

COURT OF APPEALS OF WASHINGTON, DIVISION TWO

Donovan v. Pruitt, 36 Wash. App. 324

674 P.2d 204 (1983) · No. 5827-8-II · Decided December 30, 1983

SUMMARY

The Washington Court of Appeals affirmed dismissal of purchasers’ claims against a builder for defective foundation construction. The court held that the implied warranty of habitability arose by operation of law rather than from the written sale contract, that the applicable limitations period had expired, and that the builder was not estopped from asserting the statute of limitations.

CASE DETAILS

COURT	Court of Appeals of Washington, Division Two
WRITING FOR THE COURT	Petrie, J.; Petrich, C.J.; Worswick, J.
JURISDICTION	Washington
DECIDED	December 30, 1983
DOCKET	5827-8-II
DISPOSITION	affirmed
PROCEDURAL POSTURE	Plaintiffs appealed a judgment dismissing their damages action against a building contractor as barred by the statute of limitations.
STANDARD OF REVIEW	The court stated that it would not disturb the trial court's finding concerning plaintiffs' failure to prove due diligence; no broader standard of review was expressly stated.
PRECEDENTIAL VALUE	Published Washington Court of Appeals opinion
PARTIES	James M. Donovan, John E. Donovan v. Elvin S. Pruitt

TOPICS

- construction defects
- construction law
- statute of limitations
- contracts
- civil procedure

PRACTICE AREAS

- construction law
- real estate
- contracts
- civil procedure
- remedies

QUESTIONS PRESENTED

1. Whether the implied warranty of habitability or fitness for use arose out of the written sale contract and therefore was governed by Washington's six-year limitations period for actions upon a contract in writing.
2. Whether RCW 4.16.300-.320 governed accrual and limitations of the Donovans' construction-defect claim.
3. Whether Pruitt was estopped from asserting the statute of limitations because of his conduct concerning repairs.

HOLDINGS

1. The implied warranty of habitability or fitness for use does not arise out of the written contract evidencing the sale of the house and therefore is not governed by the six-year limitations period for actions upon a contract in writing under RCW 4.16.040(1).
2. RCW 4.16.310 is a statute of repose, or statute of abrogation, that limits the time within which a construction-related claim must accrue; it is not a conventional statute of limitations measuring the period from accrual to filing. The Donovans' claim accrued by spring 1976, within six years after substantial completion of the house, so it was not barred by RCW 4.16.310's accrual limitation.
3. Pruitt was not estopped from asserting the statute of limitations because the evidence did not show that his conduct fraudulently or inequitably induced the Donovans to delay filing until the limitations period expired.

KEY QUOTATIONS

“This statute is not truly a statute of limitations in the normal sense of the term.” (327)

“In effect, we held that the warranty did not arise out of any document evidencing the sale; rather, it came into existence by operation of law by virtue of a common law duty of strict liability that the builder-seller owed to the first purchaser-occupant.” (328)

“Estoppel precludes a defendant from asserting the statute of limitations when his actions have fraudulently or inequitably invited a plaintiff to delay commencing legal action until the relevant statute of limitations has expired.” (329)

FACTUAL BACKGROUND

Pruitt constructed a speculative house on a hillside in 1973. The Donovans, the first purchasers and occupants, bought it in May 1975 and later discovered that doors would not close properly and that the floor appeared to sag or slope. Pruitt made an unsuccessful repair attempt in spring 1976, and the Donovans had the foundation properly repaired in December 1979 before filing suit in December 1980.

PROCEDURAL HISTORY

The Donovans sued Pruitt in December 1980 for damages arising from allegedly faulty construction of the foundation of their home. The trial court found that the foundation was inadequate, that repairs would cost more

than \$6,000, and that Pruitt had breached an implied warranty of fitness for use, but dismissed the action as untimely. The Court of Appeals affirmed.

DISPOSITION

affirmed

CASES CITED

- House v. Thornton, 76 Wash. 2d 428, 457 P.2d 199 (1969)
- Rodriguez v. Niemeyer, 23 Wash. App. 398, 595 P.2d 952 (1979)
- Bouser v. Lincoln Park, 83 Mich. App. 167, 268 N.W.2d 332 (1978)
- Heath v. Sears, Roebuck & Co., 123 N.H. 512, 464 A.2d 288 (1983)
- Berg v. Stromme, 79 Wash. 2d 184, 484 P.2d 380 (1971)
- Gay v. Cornwall, 6 Wash. App. 595, 494 P.2d 1371 (1972)
- Bicknell v. Garrett, 1 Wash. 2d 564, 96 P.2d 592 (1939)
- Central Heat, Inc. v. Daily Olympian, Inc., 74 Wash. 2d 126, 443 P.2d 544 (1968)

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