

*This opinion is nonprecedential except as provided by
Minn. R. Civ. App. P. 136.01, subd. 1(c).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A25-0135**

City of Jackson,
Appellant,

vs.

Bolton & Menk, Inc.,
Respondent.

**Filed August 25, 2025
Affirmed
Cochran, Judge**

Jackson County District Court
File No. 32-CV-22-148

Joseph J. Langel, Jordan H. Soderlind, Ratwik, Roszak & Maloney, P.A., St. Paul,
Minnesota (for appellant)

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Minnesota (for respondent)

Considered and decided by Schmidt, Presiding Judge; Reyes, Judge; and Cochran,
Judge.

NONPRECEDENTIAL OPINION

COCHRAN, Judge

Appellant challenges the district court's grant of summary judgment to respondent on the appellant's claims for negligent misrepresentation and professional negligence. Appellant contends that the district court erred by determining that its claims were barred by the two-year statute of limitations in Minnesota Statutes section 541.051 (2024).

Because there is no genuine issue of material fact related to the applicability of section 541.051's two-year statute of limitations and section 541.051 bars appellant's claims as a matter of law, we affirm.

FACTS¹

This case involves appellant City of Jackson's engagement of respondent Bolton & Menk, Inc. (BMI), an engineering firm, in 2018 to make recommendations for an upgrade to the city's wastewater-treatment system and to design the same. The city's wastewater-treatment system functions, in part, through a series of lift stations that pump wastewater into stabilization ponds. All wastewater in the city is ultimately directed to lift station 4, which, in turn, pumps the wastewater directly into the stabilization ponds. Lift station 4 was constructed in the 1970s and had been updated in 2005. From 2016 to 2018, the city reported ten unauthorized discharges of wastewater from its wastewater-treatment system, four of which were caused by electrical or mechanical failures in its system.

In April 2017, the city asked BMI to estimate how much it would cost to upgrade lift station 4 to a submersible-pump lift station, which would eliminate the need to enter the lift station to perform pump maintenance. By 2018, the scope of the project expanded to wholesale replacement of lift station 4 because of its age and condition. BMI recommended that the city construct a new submersible lift station equipped with two

¹ Our recitation of the facts is based on the summary-judgment record viewed in the light most favorable to appellant as the nonmoving party. *See Staub v. Myrtle Lake Resort, LLC*, 964 N.W.2d 613, 620 (Minn. 2021) (providing that, on appeal from summary judgment, appellate courts “view[] the evidence in the light most favorable to the nonmoving party and resolv[e] all doubts and factual inferences against the moving party”).

pumps, each with a pumping capacity of 1,956 gallons of wastewater per minute (gpm). BMI assured the city that the new pumps would be more efficient than the old pumps and “would provide 3,000 [gpm].” In its former state, lift station 4 could pump only 1,935 gpm. BMI received approval from the city to proceed with the design phase.

The city approved BMI’s final design for the new lift station 4 in late 2018. The city solicited bids on the project, ultimately awarding it to a contractor in February 2019. Construction started in the fall of 2019, and the new lift station 4 was placed into service in November 2019.

The city then tested lift station 4’s wastewater output. The city’s testing showed that lift station 4 could pump only 2,400 gpm, well below the city’s expectation of 3,000 gpm. In March 2020, the city retained an independent engineer to provide a professional opinion on whether lift station 4 could meet the city’s needs. The city received a preliminary report from the independent engineer in April 2020 and the final report in August 2020. In the final report, the engineer opined that lift station 4 required a minimum capacity of 3,000 gpm “to prevent bypassing of raw sewage to the river from upstream lift stations.” She noted that BMI’s design was for a maximum capacity of just 2,000 gpm. The engineer also observed that lift station 4 required pumps with larger horsepower than those recommended by BMI. To achieve 3,000 gpm, the engineer recommended that the city replace the new lift station 4 with a new facility and estimated the cost to be greater than one million dollars.

