

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

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GOLD & MAIZE DEVELOPMENT  
CORPORATION, d/b/a/ CURTIS TRAILER  
CENTER, MICHAEL J. MARIETTI and MARY E.  
MARIETTI,

UNPUBLISHED  
April 6, 1999

Plaintiffs-Appellants,

v

DRAKE, WATTERS, BRIEGER, P.C., f/k/a  
DRAKE, WATTERS & COMPANY, MARVIN  
DRAKE, and GIL VANDERLIP, JR.,

No. 206926  
Kalamazoo Circuit Court  
LC No. 96-001025 CK

Defendants-Appellees.

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Before: Holbrook, Jr., P.J., and Murphy and Talbot, JJ.

PER CURIAM.

Plaintiffs appeal as of right an order granting defendants' motion for summary disposition pursuant to MCR 2.116(C)(7) on the ground that plaintiffs' claims were barred by the statute of limitations. Plaintiffs also appeal as of right the order denying the motion for reconsideration. We affirm.

In July 1988, plaintiff Gold & Maize Development Corporation (Gold & Maize) agreed to purchase certain assets of Curtis Trailer Center (CTC), a motor home, RV, and trailer business. Before the purchase, plaintiff Michael Marietti, a principle shareholder of Gold & Maize, reviewed CTC's 1986 and 1987 year-end financial statements and also met with defendant Gil Vanderlip, an accountant with defendant Drake, Watters & Brieger. Vanderlip attested to the accuracy of the financial statements. These financial statements showed a net income of \$34,101 for 1986 and \$44,570 for 1987. After the sale was completed, plaintiff Marietti noticed a significant discrepancy between the financial statements that he reviewed before the sale and a later financial statements that showed operating losses. Plaintiffs initiated this cause of action against defendants on March 26, 1996, claiming negligent misrepresentation and fraud arising out of plaintiffs' reliance on the 1986 and 1987 financial statements in purchasing CTC.

Plaintiffs first argue that the lower court erred in granting summary disposition in favor of defendants because it applied the incorrect standard governing claim accrual when it determined that the claims in the complaint were barred by the statute of limitations. We disagree. In actions for fraud or misrepresentation the applicable limitations period is six years, MCL 600.5813; MSA 27A.5813. *Blue Cross & Blue Shield of Michigan v Folkema*, 174 Mich App 476, 481; 436 NW2d 670 (1988). Therefore, to be timely, the fraud and negligent misrepresentation claims must have accrued no earlier than March 26, 1990, six years before the date on which plaintiffs filed their complaint.

Appellate review of a motion for summary disposition is de novo. *Spiek v Dep't of Transportation*, 456 Mich 331, 337; 572 NW2d 201 (1998). A grant of summary disposition pursuant to MCR 2.116(C)(7) is proper when a claim is barred by the applicable statute of limitations. *Home Ins Co v Detroit Fire Extinguisher Co, Inc*, 212 Mich App 522, 527-528; 538 NW2d 424 (1995). A motion under MCR 2.116(C)(7) may be supported by affidavits, admissions, or other documentary evidence. This Court must take all well-pleaded allegations and the factual support submitted as true. The question of whether the claim is statutorily barred is a question of law for the court, if there are no facts in dispute. *Pendzsu v Beazer East, Inc*, 219 Mich App 405, 408; 557 NW2d 127 (1996).

MCL 600.5827; MSA 27A.5827 provides that the period of limitations runs from the time the claim accrues, which occurs at the time the wrong that the claim is based upon was done, regardless of the time when the damage results. However, under the discovery rule, a claim accrues “when [a plaintiff] discovers, or through the exercise of reasonable diligence, should have discovered that he has a possible cause of action.” *Moll v Abbott Laboratories*, 444 Mich 1, 20; 506 NW2d 816 (1993). The discovery rule has been adopted in negligent misrepresentation cases. *Id.* at 13, citing *Williams v Polgar*, 391 Mich 6, 25; 215 NW2d 149 (1974). Accordingly, the question before us is whether the lower court erred in concluding that plaintiff discovered, or through the exercise of reasonable diligence, should have discovered that he had a possible cause of action against defendants sometime before March 26, 1990. Our review of the record reveals that the lower court applied the correct standard for determining whether plaintiffs claims were barred by the applicable statute of limitations.

However, plaintiffs also contend that the lower court erred in ultimately determining that plaintiffs claims were barred by the limitations period. Again, we disagree. In deposition, plaintiff Marietti admitted that the 1988 financial statement presented a huge discrepancy and that CTC continued to suffer losses, despite the indications of profitable performance in the 1987 and 1988 financial statements. However, it was not until 1992 that Marietti hired counsel to investigate these discrepancies, and not until 1996 that plaintiff filed this complaint against defendants. Further, plaintiffs did not inquire of defendants or any other accounting professional about the discrepancy until 1992. Based upon our review the evidence in this case, we agree with the lower court that plaintiffs should have discovered that they had a possible cause of action against defendants before March 26, 1990. Therefore, the lower court did not err in granting summary disposition in favor of defendants.

Plaintiffs finally argue that the lower court erred in failing to grant plaintiffs’ motion for rehearing or reconsideration. We disagree. A grant or denial of a motion for rehearing or reconsideration is

reviewed for an abuse of discretion. *Michigan Nat'l Bank v Mudgett*, 178 Mich App 677, 681; 444 NW2d 534 (1989).

Plaintiffs first contend that the lower court failed to recognize the affidavit of plaintiff Michael Marietti submitted in support of its motion for rehearing. In the affidavit, plaintiff Marietti averred that notes written on the 1988 financial statement provided an apparent explanation for the discrepancy between that statement and those that he relied upon in purchasing CTC, thus explaining why Marietti would not have reasonably suspected fraud or negligent misrepresentation at that time. However, plaintiffs received a later financial statement for the period ending December 1988, which showed an additional loss, and which provided no explanation for the discrepancy. Therefore, on this record, we cannot say that the lower court abused its discretion in denying plaintiffs' motion for rehearing on the basis of the affidavit, where a later financial statement should have put plaintiffs on notice of the possibility of a cause of action against defendants.

Plaintiffs also contend that the lower court refused to recognize the errors in applying the wrong accrual standard and in finding that plaintiffs knew or should have known of the possibility of a cause of action against defendants before March 26, 1990. However, as discussed above, our review of the record reveals that the lower court did not apply the wrong accrual standards, nor did the court err in ultimately dismissing plaintiffs' complaint.

Affirmed.

/s/ Donald E. Holbrook, Jr.  
/s/ William B. Murphy  
/s/ Michael J. Talbot