STATE OF MICHIGAN

COURT OF APPEALS

TONY SPRINGER and CHRISTINE SPRINGER,

Plaintiffs-Appellants,

v

DOOR-MAN MANUFACTURING COMPANY,

Defendant/Third-Party Plaintiff-Appellee.

and

GENERAL MOTORS CORPORATION,

Third-Party Defendant-Appellee.

UNPUBLISHED
August 25, 1998

No. 201007
Saginaw Circuit Court
LC No. 94-000979 NP

Before: Saad, P.J., and Jansen and Hoekstra, JJ.

PER CURIAM.

Plaintiff Tony Springer suffered injuries arising from the collapse of a train well bridge upon which he was driving a fork lift truck. The train well bridge was located in a General Motors plant and manufactured by defendant Door-Man Manufacturing Company. Plaintiffs appeal of right from an order granting General Motors Corporation's motion for summary disposition against Door-Man; however, the propriety of that decision is not before us. Rather, plaintiffs proffer three arguments challenging the lower court's previous grant of Door-Man's summary disposition motion pursuant to MCR 2.116(C)(7) (statute of limitations). We affirm.

The trial court applied the statute of repose set forth at MCL 600.5839(1); MSA 27A.5839(1) to reach its decision to grant Door-Man summary disposition.[1] MCL 600.5805(10); MSA 27A.5805(10) provides that "the period of limitation for an action against a state licensed architect, professional engineer, land surveyor, or contractor based on an improvement to real property shall be as provided in section 5839." In turn, MCL 600.5839(1); MSA 27A.5839(1) provides:

> No person may maintain any action to recover damages for any injury to property, real or personal, or for bodily injury or wrongful death, *arising out of the defective and unsafe condition of an improvement to real property*, nor any action for contribution or indemnity for damages sustained as a result of such injury, against any state licensed architect or professional engineer performing or furnishing the design or supervision of construction of the improvement, or against any contractor making the improvement, *more than 6 years after the time of occupancy of the completed improvement, use, or acceptance of the improvement, or 1 year after the defect is discovered or should have been discovered*, provided that the defect constitutes the proximate cause of the injury or damage for which the action is brought and is the result of gross negligence on the part of the contractor or licensed architect or professional engineer. However, no such action shall be maintained more than 10 years after the time of occupancy of the completed improvement, use, or acceptance of the improvement. [Emphasis supplied.]

Plaintiffs opine that the trial court should have instead applied the three-year statute of limitations governing products liability actions, MCL 600.5805(9); MSA 27A.5805(9), which starts to run at the time of the injury sustained as a result of the allegedly defective product, MCL 600.5827; MSA 27A.5827.

"Appellate review of a motion for summary disposition is de novo." *Spiek v Dep't of Transportation*, 456 Mich 331, 337; 572 NW2d 201 (1998). When reviewing a motion for summary disposition pursuant to MCR 2.116(C)(7), this Court must accept the plaintiff's well-pleaded allegations as true and construe them in favor of the plaintiff. *Witherspoon v Guilford*, 203 Mich App 240, 243; 511 NW2d 720 (1994). If there are no facts in dispute, then the question whether the claim is statutorily barred is one of law for the court. *Id.*

First, plaintiffs argue that MCL 600.5839(1); MSA 27A.5839(1) does not apply to Door-Man because Door-Man is not a contractor, but a designer, manufacturer, installer, and retailer. MCL 600.5839(4); MSA 27A.5839(4), generally defined a contractor as "an individual, corporation, partnership, or other business entity which makes an improvement to real property." For example, in *Frankenmuth Mutual Ins Co v Marlette Homes, Inc*, 456 Mich 511; 573 NW2d 611 (1998), our Supreme Court concluded that the plain meaning of the statutory language did not justify excluding the manufacturer of mass-produced modular homes from coverage while at the same time extending coverage to the on-site construction of "traditional" homes. *Id.* at 517. Citing MCL 600.5839(4); MSA 27A.5839(4), the Court stated that in either circumstance, the "individual, corporation, partnership, or other business entity" made "an improvement to real estate." *Id.* at 514.

