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Romeo Revisited:
Limiting the Statute of Limitations That Applies to Claims for Breach of a Construction Contract

Kristie M. Kachuriak*

INTRODUCTION

The Pennsylvania Superior Court's decision in Romeo & Sons, Inc. v. P.C. Yezbak & Son, Inc. ("Romeo I") and the Pennsylvania Supreme Court's decision on appeal in Romeo & Sons, Inc. v. P.C. Yezbak & Son, Inc. ("Romeo II") have created undue confusion as to whether a four-year or a six-year statute of limitations applies to claims for breach of a written construction contract in Pennsylvania. In Romeo I, the superior court applied the incorrect statutory scheme governing limitations of actions to the breach of contract claim at issue in that case and mistakenly held that a six-year statute of limitations applies to claims for breach of a written construction contract. Although the supreme court in Romeo II attempted to clarify the superior court's decision, the Romeo I decision opened the door for an argument that a six-year statute of limitations applies to claims for breach of a written construction contract in all cases.

The superior court soon will have an opportunity to firmly close the door on any such argument that may be contrived from its Romeo I decision. The case of Gustine Uniontown Associates, Ltd. v. Anthony Crane Rental, Inc. (the "Gustine case"), which is presently on appeal to the superior court, will force the court to revisit the issue of whether a four-year or a six-year statute of limitations applies to claims for breach of a written construction contract.


2. 652 A.2d 830 (Pa. 1995) ("Romeo II").
3. See Romeo I, 617 A.2d at 1323. A complete analysis of the superior court's decision in Romeo I and the supreme court's decision on appeal in Romeo II is set forth in Part II.B., infra.

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The Gustine case involves claims by Gustine for breach of contract, breach of implied warranty, professional negligence, and other contract-based and tort-based claims against a number of defendants who were engaged by Gustine as architects, engineers, consultants and contractors to design and construct a shopping mall. Gustine argued to the Allegheny County Court of Common Pleas that all of its claims were governed by a six-year statute of limitations. At the preliminary objection stage in the court of common pleas, Judge R. Stanton Wettick considered whether the December 20, 1982 amendments to the statute of limitations provisions of the Pennsylvania Judicial Code reduced the limitations period for claims for breach of a written construction contract from six years to four years. Judge Wettick properly determined that Gustine's contract-based claims were subject to a four-year statute of limitations and that Gustine's tort-based claims


5. See Gustine's Position Statement in Support of Application of Six-Year Statute of Limitation to All Claims Raised in Plaintiff's Complaint, which is a part of the docket at GD No. 99-12166 in the Court of Common Pleas of Allegheny County, Pennsylvania.

6. Pennsylvania Rule of Civil Procedure 1030(a) provides that the statute of limitations defense is to be "pleaded in a responsive pleading under the heading 'New Matter.'" In the Gustine case, the parties agreed to brief and argue the statute of limitations issue at the preliminary objection stage of the proceedings because, as stated by Judge Wettick in his July 18, 2000 opinion on the statute of limitations issue, "the discovery rule will be a significant factual issue in this litigation if I do not accept [Gustine's] position that its claims are governed by a six-year limitation period." Gustine Uniontown Assocs., Ltd. v. Anthony Crane Rental, Inc., 148 P.L.J. 233 (September 22, 2000) (Pittsburgh Legal Journal). Thus, as a result of discovery rule concerns, it was important for the court to determine as early as possible in the case which statute of limitations applied to Gustine's claims.

7. The December 20, 1982 amendments to the four-year and six-year statute of limitations provisions of the Pennsylvania Judicial Code are discussed in Part I, infra.

8. Judge Wettick concluded that Gustine's contract-based claims were governed by the four-year statute of limitations set forth in 42 Pa.C.S.A. § 5525(8) under the 1982 statutory scheme. As discussed in detail in Part I, infra, section 5525(8) requires that an action upon a written contract be commenced within four years. Judge Wettick specifically stated, "[f]or
were subject to a two-year statute of limitations. Not satisfied with this decision, Gustine requested that Judge Wettick certify the statute of limitations issue for immediate appellate review by the superior court.

