STATE OF MICHIGAN

COURT OF APPEALS

SEMCO ENERGY, INC.,

Plaintiff-Appellant,

v

ECLIPSE, INC., ROCKFORD ECLIPSE, INC., ECLIPSE COMBUSTION, INC., MUELLER COMPANY, LTD, MUELLER GROUP, LLC, TYCO INTERNATIONAL MANAGEMENT COMPANY, INC.,

Defendants-Appellees.

UNPUBLISHED
December 4, 2012

No. 306644
St. Clair Circuit Court
LC No. 10-001207-CZ

Before: O'CONNELL, P.J., and DONOFRIO and BECKERING, JJ.

PER CURIAM.

In this case involving various claims under the Uniform Commercial Code (UCC), MCL 440.1101 *et seq.*, and claims of product liability and indemnity, plaintiff SEMCO Energy, Inc. appeals of right the trial court's order granting summary disposition in favor of defendants Eclipse, Inc., Rockford Eclipse, Inc., Eclipse Combustion, Inc. (collectively "Eclipse"), Mueller Group, LLC, and Tyco International Management Company, Inc. (collectively "Mueller"). We affirm.

I. FACTS AND PROCEDURAL HISTORY

Plaintiff distributes natural gas to customers for the operation of home appliances. Plaintiff estimated that it had 41,522 Rockford Eclipse Series 125 gas valves in service. Eclipse was the sole designer and seller of the valves from 1990 until 1993. In 1993, Mueller purchased the product line from Eclipse and sold the valves from 1993 until 1999.[1] Plaintiff purchased valves from Eclipse before 1993 and purchased valves from Mueller from 1993 until 1998. Plaintiff could not identify from which defendant it had purchased each of the 41,522 valves; however, plaintiff estimated that it had purchased approximately 24% of the valves before 1993 and approximately 76% of the valves after 1993.

[1] Bates & Associates was the exclusive and independent distributor of Mueller's valves.

In 2004, Don Zube broke a gas line at his home, and the home caught on fire. Zube was installing a furnace, attempted to turn the valve, and "the . . . core of the valve blew right out of the valve body." Zube sued Mueller, and Mueller asserted that the Rockford Eclipse valve failed because of Zube's misuse.

More Rockford Eclipse valves broke on January 27, May 31, and September 6, 2005. Plaintiff issued an internal memorandum indicating the three Rockford Eclipse Series 125 valve failures, stating that it was currently investigating the failures, and instructing its employees to consider, until notified otherwise, that the failure might occur with all shutoffs because it was not certain if the failure was specific to the Rockford Eclipse valves. Ultimately, plaintiff and Mueller settled any potential claims arising from the sale, installation, or use of the valves at these three locations.

Another house fire occurred in New Jersey in 2005. On April 6, 2005, Paul Zombrowski of Failure and Reconstruction Associates opined that a defectively designed Rockford Eclipse valve caused the fire.

In 2006, an additional Rockford Eclipse valve broke. Plaintiff then issued a supplemental memorandum indicating that it had determined that "this type of failure is specific to the Rockford-Eclipse Model Series 125 service valve."

On January 1, 2007, the homeowners of the 2005 fire in New Jersey sued Mueller, alleging that Mueller's defectively designed valves had caused the house fire. Three more Rockford Eclipse valves broke on January 6, 2007, and January 20 and February 10, 2008. In February 2008, Exponent Failure Analysis Associates developed a protocol to test and replace the valves. In a letter to Mueller dated February 26, 2008, plaintiff told Mueller that its "apprehension over the integrity of these valves continues to grow." An additional Rockford Eclipse valve broke on May 6, 2010.

Plaintiff filed its complaint in this case on May 14, 2010. Plaintiff alleged seven counts: (1) breach of express warranty; (2) breach of implied warranty of merchantability; (3) breach of implied warranty of fitness; (4) defective product liability; (5) breach of the consumer protection act[2] (MCL 445.903); (6) express-contractual, implied-contractual, and common-law indemnity; and (7) declaratory judgment. Mueller and Eclipse moved the trial court for summary disposition, arguing that the statute of limitations and the economic-loss doctrine barred plaintiff's claims. In response, plaintiff argued that privity of contract was a genuine issue of material fact, the statute of limitations was tolled or subject to the discovery rule, and it did not need to wait for another house to catch on fire to allege common-law indemnity.

