

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT O.P. 65.37

DANIEL JAUCH, ERIN CONAWAY, : IN THE SUPERIOR COURT OF
MATTHEW CONAWAY, RAYMOND : PENNSYLVANIA
JAUCH, SALLYANN JAUCH, :
STEPHANIE JAUCH, LANCE LAHR, :
STEPHANIE LAHR, BRIAN :
MCCORMICK, NANCY MCCORMICK, :
RYAN PHILLIPS, AND SAMANTHA :
PHILLIPS :

No. 838 EDA 2025

v.

HOVNANIAN ENTERPRISES, INC., :
EPIC STUCCO AND STONE, LLC, GH :
STUCCO, LLC, K HOVNANIAN AT :
SAWMILL, INC., K HOVNANIAN :
COMPANIES, LLC, K HOVNANIAN :
EAST GROUP, LLC, K HOVNANIAN :
NORTHEAST DIVISION, INC., KJ :
STUCCO, LLC, LABUDA HOME :
IMPROVEMENT, LLC, WALDEMAR :
PAPUGA, RYNIO STUCCO AND :
STONE, LLC, PIOTR SADLOWSKI :

APPEAL OF: LANCE AND STEPHANIE :
LAHR, ERIN AND MATTHEW :
CONAWAY, AND RYAN AND :
SAMANTHA PHILLIPS :

Appeal from the Order Entered February 4, 2025
In the Court of Common Pleas of Montgomery County Civil Division at
No(s): 2021-04722

JAMES SMYTH AND TRACY SMYTH : IN THE SUPERIOR COURT OF
: PENNSYLVANIA
Appellants :

v.

HOVNANIAN ENTERPRISES, INC., K : No. 839 EDA 2025
HOVNANIAN AT SAWMILL, INC., K :
HOVNANIAN COMPANIES, LLC, K :
HOVNANIAN EAST GROUP, LLC, K :
HOVNANIAN NORTHEAST DIVISION, :
INC., KJ STUCCO, LLC, LABUDA :
HOME IMPROVEMENT, LLC :

Appeal from the Order Entered February 4, 2025
In the Court of Common Pleas of Montgomery County Civil Division at
No(s): 2021-15528

ALONZO J. ADAMS : IN THE SUPERIOR COURT OF
: PENNSYLVANIA
Appellant :

v. :

HOVNANIAN ENTERPRISES, INC., GH : No. 840 EDA 2025
STUCCO, LLC, K HOVNANIAN AT :
SAWMILL, INC., K HOVNANIAN :
COMPANIES, LLC, K HOVNANIAN :
EAST GROUP, LLC, K HOVNANIAN :
NORTHEAST DIVISION, INC., :
LABUDA HOME IMPROVEMENT, LLC, :
WALDEMAR PAPUGA, AND PIOTR :
SADLOWSKI :

Appeal from the Order Entered February 4, 2025
In the Court of Common Pleas of Montgomery County Civil Division at
No(s): 2021-17921

BEFORE: DUBOW, J., KUNSELMAN, J., and SULLIVAN, J.

MEMORANDUM BY SULLIVAN, J.:

FILED AUGUST 28, 2026

At No. 838 EDA 2025, Matthew and Erin Conaway (collectively, “the Conaways”); Lance and Stephanie Lahr (collectively, “the Lahrs”); and Ryan and Samantha Phillips (collectively, “the Phillipses”), appeal from the grant of summary judgment against them and in favor of Hovnanian Enterprises Inc.,

et al. (“Hovnanian”), Labuda Home Improvement, LLC (“Labuda”), and KJ Stucco, resulting from the trial court’s conclusion that a statute of repose barred the action.¹ At No. 839 EDA 2025, James and Tracy Smyth (collectively “the Smyths”) appeal from the grant of summary judgment against them and in favor of Hovnanian, Labuda, and KJ Stucco, on the same grounds. At No. 840 EDA 2025, Alonzo J. Adams (“Adams”) appeals from the grant of summary judgment against him and in favor of Hovnanian, Labuda, and GH Stucco, LLC, Waldemar Papuga, and Piotr Sadlowski, on the same grounds.² Because we find no error in the trial court’s determination that a statute of repose barred the litigation in these cases, we affirm.

