

STATE OF MICHIGAN
COURT OF APPEALS

THE TAYLOR GROUP, AN INDIANA GENERALA
PARTNERSHIP, CHARLES R. NEWMAN, STEPHEN
R. NEWMAN, MARILYN DODDS, CHRISTINE
NEWMAN AUMILLER, IRMA NEWMAN, KEITH
DEMPSEY, CAROLYN M. DEMPSEY, ROLAND J.
W. LINDER, ESTATE OF RUTH DEMPSEY,
DECEASED, NARLYN D. (DEMPSEY) VINYARD,
BASIL DEMPSEY, BRYNA M. DYE, WINIFRED Y.
BLOSSOM, RAY BULLOCK, KRIS A. BULLOCK,
JEANNE L. BULLOCK, JACK L. WHITE, WILLIAM
J. WHITE, CAROL JANEHARSHMAN, DEE ANN
PETERSON, KEN A. STOOPS, SHERYL L. WHITE,
ROBERT L. & BETTY J. STOOPS CHARITABLE
REMAINDER UNITRUST, CHRISTINE M.
(NEIDECK) WEISS, STEVEN P. NEIDECK,
ROBERT R. NEIDECK, JR., MARGARET C.
NEIDECK, ROBERT R. NEIDECK, LAWRENCE N.
& MARIE E. WILLIAMSON, ESTATE OF VIRGIL
BURKHOLDER, DECEASED, ALISON M.
BURKHOLDER, CAROLYN ROSE BURKHOLDER,
JOLEEN M. (BURKHOLDER) HURT, TIM
BURKHOLDER, ESTATE OF JOHN AYERS,
DECEASED, JOHN S. BURD & PATRICIA A. BURD,
JIM MATHIS, PAUL NUSSBAUM, KURT EVAN
BULLOCK, ELMER NUSSBAUM, JEFFREY
DEMPSEY, ERICA L. (DYE) DYESON, HAROLD
AND ELLEN SNYDER, JAMES A. SYNDER,
MARIAN S. (SYNDER) WILLEY, THE HAROLD &
ELLEN SYNDER CHARITABLE REMAINDER
UNITRUST (TRUSTEE-SPRING ARBOR COLLEGE);
THE HAROLD & ELLEN SYNDER CHARITABLE
REMAINDER UNITRUST (TRUSTEE-FREE
METHODIST FOUNDATION), RUTH E. WHITE,
CLARENCE A. SYNDER, and ARTHUR H. SYNDER,

UNPUBLISHED
July 13, 1999

Plaintiffs-Appellants,

v

ANR STORAGE COMPANY,

Defendant-Appellee.

No. 206534

Kalkaska Circuit Court

LC No. 96-004776 NZ

Before: Murphy, P.J., and Doctoroff and Neff, JJ.

PER CURIAM.

Plaintiffs appeal as of right from the trial court's decision to grant summary disposition in favor of defendant. We affirm.

The trial court granted summary disposition in favor of defendant on several alternative grounds; however, because the trial court correctly decided that plaintiffs' complaint was barred by the applicable statute of limitations, our review of plaintiffs' other issues is unnecessary.

In March 1983, plaintiffs, a group of individuals associated with Taylor University in Indiana, were contacted by defendant regarding the purchase of plaintiffs' mineral rights. Defendant is engaged in the business of storing natural gas. Defendant informed plaintiffs that it was interested in purchasing each plaintiff's pro-rata share of mineral rights in Blue Lake 18A Field, a tract of land in Kalkaska County, for the purpose of developing a natural gas storage facility. At that time, Amoco Production Company was operating Blue Lake 18A Field, and plaintiffs were receiving royalties from Amoco in exchange for drilling rights. The field was producing both natural gas and natural gas condensate, a valuable liquefied form of natural gas.

Following negotiations, plaintiffs agreed to sell their mineral rights to defendant for a price calculated by using defendant's estimate of the remaining value of those rights. Specifically, in exchange for the mineral rights, defendant agreed to pay plaintiffs a sum based on the remaining gas in the field as of June 1, 1983. In the early 1990s, plaintiffs came to believe that they had been defrauded by defendant with respect to defendant's representation regarding the volume of natural gas condensate remaining in Blue Lake 18A Field in June 1, 1983. On January 14, 1993, plaintiffs filed this suit, alleging that defendant had been "either intentionally false and incorrect, or negligently false and incorrect" in representing the volume of natural gas condensate remaining in the ground in June 1983. In its answer to plaintiffs' complaint, defendant offered the affirmative defense that each plaintiff had accepted a cash payment in exchange for the execution of a release of all obligations arising out of the representation made by defendant in connection with the sale. Defendant later moved for summary disposition on the basis of the release. The lower court granted the motion, and this Court affirmed the decision of the lower court in *Taylor Group et al v ANR Storage Co*, unpublished opinion per curiam of this Court, issued March 27, 1995 (Docket No. 173259). Our Supreme Court, however, reversed this Court's decision in *Taylor Group v ANR Storage Co*, 452 Mich 561; 550 NW2d 258 (1996),

and remanded the case to the trial court for further proceedings. On remand, the trial court again dismissed plaintiffs' case. Plaintiffs now appeal from that dismissal.

Plaintiffs argue that the trial court erred in dismissing their case on statute of limitations grounds because there were genuine issues of material fact with regard to whether they knew or should have known that they had a cause of action for common law fraud against defendant six years before they filed their complaint.

