

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Daniel and Christine Baker :
 :
 v. :
 :
 Reese Bros. and Knieriem :
 Construction and Somerset :
 County Building Inspections, LLC. :
 :
 Appeal of: Somerset County Building : No. 1546 C.D. 2011
 Inspections, LLC : Argued: April 18, 2012

BEFORE: HONORABLE DAN PELLEGRINI, President Judge
HONORABLE BERNARD L. McGINLEY, Judge
HONORABLE BONNIE BRIGANCE LEADBETTER, Judge
HONORABLE ROBERT SIMPSON, Judge
HONORABLE MARY HANNAH LEAVITT, Judge
HONORABLE P. KEVIN BROBSON, Judge
HONORABLE ANNE E. COVEY, Judge

OPINION NOT REPORTED

MEMORANDUM OPINION
BY JUDGE McGINLEY

FILED: October 19, 2012

Somerset County Building Inspections, LLC (SCBI) petitions for review by permission from an order of the Court of Common Pleas of Somerset County (common pleas court) that denied SCBI's motion for reconsideration of its previous order denying SCBI's motion for summary judgment but granted its alternative motion to amend the court's order pursuant to 42 Pa. C.S. § 702(b).¹

¹ 42 Pa. C.S. § 702(b) provides:

Interlocutory appeals by permission.-When a court or other government unit, in making an interlocutory order in a matter in which its final order would be within the jurisdiction of an appellate court, shall be of the opinion that such order involves a controlling question of law as to which there is substantial ground for difference of opinion and that an immediate appeal from the order may materially advance the ultimate termination of the

(Footnote continued on next page...)

A. First Amended Complaint.

On April 16, 2009, Daniel and Christine Baker (the Bakers) filed an amended complaint (First) and alleged:

....

5. On or about February 28, 2008, the Bakers entered into a contract with Reese Bros. and Knieriem Construction that provided for a construction of a residential home at 3986 Coxes Creek Road, Somerset Township, Somerset Pennsylvania 15501

6. Reese Bros. and Knieriem Construction (hereinafter referred to Reese) is the general contractor for the construction of the Baker home.

....

8. . . . Plans must be engineered to meet local Codes . . . Footings Must Be Engineered According To Local Codes.

....

10. At no time did Defendant Reese have the plans, including the plans or specifications for footing engineered to meet local codes. (emphasis added).

11. The Bakers paid the sum of \$4,226.00 for the purpose of obtaining the required Code Compliance Review Building Permit issuance and inspection/verification process. (emphasis added).

12. Upon information and belief, Defendant [Somerset County Building Inspection, LLC] Somerset Inspections issued a Building Permit, despite the fact that plans to meet local codes were not submitted by Reese.

(continued...)

matter, it shall so state in such order. The appellate court may thereupon, in its discretion, permit an appeal to be taken from such interlocutory order.

13. In 2008, Defendant Reese began construction.

14. In mid-December of 2008, the Bakers noticed structural deficiencies relative to the timber framing in the construction of their home. (emphasis added).

15. The Bakers sought the assistance of a professional structural engineer to conduct a preliminary examination and evaluation of the structural integrity of the framing and other construction which had preceded [sic] to date. (emphasis added).

.....

17. The evaluation of EADS [Engineering Architecture and Design Services Group] revealed widespread structural deficiencies.

18. The Bakers have been advised that the structure is not in compliance with applicable building codes and may be unsafe for habitation. (emphasis added).

.....

COUNT III
Negligence

**Bakers v. Somerset County Building Inspections,
LLC**

.....

38. Somerset Inspections [SCBI] is the third-party agency certified by the Department of Labor and Industry as a construction code official and contracted to perform plan review of construction documents, inspect construction or administer and enforce codes and regulations under Pennsylvania law. (emphasis added).

39. Somerset Inspections [SCBI] is a private, for-profit limited liability company organized and existing under the laws of the Commonwealth of Pennsylvania.

.....

41. Somerset Inspections [SCBI] was not created by a governmental entity.

.....

46. Upon information and belief, Somerset Inspections [SCBI] has not been recognized by the Pennsylvania legislature as an agent or instrumentality of the Commonwealth of Pennsylvania.

47. Upon information and belief, Somerset Inspections [SCBI] is not a governmental agency.

48. Pursuant to an Agreement between Somerset Inspections [SCBI] and Somerset County Municipal Cooperative, a Pennsylvania Non-Profit Cooperative Corporation, Somerset Inspections [SCBI] is “engaged in the business of providing consulting and inspection services pursuant to the Pennsylvania Uniform Construction Code” [PCCA]^[2] (emphasis added).

