006).

## **III. Directed Verdict**

The district court declined to instruct the jury on implied warranty. Instead, the district court found a directed verdict was appropriate on JHI's claim of implied warranty because no case law supported the claim. We agree with the district court that Iowa case law does not support a separate claim of implied warranty between a general contractor and a subcontractor.

A review of Iowa case law reveals that an implied warranty in the construction industry runs between a home builder and a home buyer. "The implied warranty of workmanlike construction is a judicially created doctrine implemented to protect an innocent home buyer by holding the experienced builder accountable for the quality of construction." *Speight v. Walters Dev. Co.*, 744 N.W.2d 108, 110 (Iowa 2008). This implied warranty serves to protect home buyers who are in an inferior position because of their lack of expertise. *Id.* at

110-11. The implied warranty remedies the inequity between the buyer and the builder by requiring that a home be built “in a reasonably good and workmanlike manner and that it will be reasonably fit for the intended purpose.” *Kirk v. Ridgway*, 373 N.W.2d 491, 493 (Iowa 1985).

There is no Iowa case law supporting a general contractor’s separate claim of implied warranty against a subcontractor.<sup>1</sup> Further, the policy behind the doctrine of implied warranty does not support extending the warranty to protect general contractors. The doctrine of implied warranty was created to protect an innocent, unskilled buyer. Such a protection is not necessary for a general contractor who has considerable expertise in the area. General contractors are not in an inferior position compared to subcontractors and do not need a judicially-created doctrine to protect them. The district court properly granted Walters’s motion for directed verdict on JHI’s implied warranty claim. Because the district court properly granted Walters’s motion for directed verdict, it did not err in declining to instruct the jury on the breach of implied warranty claim.

Moreover, JHI’s complaint that Walters did not perform the job in a good and workmanlike manner is covered in its breach of contract claim. The district court instructed the jury on the breach of contract claim as follows:

In order for the Plaintiff to recover on its claim for breach of contract, the Plaintiff must prove each of the following propositions:

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<sup>1</sup> Case law from other jurisdictions cited by JHI is not controlling, as Iowa case law does not allow for a claim of breach of implied warranty by a general contractor against a subcontractor. Further, while JHI cited case law from jurisdictions allowing such a claim, other jurisdictions, like Iowa, do not recognize a claim of breach of implied warranty by a general contractor against a subcontractor. See, e.g., *Rosenberg v. Cape Coral Plumbing, Inc.*, 920 So.2d 61, 65 (Fla. Dist. Ct. App. 2005) (finding general contractor’s claim against subcontractor for breach of implied warranty was subsumed within its breach of contract claim).

1. A contract existed between Jerry's Homes, Inc. and William Walters for the pouring of concrete slabs at its various developments;
- ... .
3. The defendant breached the contract in one or more of the following ways:
  - a. Failing to install the expansion joints; or
  - b. Failing to perform work in a good and workmanlike manner

Thus, if the jury decided Walters had failed to perform the work in a good and workmanlike manner, it would have awarded JHI damages under the breach of contract claim.

**AFFIRMED.**