

Chapter 558 and Commencement of an Action: Legislature Addresses *Gindel V. Centex*

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The Florida Legislature has amended Chapter 558, Florida Statutes, to address the Fourth District Court of Appeal's 2018 opinion in *Gindel v. Centex Homes*.¹

In *Gindel*, the Fourth District ruled that the homeowners in a construction defect class action commenced an "action," for statute of repose purposes, when they served a pre-suit notice of construction defect claim pursuant to Chapter 558, even though they had not also filed a lawsuit or arbitration action.²

The homeowners in *Gindel* closed on and took possession of the townhomes on March 31, 2004, provided Centex a pre-suit notice of construction defect claim on February 2, 2014, and then filed suit on May 2, 2014. The homeowners served the pre-suit notice of claim required by Chapter 558 within ten years of closing on and taking possession of the townhomes but filed the lawsuit more than ten years after closing on and taking possession of the townhomes.

The trial court found the homeowners had commenced an "action" upon filing the lawsuit, which it found untimely because it originated after the expiration of the 10-year statute of repose for actions founded on the design, planning, or construction of an improvement to real property set forth in section 95.11(3)(c), Florida Statutes (2014). The homeowners contended they would have filed the lawsuit earlier, but for the mandatory pre-suit procedures in Chapter 558.

Notwithstanding section 558.002(1), which provides that an “action means any civil action or arbitration proceeding,” the Fourth District opined that section 95.011 more broadly defines an action as “a civil action or proceeding” with little context to limit the meaning and without reliance on or reference to Chapter 558. As a result, it agreed with the homeowners that Chapter 558 is a mandatory “proceeding” and thus an “action” for purposes of the statute of repose, and concluded the homeowners had commenced an action when they served Centex with the pre-suit notice of construction defect claim pursuant to Chapter 558.

Only a few months later, during the 2019 legislative session, the Florida Legislature addressed *Gindel* by amending section 558.004, Florida Statutes, to provide that “[a] notice of claim served pursuant to this chapter shall not toll any statute of repose period under chapter 95.”³

The amendment, which became effective July 1, 2019, clarifies that claimants must file an actual lawsuit in order to commence an “action” for statute of repose purposes.

¹ 267 So.3d 403 (2018), *rev. denied*, 2019 WL 6248289 (Nov. 22, 2019). See ch. 19-75, section 8, Laws of Fla. (amending § 558.004(1)(d), Fla. Stat. (Notice and Opportunity to Repair)).

² See also Jaret J. Fuente & Monica L. Strady, “Chapter 558 and Commencement of an Action: *Gindel v. Centex*,” Hillsborough County Bar Association’s *Lawyer* magazine (Vol. 29, No. 4, March-April 2019).

³ See Section 558.004(1)(d), Fla. Stat. (2019).

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