

Court finds associational standing has drawbacks

STATUTE OF
LIMITATIONS BARS
HOA'S CLAIMS AGAINST
SUBCONTRACTORS

IN MULTIFAMILY CONSTRUCTION DEFECT litigation in Colorado, homeowners' associations rely on associational standing to pursue claims affecting more than two units, and bring claims covering an entire development. This practice broadens an association's case beyond what individual aggrieved owners would otherwise bring on their own against a developer or builder-vendor. However, reliance on associational standing to combine homeowners' defect claims into a single lawsuit has its drawbacks to homeowners.

A recent order in the case of Villa Mirage Condominium Owners' Association, Inc., v. Stetson 162, LLC, et al., in El Paso County District Court, reflects how an HOA unsuccessfully sought a determination from the court that its claims against subcontractors were not barred by the statute of limitations. The HOA attempted to apply the Colorado Common Interest Ownership Act (CCIOA), which governs the creation and operation of HOAs — and is a statute that is intended to apply to people under a legal disability.

HOA was unsuccessful in declarant control claims

Under CCIOA, during the period of 'declarant control,' the developer may appoint members to the association's executive board until a sufficient number of homeowners have moved into the development and taken seats on the board. In Villa Mirage, the association argued that a provision of CCIOA related to the period of declarant control; sharing tort liabilities between a developer and an association should toll the statute of limitations for claims against third parties.

That provision, C.R.S. § 38-33.3-311(1), states: Neither the association nor any unit owner except the declarant is liable for any cause of action based upon that declarant's acts or omissions in connection with any part of the common interest community which that declarant has the responsibility to maintain. Otherwise, any action alleging an act or omission by the association must be brought against the association and not against any unit owner. If the act or omission occurred during any period of declarant control and the association gives the declarant reasonable notice of and an opportunity to defend against the action, the declarant who then controlled the association is liable to the association or to any unit owner for all tort losses not covered by insurance suffered by the association or that unit owner and all costs that the association would not have incurred, but for such act or omission. Whenever the declarant is liable to the association under this section, the declarant is also liable for all

expenses of litigation, including reasonable attorney fees, incurred by the association. Any statute of limitation affecting the association's right of action under this section is tolled until the period of declarant control terminates. A unit owner is not precluded from maintaining an action contemplated by this section by being a unit owner or a member or officer of the association. [emphasis added]

The court held that this statute section only governs claims between an association and a declarant, and that it cannot be stretched to toll a statute of limitations for claims against third parties.

Court supports individual protection, designed by statute

The HOA also equated the period of declarant control to a legal disability, during which the association was prevented from asserting claims against subcontractors, relying on C.R.S. § 13-81-103. That statute section tolls a statute of limitations to protect the rights of a person under a disability, until the person has legal representation, dies or overcomes the disability. The Villa Mirage court referred to C.R.S. § 13-81-101(3), which defines a 'person under disability' as 'any person who is a minor under 18 years of age, a mental incompetent, or a person under other legal disability and who does not have a legal guardian.' The court stated that the statute protects the interest of individuals, and no case law applies this statute to business entities. The concise order suggests that this issue was an easy one for the court to decide.

While the court did not discuss it in further detail, it can be presumed that if individual homeowners had viable claims against subcontractors, they should not have waited for their HOA to bring those claims. A homeowner association's drive to combine all claims affecting a development into a single lawsuit may sometimes be an economical means to litigate a case, but the interests of the individuals may be forgotten in the strategy to rely on associational standing. ■



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