

By: Canales

H.B. No. 2310

A BILL TO BE ENTITLED

AN ACT

relating to certain construction defect litigation.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Subtitle B, Title 2, Civil Practice and Remedies Code, is amended by adding Chapter 28 to read as follows:

CHAPTER 28. CONSTRUCTION DEFECT LITIGATION

Sec. 28.001. DEFINITIONS. In this chapter:

(1) "Claimant" means a party pursuing a commercial construction defect claim. The term includes a party designated as a plaintiff, counterclaimant, cross-claimant, third-party plaintiff, or intervenor.

(2) "Commercial construction defect" means a defect, nonconformance, or deficiency in the design, engineering, material, workmanship, or construction of commercial property that causes some type of failure in that property.

(3) "Commercial construction defect claim" means a request in a civil action to recover monetary damages arising from an alleged commercial construction defect.

(4) "Commercial property" means an improvement to publicly or privately owned real property that is used for human habitation or from which a governmental activity or commercial enterprise is conducted. The term does not include:

(A) a residence as defined by Section 53.001, Property Code; or

1 (B) a highway, roadway, bridge, overpass, or
2 other similar kind of physical infrastructure used by motor
3 vehicles.

4 (5) "Petition" means a court pleading, whether
5 original or amended, in which a claimant asserts a commercial
6 construction defect claim. The term includes a petition,
7 counterpetition, cross-petition, and third-party petition.

8 Sec. 28.002. PLEADING REQUIREMENTS. In asserting a
9 commercial construction defect claim, a claimant's petition must,
10 as to each defendant:

11 (1) describe with particularity the observed
12 manifestation of each alleged failure in the commercial property
13 that gives rise to the claimant's claim against the defendant;

14 (2) state the factual basis for the claimant's
15 assertion that the defendant's services, labor, or materials caused
16 or created, wholly or partly, each described failure; and

17 (3) be verified by a person with knowledge of the facts
18 stated in the petition.

19 Sec. 28.003. DISMISSAL FOR INSUFFICIENT PLEADING; EFFECT ON
20 LIMITATIONS PERIOD. (a) At the time of filing an original answer
21 or on or before the 21st day after the date the claimant's petition
22 was served, whichever is later, a defendant may move to dismiss a
23 claimant's commercial construction defect claim against the
24 defendant for failure to comply with the pleading requirements of
25 Section 28.002.

26 (b) The filing by a defendant of a motion to dismiss under
27 this section automatically abates response deadlines for discovery

1 requests served on the defendant by the claimant who served the
2 petition that is the subject of the motion until the motion has been
3 resolved by court order or agreement of the parties.

4 (c) Not later than the seventh day before the date of the
5 hearing on the defendant's motion to dismiss, the claimant may
6 replead the commercial construction defect claim.

7 (d) If a claimant repleads a claim under Subsection (c), the
8 affected defendant may supplement or amend the defendant's motion
9 to dismiss without causing a postponement of a hearing on the
10 motion.

11 (e) Unless extended by the court for good cause or by
12 agreement of the parties, a hearing on the defendant's motion to
13 dismiss shall be held not later than the 30th day after the date the
14 motion is served on the claimant. Filing an insufficient petition
15 to avoid the expiration of a limitations period may not be
16 considered good cause to extend the deadline prescribed by this
17 subsection if, in the exercise of reasonable diligence, the
18 claimant could have filed a petition complying with Section 28.002
19 before the expiration of the limitations period.

20 (f) On motion of a defendant as provided by this section,
21 the court shall dismiss without prejudice any commercial
22 construction defect claim against the defendant that is not
23 supported by a petition complying with Section 28.002.

24 (g) The filing of a petition that fails to comply with
25 Section 28.002 with respect to a commercial construction defect
26 claim does not toll any limitations period applicable to the claim.

27 Sec. 28.004. DISMISSAL ON DEFENDANT ESTABLISHING NO

1 CULPABILITY. (a) In addition to or as an alternative to the filing
2 of a motion to dismiss under Section 28.003, a defendant may move to
3 dismiss a claimant's commercial construction defect claim against
4 the defendant on the ground that no reasonable jury could find that
5 the defendant's services, labor, or materials caused or created the
6 construction defect that is the subject of the claim.

