

For Condominium Associations, the Clock May Already Be Running: New Jersey Supreme Court Rules on Statute of Limitations for Construction Defect Claims

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In a unanimous decision issued on September 14, 2017, the New Jersey Supreme Court addressed the “Discovery Rule” and its application to the statute of limitations in a construction defect litigation involving a condominium conversion. The issue in *The Palisades at Fort Lee Condominium Association, Inc. v. 100 Old Palisade, LLC, et al.*, was whether the condominium association alleging a variety of construction defect claims timely filed its lawsuit prior to the expiration of the statute of limitations.

The Supreme Court ruled that the six-year statute of limitations for a construction defect action commences when “the building’s *original or subsequent* owners *first* knew or, through the exercise of reasonable diligence, should have known of the basis for a cause of action.” Based on this holding, the Court remanded the case to the trial court for a hearing to determine when the clock began to tick for each of the alleged construction defects.

Background

In 1998, when Palisades A/V Acquisitions Co., LLC purchased the property, only a 6-story unfinished and unused garage existed on the land. A/V retained a general contractor who hired various subcontractors to construct, among other facilities, a 30-story residential tower on top of an 11-story parking garage (incorporating the original 6-story garage). In May 2002, construction was substantially completed. The property was first operated as a rental building. Following the sale of the property to 100 Old Palisade, LLC (the Sponsor) in 2004, the property was converted by the Sponsor into a condominium in early 2005. Since that time, the property has been known as The Palisades at Fort Lee Condominium.

A Public Offering Statement (POS), including the engineering report required by New Jersey law, was issued in January 2005. In July 2006, the unit owners representing at least 75% of the common elements acquired control of The Palisades at Fort Lee Condominium Association, Inc. The unit owner-controlled Board then hired an engineering firm to perform an extensive evaluation of the property. Approximately one year later, the engineer issued its report to the Board, identifying a variety of construction defects associated with the Condominium.

In March 2009, the Association filed a multi-count complaint against the Sponsor, numerous contractors and others involved in the design and construction of the property. A significant amount of discovery took place, and the Association resolved claims with a number of the defendants.

The remaining defendants filed a motion for summary judgment stating that the “Discovery Rule” was inapplicable because the POS contained an engineering report disclosing the condition of the Condominium and that the Association’s suit was filed after the expiration of the statute of limitations, which, the defendants argued, began to run upon substantial completion of the building.

The trial court granted the motion and found that the Association could have filed suit within the time that remained under the six year limitations period following substantial completion and to hold otherwise would leave the contractors potentially liable forever.

In February 2016, the Appellate Division reversed the trial court and held that the “Discovery Rule” did, in fact, apply and it tolled the statute of limitations for the Association’s claims. The Appellate Division held that the statute of limitations did not begin to run until June 2007, when the Association received a report from its engineer as to the condition of the Condominium.

Supreme Court Ruling

The Supreme Court found that neither the trial court nor the Appellate Division applied the correct legal standard. The issue, in large part, was based on the change in ownership of the building and what each owner knew about the alleged defects. Recognizing that New Jersey’s jurisprudence on the accrual of a statute of limitations is open to more than one interpretation, the Supreme Court clarified that the date on which the earliest owner knew (or reasonably should have known) of an actionable claim against an identifiable defendant will start the ticking of the clock.

The Supreme Court rejected the trial court’s interpretation that the Association should have filed suit in the time remaining on the six-year time frame from substantial completion since the Association’s engineering report was issued approximately nine months prior to the end of that period. The Supreme Court also rejected the Appellate Division’s ruling, holding that the statute of limitations is not reset each time a property is sold. Instead, it held that suit must be brought within six years of any owner’s discovery, through reasonable diligence, of a defect. If the original owner knew or should have known about a defect, then a subsequent owner is imputed with that same knowledge.

On remand, the trial court will be required to determine when any owner in the chain of ownership first knew, or reasonably should have known, of each defect alleged in the suit. This means that if the original owner, in this case A/V, knew of or should have known of an actionable claim, then the accrual clock for that owner and all subsequent owners began to run at the earliest date of such knowledge. However, if an owner is unaware of an actionable claim, then the clock does not begin to run until someone in the chain of ownership first knows or reasonably should know of an actionable claim against an identifiable party.

Therefore, in a construction defect action, the statute of limitations will vary depending upon when, through the exercise of reasonable diligence, an owner (original or subsequent) knew of each particular defect claimed.

Published Articles (Cont.)

Newly established condominium associations, in particular those with buildings that were in existence and converted to the condominium form of ownership, must recognize that the knowledge of all prior owners in the chain of ownership will come into play when determining the statute of limitations for the association's claims. This means that a subsequent owner's time to bring suit may have started to run and could have possibly expired before he or she even took ownership of the property.

Significantly, the Supreme Court does not appear to have taken into consideration the fact that a condominium association does not own the Condominium, the individual unit owners do.

If you have any questions concerning the issues discussed in this Alert, please contact the author, **Elyse H. Wolff**, a member of the firm's **Construction** and **Community Association** Practice Groups.