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Defending Minority Shareholder Claims After *Ritchie v. Rupe*

Following the Texas Supreme Court's 2014 decision in *Ritchie v. Rupe* not to acknowledge a cause of action for minority oppression claims, minority shareholders in Texas have and will continue to make new arguments and bring different causes of action to get around the Texas Supreme Court's holding. This article seeks to provide a basic understanding of what types of claims may arise and what defenses are available. Post-*Ritchie* minority shareholder claims, as will be discussed in detail herein, will likely involve the strategy of pursuit of "derivative actions" for pre-existing causes of action identified by the *Ritchie* court. Inasmuch as the Texas Supreme Court in *Ritchie* held that the fiduciary duties of an officer or director are owed to the corporation, rather than to the shareholders, it will be important to force plaintiffs to demonstrate how the minority shareholder's claim is harmful to the corporation. Specific strategies for defending against attempts to circumvent *Ritchie's* rejection of a Texas cause of action for minority shareholder oppression claims are discussed herein following a summary of the Texas Supreme Court's decision in *Ritchie v. Rupe*.

Prior to the Texas Supreme Court's Decision in Ritchie v. Rupe in 2014, courts of appeals permitted minority oppression claims under the common law or under the receivership statute.

Before *Ritchie v. Rupe*, courts of appeals allowed trial courts to order the buyout of a minority shareholder's interest at a price set by the court where a minority shareholder could establish that a majority shareholder's conduct was "oppressive." [1] Those courts defined oppressive as:

> (1) majority shareholders' conduct that substantially defeats the minority's expectations that, objectively viewed, were both reasonable under the circumstances and central to the minority shareholder's decision to invest; or
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> (2) burdensome, harsh, or wrongful conduct; a lack of probity and fair dealing in the company's affairs to the prejudice of some members; or a visible departure from the standards of fair dealing and a violation of fair play on which each shareholder is entitled to rely.[2]

Some courts relied upon the "Receivership Statute," in Section 11.404 of the Texas Business Organizations Code (TBOC), as the source of the courts' power to order a buyout for minority shareholder oppression. [3] Those

[1] Elizabeth S. Miller, *Fiduciary Duties, Exculpation, and Indemnification in Texas Business Organizations*, pp. 6-7 (2019).

[2] *Id.*

[3] *Ritchie v. Rupe*, 443 S.W.3d 856, 863-64 (Tex. 2014).

courts relied upon the statute because it authorized the appointment of a receiver where a shareholder established "that the acts of the directors or those in control of the corporation are illegal, oppressive or fraudulent."[4] Though the statute provided for the appointment of a receiver to take control of the assets and business of the corporation "to conserve the assets and business of the corporation and to avoid damage to parties at interest," courts relied upon the language "all other remedies at law or in equity . . . are determined to be inadequate" to provide a basis for applying equitable relief other than the appointment of a receiver.[5]

The Texas Supreme Court refused to recognize minority shareholder oppression as a cause of action.

In 2014, the Texas Supreme Court "decline[d] to recognize or create a Texas common law cause of action for 'minority shareholder oppression.'"[6] In *Ritchie v. Rupe*, the court reversed a decision by the Dallas Court of Appeals affirming a buyout of a minority shareholder under the "Receivership Statute."[7] It first held:

> [A] corporation's directors or managers engage in "oppressive" actions under [the statute] when they abuse their authority over the corporation with the intent to harm the interests of one or more of the shareholders, in a manner that does not comport with the honest exercise of their business judgment, and by doing so create a serious risk of harm to the corporation.[8]

The Court further held that the receivership statute only authorizes one remedy: the appointment of a rehabilitative receiver.[9]

Having held that the minority shareholder was not entitled to a buyout under the receivership statute, the court evaluated whether it should recognize a "new cause of action" for minority shareholder oppression.[10] In analyzing the adequacy of existing protections, it noted that "when we are addressing corporations and the relationships among those who participate in them . . . we have consistently recognized [they] are largely matters governed by statute or contract."[11] It further noted that "various common-law causes of action already exist to address misconduct by corporate directors and officers," including "(1) an accounting, (2) breach of fiduciary duty, (3) breach of contract, (4) fraud and constructive fraud, (5) conversion, (6) fraudulent transfer, (7) conspiracy, (8) unjust enrichment, and (9) quantum meruit."[12]

The court concluded that the established duties that an officer or director owes to a corporation "are sufficient to protect the legitimate interests of a minority shareholder by protecting the well-being of the corporation."[13] It further held:

> Absent a contractual or other legal obligation, the officer or director has no duty to conduct the corporation's business in a manner

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[4] *Id.*

[5] *Id.* at 873.