The trial court provided a representative factual and procedural history for the Conaways’ and Lahrs’ appeal at No. 838 EDA 2025 as follows:

This matter was originally brought by six homeowners[] who alleged defects in the construction of their homes in K. Hovnanian’s “Saw Mill Estates” community which were completed between May and October in 2007. In 2011, the Hovnanian parties hired Labuda . . . to perform work to remediate defects in the stucco on the homeowners’ homes (hereinafter “Work”). In 2021, the homeowners hired companies to perform moisture inspections on the homes, which revealed a magnitude of issues. In April of 2021, the homeowners sent notice of their claims attaching a writ of summons to the Hovnanian parties [and] demanding that they cure the defects, which they allege the Hovnanian parties failed to do. During the litigation of the

¹ **See** 42 Pa.C.S.A. § 5536.

² For purposes of the present appeal—in which the facts, issues, and trial court rulings, are nearly identical—we refer to the plaintiffs in the consolidated appeals collectively as “Appellants” and the defendants collectively as “Appellees,” except where necessary to refer to the parties individually.

homeowners' claims, three of the homeowners discontinued their claims. The remaining homeowners in this action were not original homebuyers and purchased the subject homes after the Work was performed.

* * * *

. . . [The Conaways, Lahrs, and Phillipses] filed a complaint [in] November [] 2021, which was amended [in] December [] 2022[, against Hovnanian.]

[I]n February [] 2023, a joinder complaint was filed [by Hovnanian] against Labuda . . ., who performed the [Work]. Then, [i]n August 2023, Labuda filed its joinder complaint, this time against KJ Stucco [et al.], who were subcontracted by Labuda.

[I]n July []2024, leave was sought to file a second amended complaint to (1) reduce the number of plaintiffs and (2) clarify and narrow the claims of the remaining plaintiffs. Both the Jauch homeowners and the McCormick homeowners decided to discontinue the prosecution of their claims, leaving only the Conaway, Lahr, and Phillips plaintiffs. Th[e c]ourt . . . grant[ed] the discontinuance . . ., while denying the motion [as to] any need to clarify or narrow the scope of the claims of the remaining plaintiff parties.

[I]n September [] 2024, Hovnanian filed motions for summary judgment as to the claims of [A]ppellants. Additionally, Labuda and [KJ] Stucco filed motions for summary judgment. Arguments on the motions were held [i]n January [] 2025.

Trial Court Opinion, No. 2021-04722 (838 EDA 2025), 4/30/25, at 1-4 (unnecessary capitalization and citations to the record omitted). The court granted summary judgment for Appellees and against the Conaways, Lahrs, and Phillipses, concluding a statute of repose, codified at 42 Pa.C.S.A. § 5536 applied, and the suit was filed outside of the twelve-year time permitted by the statute. ***See id.*** at 7-10.

At No. 839 EDA 2025, a certificate of occupancy was issued for the Smyths' home in July 2008 and they purchased the home in September 2008. **See** Trial Court Opinion, No. 2021-15528 (No. 839 EDA 2025), 4/30/25, at 2. Hovnanian hired Labuda to replace and remediate defects in the stucco, which was, it was alleged, insufficient to fix the defects and resulted in further damage. The Smyths filed a writ of summons in July 2021. **See id.** at 2. As discussed further *infra*, the Smyths later filed a complaint alleging several causes of action against Hovnanian, alone, arising from the defective construction of the home. The remaining defendants were brought into the action *via* joinder complaints. The court ultimately granted summary judgment against the Smyths and in favor of Appellees based on the statute of repose discussed above, having concluded that the Smyths initiated their action outside of the twelve-year period allowed by the statute of repose.

At No. 840 EDA 2025, a certificate of occupancy was issued for Adams's home in August 2008, and he purchased the home in September 2008. Following the same asserted defects in the home and the same actions by Hovnanian and Labuda, Adams filed a writ of summons in August 2021. **See** Trial Court Opinion, No. 2021-17921 (No. 840 EDA 2025), at 2. As discussed further *infra*, Adams later filed a complaint alleging several causes of action against Hovnanian, alone, arising from the defective construction of the home. The remaining defendants were brought into the action *via* joinder complaints. The court ultimately granted summary judgment against Adams based on the

statute of repose, premised on its conclusion that Adams filed suit outside of the twelve-year repose period.

In each of the cases, following the grant of summary judgment, Appellants timely appealed, and they and the trial court complied with Pa.R.A.P. 1925.

