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Lantzy v. Centex Homes
California Supreme Court S098660 (03 C.D.O.S. 6914)

The California Supreme Court Limits Exceptions To The Ten-Year Statute Of Limitations For Latent Construction Defects (03 C.D.O.S. 6914)

This Update summarizes the California Supreme Court's August 4, 2003 decision that proscribes equitable tolling (i.e., suspension) of the limitations period for actions based on latent defects in real property. Before the ***Lantzy*** decision, there were conflicting appellate opinions whether promises or attempts to repair construction defects would toll the ten-year statute of limitations. That issue has now been settled. The ten-year statute of limitations in CCP Section 337.15 is essentially absolute, regardless of when a defect is discovered and regardless of promises or attempts to repair the defect.

By Kathleen A. Foley and Richard J. Sciaroni

In 1971, the California legislature enacted CCP Section 337.15 that barred actions based on latent construction defects if commenced more than ten years following substantial completion of the project. Before 1971, suits based on construction defects had to be commenced within three years (for property damage) or four years (for breach of contract or warranty) after the defects were or should have been discovered.

Pre-1971 cases had held that a defendant's promises or attempts to make repairs would equitably toll or suspend the three- and four-year limitations periods while repairs were ongoing. Several cases decided after Section 337.15 was enacted followed this reasoning to hold that promises or attempts to repair would likewise toll the ten-year statute (***Grange Debris Box, etc. v. Superior Court*** [1993] 16 Cal.App.4th 1349 and ***Cascade Gardens HOA v. McKellar & Assoc***. [1987] 194 cal.App.3rd 1252). Other more recent appellate opinions refused to recognize equitable tolling (e.g., ***FNB Mortgage v. Pacific General Group*** [1999] 76 Cal.App.4th 116).

In ***Lantzy v. Centex Homes***, the Supreme Court resolved this conflict. Rejecting application of equitable tolling to the ten-year limitations period, the Court specifically disapproved ***Grange*** and ***Cascade Gardens*** and endorsed ***FNB Mortgage v. Pacific General Group*** that held that promises or attempts to

repair would **not** toll the ten-year limitations period for latent construction defects.

In ***Lantzy***, the plaintiffs had filed suit for design and construction defects in a single family development. The Notice of Completion had been recorded ten years and nine months before plaintiffs first filed suit. In an effort to "plead around" their failure to file within the ten-year limitations period, the plaintiffs alleged that defendants had promised to or attempted to make repairs or had denied that there were defects.

The Supreme Court refused to apply equitable tolling, holding that the statute of limitations had run and that it could not be tolled or suspended because of promises or attempts to repair. The Court noted that while CCP Section 337.15 identifies specific situations in which the ten-year limit would not apply, it contains no provision for tolling the statutory period because of repairs. The Supreme Court found its interpretation consistent with the legislature's goal, when it enacted Section 337.15, of protecting contractors and other construction professionals from perpetual exposure to liability and the prohibitive cost of insuring against such never-ending risk.

The ***Lantzy*** opinion did not preclude application of equitable **estoppel** principles to prevent assertion of the ten year limitations period based on a defendant's intentional or deliberate conduct designed to induce a plaintiff not to file suit during the limitations period. In ***Lantzy***, however, the Court found no allegations to support equitable estoppel.

In a footnote, the Supreme Court noted that newly-enacted SB800 (effective January 1, 2003) allows equitable tolling of limitations periods in specific limited instances, including repairs, as expressly enumerated in Civil Code Section 927. By recognizing SB800 while limiting equitable tolling to those instances specifically identified by the legislature, the ***Lantzy*** decision appears to evidence the Supreme Court's continued policy to limit construction defect recoveries to those expressly authorized by statute when the legislature's intent is clear and unambiguous. For example, the Court had earlier limited construction defect recoveries to actual physical damage (***Aas v. Superior Court*** (2000) 24 Cal.4th 627). The legislature subsequently expanded the scope of residential construction damages when it enacted SB800. This did not deter the Supreme Court in ***Lantzy*** from narrowly construing the liability exposure of construction professionals in non-SB800 cases.

Comment: Practitioners should approach construction defect claims, and especially owner repair requests for repairs, with caution. The line between equitable tolling and equitable estoppel is blurred. A judge or jury could decide that a promise or attempt to repair construction defects induced an owner to delay fling suit, thereby extending the limitations period under equitable **estoppel** principles.

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