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**THE CAVANAGH LAW FIRM**  
A Professional Association

1850 NORTH CENTRAL AVENUE  
SUITE 2400  
PHOENIX, ARIZONA 85004-4527  
(602) 322-4000

6 R. Corey Hill, SBN 012188  
Attorneys for Defendants

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IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF ARIZONA

10 GERALD M. HALL and PAMELA J.  
HALL, husband and wife,

11  
12 Plaintiffs,

13 v.

14 ELVIRA J. MANSCHOT and ROBERT H.  
MANSCHOT, husband and wife and  
Arizona residents,

15  
16 Defendant .

NO. 06-CV-00205-FJM

**DEFENDANTS' MOTION FOR  
PARTIAL SUMMARY JUDGMENT**

**(ORAL ARGUMENT REQUESTED)**

(Assigned to the Honorable Frederick J.  
Martone)

17  
18 Defendants Manschot jointly move the Court pursuant to Rule 56, for an  
19 order granting Summary Judgment on Count II (Strict Liability) of Plaintiffs' Amended  
20 Complaint on the ground that, as a matter of law, the count is based upon a faulty premise  
21 that the Manschots failed to obtain a building permit in constructing their 1997 addition.  
22 In fact, they did obtain the requisite building permit. Additionally, the cause of action that  
23 the Plaintiffs have asserted seeking strict liability does not appear to exist under Arizona  
24 law. Finally, assuming the strict liability theory exists, it is barred by the statute of  
25 limitations. Count II therefore fails as a matter of law.

26 Additionally, Defendant Robert H. Manschot moves for judgment as a

1 matter of law on Plaintiffs' entire Amended Complaint, on the ground that he did not own  
2 the subject property at the time it was sold to the Plaintiffs, did not enter into any contract  
3 with the Plaintiffs and did not make any promises, representations or warranties with  
4 respect to the subject property. He is therefore an improper party and should not have  
5 been sued. This Motion is supported by the attached Memorandum of Points and  
6 Authorities.

7 **MEMORANDUM OF POINTS AND AUTHORITIES**

8 **I. FACTUAL BACKGROUND.**

9 This case arises out of the Plaintiffs' purchase of a residence located at 8129  
10 N. 54<sup>th</sup> Street in Paradise Valley, Arizona. At the time of the sale, which was March 9,  
11 2002, the residence was owned by Defendant Elvira J. Manschot as her sole and separate  
12 property. (¶ 1, DFs' SOF.) The residence was previously owned by Defendants Robert  
13 and Elvira Manschot as community property. (¶ 1, DFs' SOF.) Mr. Manschot conveyed  
14 his entire interest in the property to Elvira Manschot on November 15, 2001. (¶ 1, DFs'  
15 SOF.)

16 In 1997, the Manschots hired an architect and general contractor to design  
17 and construct an addition to the subject residence. (¶ 2, DFs' SOF.) The addition took  
18 approximately five to eight months to complete in 1997. (¶ 2, DFs' SOF.)

19 Prior to commencing work on the addition, Mr. Manschot applied for and  
20 obtained the necessary building permit from the Town of Paradise Valley, Arizona. (¶ 3,  
21 DFs' SOF.) The permit reflects that a Paradise Valley Building Inspector checked the  
22 plans and approved them. The approved permit for the addition is dated February 21,  
23 1997. (¶ 3, DFs' SOF.)

24 On March 9, 2002, Elvira Manschot, as the sole owner of the subject  
25 premises, sold the premises to Plaintiffs Gerald and Pamela Hall under a Residential  
26 Resale Real Estate Purchase Contract. (¶ 4, DFs' SOF.) Because Mr. Manschot held no

1 interest in the subject premises at the time of the sale, having previously transferred all of  
2 his right, title and interest in the premises to his wife, Mr. Manschot did not sign the  
3 subject real estate contract with the Halls. (¶ 4, DFs' SOF.) Nor did Mr. Manschot make  
4 any promises, representations, or warranties concerning the subject premises, in  
5 conjunction with his wife's transaction with the Halls. (¶ 4, DFs' SOF.) The Halls,  
6 knowing that they were dealing solely with Mrs. Manschot as the owner of the premises,  
7 accepted the contract and closed on the property on April 5, 2002. They further accepted  
8 a Warranty Deed signed solely by Mrs. Manschot conveying the property to the Halls on  
9 that same day. (¶ 4, DFs' SOF.)