Appellants raise the following issues for our review:

1. Did the trial court below err in granting summary judgment on the basis that Appellants' claims were time-barred by the [twelve]-year construction statute of repose notwithstanding record evidence that made clear that: (a) the construction defects at issue did not exist until 2011; and (b) this case was filed **fewer** than [twelve] years later?
2. Did the trial court below err in granting summary judgment on the basis that Appellants' claims were time-barred by the [twelve]-year construction statute of repose notwithstanding record evidence that the construction at issue was not lawfully performed?
3. Did the trial court below err in granting summary judgment despite questions of material fact concerning the actionable conduct of Appellees Labuda . . . and KJ Stucco . . . ?

Appellants' Brief at 5 (emphasis in original).³

Our standard of review in an appeal from an order granting summary judgment is as follows:

³ This Court granted an application to consolidate these appeals, filed by Labuda. **See** Order, 11/7/25. As noted above, Appellants across the three dockets raise the same issues, and this statement of questions involved is virtually identical across the three appellate briefs. Accordingly, we use the brief in No. 838 EDA 2025 as an exemplar, and all citations to Appellants' Brief below refer to the brief filed at this docket. Where appropriate, we cite to filings in the individual trial dockets.

The applicable standard of review when summary judgment is granted views the record in the light most favorable to the non-moving party, and this Court is required to determine whether the trial court abused its discretion or committed an error of law and our scope of review is plenary. ***See Petrina v. Allied Glove Corp.***, 46 A.3d 795, 797-798 (Pa. Super. 2012) (internal citations and quotations omitted; formatting altered; emphasis added).

In reviewing a trial court's grant of summary judgment, this Court applies the same standard as the trial court and reviews all the evidence of record to determine whether there exists a genuine issue of material fact:

We view the record in the light most favorable to the non-moving party, and all doubts as to the existence of a genuine issue of material fact must be resolved against the moving party. Only where there is no genuine issue as to any material fact and it is clear that the moving party is entitled to a judgment as a matter of law will summary judgment be entered. All doubts as to the existence of a genuine issue of a material fact must be resolved against the moving party.

[Likewise, m]otions for summary judgment necessarily and directly implicate the plaintiff's proof of the elements of [a] cause of action. Summary judgment is proper if, after the completion of discovery relevant to the motion, including the production of expert reports, an adverse party who will bear the burden of proof at trial has failed to produce evidence of facts essential to the cause of action or defense which in a jury trial would require the issues to be submitted to a jury. In other words, whenever there is no genuine issue of any material fact as to a necessary element of the cause of action or defense, which could be established by additional discovery or expert report and the moving party is entitled to judgment as a matter of law, summary judgment is appropriate. Thus, a record that supports summary judgment either (1) shows the material facts are undisputed or (2) contains insufficient evidence of facts to make out a prima facie cause of action or defense.

[W]e [upon appellate review] are not bound by the trial court's conclusions of law, but may reach our own conclusions.

Healy v. T.A.G. Builders, Inc., 344 A.3d 25, 30 (Pa. Super. 2025) (indentation and some internal citations omitted).

In their first two issues, Appellants assert the trial court erred in granting summary judgment against them and to Appellees based on the statute of repose. The statute of repose, entitled “Construction projects,” and codified at 42 Pa.C.S.A. § 5536, provides as follows:

(a) General rule.--Except as provided in subsection (b), a civil action or proceeding brought against any person lawfully performing or furnishing the design, planning, supervision or observation of construction, or construction of any improvement to real property must be commenced within 12 years after completion of construction of such improvement to recover damages for:

(1) Any deficiency in the design, planning, supervision or observation of construction or construction of the improvement.

* * * *

42 Pa.C.S.A. § 5536.

We begin with general principles relevant to statutes of repose: Our Supreme Court has recently reiterated the distinction between statutes of limitation and repose and, with respect to statutes of repose, elucidated:

While a statute of repose also limits the time for a plaintiff to bring suit, unlike a statute of limitations, a statute of repose is not related to the accrual of any cause of action because the injury need not have occurred, much less have been discovered. Where a limitations period begins with a definitely established event that is independent of an injurious occurrence or discovery thereof, the statute is considered to be one of repose. Importantly, a statute of repose completely abolishes and eliminates [a] cause of action regardless of when the claim accrues and, in some cases, even before the claim accrues.

