

**STATE OF MINNESOTA
IN COURT OF APPEALS
A25-1203**

Tonita Haire-Cochran,
Appellant,

vs.

24 Restore, Inc.,
Respondent.

**Filed April 13, 2026
Reversed and remanded
Bentley, Judge**

Hennepin County District Court
File No. 27-CV-24-4468

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Minnesota (for appellant)

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Considered and decided by Ede, Presiding Judge; Bentley, Judge; and Jesson,
Judge.*

SYLLABUS

Construction work performed on real property after a fire is not necessarily “an improvement to real property” for purposes of determining whether the statute of limitations in Minnesota Statutes section 541.051, subdivision 1(a) (2024), applies.

* Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to Minn. Const. art. VI, § 10.

OPINION

BENTLEY, Judge

Appellant's home was significantly damaged in a fire. She contracted with respondent, a restoration company, to perform work on her home. After the work was completed, she sued respondent for poor workmanship, alleging breach of the contract, promissory estoppel, unjust enrichment, negligence, and breach of the covenant of good faith and fair dealing. The district court later dismissed the complaint under Minnesota Rule of Civil Procedure 12.02(e), determining that appellant's claims are barred by the two-year statute of limitations set forth in Minnesota Statutes section 541.051, subdivision 1(a) (2024), which applies to claims "arising out of the defective and unsafe condition of an improvement to real property."

Appellant argues that the district court erred by applying the statute of limitations in section 541.051, subdivision 1(a), because the complaint (1) does not allege claims "arising out of [a] defective or unsafe condition" and (2) does not allege facts establishing that the work was "an improvement to real property." Minn. Stat. § 541.051, subd. 1(a). We agree with appellant that the district court erred in dismissing her claims. We therefore reverse and remand.

FACTS

The following summarizes the allegations in the complaint and the documents that are attached to it and incorporated therein.¹

¹ We accept as true the facts alleged in the complaint when reviewing a motion to dismiss for failure to state a claim. *Sipe v. STS Mfg., Inc.*, 834 N.W.2d 683, 686 (Minn. 2013). "A

In January 2019, appellant Tonita Haire-Cochran's home suffered extensive fire damage. She entered a contract with respondent 24 Restore, Inc., to perform construction work that included "removing charred materials and paint, removing all damaged fixtures, and restoring and refinishing the Property to like-new condition."

When Haire-Cochran moved back into the home in November 2019, she observed that the work was "incomplete, unworkmanlike, and over cost." Among other deficiencies, Haire-Cochran alleged that no work was performed on the basement, "incorrect and inferior" windows were installed that caused heating problems, the kitchen cabinets and countertops differed from those quoted and were improperly installed, the carpeting in the bedrooms was completed with inferior material, the kitchen vent was not properly cut out or attached to the oven hood, and the exterior siding and gutters were not completed. Haire-Cochran contracted with other companies to complete the work, and she paid for that work directly.

In March 2024, after two years of unsuccessful negotiations with 24 Restore to address their work and the extra costs she incurred, Haire-Cochran commenced an action alleging in the complaint claims for breach of contract, promissory estoppel, unjust enrichment, negligence, and breach of the covenant of good faith and fair dealing. 24 Restore invoked a statute-of-limitations affirmative defense in its answer, though it did not identify any specific statutory provision.

copy of any written instrument which is an exhibit to a pleading is a part of the statement of claim or defense set forth in the pleading." Minn. R. Civ. P. 10.03.

One month before trial, 24 Restore moved to dismiss Haire-Cochran’s complaint under Minnesota Rule of Civil Procedure 12.02(e) for failure to state a claim upon which relief may be granted.² 24 Restore argued that Minnesota Statutes section 541.051, subdivision 1(a), bars Haire-Cochran’s claims because she commenced the action over two years after sending an initial demand letter. In opposition, Haire-Cochran disputed that section 541.051, subdivision 1(a), applied because the complaint did not allege “an improvement to real property” within the meaning of that provision. Instead, she maintained that the action is subject to a six-year statute of limitations.

