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California Court of Appeals Expands Association Rights Outside of SB 800

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THE FOURTH DISTRICT CALIFORNIA COURT OF APPEAL HELD THAT THE SB800 PROCESS, OR THE “BUILDER’S RIGHT TO REPAIR ACT,” IS NOT THE ONLY AVAILABLE REMEDY WHEN CONSTRUCTION DEFECTS HAVE CAUSED ACTUAL DAMAGE. THE COURT FOUND THAT THE SB800 LAW WAS PASSED IN ORDER TO GIVE ASSOCIATIONS THE RIGHT TO HAVE CONSTRUCTION DEFECTS REPAIRED BEFORE THOSE DEFECTS CAUSE DAMAGE, NOT TO LIMIT CLAIMS WHERE CONSTRUCTION DEFECTS HAVE ALREADY CAUSED ACTUAL DAMAGES.

PROBLEMS WITH THE BUILDER’S RIGHT TO REPAIR ACT

SB800 was designed as a remedy for developers to repair construction defects, but its time limits were complex. For example, under the time limitations of SB800, a non-visible defect in an electrical system that has not yet caused actual damage would have to be brought no later than four years from the close of escrow for single family homes or completion dates for associations.¹ If that same defect later caused actual damage, the claim could be brought after the time limit expired.² Depending on the timing of the defect, certain claims did not fall within the Act’s time limits and were barred. We attach a simple chart identifying those SB 800 time limits.

NOW A COMPLAINT IS NOT TIME-BARRED

In *Liberty Mutual Insurance Company v. Brookfield Crystal Cove LLC*, 219 Cal. App. 4th 98 (4th Dist. 2013), an owner purchased a newly-constructed home from Brookfield Crystal Cove LLC (hereinafter Brookfield) in 2004. In 2008, a fire sprinkler and pipe suddenly burst that flooded the entire house. Brookfield acknowledged its liability and repaired the damage to the home. During the time of repair, Hart moved into a hotel for several months, accommodated by the owner’s insurer, Liberty Mutual.

In 2011, Liberty Mutual filed a complaint against Brookfield to recover for the plumbing damages, but Brookfield asserted

that the Act was only available when filed within the specified four year time limit³ and therefore fell outside the statute of limitations. The trial court agreed and Liberty Mutual appealed the decision.

The California Court of Appeal found that Liberty Mutual’s claim was not time-barred because it did not fall exclusively within the Act. Instead, the court held that the legislature intended the Act to provide specific procedures regarding construction defects that had not yet caused actual damage. Further, it did not intend to displace the rights that existed before the passage of the Act. The court focused on two statutes, California Code of Civil Procedure sections 337.1 and 337.15, which provide time limitations for filing construction defect claims outside of the SB800 process. Under section 337.1 claimants have four years for patent deficiencies and under section 337.15 ten years for latent deficiencies. These two statutes still remain intact because, outside the specific standards of SB800, construction defect claims based upon the existence of actual damage would continue to occur

STATEWIDE IMPLICATIONS

Before *Liberty Mutual*, California trial courts uniformly found that the Builder’s Right to Repair Act (SB800) was the exclusive basis for defective claims. This case reinforces the right for homeowners to bring claims for construction defects (such as decay, cracks in hardscape, corrosion, etc.⁴) that have caused actual damage but fall outside of the SB800 time limits process. This means that builders have lost some of the protections of SB800, are still liable for the cost of repairing anything that violates those standards, and are responsible for defects causing physical damage.

Homeowners associations can now recover under the ten-year statute of limitations by using tort causes of action when there is actual physical damage to common areas as well as the failure to meet the performance standards of SB800. This case allows homeowners associations to reach beyond the Builder’s Right to Repair Act, permitting them greater options regarding their claim in defective construction.

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¹See California Code of Civil Procedure section 896 (f).

²See California Code of Civil Procedure section 337.15(a).

³California Code of Civil Procedure section 896 (e) requires that an action for a violation of plumbing and sewer issues in residential construction be brought within four years after the close of escrow.

⁴THOMAS E. MILLER, RACHEL M. MILLER & MATTHEW T. MILLER, HOME AND CONDO DEFECTS: A CONSUMER GUIDE TO FAULTY CONSTRUCTION (2ND EDITION, 2012).

SB 800 Time Limits

STANDARDS: The standards set forth in this chapter are intended to address every function or component of a structure. To the extent that a function or component of a structure is not addressed by these standards, it shall be actionable if it causes damage (*Civil Code §897*).

TIME LIMIT: Except as specifically set forth in this title, no action may be brought to recover under this title more than 10 years after substantial completion of the improvement but not later than the date of recordation of a valid notice of completion (*Civil Code §941*).

1 YEAR

- Noise (from original occupancy of adjacent unit)
- Fit and finish warranty
- Irrigation and drainage
- Manufactured products

2 YEARS

- Decay of untreated wood posts
- Landscaping systems
- Dryer ducts

4 YEARS

- Plumbing and sewer
- Electrical
- Cracks in exterior hardscape, pathways, driveways, landscape, sidewalls, sidewalks, patios
- Corrosion of steel fences

5 YEARS

- Deterioration of building surfaces due to paint or stain

10 YEARS

- All other defects or violation of building standards:
 - Air conditioning in living spaces
 - Balconies and balcony systems
 - Ceramic tile and tile backing, Ceramic tile and tile countertops
 - Decks and deck systems
 - Doors
 - Exterior stairs and stair systems
 - Exterior stucco, siding, walls, framing, finishes and fixtures
 - Fire protection
 - Foundation systems and slabs
 - Foundations, load bearing components, slabs and underlying soils
 - Hardscape, paths, patios, irrigation systems, landscape systems and drainage systems
 - Heating
 - Plumbing lines, sewer lines and utility lines
 - Retaining and site walls, associated drainage systems
 - Roofing materials
 - Roofs, roofing systems, chimney caps and ventilation
 - Shower and bath enclosures
 - Soils and engineered retaining walls
 - Structure
 - Windows, patio doors, deck doors and related systems