



CAPITAL

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Court Holds That Lost Rental Value Is Not Recoverable As Delay Damages



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On March 27, 2013, the Dallas Court of Appeals issued an opinion in *Timmerman Custom Builders v. Dale* that continued an ongoing trend in Texas courts—limiting the ability to recover delay damages. The Court concluded the plaintiff's claim for delay was governed by the Residential Construction Liability Act ("RCLA"), and that the damages sought were not permitted under that statute.

In this case, Plaintiff Dale hired Defendant Timmerman to remodel Dale's upscale condominium. The parties entered into a contract providing that Timmerman would begin construction "forthwith and . . . continue such construction with reasonable diligence in substantial conformity with the Plans and Specifications." The contract further contained a provision under which both parties acknowledged that the RCLA applied to any claims for "construction defects."

Dale later terminated the contract. Dale also filed suit against Timmerman, asserting claims such as poor workmanship and unreasonable delay in completing the project. Dale's delay claim sought the fair market rental value of his home during the period of alleged unreasonable delay by Timmerman. Timmerman contended the delay claim was barred under RCLA. The trial court ruled in favor of Dale and awarded him his delay damages.

In its analysis, the Dallas Court of Appeals noted that the RCLA defines "construction defect" very broadly, including for "a matter concerning the design, construction, or repair of a new residence [or] of an alteration of or repair or addition to an existing residence. . . ." Based on this broad language, the Court concluded that Dale's delay allegation was governed by the RCLA.

The Court held that the RCLA, with limited exceptions, does not allow for delay damages. The Court noted that one exception is that the RCLA allows recovery of temporary housing expenses during the repair period. Therefore, Dale could have sought the temporary housing expenses as a delay damage. Because he sought only lost rental value as a delay damage—which is not permitted by the statute—the Court reversed and rendered judgment that Dale take nothing on his claim. ■