STATE OF MINNESOTA

IN SUPREME COURT

A18-0256

Court of Appeals — Thissen, J.

Village Lofts at St. Anthony Falls Association,

Respondent/Cross-Appellant,

vs.

Filed January 15, 2020
Office of Appellate Courts

Housing Partners III-Lofts, LLC, and
Kraus-Anderson Construction Company,

Appellants/Cross-Respondents,

Doody Mechanical, Inc., Kenneth Kendle, P.E.,
and M&E Engineering, Inc.,

Respondents,

and

Elness Swenson Graham Architects, Inc.,

Defendant.

Einar E. Hanson, Jonathan A. Edin, Nathaniel J. Weimer, Strobel & Hanson, P.A., Hudson, Wisconsin; and

John D. Hagen, Jr., Minneapolis, Minnesota, for respondent/cross-appellant Village Lofts at St. Anthony Falls Association.

Timothy P. Tobin, Brock P. Alton, Gislason & Hunter LLP, Minneapolis, Minnesota, for appellant/cross-respondent Housing Partners III-Lofts, LLC.

Jonathon M. Zentner, Steven J. Erffmeyer, Jeffrey M. Markowitz, Arthur, Chapman, Kettering, Smetak & Pikala, P.A., Minneapolis, Minnesota, for appellant/cross-respondent Kraus-Anderson Construction Company.

Kevin F. Gray, Matthew W. Moehrle, Rajkowski Hansmeier, Ltd., Saint Cloud, Minnesota, for respondent Kenneth Kendle, P.E.

J. Scott Andresen, Kate L. Homolka, Bassford Remele, P.A., Minneapolis, Minnesota; and

Mike Schechter, Associated General Contractors of Minnesota, Saint Paul, Minnesota for amicus curiae Associated General Contractors of Minnesota.

S Y L L A B U S

1. Under Minn. Stat. § 327A.01, subd. 8 (2018), the warranty date for a condominium building is the date on which the first buyer occupies or takes legal or equitable title to any unit in the building.

2. A building or project is a separate improvement that triggers the repose period of Minn. Stat. § 541.051 (2018) when the building or project satisfies our definition of "improvement" set forth in *Pacific Indemnity Co. v. Thompson-Yeager, Inc.*, 260 N.W.2d 548 (Minn. 1977), and its progeny, and is sufficiently complete so that the improvement may be turned over to the person who hired the construction entities to use it for the purpose for which it was intended.

Affirmed in part and reversed in part.

O P I N I O N

THISSEN, Justice.

This case requires us to decide how the repose periods in Minn. Stat. § 541.051 (2018) apply to condominiums. First, we must determine how the statute of repose operates for

claims of breach of the statutory warranties in Minnesota Statutes chapter 327A. *See* Minn. Stat. §§ 327A.01–.08 (2018). The central question we must answer is whether each unit within a condominium building has its own warranty date or whether a single warranty date applies to the entire condominium building. We conclude that a single warranty date applies to an entire condominium building.

Second, we must consider how the period of repose in section 541.051 applies to claims arising out of a defective or unsafe condition resulting from construction of the condominium. Because the condominium development that is the subject of this case includes two buildings, the critical inquiry is whether the buildings constitute one single improvement or two separate improvements to real property. *See* Minn. Stat. § 541.051, subd. 1. We conclude that a building or project is a separate improvement that triggers the repose period of Minn. Stat. § 541.051 when the building or project satisfies our definition of "improvement" set forth in *Pacific Indemnity Co. v. Thompson-Yeager, Inc.*, 260 N.W.2d 548 (Minn. 1977), and its progeny, and is sufficiently complete so that the improvement may be turned over to the person who hired the construction entities to use it for the purpose for which it was intended. Accordingly, under the circumstances of this case, we hold that the two buildings are separate improvements to real property for purposes of applying the repose period in section 541.051 to defective or unsafe-condition claims.

FACTS

Village Lofts at St. Anthony Falls is a condominium complex located in northeast Minneapolis. The condominium consists of Building A, at 100 2nd Street NE, and Building

B, at 150 2nd Street NE. Appellant Housing Partners III-Lofts, LLC (Housing Partners) developed the project.

In April 2001, Housing Partners retained appellant Kraus-Anderson Construction Company (Kraus-Anderson) as the general contractor for Building A. Defendant Elness Swenson Graham Architects, Inc. (ESG), and respondents Doody Mechanical, Inc. (Doody) and Kenneth S. Kendle, P.E. (Kendle), were subcontractors on the project. In September 2002, the City of Minneapolis issued a partial certificate of occupancy for Building A, including the base building and public spaces. On October 4, 2002, Housing Partners recorded a declaration under the Minnesota Common Interest Ownership Act (MCIOA), Minn. Stat. § 515B.2-101 (2018), creating the Village Lofts at St. Anthony Falls condominium to be operated and administered by respondent Village Lofts at St. Anthony Falls Association (Village Lofts).[1] Less than one week later, on October 10, 2002, the first unit in Building A was sold. The City of Minneapolis (City) issued a certificate of occupancy for all of Building A, excluding two units, in November 2003.

