STATE OF MINNESOTA

IN SUPREME COURT

A19-0668

Court of Appeals — Gildea, C.J.

John Moore,

Appellant,

vs.

Filed: February 3, 2021
Office of Appellate Courts

Robinson Environmental, et al.,

Respondents,

Century Surety,

Defendant.

Mahesha P. Subbaraman, Subbaraman PLLC, Minneapolis, Minnesota, for appellant.

Robert E. Kuderer, Thomas C. Brock, Madeline E. Davis, Erickson, Zierke, Kuderer & Madsen, P.A., Minneapolis, Minnesota, for respondents.

Mark R. Becker, Fabyanske, Westra, Hart & Thomson, P.A., Minneapolis, Minnesota; and

Jennifer A. Thompson, Thompson Tarasek Lee-O'Halloran PLLC, Edina, Minnesota, for amicus curiae Construction Law Section of the Minnesota State Bar Association.

S Y L L A B U S

Claims alleging damages arising from the replacement of a broken, asbestos-insulated boiler with a new, asbestos-free heating system are subject to the 2-year statute of limitations in Minn. Stat. § 541.051, subd. 1(a) (2016).

Affirmed.

O P I N I O N

GILDEA, Chief Justice.

The issue in this case is whether the 2-year statute of limitations in Minn. Stat. § 541.051, subd. 1(a) (2016), applies to claims arising from the replacement of a broken, asbestos-insulated boiler. Appellant John Moore hired respondent Robinson Environmental, Inc., to remove his broken, asbestos-insulated boiler and asbestos pipe insulation. Moore alleges that he witnessed Robinson's workers violate safety protocols resulting in contamination of his home. A report dated March 12, 2014, confirmed that substances tracked through Moore's home contained asbestos, but Moore did not sue Robinson until April 20, 2018. The district court dismissed Moore's complaint, concluding that the 2-year statute of limitations in Minn. Stat. § 541.051 barred Moore's claims. The court of appeals affirmed, and we granted Moore's petition for review. Because we hold that section 541.051 bars Moore's claims, we affirm.

FACTS

Moore's appeal comes to us from the district court's grant of Robinson's motion to dismiss under Minn. R. Civ. P. 12.02(e) for failure to state a claim on which relief may be granted. We accordingly "consider only the facts alleged in the complaint, accepting those facts as true." *Sipe v. STS Mfg., Inc.*, 834 N.W.2d 683, 686 (Minn. 2013) (citation omitted) (internal quotation marks omitted).

According to the complaint, Moore's asbestos-insulated boiler stopped working sometime before October 2013. In October, Centerpoint Energy "red tagged" the boiler, meaning that a licensed contractor needed to remove the boiler and abate the asbestos

around the boiler before it could be replaced. Moore thought it financially prudent to remove the remainder of his home's asbestos pipe insulation, original to the 1922 construction of his home, at this time as well. To that end, Moore hired Robinson for the abatement and removal work. He hired a separate contractor to install the new boiler.

On November 6, 2013, Robinson removed the boiler and pipe insulation. Robinson's workers set up several polyethylene sheets in Moore's basement to prevent asbestos from spreading during the removal work. Nonetheless, Moore observed debris strewn outside the containment sheets. Robinson's workers told him it was "just dirt." Moore also watched the workers carrying chunks of iron across his front lawn outside of any protective packaging. After Robinson's workers completed the job, they tore down the polyethylene sheets, causing asbestos debris to scatter on the floor of Moore's basement.

The heating contractor installed Moore's new heating system soon afterward. Because Robinson's workers failed to sufficiently scrub the pipes, the heating contractor unknowingly scraped asbestos onto the floor and then tracked that asbestos, along with the asbestos that Robinson's workers scattered by ripping down the polyethylene sheets, through the rest of Moore's home. An environmental report dated March 12, 2014, confirmed that the substance tracked through Moore's home was asbestos.[1]

[1] This 2014 date is not found in Moore's complaint; however, the district court determined that this date marked Moore's discovery of the injury because his complaint referenced the document in which the date was found. *See Martens v. Minn. Mining & Mfg. Co.*, 616 N.W.2d 732, 739 n.7 (Minn. 2000) (reviewing "the particular documents

