Pennsylvania Supreme Court Holds That a Contract for the Construction of Real Estate Is Subject To Four-Year Statute of Limitations

The Pennsylvania Supreme Court, in a case of first impression, has held that claims arising out of written construction contracts, including, in particular, contracts for the construction of real estate, are subject to a four-year statute of limitations, *Gustine Uniontown Associates, Ltd. v. Anthony Crane Rental, Inc.*, 842 A.2d 334 (Pa. 2004). In so doing, the Court resolved an outstanding issue in the Pennsylvania courts involving the construction industry.

**BACKGROUND**

*Gustine* involved the construction of a retail shopping mall, which began in May 1992 and was substantially completed in September 1993. Beginning in April 1995 and continuing through early 1998, significant cracks developed and movement occurred in the walls, floors, sidewalks and parking areas.

In July 1999, the owner, having incurred substantial investigation and remediation costs, commenced an action in the Court of Common Pleas of Allegheny County, Pennsylvania against its architect and twelve other contractors for, among other things, breach of contract, fraudulent misrepresentation, and professional negligence arising out of alleged latent defects in the project. In response to the complaint, the defendants asserted that the owner’s breach of contract claims were barred by the four-year limitations period of Section 5525(a)(8) of the Pennsylvania Judicial Code, which provides as follows:

(a) General Rule. Except as provided for in subsection (b) the following actions and proceedings must be commenced within four years:

(8) Any action upon a contract, obligation or liability founded upon a writing not specified in paragraph (7), under seal or otherwise, except an action subject to another limitation specified in this subchapter.

The owner, in turn, argued that the breach of contract claims were subject to the “catch-all” six-year statute of limitations contained in Section 5527 of the Pennsylvania Judicial Code, which provides as follows:

Any civil action or proceeding which is neither subject to another limitation specified in this subchapter nor excluded from the application of a period of limitation by section 5531 (relating to no limitation) must be commenced within six years.

**TRIAL COURT HOLDS THAT FOUR-YEAR LIMITATIONS PERIOD APPLIES**

The trial court sided with the defendants and held that because the breach of contract claims arose from a written contract, and because no other limitations period specifically refers to written contracts for the construction of real estate, the four-year limitations period of Section 5525(a)(8) governed.

In a separate memorandum, the trial court held that pursuant to the terms of the contract between the owner and the architect, the owner’s breach of contract claims against the architect accrued on September 8, 1993, the date of substantial completion. Accordingly, those claims were barred by the applicable four-year limitations period. The trial court, however, denied the request of the other defendants, whose contracts did not contain a similar accrual provision, to dismiss the owner’s breach of contract claims because it was not possible at the current stage of the proceedings to determine whether the four-year limitations period was tolled by application of the discovery rule or the so-called repair doctrine.
PENNSYLVANIA SUPERIOR COURT REVERSES TRIAL COURT

On appeal, the Pennsylvania Superior Court reversed the trial court and held that the six-year statute of limitations of Section 5527 applied to contract actions alleging latent real estate construction defects. The Superior Court’s decision was based, in large part, on its decision of nearly a decade earlier in Romeo & Sons, Inc. v. P.C. Yezbak & Son, Inc. In Gustine, the Superior Court stated that the “policy principles and considerations of fairness and legal and ethical responsibilities” identified in Romeo supported the application of a six-year limitations period to actions arising from construction contracts. Those policy considerations included “the frequently complex, costly and permanent nature of real estate construction projects” and “the difficulty in ascertaining presumptive responsibility for construction defects or failures, as well as the inevitable delays involved in negotiations for, and performing attempts at remediation or repair.”

PENNSYLVANIA SUPREME COURT REVERSES SUPERIOR COURT

In reversing the decision of the Superior Court, the Pennsylvania Supreme Court concluded that the Superior Court incorrectly “decided a question of statutory interpretation based upon public policy concerns, without any predicate finding of statutory ambiguity.” In that regard, the Supreme Court held that:

the plain language of Section 5528(a)(8) is clear and unambiguous: if the proviso concerning other limitations periods is not applicable, then the four-year rule set forth in 5525(a)(8) controls contract actions based upon a writing.

In sum, the Court held that because there is no other specific statutory limitations provision applicable to contracts for the construction of real estate, the four-year statute of limitations of Section 5525(a)(8) applies. The case was remanded to the Superior Court for further proceedings.

Gustine is an important decision that gives guidance to construction-industry members performing projects in Pennsylvania. The failure to comply with the applicable limitations period can result in the loss of important claims and rights.

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1 42 Pa.C.S. § 5525(a)(8).
2 42 Pa.C.S. § 5527.
4 Gustine, 842 A.2d at 340.
5 In Gustine, the Supreme Court noted that “while this Court has approved of the discovery rule, it has not definitively accepted or rejected the repair doctrine.” Gustine, 842 A.2d at 344, n.8.
8 842 A.2d 1320 (1992), affirmed on other grounds, 652 A.2d 830 (1995). The Pennsylvania Supreme Court affirmed the Superior Court’s decision in Romeo on the grounds that the contract cause of action at issue accrued under the prior (pre-1982) versions of the limitations provisions, under which breach of contract actions were expressly governed by a six-year statute of limitations. The Supreme Court did not address the Superior Court’s conclusions regarding the application of the current (post-1982) versions of the limitations provisions to construction contracts. Gustine, 842 A.2d at 343, n. 6.
9 Gustine, 786 A.2d at 254.
10 Id. at 347.

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