JARDINE LOGAN & O'BRIEN P.L.L.P.
ATTORNEYS AT LAW

651.290.6500
8519 Eagle Point Boulevard, Suite 100
Lake Elmo, Minnesota 55042
info@jlolaw.com

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Minnesota Supreme Court Clarifies Time-Bar Statute for Condominium Construction Claims

By: Tessa M. McEllistrem

The Minnesota Supreme Court made a significant decision regarding how the statute of limitations and statute of repose periods in Minn. Stat. § 541.051 (2018) apply to condominiums in the case of *Village Lofts at St. Anthony Falls Ass'n. v. Housing Partners III-Lofts, LLC*, 937 N.W.2d 430 (Minn. 2020). This case arises out of a condominium complex located in northeast Minneapolis known as the Village Lofts. The Village Lofts consist of two separate buildings, Building A and Building B. In April of 2001, construction on Building A commenced, with construction on Building B beginning in September, 2004. In September 2002, the City of Minneapolis had issued a partial Certificate of Occupancy for Building A which included the base building and public spaces. By October 4, 2002, Housing Partners, which owned Village Lofts, recorded a Declaration under the Minnesota Common Interest Ownership Act ("MCIOA") pursuant to Minn. Stat. § 515B.2-101 (2018). The City of Minneapolis then issued a Certificate of Occupancy for the entirety of Building A in November, 2003. By October 2004, the City of Minneapolis issued a Certificate of Substantial Completion and a Certificate of Occupancy for Building B.

A water leak occurred in a unit in Building A in January, 2014. An engineering consulting firm was retained and found similar defects throughout Building A. In May 2015, Village Lofts informed Housing Partners and Kraus-Anderson, the general contractor for the buildings, of the defects and, by June 2015, similar defects were found in Building B as well. In August, 2015, Village Lofts commenced this construction defect case. Among the claims asserted were claims of common law negligence, breach of implied warranty, and breach of contract against Housing Partners and Kraus -Anderson. Furthermore, there was a claim that Housing Partners and Kraus-Anderson breached the warranties provided by Minn. Stat. Chapter 327A.

Procedural Posture

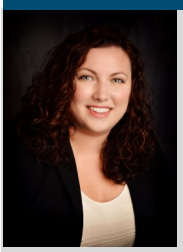
The District Court granted summary judgment for the Defendants concluding that the entirety of claims were barred by the statutes of repose found in Minn. Stat. § 541.051. The Court of Appeals affirmed the dismissal of the common law claims, but the Court of Appeals reversed the dismissal of the statutory warranty claims and reasoned that each condominium unit was entitled to its own warranty date. *Village Lofts at St. Anthony Falls Ass'n v. Housing Partners III-Lofts, LLC*, 924 N.W.2d 619, 634 (Minn. App. 2019). Review was sought as to both the statutory warranty claims and the common law claims.

Is each unit in a condominium building entitled to its own warranty under Minn. Stat. §§ 327A.01-.08?

At the outset, the Supreme Court noted that, unlike a traditional home, a residential condominium does not fit comfortably within the warranty statutes as it is property with parts designed for separate ownership by "unit owners." Minn. Stat. § 515A.1-103(4), (7), (20). Additionally, Chapter 327A does not make any reference to "unit owner" or "common element." However, Chapter 327A does provide warranties to purchasers of new homes stating:

> In every sale of a completed dwelling, and in every contract for the sale of a dwelling to be completed, the vendor shall warrant to the vendee that:
>
> a) During the one-year period from and after the warranty

Firm Announcement



Congratulations to **Tessa M. McEllistrem** on being named a board member of the Minnesota Defense Lawyers Association.

date, the dwelling shall be free from defects caused by faulty workmanship and defective materials due to non-compliance with building standards;

b) During the two-year period from and after the warranty date, the dwelling shall be free from defects caused by faulty installation of plumbing, electrical, heating and cooling systems due to non-compliance with building standards; and

c) During the 10-year period from and after the warranty date, the dwelling shall be free from major construction defects due to non-compliance with building standards.

Minn. Stat. §327A.02, subd. 1.