49. The Agreement provides that Somerset Inspections [SCBI] shall provide to Somerset County Municipal Cooperative a building code official and/or construction code official, as defined in the Pennsylvania Construction Code [PCCA], to:

- a. Provide and receive applications for permits;
 - b. Review plans;
 - c. Grant or deny permit applications;
 - d. Provide inspections;
 - e. Issue Certificates of occupancy;
 - f. Enforce the PA Uniform Construction Code;
 - g. Collect the required application, plan review, and permit and inspection fees (emphasis added).
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² Act of November 10, 1999, P.L., as amended, 35 P.S. §§ 7210.101-7210.1103.

51. The Agreement provides that Somerset Inspections [SCBI] shall establish a fee schedule for services rendered and that the fees shall be paid to Somerset Inspections [SCBI] and shall be the sole property of Somerset Inspections [SCBI] (emphasis added).

. . . .

55. Prior to the commencement of construction activity by Defendant Reese [Brothers], a Building Permit was issued by Somerset Inspections [SCBI] after a fee for the same was received from the Baker Plaintiffs. (emphasis added).

56. Somerset Inspections [SCBI] issued the Building Permit without the following proper validation process. (emphasis added).

57. Somerset Inspections [SCBI] issued a Building Permit, notwithstanding the fact that Defendant Reese did not submit engineer [sic] plans showing designs conforming to local codes.

58. Somerset Inspections [SCBI] has a duty to inspect residential dwellings to ensure that the structures are free from hazardous structural conditions and in compliance with the Uniform Construction Code [(UCC), 34 Pa. Code §§401.1.-401.16]. (emphasis added).

. . . .

60. Somerset Inspections [SCBI] has a duty to conduct foundation inspections, plumbing, mechanical and electrical system inspections, frame and masonry inspections and wallboard inspections. (emphasis added).

. . . .

62. Somerset Inspections [SCBI] has a duty to issue a written stop work order when the code official determines that construction violates the Uniform Construction Code or is being performed in a dangerous or unsafe matter [sic]. (emphasis added).

63. Somerset Inspections [SCBI] failed to verify the concrete footers. (emphasis added).

64. Somerset Inspections [SCBI] further improperly approved framing of the structure on December 4, 2008. (emphasis added).

65. The aforesaid structural deficiencies . . . were caused by the negligence of Defendant Somerset Inspections [SCBI] (emphasis added).

66. In spite of the structural deficiencies, Somerset Inspections [SCBI] permitted the construction to proceed. (emphasis added).

67. The negligence of Defendant Somerset Inspections [SCBI] was a direct and proximate cause in allowing construction to progress to the point where Defendant Reese had requested and received approximately \$450,000.00 in progress payments for a non-conforming structure.

68. As a direct and proximate result of the negligence by Somerset Inspections [SCBI], the Bakers have suffered loss and damages, including, but not limited to: (emphasis added).

- a. cost for material and labor;
- b. interest payments on a construction loan; and
- c. costs associated with consulting engineers and permit fees.

WHEREFORE, the Plaintiffs, Bakers, request that this Honorable Court enter judgment in their favor and against Defendant, Somerset Inspections, LLC, [SCBI] in excess of the arbitration limits in this jurisdiction. (emphasis added).

The Bakers' First Amended Complaint in Civil Action, April 16, 2009, Paragraphs 5-6, 8, 10-15, 17-18, 38-39, 41, 46-49, 51, 55-58, 60, and 62-68 at 4-5, 10-15; R.R. at 40a-42a and 46a-51a.

On May 7, 2009, SCBI denied the Bakers' allegations and asserted in new matter:

New Matter

.....

72. Any and all damages that may have been sustained by the Plaintiffs [the Bakers] are the direct and proximate result of the conduct of other persons, parties and/or forces over which Defendant Somerset Inspections [SCBI] is not responsible and did not control. (emphasis added).

.....

83. Somerset Township and Somerset County Municipal Cooperative do maintain control and oversight over Somerset Inspections [SCBI]. (emphasis added).

.....

86. Defendant Somerset Inspection [SCBI] is therefore entitled to the doctrines of governmental and/or official immunity as preserved in the Pennsylvania Political Subdivision Tort Claims Act, 42 Pa. C.S.A. §§ 8541, *et seq.*, and asserts herein all defenses and immunities provided therein as a complete bar to liability.

87. Defendant Somerset Inspections [SCBI] contends that it at all times complied with the Uniform Construction Code and asserts herein applicable provisions thereof as a complete bar to liability. (emphasis added).

.....

111. To the extent any other evidence reveals as such, Plaintiffs [Bakers] have failed to mitigate their damages including but limited to Plaintiffs' [the Bakers'] failure to hire another contractor to repair any alleged deficiencies

or problems and/or to complete the construction of Plaintiffs' [the Bakers'] home.