In May 2003, Housing Partners entered into a separate contract with Kraus-Anderson for the construction of Building B. Kraus-Anderson engaged ESG, Doody, and M&E Engineering, Inc. (M&E) as subcontractors. In September 2004, Housing Partners added Building B to the Village Lofts condominium development. The following month, the project architect issued a certificate of substantial completion and the City issued a certificate

[1] Housing Partners relinquished control of management and operations of Village Lofts to the unit owners in January 2005.

of occupancy for Building B. Sale and occupancy of units in both buildings continued into 2005 and later.

In January 2014, Village Lofts contacted Encompass, an engineering consulting firm, regarding a water leak in a unit in Building A. The firm determined that the source of the leak was a broken pipe that was part of the heating, ventilation, and air conditioning (HVAC) system in Building A. Encompass broadened its investigation and discovered similar defects throughout Building A. In May 2015, Village Lofts notified Housing Partners and Kraus-Anderson of the defects in the HVAC system in Building A. By the end of June 2015, Encompass had found similar defects in the HVAC system in Building B. Village Lofts paid to repair the relevant pipes throughout both buildings.

Village Lofts commenced this action in August 2015. It ultimately asserted claims of common-law negligence, breach of implied warranty, and breach of contract against Housing Partners, Kraus-Anderson, and Doody. It further claimed that Housing Partners and Kraus-Anderson breached the warranties provided by Minnesota Statutes chapter 327A. Finally, Village Lofts asserted a common-law negligence claim against ESG, Kendle, and M&E.

The district court granted summary judgment for the defendants on all claims, concluding that the claims were barred by the statutes of repose in Minn. Stat. § 541.051. The district court determined that the repose period for the Building A statutory warranty claims started to run when the first condominium unit in that building was occupied in 2002. The repose period for Building B began to run in 2004, when the first condominium unit in that building was sold and occupied. Consequently, the district court reasoned that the

10-year statute of repose ran before Housing Partners and Kraus-Anderson were given notice of the alleged construction defects in each building in 2015. The district court also found that Buildings A and B were two separate improvements to real property and that the repose period for common-law claims for each building began to run more than 10 years before the claims accrued.

The court of appeals affirmed the district court's dismissal of Village Lofts' common-law claims. *Vill. Lofts at St. Anthony Falls Ass'n v. Hous. Partners III-Lofts LLC*, 924 N.W.2d 619, 631 (Minn. App. 2019). It reversed the dismissal of the statutory warranty claims, reasoning that each condominium unit is entitled to its own warranty date. *Id.* at 634. It remanded for the district court to determine the warranty dates of each unit. *Id.* at 638.

Housing Partners and Kraus-Anderson sought review on the statutory warranty claims, arguing that each building has only one warranty date and that warranty date is applicable to all units in that building. Village Lofts sought cross-review on the dismissal of its common-law claims, arguing that Buildings A and B together are one single improvement. We granted the petitions for review and cross-review.

ANALYSIS

On appeal from summary judgment, we determine "whether there are any genuine issues of material fact" and whether the district court "erred in its application of the law." *Offerdahl v. Univ. of Minn. Hosps. & Clinics*, 426 N.W.2d 425, 427 (Minn. 1988). This case involves the interpretation of two statutes. We review matters of statutory interpretation de novo. *Amaral v. Saint Cloud Hosp.*, 598 N.W.2d 379, 383 (Minn. 1999). The purpose

of statutory interpretation is to "ascertain and effectuate the intention of the legislature." Minn. Stat. § 645.16 (2018).

When interpreting a statute, we first determine whether the language of the statute is plain. "When the language of a statute is plain and unambiguous, that plain language must be followed." *Amaral*, 598 N.W.2d at 384 (citing Minn. Stat. § 645.16). "A statute is only ambiguous when the language therein is subject to more than one reasonable interpretation." *Id.* In that case, we "may resort to the canons of statutory construction to determine its meaning." *500, LLC v. City of Minneapolis*, 837 N.W.2d 287, 290 (Minn. 2013). We will "read and construe a statute as a whole and . . . interpret each section in light of the surrounding sections to avoid conflicting interpretations." *Am. Family Ins. Grp. v. Schroedl*, 616 N.W.2d 273, 277 (Minn. 2000).

I.

The first question presented is whether each unit in a condominium building is entitled to its own warranty date under Minn. Stat. §§ 327A.01–.08. We start by noting that the language of the statute does not fit comfortably with condominium developments. Unlike a traditional home, a residential condominium is a property with parts of the development designated for separate ownership by "unit owners" and the remainder—the "common elements"—designated for common undivided ownership by all unit owners. *See* Minn. Stat. § 515A.1-103(4), (7), (20) (2018) (defining "common element," "condominium," and "unit owner"). Chapter 327A, however, makes no reference to, or distinctions about, a "unit owner" or "common element," and does not appear to contemplate a residential condominium's mix of individual and common-property ownership.

At oral argument, Kraus-Anderson suggested that we could decide that chapter 327A simply does not apply to condominiums. Because that issue was not raised before the district court or the court of appeals, we assume that the statute applies. *See In re Welfare of K.T.*, 327 N.W.2d 13, 16–17 (Minn. 1982) ("It is well settled that a party may not raise for the first time on appeal a matter not presented to the court below."); *see also* Minn. Stat. § 515B.4-113(g) (2018) ("This section does not in any manner abrogate the provisions of chapter 327A relating to statutory warranties for housing . . . .").[2]

Chapter 327A provides warranties to purchasers of new homes. It states, in relevant part:

> In every sale of a completed dwelling, and in every contract for the sale of a dwelling to be completed, the vendor shall warrant to the vendee that:
>
> (a) during the one-year period from and after the warranty date the dwelling shall be free from defects caused by faulty workmanship and defective materials due to noncompliance with building standards;
>
> (b) during the two-year period from and after the warranty date, the dwelling shall be free from defects caused by faulty installation of plumbing, electrical, heating, and cooling systems due to noncompliance with building standards; and
>
> (c) during the ten-year period from and after the warranty date, the dwelling shall be free from major construction defects due to noncompliance with building standards.