After a hearing on the motion, the district court dismissed Haire-Cochran’s complaint with prejudice under section 541.051, subdivision 1(a), because it determined that the work alleged “constituted an improvement to real property.” The district court reasoned that the complaint alleged that 24 Restore made “permanent additions to [Haire-Cochran’s] home” that were “installed through the expenditure of labor and money” and “designed to make the house more useful and enhance its value.” The court did not expressly address whether the claims arose out of a defective and unsafe condition. Rather, it concluded: “Minn. Stat. § 541.051 bars actions ‘in contract, tort, or otherwise.’ Since the

² Haire-Cochran argues that the district court abused its discretion by allowing 24 Restore to move to dismiss well after the scheduling order deadline. We do not reach this procedural argument or discuss it in further detail because we reverse on the merits of the district court’s decision to grant the motion based on the statute of limitations in section 541.051, subdivision 1(a). *See Sela Invs., Ltd. LLP v. J.H.*, 22 N.W.3d 181, 184 n.3 (Minn. App. 2025) (declining to reach appellant’s alternative arguments when reversing on other grounds), *rev. granted on other grounds* (Minn. July 30, 2025).

entire Complaint is based on the work performed, the Court need go no further in its analysis.”

Haire-Cochran appeals.

ISSUES

Is construction work performed on real property after a fire “an improvement to real property” under Minnesota Statutes section 541.051, subdivision 1(a), such that a two-year statute of limitations applies to claims arising out of the work?

ANALYSIS

Haire-Cochran argues that the district court erred in determining that Minnesota Statutes section 541.051, subdivision 1(a), bars her claims. Specifically, she asserts that the work alleged was not “an improvement to real property” and that the complaint does not allege damages that arose from a “defective and unsafe condition.” Because these arguments stem from the district court’s decision on a motion to dismiss, our appellate review is de novo. *Sipe v. STS Mfg., Inc.*, 834 N.W.2d 683, 686 (Minn. 2013). A motion to dismiss based on an affirmative defense “may be granted only if the allegations in the complaint . . . establish an un rebuttable defense.” *Hoskin v. Krsnak*, 25 N.W.3d 398, 409 (Minn. 2025). We accept as true the facts alleged in the complaint and the documents attached thereto, *Sipe*, 384 N.W.2d at 686; Minn. R. Civ. P. 10.03, and we construe all inferences in favor of the plaintiff—here, Haire-Cochran, *see Hansen v. U.S. Bank Nat’l Ass’n*, 934 N.W.2d 319, 325-26 (Minn. 2019) (“We will not make inferential leaps in favor of the defendant to conclude that a lawsuit is time-barred.”).

The two-year statute of limitations in section 541.051, subdivision 1(a), establishes an exception to the general six-year statute of limitations that otherwise would apply to the claims raised in Haire-Cochran’s complaint. *See* Minn. Stat. § 541.05, subd. 1(1), (4), (5) (2024) (establishing six-year statute of limitations for claims “upon a contract or other obligation, express or implied,” “injuring personal property,” and “for any other injury to the person or rights of another, not arising on contract”). Section 541.051, subdivision 1(a), provides:

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, or for bodily injury or wrongful death, *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, planning, supervision, materials, or observation of construction or construction of the improvement to real property or against the owner of the real property more than two years after the cause of action accrues[.]

(Emphasis added.) The issue on appeal is whether Haire-Cochran’s claims resulting from 24 Restore’s deficient work are subject to section 541.051, subdivision 1(a), because they arose from a “defective and unsafe condition of an improvement to real property.” We start with an analysis of whether the work alleged was “an improvement to real property,” and because we conclude that it was not, we do not reach Haire-Cochran’s argument that the claims also do not arise out of a “defective and unsafe condition.”

The Minnesota Supreme Court has defined “an improvement to real property” in section 541.051, subdivision 1(a), as “a permanent addition to or betterment of real property that enhances its capital value and that involves the expenditure of labor or money

and is designed to make the property more useful or valuable as distinguished from ordinary repairs.” *Moore v. Robinson Env’t*, 954 N.W.2d 277, 285 (Minn. 2021) (quotation omitted); see *Hagen v. Steven Scott Mgmt., Inc.*, 963 N.W.2d 164, 174 (Minn. 2021) (noting that once the supreme court has “interpreted a statute, that prior interpretation guides [courts] in reviewing subsequent disputes over the meaning of the statute” (quotation omitted)). In *Siewert v. Northern States Power Co.*, the supreme court articulated a three-factor test to determine whether changes or additions made to real property meet this definition: “[1] whether the addition or betterment is permanent, [2] whether it enhances the capital value of the property, and [3] whether it is designed to make the real property more useful or valuable, rather than intended to restore the property’s previous usefulness or value.” 793 N.W.2d 272, 287 (Minn. 2011).

