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Statute of Limitations Bars Claim for Patent Defect

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Professional Lines Alert

Delon Hampton & Associates CHTD v. Superior Court (Los Angeles County Metropolitan Transportation Authority), 227 Cal.App.4th 250, 14 Cal. Daily Op. Serv. 7010, 2014 Daily Journal D.A.R. 8107 (June 23, 2014)

In 1993, the Metropolitan Transportation Authority (MTA) completed a rail station in downtown Los Angeles. In 2011, plaintiff fell on a stairwell at the station. Alleging that the stairwell was "too small" and that its banister was "too low," plaintiff sued the MTA. The MTA filed a cross-complaint against a number of parties, including the engineering consulting firm (engineer) that designed the station. Engineer's attempt to dismiss the cross-complaint as time-barred based on the applicable statute of limitations was rejected by the trial court. The California Court of Appeal, finding that the alleged defects were patent, reversed.

Question Before the Court and How the Court Ruled

If the alleged defects in the stairwell were patent, should the Court grant engineer's petition for writ of mandate and direct the trial court to sustain the demurrer without leave to amend?

Yes. A "patent deficiency" means a deficiency that is apparent by reasonable inspection. A patent defect can be discovered by the kind of inspection made in the exercise of ordinary care and prudence. On the other hand, a latent defect is hidden and would not be discovered by a reasonably careful inspection. In describing the test used to determine whether a construction defect is patent, the Court explained that it is an objective test that asks: Whether the average consumer, during the course of a reasonable inspection, would discover the defect. This test generally presents a question of fact. However, if the defect is obvious in the context of common experience, then a determination of patent defect may be made as a matter of law.

By way of example, the Court cited as patent defects: the absence of a fence around a swimming pool; raised paving stones on a patio; and defective construction of a landing that allows water to pool and to drain into an office. On the other hand, defects that are latent include: an improperly designed heating and air conditioning system that causes uncontrollable temperature fluctuations (i.e., although the *effects* of the deficiency were obvious, because the temperature was always too hot or too cold, the deficiency itself was unknown); a railing that gives way due to improper nailing concealed by putty and paint; and the absence of a vapor barrier, which caused the siding on a building to

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In reaching its decision in favor of engineer, the Court noted that defects involving stairs and guardrails have been found to be patent. In particular, improperly marked and delineated stairs at a theatre constituted such a defect when discovery revealed that contrast marking stripes required by the plans and by the applicable building code were never placed on the stairs. The absence of these marking stripes on the stairs was held to be an "obvious and apparent" condition and the defect was therefore patent. Similarly, when an individual had climbed through guardrails and injured himself, the spacing between the guardrails was held to be a patent condition. Because the spacing of the rails was obvious, and the dangers attendant to climbing through guardrails on a catwalk considered a matter of "common experience," the alleged defects were patent.

In the action against the MTA, the Court identified the alleged defects as: first, the banister of the stairwell from which plaintiff fell was "too low"; and, second, the stairwell was "too narrow" given the number, age, and volume of people using the subject rail station. The height of the banister and the width of the stairwell were not hidden. Instead, they were open and apparent defects, and the danger of ascending or descending stairs is a matter of common experience. In addition to the defects being visually accessible, simple use of the stairwell would inform the average consumer whether the banister was too low or the stairwell was too narrow. The alleged defects were therefore patent.

What the Court's Decision Means for Professionals

This decision by the California Court of Appeal serves the purpose of the applicable statute of limitations, Code of Civil Procedure section 337.1. As articulated by the Court in *Sevilla v. Stearns-Roger, Inc.*, 101 Cal.App.3d 608, 611, 161 Cal. Rptr. 700 (1980), this statute exists to "provide a final point of termination, to protect some groups from extended liability." Engineer's request to have the trial court take judicial notice of the notice of completion of the subject rail station was not ruled on by the trial court. However, engineer's defense was aided by the fact that there was no dispute as to the date of the substantial completion of the project.

Finally, the Court rejected the MTA's argument that whether a defect is patent can only be established through a technical reading of the applicable building codes. The Court cited the obvious potential for danger involving and heightened risk of falling from stairs. Further, the existence of building code provisions concerning stairwells only underscores that the defects should have been discovered on a reasonable inspection.

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