The Court noted that a breach of a statutory warranty claim occurs "when the homeowners discover, or should have discovered, the builder's refusal or inability to ensure the home is free from major construction defects." *Vlahhos v. R&I Construction of Bloomington, Inc.*, 676 N.W.2d 672 (Minn. 2004).

Because *Village Lofts* notified both Housing Partners and Kraus-Anderson of faulty pipes in May 2015, the statutory warranty claims began to accrue at that time. Accordingly, if the warranty date for the statutory warranty claims is before May 2005, *Village Lofts'* claims would be barred by the statute of repose.

The decision hinges on when the effective warranty date would begin for Buildings A and B. Housing Partners and Kraus-Anderson argued that the warranty date would be the date the deed in each building was first issued to a unit owner, making one date for the entirety of the building. Village Lofts, on the other hand, argued that each unit in both Buildings A and B should have its own and separate warranty date. The Court looked at both the legislative intent of both §541.051 and Chapter 327A to determine how the statute of limitations regarding the statutory warranty claims should be defined.

The Court held that the intent of the legislature was that there would be a single warranty date for a condominium building, rather than different warranty dates for each unit. The Court noted this was in line with revisions to the statute regarding construction defect cases that provided for a statute of repose for statutory warranty claims in order to save builders from facing ongoing liability years after they completed work. Accordingly, the Court made clear that, for condominium buildings, there is to be one warranty date for the entire building, which will be helpful to the defense in future similar cases.

Are Village Lofts' common law claims barred by the statute of repose in Minn. Stat. § 541.051 for actions arising out of the defective and unsafe condition of an improvement to real property?

Pursuant to Minn. Stat. § 541.051, subd. 1(a), "no action by any person in contract, tort, or otherwise to recover damages for any injury to property, real or personal…arising out of the defective and unsafe condition of an improvement to real property" can be brought more than two years after the cause of action accrues, "nor in any event shall such a cause of action accrue more than ten years after substantial completion of the construction." *Id.*

The date of substantial completion is defined as "the date when construction is sufficiently completed so that the owner or the owner's representative can occupy or use the improvement for the intended purpose." *Id.* Moreover, the cause of action for injury accrues upon discovery of the injury. *Id.* This question, while similar to the above, ultimately turned on whether Buildings A and B are considered separate improvements, or if they form one single improvement. The accrual date of the alleged heating coil defect was January 30, 2014 for Building A and June 2015 for Building B. Moreover, the Certificate of Occupancy for Building A was November 2003, whereas the Certificate of Occupancy for Building B was October 18, 2004.

The Court held that "a building and project is a separate improvement that triggers the repose period under §541.051 when the building or project (1) satisfies the definition of "improvement" and (2) it may be turned over to the person who hired the entities doing the construction for the purpose for which it was intended." The Court noted that each separate building met the definition of an improvement as each building was constructed with the idea that people would purchase units to live, neither building would be removed at any foreseeable time, and each building enhanced the capital value of the property. Accordingly, the Court held that Buildings A and B were separate improvements, with separate statute of repose dates under Minn. Stat. §541.051. With the intended purpose of Building A being satisfied in November 2003,

Village Lofts' common law claims for damages related to the leaking pipes in Building A in 2014 were properly dismissed by the District Court.

This decision is an important one for construction defect litigation going forward and will be very helpful to the defense. It helps to clarify contested issues pertaining to statute of limitations and statute of repose regarding claims arising out of Chapter 327A and Minn. Stat. §541.051. Moreover, it gives contractors a definitive end date for litigation so they do not have to engage in prolonged litigation based on multiple different accrual dates of injuries.

Congratulations

Congratulations to JLO Attorneys
Pat Collins and **Tessa McEllistrem**

Pat and Tessa obtained summary judgment on behalf of Dakota County and three Dakota County employees. The Plaintiff, who was the Trustee for the next-of-kin of an inmate who committed suicide in the Dakota County Jail, brought claims under 42 U.S.C. § 1983 for failure to provide adequate medical care and failure to train, along with a wrongful death claim under Minnesota Statute § 573.02. The Court dismissed the Section 1983 claims on the grounds that there was no constitutional violation because the County employees did not know and should not have known that the inmate was a substantial suicide risk. Additionally, the Court dismissed Plaintiff's wrongful death claim based on official and statutory immunity.

