

STATE OF MICHIGAN  
COURT OF APPEALS

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MICHIGAN CONSOLIDATED GAS  
COMPANY,

UNPUBLISHED  
January 17, 2013

Plaintiff-Appellee,

v

No. 304679  
Oakland Circuit Court  
LC No. 2010-112574-ND

KAMPHUIS PIPELINE COMPANY,

Defendant-Appellant.

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Before: DONOFRIO, P.J., and FORT HOOD and SERVITTO, JJ.

SERVITTO, J. (*concurring*).

I agree with the conclusions reached by the majority, but write separately to address defendant's reliance on and reference to *SBC v J.T. Crawford, Inc*, unpublished opinion per curiam of the Court of Appeals, issued November 27, 2007 (Docket No. 275334), in support of its argument that it is allowed to limit plaintiff's ability to recover damages under MCL 460.714 based on plaintiff's failure to accurately mark the approximate location of the gas line as set forth under an expired MISS-DIG ticket. In that case, a panel of this Court, of which I was a member, was also presented with an expired MISS-DIG ticket, but indicated that the contractor who ruptured a utility line while working under the expired MISS-DIG ticket was not "necessarily liable for the entirety of the damages." *Slip op.* at page 5. The *SBC* panel then referenced MCL 460.708, indicating that the trial court did not consider that statutory provision. The panel remanded for a finding of whether competent evidence demonstrated whether the damages at issue were caused by the contractor's activities and whether the utility company complied with MCL 460.708. *Id.*

Not only is *SBC* an unpublished and nonbinding opinion, it is my belief that it does not stand for the proposition that a utility company's lack of compliance with MCL 460.708 serves to reduce one's liability for damages in all instances, and, specifically where a MISS-DIG ticket has expired. The *SBC* panel simply directed the trial court to consider the issue on remand. While perhaps not artfully worded, the panel's choice of the phrase "does not mean that [the contractor] is *necessarily* liable for the entirety of the damages" indicates, in my opinion, possibility rather than an unequivocal determination.

/s/ Deborah A. Servitto