While the engineer was working on her final report, the city attorney sent a letter to BMI to “place[] [BMI] on notice of [the city’s] claim for damages due to [BMI’s] improper

design of lift station 4.” The letter was dated May 29, 2020. In the letter, the city attorney stated that BMI was liable for “designing a system that actually reduced the capacity of a system that needed more capacity.” The letter also provided BMI with the city’s estimate of the cost to replace lift station 4 and stated the city’s desire to “work informally towards a satisfactory resolution rather than having to proceed with more formal action.”

More than two years later, on July 1, 2022, the city mailed a summons and complaint to BMI, asserting claims of negligence based on professional malpractice (professional negligence) and negligent misrepresentation. The city alleged that BMI’s design was “insufficient, defective, and inconsistent with relevant design standards.” The city further alleged that the defects “affect the city’s ongoing use of the sanitary sewer system, give rise to increased maintenance and replacement costs, and reduce the projected lifespan and value of the system.”

Following discovery, BMI moved for summary judgment. BMI argued the city’s claims were barred by the two-year statute of limitations set out in Minnesota Statutes section 541.051, which applies to claims to recover damages for injuries to property arising from defective and unsafe conditions of improvements to real property. The city countered that, despite BMI’s poor design, lift station 4 had not yet caused an injury to property and therefore its claims fell outside of section 541.051. The city argued that its claims were instead subject to the general six-year statute of limitations under Minnesota Statutes section 541.05 (2024).

In its order, the district court concluded that the city’s claims were subject to section 541.051’s two-year statute of limitations and that the city’s claims accrued more than two

years before it commenced this action against BMI. Accordingly, the district court granted BMI's motion for summary judgment.

This appeal follows.

DECISION

The city challenges the district court's ruling on summary judgment regarding the application of section 541.051's two-year statute of limitations to its claims. Summary judgment is appropriate "if the movant shows that there is no genuine issue as to any material fact and the movant is entitled to judgment as a matter of law." Minn. R. Civ. P. 56.01. We review the grant of summary judgment de novo, viewing all evidence in the light most favorable to the nonmoving party. *Staub*, 964 N.W.2d at 620.

"A statute of limitations applies to bar a certain kind of claim or cause of action from being asserted after a certain designated time period." *City Bella Com., L.L.C. v. City Bella on Lyndale*, 994 N.W.2d 27, 30 (Minn. 2023). "We review the construction and applicability of statutes of limitations de novo." *Id.*

Section 541.051 provides a two-year statute of limitations for certain claims:

Except where fraud is involved, no action by any person in contract, tort, or otherwise to recover damages for any injury to property, real or personal, . . . arising out of the defective and unsafe condition of an improvement to real property, shall be brought against any person performing or furnishing the design . . . of the improvement to real property . . . more than two years after the cause of action accrues

Minn. Stat. § 541.051, subd. 1(a). Section 541.051, subdivision 1(a), applies broadly to actions in "contract, tort, or otherwise" based on "*any* injury to property" arising out of a "defective and unsafe condition of an improvement to real property." *Id.* (emphasis added).

Along with a two-year statute of limitations quoted above, section 541.051, subdivision 1(a), provides a ten-year statute of repose that bars any cause of action brought “more than ten years after substantial completion of the construction.”

The district court determined that section 541.051, subdivision 1(a), applies because the city’s claims of injury arose from BMI’s allegedly defective and unsafe design of lift station 4, which was an improvement to real property. On appeal, the city does not dispute that the inadequately designed lift station constitutes a defective and unsafe improvement to real property within the scope of section 541.051, subdivision 1(a). Instead, the city argues that its property has not suffered an “injury” within the meaning of section 541.051, subdivision 1(a), because lift station 4, although under-designed for the city’s needs, has not yet failed and caused any physical property damage. The city asserts that its claims are merely for “maintenance costs and replacement costs” due to BMI’s misrepresentations and professional malpractice, and therefore its claims are not subject to section 541.051’s two-year statute of limitations. BMI responds that the language of section 541.051, subdivision 1(a), is not limited to physical damage to property but also includes diminution in property value and therefore the city alleged an “injury” sufficient to trigger section 541.051’s two-year statute of limitations.

