2012 IL App (1st) 111823-U

FIFTH DIVISION
November 21, 2012

No. 1-11-1823

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

THE BOARD OF DIRECTORS OF THE PRAIRIE DISTRICT HOMES TOWER RESIDENCES CONDOMINIUM ASSOCIATION,	)	Appeal from the Circuit Court of Cook County
Plaintiff-Appellant and Cross-Appellee,	)	No. 05 L 12769
v.	)	
LEOPARDO COMPANIES, INC.,	)	Honorable Brigid Mary McGrath,
Defendant-Appellant and Cross-Appellant.	)	Judge Presiding.

JUSTICE PALMER delivered the judgment of the court.
Justices Howse and Taylor concurred in the judgment.

O R D E R

¶ 1 ***Held*:** Trial court properly granted defendant's motion to dismiss plaintiff's fourth amended verified complaint after finding plaintiff failed to add defendant as a party to the action within four years of learning of the construction defects underlying the action.

¶ 2 Plaintiff the Board of Directors of the Prairie District Homes Tower Residences Condominium Association appeals the dismissal of its fourth amended verified complaint against

defendant Leopardo Companies, Inc. (Leopardo), pursuant to section 2-619 of the Illinois Code of Civil Procedure (Code) (735 ILCS 5/2-619 (West 2008)). Leopardo cross-appeals the trial court's denial of its motion to dismiss plaintiff's complaint pursuant to section 2-615 of the Code (735 ILCS 5/2-615 (West 2008)). We affirm.

¶ 3 This case arises from the allegedly faulty construction of the Prairie District Homes Tower Residences Condominium (Condominium). The Condominium is a residential high-rise building located at 1717 South Prairie Avenue in Chicago. The building is comprised of 175 residential dwelling units and one commercial unit. The Condominium Association (Association) is responsible for the operation, administration and maintenance of the Condominium. The Association was established by a Declaration of Condominium Ownership that was recorded with the Cook County Recorder of Deeds on November 3, 2003. Plaintiff, the Board of Directors of the Association, is the governing body of the Association.

¶ 4 In September 2005, the Association commissioned an inspection of the Condominium. The inspection found alleged design and construction defects and estimated the repair costs to be between $4 million and $8 million.

¶ 5 Plaintiff filed an 11-count complaint on November 8, 2005, against 18th & Prairie II, L.L.C., the developer of the Condominium, and Prairie Station Townhouse 2 Partners, L.L.C., the developer of certain townhouses adjacent to the Condominium. In the complaint, plaintiff alleged that the building was improperly constructed and experienced severe water infiltration due to faulty design or construction. Plaintiff also alleged that the Association will have to make repairs to correct the defects because the developer failed to: (1) tender funds as required by the

Illinois Condominium Property Act (765 ILCS 605/18.2 (West 2004)); and (2) establish a budget for repair of the defects. Plaintiff further alleged that the developer committed fraud by intentionally not apportioning adequate funds to cover the cost of repairs and replacements related to the improper construction of the building.

¶ 6 On July 27, 2006, plaintiff filed a verified amended complaint, adding William E. Warman, the manager of the developer, and various unknown "John Doe[s]" as defendants. Plaintiff did not add Leopardo as a defendant. In the amended complaint, plaintiff alleged that the developer should have known of its financial obligations and the liabilities it owed to the Association before distributing its assets to its members, *i.e.,* Warman and unknown John Does. Plaintiff specifically alleged that the developer

> "distributed all of its earnings, proceeds from unit sales, and other assets to its members, in knowing violation and complete disregard of its obligation to the Association and the Unit Owners. Consequently, the Developer limited liability company presumably has no assets, as indicated by its own representative to the Plaintiff on numerous occasions."

Consistent with the inspection report, plaintiff sought damages of $4 million to $8 million.

¶ 7 On April 27, 2007, the developer filed a third-party complaint, naming Weather-Tite, Inc. (Weather-Tite), Hansen & Hempel Co. (Hansen) and Leopardo as third-party defendants. Weather-Tite is in the business of fabrication and installation of windows and was a trade contractor of the developer during the construction of the Condominium. Hansen is in the business of masonry and brickwork and was also a trade contractor of the developer during the

construction of the Condominium.

