

IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FIFTH DISTRICT

NOT FINAL UNTIL TIME EXPIRES TO
FILE MOTION FOR REHEARING AND
DISPOSITION THEREOF IF FILED

PRECON CORPORATION,

Appellant,

v.

Case No. 5D20-165

ARCH INSURANCE COMPANY,
BRANDES DESIGN-BUILD, INC.,
KEVIN M. KLAUS, AND CAROL J. KLAUS,

Appellees.

Opinion filed February 26, 2021

Appeal from the Circuit Court
for Brevard County,
James H. Earp, Judge.

Jeffrey L. Price and Christopher W. Lewis,
of Niesen, Price, Worthy, Campo, P.A.,
Gainesville, for Appellant.

Christopher T. McRae and Megan M.
Warren, of McRae & Metcalf, P.A.,
Tallahassee, for Appellee, Arch Insurance
Company.

No Appearance for other Appellees.

WALLIS, J.

Appellant, Precon Corporation, appeals the Final Summary Judgment entered in favor of Appellee, Arch Insurance Company, after the trial court found that Appellant's

complaint was filed outside of the one year statute of limitations set forth in section 255.05(10), Florida Statutes (2017). We agree with Appellant that there are genuine issues of material fact regarding whether the complaint was filed within one year after the performance of the labor. See § 255.05(10), Fla. Stat. ("An action, except an action for recovery of retainage, must be instituted against the . . . surety on the payment bond or the payment provisions of a combined payment and performance bond within 1 year after the performance of the labor or completion of delivery of the materials or supplies."); see also § 255.05(2)(a)2., Fla. Stat. ("The time periods for service of a notice of nonpayment or for bringing an action against a contractor or a surety shall be measured from the last day of furnishing labor, services, or materials by the claimant and may not be measured by other standards, such as the issuance of a certificate of occupancy or the issuance of a certificate of substantial completion."). Therefore, we reverse and remand for further proceedings. See Dr. Rooter Supply & Serv. v. McVay, 226 So. 3d 1068, 1075–76 (Fla. 5th DCA 2017) (reversing entry of summary judgment where there were remaining issues of material fact).

REVERSED and REMANDED.

TRAVER and NARDELLA, JJ., concur.