

**THE STATUTE OF REPOSE AND ITS APPLICATION
TO PERSONAL INJURY ACTIONS IN NEW JERSEY**

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Although the statute of limitations is often one the first defenses that comes to mind when defending a personal injury action arising out of an incident occurring on real property, the statute of repose is a defense that is not always in the forefront of the minds of insurance carriers and their counsel when a suit is filed. While the statute of limitations will serve to bar a cause of action, the statute of repose will serve to prevent what might otherwise be a cause of action from ever arising. Therefore, proper consideration should always be given in the first instance as to whether particular claims will be precluded altogether by this most potent of defenses.

The New Jersey Statute of Repose, N.J.S.A. 2A:14-1.1, enacted in 1967, specifically bars lawsuits for damages from personal injuries arising out of the defective and unsafe condition of improvement to real property against the following specific classes of entities: “any person performing or furnishing the design, planning, surveying, supervision of construction or construction of such improvement to real property more than ten years after the performance or furnishing of such services and construction.”

The New Jersey Supreme Court made it very clear in *State v. Perini Corp.*, 221 N.J. 412 (2015) that N.J.S.A. 2A:14-1.1 applies when:

- (1) the injury sustained by the plaintiff resulted from a defective and unsafe condition of an improvement to real property;
- (2) the defendant was responsible for performing or furnishing the design, planning, surveying, supervision of construction, or construction of the improvement; and
- (3) the injury occurred more than ten years after the performance or furnishing of the services.

The New Jersey Supreme Court explained the purpose of the Act in *Rosenberg v. North Bergen*, 61 N.J. 190 (1972), wherein the Court noted that “the Legislature intended to address an increased exposure to potential liability on the part of architects, contractors and the like, and sought to provide what it deemed to be a reasonable amount of protection against this greater hazard, and applied such protection to all who can, by a sensible reading of the words of the Act, be brought within its ambit.” Explaining the interplay between the three year statute of limitations for personal injury actions in New Jersey and the ten year statute of repose, the Court in *Rosenberg* made it clear that the time within which suit may be brought under N.J.S.A. 2A:14-1.1 is entirely unrelated to the accrual of any cause of action, and its effect is not to bar a cause of action, rather it is

to prevent what might otherwise be a cause of action from ever arising. The New Jersey Appellate Division explained the policy underlying the Act in *Wayne Township Board of Education v. Strand Century, Inc.*, 172 N.J. Super. 296 (App. Div. 1980), wherein it noted that “the statute was clearly a legislative response to the judicial adoption of the so-called ‘discovery’ rule and abrogation of the so-called ‘completed and accepted’ rule to tort claims arising from construction of improvements to real property.” The Court in *Hall v. Luby Corp.*, 232 N.J. Super. 337 (Law Div. 1989), explained that N.J.S.A. 2A:14-1.1 effectively extinguishes any cause of action arising more than 10 years after the performance of construction or services regarding improvements to real property.

Since the enactment of the Act, it has been liberally applied by New Jersey State Courts to preclude personal injury actions against architectural firms, construction companies, condominium developers, contractors and other entities involved in performing or furnishing the design, planning, surveying, supervision of construction, or construction of an improvement to real property. For, example, the New Jersey Appellate Division in *Lewis v. Hopewell Valley Racquet Club*, 269 N.J. Super. 71 (App Div. 1993), held that a plaintiff who sustained personal injuries when he dove into a pool could not pursue an action against the company that had installed the pool more than ten years prior to the date of the accident. However, New Jersey Courts have made it quite clear that the Act would not apply to bar a cause of action against the manufacturer of a product because product liability actions are subsumed by the New Jersey Product Liability Act. Therefore, the Appellate Division in *Dziewiecki v. Bakula*, 361 N.J. Super. 90 (App. Div. 2003), held that the Act did not apply to bar an action filed by a diver who sustained personal injuries against the pool manufacturer and against the pool installer *in his capacity as a seller* even though the pool could be classified as an improvement to real property, because product liability principles applied to the action, although it barred a claim against the installer in his capacity as having installed the pool and erecting warning signs.