112. Plaintiffs' [the Bakers'] First Amended Complaint fails to state a claim against Defendant Somerset Inspections [SCBI] upon which relief can be granted. (emphasis added).

.....

114. To the extent that it may be applicable, Defendant Somerset Inspections [SCBI] asserts the economic loss doctrine as a complete bar to liability and/or to any recovery by the Plaintiffs [the Bakers]. (emphasis added).

SCBI's Answer, New Matter and Cross Claim Pursuant to Rule 1031.1, May 7, 2009, Paragraphs 72, 83, 86-87, 111-112, and 114 at 22, 24-25, and 28-29; R.R. at 83a, 85a-86a, and 89a-90a.

B. Second Amended Complaint.

On February 11, 2011, the Bakers filed a second amended complaint and alleged:

.....

Count III **Negligence**

Bakers v. Somerset County Building Inspections, LCC

70. Defendant . . . [SCBI], through its agents, servants and employees, acted with reckless indifference to the Plaintiffs [the Bakers] and to the public or community in general as follows:

a. By creating an inspection record which falsely suggested that the foundation and footings had been inspected;

- b. Ignoring or overlooking obvious defects and aspects of the construction which were not compliant with the Pennsylvania Uniform Construction Code;
- c. In creating an inspection record which falsely suggested that the framing had been inspected;
- d. In remaining indifferent to the construction technique of “sistering” [sic] rafter and roof support members, which created a risk of collapse or failure of the roof structure;
- e. By intentionally ignoring and avoiding the obligations accepted to enforce the Pennsylvania Uniform Construction Code.

71. The indifference of Defendant [SCBI] . . . created an unreasonable risk of physical harm to Plaintiffs [the Bakers] and to such members of the public who may have had cause to enter the completed structure, such as ambulance personnel, volunteer firefighters or other persons present within the structure for some lawful purpose.

72. Defendant . . . [SCBI] is liable to the Bakers for punitive damages.

WHEREFORE, the Plaintiffs, Daniel and Christine Baker, request that this Honorable Court enter judgment in their favor and against Defendant Somerset County Building Inspections, LLC, [SCBI] in excess of the arbitration limits in this jurisdiction.

The Bakers’ Second Amended Complaint in Civil Action, February 11, 2011, Paragraphs 70-72 at 1-2; R.R. at 135a-36a.

On March 4, 2011, SCBI denied the Bakers’ new allegations in their second amended complaint and asserted in new matter:

New Matter

....

2. At no time did SCBI or any of its inspectors act in an outrageous fashion due to any evil motive or due any reckless indifference to the Plaintiffs [the Bakers] or to the public in general.

3. At no time did SCBI or any of its inspectors act recklessly to the Plaintiffs [the Bakers] or to the public or community in general, or otherwise create an unreasonable risk of harm to the Plaintiffs [the Bakers] or to the public or community in general. (emphasis added).

4. Neither the Plaintiffs [the Bakers] nor the public or community in general were ever exposed to an unreasonable risk of harm because the residential structure of the Plaintiffs [the Bakers] was never occupied or lived in notwithstanding the fact that it is still standing to this day and has not collapsed. (emphasis added).

5. Therefore, Plaintiffs [the Bakers] are not entitled to the recovery of punitive damages from Defendant SCBI.

6. Plaintiff's [sic] [the Bakers'] Second Amended Complaint fails to state a claim for punitive damages upon which relief can be granted.

Answer and New Matter to Plaintiffs' Second Amended Complaint, March 4, 2011, Paragraphs 2-6 at 4; R.R. at 141a.

C. Motion For Summary Judgment.

On March 9, 2011, SCBI sought summary judgment and asserted:

I. Summary Judgment Should Be Entered In Favor Of Defendant Somerset County Building Inspections, LLC On The Basis Of The Economic Loss Doctrine.

54. “The economic loss doctrine provides, ‘no cause of action exists for negligence that results solely in economic damages unaccompanied by physical injury or property damage’” (emphasis added).

.....

56. In the present matter, Plaintiffs [the Bakers] have raised a negligence claim against Defendant SCBI.

.....

58. In addition to the allegations of Plaintiffs’ [the Bakers’] First Amended Complaint, the evidence confirms that Plaintiffs’ [the Bakers’] cause of action results from the alleged improper work to the structure itself and not from personal injuries or damages to other property (emphasis added).

.....

60. To the contrary, Plaintiffs [the Bakers] have only sustained economic losses which are not recoverable from SCBI in negligence under well-established Pennsylvania law and which Plaintiffs have not proved otherwise. (emphasis added).