The Meaning of “Injury”

The parties’ dispute requires us to interpret the meaning of “injury” as used in section 541.051, subdivision 1(a). “[T]he meaning and scope of a statute of limitations is a question of statutory interpretation, dictated in the first instance by its plain language.” *City Bella*, 994 N.W.2d at 31. Our aim in interpreting a statute “is to ascertain and

effectuate the intent of the [l]egislature.” *In re Commitment of Benson*, 12 N.W.3d 711, 715 (Minn. 2024) (quotation omitted). “If the [l]egislature’s intent is clear from the statute’s plain and unambiguous language, then we interpret the statute according to its plain meaning without resorting to the canons of statutory construction.” *State v. Struzyk*, 869 N.W.2d 280, 284-85 (Minn. 2015) (quotation omitted). “In ascertaining this plain meaning,” we afford words their common usage and we may rely on dictionary definitions to determine the meaning of a word in the absence of a statutory definition. *Great N. Ins. Co. v. Honeywell Int’l, Inc.*, 911 N.W.2d 510, 516 (Minn. 2018).

We conclude that the legislature did not intend the word “injury” as used in section 541.051, subdivision 1(a), to be limited solely to physical damage as argued by the city but instead intended the phrase to have broader application. We reach this conclusion based on the plain meaning of the word “injury” as used in the phrase “any injury to property.” Because this term is not statutorily defined, we turn to the dictionary definition to determine its meaning. *See* Minn. Stat. § 541.051; *Great N. Ins. Co.*, 911 N.W.2d at 516. The common dictionary definition for “injury” is “a particular form of hurt, damage, or loss.” *The American Heritage Dictionary of the English Language* 904 (5th ed. 2018). In turn, “damage” is defined as “any bad effect on something,” *Black’s Law Dictionary* 488 (12th ed. 2014), and “destruction or a loss in value, usefulness, or ability resulting from an action or event,” *American Heritage*, *supra*, at 457. And “loss” means “the disappearance or diminution of value.” *Black’s Law Dictionary*, *supra*, at 1129. Applying the relevant definitions, we conclude that the plain meaning of “injury” as used in relation

to property in section 541.051, subdivision 1(a), is any bad effect on property, including but not limited to the loss in value or usefulness of the property.

Additionally, we note that the word “injury” in section 541.051, subdivision 1(a), is not qualified by words such as “physical” or “tangible.” Rather, section 541.051, subdivision 1(a), applies to “*any* injury to property.” Minn. Stat. § 541.051, subd. 1(a) (emphasis added). The supreme court has held that “[t]he word ‘any’ is given broad application in statutes.” *Hyatt v. Anoka Police Dep’t*, 691 N.W.2d 824, 826 (Minn. 2005). Our broad interpretation of section 541.051, subdivision 1(a), is therefore supported by the legislature’s use of the word “any.”

Caselaw interpreting section 541.051, subdivision 1(a), also supports a broad reading of “injury.” An “injury to property” under section 541.051, subdivision 1(a), can be a physical harm, such as flooding or erosion. *See, e.g., Ocel v. City of Eagan*, 402 N.W.2d 531, 532-33 (Minn. 1987) (applying section 541.051, subdivision 1(a), in a case involving damage caused by surface water discharged by city’s sewer system); *Cap. Supply Co. v. City of St. Paul*, 316 N.W.2d 554, 555 (Minn. 1982) (applying section 541.051, subdivision 1(a), in a case involving “flooding, erosion, and other property damage” caused by city’s storm-sewer system). But an “injury to property” can also include other harms, such as a diminution in property value. For instance, in *Griebel v. Andersen Corp.*, the supreme court held that “the loss and diminution of the market value of [a] home” was an injury to property for purposes of section 541.051, subdivision 1(a). 489 N.W.2d 521, 522 (Minn. 1992). Caselaw therefore reflects that the

phrase “any injury to property” in section 541.051, subdivision 1(a), has not been construed so narrowly as to apply only to physical property damage.

