## Smith Freed Eberhard P.C. OREGON LAW UPDATE

## Which 10-Year Statute of Repose Will Apply to a "Spec" Home Purchase?

From the desk of Paul Sheely: In a construction defect case involving a purchase and sale agreement for a "spec" home, when will the 10-year statutory period to commence an action begin to run?

Claims Pointer: The Oregon Supreme Court ruled that in regards to a "spec" home (a home built on speculation that it will eventually sell) the 10-year period of repose runs from the "act or omission complained of," rather than from the "date of substantial completion." In this case, the plaintiff filed a negligence lawsuit against the defendant, alleging windows, siding and roof installation defects. The court concluded that the claims were barred because the negligent acts or omissions complained of fell outside the 10-year statute of repose. This case is important because it establishes a bright line that the statute of repose for "spec" homes will run from the date the work was done instead of when the owner purchased the "spec" home.

Shell v. The Schollander Companies, Inc., 358 Or 552 (2016)

My client, a general contractor, built "spec" homes—homes built on speculation of eventual sale to the public. On May 30, 2000, my client and plaintiff entered into a purchase and sale agreement for a home. Although most of the construction was complete, the agreement required my client to make interior changes to the home. After completing the interior changes, the sale closed on July 12, 2000.

Plaintiff filed a complaint against my client for construction defects arising from allegedly defective window, roof and siding installation, resulting in water intrusion damages. The lawsuit was filed more than 10 years after the windows, roof and siding were installed (the "date of the act or omission complained of"), but less than 10 years after the construction was substantially completed, as defined by the construction contract statute of repose, ORS 12.135. She alleged defendant was negligent based on certain defective exterior elements of the home, namely the windows, siding and roof. We alleged that plaintiff's negligence claims were barred by the 10year period set out in the general negligence statute of repose, ORS 12.115(1).

Last week, the Oregon Supreme Court sided with my client. The court held that the construction contract statute of repose, ORS 12.135, only applies when the parties contract to construct a home. It does not apply when a new home is purchased by a real estate contract. The court concluded that plaintiff's negligence claims are barred due to the acts or omissions complained of having occurred more than 10-years prior to her filing the lawsuit.

This case is important in that it creates certainty as to the statute of repose "spec" homes. In its analysis, the court indicated that the legislature may have deliberately differentiated between "spec" homes as opposed to homes built pursuant to construction contracts, as they present different issues for purposes of statutes of repose. For instance, "spec" homes could go unsold for years. If the statute of repose for construction applied to "spec" homes, it would create uncertainty as to when the buyer accepted the construction as substantially completed. This result bodes well for contractors as there is now clarity about when their liability exposure ends.

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case in point...

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