Gidor v. Mangus, 345 A.3d 629, 640–41 (Pa. 2025) (internal citations and quotations omitted). The Court has emphasized that “because statutes of repose not only bar a party’s right to a remedy, but abolish and eliminate a cause of action entirely, a plaintiff may not invoke the discovery rule or other equitable tolling considerations. ***There simply is no action to toll once a repose period lapses.***” ***Id.*** at 641 (internal citations and quotations omitted; emphasis added). Importantly, the General Assembly does not tie the repose period to whether a cause of action has accrued or whether any injury has resulted. ***See id.***⁴

As this Court has explained, a statute of repose is a jurisdictional issue. ***See Venema v. Moser Builders, Inc.***, 284 A.3d 208, 212 (Pa. Super. 2022). Generally, a statute of repose may not be tolled, “even in cases of

⁴ The policy behind the statute of repose is the recognition that while builders are liable for defects, construction involves sufficiently difficult conditions to warrant some limitations on liability:

A builder . . . can protect his design and construction only in limited ways—actual use in the years following construction is their only real test. Further, every building is unique and far more complex than any of its component parts. Even in the most uniform-looking suburban subdivision, each house stands on a separate plot of land; each lot may have slightly different soil conditions; one may be near an underground stream; and so forth. The Legislature can rationally conclude that the conditions under which builders work are sufficiently difficult that limitations should be placed on their liabilities . . .

McConnaughey v. Bldg. Components, Inc., 637 A.2d 1331, 1334–35 (Pa. 1994) (internal citation omitted).

extraordinary circumstances beyond a plaintiff's control." **Id.** at 213 (internal citation and quotations omitted). Where a defendant raises a defense indicating a statute of repose has lapsed and precludes liability, the defendant has the burden of proof and must show:

(1) what is supplied [by defendant] is an improvement to real property; (2) more than twelve years have elapsed between the completion of the improvements to the real estate and the injury; and (3) the activity of the moving party must be within the class which is protected by the statute[.]

Id. (internal citations, indentation, and unnecessary capitalization omitted).

Regarding the interplay between a certificate of occupancy and the statute of repose at issue, this Court has stated:

A residential building . . . may not be used or occupied until a certificate of occupancy is issued. The issuance of the certificate hinges on a satisfactory "final inspection" showing that the construction of the residence comports with the governing building codes. **See** Pennsylvania Uniform Construction Code, 34 Pa. Code § 403.65(a)-(b) ("A residential building may not be used or occupied without a certificate of occupancy issued by a building code official. . . . A building code official shall issue a certificate of occupancy after receipt of a final inspection report that indicates compliance with the Uniform Construction Code[.]").

There can be no satisfactory result to a final inspection, nor a certificate of occupancy, until construction of the residence is "completed." **See id.** at § 403.64(f) ("A construction code official shall conduct a final inspection of the completed construction work and file a final inspection report that indicates compliance with the Uniform Construction Code."); **see also Umbelina v. Adams**, 34 A.3d 151, 154 (Pa. Super. 2011) ("Upon completion of the home, [building inspector] issued the home's certificate of occupancy, which was an affirmative statement a builder can rely upon that the property meets all the applicable township codes.").

* * * *

We have also held that in this context, completion of the construction of such improvement, marks the commencement of the repose period at the point when third parties are first exposed to defects in design, planning, or construction.

Id. (unnecessary capitalization and some internal citations and quotations omitted; brackets in original).

Appellants argue that the statute of repose did not operate to bar their claims because the tortious conduct at issue did not arise until 2011. Appellants do not contest the dates the certificates of occupancy were issued for their respective homes; rather, they assert that their claim is predicated not on an original defective “building envelopes,” but the second defective stucco system. **See** Appellants’ Brief at 14. As Appellants emphasize: “Unfortunately, the **replacement** stucco system—installed by Labuda and/or KJ in 2011, at the Hovnanian [a]ppellees’ direction and expense—was **itself defective . . .**” **Id.** Appellants maintain the claims do not arise from defective stucco systems in place at the issuance of the certificate of occupancy, because the defective stucco system at issue “did not even exist until 2011,” and as such, “[t]here is no basis in law to allow Appellees to avoid liability under the statute of repose for **new** defects and damage that they caused to the [h]omes only 10 years before this lawsuit was filed.” **Id.** at 15.

The trial court considered Appellants’ argument and rejected it:

. . . As to the liability of builders for defects, the statute of repose bars suits filed 12 years after the completion of the construction. Here, the certificates of occupancy were filed between July and October of 2007 by the Hovnanian appellees, meaning this suit

should have been brought in 2019[] or earlier. The present action was initiated in 2021.

