

Supreme Court Clarifies Statute of Limitations Applicability in Construction Claims

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The limitations periods for breach of contract actions and tort actions arising out of improvements to real property are both six years. So, in an action against a contractor for an alleged breach of a construction contract, which period governs the dispute?

The Michigan Supreme Court recently ruled in *Miller-Davis Company v Ahrens Construction, Inc.*, 489 Mich 355 (2011) that MCL 600.5807(8), the statute of limitations for breach of contract actions, and not MCL 600.5839(1), which applies to actions arising from improvements to real property, governs disputes involving terms of a construction contract.

The Supreme Court's ruling means that the statute of limitations is applicable where there is a contract between parties does not begin to run until the contract is breached by one or more of the contracting parties. Said differently, under Michigan law, a cause of action for breach of contract accrues when a contracting party fails to do what he is obligated to do under the contract.

In contrast, a cause of action in tort for "injury to property" or "bodily injury or wrongful death" rooted in an improvement to real property begins to run from the time of occupancy of the completed improvement, use or acceptance of the improvement to the real property.

In *Miller-Davis Company*, the plaintiff contractor sued the defendant subcontractor, claiming the defendant breached their contract by installing a defective roof. The plaintiff's claim never alleged that defendant's work created an unsafe condition or caused injury to the property or any persons. The plaintiff wanted indemnification for having to correct the problem with the roof.

In its decision, the Supreme Court made clear that a claim for damages from deficiencies in an improvement to real property shall not be considered in the same light as a tort action to recover damages for an injury to persons or property.

Based on the foregoing, the *Miller-Davis Company* court ruled that because there was a contract between the parties, and the plaintiff's claims were rooted in the terms of that contract, the defendant's obligation to construct a satisfactory roof arose out of the contract. Accordingly, the appropriate statute of limitations was the one governing breach of contract actions and not the statute of limitations governing improvements to real property.

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In theory, the Supreme Court's decision means that a party to a contract may maintain a legal cause of action more than six years from the time of occupancy of a completed improvement, use or acceptance of the improvement to the real property. This will occur, similar to the *Miller-Davis Company* case, when a plaintiff takes possession of the real property, or a temporary certificate of occupancy is issued, and the contracting party continues to work on the project.

Failure to understand the parameters of breach of contract claims and injury to person or property tort claims in a construction setting may bring about detrimental consequences. For more information regarding same, please contact the author of this article or any member of the Plunkett Cooney's Construction Law Practice Group.

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