Applying the statutory definition and our Supreme Court's analysis to this case, we conclude that MCL 600.5839(1); MSA 27A.5839(1) applies to Door-Man. The architectural firm that designed the General Motors plant contracted with Door-Man to manufacture and install a railroad lift bridge according to the architect's specifications. Door-Man provided its individualized expertise to custom produce a particular part of the larger piece of real property constructed for General Motors. Therefore, provided that the train well lift bridge is "an improvement to real property," which is the last

issue plaintiffs raise on appeal, Door-Man, the party that made that improvement, is a contractor within the purview of MCL 600.5839(1); MSA 27A.5839(1).

Second, plaintiffs argue that they filed this lawsuit as a products liability action and that the "specific" products liability statute of limitations must control over the "general" architects, engineers, and contractors statute of repose. However, plaintiffs cannot avoid the reach of MCL 600.5839(1); MSA 27A.5839(1) simply by labeling their action a products liability claim. A court is not strictly bound by the label affixed to a claim but may look beyond the label to determine the exact nature of the allegation made. See, e.g., *Randall v Harrold*, 121 Mich App 212, 217; 328 NW2d 622 (1982). Here, plaintiffs' presentation of their claim as a products liability action is contrary to legislative intent. In *Witherspoon, supra* at 245-246, this Court recognized that the Legislature "added § 5805(10) to underscore its intent to grant § 5839 primacy over other arguably applicable periods of limitation, running from the time of discovery, whose effect would defeat the repose aspect of § 5839." Thus, through the addition of § 5805(10), § 5839 applies to all claims against contractors for injuries arising from improvements to real property, whether involving the original or third parties, and whether based on tort or contract. *Id.* Once the applicable period under § 5839 has passed, a claim is conclusively barred. *Id.* Accordingly, if the train well bridge in this case is an improvement to real property, then plaintiffs' claim is barred by MCL 600.5839(1); MSA 27A.5839(1).

Last, in the dispositive issue of this appeal, plaintiffs argue that the train well bridge is not an improvement to real property but a product. This Court has twice addressed the question of what constitutes "an improvement to real property" and in both cases has relied on the reasoning of the Sixth Circuit Court of Appeals in *Adair v The Koppers Co, Inc*, 741 F2d 111 (CA 6, 1984). In *Adair, supra* at 114, the Sixth Circuit Court of Appeals concluded that an improvement is a "permanent addition to or betterment of real property that enhances its capital value and that involves the expenditure of labor or money and is designed to make the property more useful or valuable as distinguished from ordinary repairs." The Court further stated that in applying the definition of "improvement," courts consider "whether a modification adds to the value of the property for the purposes of its intended use" as well as "the nature of the improvement, its relationship to the land and its occupants, and its permanence." *Id.* (citations omitted).

Accordingly, in *Fennell v John J Nesbitt, Inc*, 154 Mich App 644, 650-651; 398 NW2d 481 (1986), this Court upheld the trial court's grant of an accelerated judgment in favor of the defendant on the basis that the plaintiffs' claim was not a products liability action. This Court held that it was instead a claim barred by the architects, engineers, and contractors statute of repose because a heating/ventilation/air conditioning (HVAC) system in the school was an improvement to real property because it was integral to the use of the school. *Id.* Likewise, in *Pendzsu v Beazer East, Inc*, 219 Mich App 405, 412; 557 NW2d 127 (1996), this Court rejected the plaintiffs' argument that the brick the defendant used to reline the ovens and furnaces was a "product" because it was not permanent but would eventually wear out. The Court instead held that there was no genuine issue of material fact that the brick used to reline coke ovens and blast furnaces was "integral" to the usefulness of the respective plants and therefore constituted improvements to real property. *Id.*

Under the controlling definitions cited above, there is no genuine issue of material fact that the train well bridge in this case is an improvement to real property. The train well bridge was built as a part of the General Motors plant itself, based on the designs and specifications that the architects of the plant provided Door-Man. The vertical lift bridge was designed to lower to permit train cars to be rolled into the well of the plant for loading and unloading and to raise to provide access at the plant floor level above the train well. The lifting and safety mechanisms of the bridge, which is hydraulically operated, are bolted, welded, and embedded in concrete that is part of the plant's foundation, such that they are fully integrated into the existing building. The train well lift bridge was an "integral component of an essential system," was "useful to the purpose of the factory," and was "permanent." Thus, it "adds value to the realty, for the purposes for which it was intended to be used." *Adair*, *supra* at 114. Accordingly, the trial court properly determined that the train well bridge is an integral part of the system of the plant.