61. Accordingly, because there is no genuine issue of material fact that Plaintiffs’ [the Bakers’] negligence claim against SCBI seeks the recovery of damages that are purely economic as they relate only to the alleged improper work itself, Plaintiffs [the Bakers] cannot recover against SCBI in negligence and summary judgment must be entered as a matter of law. (emphasis added).

.....

II. Alternatively, Summary Judgment Should Be Entered In Favor Of Defendant Somerset County Building Inspections, LLC Because It Owed No Duty To The Plaintiffs.

.....

64. In the present matter, this Defendant SCBI is not aware of any common law duty that SCBI owed to the Plaintiffs [the Bakers] and Plaintiffs [the Bakers] have not established any such a [sic] common law duty.

65. In that regard, Defendant SCBI owed no duty to the Plaintiffs [the Bakers] to protect them from their contractor, Defendant Reese, because there was no “special relationship” with either Reese or the Plaintiffs [the Bakers] recognized at common law for purposes of establishing a legal duty.

.....

68. It is well-settled that law enforcement officers have no general duty to individuals absent some special relationship (emphasis added).

69. Furthermore, no statute exists that establishes any such duty that was owed to the individual Plaintiffs [the Bakers] by SCBI as a third party agency and building code official appointed by Somerset County Municipal Cooperative and Somerset Township to enforce and administer the Uniform Construction Code on behalf of the Township. (emphasis added).

.....

74. There is no provision in the PCCA [Pennsylvania Construction Code Act] which establishes the existence of a legal duty to the individual Plaintiffs [the Bakers] owed by SCBI as the building inspector and official on behalf of Somerset Township. (emphasis added).

.....

85. Therefore, the PCCA and the Uniform Construction Code adopted thereunder, see 35 P.S. §§ 7210.301-305 and 34 Pa. Code § 403.21, do not establish the existence of any duty that was owed by SCBI to the individual Plaintiffs in this action. (emphasis added).

86. Accordingly, because SCBI owed no duty to the Plaintiffs [the Bakers] as individuals, Plaintiff cannot maintain an action in negligence against it.

87. As a result thereof, summary judgment must be entered in favor of SCBI as a matter of law.

Motion for Summary Judgment³, March 9, 2011, Paragraphs 54, 56, 58, 60-61, 64-65, 68-69, 74, and 85-87 at 12-16, and 19; R.R. at 157a-61a, and 164a.

The Bakers responded to SCBI's motion for summary judgment:

....

53. It is admitted that the building permit for the Baker home was issued by SCBI. It is denied that SCBI did so on behalf of Somerset Township or that it did so as an agent or employee of Somerset Township. Rather, SCBI did so in its capacity as a third-party agency and independent contractor. (emphasis added).

....

57. . . . SCBI had a duty to provide Pennsylvania Uniform Construction Code compliance and enforcement services, to include required physical inspections of the construction as it progressed. SCBI failed to perform that duty in a reasonable manner, with the result that construction defects, such as improper footings, improper joinery of timber framing and other violations of the Uniform Construction Code, were overlooked, approved, incorporated into the defective structure and obscured view. The Plaintiffs [the Bakers] experienced damage, which is proximately caused by and a direct result of the negligence of SCBI. (emphasis added).

....

61. The Bakers deny that there is no genuine issue of material fact and deny they cannot recover as against SCBI. (emphasis added).

....

³ Although SCBI also sought, in the alternative, partial summary judgment with respect to the Bakers' claim for attorney fees and costs, the issue of fees and costs is not before this Court on appeal. See Commonwealth Court's September 14, 2011, order.

65. It is denied that SCBI owed the Bakers no duty to protect the Bakers from the contractor/Co-Defendant Reese. Rather, the Pennsylvania Uniform Construction Code required SCBI to perform certain functions, including compliance inspections. The Pennsylvania Uniform Construction Code, in effect, assumes that construction contractors will fail to comply with the Code; and therefore, inspections by independent, certified individuals must occur and be documented for the benefit of the public, to include the Bakers. (emphasis added).

....

74. . . . The structure in question was being built under a permit issued by Defendant SCBI. SCBI had the duty to enforce the Code so as to comply with the purpose of the Construction Code Act In particular, the Pennsylvania Uniform Construction Code contains a requirement that third-party administrators, such as SCBI, carry minimum levels of liability insurance. Further, the regulations established by the Pennsylvania Department of Labor & Industry require that third-party agencies maintain a minimum level of insurance related to performance of Construction Code administration and enforcement activities and notify the Department of any change or lapse of the required insurance. (emphasis added).

....

