

STATE OF MICHIGAN
COURT OF APPEALS

OAKWOOD HOMEOWNERS ASSOCIATION
AT STONECLIFFE, MARK O'NEILL,
MARIANNE O'NEILL, PATRICIA HELD,
PETER HELD, KEVIN RAMON, SHARON
RAMON, JOSEPH DRESSLER, D. K.
DRESSLER, IRENE RZADZKI, HELEN
MAZUR, TRIAN MOGA, and ANNA MOGA,

UNPUBLISHED
July 12, 2002

Plaintiffs-Appellants/Cross-
Appellees,

v

WILLIAM FULLER,

Defendant-Appellee/Cross-
Appellant.

No. 227734
Emmet Circuit Court
LC No. 97-004446-CZ

Before: Jansen, P.J., and Smolenski and Wilder, JJ.

PER CURIAM.

Plaintiffs appeal as of right from the trial court's order granting summary disposition in favor of defendant under MCR 2.116(C)(7) (claim barred by statute of limitations). Defendant cross-appeals, asserting that governmental immunity is a proper alternative ground for affirming the trial court's decision. We affirm the trial court's ruling that plaintiffs' claim is barred by the applicable statute of limitations.

Plaintiffs are a condominium association and the individual owners and members of the association of those condominiums located on Mackinac Island, commonly known as Oakwood or Stonecliffe VI. Construction of the condominiums began in 1987 by developer George Staffan. Most of the units were purchased by 1990 and construction was completed in 1992. Defendant, a Mackinac Island building inspector, inspected the buildings before their completion in 1989 and advised plaintiffs of the steps necessary to bring the buildings into compliance with the local building code. In 1995, city officials informed plaintiffs that they could not rent their units until they complied with local fire protection codes. This lawsuit involves plaintiffs' allegations that defendant failed to include in that list any of the fire code requirements or to inform plaintiffs that defendant worked on architectural drawings for the developer on the project. Essentially, plaintiffs allege that defendant failed to inform them that they could not rent their units without bringing them into compliance with the local fire protection codes and they

seek damages for lost rental income and construction costs to bring the units in compliance with the code.

Plaintiffs filed their complaint on October 10, 1997, asserting claims of gross negligence, fraud or misrepresentation, and violation of their civil rights.¹ Defendant moved for summary disposition on the basis of the three-year statute of limitation set forth in MCL 600.5805(9).² The trial court granted summary disposition in favor of defendant finding that plaintiffs knew or should have known before October 10, 1994, that defendant's list was incomplete. The trial court thus ruled that the three-year statute of limitations had expired by the time this case was filed on October 10, 1997. We review de novo the trial court's ruling on the motion for summary disposition. *Maiden v Rozwood*, 461 Mich 109, 118; 597 NW2d 817 (1999).

Plaintiffs first assert that defendant should be estopped from raising the statute of limitations as a defense in this case. Our Supreme Court has stated that equitable estoppel is "essentially a doctrine of waiver that extends the applicable period for filing a lawsuit by precluding the defendant from raising the statute of limitations as a bar." *Cincinnati Ins Co v Citizens Ins Co*, 454 Mich 263, 270; 562 NW2d 648 (1997).

One who seeks to invoke the doctrine generally must establish that there has been (1) a false representation or concealment of a material fact, (2) an expectation that the other party will rely on the misconduct, and (3) knowledge of the actual facts on the part of the representing or concealing party. This Court has been reluctant to recognize an estoppel absent intentional *or negligent* conduct designed to induce a plaintiff to refrain from bringing a timely action. [*Id.*]

Further, in *Secura Ins Co v Auto-Owners Ins Co*, 232 Mich App 656, 661; 591 NW2d 420 (1998), this Court stated that to prevail on its estoppel theory, the plaintiff had to establish that the defendant induced it to refrain from bringing an action within the period fixed by the applicable statute of limitations.

In this case, there is no evidence that defendant induced plaintiffs to delay this action beyond the statute of limitations period. Defendant's alleged omission of not including the fire code requirements in the list is not evidence that defendant intentionally or negligently induced plaintiffs to refrain from bringing a timely action. Given the absence of evidence that defendant induced plaintiffs to refrain from bringing a timely action, the trial court properly rejected plaintiffs' estoppel claim.

Moreover, we find that the trial court correctly concluded that plaintiffs knew or should have known of their claim before October 10, 1994. Here, both parties agree that accrual occurred in this case when plaintiffs knew or should have known of their claim. *Moll v Abbot Laboratories*, 444 Mich 1, 23-24; 506 NW2d 816 (1993). Both parties also agree that because plaintiffs' complaint was filed on October 10, 1997, if plaintiffs had such knowledge before

¹ The only remaining claim on appeal is the gross negligence claim.

² There is no dispute that this is the applicable limitation period.

October 10, 1994, the claim is time barred. The only dispute is whether plaintiffs knew or should have known of their claim against defendant before that date.

In the present case, construction of the condominiums began in 1987 and defendant inspected them and generated his list in August of 1989. Plaintiffs initially took defendant's list to Staffan to correct the problems noted in the list, but Staffan refused to do so and filed a bankruptcy action shortly thereafter. In November 1989, plaintiffs received two reports from an engineering firm they had hired, indicating that there were many code violations that were missed by the building inspector. On January 1990, members of the association filed a statement of complaint with the State of Michigan regarding the code violations that were missed by the building inspector. Plaintiffs knew that by September 1990, a receiver had been appointed by the court with regard to the bankruptcy action. On October 25, 1992, plaintiffs settled their lawsuit against Staffan in bankruptcy court. In 1992, the city denied occupancy permits to plaintiffs and in 1995, the city required that plaintiffs comply with the fire protection codes before renting the units.

In this case, the facts and chronology of the facts are not in dispute. Rather, plaintiffs argue that they could not have known that a claim existed because the bankruptcy court settlement adopted defendant's list as a complete list of modification and repairs needed for occupancy in 1992 and that the claim did not accrue until 1995 when the city required that fire protection codes be complied with before the units could be rented, thus creating their damages. In the absence of disputed facts, the question whether a plaintiff's cause of action is barred by the applicable statute of limitations is a question of law to be determined by the court. *Id.* at 26. Moreover, the discovery rule applies to the discovery of an injury, not to the discovery of a later realized consequence of the injury. *Id.* at 18.

The trial court did not err in finding that plaintiffs' claim was barred by the three-year statute of limitations. Regardless of the bankruptcy court settlement, it is undisputed that plaintiffs were well aware of the problems with defendant's list, certainly by January 1990, when some of the plaintiffs filed a complaint with the State of Michigan regarding defendant's failure to identify certain code violations. Plaintiffs were aware that defendant failed to identify certain code violations because of the report generated by the civil engineer that they had hired who generated his reports in November 1989. Because plaintiffs do not explain why this engineer or some other independent inspector should or could not have also discovered defendant's failure to identify all applicable code violations, there is simply no dispute that plaintiffs at least should have known of their injury in 1990. Accordingly, plaintiffs' complaint, which was filed in October 1997, was filed outside the three-year limitations period and is time barred.

Given our conclusion that the trial court did not err in granting defendant's motion for summary disposition on the basis that the statute of limitations barred the claim, it is unnecessary to address the merits of defendant's argument on cross-appeal.

Affirmed.

/s/ Kathleen Jansen
/s/ Michael R. Smolenski
/s/ Kurtis T. Wilder