As to [] Appellants' argument that the [statute of repose] does not bar their claims because they began their lawsuit within ten [] years of the completion of the Work, the Superior Court held in [] **Venema** . . . that the [repose] period runs uninterrupted beginning upon the issuance of certificates of occupancy after the completion of the construction of the improvement. Simply put, the statute of repose begins to run after the completion of the construction of the improvement, regardless of whether repairs are made to correct defects in the original construction improvement. . . . [A]lthough repairs may have been completed once the residence was legally occupied, the occupants still would have been first exposed to the alleged defects when their [certificate of occupancy] was issued. In the present action, the statute of repose would have begun to run in 2007, and the Work performed in 2011 constituted repairs to the original construction of [] Appellants' homes, regardless of Appellants' expert's opinion that there were deficiencies in the work.

Trial Court Opinion, No. 2021-07422 (No. 838 EDA 2025), 4/30/25, at 9-10.

Having reviewed the trial court's reasoning, we find no error. **Venema** is instructive. There, the plaintiffs initiated suit against the defendant, the original builder of their residence, in August 2019. A certificate of occupancy was issued for the residence in August 2003. The plaintiffs had purchased the home in October 2004, subsequent to its completion. In their March 2020 complaint, the plaintiffs alleged construction defects in the residence. Crucially, they also asserted the defendant "performed a number of inspections and repairs on the residence from 2004 to 2008," that "failed to remedy defects which ultimately resulted in significant water infiltration, causing damages." **Venema**, 284 A.3d at 211. The defendant moved for judgment on the pleadings, seeking dismissal of the complaint, and arguing

that “as a matter of law . . . the completion date of the residence was determined by the certificate of occupancy issued [i]n August [] 2003.” **Id.** The trial court granted the motion for judgment on the pleadings.

This Court affirmed. The Court noted there was no dispute that the certificate of occupancy was issued in 2003 and suit was not filed until over twelve years later in 2019, and, as such, the suit was outside of the twelve-year statute of repose. The Court rejected the plaintiffs’ argument that the “purported repairs tolled the statute of repose and rendered their claims timely filed.” **Id.** at 213 (unnecessary capitalization omitted). The Court explained that “regardless of any repairs [the defendant] may have done once the residence was legally occupied, the occupants would have been exposed to the alleged defects in 2003, and the statute of repose period would have continued to run without interruption from that point on.” **Id.** (footnote omitted).

Similarly here, notwithstanding the subsequent remedial repairs commissioned by Hovnanian, the gravamen of Appellants’ amended complaint is that Hovnanian rendered “defective, careless, and negligent performance in **constructing** [the home] . . .” Amended Compl., No. 2021-04722 (Conaways’, Lahrs’, and Phillipses’ amended complaint), 12/30/22, at ¶¶ 300-09 (Lahrs averring negligence against Hovnanian for failing to construct their home in a reasonable workmanlike manner, free from construction defects,

and suitable for habitation).⁵ The complaints in the Smyth and Adams cases reveal the same as with the Conaways', Lahrs', and Phillipses', namely, that the claims all pertain to Hovnanian's actions with respect to the original construction of the properties. **See** Amended Compl., No. 2021-15528 (Smyth's amended complaint), 12/27/22, at ¶¶ 61-66 (breach of contract claim against Hovnanian for construction defects);⁶ **see also** Amended

⁵ **See also** Amended Compl., No. 2021-04722 (Conaways', Lahrs', and Phillipses' amended complaint), 12/30/22, at ¶¶ 310-15 (claim by the Lahrs for negligent misrepresentation regarding "latent construction defects"); **id.** at ¶¶ 316-32 (the Lahrs' UTPCPL claim against Hovnanian for "impliedly and expressly representing" the home was of a suitable standard, quality, or grade and free from structural defects and "the materials and labor used to construct the Home were defective, unworkmanlike, and failed to satisfy the building code"); **id.** at ¶¶ 333-42 (similar negligence claim by the Conaways); **id.** at 343-48 (similar negligent misrepresentation claims by the Conaways); **id.** at 349-65 (similar UTPCPL claim by the Conaways); **id.** at ¶¶ 366-75 (Phillipses' negligence claim arising from the defective "design and construction of the Home"); **id.** at ¶¶ 376-81 (similar negligent misrepresentation claim by the Phillipses); **id.** at ¶¶ 382-98 (UTPCPL claim by the Phillipses regarding misrepresentations about the "materials and labor used to construct the Home [that] were defective, unworkmanlike, and failed to satisfy the building code").

