

Massachusetts Appeals Court Hears Argument on Whether Late-Filed Construction Defect Claims Are Barred by Statute of Repose

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On September 16, 2026, the Massachusetts Appeals Court held oral argument in *Trustees of the 350 West Broadway Condominium Trust v. Peter Leoutsakos, et al.*, 2025-P-1506, where the appeals court must decide whether newly added construction defect claims filed against a condominium developer relate back to the date of the initial filing of the lawsuit and may be asserted or are time barred by the six-year limitation in the statute of repose in G. L. c. 260, § 2B.

G. L. c. 260, § 2B provides a time limit of six years for a plaintiff to assert a tort claim “arising out of any deficiency or neglect in the design, planning, construction, or general administration of an improvement to real property....”

In *Trustees*, in opposing a motion for summary judgment at the lower trial court level, the plaintiff/appellant argued that the new construction defect claims were merely a refinement of its previously alleged legal theories in the original complaint, and that under the relation-back doctrine in Mass. R. Civ. P. 15(c), the new negligence and breach of implied warranty counts should be treated as if they were commenced timely on the original filing date of the complaint, despite being filed after the six-year repose period expired.

In rejecting that argument, the trial court found the new construction defect claims to be new theories of liability that were barred by the statute of repose. The trial court relied, in part, on *Tindol v. Boston Hous. Auth.*, 396 Mass. 515, 519 (1986), where the Massachusetts Supreme Judicial Court (SJC) established the precedent that the relation-back doctrine found in Rule 15(c) could not be used to amend a pleading to circumvent the statute of repose. However, the *Tindol* case involved the addition of defendants after the repose period lapsed, whereas the *Trustees* case involves the addition of claims, which will be a distinction for the appeals court to address in its decision.

During oral argument, the plaintiff/appellant argued that the case is still one “action” against the same defendants commenced within the repose period, and that the repose prevents adding new defendants and not new allegations against an existing defendant. Appellant also argued that a 2016 G.L. c. 93A demand letter referencing “negligent construction” and notice to the defendants during the repose period that engineers were re-inspecting the building envelope demonstrates that the defendants were not unfairly surprised by the new defect claims. The appeals court pushed back on that argument and questioned why only the elevator was mentioned in the initial complaint if the broader defects were really part of the same case.

In response, the appellees argued that appellant's position improperly imports a statute of limitations relation-back concept into the statute of repose, which the SJC had previously addressed in *Tindol*. Appellees argued that the original complaint put the defendants on notice of only narrow issues (e.g. intercom, storage space, funding, and elevator warranty dispute) and not any building-envelope defects. And therefore, the 2021 amended complaint adding the new defect claims came after the repose period expired and was time-barred. The appellees noted that accepting the appellant's theory would leave the defendants exposed to the underlying claims while also being barred from seeking third-party contribution from the architect or contractor, since that too would be barred by the statute of repose.

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The appeals court's decision is expected in early 2027. The decision will be important because if the appeals court reverses the lower trial court, construction and design professionals could face negligence claims for improvements to real property (e.g., defective work or services) made after the six-year repose period has expired.

MG+M The Law Firm filed an Amicus Brief on behalf of the American Council of Engineering Companies of Massachusetts and the Massachusetts Chapter of the American Institute of Architects, in support of defendants/appellees. We are monitoring this case closely and will continue to provide updates as it works its way through the appeals court.