

SJC Clarifies Time Limit on Construction Claims in Multi-Phase Condominium Projects

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The Massachusetts Supreme Judicial Court (SJC) resolved an important question concerning how long prospective plaintiffs have to pursue construction defect claims against a developer when a condominium development consists of multiple buildings constructed over an extended period of time.

In *D'Allesandro v. Lennar Hingham Holdings, LLC*, the SJC held that the six-year statute of repose for filing a lawsuit regarding common areas of an individual building is triggered when the building is substantially complete or open and operating, regardless of whether construction is ongoing on other buildings of the same project.

Massachusetts law contains two time limits on liability: a three-year statute of limitations and a six-year statute of repose under Section 2B of Chapter 260 of the Massachusetts General Laws. The statute of limitations is the maximum time within which a claim may be filed after an event for which legal proceedings may be initiated. The statute of repose sets specific time limits of six years from the earlier of “(1) the opening of the improvement to use; or (2) substantial completion of the improvement and the taking of possession for occupancy by the owner.”

However, for multi-phase condominium developments, Section 2B relative to the statute of repose, leaves some important questions unanswered. Notably, Section 2B does not address what constitutes “the improvement” within the context of a multi-phase development with multiple buildings. In *D'Allesandro v. Lennar Hingham Holdings, LLC*, the Massachusetts Supreme Judicial Court addressed this vacancy in the statutory language by holding that:

“Where a condominium development is comprised of multiple buildings, regardless of how many phases of the development there may be or how many buildings are within each phase, each building constitutes a discrete ‘improvement’ for purposes of § 2B, such that the opening of each individual building to its intended use, or the substantial completion of the individual building and the taking of possession for occupancy by the owner or owners, triggers the statute of repose . . . with respect to the common areas . . . of that building.”

As a separate issue, the Court also addressed the triggering date for the statute of repose in circumstances in which a common area improvement is intended for the benefit of multiple buildings within a condominium development or for the benefit of the condominium development as a whole. With regard to these improvements, the court held that “the statute of repose begins to run when [the] discrete improvement is substantially complete and open to its intended use.”

In other words, when a large-scale condominium development project remains continuously active over a several-year period (approximately seven years in the case of D'Allesandro), each individual building within the development constitutes a separate “improvement” for purposes of triggering the statute of repose in Section 2B. As a result, when faced with construction defect or other claims relating to buildings that were completed prior to the overall completion of a condominium development project, developers should work with their legal counsel to determine whether the statute of repose provides a defense to liability.