The Gustine case provides the superior court the opportunity to clarify and correct its Romeo I decision by unequivocally holding that the four-year statute of limitations period set forth in title 42, section 525, subsection 8 of the Pennsylvania Consolidated Statutes Annotated ("section 525(8)") means what it says — that all breach of contract claims arising from written contracts, including construction contracts, are subject to a four-year statute of limitations. The purpose of this Article is to present a comprehensive argument in support of such a holding by the superior court when it decides the Gustine case. Accordingly, Part I of this Article provides an overview of the 1980 and the 1982 statutory schemes relative to the four-year and the six-year statutes of limitation and, in so doing, analyzes the impact of the 1982 amendment to the statute of limitations provisions that apply to breach of contract claims. Part II presents the argument that claims for breach of a construction contract are governed by the four-year statute of limitations set forth in section 525(8). This Part identifies three reasons why such a conclusion is justified and examines each of those reasons in turn. The Article concludes that the four-year statute of limitations of section 525(8) unquestionably applies to all claims for breach of a written contract, including claims for breach of a written contract that

the reasons that I have discussed, the language of § 525(8) clearly reaches written contracts for the construction of real estate." Gustine, 148 P.J. at 234. The "reasons" cited by Judge Wettick are best summarized in this excerpt from his opinion:

The language of § 525(8) could not be clearer: a single limitation period of four years governs actions upon any written contracts unless there is another limitation period specified in the subchapter. Furthermore, construction contracts involving real estate are not esoteric transactions that the Legislature might have overlooked. Consequently, since no other subsection refers to written contracts for the construction of real estate, the Legislature intended for these contracts to be governed by the four-year limitation period of § 525.

Id. 9. Judge Wettick held that Gustine's tort claims were governed by the two-year statute of limitations of 42 Pa.C.S.A. § 524. Gustine, 148 P.J. at 234. The court's decision regarding Gustine's tort claims is beyond the scope of this Article.

10. The issues to be raised by Gustine on appeal to the Superior Court include, inter alia, whether Judge Wettick erred in holding that Gustine's contract-based claims are governed by a four-year statute of limitations instead of a six-year statute of limitations and whether Judge Wettick erred in determining that Gustine's tort-based claims are governed by a two-year statute of limitations instead of a six-year statute of limitations.
relates to construction.


In Pennsylvania, prior to 1982, certain contract-based claims were subject to a four-year statute of limitations, while other contract-based claims were subject to a six-year statute of limitations. Specifically, under the 1980 statutory scheme, a four-year statute of limitations applied to: (1) contracts for the sale, construction or furnishing of tangible personal property or fixtures; (2) contracts for the sale of goods under the Uniform Commercial Code; (3) an express contract not founded upon a written instrument; and (4) a contract implied in law.11 Under the 1980 framework, contract-based claims that were subject to a six-year statute of limitations included: (1) an action upon a judgment or decree of any state or federal court; (2) an action upon a contract, obligation or liability founded upon a bond, note or other written instrument; and (3) an action upon any official bond.12 The 1980 statutory framework contained a six-year "catch-all" statute of limitations that applied to any civil action or proceeding that was not subject to another specified limitations period.13

