

Ohio Supreme Court Holds 10-Year Construction Statute of Repose Includes Breach of Contract Claims

On July 17, 2019, the Ohio Supreme Court issued its ruling in *New Riegel Local School Dist. Bd. of Edn. v. Buehrer Group Architecture & Eng., Inc.*, in which it held that Ohio's 10-year construction statute of repose includes both tort and contract claims. Previously, the statute was not interpreted to include breach of contract claims.

New Riegel involved claims arising from the design and construction of a public school in the New Riegel Local School District. The school was built as part of Ohio's Classroom Facilities Assistance Program, administered by the Ohio Facilities Construction Commission. The school district asserted claims for moisture intrusion and damage at various locations in its facility based on allegedly defective design and construction. The defendants/appellants included the design professional, the general contractors and their insurer for the project.

Construction was completed in 2002, but the school district filed suit in 2015. The trial court granted the design professional and contractors' motions for judgment on the pleadings, holding that New Riegel's claims were time-barred pursuant to R.C. 2305.131, Ohio's 10-year construction statute of repose. The Third District Court of Appeals reversed the trial court's judgment, holding that prior Ohio Supreme Court precedent (established in *Kocisko v. Charles Shutrump & Sons Co.*, 21 Ohio St.3d 98, 488 N.E.2d 171 (1986)), excludes breach of contract claims from R.C. 2305.131.

The Supreme Court determined that it was not bound by its prior precedent because the decision in *Kocisko* was based

on an interpretation of a prior version of Ohio's statute of repose. In 2004, Ohio's General Assembly enacted the current version of R.C. 2305.131, which, unlike prior versions, expressly refers to contract-law concepts. The 10-year repose period begins to run, under the current version of the statute, upon the "substantial completion" of an improvement, which has the meaning provided in the applicable contract document. See R.C. 2305.131(A)(1). The statute also includes an exception for "express warranties" that run longer than the repose period, meaning that a party can still contract for warranty coverage in excess of the repose limitation. See R.C. 2305.131(D). By excluding express contractual warranty provisions from the repose period, the court reasoned, the General Assembly clearly intended for R.C. 2305.131 to apply to contract claims generally. Otherwise, there would be no need for this express warranty exclusion.

Because of these substantial differences in the new version of the statute, the Supreme Court determined that it could reinterpret its prior precedent to include these contract concepts in the new version of the statute. It reasoned that such a holding is consistent with the General Assembly's goal of protecting defendants from having to litigate "stale claims."

By ruling that the current version of the statute bars breach of contract claims as well as negligence claims, the Ohio Supreme Court has significantly increased the scope of claims against construction professionals that could potentially be barred by Ohio's 10-year construction statute of repose.

FOR MORE INFORMATION

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