STATE OF MICHIGAN

COURT OF APPEALS

BRIDGET BROOKS,

Plaintiff-Appellant,

v

WILLOW TREE VILLAGE, AMERICAN WILLOW TREE LTD PARTNERSHIP, and AMERICAN EQUITIES MANAGEMENT COMPANY d/b/a THE VILLAGE TEAM,

Defendants-Appellees,

and

WRONA ROOFING COMPANY,

Defendant.

UNPUBLISHED
March 1, 2011

No. 294544
Bay Circuit Court
LC No. 08-003802-NO

Before: SERVITTO, P.J., and GLEICHER and SHAPIRO, JJ.

PER CURIAM.

Plaintiff appeals, by leave granted, the trial court's order granting summary disposition in defendants' favor on plaintiff's negligence claim, based upon the statute of limitations. Because plaintiff's negligence claim is barred by the applicable statute of limitations, we affirm.

In December 2004, plaintiff viewed a modular home available for lease in defendant Willow Tree Village, a manufactured home community owned by defendant American Willow Tree Limited Partnership. During her tour of the home, plaintiff noticed a slight discoloration on the ceiling, near a skylight, in the master bedroom. The onsite manager advised plaintiff that there had previously been a leak in that area, but that it had been remedied. Plaintiff thereafter entered into a contract with the company managing Willow Tree Village, defendant American Equities Management Company, whereby she would lease, with the option to purchase, the modular home. She moved into the home in January 2005.

From the time she moved in and continuing for the year that plaintiff resided in the home, she noticed additional brown spots appearing on the ceiling of the home. In the summer of 2005, plaintiff noticed a significant amount of water leaking into the home near the skylight. Plaintiff

immediately advised the onsite manager of the leak and, several days later, was told that maintenance had sealed the leak in the skylight. The discoloration near the skylight thereafter grew and, within two months, the ceiling began leaking again. Paint also began falling from the ceiling in another bedroom in the home, revealing additional discoloration. Though plaintiff again called the onsite manager, the ceiling continued to leak. Plaintiff was advised that the ceiling had been sealed again, but that roofing repairs would not be made until the spring. Unfortunately, the leaking continued.

Plaintiff testified that in September or October of 2005, she began experiencing pelvic pain, had a cold that would not go away, and experienced difficulty breathing with temperature changes. In December 2005, plaintiff hired an environmental company to inspect the home. On visual inspection, the environmental company told her she should not be living there, due to the existence of mold. Plaintiff immediately moved out of the home and did not reside there again. Testing later performed by the environmental company confirmed high levels of mold in the home.

Plaintiff filed the instant lawsuit against defendants on November 5, 2008. Plaintiff alleged that defendants negligently maintained the home and negligently failed to repair the leaks and water damage, thereby allowing dangerous amounts of mold to exist in the home. Plaintiff asserted she suffered serious health problems as a result of defendants' negligence. Plaintiff also asserted (in an amended complaint) claims of breach of contract, breach of warranty, and fraud.

Defendants moved for summary disposition, asserting that the applicable statute of limitations had run and that plaintiff's complaint was thus untimely. The trial court agreed, granting summary disposition in defendants' favor on plaintiff's tort claims. After plaintiff's motion for reconsideration and plaintiff's motion to reinstate her negligence claim were denied, plaintiff filed an application for leave to appeal, which we granted.

This Court reviews de novo the grant or denial of summary disposition. *Ligon v Detroit*, 276 Mich App 120, 124; 739 NW2d 900 (2007). A party is entitled to summary disposition under MCR 2.116(C)(7) if the opposing party's claim or claims are barred under the applicable statute of limitations. In reviewing motions under MCR 2.116(C)(7), this Court will accept the plaintiff's well-pleaded factual allegations as true unless contradicted by the parties' supporting affidavits, depositions, admissions, or other documentary evidence. *Odom v Wayne Co*, 482 Mich 459, 466; 760 NW2d 217 (2008). "If the pleadings demonstrate that one party is entitled to judgment as a matter of law, or if affidavits and other documentary evidence show that there is no genuine issue of material fact concerning the running of the period of limitations, the trial court must render judgment without delay." *Adams v Adams (On Reconsideration)*, 276 Mich App 704, 720; 742 NW2d 399 (2007).