The statutory scheme relative to the four-year and the six-year statutes of limitations was amended in 1982 (the "1982 Amendment"). The 1982 Amendment to title 42, sections 5525 and 5527 of the Pennsylvania Consolidated Statutes Annotated ("section 5525()" and "section 5527()") represented a statutory reorganization of sorts. Significantly, as a result of the 1982 Amendment, breach of contract claims that were formerly subject to a six-year statute of limitations are now included under the four-year limitations period of section 5525. Hence, since 1982, the four-year statute of limitations has applied to the same four contract-based claims as under the 1980 framework,14 as well as to four additional contract-based claims: an action upon a judgment or decree of any state or federal court; an action upon any official bond of a public official, officer or employee; an action upon a negotiable or nonnegotiable bond, note or other similar written instrument; and

an action upon a contract, obligation or liability founded upon a writing. The 1982 Amendment added these four contract-based claims to section 5525 as subparagraphs (5)-(8). The substance of these “new” subparagraphs was formerly contained in section 5527(1)-(3) under the 1980 scheme. As a result of the 1982 Amendment, the only claims that remain subject to section 5527’s six-year “catch-all” statute of limitations are those claims not governed by any other expressly defined limitations period.

The 1982 Amendment to sections 5525 and 5527 makes clear that all contract-based claims are subject to a four-year statute of limitations. Consistent with the 1982 Amendment, as explained in detail below, claims premised upon breach of a construction contract, like all other contract-based claims, are governed by the unambiguous four-year statute of limitations set forth in section 5525(8).

II. CLAIMS FOR BREACH OF A CONSTRUCTION CONTRACT ARE GOVERNED BY THE FOUR-YEAR STATUTE OF LIMITATIONS OF SECTION 5525(8)

Pursuant to the 1982 Amendment, a breach of contract claim based upon a written contract is subject to the four-year statute of limitations set forth in section 5525(8). The 1982 version of section 5525(8) does not single out specific types of written contracts, nor does it differentiate among written contracts relating to various subjects. Section 5525(8) applies to all breach of contract claims “founded upon a writing.” Accordingly, the four-year statute of limitations contained in section 5525(8) of the 1982 statutory scheme applies to claims for breach of a written construction contract, like all other written contracts. The clear

16. Compare 42 Pa.C.S.A. § 5527(1)-(3) (1980), with 42 Pa.C.S.A. § 5525(5)-(8) (1982) (the subject matter of section 5525(5) under the 1982 scheme was formerly section 5527(1) under the 1980 scheme; the substance of the 1982 version of section 5525(6) was formerly section 5527(3) under the 1980 framework; and sections 5525(7) and (8) under the 1982 statute were formerly part of section 5527(2) under the 1980 statutory framework).
19. See 42 Pa.C.S.A. § 5525(8) (1982) (stating that an action upon a contract “founded upon a writing” must be commenced within four years).
and unambiguous language of section 5525(8), as well as the opinions of the Pennsylvania Superior Court and the Pennsylvania Supreme Court in the *Romeo I* and *Romeo II* cases, respectively, support this conclusion. This conclusion is further strengthened by the fact that there is no basis to afford construction contracts treatment distinct from other written contracts. Each of these factors that support the application of the four-year statute of limitations set forth in section 5525(8) to construction contracts will be analyzed in turn below.

A. *The Clear and Unambiguous Language of Section 5525(8) Dictates That a Four-Year Statute of Limitations Be Applied to Claims for Breach of a Construction Contract*

Pursuant to the 1982 Amendment, section 5525(8) provides that a four-year limitations period applies to:

> [a]n action upon a contract, obligation or liability founded upon a writing not specified in paragraph (7) [relating to negotiable or nonnegotiable bonds, notes or other similar instruments in writing], under seal or otherwise, except an action subject to another limitation specified in this subchapter.

On its face, the language of section 5525(8) is clear that a claim for breach of a written contract must be commenced within four years. Section 5525(8) does not single out certain claims for breach of a written contract as subject to the four-year statute while excluding others. Accordingly, in light of the plain language of section 5525(8), a claim for breach of a written construction contract entered into after the 1982 Amendment, like all other breach of contract claims, is subject to the four-year statute of limitations.