¶ 8 In the third-party complaint, the developer alleged breach of contract and contractual indemnity against Weather-Tite, Hansen and Leopardo. In support of its allegations against Leopardo, the developer attached a Construction Management Agreement it entered into with Leopardo. Pursuant to the agreement, Leopardo "agreed to manage and oversee the construction of the [Condominium] and to insure that it was constructed according to the plans for the [Condominium]." The developer alleged that Leopardo violated the agreement by failing to properly supervise: (1) the construction of the Condominium; (2) the fabrication and installation of various exterior windows; (3) the installation of the masonry, facade and brickwork; and (4) the use and application of sealant. The developer further alleged that Leopardo failed to otherwise assist the developer in the design and construction of the Condominium so as to avoid the defects with the fabrication and installation of various exterior windows, masonry, brickwork and sealant at the Condominium. The developer ultimately dismissed its complaint against Leopardo, pursuant to a February 4, 2005, "Settlement Agreement and Mutual Limited Releases" contract it entered into with Leopardo.

¶ 9 On May 15, 2007, about one month after the developer filed its third-party complaint, plaintiff filed a second amended verified complaint, adding Weather-Tite and Hansen as defendants. Plaintiff alleged that both Weather-Tite and Hansen breached their express warranties pursuant to their trade contract agreement with the developer which required them to warrant their work for one year after completion. Plaintiff also alleged that both Weather-Tite and Hansen breached their implied warranties of habitability and workmanship.

¶ 10 Plaintiff filed a third amended verified complaint on July 29, 2008. In the complaint, plaintiff provided details of the results of its forensic accountant's analysis of the developer's financial condition. On May 5, 2010, the trial court entered partial summary judgment in favor of plaintiff on count II of the third amended verified complaint–the developer's breach of its express warranty–and awarded plaintiff $6,944,083.60.

¶ 11 On September 10, 2010, plaintiff filed a fourth amended verified complaint, adding for the first time Leopardo as a defendant. Count XVII of the complaint was directed against Leopardo and alleged that Leopardo breached its implied warranties of habitability and workmanship. The facts as alleged in count XVII of plaintiff's fourth amended complaint are as follows.

¶ 12 After construction, the Condominium experienced severe water infiltration because of the developer's failure to install a window system, metal base flashing, sealant joints and end dams in various locations throughout the building. The developer also failed to repair cracks in mortar joints, brick masonry and cast stone units in the Condominium. The developer had notice of these deficiencies but failed to remedy them before the sale of units in the Condominium. The developer impliedly warranted to the unit purchasers that the Condominium was reasonably fit and suited for habitation. The developer's actions resulted in damages to the Association of between $4 million to $8 million. The developer had insufficient funds to pay for the damages.

¶ 13 Plaintiff claimed that it "recently discovered" that "[d]espite Leopardo's holding itself out as simply a construction manager for the construction of the Condominium," Leopardo's "true role" was that of general contractor for the project. In support of this claim, plaintiff attached a

December 8, 2009, letter sent to Leopardo from the City of Chicago, indicating that the City considered Leopardo to be the general contractor of the Condominium project. Plaintiff also attached a copy of the February 2, 2002, Department of Buildings Permit Application, listing Leopardo as the "Genl. Cont." for the Condominium project. Plaintiff further attached a copy of the November 13, 2002, building permit for the project, listing Leopardo as the "Contractor." Finally, plaintiff attached the August 6, 2010, discovery deposition of James P. Sanavaitis, a construction manager for the Condominium project. In his deposition, Sanavaitis testified that Leopardo was the general contractor for the Condominium project and performed all duties associated with that role, *i.e.*, bid for the project, produced a budget for the owner, submitted a budget agreement with the owner to guarantee a price, locked in a price, controlled the subcontractors, provided pay applications, presided over all meetings regarding the Condominium project and was on site running the project on a daily basis.

¶ 14 Plaintiff claimed that it had sustained significant losses due to the faulty construction of the Condominium which was directed, overseen and controlled by Leopardo as general contractor. Plaintiff also claimed that Leopardo, in performance of its duties as general contractor, impliedly warranted to the developer and the unit purchasers that the Condominium was reasonably fit and suited for habitation. Plaintiff maintained that Leopardo's failure to perform its duties with proper workmanship resulted in the construction of a building that has had significant water damage, requiring plaintiff to repair the Condominium at an estimated cost of between $4 million to $8 million.