The trial court granted defendants' motions on all counts under MCR 2.116(C)(7) (statute of limitations) and MCR 2.116(C)(10) (no genuine issue of material fact and entitlement to judgment as a matter of law). The court concluded that the UCC's four-year statute of limitations barred plaintiff's warranty claims. The court explained that plaintiff's warranty

[2] This count is not at issue in this appeal.

claims began to accrue when it purchased the valves; thus, because plaintiff had purchased the valves from Eclipse in 1993 and Mueller in 1998, plaintiff had had until 1997 and 2002 respectively to file its breach-of-warranty claims. The court further explained that the UCC governs the sale of goods regardless of privity of contract and that plaintiff had not identified any express warranties or demonstrated fraudulent concealment. With respect to plaintiff's product-liability claim, the court determined that the economic-loss doctrine applied and, therefore, provided the sole remedy in contract law for the claims arising out of the commercial sale of the valves. Finally, the court dismissed both plaintiff's indemnity claim because plaintiff did not allege that any claims had been made against it for failed valves and plaintiff's request for declaratory relief because plaintiff no longer had a justiciable controversy.

II. ANALYSIS

A. STANDARD OF REVIEW

We review de novo a trial court's summary-disposition ruling. *Maiden v Rozwood*, 461 Mich 109, 118; 597 NW2d 817 (1999).

"Summary disposition may be granted under MCR 2.116(C)(7) when an action is barred by the statute of limitations." *Schaendorf v Consumers Energy Co*, 275 Mich App 507, 509; 739 NW2d 402 (2007). When reviewing a motion under MCR 2.116(C)(7), "a court accepts as true the plaintiff's well-pleaded allegations of fact, construing them in the plaintiff's favor. The Court must consider affidavits, pleadings, depositions, admissions, and any other documentary evidence submitted by the parties, to determine whether a genuine issue of material fact exists." *Nuculovic v Hill*, 287 Mich App 58, 61; 783 NW2d 124 (2010).

Similarly, when reviewing a motion brought under MCR 2.116(C)(10), this Court considers the pleadings, affidavits, depositions, admissions, and any other documentary evidence submitted by the parties in a light most favorable to the nonmoving party. *The Cadle Co v City of Kentwood*, 285 Mich App 240, 247; 776 NW2d 145 (2009). A motion for summary disposition under MCR 2.116(C)(10) may be granted where there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. *Campbell v Dep't of Human Servs*, 286 Mich App 230, 235; 780 NW2d 586 (2009).

B. SATISFACTION OF DEFENDANTS' INITIAL BURDEN UPON MOVING FOR SUMMARY DISPOSITION

Plaintiff first argues that the trial court erroneously granted summary disposition in favor of defendants because defendants did not meet their initial burden in their motion for summary disposition of specifically identifying issues where there were no material facts in dispute. We disagree. A party moving for summary disposition under MCR 2.116(C)(10) must supply affidavits, depositions, admissions, or other documentary evidence supporting its position and specifically identify the issues which have no genuine issue of material fact. MCR 2.116(G)(3)(b); MCR 2.116(G)(4). When moving for summary disposition in this case, defendants argued that it was undisputed that plaintiff had last purchased valves from Eclipse in 1993 and Mueller in 1998 and, therefore, that they were entitled to judgment as a matter of law on plaintiff's warranty and tort claims because of the statute of limitations and the economic-loss

doctrine. Accordingly, defendants argued sufficient grounds to meet their initial burdens under these rules.

C. APPLICABILITY OF THE ECONOMIC-LOSS DOCTRINE TO PLAINTIFF'S TORT CLAIM

Plaintiff also argues that the trial court erroneously concluded that the economic-loss doctrine bars its product-liability claim. We disagree.

