

2017

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Florida Statute 95.11(3)(C) Has Been Amended to Address the Ruling in *Cypress Fairway Condo. V. Bergeron Constr. Co.*

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December 2017

In *Cypress Fairway Condo. v. Bergeron Constr. Co.*, 164 So. 3d 706 (Fla. 5th DCA 2015) the 5th District Court of appeals defined "completion of the contract" to mean completion of performance by both sides of the contract, not merely performance by the contractor. In *Cypress Fairways*, the Court ruled that means when payment occurred. This ruling is problematic because final payment can be disputed and occur years later - or never, which created the possibility that the Statute of Limitation could be extended by a payment dispute. The controversy over this ruling appears to have led to the recent legislative amendment to Florida Statute 95.11(3)(c) which provides:

95.11(3)(c) - Deconstruction of the Statute

95.11 Limitations other than for the recovery of real property.—Actions other than for recovery of real property shall be commenced as follows:

(3) Within four years.—

(c) An action founded on the design, planning, or construction of an improvement to real property, with the time running from the 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 date is latest; 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. In any event, the action must be commenced within 10 years after the 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 date is latest. *Completion of the contract means the later of the date of final performance of all the contracted services or the date that final payment for such services becomes due without regard to the date final payment is made.*

The revision to Fla. Stat. 95.11(3)(c) now defines "completion of the contract" as "...the later of the date of final performance of all the contracted services or the date that final payment for such services becomes due without regard to the date final payment is made." This language overturns the ruling in *Cypress Fairway* which had defined it as when both parties completed performance. The revision to Fla. Stat. 95.11 now makes the date of payment irrelevant and appears to remove the specter that a payment dispute could extend the start of the statute of limitations period for years.

Whether the new statute will put the issue to rest or merely create new ambiguities is a question only the future can answer.

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