[6] *Id.* at 860.

[7] Tex. Bus. Orgs. Code § 11.404.

[8] *Ritchie*, 443 S.W.3d at 871.

[9] *Id.* at 877.

[10] *Id.* at 877-78.

[11] *Id.* at 880.

[12] *Id.* at 882.

[13] *Id.* at 888.

> that suits an individual shareholder's interests when those interests are not aligned with the interests of the corporation and the corporation's shareholders collectively.
>
> We recognize that our conclusion leaves a "gap" in the protection that the law affords to individual minority shareholders, and we acknowledge that we could fill the gap by imposing a common-law duty on directors in closely held corporations not to take oppressive actions against an individual shareholder even if doing so is in the best interest of the corporation.[14]

After Ritchie, minority shareholders will continue to file lawsuits, but they will change their strategy, which necessitates the adoption of a defense tailored to the new strategy.

Although the Texas Supreme Court clearly held that there is no common-law cause of action for minority shareholder oppression in Texas, angry minority shareholders in Texas are going to look for new ways to present their complaints in court. The most likely strategy they will adopt in an attempt to circumvent *Ritchie*'s prohibition on minority oppression claims is to file "derivative actions" for the pre-existing causes of action noted by the Texas Supreme Court.

In practice, this may mean fewer claims against majority shareholders, in their capacity as shareholders, and more claims against directors and officers, purportedly on behalf of the corporation. With the lines drawn on the new playing field, practitioners defending such claims need to adopt new defensive strategies. The appropriate defenses will necessarily be case-specific, but the following are possible defenses to the end-run claims likely to arise in the future:

Force the plaintiff to state a claim on behalf of the corporation. While many minority shareholders will call their claims derivative, they are more often aggrieved by conduct that arguably injures them individually rather than the corporation. Indeed, in claims against closely-held corporations, minority shareholders will be tempted to seek direct recovery under Section 21.563(c) of the TBOC.[15] This election alone will often illustrate that the plaintiff's interests are not aligned with the corporation.

Demonstrating how the corporation has been harmed will often be difficult for a plaintiff. Putting the plaintiff to this burden not only may provide a good legal defense, but, if necessary, it may also illustrate for the fact-finder that the plaintiff is entirely self-interested.

Remember the Business Judgment Rule. The business judgment rule in Texas generally protects non-interested corporate officers and directors from liability under the duty of care for acts that are "within the honest exercise

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[14] *Id.* at 889. *See also id.* at 888 ("Though we recognize that the directors may endeavor in such conduct to harm the interests of one or more individual minority shareholders without harming the corporation (*i.e.*, without giving rise to damages in a derivative suit), for the reasons discussed below, we cannot adopt a common-law rule that requires directors to act in the best interests of each individual shareholder at the expense of the corporation").

[15] TBOC Section 21.563(c) provides that "(1) a derivative proceeding brought by a shareholder of a closely held corporation may be treated by a court as a direct action brought by the shareholder for the shareholder's own benefit; and (2) a recovery in a direct or derivative proceeding by a shareholder may be paid directly to the plaintiff or to the corporation if necessary to protect the interests of creditors or other shareholders of the corporation."

of their business judgment and discretion,"[16] as long as the officer or director was informed of all material information reasonably available before making the decision.[17]

As the Texas Supreme Court reiterated in *Sneed v. Webre*, "courts will not interfere with the officers or directors in control of the corporation's affairs based on allegations of mere mismanagement, neglect, or abuse of discretion."[18] Rather, to constitute a breach of the duty of care and merit relief, a claim against an officer or director must be "characterized by ultra vires, fraudulent, and injurious practices, abuse of power, and oppression on the part of the company or its controlling agency clearly subversive of the rights of the minority, or of a shareholder, and which, without such interference, would leave the latter remediless."[19]

In non-interested director and officer transactions, requiring the plaintiff to prove ultra vires or fraudulent acts will often create an insurmountable burden.

