

STATE OF MICHIGAN
COURT OF APPEALS

LILIA SAINZ LANDETA, Individually and as
Personal Representative of the Estate of RAFAEL
MONTIEL CARRERA, Deceased,

Plaintiff-Appellant,

v

FORD MOTOR COMPANY and TRW VEHICLE
SAFETY SYSTEMS, INC.,

Defendants-Appellees.

UNPUBLISHED
July 20, 2004

No. 247152
Wayne Circuit Court
LC No. 02-225405-NP

JOSE OLEGARIO OSUNA TIRADO and
ESTELLA ROMERO GUERRERO,

Plaintiffs-Appellants,

v

FORD MOTOR COMPANY and TRW VEHICLE
SAFETY SYSTEMS, INC.,

Defendants-Appellees.

No. 247153
Wayne Circuit Court
LC No. 02-225409-NP

Before: Zahra, P.J., and Talbot and Wilder, JJ.

PER CURIAM.

In these consolidated cases, plaintiffs appeal as of right from the trial court's orders granting defendants' motions for summary disposition under MCR 2.116(C)(7). We affirm.

I. Facts and Procedure

Plaintiffs are citizens and residents of Mexico. On October 1, 1999, plaintiffs were involved in an automobile accident on the Culiacan-Mazatlan Highway in the Mexican state of Sinaloa. According to plaintiffs, a trailer entered the highway just in front of their vehicle, resulting in a collision in which Rafael Montiel Carrera¹ died and plaintiff Jose Olegario Osuna Tirado² suffered serious injuries. Plaintiffs were traveling in a Ford Lobo pickup truck, which was manufactured by defendant Ford Motor Company. The vehicle's seatbelts were manufactured by defendant TRW Vehicle Safety Systems, Inc.

On July 23, 2002, plaintiffs filed their respective lawsuits against defendants in the Wayne Circuit Court. Plaintiffs' amended complaints allege claims of defective design, failure to warn, negligence, and breach of warranty. Plaintiffs argued that defendants were strictly liable for the products liability claims. Defendants moved to dismiss plaintiffs' complaints on two alternate grounds. First, defendants sought summary disposition under MCR 2.116(C)(7), arguing that plaintiffs' claims were barred by a two-year Mexican statute of limitations for tort claims, and thus were time-barred under Michigan's "borrowing statute," MCL 600.5861. Alternatively, defendants moved for dismissal on forum non conveniens grounds, arguing that Mexico was the more appropriate forum for plaintiffs' actions. The trial court granted defendants' motions under MCR 2.116(C)(7), holding that plaintiffs' claims were time-barred under Mexican law and, therefore, time-barred under Michigan's borrowing statute, MCL 600.5861.³

II. Analysis

A. Standard of Review

This Court reviews de novo a trial court's decision on a motion for summary disposition under MCR 2.116(C)(7). *DiPonio Construction Co v Rosati Masonry Co*, 246 Mich App 43, 46; 631 NW2d 59 (2001). Whether a claim is barred by a statute of limitations is a question of law that this Court also reviews de novo. *Id.* at 47.

When reviewing a motion for summary disposition under MCR 2.116(C)(7), the court must accept the nonmoving party's well-pleaded allegations as true and construe the allegations in the nonmovant's favor to determine whether any factual development could provide a basis for recovery. *Amburgey v Sauder*, 238 Mich App 228, 231; 605 NW2d 84 (1999). The court must consider any pleadings, affidavits, depositions, admissions, or other documentary evidence that has been submitted by the parties, *id.*, however, the moving party is not required to file supportive material. *Maiden v Rozwood*, 461

¹ Plaintiff Lilia Sainz Landeta was the spouse of decedent Carrera. Landeta was in the vehicle when the accident occurred, but apparently was not injured.

² Plaintiff Estella Romero Guerrero is Tirado's spouse.

³ The court did not reach defendants' alternative argument that dismissal was also warranted based on forum non conveniens grounds.

Mich 109, 119; 597 NW2d 817 (1999). If there are no facts in dispute, whether the claim is statutorily barred by immunity is a question of law. *Id.* [*Diehl v Danuloff*, 242 Mich App 120, 123; 618 NW2d 83 (2000).]