If there is any question, however, as to whether the language of section 5525(8) is clear and unambiguous regarding its applicability to all written contracts, the well-established principles of statutory analysis guide the inquiry. “The starting point of statutory analysis is the language employed by the legislature in the statute itself and [courts are to] assume[] that the legislative purpose is expressed by the ordinary meaning of the words used.”20 “When the words of the statute are unambiguous, the ordinary meaning of those words

controls and judicial inquiry is complete." Therefore, when the words of a statute are clear and free from all ambiguity, the letter of it is not to be disregarded.

After applying these principles of statutory analysis to section 5525(8) [the post-1982 Amendment limitations period for written contracts], one must conclude that the language of section 5525(8) is clear and free of ambiguity. For this reason, courts are bound to first consider and apply the plain and unambiguous language of section 5525(8) before relying upon case law to determine the appropriate statute of limitations that governs a claim for breach of a written construction contract. As already noted at the outset of Part II.A., the plain and unambiguous language of section 5525(8) mandates that courts apply a four-year statute of limitations to all claims for breach of a written contract, including a written construction contract.

This result does not change even if a court was to determine that section 5525(8) is ambiguous and find it necessary to rely upon case law for guidance. The relevant case law lends further support to the conclusion that section 5525(8)'s four-year statute of limitations applies to claims for breach of a construction contract.

Prior to the 1982 Amendment, in the case of Ragnar Benson, Inc. v. Bethel Mart Associates, which involved an alleged breach of a shopping center construction contract, the Pennsylvania Superior Court held that "the statute for contract matters provides for a six-year limit, 42 Pa.C.S.A. § 5527(2)." It is undisputed that contract claims based upon a writing that accrued prior to the 1982 Amendment were subject to the six-year statute of limitations set forth in section 5527(2) (1980). In its analysis of that section, it is noteworthy that the Ragnar court held that "contract matters," in general, were subject to a six-year statute of limitations at that date.

22. 1 Pa.C.S.A. § 1921(b). Section 1921(b) specifically provides, "[w]hen the words of a statute are clear and free from all ambiguity, the letter of it is not to be disregarded under the pretext of pursuing its spirit."
23. The language of section 5525(8) has been interpreted as being unambiguous. See Packer, 635 A.2d at 651 (construing 42 Pa.C.S.A. § 5525(8) and stating that "the words of the statute are clear and free of ambiguity").
24. See Primiano v. City of Philadelphia, 739 A.2d 1172, 1176 (Pa. Commw. 1999) (holding that there is no need to ascertain the intent of the General Assembly when the statute's language clearly manifests what the legislature intended, i.e., when there is no ambiguity).
26. Id. at 603.
time. The Ragnar court did not hold that a six-year limitation period uniquely applied to construction contracts. Therefore, the Ragnar court's holding is directly contrary to an argument that somehow the "construction project" aspect of a breach of contract claim acts as a catalyst to convert what would otherwise be a four-year statute to a six-year statute of limitations.

The Ragnar holding is also contrary to an argument that there is an established history in Pennsylvania of applying a six-year statute to construction contract claims, thus creating a "public policy" in favor of such application. In fact, the cases that may arguably support a so-called "public policy" are nothing more than breach of contract cases decided prior to the 1982 Amendment. Similar to Ragnar, in Cluett, Peabody & Co., Inc. v. Campbell, Rea, Hayes & Large, A.J. Aberman, Inc. v. Funk Building Corp., DeMatteo v. White and Med-Mar, Inc. v. Dilworth, the courts applied a six-year statute of limitations to breach of contract claims that related to construction matters. The thrust of those decisions was simply that they involved breach of contract claims. The fact that the subject matter of those cases happened to relate to a construction contract was not germane to the courts' respective analyses of the statute of limitations issue. Indeed, in each of those cases, the court did not single out the construction aspect of the breach of contract claim as distinct from any other breach of contract claim. Rather, any breach of contract claim would have been subject to a six-year statute of limitations at the time those cases were decided (prior to the 1982 Amendment).