Put the plaintiff to his, her or its burden in establishing a breach of the duty of loyalty. When a derivative suit challenges a transaction between the corporation and another company in which an officer or director has certain interests, the common law shifted the burden to the interested officer or director to demonstrate the validity of the transaction by proving it was fair to the corporation.[20] It is currently an open question in Texas, however, whether the burden still shifts under the relatively new interested-director statute, Section 21.418,[21] which provides that an interested transaction is "valid and enforceable" if any of three conditions are met, with one of such conditions being fairness to the corporation (discussed in more detail below).

Plaintiffs will undoubtedly argue that, once they establish an interested transaction under the statute, the burden continues to shift to defendants to avoid liability. Defendants should not accept that burden lightly and should endeavor to preserve any argument against burden-shifting for potential appeal. But regardless, the plaintiff always bears the burden in a derivative suit of proving duty, causation, and damages *to the corporation*. It is often particularly difficult for a plaintiff shareholder to prove damages to the corporation or the shareholders collectively, rather than damages to the plaintiff's individual interests.

In cases involving corporate conglomerates, plaintiffs may also attempt to establish that directors and officers generally have interests in the interrelated companies, rather than identifying specific transactions between those

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[16] *Sneed v. Webre*, 465 S.W.3d 169, 173 (Tex. 2015).

[17] *Pace v. Jordan*, 999 S.W.2d 615, 624 (Tex. App.—Houston [1st Dist.] 1999, pet. denied). Section 3.102 of the TBOC further provides protections for governing persons who rely in good faith and with ordinary care upon information, opinions, reports, or statements, including financial statements and other financial data presented by certain professionals.

[18] 465 S.W.3d at 186.

[19] *Id.* at 186.

[20] *E.g.*, *Campbell v. Walker*, No. 14-96-01425-CV, 2000 WL 19143, at *11 (Tex. App.—Houston [14th Dist.] Jan. 13, 2000, no pet.).

[21] Tex. Bus. Org. Code § 21.418; *Landon v. S & H Mktg. Group, Inc*., 82 S.W.3d 666, 673 (Tex. App.—Eastland 2002, no pet.). Under Section 21.418, three kinds of transactions implicate the duty of loyalty: (1) transactions between a corporation and its directors or officers; (2) transactions between a corporation and another entity with common directors or officers; and (3) transactions between a corporation and another entity in which the first corporation's directors or officers have a financial interest.

companies. Having done so, plaintiffs will argue that the officer or director holds fiduciary duties to each company and must therefore demonstrate that all transactions between the companies are fair. When put in this position, defendants should argue that plaintiffs have the burden to prove the officers or directors are on both sides of specific transactions and that the burden shifts to the defendant, if ever, only once an interested transaction has been identified.

Defend interested transactions with the statutorily-provided protections. Section 21.418 of the TBOC identifies three circumstances under which an interested transaction is valid and enforceable and is not void or voidable:

> (1) approval by a majority of uninterested directors after full disclosure;
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> (2) approval by shareholder vote after full disclosure; or
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> (3) fairness to the corporation.[22]

If at least one of these conditions is satisfied, the transaction is valid.[23]

It is therefore important to parse through the corporate records to find evidence of the votes that led to challenged corporate actions. If evidence of disinterested votes or shareholder approval is not available, attention should be devoted to proving the transaction was fair to the corporation. Importantly, this evidence will substantially overlap with the evidence that proves that a claim is not derivative, *i.e.*, it will show that the plaintiff is complaining about harm to himself, herself or itself, rather than the corporation.

Carefully review the corporate governing documents and agreements. As noted in *Ritchie*, the TBOC authorizes (1) shareholders to waive many rights and duties in shareholder agreements, (2) companies to provide certain significant indemnities, and (3) director and officer liability to be limited to a certain extent. Moreover, the failure of corporate documents to include certain provisions may give rise to default provisions under the TBOC, of which counsel will need to be aware (*e.g.*, the failure to provide that each member of a limited liability company holds a voting percentage for member votes proportionate to his/her/its agreed relative contribution percentage, will result in each member having an equal vote at a meeting or consent vote) [24] . An understanding of the corporate documents, in context with the limitations under the TBOC, will therefore be instrumental in defending a claim by a minority shareholder.

Tender. Claims made against officers or directors in their capacity as officers or directors should immediately be tendered to the appropriate insurance carrier. Any delay could be catastrophic because many of these policies will be claims made and reported policies.