Minn. Stat. § 327A.02, subd. 1. Village Lofts asserts that, under subdivision 1(c), a major construction defect occurred.

The Act further provides that the vendee has a "cause of action against the vendor for damages arising out of the breach [of a warranty], or for specific performance." Minn.

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[2] Of course, the Legislature has full power to make changes to chapter 327A to clarify how the law applies to condominiums.

Stat. § 327A.05, subd. 1. Minnesota Statutes section 541.051 establishes statutes of limitation and repose for these causes of action. Actions for breach of the statutory warranties in section 327A.02 that accrue more than 10 years after the warranty date are barred by the statute of repose. Minn. Stat. §541.051, subds. 1, 4; *Day Masonry v. Indep. Sch. Dist. 347*, 781 N.W.2d 321, 326 & n.6 (Minn. 2010).

A breach of warranty claim accrues "when the homeowner discovers, or should have discovered, the builder's refusal or inability to ensure the home is free from major construction defects." *Vlahos v. R&I Constr. of Bloomington, Inc.*, 676 N.W.2d 672, 678 (Minn. 2004); *see also Day Masonry*, 781 N.W.2d at 328. Village Lofts notified Housing Partners and Kraus-Anderson of the faulty pipes in May 2015; neither took any action to remedy the damages. The association's statutory warranty claims therefore accrued, at the earliest, in May 2015. *See Day Masonry*, 781 N.W.2d at 329 (holding that the earliest "the breach-of-warranty claims could have accrued" was after the building owner notified the contractors of "potential warranty claims and forward[ed] the [inspection] report"). If the warranty date for the statutory warranty claims is before May 2005, Village Lofts' claims are barred by the statute of repose.

Housing Partners and Kraus-Anderson argue that the effective warranty dates for Buildings A and B are the dates the first warranty deed in each building was issued to a unit owner or the date a unit was first occupied by an owner. Because the first warranty deed for a unit in each building was issued before 2005, the statutory claims are time-barred. Village Lofts contends that every unit in Buildings A and B should have its own

warranty date. Under this interpretation, claims arising out of defects in units sold or occupied after 2005 would not be subject to the time-bar in section 541.051.

We turn then to determining the warranty date or dates for the Village Lofts condominiums. Chapter 327A defines "warranty date" as "the earliest of: (a) the date of the initial vendee's first occupancy of the dwelling; or (b) the date on which the initial vendee takes legal or equitable title in the dwelling." Minn. Stat. § 327A.01, subd. 8. A "dwelling" is defined as a "new building, not previously occupied, constructed for the purpose of habitation." *Id.*, subd. 3. The statute provides no definition of the word "building."

Housing Partners and Kraus-Anderson contend that the statutory definition of "warranty date" is plain and unambiguous. Their position is straightforward: because first occupancy of or title in a dwelling sets the warranty date, and a dwelling is a building, the statute contemplates a single warranty date for the building, not separate warranty dates for each individual unit.

Village Lofts argues that the statutory definition of "warranty date" is not so clear. In particular, Village Lofts points out that an "initial vendee" is defined in chapter 327A as a "person who first contracts to purchase a dwelling [i.e., a building] from a vendor for the purpose of habitation and not for resale in the ordinary course of trade." *Id.*, subd. 4. And because no single person contracted to purchase all of Building A or Building B as that person's residence, if we were to adopt the reading of "dwelling" proposed by Housing Partners and Kraus-Anderson, there would be no initial vendee. Without an initial vendee, the argument goes, condominium buildings have no statutory warranty date. According to

Village Lofts, the best way to reconcile this inconsistency in the statute is to consider each condominium unit to be a "dwelling" with a separate warranty date.

Problems arise from Village Lofts' interpretation as well. First, concluding that each condominium unit is a dwelling would be at odds with a plain reading of the word "building," which connotes the whole edifice, rather than portions or units.[3] Further, the language of the Minnesota Common Interest Ownership Act (MCIOA) undermines the argument.

The MCIOA governs the creation, organization, operation, and termination of common-interest communities, including condominiums. *See* Minn. Stat. §§ 515B.1-100–.4-118 (2018). The MCIOA states that each unit within a condominium is allocated "a fraction or percentage of undivided interests in the common elements" of the building. Minn. Stat. § 515B.2-108(a)(1). Common elements are "all portions of the common interest community other than the units." Minn. Stat. § 515B.1-103(7). Therefore, each unit owner also acquires ownership over the common elements of the building. Because these elements are essential aspects of the "dwelling," a narrow focus on each unit is not an obvious fit. Of course, purchasing an undivided interest in parts of a building is different than purchasing the building. Individuals with undivided interests in common elements have no interest in other units. In short, condominium unit owners own their own unit, do

[3] It perhaps hardly needs to be said, but a "building" is commonly understood to be "a constructed edifice designed to stand more or less permanently, covering a space of land, usu[ally] covered by a roof and more or less completely enclosed by walls . . . ." *See Webster's Third New International Dictionary* 292 (2002).

not own other units, and share ownership of common elements. As has perhaps become obvious, parsing the language of chapter 327A leads in endless circles.