Congratulations to **Pat Collins**

Pat obtained a dismissal of all claims with prejudice on behalf of the City of Roseville and the Roseville Police Department. The Plaintiff alleged that the Roseville Police Department was negligent in the management of a stalking/harassment case in which the Plaintiff was the alleged victim. Also, Plaintiff alleged that the Defendants were indifferent to Plaintiff's due process rights, and that such behavior constituted a breach of the Roseville Police Department's duty to train its employees under 42 U.S.C. § 1983. The Court dismissed Plaintiff's claims on the grounds that the Roseville Police Department was not a legal entity subject to suit, and Plaintiff's negligence and Section 1983 claims were barred by the statute of limitations.

MINNESOTA SUPREME COURT DENIES PAYMENT TO QRC FOR SERVICES PROVIDED PRIOR TO EMPLOYER'S REHABILITATION REQUEST

By: Jordan D. Sisto

In *Ewing v. Print Craft, Inc.,* 936 N.W.2d 886 (Minn. Jan. 2 2020), the Minnesota Supreme Court held that an employer is not obligated to continue to pay a qualified rehabilitation consultant (QRC) for rehabilitation services provided after the date the employee's injury resolved, even if the employer did not file a rehabilitation request seeking to discontinue rehabilitation services, as long as the QRC has notice that the injury is in dispute.

Procedural History

Ewing came to the Supreme Court after being heard by a compensation judge and the Worker's Compensation Court of Appeals (WCCA). Initially, the compensation judge denied the QRC's claim for reimbursement of services provided after the employee's work-related injury had resolved. The WCCA reversed the decision of the compensation judge, holding that an employer is bound to pay for rehabilitation services until the Employer files a rehabilitation request. The Supreme Court reversed the WCCA and re-instated the ruling of the compensation judge.

Relevant Facts

Employee, Damon Ewing, was injured during a slip-and-fall at work on December 1, 2015. Over the next several months, Mr. Ewing underwent treatment and tests at numerous providers. On April 20, 2016, doctors at the Mayo Clinic concluded that Mr. Ewing's work-related injury had resolved and that he did not suffer from complex regional pain syndrome (CRPS). However, Mr. Ewing's primary care provider and podiatrist diagnosed him with CRPS. Ewing did not meet with his QRC until after April 20, 2016.

After an initial rehabilitation consultation, the QRC determined Mr. Ewing was a qualified employee and prepared a rehabilitation plan that included medical management and coordination of Mr. Ewing's return to work. The QRC continued to work with Mr. Ewing until the summer of 2016, when Ewing was referred for a neurological consultation to "rule out concussion secondary to fall." At this point, the adjuster indicated Print Craft would not pay for anymore of Mr. Ewing's treatments pending an independent medical examination (IME). Print Craft paid the QRC through September 8, 2016, but refused to pay thereafter. The QRC continued to provide services.

Dr. Joel Gedan saw Mr. Ewing for an IME on November 7, 2016. Dr. Gedan concluded that Mr. Ewing did not suffer from CRPS and that his work injury was limited to a left-ankle sprain.

Thereafter, on November 9, 2016, Mr. Ewing filed a claim petition asserting, among other conditions, that he had CRPS and suffered a concussion as a result of his work injury. On December 7, 2016, Print Craft filed a Notice of Intent to Discontinue Worker's Compensation Benefits (NOID). On January 4, 2017, a compensation judge granted Print Craft's request. During this time, the QRC continued to provide rehabilitation services, and filed a second rehabilitation plan extending the plan through April 30, 2017.