Moore sued Robinson on April 20, 2018. Robinson moved to dismiss under Rule 12.02(e) of the Minnesota Rules of Civil Procedure, arguing that the 2-year statute of limitations in Minn. Stat. § 541.051, subd. 1(a) (2016), barred Moore's complaint.[2]

The district court granted Robinson's motion, holding that most of Moore's claims were barred by Minn. Stat. § 541.051.[3] The district court held that Robinson's work was "construction" under section 541.051, reasoning that it was not "merely demolition" because it was "integral to the installation of an updated boiler system." The district court further held that Robinson's work was an "improvement" to Moore's property by applying the test from *Siewert v. N. States Power Co.*, 793 N.W.2d 272, 287 (Minn. 2011).

Moore appealed, and the court of appeals affirmed using a similar analysis. *Moore v. Robinson Env't*, No. A19-0668, 2020 WL 413352, at *2 (Minn. App. Jan. 27, 2020). We granted Moore's petition for review.

ANALYSIS

The only issue in this case is whether the 2-year statute of limitations in Minn. Stat. § 541.051, subd 1(a) (2016), applies to Moore's claims. If the statute applies, Moore's complaint is time-barred, and we must affirm. If section 541.051 does not apply, then the

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and oral statements referenced in the complaint" on a Rule 12.02(e) motion). Moore does not challenge the district court's use of the 2014 date in this appeal.

[2] Minnesota Statutes § 541.051 was amended in 2018, but the amendment applied only to "causes of action accruing on or after" the date of enactment. Act of May 8, 2018, ch. 116, § 1, 2018 Minn. Laws 50, 50–51 (codified as amended at Minn. Stat. § 541.051 (2020)). Because Moore's cause of action accrued in 2014, the version in effect at that time applies.

[3] Moore does not challenge the dismissal of his other claims in this appeal.

6-year statute of limitations in Minn. Stat. § 541.05, subd. 1 (2020), applies and Moore's claims may proceed.

Moore argues that the district court and the court of appeals erred in concluding that the 2-year statute of limitations applies. The statute reads, in relevant part:

> 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 . . . 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 . . . more than two years after discovery of the injury . . . .

Minn. Stat. §541.051, subd. 1(a).[4]

Moore relies on three different parts of the statute to support his contention that the 2-year statute of limitations does not apply. He argues that the removal of his broken, asbestos-insulated boiler was not "an improvement to real property." *Id.* Moore also asserts that Robinson did not "perform[] . . . construction" of the improvement because Robinson's workers merely removed materials from his home. *Id.* Lastly, Moore contends that his damages did not arise out of a "defective and unsafe condition of an improvement" because his damages arose only out of the negligence of Robinson's workers. *Id.* Each of Moore's arguments involve questions of statutory interpretation that we review de novo. *State v. Thonesavanh*, 904 N.W.2d 432, 435 (Minn. 2017).

[4] For ease of reference, we refer to Minn. Stat. § 541.051, subd. 1(a) (2016), as "section 541.051."

I.

We turn first to Moore's argument that section 541.051 does not apply to his suit because Robinson did not "perform[] . . . construction" of an "improvement to real property." Minn. Stat. § 541.051, subd. 1(a). Moore separately disputes the meaning of both the phrases "person performing . . . construction" and "improvement to real property." *Id.* We do not, however, read statutory phrases in isolation. Rather, our task in statutory interpretation is to read the provisions in the context of section 541.051 as a whole. *See State v. Gaiovnik*, 794 N.W.2d 643, 647 (Minn. 2011) (stating that we must not "examine different provisions in isolation," but instead should read "[w]ords and sentences . . . in the light of their context" (citation omitted) (internal quotation marks omitted)). Accordingly, the question under the statute is whether Robinson performed construction of an improvement to Moore's property.

In answering that question, the parties dispute the relevant scope of work to be examined. Moore urges that we examine Robinson's removal and abatement work in isolation, while Robinson contends that we should analyze its work in light of the replacement project as a whole—including the relationship of Robinson's work to the installation of Moore's asbestos-free heating system.