As the foregoing discussion illustrates, all breach of contract claims founded upon a writing must be commenced within four years pursuant to section 5525(8). Section 5525(8), alone, is clear and unambiguous in its applicability to all breach of contract claims, including breach of contract claims that relate to construction matters. A fortiori, resort to case law analysis further supports the conclusion that construction contracts are governed by the four-year statute of limitations of section 5525(8).

31. See Packer, 635 A.2d at 652 (holding that the four-year statute of limitations of section 5525(8) applies to claims based upon written contracts arising subsequent to the 1982 Amendment); Unisys Fin. Corp. v. U.S. Vision, Inc., 630 A.2d 55, 58 (Pa. Super. 1993) (holding that a written agreement is governed by section 5525(8)).
B. The Romeo I and Romeo II Cases Lend Further Support to the Conclusion That the Four-Year Statute of Limitations of Section 5525(8) Applies to Claims for Breach of a Construction Contract

As stated at the outset of this Article, the Pennsylvania Superior Court’s decision in Romeo I and the Pennsylvania Supreme Court’s decision on appeal in Romeo II have created undue confusion as to the statute of limitations that applies to construction contracts. Close scrutiny of the Romeo I and Romeo II decisions reveals, however, that the six-year “catch-all” statute of limitations does not apply to claims for breach of a construction contract; rather, the four-year statute of limitations contained in section 5525(8) applies to all breach of contract claims based upon a written contract, including claims based upon a written construction contract.

The contract at issue in both Romeo I and Romeo II was a contract for the construction of a warehouse/office building. Notably, the contract at issue was entered into in 1979 and the work was completed in 1980, before the 1982 Amendment. The facts supplied in the Romeo cases reveal that Yezbak, as contractor, completed the project in July 1980. Approximately two months later, in September 1980, Romeo, who was the owner of the project, claimed that it noticed structural defects in the building’s floor, ceiling, downspouts, and gutters. After Yezbak discontinued its efforts to remedy the alleged deficiencies in May 1986, Romeo filed suit for breach of implied warranty of suitability for specific purpose, breach of express warranty of quality of workmanship, and breach of contract.

The trial court concluded that Romeo’s claims against Yezbak were barred by the four-year statute of limitations contained in section 5525. On appeal, in Romeo I, the Pennsylvania Superior Court considered this issue under the post-1982 Amendment statutory scheme, despite the fact that the contract in question was entered into in 1979 and the breach occurred in 1980, prior to the 1982 Amendment. The Romeo I court explained that it sought to determine whether the four-year statute of limitations contained in section 5525(1), relating to contracts for the sale, construction or furnishing of tangible personal property or fixtures, applied or

32. Romeo I, 617 A.2d at 1321.
33. Id.
34. Id.
35. Id.
whether the six-year "catch-all" statute of limitations contained in section 5527 controlled.\textsuperscript{36} The superior court in \textit{Romeo I} reversed the trial court and held that the trial court erred in not applying the six-year "catch-all" statute of limitations set forth in section 5527 under the 1982 statutory scheme. Accordingly, the superior court ruled that a six-year limitations period applied to the construction controversy at issue in \textit{Romeo I}.\textsuperscript{37} In so ruling, the superior court relied upon policy-based concerns, which it apparently believed were unique to construction contracts.\textsuperscript{38}

Yezbak appealed the superior court's decision to the Pennsylvania Supreme Court. The supreme court, in \textit{Romeo II}, only affirmed the superior court's result.\textsuperscript{39} The supreme court's \textit{Romeo II} decision did not expressly or implicitly affirm the \textit{rationale} that supported the superior court's decision in \textit{Romeo I}. To the contrary, the supreme court declined to comment upon the wisdom of the superior court's policy-based conclusion.\textsuperscript{40} Although the supreme court ultimately affirmed the application of a six-year statute to Romeo's claim, it is significant that the supreme court observed that the superior court had erred in its reliance upon the post-1982 Amendment version of either section 5525 or section 5527.