We conclude that there are two reasonable interpretations of when the "warranty date" begins to run on a condominium. One interpretation is that the warranty date for the whole building begins to run when the first condominium unit owner occupies or takes title to his unit. The second is that a new warranty date arises for each unit when the owner of that unit occupies or takes title to the unit. The language of the statute is ambiguous. We therefore turn to other tools of statutory interpretation.

One method we use to analyze ambiguous language is to look to the strength of the textual clues supporting each interpretation. *State v. Hayes*, 826 N.W.2d 799, 805 (Minn. 2013) (resolving an ambiguity in the drive-by-shooting statute, Minn. Stat. § 609.66, subd. 1e (2018), by looking for "textual clue[s]" as to the better interpretation). The Legislature's use of the word "building" in the definition of "dwelling" does not eliminate all ambiguity from the statutory language. But it is a stronger indicator of the Legislature's intent (that a dwelling is the entire building and not individual parts of a building) than Village Loft's focus on the textual confusion sown by the ill-fit between the statute's definition of "initial vendee" and its application to condominium units.

We may also consider the purpose of chapter 327A. *See* Minn. Stat. § 645.16(3)–(4) (stating that in ascertaining the intent of the Legislature, courts may consider "the mischief to be remedied" and "the object to be attained" by a law). The Legislature enacted the law to provide new homeowners with statutory consumer protections against major construction defects and defects caused by faulty workmanship, use of defective materials,

and faulty installation of plumbing, electrical, heating, and cooling systems. *See* Minn. Stat. § 327A.02, subd. 1. And the Legislature aimed to ensure compliance with the building standards that are set forth in the State Building Code. *See id.*; *see also* Minn. Stat. § 326B.101 (2018) (stating that the State Building Code shall "establish reasonable safeguards for health, safety, welfare, comfort, and security of the residents of this state"). The warranties contained in chapter 327A apply to "every sale of a completed dwelling," Minn. Stat. § 327A.02, subd. 1, and those warranties cannot be "waived or modified by contract," Minn. Stat. § 327A.04, subd 1.

This general consumer-protection focus provides some support for a reading of the term "warranty date" under which each condominium unit is entitled to its own warranty. But we are reluctant to place decisive emphasis on this general consumer-friendly purpose because it offers little insight into what the Legislature specifically intended when it defined "warranty date," particularly because it does not appear that the Legislature considered the application of that definition to condominiums.

Moreover, the provisions in chapter 327A are not all consumer-protective. *See* Minn. Stat. § 327A.02, subds. 4–7 (giving vendors and contractors the right to inspect and offer to repair a defect before the owner may commence an action for breach of a warranty); *see also* Minn. Stat. § 327A.03(a), (e)–(f) (providing for various situations that the statutory warranties in chapter 327A do not cover). The presence of statutes of limitations and statutes of repose, regardless of when any particular statute might run, also support the conclusion that the rights of consumers are not unlimited. Overall, the consumer-

protection purpose of chapter 327A does not compel a conclusion that the Legislature intended that each condominium unit is entitled to its own warranty date.

One of our goals in statutory interpretation is to harmonize statutes if possible. *See* Minn. Stat. § 645.26, subd. 1 (2018) ("When a general provision in a law is in conflict with a special provision in the same or another law, the two shall be construed, if possible, so that effect may be given to both."). Accordingly, we now turn to the other provision at issue in this dispute: the general statutes of limitation and repose for damage actions based on construction to improve real property set forth in Minn. Stat. § 541.051. Attempting to harmonize chapter 327A and section 541.051, subdivision 4, is particularly relevant because subdivision 4 expressly applies to chapter 327A.[4]

Generally, statutes of repose are "intended to eliminate [a] cause of action" after a period of time. *Weston v. McWilliams & Assocs., Inc.*, 716 N.W.2d 634, 641 (Minn. 2006). They " 'reflect the legislative conclusion that a point in time arrives beyond which a potential defendant should be immune from liability for past conduct.' " *Id.* (quoting 51 Am. Jur. 2d *Limitation of Actions* § 18 (2000)).

We have described the specific purposes of the statute of repose in section 541.051, stating:

> The statutory limitation period is designed to eliminate suits against architects, designers and contractors who have completed the work, turned the improvement to real property over to the owners, and no longer have any interest or control in it. . . . [T]he statute helps avoid litigation and stale

[4] Minnesota Statutes section 541.051, subdivision 4, was enacted in 1977 in the same bill that established the new home warranties in chapter 327A. *See* Act of May 5, 1977, ch. 65, § 8, 1980 Minn. Laws 107, 110 (codified as amended at Minn. Stat. § 541.051, subd. 4 (2018)).

> claims which could occur many years after an improvement to real property has been designed, manufactured and installed. The lapse of time between completion of an improvement and initiation of a suit often results in the unavailability of witnesses, memory loss and a lack of adequate records. . . . Minn. Stat. § 541.051 (1980) was designed to eliminate these problems by placing a finite period of time in which actions against certain parties may be brought. We hold this objective is a reasonable legislative objective and should not be lightly disregarded by this court absent a clear abuse.

