

12-29-2016

## Dykema v. Del Webb Communities, Inc., 132 Nev. Adv. Op. 82 (Dec. 29, 2016)

Christopher Giddens  
*Nevada Law Journal*

Follow this and additional works at: <http://scholars.law.unlv.edu/nvscs>

 Part of the [Construction Law Commons](#), and the [Property Law and Real Estate Commons](#)

---

### Recommended Citation

Giddens, Christopher, "Dykema v. Del Webb Communities, Inc., 132 Nev. Adv. Op. 82 (Dec. 29, 2016)" (2016). *Nevada Supreme Court Summaries*. 1018.  
<http://scholars.law.unlv.edu/nvscs/1018>

This Case Summary is brought to you by the Scholarly Commons @ UNLV Law, an institutional repository administered by the Wiener-Rogers Law Library at the William S. Boyd School of Law. For more information, please contact [david.mcclure@unlv.edu](mailto:david.mcclure@unlv.edu).

*Dykema v. Del Webb Communities, Inc.*, 132 Nev. Adv. Op. 82 (Dec. 29, 2016)<sup>1</sup>

## PROPERTY LAW: CONSTRUCTION DEFECT, NOTICE OF COMPLETION

### **Summary**

The Court determined that a notice of completion's recording date—not the date on which the notice is signed and notarized—signifies when the notice is “issued” to trigger “substantial completion” under NRS 11.2055(1)(b) for NRS Chapter 11's construction defect statutes of repose.<sup>2</sup>

### **Background**

In 2004, respondent Del Webb Communities, Inc. developed separate homes for appellants Robert Dykema and Ronald Turner. In 2014, appellants each served a notice of construction defect on respondent, pursuant to NRS Chapter 40.<sup>3</sup>

Though the statute of repose for known construction deficiencies was ten years,<sup>4</sup> both appellants served respondent more than ten years after notices of completion for their respective homes were signed and notarized. However, appellants served respondent less than ten years from the date these notices were recorded.<sup>5</sup>

The district court relied upon the date the notices were signed and notarized to determine the “issued” date when the statutes of repose began to run. In doing so, the district court dismissed appellants' claims as expired. Appellants challenged the summary judgment dismissal.

### **Discussion**

#### *A notice of completion is issued when it is recorded*

Appellants argued that notices of completion are issued when recorded, in harmony with NRS Chapter 108, in which recording a notice of completion triggers mechanics' lien rights.<sup>6</sup> Conversely, respondent argued that NRS Chapter 108 neither addresses statutes of repose nor defines “issued” or “substantially completed”, and that notices of completion are issued when they are signed and notarized to attest that the work is completed. Because the parties offered competing interpretations of the ambiguous term “issued”, and nothing within NRS 11.2055

---

<sup>1</sup> By Christopher Giddens.

<sup>2</sup> With A.B. 125, the 2015 Legislature repealed the individual six-, eight-, and ten-year statutes of repose for construction defect claims and left such claims to be governed by the six-year statute of repose in NRS 11.202. Assemb. B. 125, 2015 Leg., 78th Sess. (Nev. 2015) (repealing NRS 11.203, NRS 11.204, NRS 11.205).

<sup>3</sup> NEV. REV. STAT. § 40.645 (2015).

<sup>4</sup> NEV. REV. STAT. § 11.203 (2013) (though now repealed by A.B. 125, the pre-repeal versions of the statutes of repose govern here because appellants filed the original complaint within one year of A.B. 125's effective date, as permitted by the act's savings clause).

<sup>5</sup> Dykema served a notice of construction defect on Dec. 2, 2014 after a notice of completion for his residence was signed and notarized on Nov. 30, 2004 and recorded on Dec. 8, 2004. Turner served a notice of construction defect on Dec. 22, 2014 after a notice of completion for his residence was signed and notarized on Dec. 14, 2004 and recorded on Dec. 23, 2004.

<sup>6</sup> NEV. REV. STAT. § 108.228 (2015).

distinguished either interpretation, the Court turned to legislative history and context within the statutory scheme to determine the legislative intent.

First, the Court noted that the legislative history of NRS 11.2055 does not define which act determines that a notice of completion has issued. The Court then examined commentary in the legislative history addressing lien rights, which refer to the statutes governing mechanics' and materialmen's liens.<sup>7</sup> Explicit reference to recording the notice of completion to signify completion of work exists within these lien provisions.<sup>8</sup>

Further, the intent of NRS 11.2055 was to give parties a clear date for when the statutes of repose begins to run and also suggests the Legislature knew that lien rights would be secured after a notice of completion is recorded. It follows that the Legislature intended the statutes of repose to begin running on the recording date to coincide with this crucial event affecting mechanics' lien rights.

In construing related statutes in harmony with each other and maintaining reasonable public policy the Legislature intended, the Court concluded that the act of recording signifies a notice of completion has been "issued."

*The ten-year statute of repose is applicable here*

The Court also briefly addressed respondent's contention that the eight-year statute of repose for latent deficiencies<sup>9</sup> should apply instead of the ten-year statute for known deficiencies. However, respondent did not specify which specific claims could be characterized as latent. As a result, the Court affirmed application of the ten-year statute of repose.

## **Conclusion**

Holding the event of recording as the date a notice of completion is issued provides clarity in harmony with similar statutes. The appellants served respondent within the ten-year statute of repose period initiated by the recording of their respective notices of completion. Thus, the Court reversed the district court's summary judgment against appellants and remanded to the district court for further proceedings.

---

<sup>7</sup> NEV. REV. STAT. §§ 108.221–108.246 (2015).

<sup>8</sup> See NEV. REV. STAT. §§ 108.22116, 108.226, 108.228 (2015).

<sup>9</sup> NEV. REV. STAT. § 11.204 (2013) (repealed).