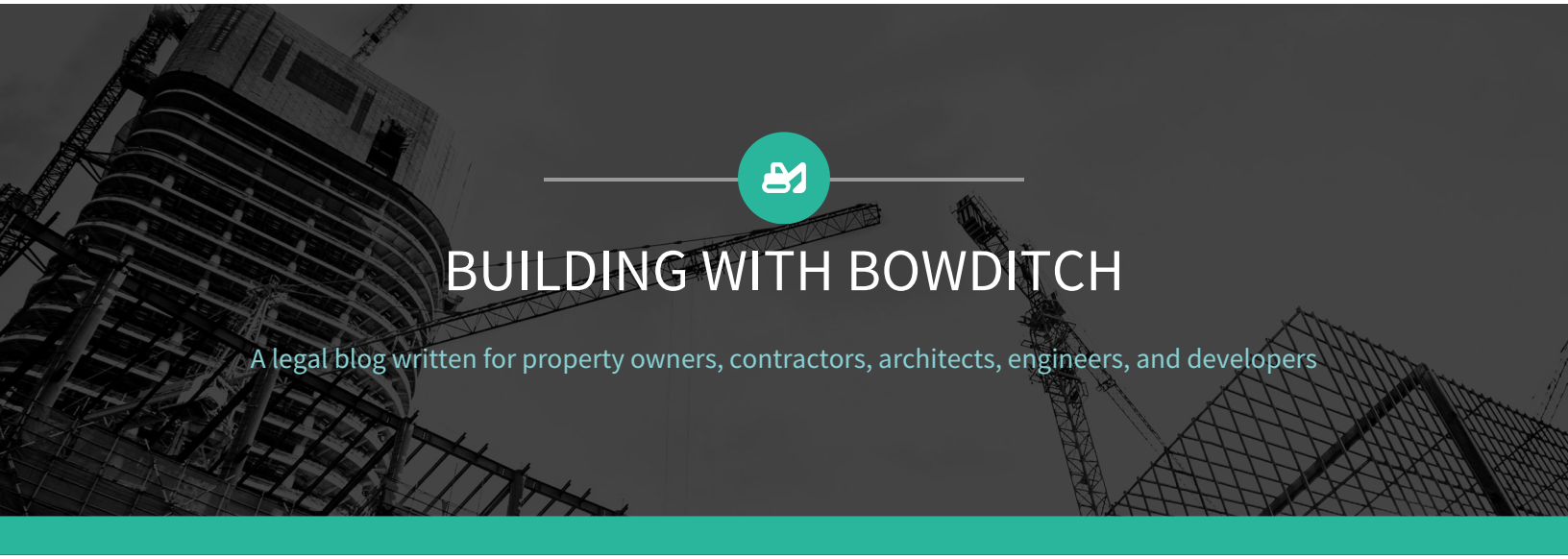


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Six Years Means Six Years? Appeals Court Weighs New Construction Defect Claims

BY M. MATTHEW MADDEN, JR. • NOVEMBER 12, 2026

Massachusetts contractors, developers, architects and engineers are familiar with the six-year statute of repose in G.L. c. 260, § 2B. For claims arising out of the design or construction of an improvement to real property, the statute places an outside limit on when certain claims can be brought.

A case now before the Massachusetts Appeals Court asks a different question: what happens when the lawsuit itself was filed within that six-year period, but new construction defect claims were added later?

In *Trustees of the Three Fifty West Broadway Condominium Trust v. Leoutsakos*, No. 2025-P-1506, the condominium trust sued the developer in 2017. The original complaint involved several specific issues, including storage, an intercom system, common funding and the building's elevator.

In 2021, after the six-year repose period had expired, the trust amended its complaint to add negligence and implied-warranty claims involving alleged water intrusion and defects with the windows, siding, roof, balconies and other portions of the building.

The Superior Court ruled that the later claims were barred. The trust argued that the claims should relate back to the filing of the original complaint under Mass. R. Civ. P. 15(c). The court disagreed, finding that the new allegations were not simply a refinement of claims already in the case, but instead involved different alleged defects and new theories of liability.

The appeal puts that issue before the Appeals Court.

One of the cases in the background is *Tindol v. Boston Housing Authority*, 396 Mass. 515 (1986), where the SJC held that the relation-back rule could not be used to add new defendants after the statute of repose had expired. The distinction in *Three Fifty West Broadway* is that the defendants were already in the case. The question is whether new claims

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against an existing defendant should be treated differently.

At oral argument in September 2026, the trust argued that the action against the defendants had been commenced within the repose period and that the defendants had notice of broader construction concerns before the six years expired. The defendants argued that allowing substantially different defect claims to be added later would undermine the protection the statute of repose is intended to provide.

There is also a practical construction issue. If new defect claims can be added after the repose period expires, a contractor, developer or design professional already in the case could face allegations involving portions of the project that were not part of the original complaint. At the same time, that defendant may no longer be able to bring related claims against other project participants because the repose period has already run.

The Appeals Court has not yet issued its decision. Whatever the outcome, the case should provide useful guidance on how far an existing construction lawsuit can expand after the six-year period expires.

For owners and condominium associations, the case is a reminder to identify and assert construction defect claims before the repose period runs. For contractors, developers and design professionals, the decision could affect how much protection the six-year statute provides once a lawsuit has already been filed.

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