Sartori v. Harnischfeger Corp., 432 N.W.2d 448, 454 (Minn. 1988) (footnote omitted) (evaluating the constitutionality of section 541.051). The purpose of the statute of repose therefore provides a strong counterbalance to the broad consumer protection offered by chapter 327A.

This purpose is also evident in the legislative history of section 541.051. Chapter 327A was enacted in 1977, a dozen years after the Legislature adopted section 541.051 in 1965. Act of May 5, 1977, ch. 65, 1977 Minn. Laws 107 (codified as amended at Minn. Stat. §§ 327A.01–.08 (2018)). In the 1977 bill, the Legislature expressly provided that the chapter 327A statutory warranties were *not* subject to the limitations or repose periods in section 541.051. *Id.*, § 8. ("Section 541.051 shall not apply to actions based on breach of the statutory warranties set forth in [327A.02].") A two-years-from-date-of-discovery limitations period was added for statutory warranty claims in 1980. Act of Apr. 7, 1980, ch. 518, § 4, 1980 Minn. Laws 595, 596 (codified as amended at Minn. Stat. § 541.051 (2018)).

In 2001, the court of appeals interpreted the language of Minn. Stat. § 541.051 and observed that "there is no clear statute of repose that even arguably applies to the new-home statutory warranty . . . and thus, there is a hypothetical potential for stale claims extending

many years into the future because the homeowner was not in a position to discover the defect or damage." *Koes v. Advanced Design, Inc.*, 636 N.W.2d 352, 360 (Minn. App. 2001), *rev. denied* (Minn. Feb. 19, 2002). Insurers, concerned about the uncertainty of open-ended and longer periods of postconstruction liability, began denying insurance to residential builders in Minnesota. *See* Hearing on H.F. 730, H. Comm. Commerce, Jobs, and Dev., 83rd Minn. Leg., Mar. 27, 2003 (audio file) (statement of Steve Noble, President of Central Minnesota Builders Association).

In response, the Legislature changed course in 2004 and enacted the current version of section 541.051, amending subdivision 4 to explicitly provide a statute of repose for statutory warranty claims. Act of May 15, 2004, ch. 196, § 1, 2004 Minn. Laws 356, 356–57 (codified as amended at Minn. Stat. § 541.051 (2018)). Legislators supported the 2004 amendment because they were concerned that failing to amend section 541.051 would leave builders vulnerable to open-ended liability that could last 20, 30, even 50 years. *See* Hearing on H.F. 730, H. Comm. Commerce, Jobs, and Dev., 83rd Minn. Leg., Apr. 1, 2003 (audio file) (statement of Rep. Joseph Atkins, Member); *see also* Hearing on S.F. 289, S. Judiciary Comm., 83rd Minn. Leg., Apr. 10, 2003 (audio file) (statement of Sen. Don Betzold, Chair).

In other words, the 2004 amendment was enacted with the specific, narrow, and clear purpose to save builders from facing ongoing liability years after they completed work on the building. Admittedly, this does not definitively answer the question of whether a "warranty date" runs with the building or with each unit. But an interpretation of section 541.051 that applies a different warranty date for each unit would create the kind of

uncertainty about the length of a builder's exposure to liability for statutory warranty claims that the 2004 amendment was designed to limit.

Based on our conclusion that it is the better reading of the statutory text, and due to the Legislature's clear desire in subdivision 4 to place meaningful temporal limits on builder liability for chapter 327A statutory warranty claims, we hold that the Legislature intended that there be a single warranty date for a condominium building rather than different warranty dates for each unit. We therefore reverse the court of appeals' decision to the extent that it held that warranty dates are determined on a unit-by-unit basis.

We recognize that the "warranty date" is also relevant to the 1-year and 2-year warranties set forth in Minn. Stat. § 327A.02, subd. 1(a)–(b). As Village Lofts points out, if the warranty date is determined by the first buyer to occupy or take title to any unit in the building, future unit buyers may lose the 1-year and 2-year warranties provided for in section 327A.02. We are not indifferent to that result.

We observe, however, that chapter 327A is not the only source of protections for condominium owners. In addition to common-law remedies, the MCIOA provides a host of implied and express warranties exclusively for condominium buyers. *See* Minn. Stat. §§ 515B.4-112–.4-115 (creating warranties for condominium units and establishing accrual times for each unit). Many defects covered by the 1-year and 2-year statutory warranties in section 327A.02, subdivision 1(a)–(b), may also be covered by MCIOA warranties.[5] The MCIOA statute of limitations provisions also demonstrate that the

[5] For instance, under the MCIOA, a declarant—a person who executes a declaration creating a common-interest community (here Housing Partners)—impliedly warrants that

Legislature knows how to explicitly establish limitations rules for warranty claims related to units. *See* Minn. Stat. § 515B.4-115(c). That it did not make such distinctions in chapter 327A is a clue that the Legislature did not intend to create unit-specific warranties under chapter 327A.

II.

We turn now to the question of whether Village Lofts' common-law claims are barred by the statute of repose in Minn. Stat. § 541.051 for actions arising out of the defective and unsafe condition of an improvement to real property.