The supreme court's decision pointed out that the superior court "proceeded under the \textit{erroneous assumption} that the current version of either section 5525 or section 5527, both of which were amended in 1982, governs this case."\textsuperscript{41} The supreme court explained that the 1980 statutory scheme applied because the breach at issue in \textit{Romeo I} and \textit{Romeo II} occurred in 1980.\textsuperscript{42} In this regard, the

\textsuperscript{36} Id. at 1322.
\textsuperscript{37} In \textit{Romeo I}, the superior court stated, "we find that the statute of limitations applicable to the construction contract controversy with which we are faced is section 5527, Six year limitation." \textit{Romeo I}, 617 A.2d at 1323.
\textsuperscript{38} In support of its policy-based concerns, the \textit{Romeo I} court stated, "the purchaser and his investment must be afforded the six years of protection provided by section 5527 [under the 1982 statutory scheme]." Id. According to the superior court, this result was justified "[i]n the interest of fair play and in light of the expected long-term life span of a house and/or commercial structure and the builder's attendant ethical and legal responsibilities to its customer . . . ." Id. In the superior court's view, "[t]o find otherwise would be grossly unfair to the buyer . . . ." Id.
\textsuperscript{39} See \textit{Romeo II}, 652 A.2d at 833. The supreme court stated, "we affirm the Superior Court's conclusion that Romeo's complaint is not barred by the statute of limitations, but write to clarify the court's application of 42 Pa.C.S. § 5527 (1982) to the instant facts." Id. at 832.
\textsuperscript{40} Id. at 832-33.
\textsuperscript{41} Id. at 832 (emphasis added).
\textsuperscript{42} Id. In a breach of contract action, the statute of limitations begins to run from the time of the breach. \textit{Aberman}, 420 A.2d at 599 (citing In re Dixon's Estate, 233 A.2d 242 (Pa.
The supreme court stated, "[t]he limitations period applicable to causes of action based on construction contracts accruing in 1980 was codified at 42 Pa.C.S. § 5527(2)." This statement by the supreme court indicates that it was the superior court's analysis in Romeo I, based upon section 5525(1), relating to contracts for the sale, construction or furnishing of tangible personal property or fixtures, that was completely inapplicable in that case.

Moreover, it is significant that the supreme court pointed out that if the superior court in Romeo I had properly relied upon the 1980 statutory scheme, section 5527(2) of the 1980 scheme would have been the provision that applied to the contract in issue. The 1980 version of section 5527(2) related to written contracts. As discussed in detail in Part I, supra, the content of section 5527(2) is now contained in section 5525(8) under the 1982 Amendment. All of this reveals that under the 1980 statutory scheme, pursuant to which the Romeo I case was decided, all breach of contract claims based upon a writing, regardless of the subject matter, were governed by a six-year statute of limitations. After the 1982 Amendment, all breach of contract claims based upon a writing, regardless of the subject matter, are governed by a four-year statute of limitations. This change from a six-year statute to a four-year statute for breach of contract claims based upon a writing appears to reflect the intent of the Pennsylvania Legislature in amending the statutory scheme relating to limitations of actions.

1967). Furthermore, "in the case of a latent defect in construction, the statute of limitations will not start to run until the injured party becomes aware, or by the exercise of reasonable diligence should have become aware, of the defect." Id. (citing cases). In the Romeo I case, Romeo alleged that it first became aware of defects in the warehouse/office building in September 1980. See supra note 34 and accompanying text. Accordingly, the Romeo II court concluded that Romeo's claim accrued in 1980 and that the statute of limitations set forth in 42 Pa.C.S.A. § 5527(2) (1980) was applicable to that claim. See infra note 43 and accompanying text.

