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# Florida Court Enforces Four Year Statute of Limitations For Work Performed by Window Installer

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In *Brock v. Garner Window & Door Sales, Inc.*, 187 So. 3d 294 (Fla. Dist. Ct. App., 2016), plaintiffs, Lawrence and Laura Brock ("Plaintiffs") sued the contractor that installed windows on their home after they sustained water intrusion damage. Suit was filed more than four years, but less than five years, after discovery of the allegedly latent defect in the window installation. The window installer, Garner Window & Door Sales, Inc. ("Garner"), raised a statute of limitations defense under Florida's statute, § 95.11(3)(c), which provides a four year statute of limitations for claims related to construction of an improvement to property. Plaintiffs argued that the general five-year statute for actions founded on a written contract applied. The trial court found that the four year statute applied and the Court of Appeals affirmed.

The Court of Appeals explained that section 95.11(3)(c), Florida Statutes, which provides a four-year limitations period for all actions "founded on the . . . construction of an improvement to real property," specifically applied to the facts of the suit and controlled over the general statute for written contracts. The court rejected what it described as Plaintiffs novel argument that the four year statute of limitations should not apply because Garner was not a licensed contractor. In support of that argument Plaintiffs pointed to language of the statute which states that the statute of limitations begins to run when the latter of the four events occurs:

[T]he date of actual possession by the owner, the date of the issuance of a certificate of occupancy, the date of abandonment of construction if not completed, or the date of completion or termination of the contract between the professional engineer, registered architect or **licensed contractor** and his or her employer, whichever data is late; except that, when the action involves a latent defect, the time runs from the time the defect is discovered or should have been discovered with the exercise of due diligence.

Fla. Stat. § 95.11(3) (c)...

Having observed that the reference to the licensed contractor is in the portion of the statute which addresses when the statute of limitations begins to run and not what type of actions the statute applies to, the Court found Plaintiffs' interpretation illogical.

The Court noted that even if it were willing to accept Plaintiffs' interpretation of the "licensed contractor" language in the statute, the trigger for the running of the statute of limitations was the discovery of a latent defect, not completion of contract and, therefore, Plaintiffs' interpretation was immaterial.

Plaintiffs' also sought to rely upon Fla. Stat. §489.128, which deems contracts entered into by unlicensed contractors unenforceable, citing to *Earth Trades, Inc. v. T&G Corp.*, 108 So. 3d 580 (Fla. 2013). The Court of Appeal, however, disagreed, finding that Fla. Stat. § 489.128 and the *Earth Trades* decision prevent an unlicensed contractor from enforcing a contract but not from defending an action to enforce the contract.

Based upon the foregoing, the Court of Appeal affirmed the decision of the trial court dismissing Plaintiffs' claims against Garner.