In 1992, the Michigan Supreme Court formally adopted the economic loss doctrine. *Neibarger v Universal Cooperatives, Inc*, 439 Mich 512, 527-528; 486 NW2d 612 (1992). The economic loss doctrine "bars tort recovery and limits remedies to those available under the Uniform Commercial Code where a claim for damages arises out of the commercial sale of goods and losses incurred are purely economic." *Id.* at 515. The *Neibarger* Court also stated that the economic loss doctrine is implicated and economic losses alone are suffered when a purchaser's expectations in a sale are frustrated because the purchased product is not working properly. *Id.* at 520. The Court stressed that the doctrine distinguishes "between transactions involving the sale of goods for commercial purposes where economic expectations are protected by commercial and contract law, and those involving the sale of defective products to individual consumers who are injured in a manner which has traditionally been remedied by resort to the law of torts." *Id.* at 520-521. In a commercial transaction, the parties can negotiate terms, specifications, and warranties to allocate the risk of product failure. *Id*. at 523. When all the parties to a transaction are commercial businesses, the tort-law rationale that the risk of a defective product should be on the manufacturer does not apply.[3] *Id*. at 526.

The *Neibarger* Court also addressed the applicability of the doctrine where a defective product damages other property, holding that it applies in such circumstance and explaining that "the UCC provides remedies sufficient to compensate the buyer of a defective product for direct, incidental, and consequential losses, including property damage." *Id.* at 532, citing MCL 440.2714-2715. Thus, "[w]here damage to other property was caused by the failure of a product purchased for commercial purposes to perform as expected, and this damage was within the contemplation of the parties to the agreement," the economic-loss doctrine applies to such damage to other property. See *id.* at 532-533; see also *Quest Diagnostics*, 254 Mich App at 378 n 4 ("Michigan's economic loss doctrine is broader than other jurisdictions in that it . . . may also include damage to other property when 'this damage was within the contemplation of the parties to the agreement . . . .'"); *MASB-SEG Prop/Cas Pool, Inc v Metalux*, 231 Mich App 393, 401-402; 586 NW2d 549 (1998) ("The Court in *Neibarger* reasoned that the UCC provides remedies sufficient to compensate the buyer of a defective product for . . . damage to property other than the defective product itself, where the damage was within the contemplation of the parties to the

[3] This Court has since extended the doctrine to some sales involving end consumers as well. See *Sherman v Sea Ray Boats, Inc*, 251 Mich App 41, 47-50; 649 NW2d 783 (2002); see also *Quest Diagnostics, Inc v MCI WorldCom, Inc*, 254 Mich App 372, 378; 656 NW2d 858 (2002).

agreement and the occurrence of the damage could have been the subject of negotiations between the parties.").

Applying these legal principles to this case, we conclude that the trial court did not err when it determined that the economic-loss doctrine barred plaintiff's tort claim. Plaintiff in this case seeks damages sustained for purely economic loss. Moreover, plaintiff is a corporation that commercially supplies natural gas, and defendants are commercial manufacturers of natural-gas shutoff valves. Plaintiff purchased valves from defendants or an independent distributor; thus, this case is one in which all parties to the transaction were sophisticated commercial entities. The use of the gas valves to regulate natural gas—a highly flammable substance—necessarily involves a contemplation of the risks to other property should a valve fail. These facts support a finding that the risk was reasonably contemplated at the time of the contract. See *Metalux*, 231 Mich App at 401-402 (where the sophistication of the parties and the use to which the light fixture in that case was to be put were factors in determining whether the parties contemplated the consequences of potential product failure).