In *Moore*, the supreme court provided two additional guiding principles in applying section 541.051, subdivision 1(a). 954 N.W.2d at 284-85. First, *Moore* reaffirmed that courts should use a “common-sense interpretation” of the phrase “improvement to real property.” *Id.* at 285. And second, *Moore* concluded that courts should base the analysis on the “project as a whole” rather than its individual parts. *Id.* at 284. With this guidance in mind, we turn to the three-factor test from *Siewert* to determine whether Haire-Cochran’s complaint alleges claims stemming from “an improvement to real property.”

The first two factors are largely unaddressed by the parties on appeal. With respect to the first factor—whether the change or addition to the property is permanent—the context relevant to our determination is readily apparent on the face of the complaint because the construction work performed by 24 Restore was permanent. See *Siewert*, 793

N.W.2d at 287. This factor is satisfied and supports identifying the work as an improvement to real property.

As to the second factor—whether the work performed by 24 Restore enhanced the capital value of the property—we cannot discern from the complaint what the home’s value was before or after it was restored. *See id.* 24 Restore argues that the work increased the capital value of the home because the complaint alleges that the work included “restoring and refinishing the Property to *like-new* condition.” (Emphasis added.) We are not persuaded. Because we must construe all inferences in favor of Haire-Cochran, we infer that a “like-new condition” is similar to the home’s condition before the fire. This factor does not support a determination that the work performed was an improvement to real property.

The third *Siewert* factor—whether the work was “designed to make the real property more useful or valuable,” rather than “restor[ing] the property’s previous usefulness or value”—also does not support a conclusion that the work alleged was an improvement to real property. *Id.* To begin our analysis of this factor, we address a dispute about the relevant point of comparison in assessing whether the property is more useful or valuable than it once was. 24 Restore argues that we should look to the home’s condition immediately before the construction work began. That is, we should consider the condition of the home in its damaged state after the fire. Through that lens, 24 Restore maintains that the project was designed to make the property more useful or valuable because it is more

useful or valuable than it was in its post-fire condition.³ We disagree with that framing. As Haire-Cochran argues, caselaw instructs that the relevant comparison in cases involving an event resulting in damage to real property is the condition of the property before the damaging event took place—here, the home’s condition before the fire.

The supreme court’s decision in *Moore* provides helpful guidance. There, a home heating system broke down and, upon inspection, it was determined that the boiler and other areas in the home were asbestos laden. *Moore*, 954 N.W.2d at 279. The question was whether the work performed to replace the boiler and abate the asbestos was “an improvement to real property.” *Id.* at 279-80. The supreme court assessed the property’s prior usefulness by looking to the property’s condition immediately *before* the heating system broke down—the damaging event—not to its condition *after* the break down. *Id.* at 286. The court concluded that, on those facts, the replacement was an improvement to real property under the third factor of the *Siewert* test, reasoning:

The new, asbestos-free heating system . . . was not designed to restore the home to the condition it was in before Moore’s boiler broke down; rather, the new heating system was designed to make the property more valuable by replacing a heating system that had been laden with asbestos since the home’s construction in 1922.

Id. at 286. Applying *Moore*, we understand that the third *Siewert* factor requires us to consider whether the work alleged was designed to restore the home to its condition before

³ The district court also appears to have focused its analysis on a comparison between the post-fire condition and the condition after 24 Restore performed work: “When [24 Restore] arrived at the home, it was considerably fire damaged. The work performed by [24 Restore] was intended to turn the home back into a habitable dwelling. The work constituted an improvement to real property[.]”

the fire occurred, just as the *Moore* court considered whether that project was designed to restore the heating system to the condition it was in before the boiler broke down. *Id.* We do not consider whether the work was designed to make the real property more useful or valuable than it was immediately after the fire.

With that understanding, we agree with Haire-Cochran that the complaint alleged that the work performed on her home was intended to restore the prior usefulness or value of her home, meaning it was designed to restore it to its condition before the fire occurred. The complaint characterizes the work as “removing charred materials and paint, removing all damaged fixtures, and restoring and refinishing the Property to like-new condition.” The contract, which was attached to the complaint and incorporated therein, described the scope of the work to include the following: “set air scrubbers, emergency services, emergency laundry, emergency mitigation [and] preventative winterization to help prevent home from freezing, board up [and] secure home, demo [and] reconstruct.” These allegations reflect that the work aimed to repair the damage throughout the home and restore the house to its prior state.