Moore argues that section 541.051 does not apply because, under his view, Robinson's abatement and removal work was not, by itself, an improvement. Moore asserts that improvements must be additions to real property and notes that Robinson's work, which removed the old boiler and asbestos insulation, did not create an addition to his home. Moore further contends that "construction" categorically excludes demolition

work, citing *Brandt v. Hallwood Mgmt. Co.*, 560 N.W.2d 396, 399–400 (Minn. App. 1997), *rev. denied* (Minn. Jun. 11, 1997) (contrasting the definitions of "demolition" and "construction" to conclude that an electrical subcontractor did not perform "construction" by taking down lights, de-energizing electrical lines, and disconnecting light fixtures). He characterizes Robinson's abatement and removal work as demolition and, consequently, outside the scope of section 541.051.

Robinson responds that we should look at its work in light of the replacement project as a whole. In Robinson's view, Moore's new, asbestos-free heating system meets our definition of an improvement to real property, and all work integral to the construction of that improvement is covered under section 541.051.

To resolve these arguments, we interpret section 541.051. We interpret "statutory language to 'ascertain and effectuate' the Legislature's intent." *State v. Bowen*, 921 N.W.2d 763, 765 (Minn. 2019) (quoting Minn. Stat. § 645.16 (2020)). We begin by determining whether the statute, on its face, is ambiguous. *State v. Townsend*, 941 N.W.2d 108, 110 (Minn. 2020). A statute is ambiguous if it is subject to more than one reasonable interpretation. *Id.* If the Legislature's intent is clear from the plain and unambiguous language of the statute, we do not engage in any further construction. *Id.*

Our analysis begins by addressing whether section 541.051 is ambiguous as to the proper scope of work to be examined; namely, whether Robinson can be covered under section 541.051 only if its abatement and removal work was itself an improvement, or whether it is enough to say that Robinson's work was necessary to the installation of the new heating system. Because we conclude section 541.051 is ambiguous in this regard,

we then turn to the canons of statutory construction. Based on those canons, we conclude that section 541.051 requires our analysis to be tied to the project as a whole—including the installation of the new heating system—not merely Robinson's work in isolation. Finally, after concluding that we must look to the construction project as a whole, we consider whether the new heating system is an improvement to real property.

A.

We first address whether section 541.051 is ambiguous. Turning to the language of the statute, section 541.051 could be read to focus only on the work the defendant does, as advocated by Moore. The statute lists specific types of work that could be performed on a construction project, such as "design" work and "planning" work. By listing these specific tasks, it could reasonably be argued that the Legislature intended to focus on the individual acts of the defendant, rather than the project as a whole.

But the statute could also reasonably be read more inclusively to cover all persons whose work is necessary to the process of a construction project, as urged by Robinson. This is so because, in addition to listing specific types of work, the statute also generally applies to anyone performing "construction of the improvement."

Because section 541.051 is subject to two reasonable interpretations, we conclude that it is ambiguous as applied to the facts of this case. *See Lietz v. N. States Power Co.*, 718 N.W.2d 865, 870 (Minn. 2006) (concluding that section 541.051 was ambiguous as applied). We rely on canons of construction to construe ambiguous statutes. *See In re Welfare of J.B.*, 782 N.W.2d 535, 539 (Minn. 2010); Minn. Stat. § 645.16 (2020).

B.

Having determined that section 541.051 is ambiguous, we next consider the canons of statutory construction. Several tools of statutory construction lead us to conclude that the phrase "performing . . . construction of the improvement" means construction of the project as whole. Namely, we rely on relevant dictionary definitions, the Legislature's inclusion of all work categories involved in the process of a construction project, the relevant Legislative history, and the consequences of the parties' interpretations.[5]

The word "construction" is not defined in section 541.051. To interpret it, then, we may turn to dictionary definitions of the word. *See Townsend*, 941 N.W.2d at 110. At least

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[5] Both parties argue that we should rely on an additional canon of statutory interpretation: the related statutes canon. Moore points to Minn. Stat. § 514.01 (2020) (the "mechanic's lien statute"), to argue that the Legislature's inclusion of "removal" in that statute implies its intentional omission from section 541.051. Robinson, for its part, directs us to the definitions of "construction" used in Minn. Stat. § 16C.02, subd. 5b (2020), a statute codified under the title "state procurement," and in Minn. Stat. § 144A.071 (2020), a statute with a section heading "moratorium on certification of nursing home beds."