On appeal, plaintiff contends that her negligence action was not time barred. The parties agree that plaintiffs' negligence claim is governed by the three-year period of limitations prescribed in MCL 600.5805(10). The parties disagree, however, when that limitations period began to run.

MCL 600.5805 provides, in relevant part:

> (1) A person shall not bring or maintain an action to recover damages for injuries to persons or property unless, after the claim first accrued to the plaintiff or to someone through whom the plaintiff claims, the action is commenced within the periods of time prescribed by this section.
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> (10) The period of limitations is 3 years after the time of the death or injury for all other actions to recover damages for the death of a person, or for injury to a person or property.

"Thus, the period of limitations runs three years from the death or injury." *Trentadue v Buckler Lawn Sprinkler*, 479 Mich 378, 387; 738 NW2d 664 (2007).

> MCL 600.5827 specifies when a claim "accrues" as follows:
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> Except as otherwise expressly provided, the period of limitations runs from the time the claim accrues. The claim accrues at the time provided in sections 5829 to 5838, and in cases not covered by these sections the claim accrues at the time the wrong upon which the claim is based was done regardless of the time when damage results.

According to *Boyle v Gen Motors Corp*, 468 Mich 226, 231 n 5; 661 NW2d 557 (2003), under § 5827 "[t]he wrong is done when the plaintiff is harmed rather than when the defendant acted." Because it is undisputed that plaintiff's claim is not covered by sections 5829 to 5838, her claim accrued "at the time the wrong upon which the claim is based was done." Plaintiff provides us several events within three years of her November 5, 2008 complaint that she asserts mark the point at which her claim accrued. None of these events, however, mark the actual date of accrual.

Plaintiff first asserts that because she filed her claim within three years of discovering her injuries, her claim is timely. We disagree.

Plaintiff was aware of water damage to the home when she first toured it in December, 2004. While she was advised that the leak had been repaired, she nevertheless saw additional brown spots on the ceiling within a short time and, in the summer of 2005, had to place buckets in the bedroom to catch all of the water leaking from the ceiling. Despite another attempted remedy of the leak, by September and early October 2005 the leaking began again in the bedroom, and additional discoloration appeared in plaintiff's daughter's bedroom. Plaintiff was thus well aware of roof issues and significant water damage to the home by at least October, 2005.

Additionally, while plaintiff contends that she did not present at a medical facility until November 15, 2005 complaining of pelvic pain which began the week prior, plaintiff also unequivocally testified that in September and October 2005 she began experiencing pelvic pain, a cold that would not go away, and respiratory problems. Plaintiff thus began suffering the alleged harm from the water intrusion and mold by October 2005 at the latest. That she did not seek medical treatment until later does not change the date upon which she actually suffered

damages or was harmed. As such, her November 5, 2008 complaint was filed beyond the three-year limitation period.

Plaintiff asserts that she did not discover the correlation between her symptoms and the existence of mold in the home until the spring of 2006. However, there is no "discovery" tolling provision available to plaintiff on her negligence claim. The Michigan Supreme Court in *Trentadue*, 479 Mich at 407, held that "the plain language of MCL 600.5827 precludes the use of a broad common-law discovery rule to toll the accrual date of claims to which this statute applies." Again, plaintiff exhibited symptoms and thus incurred injuries in September and October 2005. To find that plaintiff did not suffer damage/injury until she actually discovered (as opposed to could have reasonably discovered) the correlation between her symptoms and mold would be to apply the "discovery" tolling period expressly disallowed by *Trentadue*.

Citing *Marilyn Froling Revocable Living Trust v Bloomfield Hills Country Club*, 283 Mich App 264, 269; 769 NW2d 234 (2009) and *Terlecki v Stewart*, 278 Mich App 644, 646; 754 NW2d 899 (2008), plaintiff also asserts that her complaint was timely because it was filed within three years of defendants' last attempt to repair the leaking roof (November 27, 2005). We disagree.