These circumstances are materially different from the work performed in the cases on which 24 Restore relies. For example, in *Taney v. Independent School District No. 624*, this court considered a remodeling project that brought a building into compliance with city code so that it could be a middle school. 673 N.W.2d 497, 500, 503-05 (Minn. App. 2004), *rev. denied* (Minn. Mar. 30, 2004). We concluded that the project, which included the installation of “panic bar” doors that led to the plaintiff’s injuries, was “an improvement to real property” because it enhanced the capital value of the school, involved expenditure

of labor and money to complete, and “was designed to make the property more useful and valuable by bringing it up to code.” *Id.* at 501, 504-05. Here, in contrast, the work alleged was not designed to change the nature of the property to make it more useful or valuable than it had been. It was designed to restore the property to its prior usefulness or value.

Our decision in *Williams v. Tweed*, 520 N.W.2d 515 (Minn. App. 1994), *rev. denied* (Minn. Oct. 27, 1994), offers another comparison point. There, we concluded that a project covering a hole over an abandoned septic tank was an improvement to real property. *Williams*, 520 N.W.2d at 518. The landowners abandoned the septic tank because they were required to connect the home to a community sewer system. *Id.* at 516, 518. We concluded that the work to cover the hole was an improvement to real property because it “increased the value of the property by making it appear the tank was filled in and, thus, properly abandoned.” *Id.* at 518. Much like the asbestos abatement in *Moore* and building-code updates in *Taney*, the covering of the septic tank was part of a project that was designed to change the character of an important aspect of the property and contributed to making the property more valuable or useful than it would have been had the landowners maintained the status quo. *See id.* (noting that “if the [landowners] had not ‘abandoned’ the tank as required by the city, it would have been a job left for the next owner, decreasing the property’s value”).

Other cases that identify improvements to real property are similarly distinguishable. *See Patton v. Yarrington*, 472 N.W.2d 157, 159-60 (Minn. App. 1991) (holding that the installation of smoke detectors in a building was an improvement to real property in part because they “placed the duplex in conformance with Minneapolis

requirements for rental property, thereby making the property more useful and valuable by enabling its owner to use or sell it as rental property”), *rev. denied* (Minn. Aug. 29, 1991); *Citizens Sec. Mut. Ins. Co. of Red Wing v. Gen. Elec. Corp.*, 394 N.W.2d 167, 168, 170 (Minn. App. 1986) (noting, in the context of an “extensive remodeling” project converting a warehouse to an office condominium space, that there was not “much dispute as to whether installation of the light fixtures and ballasts constituted an ‘improvement’ to real property”), *rev. denied* (Minn. Nov. 26, 1986).⁴

24 Restore maintains that the extensive scope of the construction work here is different from “ordinary repairs” that the supreme court says are not improvements to real property. *Moore*, 954 N.W.2d at 285. 24 Restore contrasts the allegations here with the repair work in *Hartford Fire Insurance Co. v. Westinghouse Electric Corp.*, 450 N.W.2d 183 (Minn. App. 1990), *rev. denied* (Minn. Mar. 22, 1990). In *Hartford*, a “damaging” event to a generator required replacement of a neoprene rubber seal connected with the generator’s blower fan. 450 N.W.2d at 185. The question was whether the “events surrounding the seal installation,” including the procurement of \$35 worth of neoprene rubber, milling of the rubber, and installing the seal, were an improvement to real property under section 541.051, subdivision 1(a). *Id.* at 185-86. We concluded that the work was not an improvement because it “constituted an ordinary repair merely restoring, not increasing, the value and utility of the generator.” *Id.*

⁴ We note that, even if aspects of the work alleged here resemble work that has been included in an improvement to real property in other circumstances, like the replacement of damaged fixtures, the supreme court has instructed that we consider “the project as a whole.” *Moore*, 954 N.W.2d at 283.