Each claim will inevitably be different and will require an individualized strategy and approach. Ware Jackson hopes that this outline will nonetheless be helpful as a starting point and will be glad to help clients or lawyers in the future in tailoring a defense to individual claims.

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[22] Tex. Bus. Orgs. Code § 21.418(b).

[23] *Id*. at § 21.418(e).

[24] Tex. Bus. Orgs. Code §§ 101.354; 101.052.

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Application of the RCLA Beyond Construction Defect Cases

The Texas Residential Construction Liability Act (RCLA), found in Chapter 27 of the Texas Property Code, was enacted by the Texas Legislature in 1989 to govern resolution of construction disputes between contractors and homeowners. Usually raised in construction defect cases, the RCLA provides defendants with an effective tool to encourage early settlement and limit a claimant's damages. However, due to a broad definition of "construction defect" within the statute, multiple courts have concluded that claims need not involve defective construction to be governed by the RCLA. These opinions have significantly expanded application of the RCLA and have the potential to considerably limit damages available to claimants. Before detailing those opinions, a brief overview of the RCLA is in order to explain how and why defendants should invoke the statute.

I. Overview of the RCLA

The Texas Legislature enacted RCLA "as a reaction to construction industry claims that the Deceptive Trade Practices Act was used as a sword to litigate against builders." *Timmerman v. Dale*, 397 S.W.3d 327, 330 (Tex. App.—Dallas 2013, pet. denied) (internal quotation marks omitted). "Its intent was to provide an appropriate balance between the residential contractor and owner, with respect to the resolution of construction disputes." *Id*. (internal quotation marks omitted).

The RCLA modifies causes of action that already exist by providing defenses and limiting damages. *Mitchell v. D. R. Horton-Emerald, Ltd.*, 579 S.W.3d 135, 137 (Tex. App.—Houston [1st Dist.] 2019, pet. denied). The RCLA does not create a cause of action or derivative liability. *Id*.; Tex. Prop. Code § 27.005. It does, however, prevail over any conflict between it and any other law, including the Deceptive Trade Practices Act (DTPA) or a common law cause of action, except in limited circumstances. *Id*. at § 27.005. The most notable provisions of the RCLA are discussed below.

a. Pre-Suit Notice, Opportunity to Inspect, and Settlement Offer

The RCLA mandates that claimants send a written notice to the contractor "specifying in reasonable detail the construction defects that are the subject of the complaint" at least 60 days before filing suit. Tex. Prop. Code § 27.004(a). The contractor then has the option of requesting additional information concerning the defect and, upon written request within 35 days of receipt of the notice, must be given a reasonable opportunity to inspect the property. *Id*. The contractor may make a written offer of settlement to the claimant within 45 days of receiving the notice. *Id*. at § 27.004(b). The form of the offer may include an agreement to repair or have repaired the alleged defect or may include a monetary settlement or an offer to purchase the residence. *Id*. at §§ 27.004(b), 27.004(n).

b. Damages Cap

Whether an offer of settlement under the RCLA was reasonable is determined by the jury. *See Perry Homes v. Alwattari*, 33 S.W.3d 376 (Tex. App.—Fort Worth 2000, pet. denied). If it is determined that the claimant rejected a reasonable settlement offer, the amount of that offer serves as a cap on the claimant's recovery. Tex. Prop. Code § 27.004(e). An offer to repair is valued at its fair market value. *Id*. § 27.004(e)(1)(a). Such a rejection also limits the recovery of attorney's fees and costs to those "incurred before the offer was rejected or considered rejected." *Id*.

c. Abatement

If a claimant files an action subject to the RCLA without abiding by the notice, inspection, or settlement offer procedures, a defendant can move to abate the action. *Id*. at § 27.004(d). If it is determined after a hearing that the claims are governed by the RCLA and the claimant failed to abide by the statute's procedures, "[t]he court or arbitration tribunal shall abate" the action. *Id*. If the motion is verified and not controverted by affidavit, the action is automatically abated beginning on the eleventh day after the motion is filed. *Id*.

d. Limits on Recoverable Damages

The RCLA also limits the damages available to a claimant. Under the statute, claimants "may recover only the following economic damages proximately caused by a construction defect:

> (1) the reasonable cost of repairs necessary to cure any construction defect;
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> (2) the reasonable and necessary cost for the replacement or repair of any damaged goods in the residence;
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> (3) reasonable and necessary engineering and consulting fees;
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> (4) the reasonable expenses of temporary housing reasonably necessary during the repair period;
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> (5) the reduction in current market value, if any, after the construction defect is repaired if the construction defect is a structural failure; and
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> (6) reasonable and necessary attorney's fees."

