

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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RICHARD M. DAY, JOE R. DAY and AUSTIN  
TUBE PRODUCTS, INC.,

UNPUBLISHED  
May 26, 1998

Plaintiffs-Appellants,

v

No. 202503  
Mecosta Circuit Court  
LC No. 95-011029 NM

ROBERT D. STANTON and WALZ, JORDAN &  
STANTON, P.C., also known as WALZ STANTON  
& VIEL,

Defendants-Appellees.

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Before: Holbrook, Jr., P.J., and White and J.W. Fitzgerald,\* JJ.

MEMORANDUM.

Plaintiffs appeal by right from an order granting summary disposition in favor of defendants pursuant to MCR 2.116(C)(7), based on a determination that the statute of limitations had run on plaintiffs' legal malpractice claim. We affirm.

Plaintiffs argue that their claim was timely under the six-month discovery rule for malpractice actions, MCL 600.5805; MSA 27A.5805, MCL 600.5838; MSA 27A.5838, because they filed their complaint within six months of when they identified the probable source of continuing contamination at their site. We find no merit to this argument.

The Michigan Supreme Court has adopted the "possible cause of action" standard for determining when the discovery period begins to run. *Solowy v Oakwood Hospital Corp*, 454 Mich 214, 232; 561 NW2d 843 (1997). Here, plaintiffs assert that defendants, who had assisted them in purchasing the subject property, committed legal malpractice in not seeking an environmental audit of the property before the purchase was completed. Plaintiffs' complaint alleged that "had an environmental audit or investigation been conducted prior to Plaintiffs' [sic] acquiring the site in 1984, the existence of contamination would have been discovered, and the purchase either would not have taken place or would have taken place on vastly different terms." Thus, to prevail on their claim,

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\* Former Supreme Court justice, sitting on the Court of Appeals by assignment.

plaintiffs needed only to identify a *pre-purchase* source of contamination; they did not need to identify who or what was the source of the contaminant. The documentary evidence submitted to the trial court indicates that plaintiffs were on notice as early as July 1990 of the possibility that there were other sources of contamination, and were informed in May 1993 that “spillage during previous ownership” was one of the possibilities that could account for the continued problem. Accordingly, plaintiffs’ complaint, which was not filed until July 1995, was time-barred.

Finally, contrary to plaintiffs’ argument, the trial court did not make a finding on a disputed factual issue. The trial court properly concluded as a matter of law that plaintiffs had not filed their complaint within six months of discovering, with reasonable diligence, the existence of a possible cause of action against defendants. Accordingly, summary disposition was properly granted pursuant to MCR 2.116(C)(7).

Affirmed.

/s/ Donald E. Holbrook, Jr.

/s/ Helene N. White

/s/ John W. Fitzgerald