⁶ **See also** Amended Compl., No. 2021-15528 (Smyths' amended complaint), 12/27/22, at **id.** at ¶¶ 67-70 (breach of warranty claim because the "Home was not constructed in a reasonably workmanlike manner and, because of the various construction defects as aforesaid, the Home is not fit for habitation"); ¶¶ 71-78 (negligence claim arising from the "defective, careless, and negligent performance in constructing the Home"); **id.** at ¶¶ 79-84 (negligent misrepresentation claim against Hovnanian for misrepresentations about latent construction defects); **id.** at ¶¶ 85-100 (UTPCPL claim based on the misrepresentations of Hovnanian notwithstanding that the "materials and labor used to construct the Home were defective, unworkmanlike, and failed to satisfy the building code"); **id.** at ¶¶ 101-06 (assertion of fraud based on representations by Hovnanian when there were "latent defects" in the Home").

Compl., No. 2021-17921 (Adams's second amended complaint), 11/23/22, at ¶¶ 59-64 (breach of contract claim against Hovnanian for "failing to construct the Home in a proper and workmanlike fashion").⁷ The counts in the various complaints thus all derive from Hovnanian's actions in defectively constructing their homes, notwithstanding that Hovnanian 2011 unsuccessfully attempted repairs. Thus, **Venema** supports the trial court's determination that Hovnanian's subsequent repairs do not operate to toll the statute of repose.

Section 5536 applies to, *inter alia*, the construction of "any **improvement** to real property[.]" 42 Pa.C.S.A. § 5536 (emphasis added). Notably, Appellants' argument hinges on their assertion of when they were first "exposed" to the defects at issue; however, they make no argument that the 2011 repairs should be considered an "improvement to real property," within the meaning of Section 5536, so as to restart the clock for the statute of repose. **Cf.** Conaways', Lahrs', and Phillipses' Brief at 12-15; Smyths' Brief

⁷ **See also** Amended Compl., No. 2021-17921 (Adams's second amended complaint), 11/23/22, at ¶¶ 65-68 (breach of warranty claim for failure to construct the home without defects, thereby breaching express and implied warranties"); **id.** at ¶¶ 69-76 (averring negligence arising from Hovnanian's failure "to ensure the Home was constructed to meet the applicable building code and meet any industry standards"); **id.** at ¶¶ 77-82 (negligent misrepresentation claim regarding "communications as they pertain to the latent construction defects in the Home[which] were . . . falsely and/or negligently made"); **id.** at ¶¶ 83-98 (UTPCPL claim for several misrepresentations regarding the quality of the home, absent with "Adams would not have purchased the Home"); **id.** at 99-103 (fraud claim arising from misrepresentations about "latent defects" in the construction of the home").

at 11-14; Adams's Brief at 11-14. Consequently, this argument is not sufficiently developed for our review, and therefore, Appellants have waived it. ***See Matthew 2535 Properties, LLC v. Denithorne***, 313 A.3d 223, 231 (Pa. Super. 2024) (finding waiver of an undeveloped argument). In any event, we note that while "improvement" is not defined in the statute, our Supreme Court has defined it as a "valuable **addition** . . . or an amelioration in its condition, **amounting to more than mere repairs or replacement**, costing labor or capital, and intended to enhance its value, beauty or utility or to adapt it for new or further purposes[.]" ***Noll by Noll v. Harrisburg Area YMCA***, 643 A.2d 81, 87 (Pa. 1994) (emphases added) (internal citation omitted). However, as discussed above, Appellants' claims hinged on the fact that Hovnanian failed to "properly design and/or construct the Home" originally, and falsely told Appellants "there were no issues with the stone and stucco façade . . . following the exterior **remediation** that occurred in 2011." Amended Compl., No. 2021-04722 (Conaways', Lahrs', and Phillipses' amended complaint), 12/30/22, at ¶¶ 95, 115 (emphasis added); ***see also*** Amended Compl., No. 2021-15528 (Smyth's amended complaint), 12/27/22, at ¶¶ 28-29 ("After settling on the Home, the Smyths discovered substantial construction and design defects in the Home In or about 2011, the Hovnanian Defendants replaced the stucco on the home, **purporting to fix the defects.**") (emphasis added); Amended Compl., No. 2021-17921 (Adams's second amended complaint), 11/23/22, at ¶¶ 27-28 (stating the

same).⁸ Thus, but for the pre-existing defects in the home, the unsuccessful 2011 repairs would not have occurred, which places this case squarely in the realm of **Venema**. Therefore, Appellants' first issue merits no relief.