WHEREFORE, the Plaintiffs [the Bakers] respectfully request that the Motion for Summary Judgment and/or Partial Summary Judgment be denied.

Response to Motion for Summary Judgment of Somerset County Building Inspections, LLC, April 6, 2011, Paragraphs 53, 57, 61, 65, and 74 at 6-9, and 12; R.R. at 277a-80a, and 283a.

D. The Common Pleas Court's Decision.

The common pleas court denied SCBI's motion for summary judgment:

Although the Bakers had an expressed written contract with defendant Reese Brothers and Knieriem Construction, there was no bargained for exchange between the Bakers and SCBI. The Pennsylvania Construction Code Act, 35 P.S. § [7210]101 et. seq. requires municipalities to enact an ordinance adopting the current Uniform Construction Code as their municipal building code. 35 P.S. § 7210.501. In its findings, the General Assembly determined that consumers and occupants may be at risk from substandard construction and therefore one of the purposes of the act was to provide standards for the protection of life, health, property and environment and for the safety and welfare of the owners and occupants of buildings and structures. 35 P.S. §7210.102(a)(1) and (b)(1)

Prior to construction the Bakers were required to obtain a building permit from SCBI, the third-party agency engaged by Somerset Township to assure its compliance with the Act Although our research has not revealed any express private right of action against a third party agency in a lapse of their performance in carrying out their [sic] inspection duties under the Act, the express imposition of a duty to carry errors and omissions liability insurance can only contemplate the intent of the General Assembly to expressly authorize actions in tort for losses suffered by building owners whose construction projects did not receive a reasonable standard of care in inspections by the third party agency.

In analyzing the economic loss doctrine applicability to this case it is noteworthy that there is a direct relationship between the Plaintiffs-Baker and the Defendant-SCBI. As previously discussed, the economic loss doctrine often focuses in denial of liability based on the remoteness of the tortfeasor and the claimant. Here, the tortfeasor and the claimant have a direct relationship.

Further, the statutory scheme establishes a duty on the part of the building inspector to notify a permit holder if construction complies with the Uniform Construction Code or fails to comply. This is not a products liability case where the damage is solely to the product itself and the economic loss doctrine denies liability to the manufacturer for economic losses. There is no alternate theory available in this case because there is no warranty, strict liability or express contract. Indeed, there is no bargained for exchange between the Bakers and SCBI for which a contract theory would allow the Plaintiffs [Bakers] to recover for SCBI's malfeasance or misfeasance. Because of the directness and foreseeability of the harm done Plaintiff's [sic] [the Bakers] by the breach of the standard of care of SCBI as building inspectors, the economic loss doctrine should not be deemed applicable to deny Plaintiff's [sic] [the Bakers'] cause of action.

. . . Defendant-SCBI was in the profession of examining the progress of construction and making reports to the owner to assure the owner's safety. The exception to the economic loss doctrine found and utilized in the Bilrite [sic] [Bilt-Rite Contractors, Inc. v. Architectural Studio, 581 Pa. 454, 866 A.2d 270 (2005)] should be equally applicable here. (emphasis added and in original).

Opinion of the Common Pleas Court, July 27, 2011, at 8-10.

On September 14, 2011, this Court entered the following order:

. . . [U]pon consideration of appellant's [SCIB's] petition for permission to appeal the Order of the Court of Common Pleas of Somerset County, to which no response has been filed, the petition is granted and the appeal is allowed from the June 15, 2011 order, as amended, entered by the Court of Common Pleas of Somerset County at Docket No. 296 Civil 2009.

The Court will consider the following issue:

Whether Plaintiffs' [The Bakers'] Negligence Claim Against Defendant Somerset Building Inspections, LLC (SCBI) Is Precluded On The Basis Of The Economic Loss Doctrine In That Plaintiffs [The Bakers] Seek To Recover Only Economic Damages, And Because There Was No Duty Imposed Upon SCBI By Statute To Avoid Economic Losses To Plaintiffs [The Bakers]?

.....

All proceedings in this matter before the Court of Common Pleas of Somerset County are stayed pending resolution of this appeal. (emphasis added).

Order of the Commonwealth Court, September 14, 2011, at 1.

I. Whether The Economic Loss Doctrine Bars The Bakers' Negligence Claim Under Pennsylvania Law Because Only Economic Damages Are Claimed?

