



UNDER CONSTRUCTION

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Colorado Court of Appeals Clarifies the Application of the Statute of Repose in Contractor v. Subcontractor Claims Arising from Multi-Phase Projects

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On February 2, 2012, the Colorado Court of Appeals addressed issues of first impression arising under Colorado's statute of repose for construction defect claims, which imposes an absolute deadline of six years from substantial completion of an improvement to assert defect claims against construction professionals.

In *Shaw Construction v. United Builder Services*, a Homeowners' Association (HOA) sued the general contractor of a multi-phase condominium project. The general contractor then sued its subcontractors, but those claims were dismissed under the statute of repose. The contractor appealed, arguing that (1) in multi-phase projects "improvement" means the entire project; (2) the "substantial completion" triggering the statute did not occur until the project architect certified completion (after a certificate of occupancy was issued); and (3) the statute of repose was tolled by the HOA's service of a Construction Defect Action Reform Act (CDARA) notice. The subcontractors argued that (1) the "improvement" was limited to their specific work; (2) "substantial completion" occurred when each subcontractor completed its work; and (3) a CDARA notice of claim served on other parties does not toll the statute of repose for the subcontractors.

The Court of Appeals sided with the subcontractors.

First, the court ruled that an improvement “may be a discrete component of an entire project,” meaning completing one phase of a multi-phase project may constitute completion of the “improvement” and the six-year clock may start ticking before project completion. Whether a project component constitutes an improvement depends on whether the component is permanent and essential to the project’s function. The court did not decide whether an improvement triggering the statute of repose can be determined on a trade-by-trade basis.

Second, the court ruled that, because the project components that encompassed the subcontractors’ work were completed more than six years before the contractor filed its lawsuit, the statute of repose barred the contractor’s claims. The court did not decide whether substantial completion occurs when a certificate of occupancy is issued or when the architect certifies completion.

Finally, the court ruled that CDARA’s notice of claim process does not toll the statute of repose unless the subcontractor is served with a notice of claim. So, the contractor could not rely on the HOA’s notice of claim to toll the statute of repose for the contractor’s claims against the subcontractors.

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