The parties agree that the applicable statute of limitations for claims of common law fraud or misrepresentation is MCL 600.5813; MSA 27A.5813, which provides that "[a]ll other personal actions shall be commenced within the period of six years after the claims accrue and not afterwards unless a different period is stated in the statutes." If the common-law discovery rule applies, a claim accrues, for limitation period purposes, when the plaintiff discovers, or through the exercise of reasonable diligence should have discovered (1) an injury and (2) the causal connection between the injury and the defendant's breach of duty. *Lemmerman v Fealk*, 449 Mich 56, 66; 534 NW2d 695 (1995). Plaintiffs filed their complaint in this case on January 14, 1993. Therefore, assuming without deciding that the discovery rule applies to plaintiffs' cause of action, if plaintiffs discovered or through the exercise of reasonable diligence should have discovered that they had a cause of action against defendant for fraud sometime before January 14, 1987, the cause of action is time-barred.

This Court reviews a trial court's grant or denial of a motion for summary disposition pursuant to MCR 2.116(C)(7) de novo to determine whether the moving party was entitled to judgment as a matter of law. *Huron Tool & Engineering Co v Precision Consulting Services, Inc*, 209 Mich App 365, 376-377; 532 NW2d 541 (1995). This Court must accept as true the plaintiff's well-pleaded allegations, construing them in plaintiff's favor. *Id.* After examining the pleadings, affidavits, or other documentary evidence, if there are no genuine issues of material fact, whether the plaintiff's claim is barred by the statute of limitations is a question of law for the court. *Id.* However, if a material factual dispute exists, such that further factual development could provide a basis for recovery, summary disposition is inappropriate. *Id.*

After examining the record in this case, we agree with the trial court that plaintiffs, through the exercise of reasonable diligence, should have discovered that they had a cause of action against defendant for fraud sometime before January 14, 1987, and thus the trial court did not err in dismissing plaintiffs' complaint pursuant to MCR 2.116(C)(7). The record in this case reveals that in June 1983, defendant extended an offer to purchase plaintiffs' mineral rights in Blue Lake 18A Field. As part of this offer, defendant specifically represented to plaintiffs that, as of June 1, 1983, Blue Lake 18A Field contained 45,170 barrels of remaining natural gas condensate, which was later adjusted to 51,816 barrels pursuant to the terms of the contract.

Plaintiffs contend that in late 1991, a friend of a partner of the Taylor Group advised the group that he had information that defendant had significantly understated the amount of natural gas condensate remaining in Blue Lake 18A Field. In response to this information, and at the suggestion of counsel, plaintiffs retained an expert to evaluate the volume of natural gas condensate, as well as the volume of secondary gas condensate subject to future recovery, that was remaining in the field on June 1, 1983.

Gary Way, an expert engaged in petroleum engineering, estimated that the natural gas condensate remaining in the ground and subject to recovery as of June 1, 1983, was not 51,816 barrels as represented by defendant, but significantly greater.

In moving for summary disposition, defendant contended that plaintiffs' experience in the oil and gas business should have caused them, like any reasonably prudent seller of property, to seek the advice of both counsel and experts before accepting defendant's offer to purchase plaintiffs' mineral rights. Defendant also relied heavily on a 1980 report created for plaintiff Harold Snyder regarding the value of the mineral rights in another gas field in which he owned an interest. In this report, Charles Brown, a petroleum consultant, alerted Snyder to the possibility that the use of a natural gas field for storage purposes could generate secondary natural gas condensate and that royalty owners should consider the potential for such secondary condensate recovery in negotiating the sale of mineral rights. Further, plaintiff Harold Snyder admitted in his deposition in this case that the information regarding the potential for secondary condensate in Blue Lake 18A Field was available in 1983 had he asked for it.

Plaintiffs responded to defendant's motion by arguing that in negotiating the sale of their mineral rights to defendant, plaintiffs justifiably relied on the oral representations of Donald Ross, an agent of defendant, who represented that the terms of the contract required defendant to compensate plaintiffs for all the natural gas that was remaining in Blue Lake 18A Field. Plaintiffs contended that Ross' representation regarding the terms of the contract induced them not to obtain an independent assessment of the volume of natural gas condensate remaining in the field on June 1, 1983.

We agree with the trial court that plaintiffs, through the exercise of reasonable diligence, should have discovered that they had a cause of action against defendant in June 1983. Even assuming that defendant perpetuated some type of fraud upon plaintiffs, the exercise of reasonable diligence should have exposed that fraud in June 1983. If the volume of natural gas condensate remaining in the field was available to defendant in June 1983, then it must also have been available to plaintiffs. In fact, plaintiffs do not deny this, but contend that the representations of Donald Ross, referenced above, induced them not to seek an independent appraisal of the value of their own mineral rights. Although this might be true, the question is not whether plaintiffs were actually induced by Ross not to verify the accuracy of defendant's estimate of the value of plaintiffs' mineral rights, but, rather, whether their reliance on Ross' representations was reasonable under the circumstances of this case. In our opinion, the exercise of reasonable diligence should have caused plaintiffs to seek an independent appraisal of the volume of natural gas condensate remaining in their own property, notwithstanding the representations of Ross.

Accordingly, the trial court did not err in concluding that the statute of limitations barred plaintiffs' cause of action. In light of our resolution of this case, we need not reach plaintiffs' remaining issues.

Affirmed.

/s/ William B. Murphy
/s/ Martin M. Doctoroff
/s/ Janet T. Neff