“The economic loss doctrine provides that no cause of action exists for negligence that results solely in economic damages unaccompanied by physical injury or property damage.” (citation omitted and emphasis added). Adams v. Copper Beach Townhome Communities, 816 A.2d 301, 305 (Pa. Super. 2003). Case law defines “economic loss” as “damage for inadequate value, costs of repair and replacement of [a] defective product, [or] consequential loss of property, without any claim of personal injury or damage to other property.” (emphasis in original). Am. Stores Props, Inc. v. Spotts, Stevens & McCoy, Inc., 648 F. Supp. 2d 707, 713 (E.D. Pa. 2009). In Aikens v. Baltimore & Ohio R.R. Company, 501 A.2d 277 (Pa. Super. 1989), our Pennsylvania Superior Court noted:

Therefore, negligent harm to economic advantage alone is too remote for recovery under a negligence theory. The reason a plaintiff cannot recover stems from the fact that the negligent actor has no knowledge of the contract

or prospective relation and thus has no reason to foresee any harm to the plaintiff's interest. (citations omitted and emphasis added).

Id. at 279.

In support of its argument that the economic loss doctrine bars the Bakers' cause of action, SCBI contends⁴ that the test for application of the economic loss doctrine is whether purely pecuniary or economic losses are claimed, not the alleged foreseeability of the losses in each case. SCBI maintains the damages claimed by the Bakers are solely for economic loss and, as a result, the economic loss doctrine bars their negligence claim as a matter of law.

The Bakers respond that the economic loss doctrine does not apply because they sustained non-economic damages. The Bakers maintain that they have not alleged the loss of a product purchased from SCBI but that SCBI's negligent conduct caused the loss of their residence. The Bakers state that the economic loss doctrine does not apply because SCBI had a direct relationship with them such that the Bakers' damages were foreseeable and not remote. The Bakers submit that this case is analogous to Bilt-Rite Contractors, Inc. v. The Architectural Studio, 581 Pa. 454, 866 A.2d 270 (2005) because SCBI provided information for pecuniary gain much like the architect supplied in Bilt-Rite. Therefore, Bilt-Rite is controlling.

⁴ This Court's review of an order granting or denying summary judgment is limited to determining whether the trial court committed an error of law or abused its discretion. Salerno v. LaBarr, 632 A.2d 1002 (Pa. Cmwlth. 1993). Summary judgment is only appropriate when, after examining the record in the light most favorable to the non-moving party, there is no genuine issue of material fact, and the moving party clearly establishes that he or she is entitled to judgment as a matter of law. Id.

In Bilt-Rite, the factual situation, as recounted by our Pennsylvania Supreme Court, was as follows:

East Penn School District entered into a contract with appellee, The Architectural Studio (“TAS”), pursuant to which TAS provided architectural services for the design and construction of a new school in Lower Macungie Township, Lehigh County. The services included the preparation of plans, drawings and specifications to be submitted to contractors for the purpose of preparing bids for the construction of the new school [T]he school district solicited bids from contractors for all aspects of the project and included TAS’s plans, drawings and specifications in the bid documents supplied to the contractors. Bilt-Rite Contractors, Inc. (“Bilt-Rite”) submitted its bid for general construction work on the project . . . and the school district awarded the general construction contract to Bilt-Rite, who was the lowest responsible bidder. On June 6, 1997, the school district and Bilt-Rite entered into a contract for the project in the base amount of \$16,238,900. The contract specifically referred to, and incorporated by reference, TAS’s plans, drawings and specifications.

. . . Once construction commenced, however, Bilt-Rite discovered that the work . . . could not be constructed using normal and reasonable construction methods, and instead required Bilt-Rite to employ special construction means, methods and design tables, resulting in substantially increased construction costs.

On November 19, 1999, Bilt-Rite sued TAS on a theory of negligent misrepresentation under Section 552 of the Restatement (Second) of Torts, claiming that TAS’s specifications were false and/or misleading and seeking damages for its increased construction costs. . . . TAS filed preliminary objections in the nature of a demurrer, arguing that: (1) Bilt-Rite’s action was barred by the “economic loss doctrine,” which holds that a tort plaintiff cannot recover for purely economic losses, and (2) TAS

owed no duty to Bilt-Rite, with whom it had no contractual relationship. . . . [T]he trial court sustained TAS's preliminary objections and dismissed Bilt-Rite's complaint.

. . . .

On appeal, the Superior Court affirmed . . . [and] noted that the absence of privity is not an absolute bar to recovery for economic damages in tort; however, the question of which business relationships should be deemed exempt from the privity requirement (and thus exempt from the economic loss rule) must be decided on a case by case basis. The panel further noted that the architect-contractor relationship had never been expressly included or excluded from the reach of Section 552. Therefore, the panel reasoned, its 'review is guided by the principle that the tort of negligent misrepresentation, like the [sic] any action in negligence, requires the existence of a duty owed by one party to another' The panel recognized that . . . since Bilt-Rite enjoyed no privity of contract with TAS, TAS owed it no duty, and Bilt-Rite could not proceed upon its negligent misrepresentation claim. (emphasis added).

