

# WILENTZ

—ATTORNEYS AT LAW—

WILENTZ, GOLDMAN & SPITZER, P.A.

## New Jersey Appellate Court Reaffirms that Statute of Limitations for Construction Defect Claims is Not Tolled Until Transition of Condominium Association from Developer to Unit Owners

10/28/20

The Appellate Division recently issued a decision applying the law established by the Supreme Court in the seminal case of [The Palisades at Fort Lee Condo. Ass'n, Inc. v. 100 Old Palisade, LLC](#) to affirm the dismissal of a condominium association's construction defect lawsuit as time-barred under the statute of limitations.

In [Riva Pointe at Lincoln Harbor Condo. Ass'n, Inc. v. Tishman Constr. Corp.](#), the condominium association, still within the control of the developer of the project, first learned of alleged construction defects at the project when it obtained a report prepared by an engineering expert in September 2008. The unit owners at the project did not gain control of the new association's board from the developer until March 2011. The association timely filed a construction defect lawsuit against the developer, general contractor, architect and other parties in 2012, but the matter was dismissed in 2015. The association then filed a second construction defect lawsuit against those parties in October 2015, more than seven years after its engineering expert issued its report.

The Appellate Division affirmed the trial court's dismissal of the association's second matter because its claims were time-barred by the statute of limitations. The Appellate Division reiterated that, under New Jersey law, construction defect claims must be filed within six years of the date the claims have accrued, i.e., the date on which the plaintiff knows or reasonably should know of the claims against an identifiable party. The court correctly recognized that the Supreme Court in *Palisades* held that the six-year statute of limitations can begin running before the unit owners gain full control of the association, and does not restart when the unit owners take control. The court found that the association's claims accrued in September 2008 when it received its engineering expert's report and the statute of limitations did not start anew in March 2011 when the unit owners gained control of the association. The court thus ruled that the claims filed in October 2015 were untimely as the six-year statute of limitations expired in September 2014.

The *Riva Point* decision reinforces the protection provided to developers, contractors and design professionals from a reset of the statute of limitations period. Yet, it remains in a developer's best interest to promptly notify unit owners of alleged defects they learn about prior to and during the transition of association control, or even file claims themselves against the responsible contractors or design professionals in appropriate circumstances. In *Palisades*, the Supreme Court suggested that an association may have claims against a developer that failed to bring claims against parties responsible for defects within the six-year limitations period, claims which can permit the association to seek escalated forms of relief. Developers should seek to minimize their potential exposure by fully disclosing known issues at projects, if any, upon transition so the unit-owner controlled association cannot blame the developer for missing a statute of limitations because the developer concealed known defects.

If you have questions about this case or construction defects in New Jersey, please contact [Don Taylor](#) at 732.855.6434 or [dtaylor@wilentz.com](mailto:dtaylor@wilentz.com), or [Dan Kluska](#) at 732.855.6033 or [dkluska@wilentz.com](mailto:dkluska@wilentz.com).

### Attorneys

- Donald E. Taylor

- Daniel J. Kluska

**Practice**

- Construction Law