

STATE OF MICHIGAN
COURT OF APPEALS

CITY OF LITCHFIELD,

UNPUBLISHED

Plaintiff- Appellant,

v

No. 189823

Hillsdale Circuit Court

LC No. 92-22554 CK

UNION CONSTRUCTION COMPANY and ,
ALAN E. RINGENBERG d/b/a RINGENBERG
ENGINEERING,

Defendants- Appellees.

Before: O’Connell, P.J., and Smolenski and T.G. Power*, JJ.

O’CONNELL, P.J. (concurring in part and dissenting in part).

I concur with the majority’s conclusion that MCL 600.5839(1); MSA 27A.5839(1), does not apply to the present action.

I also agree with the majority that the statute of limitations governing contract actions, MCL 600.5807(8); MSA 27A.5807(8), applies to the present dispute.

However, assuming that the fraudulent concealment statute, MCL 600.5855; MSA 27A.5855, applies, I do not believe that plaintiff has alleged facts that, even if proven, would constitute fraudulent concealment. As summarized by the majority, plaintiff alleged only that defendants “fail[ed] to disclose the [alleged] breaches to plaintiff,” “falsely represent[ed] that Simpson Drive was constructed to specification,” and “cover[ed] the roadbed . . . with what appeared to be a proper . . . surface.” Quite simply, there is no difference between these allegations and the allegation that the contract was breached. To consider these allegations, if proven, to constitute fraudulent concealment would be tantamount to holding that in virtually every situation in which a party delivers a product to another that does not meet specifications, it has engaged in fraudulent concealment. To so read the fraudulent concealment statute would vitiate the statute of limitations in contract actions almost entirely.

* Circuit judge, sitting on the Court of Appeals by assignment.

I would affirm.

/s/ Peter D. O'Connell