IN THE COURT OF APPEALS OF IOWA

No. 8-814 / 07-1410
Filed November 13, 2008

JAYNE HANSEN LIPPS and THOMAS LIPPS,
Plaintiffs-Appellants,

vs.

HJELMELAND BUILDERS, INC., and ROGER KENNE,
Defendants-Appellees.

Appeal from the Iowa District Court for Kossuth County, Edward A. Jacobson, Judge.

The plaintiffs appeal from the district court order granting summary judgment on their tort claims against a subcontractor, stemming from work performed in the construction of their home. **AFFIRMED.**

Brian L. Yung of Klass Law Firm, L.L.P., Sioux city, for appellants.

Mark Fonken, Lake Elmo, Minnesota, Patrick Rourick, Saint Angsar, and John M. Wharton and Joseph M. Barron of Peddicord, Wharton, Spencer & Hook, L.L.P., Des Moines, for appellees.

Considered by Sackett, C.J., and Vaitheswaran and Eisenhauer, JJ.

EISENHAUER, J.

Jayne Hanson-Lipps and Thomas Lipps appeal from the district court order granting summary judgment on their tort claims against a subcontractor, Roger Kenne, stemming from work performed in the construction of their home. They contend the court erred in finding the economic loss doctrine applies where a homeowner produces evidence that a subcontractor's work caused property damage.

We review rulings on motions for summary judgment for errors at law. *Sain v. Cedar Rapids Cmty. Sch. Dist.,* 626 N.W.2d 115, 121 (Iowa 2001). The record before the district court is reviewed to determine whether a genuine issue of material fact existed and whether the district court correctly applied the law. *Id.* We review the facts in the light most favorable to the party resisting the motion. *McIlravy v. North River Ins. Co.,* 653 N.W.2d 323, 328 (Iowa 2002). The resisting party has the burden of showing a material issue of fact is in dispute. *Id.*

It is a generally recognized principle of law that plaintiffs cannot recover in tort when they have suffered only economic harm. *Richards v. Midland Brick Sales Co., Inc.*, 551 N.W.2d 649, 650 (Iowa Ct. App. 1996). The "economic loss doctrine" holds that purely economic losses usually result from the breach of a contract and should ordinarily be compensable in contract actions, not tort actions. *Id.* at 650-51.

> The distinction that the law has drawn between tort recovery for physical injuries and warranty recovery for economic loss is not arbitrary and does not rest on the "luck" of one plaintiff in having an accident causing physical injury. The distinction rests, rather, on an

> understanding of the nature of the responsibility a manufacturer must undertake in distributing his products. He can appropriately be held liable for physical injuries caused by defects by requiring his goods to match a standard of safety defined in terms of conditions that create unreasonable risks of harm. He cannot be held [liable] for the level of performance of his products in the consumer's business unless he agrees that the product was designed to meet the consumer's demands. A consumer should not be charged at the will of the manufacturer with bearing the risk of physical injury when he buys a product on the market. He can, however, be fairly charged with the risk that the product will not match his economic expectations unless the manufacturer agrees that it will.

Id. at 651 (quoting *Seely v. White Motor Co*., 403 P.2d 145, 155 (Cal. 1965)). Therefore, losses in product liability cases are generally limited to physical harm to the plaintiff or physical harm to property of the plaintiff other than the product itself, while economic losses to the product itself are excluded. *Id.* If the damage was a foreseeable result from the failure of a product to work properly, the remedy lies in contract, since the loss relates to a consumer's disappointed expectations due to deterioration, internal breakdown, or nonaccidental cause. *Id.* On the other hand, when the harm is a sudden or dangerous occurrence resulting from a general hazard in the nature of the product defect, tort remedies are generally appropriate because the harm could not have been reasonably anticipated by the parties. *Id.* Despite its origins, the economic loss doctrine has not been limited to product liability suits and clearly includes defective construction claims. *See Determan v. Johnson*, 613 N.W.2d 259, 260-61, 263 (Iowa 2000).

Kenne worked as a subcontractor for Hjelmeland Builders, Inc., the general contractor on the plaintiffs' home. The plaintiffs allege negligence and

strict liability against Kenne for damages caused when water entered the home due to his alleged negligence in erecting the brick exterior of the house. Their claim is one of damage that is a foreseeable result from the failure of the exterior brick to protect the home from the elements. The contract remedy is the appropriate one.

The plaintiffs note that the damage here goes beyond the brick exterior and into other areas of the house on which Kenne did not work. In *Determan v. Johnson*, 613 N.W.2d at 260-61, 63 (Iowa 2000), our supreme court noted that where the plaintiffs alleged a defective beam system supporting the roof and inadequate vapor barrier caused cracks in the walls and moisture spots in the walls and ceilings, "the plaintiff's damages result from the deterioration of the house due to its poor construction." The court concluded the plaintiff's claim was based on unfulfilled expectations with respect to the quality of the home and, as such, the "remedy lies in contract law, not tort law." *Id.* at 263. "When a buyer loses the benefit of his bargain because the goods are defective . . . he has his contract to look to for remedies. Tort law need not, and should not, enter the picture." *Id.* at 264 (quoting *Nelson v. Todd's Ltd*., 426 N.W.2d 120, 125 (Iowa 1988)).

Citing case law from other jurisdictions, the plaintiffs argue the economic loss doctrine should not bar a negligence action against a subcontractor. We decline to limit the doctrine here.

Because the district court did not err in granting summary judgment on the tort claims against Kenne, we affirm.

AFFIRMED.