Section 541.051, subdivision 1(a), provides:

> Except where fraud is involved, no action by any person in contract, tort, or otherwise to recover damages for any injury to property, real or personal, or for bodily injury or wrongful death, arising out of the defective and unsafe condition of an improvement to real property, shall be brought against any person performing or furnishing the design, planning, supervision, materials, or observation of construction or construction of the improvement to real property or against the owner of the real property more than two years after the cause of action accrues, as specified in paragraph (c), *nor in any event shall such a cause of action accrue more than ten years after substantial completion of the construction*.

Minn. Stat. § 541.051, subd. 1(a) (emphasis added). The statute defines "date of substantial completion" as "the date when construction is sufficiently completed so that the owner or the owner's representative can occupy or use the improvement for the intended purpose."

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a unit and the common elements in the common-interest community are suitable for the ordinary uses of real estate of its type and free from defective materials and constructed in accordance with applicable law, according to sound engineering and construction standards, and in a workmanlike manner. Minn. Stat. § 515B.4-113(a)–(b). Because Village Lofts was created before August 1, 2010, MCIOA warranties were subject to a 6-year statute of limitations. Minn. Stat. § 515B.4-115(b).

Id. Finally, the statute states that a cause of action for injury to real or personal property accrues "upon discovery of the injury." *Id.*, subd. 1(c).[6]

The decisive question here is whether Village Lofts' cause of action accrued more than 10 years after the substantial completion of the construction of the "improvement." That question ultimately turns on whether Buildings A and B are separate improvements or form one single improvement.

Two dates are critical to an analysis of whether the statute of repose in section 541.051 bars a claim: (1) when the construction of an improvement was substantially completed and (2) when the injury was discovered (the accrual date). The accrual dates are readily determined here and are not disputed. Village Lofts did not discover the alleged heating coil defect in Building A until January 30, 2014, and in Building B until late June 2015.

Having determined the accrual dates, we now compare them with the date of substantial completion. We agree with the court of appeals that a certificate of occupancy is powerful evidence that an improvement is substantially complete for purposes of Minn. Stat. § 541.051 because a certificate of occupancy is not issued before a structure's construction is completed. *Vill. Lofts*, 924 N.W.2d at 628–29 (citing *Rosso v. Hallmark Homes of Minneapolis, Inc.*, 843 N.W.2d 798, 802 (Minn. App. 2014)) (stating that "a

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[6] In 2018, the Legislature amended subdivision 1(c) to provide that "in no event does a cause of action accrue earlier than substantial completion, termination, or abandonment of the construction or the improvement to real property." Act of May 8, 2018, ch. 116, § 1, 2018 Minn. Laws 50, 50–51. The amended provision applies to causes of action accruing on or after its May 8, 2018, date of enactment and so does not apply to this case.

certificate of occupancy may serve as prima facie evidence of substantial completion" but holding that it is not a necessary condition for substantial completion); *see* Minn. R. 1300.0220, subp. 5 (2017) (stating that a certificate of occupancy shall be issued "[a]fter the building official inspects a building or structure and finds no violations of the [building] code or other laws that are enforced by the Department of Building Safety"). Under that standard, Building A was substantially completed at the very latest in November 2003, when the City of Minneapolis issued a complete certificate of occupancy for Building A.[7] Building B was completed on October 18, 2004, when the City of Minneapolis issued a certificate of occupancy for all of Building B.

A close look at the four relevant dates reveals the heart of the dispute in this case. If Buildings A and B are treated as separate improvements, Village Lofts' common-law claims are barred by the statute of repose: November 2003 is more than 10 years before January 2014 and October 2004 is more than 10 years before June 2015. But if the two buildings are treated as a single improvement, Village Lofts' common-law claims can proceed because January 2014 (the date of first discovery of injury in Building A) is less than 10 years after substantial completion of Building B in October 2004.[8]

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[7] By that date, Housing Partners had already sold at least 40 units and owners had begun to move in. Housing Partners and Kraus-Anderson argue that substantial completion occurred on September 5, 2002, when the City of Minneapolis issued a certificate of occupancy for the "base building—public space, basement through roof & unit 310." We need not resolve whether substantial completion of Building A occurred in September 2002 or November 2003 because it has no impact on the outcome of this case.

[8] Village Lofts initiated its suit in August 2015. Accordingly, if the buildings are one improvement, Village Lofts does not run afoul of Minn. Stat. § 541.051, subd. 2, which provides that if a cause of action "accrues during the ninth or tenth year after substantial

Minnesota Statutes section 541.051 does not define "improvement to real property." We have held that an improvement is " 'a permanent addition to or betterment of real property that enhances its capital value and that involves the expenditure of labor or money and is designed to make the property more useful or valuable as distinguished from ordinary repairs.' " *Pac. Indem. Co. v. Thompson-Yaeger, Inc.*, 260 N.W.2d 548, 554 (Minn. 1977) (quoting *Kloster-Madsen, Inc. v. Tafi's, Inc.*, 226 N.W.2d 603, 607 (Minn. 1975)), *superseded by statute*, Act of Apr. 7, 1980, ch. 518, §§ 2–4, 1980 Minn. Laws 595, 595–96, *as recognized in Siewert v. N. States Power Co.*, 793 N.W.2d 272, 286 (Minn. 2011). The definition was further developed in the context of cases asking whether a particular item was an improvement. *See, e.g.*, *Siewert*, 793 N.W.2d at 287 (noting that a multi-grounded wye system to conduct electricity is an improvement); *State Farm Fire & Cas. v. Aquila, Inc.*, 718 N.W.2d 879, 884 (Minn. 2006) (holding that a natural gas pipeline is an improvement); *Lietz v. N. States Power Co.*, 718 N.W.2d 865, 869–71 (Minn. 2006) (holding that an anchor pole is an improvement); *Sartori*, 432 N.W.2d at 452 (holding that a permanently installed crane is an improvement).