Plaintiff argues that the trial court should not have applied the economic-loss doctrine in this case in the absence of privity of contract between it and defendants. Plaintiff contends that whether there was a direct contractual relationship between the parties was an issue of material fact on which discovery was ongoing. However, this Court has "expressly rejected the argument that the economic loss doctrine does not apply in the absence of privity of contract."[4] *Citizens*

[4] We note that plaintiff's reliance on *Quest Diagnostics* for the proposition that the economic-loss doctrine does not apply in this case is misplaced. In *Quest Diagnostics*, this Court stated the following:

> On the basis of *Neibarger* and its progeny, we conclude that parties to a transaction for goods are precluded recovery in tort for economic loss caused by inferior products where: (1) the parties or others closely related to them had the opportunity to negotiate the terms of the sale of the good or product causing the injury, and (2) their economic expectations can be satisfied by contractual remedies. [*Quest Diagnostics*, 254 Mich App at 380.]

The economic-loss doctrine did not apply in *Quest Diagnostics* because there was "no underlying sale of goods, transaction, or contract between the parties or others closely related to them . . . ." *Id.* at 381. Rather, the plaintiffs in *Quest Diagnostics* sued defendants MCI WorldCom, Inc. and Corby Energy Services, Inc. simply because the plaintiffs were left without running water after Corby ruptured a water main while performing underground work on behalf of MCI. *Id.* at 374. This case is factually distinguishable from *Quest Diagnostics* because, here, "the parties or others closely related to them had the opportunity to negotiate the terms of the sale of the good or product causing the injury." *Id.* at 380. Specifically, there were commercial transactions between plaintiff and defendants, although those transactions were indirect; plaintiff purchased the valves from an associated retailer of the manufacturers. "A factor present in all cases in which Michigan courts have applied the economic loss doctrine is that the parties to the

Ins Co v Osmose Wood Preserving, Inc, 231 Mich App 40, 45; 585 NW2d 314 (1998); see also *Sullivan Indus, Inc v Double Seal Glass Co*, 192 Mich App 333, 341-344; 480 NW2d 623 (1991) (holding that, at least in a commercial setting, privity of contract is not a prerequisite for the application of the economic-loss doctrine); *Freeman v DEC Int'l, Inc*, 212 Mich App 34, 36, 38-39; 536 NW2d 815 (1995) (explaining that, regardless of privity, the UCC applies in economic-loss cases brought by a commercial buyer against a manufacturer of goods). Thus, whether there was a direct contractual relationship between plaintiff and defendants is immaterial.

Plaintiff also argues that the economic-loss doctrine does not apply in this case pursuant to *Detroit Bd of Ed v Celotex Corp*, 196 Mich App 694; 493 NW2d 513 (1992). We do not agree. In *Celotex*, this Court held that the economic-loss doctrine did not bar an asbestos tort claim. *Celotex*, 196 Mich App at 704-705. We emphasized that the plaintiff in *Celotex* did not claim an injury to the asbestos products themselves, that the defendant's asbestos products were inferior in quality, or that the products did not work for their intended purpose; rather, the plaintiff claimed that the products were "safety hazards that . . . created a potential health threat and caused [plaintiff] to suffer damages in abating the hazard." *Id.* at 704-705. We also emphasized that the plaintiff could not have anticipated or bargained over the hazards of asbestos when it purchased the products because the health risks of the material were not yet known. *Id.* at 705. Thus, "the risk involved [was] not the type that is allocated to a party through negotiation." *Id.* The present case is distinguishable from *Celotex*. Unlike asbestos, the dangers of which were not yet known, there has been no recent "discovery" of the fact that natural-gas leaks can cause fires. Plaintiff does not argue that it could not have predicted the type of damage that would result from a failed gas valve, i.e., the possibility of house fires, at the time it purchased the valves. Indeed, any argument that plaintiff could not have predicted that fires could result from defective valves would not be reasonable; the purpose of the valves is to prevent large gas leaks and resulting fires.

Accordingly, the trial court did not err when it determined that the economic-loss doctrine barred plaintiff's product-liability claim as a matter of law.

D. THE APPLICABILITY OF THE STATUTE OF LIMITATIONS TO PLAINTIFF'S CLAIMS UNDER THE UCC

Plaintiff next argues that the trial court erred when it concluded that the statute of limitations barred its warranty claims. We disagree.

