

## SJC Clarifies Time Limit on Construction and Design Claims by Condominium Owners.

In *D'Allessandro v. Lennar Hingham Holdings, LLC*, SJC-12891, 2020 WL 6438937 (Mass. Nov. 3, 2020), the Supreme Judicial Court held that the statute of repose starts running more quickly for litigants in condominium developments than previously established. All claims against contractors, designers, or engineers of such condominiums are now barred 6 years after the issuance of a certificate of occupancy for the particular location of the alleged defect, regardless of when the rest of the condominium was occupied or substantially complete. This clarification is helpful for defense attorneys in the construction industry and instructive for owners' counsel.

By way of background, Massachusetts law contains two time limits on liability for architects, engineers, contractors, and others involved in construction: a three-year statute of limitations and a six-year statute of repose under G.L. c. 260, § 2B. Once either statute has run, plaintiffs are barred from bringing tort claims against those defendants. The two statutes start running at different times. The statute of limitations begins to run when the injury happens, even if long after construction finishes. The statute of repose begins to run when the "improvement" opens to use, or when the owner takes possession and it is substantially completed. Therefore, in these cases, it is critical to determine when an improvement was opened or substantially completed.

*D'Allessandro* addressed whether, in condominium developments with multiple buildings, the statute of repose starts running once the entire development is complete or whether it runs separately for each individual building. The SJC held that each individual building is a separate improvement that is substantially completed when a certificate of occupancy is issued. Thus, the statute of repose bars lawsuits based over a building that are brought more than 6 years after that building receives a certificate of occupancy. The court applied a similar rule for improvements serving multiple buildings, such as a hot water system, finding the repose period begins when the individual improvement is substantially complete and open to its intended use. The ruling was grounded in the stated importance of construing the statute of repose strictly to carry out the legislature's intent to limit construction liability.

*D'Allessandro* is a potentially powerful shield for defendants. Had the plaintiffs prevailed, the statute of repose would have effectively been expanded to include the period of time between completion of early phases of a multi-phase project and the completion of the entire project – a period that can often be many years. Here, the development included buildings built in multiple phases between 2008 and 2015. Under *D'Allessandro*, lawsuits arising from buildings in the first phase are barred after 2014, even if the injury occurs while subsequent phases are still being constructed. The plaintiffs' proposed rule would have allowed lawsuits from any building until 2021.

The decision means that owners and users of phased construction projects will have to make sure all claims for early phases of construction are begun as soon as possible, and not held until the close-out of the entire project.