Id. at 457-460, 866 A.2d at 272-74.

Our Pennsylvania Supreme Court granted allocatur and addressed the issue of whether a building contractor may state a cause of action for negligent misrepresentation against an architect where there was no privity of contract between them but where the contractor reasonably relied upon the misrepresentation of the architect in submitting its winning bid. The Supreme Court then proceeded to examine the language of Section 552 of the Restatement

(Second) of Torts⁵ and the conflicting case law interpreting Section 552. The Supreme Court noted:

In Bilt-Rite's view, the economic loss rule does not bar the claim *sub judice* because negligent misrepresentation is a recognized exception to the economic loss doctrine.

TAS's response mirrors the reasoning of the courts below. Advancing a more traditional view of tort law, TAS responds that the economic loss doctrine precludes causes of action based upon negligence or negligent misrepresentation where the plaintiff claims only

⁵ Section 552 of the Restatement provides:

Information Negligently Supplied For Guidance Of Others

- (1) One who, in the course of his business, profession or employment, or in any other transaction in which he has a pecuniary interest supplies false information for the guidance of others in their business transactions, is subject to liability for pecuniary loss caused to them by their justifiable reliance upon the information, if it fails to exercise reasonable care or competence in obtaining or communicating the information. (emphasis added).
- (2) Except as stated in Subsection (3), the liability stated in Subsection (1) is limited to loss suffered
 - (a) by the person or one of a limited group of persons for whose benefit and guidance he intends to supply the information or knows that the recipient intends to supply it; and
 - (b) through reliance upon it in a transaction that he intends the information to influence or knows that the recipient so intends or in a substantially similar transaction.
- (3) The liability of one who is under a public duty to give the information extends to loss suffered by any of the class of persons for whose benefit the duty is created, in any of the transactions in which it is intended to protect them. (emphasis added).

Restatement (Second) of Torts: Misrepresentation §552 (1977).

economic loss and the parties are not in privity of contract. TAS argues that the doctrine applies to services rendered by design professionals, and Pennsylvania courts and federal courts in Pennsylvania have held that design professionals cannot be held liable for purely economic losses to a party with whom they share no contractual relationship.

....

We are persuaded by these decisions from our sister jurisdictions^[6] that: (1) this Court should formally adopt Section 552 of the Restatement (Second), which we have cited with approval in the past, as applied by those jurisdictions in the architect/contract scenario; (2) there is no requirement of privity in order to recover under Section 552; and (3) the economic loss rule does not bar recovery in such a case

....

Accordingly, we hereby adopt Section 552 as the law in Pennsylvania in cases where information is negligently supplied by one in the business of supplying information, such as an architect or design professional, and where it is foreseeable that the information will be used and relied upon by third persons, even if the third parties have no

⁶ See Tommy L. Griffin Plumbing & Heating Co. v. Jordon, Jones & Goulding, Inc., 320 S.C. 49, 463 S.E.2d 85 (1995) (economic loss doctrine did not preclude a contractor from recovering against engineer, absent privity, on a theory of negligent misrepresentation in design of project); Jim's Excavating Services, Inc. v. HKM Associates, 265 Mont. 494, 878 P.2d 248 (1994) (low bidder awarded the pipeline construction project could recover for purely economic losses against engineer who prepared plans and specifications even in the absence of privity); John Martin Co., Inc. v. Morse/Diesel, Inc., 819 S.W.2d 428 (Tenn.1991) (Section 552 governed negligent misrepresentation claim by a subcontractor against a construction manager for negligently supplied information intended to be used so long as use of information was foreseeable and no privity required); Robert & Company Associates v. Rhodes-Haverty Partnership, 250 Ga. 680, 300 S.E.2d 503 (1983) (where purchasers of property relied on an engineer's report as to the condition of that property, the lack of privity does not shield the engineer from liability to purchasers and economic damages are recoverable); and Davidson and Jones, Inc. v. County of New Hanover, 41 N.C. App. 661, 255 S.E.2d 580 (1979) (architect was liable to general contractor for negligent misrepresentation, absent privity, where the loss was purely economic). Bilt-Rite, 581 Pa. at 478-79, 866 A.2d at 285.

direct contractual relationship with the supplier of information. In so doing, we emphasize that we do not view Section 552 as supplanting the common law tort of negligent misrepresentation, but rather, as clarifying the contours of the tort as it applies to those in the business of providing information to others.

....