10 Despite the fact that Mrs. Manschot was the sole owner of the subject  
11 premises and the sole contracting party with the Halls, the Halls have chosen to sue not  
12 only Mrs. Manschot, but Mr. Manschot as well. Further, despite the fact that the  
13 Manschots did obtain the necessary building permit from the Town of Paradise Valley in  
14 constructing their addition, the Halls have sued the Manschots under a strict liability  
15 theory for failure to obtain that permit, claiming that the alleged failure to obtain a permit  
16 resulted in the property being "inherently defective and unreasonably dangerous." Both  
17 claims against Mr. Manschot and Count II as to Mrs. Manschot fail as a matter of law.

## 18 **II. ARGUMENT.**

### 19 **A. BECAUSE MR. MANSCHOT WAS NOT AN OWNER OF THE** 20 **SUBJECT PROPERTY NOR A CONTRACTING PARTY,** 21 **PLAINTIFFS HAVE NO RIGHT TO SUE HIM IN THIS CASE.**

22 It is undisputed that Mr. Manschot transferred his entire right, title and  
23 interest in the subject premises to his wife by way of a Warranty Deed dated November  
24 15, 2001. (See ¶ 1, DFs' SOF.) That is the last conveyance of the property prior to the  
25 sale by Mrs. Manschot to the Halls on March 9, 2002. Accordingly, at the time of the sale  
26 to the Halls, Mr. Manschot held no interest in the subject premises whatsoever. See  
*Schwartz v. Schwartz*, 52 Ariz. 105, 79 P.2d 501 (Ariz. 1938) (husband and wife can make

1 valid gifts *inter sese* of their interest in the community property to each other, and the  
2 property given becomes the separate property of the donee).

3 More importantly, Mr. Manschot did not sign the real estate contract with  
4 the Halls and made no promises, representations or warranties to the Halls in conjunction  
5 with the sale. Under Arizona law, in order to bind a party to a real estate contract, that  
6 contract must be in writing and signed by the party against whom one seeks to enforce the  
7 contract. *See Passey v. Great Western Associates II*, 174 Ariz. 420, 424-25, 850 P.2d 133,  
8 137-38 (App. 1993) ("the statute of frauds bars a party's suit upon an agreement involving  
9 real property unless the agreement is in writing and is signed by the party to be charged.. .  
10 . . The party to be charged' is generally defined as the party against whom the contract is  
11 sought to be enforced"). *See also* A.R.S. § 44-101. As Mr. Manschot was not a party to  
12 the subject real estate contract out of which this lawsuit arises and did not sign it, he may  
13 not be held liable under that contract. Accordingly, the Plaintiffs had no right to sue him  
14 in this lawsuit under any theory.

15 Additionally, when the Halls entered into the Real Estate Contract, they  
16 accepted Mrs. Manschot as the only contracting party against whom remedies could be  
17 sought. They fully recognized when they contracted with just Mrs. Manschot that she,  
18 and she alone, would be answerable for any breach of the contract. *See* A.R.S. § 25-  
19 214(C); *A. Zork Hardware Co. v. Gottlieb*, 170 Ariz. 5, 821 P.2d 272 (App. 1991) (one  
20 spouse acting unilaterally cannot, by signing a promissory note during marriage, convert a  
21 separate obligation into a community one.)

22 Plaintiffs now seek to expand their remedies and their potential recovery by  
23 including Mr. Manschot in this case, even though they knew full well when they entered  
24 into the contract that he was not a party to it and did not agree to be responsible for Mrs.  
25 Manschot's sole and separate obligations. Undersigned counsel could find no case, statute  
26 or other authority that would permit such a right of recovery in Arizona. For these

1 reasons, Defendant Robert Manschot is entitled to judgment as a matter of law on  
2 Plaintiffs' entire Complaint.