Each building unquestionably meets our definition of an improvement. Each building is permanent, constructed with the understanding that people would purchase units and live there indefinitely; the buildings will not be removed at any foreseeable time. Each building also enhances the capital value of the real property: a bare tract of land in northeast

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completion of the construction, an action to recover damages may be brought within two years after the date on which the cause of action accrued, but in no event may such an action be brought more than 12 years after substantial completion of the construction."

Minneapolis is generally worth less than one on which profitable buildings are constructed. Furthermore, the developer and contractors expended large sums of money and many hours of labor to construct each building. Finally, each building was intended to make the property more useful or valuable. Both buildings were constructed to provide housing for people living in or moving to Minneapolis. The buildings therefore make the property more valuable to the property owner and more useful to the residents.

On the other hand, the same factors are satisfied if Buildings A and B are treated as a single improvement. Consequently, while satisfying our case law definition of improvement is a necessary condition before a construction project may be treated as an improvement for purposes of section 541.051, it is not sufficient to answer the question of whether the two buildings form one improvement or are separate improvements.[9] To answer that question, we turn our attention to section 541.051.

The statute sets the limitations and repose rules for claims for defects and unsafe conditions that arise out of the construction of an improvement; that is, complaints about the work done by the builders. Appropriate to that context, the statutory definition of "substantial completion" directs our focus to the construction—and the relationship between the entities hired to do the design and construction and the entity that hired them. To quote the language once more, the Legislature defined "substantial completion" as "the date when

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[9] Village Lofts' reliance on our decision in *Hyland Hill North Condominium Association, Inc. v. Highland Hill Co.*, 549 N.W.2d 617 (Minn. 1996), *overruled in part by Vlahos*, 676 N.W.2d at 678, is inapposite. Our decision did not address the meaning of "improvement" in section 541.051. Moreover, the case involved a single building.

construction is sufficiently completed so the owner or the owner's representative can occupy or use the improvement for the intended purpose." *See* Minn. Stat. § 541.051, subd. 1(a). This context provides powerful support for the conclusion that the Legislature intended that the statute of repose starts running when the contractor can turn a building or project over to the person who hired the contractor to use for the purposes for which the building or project was constructed. Accordingly, we conclude that under section 541.051, the statute of repose begins to run at that moment.

This interpretation is consistent with our established understanding that the broader purpose of the statute of repose in section 541.051 is to "avoid litigation and stale claims" that could occur many years after those involved in constructing improvements have turned the improvement over to the person or entity who hired them. *See Great N. Ins. v. Honeywell Int'l.*, 911 N.W.2d 510, 515 (Minn. 2018); *Sartori*, 432 N.W.2d at 454. As we discussed in *Pacific Indemnity*, the statute was enacted in response to the erosion of the common law rule that the potential liability of building and construction contractors to third parties ended when their work was completed. 260 N.W.2d at 554. This erosion resulted in "greatly increased exposure of architects, engineers, and contractors over an extended period of time." *Id.* Section 541.051 was adopted precisely to protect contractors from such unlimited exposure to future claims for construction defects. *Id.*[10]

[10] We do not find relevant our precedents analyzing when an improvement is completed for the purpose of mechanic's lien statutes, Minn. Stat. §§ 514.01–.17 (2018). Conversely, our analysis for determining what constitutes an improvement under section 541.051 should have no bearing on our mechanic's lien case law. The language of section 541.051 differs from Minnesota's mechanic's lien statutes. A mechanic's lien attaches and takes effect "from the time the first item of material or labor is furnished upon

Village Lofts argues that our focus on the understanding and expectations of the builders and the entity that hired the builders is too limited and urges us instead to focus on the understanding and expectations among Housing Partners, as the developer of the condominium, and the purchasers of each condominium unit.[11] To support its argument for a different focus, Village Lofts leans heavily on the consumer-protection purpose of the MCIOA.

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the premises for the beginning of the improvement." Minn. Stat. § 514.05, subd. 1. "The lien ceases at the end of 120 days after doing the last of the work, or furnishing the last item of skill, material, or machinery . . . ." Minn. Stat. § 514.08, subd. 1. Unlike section 541.051, the amount of time to file a mechanic's lien is not limited by the concept of substantial completion of the improvement.

Further, the purpose of the mechanic's lien statute is to protect the rights of contractors to get paid. *See Big Lake Lumber, Inc. v. Sec. Prop. Invs., Inc.*, 836 N.W.2d 359, 362 n.4 (Minn. 2013) ("The purpose of [the mechanic's lien priority scheme] is twofold: it protects the rights of a mortgagee who advances its money for the improvement of the premises . . . and it protects the rights of workmen and materialmen who furnish labor and materials in the improvement of real estate." (citations omitted) (internal quotation marks omitted)). So we can envision a situation where a multi-building development may be multiple separate improvements under section 541.051, yet be one continuous improvement under the mechanic's lien law. *See, e.g., Witcher Constr. Co. v. Estes II Ltd. P'ship*, 465 N.W.2d 404, 407 (Minn. App. 1991) (stating that "separate construction phases of the same overall construction project constitute one continuous improvement"), *rev. denied* (Minn. Mar. 15, 1991).