Id. at § 27.004(g). Fees are not recoverable under the RCLA unless the claimant pleads and proves "an underlying cause of action for the recovery of such fees." *Mitchell v. D. R. Horton-Emerald, Ltd.*, 579 S.W.3d 135 (Tex. App.—Houston [1st Dist.] 2019, pet. denied).

II. Relevant Definitions

a. Application

The RCLA applies to:

> (1) any action to recover damages or other relief arising from a construction defect, except a claim for personal injury, survival, or wrongful death or for damage to goods; and
>
> (2) any subsequent purchaser of a residence who files a claim against a contractor.

Tex. Prop. Code Ann. § 27.002(a). The RCLA does not apply to an action to recover damages that arise from a violation of Section 27.01 of Business & Commerce Code (fraud in real estate and stock transactions), a contractor's wrongful

abandonment of an improvement project before completion, or a violation of Chapter 162 of the Texas Property Code (construction payments, loan receipts, and misapplication of trust funds). *Id*. at § 27.002(d).

b. Construction Defect

"Construction defect" is defined by the RCLA as:

> [A] matter concerning the design, construction, or repair of a new residence, of an alteration of or repair or addition to an existing residence, or of an appurtenance to a residence, on which a person has a complaint against a contractor. The term may include any physical damage to the residence, any appurtenance, or the real property on which the residence and appurtenance are affixed proximately caused by a construction defect.

Id. at § 27.001(4).

c. Contractor

"Contractor" is defined as:

> (i) a builder, as defined by Section 401.003, contracting with an owner for the construction or repair of a new residence, for the repair or alteration of or an addition to an existing residence, or for the construction, sale, alteration, addition, or repair of an appurtenance to a new or existing residence;
>
> (ii) any person contracting with a purchaser for the sale of a new residence constructed by or on behalf of that person; or
>
> (iii) a person contracting with an owner or the developer of a condominium for the construction of a new residence, for an alteration of or an addition to an existing residence, for repair of a new or existing residence, or for the construction, sale, alteration, addition, or repair of an appurtenance to a new or existing residence[.]

Id. at § 27.001(5)(A).

III. Interpretation of "Construction Defect" and Expansion of the RCLA

Texas courts have long made clear that "a plaintiff cannot by artful pleading recast" a construction defect claim to avoid application of the RCLA. *See*, *e.g.*, *In re Kimball Hill Homes Texas, Inc.*, 969 S.W.2d 522, 526 (Tex. App.—Houston [14th Dist.] 1998, no pet.) (holding RCLA applied to claims based on "purported misrepresentations and false promises," where claims existed solely by virtue of alleged construction defects). However, courts have also construed the RCLA's definition of "construction defect" to encompass claims beyond those involving defective construction.

a. In re Wells

In re Wells, 252 S.W.3d 439 (Tex. App.—Houston [14th Dist.] 2008, no pet.) involved claims for DTPA violations, common law fraud, breach of contract, and breach of warranty. The plaintiff, Roberts, alleged that Wells Roofing promised but failed to (1) remove all old roofing materials before installing a new roof and (2) install a roof carrying a thirty-year manufacturer's

warranty. *Id*. at 447. In response to Wells Roofing's contention that the RCLA applied to his claims, Roberts argued he would have claims for breach of contract, fraud, and deceptive trade practices even if Wells Roofing had flawlessly performed the construction aspects of its work. *Id*. Therefore, he concluded, the claims could not arise from a "construction defect" under the RCLA. *Id*.

The Fourteenth Court of Appeals disagreed with Roberts, concluding that because he asserted "that Wells Roofing's improper installation of the roof forms at least part of the basis for his complaints" then "his action arises, to some degree, from defective construction, and the action is thus subject to the RCLA." *Id*. Significantly, however, the court then went one step further, opining that "[m]oreover, under the RCLA, an action can arise out of a 'construction defect' without involving defective construction or repair work." *Id*. at 448. The court explained:

> Under the express language of the statute, the complaint against the contractor must merely *concern* the design, construction, or repair of a new or existing residence (or of an alteration or addition thereto). Even if we ignore Roberts's contention that installation of the roof was defective and consider only his claim that Wells Roofing induced him to enter the roofing contract by making promises it did not intend to keep and in fact did not keep, we would nonetheless conclude that Roberts's action *concerns* the construction of an alteration to, or the repair of, an existing residence. Accordingly, Roberts's action arises from a "construction defect" as that term is defined under the RCLA.

