

## Construction Law

April 22, 2008

### Ohio Court of Appeals Upholds 10 Year Statute of Repose for Construction Claims

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On March 21, 2008, the Second District Court of Appeals upheld Ohio Revised Code Section 2305.131, the ten-year statute of repose for a negligence claim based on a defective improvement to real property.

In *McClure v. Alexander*, 2008 Ohio 1313 (2nd Dist., March 21, 2008), the plaintiff, McClure, contended that his contractor, Alexander, defectively constructed an addition to his home. The contract was entered into in December 1988, and the home was completed in June 1989. McClure claimed that the walls had become rotten due to water damage, and suit was filed against the contractor in August 2007. The contractor argued that McClure's claim was barred by Ohio's statute of repose, which requires that a claim for defective improvement to real property must accrue within ten years of the date of substantial completion. McClure argued that the statute was unconstitutional, however the trial court agreed with the contractor and dismissed the action.

McClure appealed. The Second District Court of Appeals agreed with the trial court's dismissal, holding that McClure's claim was time barred. The Court ruled that a claim based on negligent, defective improvements to real property must vest within 10 years. It held that the statute of repose would not necessarily deprive a plaintiff of a right to any remedy, because an owner could still have a claim against an architect or the contractor under a written contract prior to expiration of the fifteen year statute of limitations for written contracts under Ohio Code Section 2305.06. The Court also ruled that statute also preserves a plaintiff's right to bring a tort claim for bodily injury or property damage after ten years, if it was discovered within that period but less than two years before its expiration. Finally, the Court held that the statute also does not apply in cases in fraud or where an express guarantee of workmanship has been given that exceeds the ten year period.

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