The UCC applies to transactions in goods, which are defined as "all things (including specially manufactured goods) which are movable at the time of identification to the contract for sale . . . ." MCL 440.2102; MCL 440.2105(1). The UCC's statute of limitations applies to a transaction that is obviously a sale of goods even if the parties do not have direct contact. *Farm Bureau Mut*, 255 Mich App at 722-723. In this case, the contract was not predominantly for

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litigation were involved, either directly *or indirectly*, in a transaction for goods." *Id.* at 379 (emphasis added).

services. Indeed, plaintiff did not allege that any services were involved; rather, plaintiff alleges in its complaint that it purchased the valves new and installed them itself. Thus, the UCC applies in this case, including its statute of limitations.

The statute of limitations for breach of a contract for the sale of goods is four years. MCL 440.2725(1). The breach occurs when the goods are delivered, "regardless of the aggrieved party's lack of knowledge of the breach." MCL 440.2725(2). Here, there is no factual dispute that plaintiff last purchased the valves in 1998. Therefore, applying the four-year statute of limitations, plaintiff must have brought its claims under the UCC before 2002. However, plaintiff brought this suit in May 2010. Therefore, the statute of limitations bars plaintiff's claims.

Plaintiff insists that the discovery rule, MCL 600.5833[5], applies to his warranty claims and that when it discovered its warranty claims are genuine issues of material fact. We disagree. In the past, this Court has held that the discovery rule in MCL 600.5833 tolls the statute of limitations for a breach of contract. *Waldron v Armstrong Rubber Co (On Remand)*, 64 Mich App 626, 636; 236 NW2d 722 (1975). However, we have more recently specified that when a plaintiff's claim is subject to the UCC, the discovery rule in MCL 600.5833 does *not* toll the statute of limitations. This is because MCL 600.5833 applies to warranties in service contracts—not to warranties that the UCC governs. See *H Hirschfield Sons, Co v Colt Indus Operating Corp*, 107 Mich App 720, 723-725; 309 NW2d 714 (1981); see also *Parish v B F Goodrich Co*, 395 Mich 271, 280-282; 235 NW2d 570 (1975). Thus, plaintiff's contract claims would be subject to the discovery rule of MCL 600.5833 only if its contract was predominantly a contract for services, which it is not in this case. See *Frommert v Bobson Constr Co*, 219 Mich App 735, 740-741; 558 NW2d 239 (1996).

Plaintiff also insists that defendants fraudulently concealed plaintiff's claims when it had a duty to warn plaintiff of any defects and, therefore, the statute of limitations does not bar its claims.[6] Again, we disagree. Generally, if a party that may be liable for a claim fraudulently

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[5] MCL 600.5833 provides that claims accrue for actions based on breaches of warranties of quality or fitness "at the time the breach of the warranty is discovered or reasonably should be discovered."

[6] To the extent that plaintiff argues that it has viable claim that defendants had a duty to warn plaintiff of any defects, we reject plaintiff's argument. Because the economic-loss doctrine and the UCC apply, plaintiff cannot maintain a tort claim on the basis of a failure to warn. See *Sherman*, 251 Mich App at 53 (the economic-loss doctrine precludes application of any claim based on a failure to warn). Plaintiff asserts that the duty to warn is a separate claim that arose in 2005. A post-manufacture duty to warn is "based in tort law and apart from the sale of the [product] and any related contractual obligations." *Farm Bureau Mut*, 255 Mich App at 726. This Court has found a separate and distinct duty to warn in tort when a defendant visited a plaintiff to inspect the product's setup "long after the sale" where the defendant had no contractual duty to do so. *Id.* at 723-724, 727. However, in that case, the UCC was inapplicable where the plaintiff had established a duty separate and distinct from the contract. *Id*. at 726-727.

conceals the existence of that claim, the statute of limitations is tolled for two years. MCL 600.5855; *Doe v Roman Catholic Archbishop of the Archdiocese of Detroit*, 264 Mich App 632, 642; 692 NW2d 398 (2005). The claim must be brought within two years of when the plaintiff should have discovered the claim. *Doe*, 264 Mich App at 642. On November 16, 2006, plaintiff issued an internal memorandum pinpointing the Rockford Eclipse valves as a specific safety problem. This was the latest point at which plaintiff had a reasonable argument that it was unaware of an injury from the defective valves or the likely cause of the injury. Plaintiff, therefore, was aware of possible claims by November 2006 at the latest. Even with two-year tolling from fraudulent concealment, plaintiff should have brought its claim by 2008 at the latest. However, plaintiff filed its claim on May 14, 2010. Thus, even when tolling the statute of limitations for two years, plaintiff's claim is still barred.