The cases plaintiffs cite to support their position that the train well bridge fits within the definition of a "product" are inapplicable. First, in *Fenton Area Public Schools v Sorensen-Gross Construction Co*, 124 Mich App 631, 638-640; 335 NW2d 221 (1983), which dealt with the installation of a defective roof on a school that began leaking almost immediately, this Court held that a lawsuit for damages resulting from the defective roof was a products liability action. This Court considered the applicability of a statute of limitations defense but did not rule on the question because it had not been properly raised in the arbitration proceeding below. *Id.* at 640-641. Similarly, in *Gauthier v Mayo*, 77 Mich App 513; 258 NW2d 748 (1977), this Court did not consider the application of any statute of limitations or repose. Rather, the Court upheld the trial court's determination that the plaintiffs were entitled to seek recission of a purchase agreement where their modular home was defective and therefore uninhabitable. *Id.* Last, in *Southgate Community School Dist v West Side Construction Co*, 399 Mich 72, 81-82; 247 NW2d 884 (1976), where the plaintiff sought recovery of the cost of maintenance, repair and replacement of allegedly defective floor tiles, our Supreme Court held that the three-year statute of limitations in MCL 600.5805(7); MSA 27A.5805(7) was applicable, but the Court found that the facts in the record did not conclusively establish when the plaintiff discovered (or reasonably could have discovered) that the tiles were defective. The Court then stated:

> In a products liability action, *where there has been no sudden injury to person or property and where the gravamen of the complaint is the deterioration over a period of time of the product itself*, the claim accrues when plaintiff discovers or reasonably should have knowledge of the manufacturer's breach of warranty. We hold that the question of whether plaintiff's claim accrued more than three years prior to the commencement of its action is dependent upon the facts outside of this record. [*Id.* at 82 (footnote omitted; emphasis supplied).]

Here, there was a sudden injury to a person that allegedly resulted from a defect in an improvement to real property. Thus, the basis for the allegations in this case is materially different from the basis for the actions in the above three cases. Additionally, the above cases all predate the amendment of MCL 600.5805(10); MSA 27A.5805(10), by which the Legislature specifically limited

actions against architects, engineers and contractors for injuries arising out of "improvements to real property," a phrase that none of the courts in the above decisions considered.

Plaintiffs also argue that the lower court erred in concluding that the train well bridge was integral to the plant's operation because in ruling on the summary disposition motion under MCR 2.116(C)(7), the court had to accept plaintiffs' "well-pleaded allegations as true and construe them in favor of the plaintiff[s]." *Witherspoon, supra* at 243. However, there was no dispute regarding the material facts. The parties did not dispute when the train well bridge was manufactured and installed at the plant, how it was utilized, when and how the accident to plaintiff occurred, and when the complaint was filed. The disputed issues were questions of law, i.e., how to define the phrase "improvement to real property," and which statute of limitations was applicable. Therefore, absent disputed facts, the question whether plaintiffs' cause of action was barred was a question of law to be determined by the trial judge. *Id.; Moll v Abbott Laboratories*, 444 Mich 1, 26; 506 NW2d 816 (1993).

In summary, the statute of repose set forth at MCL 600.5839(1); MSA 27A.5839(1) applies to this case because Door-Man is a contractor and plaintiffs' complaint alleges a claim against Door-Man for injuries arising from an improvement to real property. Because the accident in this case occurred more than six years after the occupancy of the completed improvement, plaintiffs' complaint was not brought within the period set forth at MCL 600.5839(1); MSA 27A.5839(1). The trial court properly granted Door-Man's motion for summary disposition pursuant to MCR 2.116(C)(7).

Affirmed.

/s/ Henry William Saad
/s/ Kathleen Jansen
/s/ Joel P. Hoekstra

[1] For actions that accrue within six years from occupancy, use, or acceptance of the completed improvement, the statute prescribes the time within which such actions may be brought and thus acts as a statute of limitations; however, when more than six years from such time have elapsed before an injury is sustained, the statute prevents a cause of action from ever accruing and thus acts as a statute of repose. *O'Brien v Hazelet & Erdal*, 410 Mich 1, 15; 299 NW2d 336 (1980).