The City’s Claims Allege an Injury to Property

Having identified the broad meaning of “injury” for purposes of the phrase “any injury to property,” we next consider whether the city has alleged an injury to property such that its claims are subject to section 541.051’s two-year statute of limitations. When determining whether section 541.051, subdivision 1(a), applies, appellate courts may look to the “individual facts alleged in the complaint,” even in appeals arising from summary judgment. *Lietz v. N. States Power Co.*, 718 N.W.2d 865, 869, 871-72 (Minn. 2006) (quotation omitted) (affirming grant of summary judgment to defendant after examining the allegations in plaintiff’s complaint and determining that section 541.051, subdivision 1(a), barred plaintiff’s claims).

In its complaint, the city asserted that “the defects adversely affect the City’s *ongoing use* of the sanitary sewer system, give rise to increased maintenance and replacement costs, and reduce the projected lifespan and *value* of the system.” (Emphasis added.) And, in the city’s letter placing BMI on notice of its claims, the city attorney asserted that BMI’s design of lift station 4 caused the city’s wastewater-treatment system to have “less capacity . . . than it started with.”

We conclude that the city’s alleged injuries fall within the broad meaning of “any injury to property” under section 541.051, subdivision 1(a). The city has alleged that BMI’s negligent design of lift station 4 reduced the value and usefulness of the city’s entire wastewater-treatment system. The caselaw and the plain meaning of “any injury,” as

discussed above, indicate that the diminution in the value and usefulness of property constitutes an injury to property within the meaning of section 541.051, subdivision 1(a), and therefore subject to the statute's two-year statute of limitations. *See Griebel*, 489 N.W.2d at 522; *American Heritage*, *supra*, at 457, 904 (defining “injury” and “damage”); *Black’s Law Dictionary*, *supra*, at 1129 (defining “loss”).

The city attempts to distinguish *Griebel*, asserting *Griebel* held only that a diminution in “*market* value” constitutes an injury to property. *See Griebel*, 489 N.W.2d at 522 (emphasis added). The city further contends that its wastewater-treatment system has no market value and therefore there is no injury based on a diminution of value. But the city’s argument is conclusory—it provides no legal, factual, or logical support for its assertion that lift station 4 has no market value. And even if lift station 4 has no market value, the city has not explained why a reduction in general value, as opposed to *market* value, is not an “injury to property” under section 541.051, subdivision 1(a). Moreover, the city ignores that it has also alleged a diminution in the usefulness of its wastewater-treatment system as a result of BMI’s design for lift station 4. And the city ignores the plain meaning of the phrase “any injury” as used in section 541.051, subdivision 1(a). Accordingly, the city’s claims for negligent misrepresentation and professional malpractice are subject to section 541.051’s two-year statute of limitations.²

² We recognize that claims for negligent misrepresentation and professional malpractice may fall within section 541.05’s six-year statute of limitations in some cases. *See* Minn. Stat. § 541.05, subd. 1(1), (5)-(6) (stating that six-year statute of limitations applies to actions “upon a contract,” “for criminal conversation, or for any other injury to the person or rights of another, not arising on contract,” and “for relief on the ground of fraud”). But, to the extent that the city’s claims fall under both section 541.05 *and* section 541.051, the

Fraud Exception

The city also argues that section 541.051's two-year statute of limitations does not apply to either of its claims because one of its claims was for negligent misrepresentation, a claim that "sounds in fraud." In support of this argument, the city notes that section 541.051, subdivision 1(a), begins with the qualifier "[e]xcept where fraud is involved" and then specifies when the two-year statute of limitations and ten-year statute of repose apply. *See* Minn. Stat. § 541.051, subd. 1(a) ("Except where fraud is involved, no action . . . shall be brought . . . more than two years after the cause of action accrues, . . . nor in any event shall such a cause of action accrue more than ten years after substantial completion of the construction."). The city asserts that this qualifier means that "the two-year limitation period [is] inapplicable" to both of its claims because one of its claims involves fraud. The city argues that its claims are therefore subject only to section 541.051's ten-year statute of repose that requires a claim to be brought within ten years of "substantial completion of the construction." Minn. Stat. § 541.051, subd. 1(a).