On April 6, 2017, Print Craft filed a rehabilitation request seeking to terminate the rehabilitation plan, claiming the QRC was providing services for "solely denied conditions." The issue was not heard until April 6, 2018, and the QRC continued to provide services in the interim and extended her projected completion date through July 31, 2018. The compensation judge found that Mr. Ewing's injury resolved on April 20, 2016 and that he had not developed any consequential injuries. The compensation judge further denied all benefits, including rehabilitation benefits, after April 20, 2016. The WCCA reversed, holding that "employers must provide notice and show good cause under Minn. Stat. § 176.102, subd. 8(a) (2018) and Minn. R. 5220.0510, subp. 5 (2019) to terminate a rehabilitation plan." The WCCA set the "cutoff date for services" as April 6, 2017, the day that Print Craft filed a rehabilitation request.

Supreme Court Decision

Print Craft appealed to the Supreme Court of Minnesota. At issue before the court was whether Print Craft was liable to pay for rehabilitation services after April 20, 2016, the date on which Mr. Ewing's work-related injury resolved.

The Court held, while an employer is generally liable for compensation for an employee's work-related injury, liability ends when an employee is no longer disabled. *See* Minn. Stat. § 176.021, subd. 1; *see also Kautz v. Setterlin Co.,* 410 N.W.2d 843, 845 (Minn. 1987). The court clarified that "employers are only liable for reasonable and necessary rehabilitation services provided to a

qualified employee." *Ewing,* 936 N.W.2d at 891.

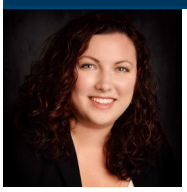
Here, the compensation judge concluded that "Ewing's work-related injury had resolved by April 20, 2016, and that the treatment he received thereafter, including the rehabilitation services, was not 'reasonable, necessary, or causally related to the December 1, 2015 date of injury.'" Neither Ewing nor the QRC challenged these findings of fact. Instead, the QRC argued that the employer remained liable for rehabilitation services until the employer provided notice of its intent to terminate said services.

The QRC relied on the Supreme Court decision in *Halvorson v. B&F Fastener Supply, 901 N.W.2d 425 (Minn. 2017).* In *Halvorson*, the Employer attempted to terminate rehabilitation services on the grounds the employee returned to work, and therefore, was no longer a "qualified employee" under *Minn. R. 5220.0100, subp. 22.* The compensation judge agreed and granted the request. However, the WCCA reversed on the grounds the employee must file a rehabilitation request and show "good cause" to terminate rehabilitation services, as required in *Minn. Stat. § 176.102, subd. 8(a)* and *Minn. R. 5220.0510, subp. 5.* In other words, once an employee is deemed a qualified employee, the definition of a qualified employee does not apply to the termination of rehabilitation services. Instead, services must be terminated under the "good cause" standard. The Supreme Court agreed and affirmed the WCCA.

In *Ewing,* the Court distinguished *Halvorson* on the grounds *Halverson* involved an on-going claim for which the employer owed benefits. In contrast, the judge in *Ewing* found the Employee had recovered from his work injury.

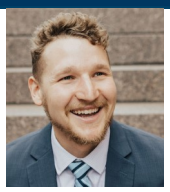
The QRC in *Ewing* argued that she was entitled to reimbursement up until the employer served her notice of the discontinuance of her services through the filing of a rehabilitation request. However, the Court noted that nothing in the rules, statutes, or case law indicates that a rehabilitation request is necessary to constitute notice. The Court concluded: "By continuing to provide rehabilitation services rather than pursuing other options available to her, including filing her own rehabilitation request for assistance or discontinuing services, she assumed the risk of non-payment."

About the Authors



Tessa M. McEllistrem
Senior Associate
tmcellistrem@jlolaw.com
651-290-6541

Tessa is a senior associate at Jardine, Logan & O'Brien, P.L.L.P. She received her J.D. from William Mitchell College of Law, St. Paul, Minnesota. She practices in the area of Civil Litigation and Government Liability.



Jordan D. Sisto
Associate
jsisto@jlolaw.com
651-290-6504

Jordan is an associate at Jardine, Logan & O'Brien, P.L.L.P. He received his J.D. from Mitchell Hamline School of Law, St. Paul, Minnesota. He practices in the area of Civil Litigation and Workers' Compensation.

About the Firm

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