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A Case Of Narrow Construction: Court Of Appeal Rules That Four Year Statute For
Patent Defects Per Code Of Civil Procedure Section 337.1 Does Not Apply To Express
Contractual Indemnity Claims

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While many are familiar with California's ten year statute of repose for construction defect claims pursuant to Code of Civil Procedure Section 337.15, a very important time limitation involves the four year period called for under Code of Civil Procedure Section 337.1 for patent defects. The four year statute applies to defective conditions which are discernable or patent and commences upon substantial completion (and not when the condition becomes patent). [Tomko Woll Group Architects, Inc. v. Superior Court (1996) 46 Cal.App.4th 1326] The four year statute has also been construed broadly. In Wagner v. State of California (1978) 86 Cal.App.3rd 922 ("Wagner"), the Court (Third District Court of Appeal) ruled that the four year statute found in Code of Civil Procedure Section 337.1 applies to equitable indemnity claims. That ruling was followed in the recent decision in Delon Hampton & Associates, Chtd. v. Superior Court (2014) 227 Cal.App.4th 250 (Second District Court of Appeal).

Many practitioners have argued that the four year statute found in Code of Civil Procedure Section 337.1 should apply to express indemnity claims consistent with the holding in Wagner. However, the California Court of Appeal, Fourth District, recently ruled in Valley Crest Landscape Development, Inc. v. Mission Pools of Escondido, Inc. (2015) 238 Cal.App.4th 468 ("Valley Crest Landscape"), that express contractual indemnity claims do not come within Code of Civil Procedure Section 337.1.

The Valley Crest Landscape case involved injuries to Jeffrey Epp who suffered serious injuries after diving into a swimming pool at the St. Regis Resort in Monarch Beach, California. Epp and his wife sued the owner of the St. Regis Resort and entities involved in the design and construction of the swimming pool. The defendants included Valley Crest Landscape Development, Inc. ("Valley Crest"), which was the general contractor for exterior improvements at the St. Regis Resort, and Mission Pools of Escondido, Inc. ("Mission Pools"), a subcontractor of Valley Crest which was responsible for building the swimming pool.

Long before trial, summary judgment motions were filed by various entities based upon the statute of limitations (the accident took place in 2007 and the exterior improvements at the St. Regis Resort were completed in November 2000). Based upon summary judgment motions and settlements, the only claim that went to trial (a bench trial) was that of Valley Crest for express indemnity and reimbursement of defense fees as against Mission Pools (and the insurer for Valley Crest was also joined as a party).

As relevant to this article, the trial court, with the Honorable Andrew Banks presiding, ruled that the time bar under Code of Civil Procedure Section 337.1 did not apply to the Valley Crest express indemnity claim against Mission Pools. The trial court then awarded all sums claimed in favor of Valley Crest as against Mission Pools. Mission Pools appealed on a number of grounds, including that the indemnity claims involving the 2007 accident were time barred per Code of Civil Procedure Section 337.1. As relevant to this article, the Court of Appeal affirmed the ruling of the trial court as to Code of Civil Procedure Section 337.1 finding that Statute to be not applicable.¹ In its holding, the Court of Appeal ruled that an action for indemnity, express or implied, is not included within Code of Civil Procedure Section 337.1's definition of the word "action" and cited FNB Mortgage Corp. v. Pacific General Group (1999) 76 Cal.Appl.4th 1116, 1127. The Court of Appeal noted that Mission Pools had relied on Wagner. In that regard, the Court of Appeal declined to follow Wagner for number of reasons, holding that Wagner did not consider Code of Civil Procedure Section 337.15 in construing the statute. The Court of Appeal went on to rule that Valley Crest's cause of action for express contractual indemnity accrued when Valley Crest sustained a loss by paying money and found the indemnity claim to be timely. It also ruled that the Valley Crest insurer's claims for equitable subrogation was not barred, either.

The decision in Valley Crest is certainly in tension with the Wagner decision and will likely be subject to further judicial review.

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¹ The Court of Appeal reversed the judgment against Valley Crest on unrelated grounds dealing with the right to a jury trial.

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