

STATE OF MICHIGAN  
IN THE 17th CIRCUIT COURT FOR KENT COUNTY

RIVER HOUSE AT BRIDGEWATER PLACE  
CONDOMINIUM ASSOCIATION; and  
CONTINENTAL CASUALTY INSURANCE  
COMPANY,

Plaintiffs,

Case No. 14-03282-NZB

vs.

HON. CHRISTOPHER P. YATES

BRIDGEWATER CONDOS, L.C.;  
WOLVERINE CONSTRUCTION  
MANAGEMENT, INC.; GODWIN  
PLUMBING, INC.; CHARLOTTE PIPE  
& FOUNDRY CO.; K.L. MCCOY AND  
ASSOCIATES, INC.; TRAVELERS  
INDEMNITY COMPANY OF  
CONNECTICUT; and THE TRAVELERS  
COMPANIES, INC.,

Defendants.

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OPINION AND ORDER DENYING DEFENDANT CHARLOTTE PIPE'S  
MOTION FOR SUMMARY DISPOSITION PURSUANT TO MCR 2.116(C)(7)

In 2012 and 2013, the River House Condominiums sustained substantial water damage that the plaintiffs attribute to the failure of six-by-four inch reducer couplings in the building's plumbing system. One target of the plaintiffs' lawsuits, Defendant Charlotte Pipe & Foundry Co. ("Charlotte Pipe"), has moved for summary disposition under MCR 2.116(C)(7), asserting that all of the claims against it are barred by the economic-loss doctrine and the applicable statutes of limitations. Based upon a careful review of the record, the Court concludes that neither the economic-loss doctrine nor the governing three-year statute of limitations set forth in MCL 600.5805(13) prevents the plaintiffs from pursuing their products-liability claims against Charlotte Pipe.

## I. Factual Background

Defendant Charlotte Pipe has based its summary-disposition motion upon MCR 2.116(C)(7), which requires the Court to accept as true the “contents of the complaint . . . unless contradicted by documentation submitted by the movant.” See Maiden v Rozwood, 461 Mich 109, 119 (1999). To be sure, “a movant under MCR 2.116(C)(7) is not required to file supportive material,” id., but the movant “may support a motion under MCR 2.116(C)(7) by affidavits, depositions, admissions, or other documentary evidence.” Id. Accordingly, the plaintiffs’ complaints provide the foundation for the Court’s analysis unless its allegations run counter to the evidence presented by Charlotte Pipe at this early stage of the proceedings.

In 2007 and 2008, Defendant Bridgewater Condos, L.C. developed and Defendant Wolverine Construction Management, Inc. built the River House Condominiums. See River House’s First Amended Complaint, ¶ 13. The plumbing work on the project was performed by Defendant Godwin Plumbing, Inc. (“Godwin”), id., which installed a water-supply system including CPVC piping and fittings manufactured by Defendant Charlotte Pipe. Id., ¶ 18. Godwin incorporated CPVC piping fittings and couplings, including CPVC reducer couplings that connected a six-inch CPVC pipe on one end with a four-inch CPVC pipe on the other end. See id., ¶ 21. On April 13, 2012, and again on June 2, 2013, a reducer coupling manufactured by Charlotte Pipe ruptured, causing widespread flooding that began on the fifth floor of the River House Condominiums. See id., ¶¶ 31, 42. In time, the condominium association, individual condominium owners, and condominium insurers filed suit, pleading, *inter alia*, products-liability claims against Charlotte Pipe, which responded with a motion for summary disposition pursuant to MCR 2.116(C)(7). Specifically, Charlotte Pipe contends that the economic-loss doctrine and the governing statutes of limitations foreclose those products-liability claims.

## II. Legal Analysis

In moving for summary disposition, Defendant Charlotte Pipe has chosen to rely upon MCR 2.116(C)(7). When reviewing a motion under MCR 2.116(C)(7), the Court “must consider not only the pleadings, but also any affidavits, depositions, admissions or other documentary evidence filed or submitted by the parties.” RDM Holdings, Ltd v Continental Plastics Co, 281 Mich App 678, 687 (2008). If the Court finds no factual dispute, whether a “claim is barred under a principle set forth in MCR 2.116(C)(7) is a question of law for the court to decide.” See id. “If a factual dispute exists, however, summary disposition is not appropriate.” Id. Applying these standards, the Court must consider whether Charlotte Pipe is entitled to summary disposition based upon either the economic-loss doctrine or the applicable statutes of limitations.

### A. Economic-Loss Doctrine.

In simple terms, the economic-loss doctrine is “a judicially created limitation on tort actions that seek to recover economic damages resulting from commercial transactions.” Quest Diagnostics, Inc v MCI WorldCom, Inc, 254 Mich App 372, 376 (2002). The doctrine, which traces its roots to the Uniform Commercial Code, id., serves as ““a crude proxy for the dividing line between what is tort and what is not.”” Id. The economic-loss “doctrine’s basic premise is that economic losses that relate to commercial transactions are not recoverable in tort.” Id. Consequently, “the economic loss doctrine in Michigan has been applied in the context of various transactions for goods or products to bar recovery in tort when damages are recoverable under the Uniform Commercial Code.” Id. at 377-378. Beyond that, our Court of Appeals has not required strict privity of contract between the plaintiff and the defendant in order to invoke the economic-loss doctrine. See Sullivan Industries, Inc v Double Seal Glass Co, Inc, 192 Mich App 333, 341-344 (1991). Thus, our Court of Appeals

has applied the economic-loss doctrine “in a case where privity was not present, but a contract for goods existed, which governed the underlying transaction.” See Quest Diagnostics, 254 Mich App at 385 n10 (2002).