[11] Village Lofts points to evidence that Housing Partners marketed and sold Village Lofts condominium units as part of a unified development in which owners of units in Building A would have access to amenities in Building B and vice versa. It further observes that the Disclosure Statement provided to condominium unit purchasers in Building A stated that the project was being constructed in two phases located in adjacent buildings and listed amenities found in both buildings. Finally, Village Lofts calls attention to individual owners of condominium units in Building A who purchased the rights to parking spaces below Building B before Building B was completed. Village Lofts argues that all of this evidence supports the conclusion—or at the very least creates a factual dispute—that Buildings A and B were one improvement for purposes of the statute of repose in section 541.051.

We do not agree with Village Lofts' argument for the simple reason that Village Lofts did not assert claims under the MCIOA. The purpose of the MCIOA is precisely to establish the legal duties between condominium developers and purchasers of condominium units; section 541.051 does not share that purpose. MCIOA claims are not subject to the limitations period set forth in section 541.051. *Hyland Hill N. Condo. Ass'n*, 549 N.W.2d at 622; *see* Minn. Stat. § 515B.4-115. Moreover, Village Lofts' focus on protecting condominium purchasers ignores that section 541.051 is not limited to claims arising out of the construction of condominiums, but governs a broad range of claims arising out of improvements to any type of real property. Accordingly, it makes little sense to impose MCIOA consumer-protection principles on a general statute like section 541.051.

In summary, we hold that a building or project is a separate improvement that triggers the repose period under section 541.051 when the building or project (1) satisfies our case law definition of "improvement" and (2) may be turned over to the person who hired the entities doing the construction for the purpose for which it was intended.

Applying our holding in this case leads us to the conclusion that Building A is a separate improvement to which the statute of repose in section 541.051 applies. First, as noted earlier, Building A independently satisfies our case law definition of "improvement."

Second, Kraus-Anderson turned over Building A to Housing Partners for the purpose for which it was intended before Building B was completed. The intended purpose of the construction—the reason that Housing Partners hired Kraus-Anderson—was to construct a building with condominium units that Housing Partners could market and sell. The agreement between Kraus-Anderson and Housing Partners for Building A defined the

"project" as "Block 3 Village Lofts at St. Anthony Falls Building 'A' " and set forth the purpose for which Kraus-Anderson was hired: to "[p]rovide preconstruction and construction services as required to construct the Building 'A' only."

The intended purpose was satisfied by November 2003 when the City of Minneapolis issued a certificate of occupancy for Building A. Indeed, by November 2003, Housing Partners had already sold at least 40 units and owners had begun to move in.

The construction and completion of Building B was not necessary before Kraus-Anderson could turn over Building A to Housing Partners for the intended purpose. The construction of Buildings A and B proceeded under separate and independent contracts between Housing Partners and Kraus-Anderson.[12] Payment to Kraus-Anderson for its work on Building A was not contingent on any Building B work. Different subcontractors were hired for Buildings A and B. And critically, by November 2003, construction on Building B was only in its beginning phases under a separate contract and it would be nearly another year before it was completed. Finally, neither the city building inspector nor the unit owners

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[12] Village Lofts observes that the Building A agreement contemplated the construction of Building B in section 14.6.4 of the Building A agreement. That provision mentions that preliminary drawings had been prepared for Building B and that, if certain contingencies occurred, including the completion of the architect's plans and finalizing the "scope" and "[p]rice" of the construction, Kraus-Anderson and Housing Partners may "come to a mutual agreement" to supplement, amend, and modify the Building A agreement to include the construction of Building B. Ultimately, we do not find section 14.6.4 persuasive evidence that Kraus-Anderson and Housing Partners understood or expected that Building A construction would not be complete and ready to be turned over to Housing Partners for its intended purpose until Building B was also completed. The provision is riddled with contingent language; the construction of Building B was not a certainty. And the parties never used this provision. Instead, Kraus-Anderson and Housing Partners entered into a separate agreement for Building B.

who moved in considered the completion of Building B a necessary condition for the occupancy of Building A.[13]

Because Buildings A and B are separate improvements for the purpose of the statute of repose in Minnesota Statutes section 541.051, Village Lofts' common-law claims for damages related to the leaking pipes were properly dismissed by the district court. We therefore affirm the court of appeals' holding that the district court did not err in granting summary judgment to respondents on Village Lofts' common-law claims.

CONCLUSION

For the foregoing reasons, we affirm in part and reverse in part the decision of the court of appeals.

Affirmed in part and reversed in part.

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[13] Village Lofts argues that Kraus-Anderson continued to do work in Building A after the certificate of occupancy. But this work consisted of finishing individual units in accordance with the individual unit buyer's choice of buildout options. It was not work central to the intended purpose of constructing the condominium building in the first place, which was to allow Housing Partners to market and sell condominium units. Further, additional costs associated with the individualized build-outs were borne by the unit owners, not Housing Partners. Finally, the defective heating coils at the heart of the parties' dispute are common elements that are part of the building's HVAC system and not elements of individual units.