Under the related statutes canon, we may interpret ambiguous language by turning to statutes *in pari materia*. *State v. Lucas*, 589 N.W.2d 91, 94 (Minn. 1999). But for this canon to apply, the two statutes must share a "common purpose[] and subject matter." *Id.* It is true that the statutes cited by the parties generally embrace the subject matter of "construction," but because these statutes do not share a common purpose with section 541.051, we conclude that they are not *in pari materia*.

The purpose of the statute of limitations in section 541.051 is to limit liability exposure for contractors. *See Lietz*, 718 N.W.2d at 870. The mechanic's lien statute, on the other hand, protects the rights of contractors to get paid. *See Vill. Lofts at St. Anthony Falls Ass'n v. Hous. Partners III-Lofts, LLC*, 937 N.W.2d 430, 444 n.10 (Minn. 2020) ("[O]ur analysis for determining what constitutes an improvement under section 541.051 should have no bearing on our mechanic's lien case law."). Furthermore, the state procurement statute is found in a chapter of statutes that regulates the procedures, requirements, and rulemaking authority for procuring services on behalf of the state, *see generally* Minn. Stat. ch. 16C, and the nursing home statute limits the state's nursing home expenditures, *see* Minn. Stat. § 144A.071. Because these statutes are not *in pari materia* with section 541.051, we decline to address them in our interpretation of section 541.051.

three dictionaries define construction as including the "process" of building or construction. *See Webster's New International Dictionary* 572 (2d ed. 1937) (defining construction as the "[p]rocess or art of constructing"); *Merriam-Webster's Collegiate Dictionary* 248 (10th ed. 2001) (defining construction as "the process, art, or manner of constructing something"); *American Heritage Dictionary* 315 (2d college ed. 1982) (defining construction as "[t]he act or process of constructing"). "Process," in turn, is defined as "the action of moving forward progressively from one point to another *on the way to completion*." *Webster's Third New International Dictionary* 1808 (1961) (emphasis added).

The word "process," as defined, includes actions that move toward the completion of something. And when used together with the word "construction," the "process" of construction includes actions that are necessary to move a construction project toward completion. Using these definitions to interpret "construction of the improvement," then, the statute tells us to view a contractor's coverage under the statute in light of the entire process of the building project.

In urging us to focus just on Robinson's work, rather than on the entire project, Moore emphasizes the part of section 541.051 that explicitly lays out six work categories and argues that these six categories define what "construction" means. These categories are: "performing or furnishing the [1] design, [2] planning, [3] supervision, [4] materials, or [5] observation of construction or [6]construction of the improvement." Minn. Stat. § 541.051, subd. 1(a). Moore contends that Robinson's removal work does not fall within

these categories and that to the extent we conclude that the statute applies to Robinson's work, we would be re-writing the statute. We disagree.

Rather than limit the statute to just the six categories of work and to those who add something "tangible" to the project, as Moore argues, the Legislature has seen fit to expressly include all contractors involved in the process of a construction project. The statute covers contractors involved at the very beginning of the process, including those who design the improvement and plan the implementation of the improvement's construction. It also covers contractors who do not engage in the physical labor that one would normally associate with construction; it covers those who supervise and observe the construction project. And lastly, section 541.051 covers contractors who may not even set foot on the construction site at all by covering those who "furnish[] . . . materials" to be used in the project. The Legislature's decision to include these contractors suggests that the proper scope of our analysis should be tied to the project as a whole, not the isolated actions of an individual contractor.