43. Romeo II, 652 A.2d at 832.

44. The Romeo II court stated, "[t]he Superior Court, although correctly applying a six-year limitation period, erroneously concluded that 42 Pa.C.S. § 5527 (1982) controls this scenario. Rather, 42 Pa.C.S. § 5527(2)(1980), before its amendment in 1982, governs the instant claim." Id. at 831 (footnotes omitted).

45. Although there is a dearth of information relative to the legislative history surrounding the 1982 Amendment, the historical and statutory notes to the year 2000 update to 42 Pa.C.S.A. § 5527 (1982) provide insight into the Pennsylvania Legislature's intent in amending the statutory scheme governing limitations of actions. Those historical and statutory notes state, "[f]or provisions similar to those contained in former pars. (1) to (3) of this section see § 5525(5) to (8) of this title." This statement indicates that the Legislature manifested a conscious intent to transfer all breach of contract claims based upon a writing...
Although the *Romeo II* court affirmed the *result* of the superior court and concluded that the action was timely filed within six years pursuant to the 1980 version of section 5527(2),\(^4\) the supreme court refused to affirm the superior court’s rationale to the extent that it was based upon public policy concerns associated with construction contracts. The following excerpt from *Romeo II* clearly portrays the supreme court’s unwillingness to proclaim that construction contracts are distinct from other written contracts or that they are peculiarly subject to a six-year statute of limitations when other written contracts are subject to a four-year statute:

We note the Superior Court, in analyzing this case under the *current* statutory scheme, concluded that section 5527, as amended in 1982, provides the appropriate period of limitation for written construction contract scenarios. The court reasoned as follows:

“In the interest of fair play and in light of the expected long-term life span of a house and/or commercial structure and the builder’s attendant ethical and legal responsibilities to its customer, we find the purchaser and his investment must be afforded the six years of protection provided by section 5527. To find otherwise would be grossly unfair to the buyer, who routinely expends large sums of money in the hope of securing a structurally and financially sound investment. Therefore, we find the statute of limitations applicable to the construction contract controversy with which we are faced is section 5527, Six-year limitation . . . .”

*Because the facts of this case do not implicate the current statutory scheme for limitations of actions, we express no opinion regarding the wisdom of the Superior Court’s conclusion.* Accordingly, we affirm the *result* of the Superior Court, and hold that Romeo’s complaint against Yezbak was filed within the six-year limitation period provided by 42 Pa.C.S. § 5527(2) (1980) [now 42 Pa.C.S.A. § 5525(8)].\(^4\)

The supreme court’s decision in *Romeo II* to distance itself from the superior court’s public policy-based rationale in *Romeo I* is from the six-year limitation period to the four-year limitation period.

\(^4\) *Romeo II*, 652 A.2d at 833.

\(^4\) Id. at 832-33 (citation omitted) (emphasis and brackets added).
significant. The *Romeo II* decision indicates that: (1) the supreme court explicitly refused to adopt the public policy-based rationale endorsed by the superior court for applying a six-year statute of limitations to construction contracts; and (2) the supreme court only affirmed the superior court's result because that result would have been reached had the superior court considered the matter under the 1980 statutory scheme pursuant to which all written contracts, not just construction contracts, were subject to the six-year statute of limitations contained in section 5527(2). Hence, the supreme court effectively held that a claim for breach of a written construction contract, if brought under the 1982 Amendment, would be subject to the four-year statute of limitations period set forth in section 5525(8). Accordingly, cogent analysis of the *Romeo I* and the *Romeo II* cases and the application of the supreme court's holding in *Romeo II* support the conclusion that, as a result of the 1982 Amendment, all breach of contract claims based upon a writing, including claims for breach of a construction contract, are subject to the four-year statute of limitations contained in section 5525(8).