7 (b) A motion to dismiss under this section may be supported
8 by evidence that could support a motion for summary judgment. The
9 motion must:

10 (1) describe the services, labor, or materials
11 provided by the defendant in regard to the building or other
12 improvement that is the subject of the claimant's commercial
13 construction defect claim against the defendant;

14 (2) explain why the services, labor, or materials
15 provided by the defendant did not cause or create the construction
16 defect that is the subject of the claim;

17 (3) include a stipulation that the defendant will not
18 assert limitations as a defense against the claimant reasserting
19 the same claim against the defendant in a petition that is:

20 (A) filed on or before the first anniversary of
21 the date the motion is granted;

22 (B) sufficient under Section 28.002; and

23 (C) based on evidence that was not available to
24 the claimant at the time the motion was heard; and

25 (4) be verified by a person with knowledge of the facts
26 stated in the motion.

27 (c) If the defendant has filed a motion to dismiss under

1 Section 28.003, a motion to dismiss under this section must be filed
2 not later than the 14th day after the earlier of:

3 (1) the date of the court's order overruling the motion
4 to dismiss under Section 28.003; or

5 (2) the date an agreement under Rule 11, Texas Rules of
6 Civil Procedure, resolving the motion to dismiss under Section
7 28.003 is filed.

8 (d) If a defendant has not filed a motion to dismiss under
9 Section 28.003, a motion to dismiss under this section must be filed
10 at the time of the filing of the defendant's original answer or on
11 or before the 21st day after the date the claimant's petition was
12 served, whichever is later.

13 (e) Except as provided by Subsection (f), the filing by a
14 defendant of a motion to dismiss under this section automatically
15 abates response deadlines for discovery requests served on the
16 defendant by the claimant who served the petition that is the
17 subject of the motion until the motion has been resolved by court
18 order or agreement of the parties.

19 (f) On a showing of good cause, the court may allow
20 specified and limited discovery relevant to the defendant's motion
21 to dismiss.

22 (g) Not later than the seventh day before the date of the
23 hearing on the defendant's motion to dismiss, the claimant may
24 replead the commercial construction defect claim or file a verified
25 response to the motion. A response to the defendant's motion to
26 dismiss may be supported by evidence that could support a motion for
27 summary judgment.

1 (h) Unless extended by the court for good cause or for
2 discovery to be conducted, or extended by agreement of the parties,
3 the court shall hold a hearing on the defendant's motion to dismiss
4 not later than the 30th day after the date the motion is served on
5 the claimant.

6 (i) The court shall grant the defendant's motion to dismiss
7 if the court finds, based on the verified pleadings and summary
8 judgment evidence submitted by the parties, that no reasonable jury
9 could find that the defendant's services, labor, or materials
10 caused or created the construction defect that is the subject of the
11 claimant's claim against the defendant.

12 (j) If the defendant's motion to dismiss under this section
13 is granted and the claimant files a subsequent petition reasserting
14 the same claim against the defendant as described by Subsection
15 (b)(3), the defendant may file a motion under this chapter to
16 dismiss the claim. If that motion is granted, the claim shall be
17 dismissed with prejudice.

18 Sec. 28.005. AWARD OF ATTORNEY'S FEES AND COSTS;
19 SANCTIONS. (a) On ruling on a motion to dismiss filed under this
20 chapter, the court may award costs and reasonable attorney's fees
21 to the prevailing party. The court shall award costs and reasonable
22 attorney's fees to the prevailing party if:

23 (1) the motion to dismiss is granted and the court
24 determines there was no reasonable justification for the claimant
25 having joined the defendant in the action; or

26 (2) the motion to dismiss is overruled and the court
27 determines the defendant used the procedures provided by this

1 chapter for the primary purpose of postponing the defendant's
2 obligation to participate in the action.

3 (b) The court shall impose an appropriate sanction on a
4 person who verifies a petition or motion or signs an affidavit filed
5 under this chapter when the person knew or reasonably should have
6 known the facts stated in the petition, motion, or affidavit were
7 untrue.

8 Sec. 28.006. SUPREME COURT RULEMAKING. The supreme court
9 may adopt rules to implement this chapter.

10 Sec. 28.007. SUPPLEMENTATION OF EXISTING LAWS. The
11 procedures and remedies provided by this chapter are in addition to
12 other procedures and remedies provided by law.

13 SECTION 2. Chapter 28, Civil Practice and Remedies Code, as
14 added by this Act, applies only to an action commenced on or after
15 the effective date of this Act.

16 SECTION 3. This Act takes effect September 1, 2023.