City School District of City of Newburgh, Appellant,
v.
Hugh Stubbins & Associates, Inc., et al., Respondents.
Court of Appeals of New York
Argued and submitted March 21, 1995;
Decided May 2, 1995
CITE TITLE AS: City School Dist. of City of Newburgh v Stubbins & Assoc.

SUMMARY

Appeal, by permission of the Court of Appeals, from an order of the Appellate Division of the Supreme Court in the Second Judicial Department, entered May 16, 1994, which (1) dismissed the appeal from an order of the Supreme Court (Joseph G. Owen, J.), entered in Orange County, granting motions by defendants Hugh Stubbins & Associates, Inc., George Silverman, individually and doing business as Fleming & Silverman, Solart Builders, Inc., and Van Zelm, Heywood & Shadford to dismiss the complaint as against them, and (2) affirmed four judgments entered thereon dismissing the complaint as against those defendants.

City School Dist. v Stubbins & Assocs., 204 AD2d 509, affirmed.

HEADNOTES

Limitation of Actions--When Cause of Action Accrues--Claim for Damages to Personal Property Arising from Defective Construction

(1) When a defectively assembled pipe fitting bursts, damaging a library's book collection, plaintiff, the school district that owned the library, cannot sue those responsible for design and construction of the building some 15 years earlier. An owner's claim arising out of defective construction accrues on the date of completion, since all liability has its genesis in the contractual relationship of the parties. While the Urban Development Corporation, not plaintiff, entered into the contract with defendants to build the library, it did so on behalf of plaintiff and plaintiff was the intended beneficiary of the contract; thus, the relationship here was the functional equivalent of privity. Moreover, the claim cannot be said to accrue at the time of damage, rather than completion, because recovery is sought for damages to personal, as opposed to real, property. Inasmuch as both claims arise from breach of contractual obligation, no rational distinction supports extension of a cause of action to an owner for harm to personal property when, under the same circumstances, a claim for damage to real property would be barred.

TOTAL CLIENT SERVICE LIBRARY REFERENCES

Am Jur 2d, Limitation of Actions, §§ 92, 126.
Carmody-Wait 2d, Limitation of Actions §§ 13:226, 13:227.
NY Jur 2d, Limitation and Laches, §§ 93, 156.*536

ANNOTATION REFERENCES

See ALR Index under Limitation of Actions.

POINTS OF COUNSEL

Bouck, Holloway, Kiernan and Casey, Albany *(John R. Casey* and *David B. Cabaniss* of

counsel), for appellant.
Plaintiff's claims for damage to its personal property accrued upon the bursting of the pipe, not upon completion of the library building. *(Sears, Roebuck & Co. v Enco Assocs.*, 43 NY2d 389; *State of New York v Lundin*, 60 NY2d 987; *Sosnow v Paul*, 43 AD2d 978, 36 NY2d 780; *Cabrini Med. Ctr. v Desina*, 64 NY2d 1059; *Bellizzi v Huntley Estates*, 3 NY2d 112; *Cubito v Kreis-berg*, 69 AD2d 738, 51 NY2d 900; *Durant v Grange Silo Co.*, 12 AD2d 694; *Schmidt v Merchants Desp. Transp. Co.*, 270 NY 287.)

OPINION OF THE COURT

Chief Judge Kaye.

When a defectively assembled pipe fitting bursts, damaging a library's book collection, can the library sue those responsible for design and construction of the building some 15 years earlier? Because the rule is settled that an owner's cause of action accrues against a builder upon completion of construction, and we perceive no basis to apply a different rule where a cause of action rests on damage to personal rather than real property, we conclude that plaintiff's cause of action was time-barred.

In 1972 or 1973, the Urban Development Corporation agreed to assist the Newburgh School District in the design, financing and construction of a library. The City of Newburgh Urban Renewal Agency transferred title to a parcel of property to the UDC, which entered into contracts to construct the building with defendants Solart Builders, Inc. as general contractor, Hugh Stubbins & Associates, Inc. as architect, and Van Zelm, Heywood & Shadford as mechanical and electrical engineers. Upon completion of construction in late 1975, UDC sold the building to plaintiff.

Within the structure of the building was a copper pipe fitted with a steel plug, which began a gradual chemical corrosion ofthe*538 integrity of the pipe. Fifteen years later, on October 13, 1990, a water pipe in the library burst, causing plaintiff to suffer $1,500,000 damage to personal property-- including books, bookshelves, and office supplies and furnishings--and $500,000 damage to its real property. When plaintiff brought suit against defendants alleging five causes of action rooted in negligence, Supreme Court dismissed the complaint, upon motion of the defendants, as barred by the Statute of Limitations since a cause of action for defective construction and design generally accrues upon completion of construction. The Appellate Division affirmed, as do we.

In cases against architects or contractors, the accrual date for Statute of Limitations purposes is completion of performance *(Sosnow v Paul*, 36 NY2d 780; *see also, State of New York v Lundin*, 60 NY2d 987; *Cabrini Med. Ctr. v Desina*, 64 NY2d 1059). We made clear in *Sears, Roebuck & Co. v Enco Assocs.* (43 NY2d 389) that no matter how a claim is characterized in the complaint--negligence, malpractice, breach of contract--an owner's claim arising out of defective construction accrues on date of completion, since all liability has its genesis in the contractual relationship of the parties.

Plaintiff recognizes that any claim for damage to the building itself would normally be barred under this rule *(Sears, Roebuck*, 43 NY2d, at 396), but contends that its claim does not fall under the general rule of accrual because it was a third party to the construction

contract, and because it demanded compensation for personal, not real, property. Neither contention has merit.

Here it was UDC--not plaintiff--that entered into a contract with defendants to build the library. Because of this lack of privity, plaintiff argues, Sears, Roebuck does not control. Since there is no contract between the parties, the liability did not arise out of a contractual relationship, and therefore plaintiff--as a stranger to the contract--would be able to bring suit in negligence alone *(see, Cubito v Kreisberg,* 69 AD2d 738, *affd* 51 NY2d 900).

Plaintiff, however, was not a stranger to the contract. UDC undertook construction of the library on behalf of plaintiff, and plaintiff was the intended beneficiary of the contract. That fact, and the intended purpose of the building, was known to all parties at the time the contracts were negotiated. Plaintiff reviewed and approved the architectural plans and specifications. It retained control of the budget and change *539 orders during construction. Plaintiff also had a representative at the construction site on a daily basis. Such a relationship--even pleaded by plaintiff in support of its claim of negligent design and construction--was the "functional equivalent" of privity *(see, Ossining Union Free School Dist. v Anderson LaRocca Anderson,* 73 NY2d 417, 419).

Plaintiff next contends, in support of its negligence claims, that where recovery is sought for damages to personal, as opposed to real, property, the claim accrues at the time of damage, not the time of completion. Because, however, both claims arise from breach of contractual obligation, no rational distinction supports extension of a cause of action to an owner for harm to personal property when, under the same circumstances, we deny a claim for damage to real property *(Matter of Paver & Wildfoerster [Catholic High School Assn.],* 38 NY2d 669, 675). In both instances, liability arises out of the contractual relationship, where damage to real or personal property flowing from faulty design or construction can be anticipated, and steps taken to protect against the consequences of such damage. In a different category, of course, is injury to the person--a circumstance not present here.

Accordingly, the order of the Appellate Division should be affirmed, with costs.