Moreover, plaintiff has not shown that there is a genuine issue of material fact concerning fraudulent concealment. Fraudulent concealment requires fraud manifested by an affirmative act or misrepresentation designed to prevent subsequent discovery. *Prentis Family Foundation, Inc v Barbara Ann Karmanos Cancer Inst*, 266 Mich App 39, 48; 698 NW2d 900 (2005). Silence is only sufficient to show fraudulent concealment if there is a fiduciary relationship between the parties. *Id.*; *Lumber Village, Inc v Siegler*, 135 Mich App 685, 695; 355 NW2d 654 (1984). A fiduciary relationship occurs when one party reasonably puts faith, confidence, or trust in another party. *Prentis Family Foundation, Inc*, 266 Mich App at 43-44. Here, plaintiff alleged in its complaint that, even though it asked for information concerning both valve defects and the New Jersey cases, defendants neither responded to the request nor informed plaintiff about the New Jersey cases and the associated expert reports that indicated that the valves were defective. This "mere silence" does not constitute fraudulent concealment in the absence of a fiduciary relationship. See *id.* at 48; *Siegler*, 135 Mich App at 695.

Accordingly, the trial court did not err when it concluded that plaintiff's warranty claims under the UCC were barred by the statute of limitations.

E. COMMON-LAW INDEMNITY

Plaintiff's final argument is that the trial court erroneously granted summary disposition in favor of defendants with respect to plaintiff's claim for common-law indemnity. Plaintiff insists that it is entitled to a declaratory judgment that defendants must indemnify it for any past and prospective costs that it incurs for replacing the Rockford Eclipse valves. We do not agree.

A party's right to common-law indemnity exists independent of any statute, contractual relationship, or special or legal duty not to be negligent. *Botsford Continuing Care Corp v Intelistaf Healthcare, Inc*, 292 Mich App 51, 62; 807 NW2d 354 (2011). Common-law indemnity "developed as an exception to the harsh rule that tortfeasors were not entitled to apportion damages or shift liability between themselves through contribution or indemnification." *Hardy v Monsanto Enviro-Chem Sys, Inc*, 414 Mich 29, 86; 323 NW2d 270

In this case, the UCC applies for the reasons described above, and plaintiff has not demonstrated that defendants undertook a separate and distinct duty as the defendant did in *Farm Bureau Mutual*.

(1982). "The right to common-law indemnification is based on the equitable theory that where the wrongful act of one party results in another party's being held liable, the latter party is entitled to restitution for any losses." *Botsford*, 292 Mich App at 62. "[T]he right can only be enforced where liability arises vicariously or by operation of law from the acts of the party from whom indemnity is sought." *Langley v Harris Corp*, 413 Mich 592, 601; 321 NW2d 662 (1982).