**C. Construction Contracts Should Not Be Afforded Treatment Distinct from Other Written Contracts**

As noted in Part II.A., *supra*, section 5525(8) (1982) is clear and unambiguous. As a result, courts are not required to engage in any statutory construction analysis. Nonetheless, even if section 5525(8) was determined to be ambiguous, resort to statutory interpretation dictates the conclusion that construction contracts are not to be afforded treatment distinct from other written contracts.

To support a contention that construction contracts are unique and, therefore, subject to something other than a four-year statute of limitations, one may attempt to argue that certain aspects of construction projects have been given specific treatment by the legislature. By way of example, in support of such an argument, one may point to the statute of repose that would apply to a claim arising out of a construction project, the statute of limitations for actions involving land surveying, and the statute of limitations for

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48. *See* 42 Pa.C.S.A. § 5536. Section 5536 provides, *inter alia*, that an action brought against any person lawfully performing or furnishing the design, planning or supervision of construction, or construction of any improvement to real property, must be commenced within 12 years after completion of such construction.

49. *See* 42 Pa.C.S.A. § 5537. Section 5537 states, *inter alia*, that an action to recover damages against any person engaged in the practice of land surveying because of a claimed
landscape architecture claims.50 The existence of these provisions does not lend support to an argument that construction contracts are unique and that they should be treated in a manner different from other contracts for statute of limitations purposes. Quite to the contrary, while the Pennsylvania Legislature expressly addressed "construction related" circumstances in each of the provisions discussed above, the Legislature did not address "construction contract" claims as distinct from any other contract claim under the legislative scheme related to limitations of actions. Clearly, this negative pregnant demonstrates that the Pennsylvania Legislature is cognizant of construction-related claims, and that it knows how to enact express provisions for such claims when it sees fit.

It must be presumed that the Pennsylvania Legislature's failure to enact a statute of limitations that expressly applies only to claims for breach of a construction contract is intentional. This presumption is supported by the maxim of statutory interpretation "expressio unius est exclusio alterius" which is well established in Pennsylvania. That maxim "basically means that where some things are specifically designated in a statute, things omitted should be understood as excluded."51 Pursuant to this doctrine, the omission of a construction contract statute of limitations from the statutory scheme must be understood as an intentional exclusion by the Pennsylvania Legislature, especially in light of the Legislature's decision to enact legislation relative to other aspects of construction projects.

If the Legislature had intended to make claims for breach of a written construction contract subject to a six-year statute of limitations, the Legislature would have expressly so provided. The absence of any such legislation indicates that the Legislature intended that construction contracts be treated like all other written contracts for statute of limitations purposes — they are subject to the four-year limitations period of section 5525(8).

deficiency, defect, omission, error or miscalculation must be commenced within 21 years from the time the services are performed.

50. See 42 Pa.C.S.A. § 5538. Section 5538 requires, inter alia, that an action to recover damages against any person engaged in the practice of landscape architecture because of a claimed deficiency, defect, omission, error or miscalculation must be commenced within 12 years from the time the services are performed.

CONCLUSION

The language of section 5525(8) is very clear that all claims for breach of a written contract are subject to a four-year statute of limitations. There are no exceptions set forth in section 5525(8). Therefore, claims for breach of a construction contract are not exempt from the requirement that such claims must be commenced within four years. While section 5525(8) is unambiguous in its application to all written contracts, analysis of the case law, in particular the Romeo cases, only strengthens the conclusion that the four-year statute of limitations of section 5525(8) equally governs claims for breach of a construction contract.

The Romeo I case should not be relied upon to circumvent the applicability of a four-year statute of limitations to claims for breach of a construction contract. The Pennsylvania Superior Court should seize the opportunity that the Gustine case presents to correct its mistaken holding in Romeo I that a six-year statute of limitations applies to claims for breach of a construction contract. Indeed, when the superior court revisits its Romeo I decision in the context of the Gustine case, it should rely upon the analysis and arguments presented in this Article to reiterate what section 5525(8) plainly dictates—that claims for breach of a construction contract are subject to a four-year statute of limitations.