The Court in *Hall v. Luby*, 232 N.J. Super. 337 (Law Div. 1989), explained that the date when the 10 year time bar matures under N.J.S.A. 2A:14-1.1 must be measured from the final date the person claiming repose and immunity from suit furnishes any and all services or construction it has undertaken at the job site. For example, the New Jersey Appellate Division observed in *Hopkins v. Fox & Lazo Realtors*, 242 N.J. Super. 320 (App. Div. 1990), that the period of repose provided under the statute began when the architect who had been sued completed the work for which he had been commissioned and submitted the plans to an independent contractor-developer and did not supervise the project. In light of the fact that a typical construction project may involve several entities performing work over the course of multiple phases, the New Jersey Appellate Division addressed the application of the statute to such a situation in *State v. Perini Corp.*, 425 N.J. Super. 62 (App. Div. 2012). There, the Court enunciated the following principles: (1) The trigger date is the date of substantial completion, not completion of every last task of the contractor; (2) Separate trigger dates apply to subcontractors that have substantially

completed their work even if the improvement as a whole is not completed and ready for use and a certificate of occupancy has not been issued; and (3) the trigger date for any single contractor runs from completion of that contractor's entire work on the improvement, not from discrete tasks. Therefore, in a multi-phase construction project, it is entirely conceivable and highly likely that the trigger date for the general contractor will be altogether different than the trigger date for its subcontractors and that the trigger date for each subcontractor may vary substantially depending upon the length of the project.

Although the subject of attack on constitutional grounds, the constitutionality of N.J.S.A. 2A:14-1.1 was upheld by the New Jersey Supreme Court in *Rosenberg v. North Bergen*, 61 N.J. 190 (1972) wherein the Court noted that there was no exclusion from the class which would justify a determination that the statute was in any way unconstitutional. Since its passage, the Act has been repeatedly applied and enforced by New Jersey Courts to insulate contractors and others involved in the performance of construction or services regarding improvements to real property from lifetime liability. When applicable, the statute of repose is a mighty arrow in the quiver of a defendant that can serve to extinguish a case in its early stages. Therefore, its potential application should be carefully examined at the outset of each case.

ILLUSTRATION

The following illustration will help explain how the New Jersey Statute of Repose Statute, N.J.S.A. 2A:14-1.1, would apply to various entities under same factual scenario.

A property owner, Silver Lake Development Corporation, contracts with a General Contractor, Henry Construction, for the development and construction of a strip mall/shopping center, Clara Plaza, in Sewell, New Jersey. Silver Lake Development Corporation also contracts with Domenico Architectural Associates to develop the architectural plans for the site which include not only the buildings but also the adjoining sidewalks, curbing and parking lot. The General Contractor, Henry Construction, then subcontracts with J & J, Inc. to perform the excavation work, lay the foundation and install the sidewalks, curbs and parking lot in accordance with the architectural plans. Henry Construction also subcontracts with a number of subcontractors for the construction of the buildings comprising the stores in the strip mall/shopping center whose identities are irrelevant for the purpose of this illustration. The architectural plans are completed by Domenico Architectural Associates and delivered to the General Contractor, Henry Construction, in 2006. Domenico Architectural Associates has no further involvement with the project thereafter. The plans do not comply with the applicable state and township codes resulting in the construction of curbing and sidewalks that are 2" higher than permissible. The construction of the sidewalks, curbs and parking lot is completed by J & J, Inc. in 2007, in accordance with the design plans prepared by Domenico Architectural Associates. The construction of the overall project is completed

as overseen by the General Contractor, Henry Construction, in 2009. The completed strip mall/shopping center, Clara Plaza, is sold by the property owner, Silver Lake Development Corporation, to Tannen Corporation which takes possession of the property in 2009. The new property owner, Tannen Corporation, enters into a property management agreement for the property with Pelham Property Management, LLC, in 2009. The stores are leased to various tenants which begin to occupy them in 2010. Clara Plaza opens to the public for business in 2010.

In 2018, 84 year old Leo Patrick Monahan visits the strip mall/shopping center and trips over the high curb while walking from his car in the parking lot and attempting to step up onto the sidewalk in front of the stores. Mr. Monahan falls and sustains a fractured hip. The 10 year statute of repose would prohibit Mr. Monahan from pursuing claims against the architect, Domenico Architectural Associates, whose work, namely the preparation and delivery of the architectural plans, was completed in 2006 (12 years prior to the date of the accident). The 10 year statute of repose would also prohibit Mr. Monahan from pursuing claims against J & J, Inc., whose construction of the sidewalks, curbs and parking lot was completed in 2007 (11 years prior to the date of the accident). However, Mr. Monahan would be permitted to file his lawsuit in 2018 against the General Contractor, Henry Construction, which oversaw the completion of the project in 2009 (9 years prior to the date of the accident). The statute of repose would not even apply to Tannen Corporation, the owner of Clara Plaza on the date of the accident, nor the property management company, Pelham Property Management, LLC, since neither entity was involved in the construction of the property. As such, neither company would fall within the class of entities which N.J.S.A. 2A:14-1.1 was intended to insulate from liability. Therefore, Mr. Monahan would be permitted to file suit against both entities in 2018 on the basis that they permitted a dangerous condition to exist on the property which caused his accident. Further, his claims would be timely as having been filed within the applicable statute of limitations.