The city's interpretation of section 541.051, subdivision 1(a), conflicts with caselaw construing the fraud exception. For instance, the supreme court has observed that fraud is relevant to tolling the statute of repose when "the defendant has by fraud prevented the

latter controls. *See* Minn. Stat. § 645.26, subd. 1 (2024) ("When a general provision in a law is in [irreconcilable] conflict with a special provision in the same or another law, . . . the special provision shall prevail and shall be construed as an exception to the general provision."); *Fagerlie v. City of Wilmar*, 435 N.W.2d 641, 643-44 (Minn. App. 1989) (applying section 541.051's two-year statute of limitations to statutory-nuisance claim based on defective and unsafe construction of wastewater-treatment plant even though section 541.05's "catch-all provision applying generally to all actions for liability created by statute" could have also applied).

plaintiff from discovering the defective and unsafe condition.” *Wittmer v. Ruegemer*, 419 N.W.2d 493, 497 (Minn. 1988), *superseded by statute on other grounds*, 1988 Minn. Laws ch. 607, § 1, at 680-81 (codified at Minn. Stat. § 541.051, subd. 1 (1988)). But the mere allegation of fraud does not extend or eliminate the two-year statute of limitations “because the limitation period does not, according to its terms, begin to run until discovery of the defective condition.” *Id.* at 498; *see also* Minn. Stat. § 541.051, subd. 1(c)(2) (providing that the statute of limitations begins to run “upon discovery of the injury”). Thus, fraud is relevant only to the two-year statute of limitations when “it is contended that the plaintiff should, by exercising reasonable diligence, have sooner discovered the defective condition.” *Wittmer*, 419 N.W.2d at 498. In other words, by establishing fraudulent concealment by the defendant, a plaintiff can rebut a contention that the two-year statute of limitations started running earlier. *See id.*

Here, the city does not allege that BMI fraudulently prevented the city from discovering the defective and unsafe conditions in lift station 4. Accordingly, section 541.051’s fraud exception does not alter the applicability of the two-year statute of limitations to the city’s claims.

Accrual of the City’s Claims

Having determined that section 541.051’s two-year statute of limitations applies, we next consider whether the district court erred by determining that this action accrued more than two years before the city commenced it. Under section 541.051, a cause of action generally accrues “upon discovery of the injury.” Minn. Stat. § 541.051, subd. 1(c)(2). “When reasonable minds can differ about when the injury was discovered,

summary judgment is inappropriate because the issue should be left to the trier of fact.” *Lake Superior Ctr. Auth. v. Hammel, Green & Abrahamson, Inc.*, 715 N.W.2d 458, 472-73 (Minn. App. 2006), *rev. denied* (Minn. Aug. 23, 2006).

Based on our de novo review of the record, we conclude that reasonable minds could conclude only that the city did not commence this action within two years of its claims accruing. We need not look further than the city attorney’s letter to BMI dated May 29, 2020, in which the city placed BMI on notice of the city’s “claim[s] for damages due to [BMI’s] improper design.” In the letter, the city attorney asserted that BMI was liable for “designing a system that actually reduced the capacity of a system that needed more capacity.” It cannot be reasonably disputed that the city was aware of its injury by May 29, 2020.³ And the city mailed its summons and complaint to BMI more than two years later, on July 1, 2022. Accordingly, because there is no disputed issue of material fact regarding whether the city’s claims for injury to its property are barred by section 541.051’s two-year statute of limitations, the district court did not err by granting BMI summary judgment on that basis.

Affirmed.

³ The city contends that it did not discover the injury until the independent engineer issued her formal report in August 2020. The city adds that it “is not an engineer” and could not have known the full nature of its injuries until the expert issued her final report. But for a claim to accrue, the plaintiff need not be “aware of the extent” of their injury. *Day Masonry v. Indep. Sch. Dist.* 347, 781 N.W.2d 321, 333-34 (Minn. 2010). Even if the formal report clarified the extent of the city’s injury, the city attorney’s letter definitively establishes that the city had at least discovered its injury by May 29, 2020. For this reason, the city’s reliance on the expert’s formal report is unavailing.