¶ 15 Leopardo moved to dismiss count XVII under sections 2-615 and 2-619 of the Code. In

its section 2-615 motion to dismiss (735 ILCS 5/2-615 (West 2008)), Leopardo argued that it owed no implied warranty of habitability to plaintiff because it was not a builder-vendor and did not contract with the purchasers of the Condominium units. Leopardo also argued that it should not be liable for the developer's insolvency where plaintiff failed to prevent the developer from distributing its assets.

¶ 16 In its section 2-619 motion to dismiss (735 ILCS 5/2-619 (West 2008)), Leopardo argued that plaintiff's claims were time-barred by section 13-214 of the Code (735 ILCS 5/13-214 (West 2008)) because they were not filed against Leopardo within four years of plaintiff learning of the construction defects. Leopardo also argued that plaintiff had waived any claim of a violation of an implied warranty by Leopardo, where plaintiff had already obtained a judgment against the developer for breach of an express warranty that contained a waiver provision of implied warranties.

¶ 17 After a hearing, the trial court denied Leopardo's section 2-615 motion, finding that plaintiff could properly bring a cause of action against Leopardo based on a breach of the implied warranty of habitability. In doing so, the court relied on *Minton v. The Richards Group of Chicago,* 116 Ill. App. 3d 852 (1983), which extended the implied warranty of habitability to a contractor if a new home purchaser has no recourse against a dissolved, insolvent builder-vendor. The court, however, granted Leopardo's section 2-619 motion to dismiss, finding that plaintiff's claim against Leopardo was filed after the four-year statute of limitation had expired. In reaching this conclusion, the court noted that, although it was persuaded by plaintiff's argument that, under *Minton*, a cause of action against a contractor would not come to fruition until plaintiff was

aware that the developer was insolvent, here:

> "we have [plaintiff's] verified complaint alleging the insolvency of the developer that was filed *** July [2]7, 2006, and the statute [of] limitations would expire, then, on July [2]7, 2010. This *** complaint wasn't filed until September 10, 2010, so the statute of limitations *** has run."

The court also noted that plaintiff, once it knew it was damaged, was under a duty to investigate who the responsible parties were but failed to do so despite having the benefit of the developer's third-party complaint against Leopardo. With regard to this latter point, the court said that it "didn't see anything in Mr. Sanavaitis' deposition that deviated from what had previously been alleged against Leopardo by the developer."

¶ 18 Plaintiff appeals, contending the trial court erred in granting Leopardo's section 2-619 motion to dismiss. Leopardo cross-appeals, contending the trial court's denial of its section 2-615 motion to dismiss should be reversed.

¶ 19 A motion to dismiss under section 2-619 of the Code challenges the complaint based on certain defects or defenses. 735 ILCS 5/2-619 (West 2008). A motion to dismiss under section 2-615 of the Code, on the other hand, challenges the legal sufficiency of a complaint for failure to state a cause of action on which relief can be granted. *Feltmeier v. Feltmeier*, 207 Ill. 2d 263, 267 (2003). In reviewing the sufficiency of a complaint, we accept as true all well-pled facts and reasonable inferences that may be drawn from those facts. *City of Chicago v. Beretta U.S.A. Corp.*, 213 Ill. 2d 351, 364 (2004); *Feltmeier*, 207 Ill. 2d at 277. We review the trial court order dismissing plaintiff's complaint under either section 2-619 or 2-615 of the Code *de novo*. See

Feltmeier, 207 Ill. 2d at 266. In doing so, the question on review is " 'whether the existence of a genuine issue of material fact should have precluded the dismissal or, absent such an issue of fact, whether dismissal is proper as a matter of law.' " *Doyle v. Holy Cross Hospital*, 186 Ill. 2d 104, 109-10 (1999) (quoting *Kedzie & 103rd Currency Exchange, Inc. v. Hodge*, 156 Ill. 2d 112, 116-17 (1993)).

¶ 20 We first consider plaintiff's argument that the trial court erred in granting Leopardo's section 2-619 motion to dismiss on the basis that plaintiff's claim against Leopardo was barred by the four-year statute of limitation for construction defect claims.

