

## Utah's Highest Court Holds That Plaintiffs Must Properly Commence an Action to Rely on the Relation-Back Doctrine to Overcome the Statute of Repose

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Earlier this summer, in *Gables & Villas at River Oaks Homeowners Ass'n v. Castlewood Builders LLC*, 2018 UT 28, the Supreme Court of Utah addressed the question of whether the plaintiff's construction defects claims against the general contractor for a construction project were timely-filed, or barred by the statute of repose. In Utah, the statute of repose requires that an action be "commenced within six years of the date of completion." The plaintiff alleged that its 2014 amended complaint naming the general contractor as a defendant was timely-commenced because, before the date on which Utah's statute of repose ran, a defendant filed a motion to amend its third-party complaint to name the general contractor as a defendant, and the defendant subsequently assigned its claims to the plaintiff. The plaintiff argued that the filing of its 2014 amended complaint related back<sup>[1]</sup> to the date of its original complaint. The Supreme Court disagreed, holding that an action is "commenced" by filing a complaint and that a motion for leave to amend does not count as "commencing" an action.

In *Gables & Villas*, the plaintiff, Gables & Villas at River Oaks Homeowners Association (the Association), a homeowner's association, filed suit against the developers of the project. Shortly after the plaintiff filed suit, the developers filed a third-party action against multiple sub-contractors. At this juncture, the Association and sub-contractors were not aware of the general contractor's involvement with the construction at issue.

At a later date, the parties identified Castlewood Builders LLC (Castlewood) as the general contractor involved with the original construction project. On May 2, 2012, the developers filed a motion for leave to amend their third-party complaint to bring Castlewood into the action. After the court granted the developers' motion, the developers assigned their claims to the Association. The Association then filed an amended complaint and Castlewood accepted service. However, the court struck the amended complaint because the Association, the filing party, had not obtained leave to amend the complaint. The court found that the leave it granted to the developers did not permit the Association to file an amended complaint, even if the developers assigned their claims to the Association.

Over six months after the general contractor accepted service of the Association's amended complaint, the Association filed a motion for leave to amend. Its motion was finally granted approximately eight months later. Within two months, on May 13, 2014, the association filed its amended complaint.

In response, Castlewood filed a motion for summary judgment, alleging that the statute of repose precluded the Association from bringing claims against it related to six buildings that were completed in 2006 and 2007. There was no dispute that the amended complaint was filed more than six years after the final building was completed. However, the Association argued that its amended complaint was timely because it related back to the date of its original complaint.

The district court denied Castlewood's motion, finding that the general contractor and developers were so closely related that the general contractor was on notice of the claims against it when the developers filed its motion to amend the complaint within the statute of repose period. Because the general contractor had notice of the motion to amend before the statute of repose period expired, the district court found that the relation-back doctrine was satisfied.

In response to Castlewood's interlocutory appeal, the Association argued that its action against Castlewood "commenced" when the developers filed their motion for leave to amend. To decide when an action commences within the meaning of the statute of repose, the court looked to Utah R. Civ. P. 3(a) for guidance. Rule 3(a) states that a civil action is commenced by filing a complaint or by service of the summons and a copy of the complaint. It makes no mention of motions to amend, which the court considered fatal to the Association's position.

Ultimately, the court found that the letter of the law was clear in what is meant by commencing an action and was unwilling to accept policy arguments that were inconsistent with the plain meaning of Rule 3(a). Thus, the court held that the Association "commenced" its action when it filed its amended complaint, which was *after* the statute of repose period had expired. In support of its holding, the Supreme Court rejected the Association's position that an injustice would result if motions to amend did not "commence" an action subject to the statute of repose because the moving party has no control over when a motion to amend is granted, and accordingly cannot control when the amended pleading is filed. However, as the court pointed out, while a party cannot control when a motion to amend is granted, it does have the option of filing a separate lawsuit to prevent its claims from being time-barred.

The procedural errors and delays in the *Gables & Villas* case ultimately led to the Association's claims against Castlewood being time-barred by the statute of repose. This case is a reminder that subrogation practitioners should be diligent in meeting statutory and procedural requirements, and that failure to do so may lead to a dismissal of the subrogating insurer's claims. Additionally, it is good practice to conduct prompt, thorough investigations to identify all potentially liable parties, rather than waiting until litigation is underway and there is a greater risk of statutory time limitations being an issue.

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[1] The relation-back doctrine allows amended pleadings to relate back to the time an original pleading is filed in certain circumstances, including when the party to be brought in by amendment received notice of the action and knew that an action would be brought against it once properly identified by the party asserting such claims. See Utah R. Civ. P. 15(c).

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