We are not persuaded that the facts in *Hartford* are materially different from this case for purposes of the third *Siewert* factor. 24 Restore asserts that the scope and cost of the work alleged here eclipses the repair at issue in *Hartford*, which illustrates that the work is different in kind from ordinary repair work and more like work constituting an improvement to real property. But even if the repair in *Hartford* was less extensive, the *intent* of that repair is similar to the intent of the construction work performed on Haire-Cochran's home. See *Siewert*, 793 N.W.2d 287 (considering whether the work was “intended to restore the property’s previous usefulness or value” (emphasis added)). The rubber seal in *Hartford* was designed to restore the generator to its condition before the damaging event. *Id.* It did not improve the usefulness or value of the generator. *Id.* Construing all inferences in favor of Haire-Cochran’s complaint, we cannot conclude that the construction work that 24 Restore performed was intended to do anything but return the property to its prior usefulness or value. On these allegations, the work was not designed to make the home more useful or valuable than it had been before the fire. *Siewert*, 793 N.W.2d at 287.

Considering the three *Siewert* factors, we conclude that the allegations in the complaint, construed in Haire-Cochran’s favor, do not support a conclusion that the construction work was an improvement to real property. Factor one is satisfied because the work resulted in permanent additions to the home. But factors two and three do not support characterizing the project as an improvement because there are no allegations that the construction work materially enhanced the home’s capital value from what it was before the fire, and the allegations support an inference that the construction work was designed

to “restore the property’s previous usefulness or value,” not designed to make the property “more useful or valuable.” *Id.* We therefore also conclude that dismissal was inappropriate under rule 12.02(e) because 24 Restore did not establish an affirmative defense that was un rebuttable based on the complaint allegations. *See Hoskin*, 25 N.W.3d at 409.

This is not to say that construction work performed on real property following a damaging event like a fire could never be “an improvement to real property” under Minnesota Statutes section 541.051, subdivision 1(a). A homeowner might design a project in a manner that is intended to change the nature or value of the property, in addition to restoring it to a livable condition. In that situation, an analysis of the *Siewert* factors may lead to a different conclusion. Accordingly, we hold that construction work performed on real property after a fire is not *necessarily* “an improvement to real property” within the meaning of Minnesota Statutes section 541.051, subdivision 1(a). At this stage in the proceedings, the work alleged here was not an improvement to real property.

Before concluding, we address several issues that may become relevant on remand. Given our conclusion that the statute of limitations in section 541.051, subdivision 1(a), does not support dismissal under Minnesota Rule of Civil Procedure 12.02(e) because the complaint does not allege claims that arise from “an improvement to real property,” we do not reach Haire-Cochran’s alternative argument that the claims do not arise out of a “defective and unsafe condition.” Minn. Stat. § 541.051, subd. 1(a). Haire-Cochran asserts that her complaint does not allege that the conditions underlying her claims were “unsafe,” which caselaw has interpreted to mean at “risk of bodily injury,” “insecure,” or “vulnerable to invasion.” *Griebel v. Andersen Corp.*, 489 N.W.2d 521, 523 (Minn. 1992). On remand,

if further facts develop that would support a determination that the construction work was an improvement to real property, the district court would need to consider whether the claims arise out of a “defective and unsafe condition” of the improvement to real property before deciding whether the two-year statute of limitations applies. Minn. Stat. § 541.051, subd. 1(a).

Haire-Cochran also alternatively asks that we reverse the district court’s decision to grant the motion to dismiss because 24 Restore failed to preserve its statute-of-limitations defense by not pleading the defense with specificity. And she maintains that section 541.051, subdivision 1(a), does not apply to her equitable claims. As with the defective-and-unsafe-condition issue, we decline to reach these arguments on appeal because of our conclusion that 24 Restore has not established at this stage in the proceedings that section 541.051, subdivision 1(a), applies. *See Sela Invs., Ltd. LLP v. J.H.*, 22 N.W.3d 181, 184 n.3 (Minn. App. 2025) (declining to reach appellant’s alternative arguments when reversing on other grounds), *rev. granted* (Minn. July 30, 2025).

DECISION

We hold that construction work performed on real property after a fire is not necessarily “an improvement to real property” within the meaning of Minnesota Statutes section 541.051, subdivision 1(a). Applying the *Siewert* factors here, only the first factor—that the work alleged resulted in a permanent addition to the home—supports construing the construction work as “an improvement to real property.” 793 N.W.2d at 287. The other two *Siewert* factors lead us to conclude that the work alleged was not an improvement under the statute because there is no indication that it improved the capital value of the

home, and the project, as alleged, was not designed to make the home “more useful or valuable” than it was before the fire. *Id.* Rather, the work alleged was “intended to restore the property’s previous usefulness.” *Id.* We therefore reverse the district court’s dismissal of Haire-Cochran’s complaint and remand for further proceedings not inconsistent with this opinion.

Reversed and remanded.