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CASE LAW UPDATE

Minnesota Supreme Court Confirms that Statute of Limitations for Claims of Defective Construction Can Begin to Run Before Substantial Completion

The Minnesota Supreme Court confirmed in [328 Barry Ave., LLC v. Nolan Properties Group, LLC](#) that the two-year statute of limitations for claims of defective construction contained in [Minn. Stat. § 541.051, subd. 1\(a\)](#) can begin to run before substantial completion of the construction. The court reasoned that the plain language of the statute unambiguously provides that such claims accrue “upon discovery of the injury,” with no further requirement that construction be substantially completed. The court nevertheless found that there was a genuine issue of material fact as to when the plaintiff discovered the injury and thus remanded the case to district court.

Section 541.051, subd. 1(a) provides that “no action by any person . . . to recover damages for any injury to property . . . arising out of the defective and unsafe condition of an improvement to real property, shall be brought . . . more than two years after discovery of the injury.” The property owner argued that the limitations period cannot begin to run until a project is completed because any defective condition that exists before this might be remedied during the course of construction and thus not constitute an actionable injury. The court rejected this argument, noting that the limitations provision of the statute makes no reference to “substantial completion” of a project. The court also pointed to the use of the term “substantial completion” in the repose provision of the statute as evidence that the legislature did not intend the term to be read into the limitations provision. In sum, the court found that the plain language of the statute does not provide an exception for incomplete construction projects.

Despite rejecting the property owner’s interpretation of the statute, the court did recognize that ongoing construction can be a factor in determining when an injury was discovered. It was undisputed that the property owner was aware of a leak near a window more than two years before initiating its lawsuit. But the property owner also testified that it believed all minor defects, including the leak, had been fixed during construction, all contractors and subcontractors were paid for their work at the completion of construction, and there was no evidence of any additional leaks for a 10-month period. Based on this evidence, the court determined that reasonable minds could differ with regard to when the property owner knew, or should have known, of its injury.

In sum, while confirming that the limitations period for claims of defective construction can begin to run before substantial completion, the supreme court also reiterated that discovery of an injury is a fact-specific inquiry, which may include consideration of ongoing construction as a factor.

If you have questions regarding the recent supreme court decision or any other construction related issues, please contact a member of our Construction Law Practice Group at (952) 831-6544.

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