In their second issue, Appellants assert the statute of repose does not apply because "unlawfully constructed homes—like the[ir] Homes—are **not** subject to the statute of repose." Appellants' Brief at 15. Appellants assert that the subsequent remedial repairs in 2011—not the original construction—was not built to code, and accordingly, the construction was unlawful. **See id.** at 16-21. Appellants' argument hinges on their interpretation of the repose statute. The statute provides protections to "any person lawfully performing or furnishing the design, planning, supervision or observation of construction or construction of any improvement to real property" 42 Pa.C.S.A. § 5536(a). Appellants argue that "lawful" construction must be built to code, and the **2011** construction was not so built. **See** Appellants' Brief at 15-16. Importantly, Appellants center their argument on the 2011 construction, not the original construction. **See id.** at 16 ("As Appellants' expert has opined,

⁸ We additionally observe that Appellants, earlier in these cases, cited liberally to the building codes applicable to the original construction, yet on appeal cite to the code applicable to the 2011 remediation. **Compare, e.g.,** Amended Compl., No. 2021-04722 (Conaways', Lahrs', and Phillippes' amended complaint), 12/30/22, at ¶¶ 114-18 **with** Conaways', Lahrs', and Phillippes' Brief at 18. This is additional support for our conclusion that Appellants' claims turned on defects in the original construction which Appellees failed to repair satisfactorily in 2011, notwithstanding Appellants' present arguments to the contrary.

the replacement stucco systems installed in 2011 were **not** built to code”); **id.** at 18 (discussing the building code applicable to the 2011 stucco system replacement); **id.** at 26 (asserting, “As explained thoroughly by Appellants’ expert, the 2011 stucco replacement work did **not** meet code”).

The trial court considered Appellants’ argument and rejected it. The court explained: “[T]he Pennsylvania Superior Court has held that construction is ‘lawful’ if the builder was authorized under the laws of the Commonwealth to do it and a [certificate of occupancy] was issued. [**See**] **Johnson v. Toll Brothers, Inc.**, 302 A.3d 1231 (Pa. Super. 2023)” Trial Court Opinion, No. 2021-04722 (838 EDA 2025), 4/30/25, at 10.

Based on our review, we conclude Appellants’ are due no relief. Firstly, this Court concluded above that the statute of repose began to run from the completion of the original construction notwithstanding the subsequent repair attempts. **See supra** at 13-15. As such, Appellants’ argument misses the mark with respect to the construction at issue because their argument is couched solely in terms of the 2011 repairs and not the original construction. Thus, their argument is inapposite to whether the **original** construction, from the completion of which the statute of repose began to run, was lawfully constructed.⁹

⁹ The trial court’s analysis focused on the definition of “lawful” as noted above. However, this Court may affirm on any legal basis. **See, e.g., Johnson**, 302 A.3d at 1237.

Further, even if Appellants had presented an argument that the original construction was unlawful because it was not built to code, ***Johnson*** is on point and supports the trial court's ruling. In ***Johnson***, this Court explained that "lawfully" means performed with statutory authority:

The statute of repose was enacted in 1976. The most recent version of Black's Law Dictionary at the time of that enactment defined "lawful" as "warranted or authorized by the law; having the qualifications prescribed by law; not contrary to nor forbidden by the law." *Black's Law Dictionary*, 1032 (4th ed. 1968). Elaborating further, the note of that definition explained that "lawful" implies an act "that is authorized, sanctioned, or at any rate not forbidden, by law." ***Id.*** The note then compared that latter definition to the term "legal" which implies that an act "is done or performed in accordance with the forms and usages of law, or in a technical manner[,]" going no "further than to denote compliance, with positive, technical, or formal rules[.]" ***Id.***

A number of decisions have wrestled with the meaning of "lawful" (or "lawfully") in the context of a statute of repose and distinguished "lawful" and "legal" in the same manner that Black's Law Dictionary did.