The Legislature's amendments to section 541.051, most of which have expanded the statute to cover more contractors, not fewer, provide further support for the conclusion that the relevant framework for the analysis is the project as a whole, not merely the individual work of one contractor. Passed in 1965, section 541.051 originally covered only "person[s] performing or furnishing the design, planning, supervision, or observation of construction or construction of" an improvement. Act of May 21, 1965, ch. 564, § 1, 1965 Minn. Laws 803, 803. Notably, the first version of section 541.051 did not cover contractors who furnished materials to be used for the improvement. *Id.* It also did not

specify the types of actions barred. *Id.* Responding to two of our decisions in 1976 and 1977, the Legislature amended section 541.051 in 1980, broadening its scope to cover contractors who furnished materials and to apply to actions arising from "contract, tort, or otherwise." Act of Apr. 7, 1980, ch. 518, § 2, 1980 Minn. Laws 595, 596.[6] This legislative history, which reflects a legislative intent to broaden the scope of the statute, provides additional support for a statutory construction that focuses on the project as a whole. *See Lietz*, 718 N.W.2d at 870 (discussing legislative intent "to bar a broader range of claims").

Finally, we turn to the consequences of the parties' interpretations. *See* Minn. Stat. § 645.16(6) (2020). In examining the consequences of a particular interpretation, we presume that "the legislature does not intend a result that is absurd . . . or unreasonable." Minn. Stat. § 645.17(1) (2020). We may interpret the statute "in a sensible manner" to avoid such results. *See Minn. Mining & Mfg. Co. v. Nishika Ltd.*, 565 N.W.2d 16, 20 (Minn. 1997).

Moore's interpretation requires us to draw a distinction between contractors working on the same project. In Moore's view, a contractor needs to add something "tangible" to the property to be covered under section 541.051. Under Moore's interpretation, Robinson would be covered had it not merely removed the old boiler and

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[6] In 1976, we presumed that section 541.051 was a response to a recent development in the common law that eroded the privity of contract doctrine—a doctrine that had formerly shielded building contractors from third party liability. *Kittson Cnty. v. Wells, Denbrook & Assocs., Inc.*, 241 N.W.2d 799, 802 (Minn. 1976). And in 1977, we held in *Pacific Indemnity Co. v. Thompson-Yaeger, Inc.*, 260 N.W2d 548, 555 (Minn. 1977), that the omission from the statute of contractors who furnish materials to be used in an improvement violated the Constitution.

asbestos but had also installed the new heating system. In other words, if Moore had hired just one contractor to replace his heating system instead of two, that contractor would be covered. Moore's view, then, draws a distinction between contractors who perform subtractive work and those who perform additive work. As amicus curiae Construction Law Section of the Minnesota Bar Association points out, virtually every construction project involves both types of work. Applying different statutes of limitations to different contractors, on a project based on whether they add or subtract materials in the process of constructing an improvement, is arbitrary and inconsistent with the Legislature's intention to broaden the coverage of section 541.051.

A statutory construction that focuses on the project as a whole avoids these problems. *See Minn. Mining & Mfg. Co.*, 565 N.W.2d at 20 (we may interpret the statute "in a sensible manner"). By focusing on the project as a whole, the statute treats all contractors similarly.

Based on the language of the statute, dictionary definitions, legislative history, and the consequences of the competing interpretations, we conclude that we must analyze Robinson's abatement and removal work in the context of the heating system installation project as a whole. Here, Robinson's work was an essential part of the overall project, and its work was necessary to the process of installing the heating system. The heating system project could not be completed and the new boiler installed until the broken, asbestos-insulated boiler was removed, given that the broken boiler had been red-tagged. Because the new asbestos-free boiler could not be installed until Robinson removed the old boiler,

Robinson's work moved the project toward completion and was therefore construction on the new heating system.[7]

C.

With the proper framework in mind, we next evaluate Moore's argument that section 541.051 does not apply because the new heating system was not an improvement to his property. Moore asserts that it was simply a repair.

We have interpreted the phrase "improvement to real property" and applied a "common-sense" interpretation of the phrase. *See Pac. Indem. Co. v. Thompson-Yaeger, Inc.*, 260 N.W2d 548, 554 (Minn. 1977), *superseded by statute*, Act of Apr. 7, 1980, ch. 518, § 2, 1980 Minn. Laws 595, 596 (codified as amended at Minn. Stat. § 541.051 (2020)). In *Pacific Indemnity Co.*, we said that an "improvement to real property" is:

> 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.