But the decision by our Court of Appeals to unmoor the economic-loss doctrine from privity of contract does not mean that the doctrine applies boundlessly. For example, Michigan courts have only applied the doctrine if “the parties to the litigation were involved, either directly or indirectly, in a transaction for goods.” Quest Diagnostics, 254 Mich App at 379. In addition, the doctrine “does not apply when a plaintiff could not have anticipated a safety hazard involved in a product through bargaining or negotiation at the time of the transaction or purchase.” Id. As a result, the economic-loss doctrine applies only “where: (1) the parties or others closely related to them had the opportunity to negotiate the terms of the sale of the good or product causing the injury, and (2) their economic expectations can be satisfied by contractual remedies.” Id. at 380. Here, Defendant Charlotte Pipe’s request for summary disposition founders upon these clear mandates.

The products-liability claims against Defendant Charlotte Pipe brought by the condominium owners and their insurers manifestly do not fall prey to the economic-loss doctrine. Neither any of the condominium owners nor their insurers had any involvement in the negotiations that resulted in Godwin’s installation of Charlotte Pipe products, so those plaintiffs had no “opportunity to negotiate the terms of the sale of the good or product causing the injury[.]” See Quest Diagnostics, 254 Mich App at 380. Similarly, the record contains no evidence to suggest that the condominium association had such an opportunity. Instead, the record indicates that Godwin – perhaps after consultation with the developer and the builder – purchased and installed products from Charlotte Pipe that allegedly failed, and thereby caused catastrophic damage. For that reason alone, Charlotte Pipe’s reliance on the economic-loss doctrine seems entirely misplaced.

In addition, the various plaintiffs' economic expectations manifestly cannot "be satisfied by contractual remedies." See Quest Diagnostics, 254 Mich App 380. All of the plaintiffs who bought and lived in condominium units had no idea that their entire investment in their residences could be put at risk by repeated flooding resulting from defective Charlotte Pipe products hidden in the walls that housed the plumbing system. To limit the plaintiffs strictly to contractual remedies under these circumstances would not only swallow up decades of settled products-liability law, but also confine the thoroughly blameless plaintiffs to wholly inadequate remedies. Indeed, because those plaintiffs might not even have any viable claims to assert under the Uniform Commercial Code in light of their attenuated relationship to Charlotte Pipe, application of the economic-loss doctrine could very well entirely deprive the plaintiffs of a remedy for damages they had no role in causing. In sum, Charlotte Pipe cannot invoke the economic-loss doctrine to defeat the plaintiffs' products-liability claims, so the Court must deny summary disposition to Charlotte Pipe insofar as Charlotte Pipe relies upon the economic-loss doctrine to support its motion.

B. Statutes of Limitations.

Michigan law includes a three-year statute of limitations for products-liability claims. See MCL 600.5805(13). Godwin installed the products manufactured by Defendant Charlotte Pipe more than three years before the plaintiffs filed their products-liability claims, but the plaintiffs suffered their damages due to flooding in 2012 and 2013 – well within three years of the dates on which they filed suit. Therefore, Charlotte Pipe's right to summary disposition based upon the governing statute of limitations depends entirely upon when the plaintiffs' products-liability claims accrued pursuant to Michigan law. Accordingly, the Court must apply the accrual standards prescribed by Michigan statutory law and binding precedent.

“Except as otherwise expressly provided, the period of limitations runs from the time the claim accrues.” Trentadue v Buckler Automatic Lawn Sprinkler Co, 479 Mich 378, 388 (2007). Because products-liability claims sound in tort, Tate v City of Grand Rapids, 256 Mich App 656, 660 (2003); see also Prentis v Yale Manufacturing Co, 421 Mich 670, 681-682 (1984), the Court should employ the accrual principles applicable to tort claims. Such a claim accrues “at the time the wrong upon which the claim is based was done,” which is “when the plaintiff is harmed rather than when the defendant acted.” Trentadue, 479 Mich at 388. The plaintiffs suffered harm when the products manufactured by Defendant Charlotte Pipe failed, rather than when Godwin installed the products in the River House Condominiums. Therefore, the Court finds that the plaintiffs filed their products-liability claims within the statute of limitations because they initiated suit less than three years after they were harmed in 2012 and 2013 as a result of the product failures and the resulting flooding of the River House Condominiums. Thus, the Court must deny Charlotte Pipe’s request for summary disposition based upon the statute of limitations applicable to products-liability claims.

### III. Conclusion

For all of the reasons stated in this opinion, the Court must deny Defendant Charlotte Pipe’s motion for summary disposition under MCR 2.116(C)(7). Neither the economic-loss doctrine nor the governing three-year statute of limitations precludes the plaintiffs from pursuing their products-liability claims against Charlotte Pipe.

IT IS SO ORDERED.

Dated: December 12, 2014

  
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HON. CHRISTOPHER P. YATES (P41017)  
Kent County Circuit Court Judge