Id. (emphasis in original) (internal citation omitted).

The notion that a claim can be subject to the RCLA without involving defective construction or repair has significant implications, most notably concerning damages available to claimants. As discussed above, the RCLA only provides for six categories of recoverable economic damages, most of which relate to repairs. Tex. Prop. Code § 27.004(g). If there is no defective construction or repair work at issue, and thus nothing to repair, claimants could find themselves without much, if anything, left to recover. Such was the case in *Timmerman v. Dale*, 397 S.W.3d 327 (Tex. App.—Dallas 2013, pet. denied).

b. Timmerman

Timmerman involved breach of contract claims arising from the remodeling of an upscale condominium. *Id*. at 329. The parties settled all issues except a delay claim in which the plaintiff, Dale, sought the fair market rental value of the condominium after the time remodeling should have been completed. *Id*. The contractor, Timmerman, filed a motion for summary judgment arguing that Dale's claim was governed by the RCLA and that the rental value of the home under construction was not recoverable as damages under the statute. *Id*.

In ruling on the motion for summary judgment, the *Timmerman* court first noted that the RCLA "is broadly written to encompass 'any action' that arises from a construction defect." *Id*. at 331 (quoting Tex. Prop. Code Ann. § 27.002(a)). Then, citing *In re Wells*, the court noted the statute's broad definition of "construction defect," concluding that "[u]nder the statute's express definition of construction defect, the complaint against the contractor must merely arise from a matter that *concerns* the construction of a new or existing residence. It need not necessarily involve

defective construction or repair." *Id*. (emphasis in original) (internal citation omitted). The court went on to hold:

> While "construction defect" is defined in the statute, the term "construction" is not. To properly construe an undefined statutory term, we begin with the plain meaning of the word. In common parlance, construction means "the act of putting parts together to form a complete integrated object." Webster's Third New Int'l 489 (1981). Dale alleges Timmerman failed to use reasonable diligence in completing the remodeling of his condominium. Giving the statute its plain meaning, we conclude a claim regarding delay in constructing a residence is an action arising from a matter concerning its construction, that is, the act of putting the parts together to form a complete object. In other words, while Dale's complaint may not go to the quality of construction, it clearly concerns the manner in which Timmerman performed the construction and is thus governed by the RCLA.

Id.

Dale, to his credit, alleged the RCLA was never intended to govern delay claims, contending the statute's "fundamental tenets" were its notice, inspection, and repair provisions and arguing the statute provided no procedure for resolving a delay dispute or compensating a claimant for unreasonable delays. *Id*. The court disagreed, stating "a dissatisfied owner can just as easily give notice of unreasonable delay as he can of an item of defective work so that the builder has an opportunity to cure." *Id*. The builder could, for example, "offer to pay for replacement housing, double the crew to finish more quickly, provide a rebate on the contract, or any combination of these measures." *Id*. Regarding Dale's argument that the RCLA left him without recoverable damages, the court pointed to the statute's allowance for temporary housing expenses during the repair period. *Id*. "So while a claimant seeking damages for unreasonable delay is not entitled to recover lost rental value of the property under the statute," the court concluded, "he may be entitled to the reasonable expenses of temporary housing." *Id*. at 331-32. Accordingly, the court concluded the RCLA applied to Dale's claim for delay damages and did not provide for such a recovery. *Id*. at 332.

The implications of *Timmerman* are potentially far-reaching. Building on what was arguably dicta from *In re Wells*, *Timmerman* applies the RCLA to claims that merely concern construction or repair of a residence and therefore limits claimants to recovery of the six categories of damages allowed under the statute. In addition to typical delay damages, *Timmerman* would extinguish recovery of liquidated damages, diminution in value without a structural failure, and other customary direct and consequential damages.

IV. Conclusion

The broad interpretation of the RCLA proposed in *In re Wells* and enforced in *Timmerman* has the potential to significantly expand application of the statute beyond the construction defect claims it has largely been limited to. According to these cases, the RCLA should be invoked any time the claims at issue involve the construction or repair of a new or existing residence or the sale of a new residence.