B. Discussion

Plaintiffs argue that the trial court erred in granting defendants' motions for summary disposition under MCR 2.116(C)(7) based on the conclusion that plaintiffs' claims were time-barred. We disagree. Because the automobile accident that gave rise to plaintiffs' claims took place in Mexico, the question is whether either the Michigan or the Mexican statute of limitations applies to plaintiffs' claims. As our Supreme Court observed in *Parish v B F Goodrich Co*, 395 Mich 271, 277-278; 235 NW2d 570 (1975):

Most states have enacted "borrowing statutes" to resolve the possible conflicts of laws that may arise when a plaintiff's claim accrues outside of the forum. Borrowing statutes, including Michigan's, typically confine a plaintiff whose claim accrues outside the forum to the limitational period—of the forum or the state where the claim accrued—allowing the least time to commence the action.

Michigan's borrowing statute provides, in pertinent part: "An action based upon a cause of action accruing without this state shall not be commenced after the expiration of the statute of limitations of either this state or the place without this state where the cause of action accrued" MCL 600.5861. "A cause of action accruing in another state or jurisdiction commenced in Michigan by a nonresident of this state is barred upon expiration of either the applicable Michigan limitation period or the applicable limitation period of the other state or jurisdiction." *Hover v Chrysler Corp*, 209 Mich App 314, 317-318; 530 NW2d 96 (1995).

Under Mexican law, the Civil Code of the Mexican state of Sinaloa is the controlling authority in this case. Pursuant to article 1818 of the Civil Code of Sinaloa, a tort action is time-barred two years after the day on which the harm in question was caused. In addition, article 1159, § V, of the Civil Code of Sinaloa provides that civil liability arising from illicit acts (torts) expires two years after the day on which the acts occurred. Here, plaintiffs filed their complaints more than two years after the accident occurred.

Plaintiffs argue that their strict liability and breach of implied warranty claims are not time-barred under Mexican law, because Mexico does not recognize a cause of action for these claims and, thus, does not have a statute of limitations governing these claims.⁴ Plaintiffs waived this argument by failing to cite any authority for the proposition that Mexico does not recognize strict liability or breach of implied warranty claims. *Grand Valley Health Center v Amerisure*

⁴ Defendant, citing *Prentis v Yale Mfg Co*, 421 Mich 670, 687 n 25; 365 NW2d 176 (1984), contends that Michigan does not recognize strict liability in tort. Assuming, without deciding, that Michigan recognizes strict liability and breach of implied warranty products liability claims, plaintiffs' argument nonetheless lacks merit for the reasons stated in this opinion.

Ins Co, ___ Mich App ___; ___ NW2d ___ (2004) (Docket No. 244777, issued May 11, 2004), slip op at 8, lv pending (Supreme Court Docket No. 125836). Even assuming that Mexico does not recognize strict liability causes of action or breach of implied warranty claims, plaintiffs' argument lacks merit. In determining whether plaintiffs' claims would be time-barred in Mexico, we must compare plaintiffs' claims to similar claims available under Mexican law. See *Buettgen v Volkswagenwerk AG*, 505 F Supp 84, 86 (WD Mich, 1980), aff'd 701 F2d 174 (CA 6, 1982). "In comparing law, the court looks to the entire framework of the statute of limitations, including its characterization of the nature of the claims" *Id.*, citing *Waldron v Armstrong Rubber Co*, 393 Mich 760; 223 NW2d 295 (1974), on remand 64 Mich App 626; 236 NW2d 722 (1975). Here, plaintiffs' claims most closely resemble the cause of action for torts covered in articles 1818 and 1159 of the Civil Code of Sinaloa. The only tort claims that are recognized under Sinaloa law would be barred by the two-year statute of limitations set forth in the Civil Code of Sinaloa. Our Supreme Court explained that "the Legislature did not intend to allow plaintiffs, inhibited by the borrowing statute from shopping for a forum with a favorable limitational period, to accomplish the same purpose by elaborating a legal theory" *Parish*, *supra* at 278.

Accordingly, plaintiffs' claims are governed by the two-year statute of limitations under Mexican law, and thus time-barred in Michigan under this state's borrowing statute, MCL 600.5861. See *Buettgen*, *supra* at 86 (holding that, under Michigan's borrowing statute, the plaintiffs' negligence and breach of warranty claims that arose in Mexico were barred by the applicable Mexican statute of limitations for "illicit acts"). Therefore, we conclude that the trial court properly granted defendants' motions for summary disposition under MCR 2.116(C)(7) on the basis that plaintiffs' claims were time-barred.

Affirmed.⁵

/s/ Brian K. Zahra
/s/ Michael J. Talbot
/s/ Kurtis T. Wilder

⁵ In light of our decision, we need not address the forum non conveniens issue.