Id. (citing *Kloster-Madsen, Inc. v. Tafi's Inc.*, 226 N.W.2d 603 (Minn. 1975)).

In *Siewert v. Northern States Power Co.*, we derived a three-factor test from the definition in *Pacific Indemnity Co.* to determine whether the work is an improvement to real property: "[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

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[7] In *Brandt*, the court of appeals contrasted dictionary definitions to conclude that the word "construction" as used in section 541.051 cannot include "demolition." 560 N.W.2d at 399–400. To the extent that the analysis in *Brandt* is inconsistent with this opinion, it is overruled.

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).[8]

Applying this test, we have recognized in several cases that utilities similar to Moore's new heating system are improvements. For example, in *Pacific Indemnity Co.*, we held that the installation of a furnace was, as a matter of law, an improvement to real property. 260 N.W.2d at 554. And in *Siewert*, we noted that "[u]tilities and similar installations [are] generally . . . considered real property improvements." 793 N.W.2d at 287 (holding that the installation of an electrical system was an improvement to real property). We have also held that replacing an existing utility with a more valuable utility was an improvement. *State Farm Fire & Cas. v. Aquila Inc.*, 718 N.W2d 879, 884 (Minn. 2006) (holding that the replacement of an "existing propane steel pipeline system" with "a new natural gas polyethylene pipeline system" was an improvement to real property). We reach the same conclusion here.[9]

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[8] For ease of reference, we refer to these factors as the "*Siewert* factors."

[9] In urging us to reach a different conclusion, Moore relies on *Lowry Hill Props., Inc. v. Ashbach Constr. Co.*, 194 N.W.2d 767, 775 (Minn. 1971) (explaining that pile driving and pavement removal is not covered by section 541.051). Moore argues that if the removal of pavement is not an improvement to real property, then neither can Robinson's removal of asbestos and a boiler be an improvement. *Lowry Hill*'s interpretation of section 541.051, however, is dicta. In that case, we noted two independent bases for rejecting the defendant's section 541.051 defense without having to interpret the statute. First, section 541.051 was not effective until 1965 and did not apply retroactively to plaintiff's claim, which accrued in 1964. *Id.* Second, the defendant failed to affirmatively plead the statute of limitations defense as required by Rule 8.03 of the Minnesota Rules of Civil Procedure. *Id.* Thus, because the defendant's section 541.051 defense failed as a matter of law, our interpretation of section 541.051 went "beyond the facts before the court and therefore are the individual views of the author of the opinion and not binding in

The first two *Siewert* factors are straightforwardly applied to this case. The new heating system is a permanent addition to Moore's home. And to satisfy the second factor, "no specific evidence" is required; we may find that the capital value of the property increased by using "common sense." *State Farm Fire & Cas.*, 718 N.W2d at 884. As a matter of common sense, the replacement of a home's broken, asbestos-insulated heating system with a new, asbestos-free heating system would increase its capital value, especially in Minnesota.

Moore disputes the third factor, arguing that the new heating system is not designed to make his home more useful or valuable but rather is intended to restore its previous usefulness or value. Essentially, Moore claims that what happened here was a repair and not an improvement. We are not persuaded.

Moore's complaint states that the asbestos insulating the heating system in his home, like the asbestos in many buildings, was original to the home's construction in 1922. The new, asbestos-free heating system therefore 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. Moreover, Moore's argument is inconsistent with our holding in *State Farm Fire & Casualty*, where we held that the replacement of a pipeline with a better, more valuable pipeline was an improvement to real property. 718 N.W2d at 884. Similarly, in this case, Moore's old heating system was

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subsequent cases." *State ex rel. Foster v. Naftalin*, 74 N.W.2d 249, 266 (Minn. 1956). Because the discussion in *Lowry Hill* is dicta, it is not helpful here.

replaced with a better, more valuable heating system. The third *Siewert* factor is therefore satisfied.