¶ 21 Section 13-214(a) of the Code imposes a four-year statute of limitation on claims arising from construction defects. *Andreoli v. John Henry Homes, Inc.*, 297 Ill. App. 3d 151, 154 (1998). The section provides:

> "Actions based upon tort, contract, or otherwise against any person for an act or omission of such person in the design, planning, supervision, observation or management of construction, or construction of an improvement to real property shall be commenced within 4 years from the time the person bringing an action, or his or her privity, knew or should reasonably have known of such act or omission. ***" 735 ILCS 5/13-214(a) (West 2008).

Unless a contract contains a different accrual provision, the four-year statute of limitation of section 13-214(a) contains the "discovery rule" which triggers the commencement of the statute of limitation once "the plaintiff knows or reasonably should know it has been injured and that this injury was wrongfully caused." *Swann & Weiskopf, Ltd. v. Meed Associates, Inc.*, 304 Ill.

App. 3d 970, 975-76 (1999) (citing *Knox College v. Celotex Corp.*, 88 Ill. 2d 407, 415 (1981)).

¶ 22 The term "wrongfully caused" does not mean that the plaintiff must have " 'knowledge of a specific defendant's negligent conduct or knowledge of the existence of a cause of action' " before the statute is triggered. (Emphasis omitted.) *Castello v. Kalis*, 352 Ill. App. 3d 736, 744 (2004) (quoting *Young v. McKieque*, 303 Ill. App. 3d 380, 388 (1999)); *Knox*, 88 Ill. 2d at 415-16. To the contrary, once a party knows or reasonably should know both of the injury and that it was wrongfully caused, " 'the burden is upon the injured person to inquire further as to the existence of a cause of action.' " *Castello*, 352 Ill. App. 3d at 745 (quoting *Witherell v. Weimer*, 85 Ill. 2d 146, 156 (1981)). In meeting this burden, the injured party "may not slumber on his rights." *Nolan v. John-Manville Asbestos*, 85 Ill. 2d 161, 171 (1981).

¶ 23 Count XVII of plaintiff's fourth amended complaint alleged Leopardo breached the implied warranties of habitability and workmanship based on the faulty construction of the Condominium which was directed, overseen and controlled by Leopardo as general contractor. It is well-settled that section 13-214 applies to actions based on a breach of the implied warranties of habitability and workmanship. See *Andreoli*, 297 Ill. App. 3d at 154, and cases cited therein (applying section 13-214 to a claim based on breach of the implied warranty of habitability); *Zielinski v. Miller*, 277 Ill. App. 3d 735, 741 (1995) (applying section 13-214 to a claim based on breach of the implied warranty of workmanship). As such, plaintiff had four years from the time it became "possessed of sufficient information concerning [the] injury and that it was wrongfully caused" to file an action against Leopardo.

¶ 24 Here, there is little doubt that plaintiff knew of its injury and that it was wrongfully

caused at least as early as November 8, 2005, the date plaintiff filed its first complaint against the developer. Plaintiff was actually in possession of the engineering report finding alleged design and construction defects as early as September 16, 2005. Nevertheless, as a matter of law, the limitation period must have commenced on the date the first complaint was filed. On that date, plaintiff must have had sufficient information concerning its injury and its cause for plaintiff to have initiated suit. *McCormick v. Uppuluri*, 250 Ill. App. 3d 386, 391 (1993). Accepting this date as the triggering date for the statute of limitation, plaintiff had until November 8, 2009, to file an action against Leopardo. Plaintiff did not file its fourth amended complaint, adding Leopardo as a party to the suit, until September 10, 2010.

¶ 25 Plaintiff argues that its claim against Leopardo is not untimely because it did not have a cause of action against Leopardo until January 2008, the date plaintiff's forensic accountant discovered that the developer was insolvent. See *Minton*, 116 Ill. App. 3d 852 (extending the implied warranty of habitability to a contractor if a new home purchaser has no recourse against a dissolved, insolvent builder-vendor). Leopardo responds that plaintiff's knowledge of the developer's insolvency is immaterial where this court has held that the implied warranty of habitability "applies to builders of residential homes regardless of whether they are involved in the sale of the home." *1324 W. Pratt Condominium Ass'n v. Platt Construction Group*, 404 Ill. App. 3d 611, 618 (2010). Leopardo maintains that, under *Pratt*, whether the developer is insolvent has no bearing on the timeliness of plaintiff's claim against Leopardo. Stated another way, if plaintiff had a cause of action against Leopardo for breach of the implied warranty of habitability, then plaintiff had that cause of action as soon as it knew or should have known of its

injury and that it was wrongfully caused. Plaintiff replies that, even if *Pratt* controls, it should not be bound by that holding because it was issued five years after the start of this litigation.

