

No. 35308 - *Jason Foster v. Orchard Development Company and Peteler, LLC*

FILED

November 23, 2010

RORY L. PERRY II, CLERK
SUPREME COURT OF APPEALS
OF WEST VIRGINIA

Ketchum, J., concurring:

I agree with our decision which is based on the single issue argued in this case, i.e., whether the covenants and design guidelines adopted and published by the developer allowed the developer to later unilaterally reduce the size of the residences to be built in the subdivision.

I am writing to point out that our decision does not extinguish causes of actions by a purchaser to enforce sales brochures or similar materials. The law has long recognized that purchasers will ordinarily rely on sales and promotional materials rather than attempt to interpret the legalese in complicated development covenants and design guidelines. Promissory estoppel, fraudulent misrepresentation, and other causes of action based on sales brochures and similar material are still viable.