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Minn. Stat. § 480A.08, subd. 3 (2006).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A07-1122**

Kathleen Smith, et al.,
Appellants,

vs.

Lindstrom Cleaning and Construction, Inc.,
defendant and third party plaintiff,
Respondent,

vs.

JFI Builders Insulation,
Third Party Defendant,

Kenco Construction,
third party defendant,
Respondent,

Topside, Inc.,
third party defendant,
Respondent.

**Filed May 13, 2008
Affirmed
Kalitowski, Judge**

Hennepin County District Court
File No. 27-CV-06-15490

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Considered and decided by Connolly, Presiding Judge; Kalitowski, Judge; and Minge, Judge.

UNPUBLISHED OPINION

KALITOWSKI, Judge

On appeal from a summary-judgment determination that their claims were time-barred in this improvement-to-real-property dispute, appellant-plaintiffs Kathleen Smith and Steven Hedstrom argue that material-fact questions exist regarding when they discovered the injury. We affirm.

DECISION

Appellants argue that the district court erred in granting summary judgment in favor of respondent Lindstrom Cleaning and Construction, Inc., and its subcontractors, respondents JFI Builders Insulation, Kenco Construction, and Topside, Inc., dismissing appellants' negligence and breach-of-contract claims. We disagree.

On appeal from an order granting summary judgment, we ask two questions: (1) whether there are any genuine issues of material fact; and (2) whether the district court erred in its application of the relevant law. *State by Cooper v. French*, 460 N.W.2d 2, 4

(Minn. 1990). On appeal, we view the evidence in the light most favorable to the party against whom summary judgment was granted. *Fabio v. Bellomo*, 504 N.W.2d 758, 761 (Minn. 1993).

Minn. Stat. § 541.051, subd. 1 (1998), provides a two-year limitations period for common law claims based on alleged construction defects. The statute of limitations “begins to run when an actionable injury is discovered or, with due diligence, should have been discovered, regardless of whether the precise nature of the defect causing the injury is known.” *Dakota County v. BWBR Architects, Inc.*, 645 N.W.2d 487, 492 (Minn. App. 2002), *review denied* (Minn. Aug. 20, 2002). It is knowledge of the injury, not the defect, which triggers the statute of limitations. *See Hyland Hill N. Condo. Ass’n, Inc. v. Hyland Hill Co.*, 549 N.W.2d 617, 621 (Minn. 1996), *cert. denied*, 519 U.S. 1041 (1996) (basing discovery of injury on the condominium association’s knowledge of water leakage).

The record indicates that appellants contracted with respondent Lindstrom to repair fire and water damages caused to their home by a fire in January of 1999. The repairs were completed in July of 1999, and in the fall of that same year, appellant Smith experienced flare-ups of her asthma and allergies. In February of 2002, Smith had an inspection done by Steamatic, a cleaning and restoration company, that informed Smith of visible fungal contamination.

Appellants claim that the district court erred in determining that the Steamatic report of February 2002 gave them notice of an actionable injury. Appellant Smith claims that Steamatic told her that the fungal growth in her home was unrelated to the

1999 fire and the subsequent repairs performed by respondents. But even if appellants did not have notice by February 2002, there is ample evidence that later that year, Smith knew that the air quality problems in her home were the result of fungal growth and believed that the problems stemmed from the fire and repairs. The record indicates that Smith wrote several letters to her insurance agent that attributed the mold problem to the 1999 repairs. In a July of 2002 letter, she stated that the mold was not there before the fire. And in September 2002, Smith wrote of her firm belief that the mold causing her health problems was a direct result of the fire and the subsequent rebuild as performed by Lindstrom Cleaning and Construction. In addition, the record indicates that in July of 2002, Smith's doctor noted that the fire precipitated the build-up of mold in her home.

We conclude that the record indicates that appellants had notice of an actionable injury by September of 2002 at the latest, which was more than two years before they commenced this lawsuit. Accordingly, the district court did not err in finding appellants' claims barred by the statute of limitations. Because we affirm the district court, we need not address the arguments raised by respondent Kenco.

Affirmed.