In sum, a new, asbestos-free, heating system satisfies our definition of an improvement to real property, and Robinson "perform[ed] . . . construction" of that improvement because its abatement and removal work was a necessary part of the process of installing the new heating system. We therefore hold that Robinson's work is covered by the 2-year statute of limitations under section 541.051.

II.

We next consider Moore's argument that section 541.051 does not apply because his damages arose out of the negligence of Robinson's workers, not out of a defective and unsafe condition of an improvement to real property. *See Brandt*, 560 N.W2d at 402 (holding that failure to de-energize electrical lines was not a "defective and unsafe condition"); *Wiita v. Potlatch Corp.*, 492 N.W.2d 270, 272 (Minn. App. 1992) (holding that section 541.051 did not apply when blocks fell from an unfinished wall onto construction workers).

Moore's argument is identical to the argument presented by the plaintiff in *Lietz*, who claimed that its "injuries arose out of 'negligent construction activities' rather than the defective and unsafe condition of" an improvement. 718 N.W2d at 871.

Lietz involved the construction of a fiber-optic communications system in St. Cloud. *Id.* at 868. During construction, contractors struck a gas line while installing a utility pole support anchor, causing an explosion which damaged a nearby restaurant. *Id.* In the subsequent suit against the contractors, the plaintiff argued that its damages arose out of

negligent construction activities rather than an unsafe condition of the anchor. *Id.* at 871. We explained that whether an injury arises out of a defective and unsafe condition "turns on the individual facts alleged in the complaint." *Id.* at 871–72 (quoting *Griebel v. Andersen Corp.*, 489 N.W.2d 521, 523 (Minn. 1992)). Turning to those facts, we then assessed "(1) whether the condition of the anchor was 'defective and unsafe,' and (2) whether [the plaintiff's] alleged injuries 'arose out of the condition' of the anchor." *Id.* at 871.

Because the anchor had been "bent out of alignment and had pierced a gas line," we concluded that the anchor was in a "defective and unsafe condition." *Id.* at 872. We further rejected the plaintiff's argument that its damages did not arise out of that condition. We noted that we had not yet "define[d] the exact parameters" of the "arising out of" language in section 541.051. *Id.* at 872. We declined to do so in *Lietz* because even under a proximate cause standard, we concluded that "the installation of the anchor in a manner which severed a gas line was an act that a person exercising reasonable care would anticipate was likely to result in injury to others, and the puncture of the gas line was a substantial factor in bringing about the resulting explosion and [the plaintiff's] alleged injuries." *Id.* at 872–73.

Notably, it made no difference to our analysis in *Lietz* that the defective and unsafe condition of the anchor was the result of the contractors' negligence. Indeed, we explained that we had previously held that the negligence of construction workers "can create a defective and unsafe condition." *Id.* at 872 (citing *Pac. Indem. Co.*, 260 N.W.2d at 552–55). As alleged in Moore's complaint, that scenario is exactly what happened here.

Moore's complaint essentially alleges that his new heating system was left in a defective and unsafe condition. His complaint states that Robinson's workers negligently failed to scrub his home's piping and negligently tore down polyethylene containment sheets, both of which led to asbestos scattering on Moore's basement floor. The heating contractor then stepped on that asbestos and tracked it through Moore's home.[10] In other words, Moore alleges that Robinson's negligence caused the new heating system, which was supposed to be asbestos-free, to be in a defective and unsafe condition by leaving asbestos on and around it. As in *Lietz*, it makes no difference to our analysis that the heating system's defective and unsafe condition was allegedly the result of the negligence of Robinson's workers. Negligence "can create a defective and unsafe condition," and that is exactly what Moore's complaint alleges. *Id.* at 872.

Ultimately, Moore alleges that his damages arose out of the defective and unsafe condition of the heating system because the heating contractor stepped in the asbestos and tracked it through his home. In short, Moore's damages arose out of the defective and unsafe condition of an improvement to real property, and the 2-year statute of limitations in Minn. Stat. § 541.051, subd. 1(a), applies to and bars his claims.

CONCLUSION

For the foregoing reasons, we affirm the decision of the court of appeals.

Affirmed.

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[10] Moore's complaint also alleges that Robinson's workers carried "chunks of cast iron" across his yard without any protective packaging.