¶ 26 First, we would be remiss if we did not point out that Leopardo's argument, as based on *Pratt*, contradicts Leopardo's contention on cross-appeal that the trial court erred in denying its section 2-615 motion because Leopardo owed no implied warranty of habitability to plaintiff where it was not a builder-vendor and did not contract with the purchasers of the condominium units. That aside, we believe that under either *Minton* or *Pratt*, plaintiff's fourth amended complaint is untimely. Were we to defer to the holding in *Pratt*, then clearly plaintiff could have filed its claim against Leopardo at any time after discovery of the alleged construction defects. However, putting *Pratt* aside, we still cannot say plaintiff's claim against Leopardo was filed within the four-year statute of limitation. Again, as soon as plaintiff knew that it was injured and that the injury was wrongfully caused the limitation period began to run and plaintiff was put on inquiry as to possible defendants and causes of action. Although plaintiff did not confirm the insolvency until January 2008, the record shows plaintiff became aware of the developer's financial status as of July 27, 2006, the date plaintiff filed its amended complaint. In the amended complaint, plaintiff alleged that the developer had "distributed all of its earnings, proceeds from unit sales, and other assets to its members" and therefore "presumably has no assets, as indicated by its own representatives to the Plaintiff on numerous occasions." Even accepting July 27, 2006, as the triggering date for the statute of limitation, which was the trial court's determination, plaintiff had until July 27, 2010, to file an action against Leopardo. As mentioned, plaintiff did not file its fourth amended complaint, adding Leopardo as a party to the

suit, until September 10, 2010. Accordingly, the trial court did not err in finding as a matter of law that plaintiff's claim was filed after the four-year statute of limitation had expired and granting Leopardo's section 2-619 motion to dismiss on that basis.

¶ 27 In reaching this conclusion, we are unpersuaded by plaintiff's argument that because the allegations in its July 27, 2006, amended complaint were pled only "upon information and belief" that the developer was insolvent, they were insufficient to establish that the developer was in fact insolvent and thus we should not rely on July 27, 2006, as the triggering date for the statute of limitation. As mentioned, the running of the limitation period commences when "the injured person becomes possessed of sufficient information concerning his injury and its cause to put a reasonable person on inquiry to determine whether actionable conduct is involved." *Knox*, 88 Ill. 2d at 416. We refuse to find that plaintiff must be able to sustain some level of proof against a particular defendant before the statute of limitation begins to run. As stated earlier, the limitation period begins to run when the plaintiff is put on inquiry. The plaintiff then has four years within which to diligently investigate the matter and bring suit.

¶ 28 Plaintiff argues that it was unable to add Leopardo as a party to the suit sooner because plaintiff was not aware of Leopardo's "true role" in the construction of the Condominium until sometime in 2010. Plaintiff asserts that it had no reason to doubt that Leopardo was simply a construction manager rather than a general contractor and therefore the statute of limitation with regard to Leopardo should not have been triggered until plaintiff learned of Leopardo's status as the general contractor. In support of this argument, plaintiff relies on *Mitsias v. I-Flow Corp.*, 2011 IL App (1st) 101126.

¶ 29 In *Mitsias*, a medical malpractice case, the plaintiff filed an action against the physician who performed her shoulder surgery. *Mitsias*, 2011 IL App (1st) 101126, ¶ 2. About six years later, the plaintiff added a products liability claim against the manufacturer of the pain pump that was installed in the plaintiff's shoulder during surgery. *Mitsias*, 2011 IL App (1st) 101126, ¶ 3. The trial court granted the manufacturer's motion to dismiss the products liability claim after finding that the statute of limitation as to all the defendants was triggered on the date the plaintiff filed her initial complaint against the physician. *Mitsias*, 2011 IL App (1st) 101126, ¶ 13.

