CONSTRUCTION LAWLETTER

For Industry Professionals, Directors, Officers, Managers, Agents, Realtors, Trades and Suppliers

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BUILDER NEGLIGENCE, S/L

The decision of the Court of Appeals of Ohio, Eighth District, Cuyahoga County explicitly details the statute of limitations for actions brought against a builder:

[Page 254] ***In Point E. Condominium Owners' Assn., Inc. v. Cedar House Assoc. Co. (1995), 104 Ohio App.3d 704, 663 N.E.2d 343, this court discussed the four-year statute of limitations which governs tort actions for damage to real property, R.C. 2305.09(D). We cited Gardens of Bay Landing Condominiums v. Flair Builders, Inc. (1994), 96 Ohio App.3d 353, 645 N.E.2d 82, which we found to summarize the applicable law:

"An action for the failure of a builder to perform in a workmanlike manner is a tort sounding in negligence and is governed by the four-year statute of limitations found in R.C. 2305.09. Benson v. Dorger (1972), 33 Ohio App.2d 110, 115, 62 O.O.2d 176, 179, 292 N.E.2d 919, 922. Unless damage is immediate, the cause of action does not accrue until actual injury occurs or damage ensues. Velotta v. Leo Petronzio Landscaping, Inc. (1982), 69 Ohio St.2d 376, 23 O.O.3d 346, 433 N.E.2d 147, paragraph two of the syllabus. The judiciary will determine when a cause of action arose for purposes of statutes of limitations unless the triggering event is defined by the legislature. O'Stricker v. Jim Walter Corp. (1983), 4 Ohio St.3d 84, 4 OBR 335, 447 N.E.2d 727, paragraph one of the syllabus." Id. at 358, 645 N.E.2d at 85.

In Gardens of Bay Landing, damage to concrete floors was discovered in 1985 and two identical instances were discovered in 1986. The condominium association hired engineers in 1990, who advised it that there were structural deficiencies in the framing, flooring, and foundation, and that the floors required replacement. The association filed its claim for negligent construction on May 9, 1991. Id. at 359, 645 N.E.2d at 86.

This court, in determining whether the trial court properly found the negligent construction claim barred by R.C. 2305.09(D), stated:

"[A]ppellant [association] discovered and replaced the defective underlayment in 1985. The same problem was experienced in two other buildings the following year. At that point, appellant should have known there was a widespread [Page 255] problem with the underlayment. Appellant did not retain the engineers for nearly four years after the third instance of failure.

"Appellant knew it had been damaged after the third instance occurred on October 15, 1986. The four-year statute of limitations began to run at that point. Appellant did not file suit until May 9, 1991, and, therefore, suit was barred by the statute of limitations." Id. at 359, 645 N.E.2d at 86.

The Velotta holding is not a discovery rule, as construction cases deal with a delayed occurrence of damages, not with the discovery of the injury. Sedar v. Knowlton Constr. Co. (1990), 49 Ohio St.3d 193, 198, 551 N.E.2d 938, 943; see, Cincinnati Ins. Co. v. Alcorn (1993), 91 Ohio App.3d 165, 168, 631 N.E.2d 1125, 1126-1127; Point E., supra, at 714, 663 N.E.2d at 350; Bd. of Edn. v. Dela Motte-Larson (Dec. 21, 1989), Cuyahoga App. No. 56272, unreported, 1989 WL 155155. "The Velotta decision is concerned solely with accrual of a cause of action for purposes of a statute of limitations, not with discovery of injury or damages which have already occurred." Sedar, 49 Ohio St.3d at 198, 551 N.E.2d at 943. Aluminum Line Products Co. v. Brad Smith Roofing Co., Inc. (1996), 109 Ohio App.3d 246, 254-255.

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