

In Massachusetts, the Statute of Repose Applies to Consumer Protection Claims Against Building Contractors

The Subrogation Strategist

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In *Bridgwood v. A.J. Wood Construction, Inc.*, 105 N.E.3d 224 (Mass. 2018), the Supreme Court of Massachusetts determined that the statute of repose barred the plaintiff's consumer protection claims commenced more than six years after the occurrence of the event that gave rise to the claims. In *Bridgwood*, the homeowner filed suit against the contractors who had performed renovations 15 years earlier. The homeowner asserted that concealed faulty electrical work caused a fire 11 years after the work was completed. The complaint alleged that the contractors, by violating Mass. Gen. Laws Chapter 142A §17(10), committed an unfair and deceptive act pursuant to Mass. Gen. Laws Chapter 93A.

Section 17(10) prohibits contractors from violating building laws and specifically states that a violation of Section 17(10) constitutes an unfair and deceptive act as defined by Chapter 93A. Chapter 93A is regarded as one of the most stringent consumer protection statutory schemes in the nation, and allows litigants to seek remedies such as treble damages and attorney fees.

The renovation contract required the defendant general contractor to comply with all applicable codes, to ensure that all necessary permits were obtained prior to the commencement of any renovations, and to inspect all work. The general contractor was authorized to hire subcontractors to perform the work, but remained responsible for overseeing the subcontractors' work to ensure that it was in conformity with the contract. Additionally, the general contractor was to certify compliance with all applicable regulations, including the home improvement contractor laws set forth in Chapter 142A.

The general contractor hired an electrical subcontractor to perform the electrical work. The plaintiff alleged that the contractors failed to obtain permits, did not perform any inspections, and performed electrical work that did not meet code requirements. Significantly, the electrical wiring at issue was located in a concealed space, so was not readily visible after the contractor completed the renovations.

The defendants filed a motion to dismiss, alleging that the plaintiff's Chapter 93A claims were time-barred because the plaintiff's complaint was filed after the six year statute of repose expired. The plaintiff argued that the statute of repose did not apply to her consumer protection claims under Chapter 93A. Thus, the Supreme Court was called upon to determine whether the statute of repose applied to the plaintiff's Chapter 93A claims. Central to the resolution of that question was whether the plaintiff's Chapter 93A claims were based on tort principles rather than contract principles.

The Supreme Court, looking at the substance of the action, found that the plaintiff's Chapter 93A claims were indistinguishable from negligence claims because the plaintiff alleged that the defendants failed to perform the electrical work in conformity with the standards set forth in Chapter 142A §17(10). Thus, the court held that the plaintiff's Chapter 93A claims were subject to the six-year statute of repose. To reach its decision, the court rejected the notion that a plaintiff may circumvent the statute of repose by relabeling a tort claim as a Chapter 93A violation.

The *Bridgwood* case is a good reminder of the importance of performing a thorough legal analysis to determine the applicability of "case killers" such as the statute of repose. Without understanding the foreseeable defenses of a claim, plaintiffs may expend valuable resources to pursue claims that are time-barred or are otherwise destined for dismissal. While there are times that exercising creativity is appropriate, subrogation practitioners should always be mindful that advancing such arguments may create law when uncertainty is

more favorable in a given jurisdiction.

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