¶ 30 On appeal, we reversed the trial court, finding that the statute of limitation on the product liability claim did not begin to run until such time as the patient knew or should have known that her injury may have been caused by the pain pump. In doing so, we noted that our supreme court has not directly addressed the operation of the statute of limitation when a plaintiff is aware that her injury may have been wrongfully caused by one source but could not at the time be aware of another potential source. *Mitsias*, 2011 IL App (1st) 101126, ¶ 25. We pointed out that in defining the contours of the discovery rule in *Nolan* and *Knox*, our supreme court looked for guidance to the United States Supreme Court decision of *United States v. Kubrick*, 444 U.S. 111 (1979), in which the Court implied that the beginning of the period of limitations would depend upon the discoverability of the claim at issue. *Mitsias*, 2011 IL App (1st) 101126, ¶ 25. In keeping with "the thrust of *Kubrick* as cited with approval by our supreme court in *Nolan* and *Knox*, and our supreme court's concern that plaintiffs should investigate their claims with diligence" we held that:

"where a plaintiff knows or should reasonably know that her injury was caused by

> one source, but remains unaware of another source that *could not be discovered through the exercise of diligent inquiry*, the statute of limitations does not begin to run with regard to that second source until such time as that second source would become discoverable through diligent inquiry." (Emphasis added.) *Mitsias*, 2011 IL App (1st) 101126, ¶ 31.

With this in mind, we found that the plaintiff did not "slumber on her rights" in bringing her product liability suit because her delay was "not due to any lack of diligence on her part but, rather, to the fact that the scientific community was not aware of the dangers associated with pain pumps until the summer of 2007." *Mitsias*, 2011 IL App (1st) 101126, ¶ 29.

¶ 31 Here, unlike *Mitsias*, we cannot say that Leopardo's role as the general contractor could not have been discovered sooner through the exercise of diligent inquiry by plaintiff. First, plaintiff had the benefit of the developer's April 27, 2007, third-party complaint, naming Leopardo as a defendant. Although plaintiff argues that the developer's complaint alone did not provide plaintiff with sufficient basis to name Leopardo as a defendant in its action, we believe it was sufficient to notify plaintiff of Leopardo's role in the construction of the Condominium, *i.e.*, to "manage and oversee the construction of the [Condominium] and to insure that it was constructed according to the plans for the [Condominium]."

¶ 32 Plaintiff nevertheless maintains that "it was only after [the] deposition testimony of the Developer's former employee [Sanavaitis], which confirmed Leopardo's role as general contractor, that there was sufficient basis for [plaintiff] to name Leopardo as defendant." However, as noted by the trial court, Sanavaitis's deposition testimony is substantially the same

as the allegations in the developer's third-party complaint concerning Leopardo's managerial role in the construction of the Condominium.

¶ 33 The developer's complaint aside, the record shows that Leopardo's role as general contractor is evident from public documents predating plaintiff's original 2005 complaint. In support of its fourth amended complaint, plaintiff attached a copy of the February 2, 2002, Department of Buildings Permit Application that listed Leopardo as the "Genl. Cont." In addition, plaintiff attached a copy of the November 13, 2002, building permit for the Condominium project that listed Leopardo as the "Contractor." Plaintiff failed to explain why it could not have relied on these public documents sooner. One would expect that in construction litigation one of the first things to do would be to pull the permits. This hardly amounts to the kind of diligence contemplated by *Mitsias* and cases cited therein. See *Hoffmany v. Orthopedic Systems, Inc.*, 327 Ill. App. 3d 1004 (2002); *McCormick*, 250 Ill. App. 3d 386; *Wells v. Travis*, 284 Ill. App. 3d 282 (1996).

¶ 34 For example, in *McCormick*, the plaintiff brought a medical malpractice suit against two physicians but not the defendant physician who treated plaintiff's kidney obstruction in 1984. *McCormick*, 250 Ill. App. 3d at 387. More than two years later, after the plaintiff received a doctor's opinion that his injury was caused by the negligence of the defendant physician, the plaintiff brought a second medical malpractice suit against the defendant. *McCormick*, 250 Ill. App. 3d at 387. We found this second suit was time-barred, holding that, as a matter of law, the statute of limitation began to run no later than the date on which the plaintiff filed his first suit because he must have had knowledge at that time that he was injured and that such injury may

have been wrongfully caused. *McCormick*, 250 Ill. App. 3d at 391-92. In so holding, we reasoned that the plaintiff's cause of action does not accrue when the plaintiff becomes aware that his injury may have been caused by the wrongful conduct of a particular defendant but, rather, as soon as the plaintiff becomes aware that his injury may have been caused by wrongful conduct in general. *McCormick*, 250 Ill. App. 3d at 391. We noted:

> "Significantly, this is not a case where defendant's identity was concealed. His identity was disclosed in *** medical records which plaintiff possessed prior to filing the [initial] action. Any reasonable discovery attempts should have included ascertaining defendant's involvement in this case."