In *Marilyn Froling Revocable Living Trust*, the Frolings' neighbors engaged in several actions throughout a several year period that led to flooding on the Frolings' property. The last act by a neighbor occurred in 1998, but the Frolings did not experience a flood resulting from this act until June 2001. Flooding occurred again several times after 2001. This Court held that despite later flooding, the injury occurred in 2001, and that because no actions took place after 1998, any subsequent flooding was simply a continued result of the 1998 conduct. *Id*. at 291. As a result, the Frolings' claim was found to have accrued in June 2001 and its claim thus had to be filed by June 2004 to be timely. *Id*. at 291-292.

In *Terlecki*, 278 Mich App at 647, the plaintiffs alleged that the defendants' actions in 1997, 1998, and "sometime before November 2001" caused a nearby lake to rise and flood plaintiffs' property. Though plaintiffs noticed that some of the trees on their property began dying in 2001, it was not until April 2005 that they discovered the elevated lake was causing the damage. This Court nevertheless held that the "wrong" occurred, at the latest, in 2001 when their property flooded, such that their 2005 complaint was untimely.

According to plaintiff, the above cases stand for the proposition that the statute of limitations begins to run when the first harm caused by the last act of defendants occurred. Plaintiff concludes that because defendants' last act, i.e. an attempt at sealing the leaking roof, occurred on November 27, 2005, her claim did not accrue until on or after that date. However, the present case is distinguishable from *Marilyn Froling Revocable Living Trust* and *Terlecki* in that those cases addressed several distinct actions by the defendants that led or contributed to plaintiff's damages. In *Marilyn Froling Revocable Living Trust*, for example, the Frolings' neighbors had performed various improvements on their property that affected water drainage over a several year period, with their last act affecting drainage being in 1998. Because the Frolings did not experience substantial flooding until 2001, their claim accrued in 2001, when the "wrong" occurred.

Here, on the other hand, there was only one action by defendants—failure to replace the leaky roof—that led to plaintiff's damages. And, as discussed above, plaintiff began to suffer damages from this act in the fall of 2005, at the latest. While defendants did take actions to repair the roof, several times, the failed actions did not constitute a new act resulting in new damages but instead allowed plaintiff's existing damages to continue and perhaps worsen. As noted in *Marilyn Froling Revocable Living Trust*, "the accrual of the claim occurs when both the act and the injury first occur, that is when the 'wrong is done,'" and "[s]ubsequent claims of additional harm caused by one act do not restart the claim previously accrued." *Id*. at 250-251. The roof was leaky from the start and defendants' failed attempts to remedy the leaks did not create a new accrual date with each failed attempt. Plaintiff does not assert that she suffered new damages or new harm each time defendants' remedies failed. Instead, the initial failure to remedy the leaky roof led to plaintiff's injuries, and the persistent leaking merely continued the effect of the defendants' initial actions.

Finally, plaintiff asserts that the statute of limitations is tolled for two additional years because defendants attempted to fraudulently conceal the mold. We disagree.

MCL 600.5855 provides:

> If a person who is or may be liable for any claim fraudulently conceals the existence of the claim or the identity of any person who is liable for the claim from the knowledge of the person entitled to sue on the claim, the action may be commenced at any time within 2 years after the person who is entitled to bring the action discovers, or should have discovered, the existence of the claim or the identity of the person who is liable for the claim, although the action would otherwise be barred by the period of limitations.

Here, plaintiff was aware of water damage at least as of the summer of 2005. It was apparent to her when she had to use buckets to catch the pouring water, and when she saw brown spots continually appearing on various parts of the home's ceilings. There was no hiding the leaks. Despite the fact that defendants tried to simply patch the leaks with caulk rather than replace the entire roof does not amount to fraudulent concealment because plaintiff was still aware of the leaking roof as it existed prior to the caulking and as it continued to exist after the caulking. Plaintiff has not established that defendants fraudulently concealed the condition of the roof such that she was prevented from timely bringing an action.

Affirmed.

/s/ Deborah A. Servitto
/s/ Elizabeth L. Gleicher
/s/ Douglas B. Shapiro