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Panorama Towers Condo. Unit Owners' Ass'n v. Hallier, 137 Nev. Adv. Op. 67 (Nov. 10, 2021)

Nazo Demirdjian

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RETROSPECTIVE AMENDMENT TO STATUTE OF REPOSE

SUMMARY

When NRS 11.202(1) was amended, it changed the statute of repose from six years to ten years.² The amendment specifically intended to be applied retroactively, rather than the usual prospective application. The Supreme Court reversed, saying the District Court erred when it denied an altered motion from Panorama Towers Condominium Unit Owners' Association against the builders for defects. The amendment's change from six to ten years for the statute of repose meant the nine-year-old settlement fell within the new time period and summary judgment as a result of time was inappropriate.

OPINION

The appellant, Panorama Towers Condominium Unit Owners' Association, filed a claim regarding a construction defect against respondents, which the District Court found to be barred because of time limitations. The Association responded by filing motions to alter or amend the summary judgment ruling. Before the court was to consider the amended motion, the Legislature amended the statute of repose and specifically stated the law was to be interpreted retroactively. Regardless of the change, the District Court once again denied the Association's motion to alter or amend. Based on *Dekker/Perich/Sabatini Ltd. v. Eight Judicial District Court*, the Supreme Court of Nevada found the District Court erred in its denial.³

FACTS

The respondents began construction of the Panorama Towers in Las Vegas, which included a 616 two-unit high-rise condominium building. The two buildings were completed and certified for occupancy in January and March of 2008, respectively. The construction defect claim was filed in 2009 which led to a 2011 settlement. However, the settlement was for only the known defects.

The Association sent the NRS 40.645 notice in February of 2016.⁴ The notice referenced other defects and that all the window assemblies were defective. The defect, they claim, allows water to enter, causing corrosion and eventually an unreasonable risk to the structural integrity to both persons and the property.

NRS Chapter 40 requires investigation and construction defects and required mediation. The required mediation was required on September 26, 2016 and two days later, an action was filed seeking declaratory relief and damages stating that the 2011 settlement and NRS Chapter 40 notice was not sufficient.⁵ Respondents moved for summary judgment under a time bar issue. While the District Court found that the time was tolled based on the 2015 Amendment to NRS 11.202(1), the court also said the 30-day repose had passed without any action, barring the suit.⁶

¹ Nazo Demirdjian.

² NEV. REV. STAT. § 11.202(1).

³ *Dekker/Perich/Sabatini Ltd. v. Eight Judicial District Court*, 137 Nev. Adv. Op. 53, 495 P.3d 519 (2021).

⁴ NEV. REV. STAT. § 40.645.

⁵ NEV. REV. STAT. § 40.647; NEV. REV. STAT. § 40.648; NEV. REV. STAT. § 40.652; NEV. REV. STAT. § 40.670; NEV. REV. STAT. § 40.680.

⁶ *Supra* note 5.

In 2019, the Governor signed the Assembly Bill 421, amending the statute of repose to ten years, instead of six. The District Court denied the motion to amend by the Association saying that the law was ineffective until October 1, 2019. It also granted the respondent's NRCP 54(b) certification.⁷ While the second motion was filed before the October date, the hearing took place after. Regardless, on January 14, 2020, the District Court denied the motion under time issues.

DISCUSSION

The Court is reviewed an order denying a NRCP 59(e) motion. A.B. 421 to NRS 11.202(1) did not become effective until October 1, 2019—despite being passed in June.⁸ While the law was meant to be retroactive, the date a law becomes effective is not changed, unless a different effective date is prescribed. Quoting *In re Estate of Thomas*, the Court held that the general rule is that the legislature is prospective, unless the legislature intended otherwise, as is the case here.⁹

In the present case, since the issue was within ten years of the case—having been brought nine years prior—the case was not time barred because the law had changed NRS 11.202's statute of repose from six to ten years.¹⁰ Thus, the district court erred in denying the altered motion.

CONCLUSION

The amendment changed the statute of repose to ten years and was meant to be applied retroactively. The District Court, however, did not use the retroactive aspect in considering the altered motion, which was an error. The Court reversed the summary judgment and remands for further proceedings.

⁷ Nev. R. Civ. P. 54(b).

⁸ *Supra* note 5.

⁹ *In re Estate of Thomas*, 116 Nev. 492, 495–96, 998 P.2d 560, 562 (2020).

¹⁰ *Supra* note 5.