Johnson, 302 A.3d at 1235 (footnote, some italics, and unnecessary capitalization omitted). With respect to the claim that construction in violation of local, state, or federal rules rendered construction unlawful, this Court rejected it:

Even if Toll violated local, state or federal rules when constructing the residence, the construction was still "lawful" because Toll was authorized under the laws of the Commonwealth to do it. There is no dispute that Toll was a licensed home builder and that a certificate of occupancy was issued by the Commonwealth when construction of the Johnsons' home was completed. Thus, the Johnsons' claims against Toll were barred by the Statute of Repose as a matter of law because they were filed over [twelve years after the completion of the home's lawful construction.

Id. at 1236–37 (internal citation omitted).

Thus, even if Appellants had made the argument that the original construction, for which a certificate was issued, was unlawful, that argument was squarely rejected by this Court in **Johnson**. It is notable that **Johnson**'s holding is on review with our Supreme Court now in **Aloia v. Diamant Bldg. Corp.**, 329 A.3d 586 (Pa. 2024) (granting review of this Court's application of **Johnson**). However, **Johnson** is still binding precedent until—if and when—our Supreme Court overrules it. **See Marks v. Nationwide Ins. Co.**, 762 A.2d 1098, 1101 (Pa. Super. 2000) (noting that “we have long held that as long as the decision has not been overturned by our Supreme Court, a decision by our Court remains binding precedent”).¹⁰

¹⁰ Appellants cite this Court's decision in **Calabretta v. Guidi Homes, Inc.**, 241 A.3d 436 (Pa. Super. 2020), for the proposition that “lawful” construction is one in accordance with applicable building codes; however, that is a misreading. **See** Appellants' Brief at 22-23. This Court noted that the meaning of the term “lawful” was uncertain, and did not decide whether it meant for builders to comply with applicable building codes or merely to have the requisite permits. **See id.** at 442-43. As such, this Court did not define the term, but merely noted the issue was unsettled at that time and quashed the appeal from an order denying summary judgment, as this Court lacked jurisdiction under the collateral order doctrine. **See id.** at 444.

Appellants also cite a Common Pleas Court case, **Brunken v. N. Lee Ligo Assocs.**, AD 13-10855 (Pa. Com. Pl. Feb. 25, 2015) (Butler Cty) holding to the contrary of **Johnson**. **See** Appellants' Brief at 18. However, **Brunken** is not binding on this Court. **See McKeehan v. Milton S. Hershey Med. Ctr.**, 328 A.3d 1059, 1065 (Pa. Super. 2024) (providing that “[t]his Court is not bound by decisions of the court of common pleas, even if the decision is directly on point”).

In their third issue, Appellants maintain summary judgment should not have been granted in favor of Labuda or KJ Stucco because the repairs they completed, at Hovnanian's direction and expense, were defective, which evinces their liability for Appellants' loss. **See** Appellants' Brief at 31-32.

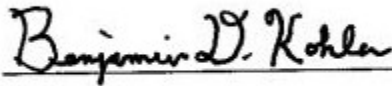
The trial court granted summary judgment to Labuda and KJ Stucco apparently based on the same rationale as the grant of summary judgment in favor of Hovnanian.

However, a review of Appellants' complaint reveals that they pleaded no claims against Labuda and KJ Stucco; rather, they pleaded claims solely against Hovnanian, and, thereafter, Hovnanian joined Labuda who joined the remaining additional defendants. **See, e.g.**, Joinder Compl., No. 2021-04722, 2/23/23 (complaint by Hovnanian joining Labuda); Praecipe to Join Add'l Def., No. 2021-04722, 8/24/23 (joinder complaint by Labuda to join, *inter alia*, KJ Stucco). As stated **supra**, in each case, Appellants pleaded claims against Hovnanian arising from the latter's actions relating to the original construction. While Appellants now attempt to recast the complaint as hinging on the 2011 repairs, the complaints show that Appellants attempted to situate their suit in context of defects in the original construction (for which there were subsequent attempts made to repair), as in **Venema**. Thus, notwithstanding the fact that "where the original defendant has properly joined an additional defendant . . . , the plaintiff's case may proceed just as if the plaintiff filed those claims directly against the additional defendant," **202**

Island Car Wash, L.P. v. Monridge Const., Inc., 913 A.2d 922, 927 (Pa. Super. 2006), Appellants' complaint shows that their claims arose from defects in the original construction of the home, for which certificates of occupancy were issued, and, therefore, the statute of repose bars these claims.

Orders affirmed.

Judgment Entered.

A handwritten signature in black ink, reading "Benjamin D. Kohler", is written over a horizontal line.

Benjamin D. Kohler, Esq.
Prothonotary

Date: 8/28/2026