¶ 35 Similarly to *McCormick*, here, Leopardo's identity was not concealed. As mentioned, the 2002 building permit on record with the City of Chicago clearly listed Leopardo as the general contractor. As in *McCormick*, we believe that any reasonable discovery attempts should have included ascertaining Leopardo's role in the construction of the Condominium, especially after the developer's third-party complaint was filed. Under these circumstances, we will not excuse plaintiff's lack of diligence in investigating its claim. Plaintiff here seems to conflate the inability to become aware of a defendant's role as in *Mitsias* with the failure to become aware of a defendant's role as is the case here. Plaintiff's "true role" argument fails as it has not been shown that it was unable to discover the source of the injury within the period of the statute of limitation. As a result, we find as a matter of law that the trial court did not err in granting Leopardo's motion to dismiss plaintiff's complaint on the basis of section 13-214 of the Code.

¶ 36 We are unpersuaded by plaintiff's alternative argument that its claim against Leopardo is

not time-barred because it was timely brought within the 10-year statute of repose. Section 13-214(b) of the Code provides:

> "No action based upon tort, contract or otherwise may be brought against any person for an act or omission of such person in the design, planning, supervision, observation or management of construction, or construction of an improvement to real property after 10 years have elapsed from the time of such act or omission. However, any person who discovers such act or omission prior to expiration of 10 years from the time of such act or omission shall in no event have less than 4 years to bring an action as provided in subsection (a) of this Section." 735 ILCS 5/13-214(b) (West 2008).

Plaintiff reads this section in conjunction with section 18.2(f) of the Illinois Condominium Property Act (765 ILCS 605/18.2(f) (West 2004)) and argues that the statutes of limitation and repose were tolled until August 5, 2004, the date of turnover of control of the Condominium to the Association. See 765 ILCS 605/18.2(f) (West 2008) ("[t]he statute of limitations for any actions in law or equity which the condominium association may bring shall not begin to run until the unit owners have elected a majority of the members of the board of managers"). Plaintiff claims that the statute of repose would thus "run for 10 years from August 5, 2004, to August 5, 2014," thereby rendering plaintiff's claim against Leopardo timely filed.

¶ 37 Plaintiff misinterprets section 13-214(b) of the Code. Contrary to plaintiff's argument, this section does not alter the requirement that "a plaintiff must commence an action within four years from the time the plaintiff knew or reasonably should have known of the builder's act or

omission." See *Andreolli*, 297 Ill. App. 3d at 154. Rather, under this section, the discovery of the alleged construction defect must occur within 10 years of construction and then the plaintiff has four years from the date of discovery to bring his action. *Andreoli*, 297 Ill. App. 3d at 154. Here, plaintiff discovered the complained of defects sometime in 2005 and therefore had four years to bring its claim against Leopardo. Plaintiff did not add Leopardo as a party to the action until September 10, 2010. Because at the time of the discovery of the defects, the Association was established and the Declaration of Condominium Ownership was recorded with the Cook County Recorder of Deeds, we find plaintiff's reliance on section 18.2(f) of the Illinois Condominium Property Act unpersuasive.

¶ 38 Given our resolution of this issue, we need not consider Leopardo's argument that the trial court erred in denying its section 2-615 motion to dismiss on the basis that it owed no implied warranty of habitability to plaintiff because it was not a builder vendor and did not contract with the purchasers of the Condominium units. As noted above, given the developer's insolvency, plaintiff did have a cause of action against Leopardo based on a breach of the implied warranty of habitability. See *Minton*, 116 Ill. App. 3d 852 (extending the implied warranty of habitability to a contractor if a new home purchaser has no recourse against a dissolved, insolvent builder-vendor).

¶ 39 For the reasons stated, the judgment of the trial court is affirmed.

¶ 40 Affirmed.