Significantly, a "party seeking indemnity must be free from active or casual negligence." *Botsford*, 292 Mich App at 63. "An indemnification action cannot lie where the plaintiff was even .01 percent actively at fault." *St Luke's Hosp v Giertz*, 458 Mich 448, 456; 581 NW2d 665 (1998). Moreover, "there is no equitable right to common-law indemnification unless the alleged indemnitee is 'held liable' for another's wrongful acts." *North Community Healthcare, Inc v Telford*, 219 Mich App 225, 229; 556 NW2d 180 (1996). "This Court has repeatedly defined common-law indemnification as the equitable right to restitution of a party *held liable for another's wrongdoing*." *Id.* (emphasis in original), citing *Paul v Bogle*, 193 Mich App 479, 497; 484 NW2d 728 (1992); *Skinner v D-M-E Corp*, 124 Mich App 580, 584; 335 NW2d 90 (1983); *Peeples v Detroit*, 99 Mich App 285, 292; 297 NW2d 839 (1980); see also *Lakeside Oakland Dev, LC v H & J Beef Co*, 249 Mich App 517, 531; 644 NW2d 765 (2002) ("[C]ommon-law indemnification is based on the equitable theory that where the wrongful act of one party results in another party's being held liable, the latter party is entitled to restitution for any losses."); *Latimer v William Mueller & Son, Inc*, 149 Mich App 620, 638; 386 NW2d 618 (1986) ("Common law indemnity is based on the equitable principle that where the wrongful act of one results in another being held liable, the latter party is entitled to restitution from the wrongdoer."); *Tahash v Flint Dodge Co*, 399 Mich 421, 425; 249 NW2d 110 (1976) ("It is generally agreed that there may be indemnity in favor of one who is held responsible solely by operation of law.").

In this case, plaintiff's common-law indemnity claim fails as a matter of law because plaintiff has not been "held liable" for the replacement cost of the valves as a result of defendants' alleged wrongdoing. See *North Community Healthcare*, 219 Mich App at 229. Simply put, plaintiff is not liable to anyone for the replacement cost of the valves because the valves are plaintiff's property. There is no genuine issue of material fact that, even after the valves were installed on gas meters to provide its customers gas service, the valves remained plaintiff's property. Indeed, plaintiff specifically informed its customers that "all natural gas equipment leading to and including your gas meter is considered Gas Company property." It is axiomatic that a party claiming a right to common-law indemnification must have a legal liability to a third party; the "held liable" requirement necessarily implies liability to a third party—a party cannot be "held liable" to itself. See *id.*; see also *Botsford*, 292 Mich App at 62 ("Common-law indemnity is intended only to make whole again a party held vicariously liable *to another* through no fault of his own."). This understanding of common-law indemnification is consistent with the Restatement of Torts, which provides as follows:

> (1) If two or more persons are liable in tort *to a third person* for the same harm and one of them discharges the liability of both, he is entitled to indemnity from the other if the other would be unjustly enriched at his expense by the discharge of liability. [Restatement Torts, 2d, § 886B (emphasis added).]

Similarly, the Restatement of Restitution and Unjust Enrichment states the following:

> (1) If the claimant renders *to a third person* a performance for which claimant and defendant are jointly and severally liable, the claimant is entitled to restitution from the defendant as necessary to prevent unjust enrichment.
>
> (2) There is unjust enrichment in such a case to the extent that
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> (a) the effect of the claimant's intervention is to reduce an enforceable obligation of the defendant *to the third person*, and
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> (b) as between the claimant and the defendant, the obligation discharged (or the part thereof for which the claimant seeks restitution) was primarily the responsibility of the defendant. [Restatement Restitution and Unjust Enrichment, 3d, § 23 (emphasis added).]

Other jurisdictions also require that a claimant of common-law indemnification demonstrate a legal liability owed to a third party. See, e.g., *Genesis Indemnity Ins Co v Deschutes Co*, 194 Or App 446, 450; 95 P3d 748 (2004) ("In an action for indemnity, the claimant must plead and prove that (1) he has discharged a legal obligation owed to a third party . . . ."); *Allstate Ins Co v US Assoc Realty, Inc*, 11 Ohio App 3d 242, 246; 464 NE2d 169 (1983) ("[W]here a person secondarily liable is compelled to respond in damages to an injured party, he may recoup his loss for the entire amount upon the basis of an implied contract of indemnity from the one who is actually at fault, and who, in fact, caused the injuries."). Here, plaintiff's past and prospective costs to replace the valves are not costs owed to a third party due to a legal liability owed to such third party.

Accordingly, plaintiff's common-law indemnity claim fails as a matter of law, and the trial court did not err when it granted summary disposition in favor of defendants on this claim.

Affirmed.

/s/ Peter D. O'Connell
/s/ Pat M. Donofrio
/s/ Jane M. Beckering