3 **B. PLAINTIFFS' COUNT II (STRICT LIABILITY) FAILS AS A**  
4 **MATTER OF LAW BECAUSE IT IS UNDISPUTED THAT THE**  
5 **MANSCHOTS DID OBTAIN THE REQUISITE BUILDING PERMIT.**

6 Plaintiffs base their second count for strict liability on a false factual  
7 premise that the Manschots failed to obtain a building permit when they constructed their  
8 addition in 1997. Attached to Defendants' Statement of Facts as Exhibit G is the requisite  
9 building permit that was obtained for the addition on February 21, 1997. The permit is  
10 signed by a Paradise Valley building inspector and shows that the Manschots' plans for  
11 the addition were "approved." As the Manschots did obtain the necessary permit, the  
12 Plaintiffs have no right to sue under a theory that the permit was not obtained, as they  
13 have done here.

14 **C. COUNT II FAILS BECAUSE, AS A MATTER OF LAW, THE**  
15 **SUBJECT ADDITION WAS NOT "INHERENTLY DEFECTIVE OR**  
16 **UNREASONABLY DANGEROUS."**

17 The Plaintiffs claim that because, according to the Plaintiffs, the Manschots  
18 did not obtain a building permit, the subject premises were "inherently defective and  
19 unreasonable dangerous," and therefore the Plaintiffs are entitled to strict liability.  
20 Because the Manschots did obtain the requisite building permit, this count is factually  
21 deficient. In any event, undersigned counsel could find no viable theory in Arizona, based  
22 solely upon a party failing to obtain a building permit, and certainly nothing that would  
23 rise to the level of strict liability. For this additional reason, Count II fails as a matter of  
24 law.

25 **D. COUNT II IS BARRED BY THE STATUTE OF LIMITATIONS.**

26 Although it is difficult to discern from the Plaintiffs' Complaint, it appears  
that Count II is a property damage claim under which the Plaintiffs are seeking recovery  
for remedying flooding to their premises. Based upon the allegations in the Plaintiffs'

1 Complaint, the Plaintiffs were aware of the alleged flooding "almost immediately after the  
2 closing," which took place in April of 2002. (See ¶¶ 21 and 22 of Plaintiffs' Complaint.)

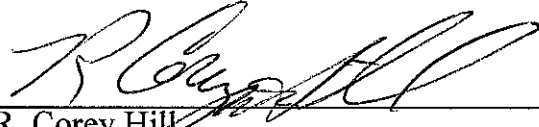
3 Property damage claims typically fall within Arizona's two-year statute of  
4 limitations. See A.R.S. § 12-542. As the Plaintiffs failed to file their initial Complaint  
5 against Mrs. Manschot until January 13, 2006 and their Amended Complaint against Mr.  
6 Manschot until February 14, 2007, the Complaints against the Manschots were time  
7 barred. For this additional reason, Count II fails as a matter of law.

8 **III. CONCLUSION.**

9 For the above reasons, Defendants request that the Court enter an order  
10 granting Summary Judgment in favor of Mr. Manschot on Plaintiffs' entire Complaint  
11 and, as to Mrs. Manschot, on Count II of Plaintiffs' Complaint.

12 DATED this 14 day of June, 2007.

13 THE CAVANAGH LAW FIRM, P.A.

14  
15 By:   
16 R. Corey Hill  
Attorneys for Defendants

17 ORIGINAL of the foregoing  
18 Electronically filed this 14 day  
of June, 2007, with:

19 Clerk of Court  
UNITED STATES DISTRICT COURT  
20 401 W. Washington St.  
Phoenix, AZ 85003

21 COPY of the foregoing hand-  
22 delivered this 14 day of June,  
2007, to:

23 The Honorable Frederick J. Martone  
UNITED STATES DISTRICT COURT  
24 401 W. Washington St.  
Phoenix, AZ 85003

25 COPY of the foregoing e-filed  
26 this 14 day of June,

LAW OFFICES  
**THE CAVANAGH LAW FIRM, P.A.**  
1850 NORTH CENTRAL AVENUE, SUITE 2400  
PHOENIX, ARIZONA 85004-4527  
(602) 322-4000

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2007, to:

Stephen M. Dichter, Esq.  
Jeffrey C. Matura, Esq.  
HARPER, CHRISTIAN, DICHTER  
& GRAIF, P.C.  
2700 N. Central Ave., 12 Fl.  
Phoenix, AZ 85004-1169  
Attorneys for Plaintiffs

M. Chittenden