. . . Having found that Bilt-Rite states a viable claim for negligent misrepresentation under Section 552, and that privity is not a prerequisite for maintaining such an action, logic dictates that Bilt-Rite not be barred from recovering the damages it incurred, if proven. Indeed to apply the economic loss doctrine in the context of a Section 552 claim would be nonsensical; it would allow a party to pursue an action only to hold that, once the elements of the cause of action are shown, the party is unable to recover for its losses. Thus, we hold that the economic loss rule does not apply to claims of negligent misrepresentation sounding under Section 552. (emphasis added).

Id. at 464, 479, and 482-484, 866 A.2d at 276, 285, and 287-88.

Here, this Court must disagree with the common pleas court's conclusion that Bilt-Rite is controlling because our Pennsylvania Supreme Court carved out a very narrow exception to the economic loss doctrine in Bilt-Rite.

Although not controlling, the United States District Court for the Eastern District of Pennsylvania's decision in American Stores Properties, Inc. v. Spotts, Stevens & McCoy, Inc., 648 F. Supp. 2d 707 (2009), is instructive on the economic loss doctrine. In American Store Properties, the U.S. District Court stated:

This litigation stems from the construction of a food and warehouse distribution center ("the Distribution Center")

owned by Plaintiff ASPI [American Stores Property, Inc.], located in Denver, Pennsylvania Due to the uneven geological foundation of the land on which the Distribution Center was to be constructed, gabion retaining walls were required as part of the foundation for the building A gabion retaining wall is composed of gabions, or stone-filled wire baskets, which are stacked together to create an earth retaining wall. Plaintiff [ASPI] alleges that each of the named Defendants [twelve parties] had roles in the design and/or construction of the site's gabion retaining walls.

Five gabion retaining walls were designed and constructed at the Distribution Center The walls were identified on the construction plans as Wall Nos. 1, 2, 3, 4 and 5 Plaintiff [ASPI] alleges that Wall No. 1 show signs of distress from excessive movement and will eventually fail in its entirety if it is not repaired or replaced Wall No. 2 also shows signs of distress. A 40-foot section of Wall No. 2 has already failed Portions of Wall No. 4 show signs of distress as well Plaintiff [ASPI] contends that the failure of Wall No. 2 and the evident distress in the other walls have progressed to the point where they will only become worse unless repaired or replaced

American Stores Properties, 648 F. Supp. 2d at 709. The Twelve Defendants sought to dismiss several counts of ASPI's complaint for failure to state a claim upon which relief can be granted pursuant to Federal Rules of Civil Procedure 12(b)(6). The U.S. District Court stated that in a diversity case, "the Court must apply the substantive law of Pennsylvania." Id. at 712. ASPI sought damages in Counts VIII to X of its amended complaint "related to the cost of repairing and/or replacing the allegedly defective gabion retaining walls at its Distribution Center." Id. at 712-13. The Twelve Defendants countered that because ASPI failed to allege physical injury to a person or damage to property aside from the retaining

walls, the negligence claims were barred by the economic loss doctrine. In rebuttal, ASPI argued, among other things that the Pennsylvania Supreme Court's holding in Bilt-Rite precluded the U.S. District Court from applying the economic loss doctrine.

The U.S. District Court rejected this argument:

However, the Bilt-Rite decision is not applicable here because the Supreme Court of Pennsylvania addressed the economic loss doctrine only in the narrow context of a negligent misrepresentation claim.

. . . The Supreme Court formally adopted Section 552 as the law in Pennsylvania, for which privity is not a requirement, and held that the economic loss doctrine does not apply to claims for negligent misrepresentation against design professionals whose information may be relied upon by others. Id. at 285.

Bilt-Rite does not preclude the application of the economic loss doctrine to all negligent or tortious conduct alleged against parties involved in a construction project. Its holding only applies to a claim for negligent misrepresentation under Section 552 of the Restatement (Second) of Torts (1977). While Bilt-Rite does carve out an exception to the economic loss doctrine to allow a commercial plaintiff to seek recourse from an "expert supplier of information" with whom the plaintiff had no contractual relationship, most courts have specifically restricted the holding in Bilt-Rite to negligent misrepresentation claims under Section 552 Some courts have read Bilt-Rite to have a more narrow application: to only negligent misrepresentation claims involving architects and similar design professionals

While the holding in Bilt-Rite is controlling on claims for negligent misrepresentation that fall under Section 552 of the Restatement (Second) of Torts, Plaintiff [ASPI] has

not brought a negligent misrepresentation claim against any of the Moving Defendants. Therefore, the Court finds that Bilt-Rite does not prevent application of the economic loss doctrine to Plaintiff's [ASPI's] negligence claims in this case. (emphasis added and citations omitted).

American Stores Properties, 648 F. Supp. 2d at 714-15. The U.S. District Court granted the Twelve Defendants' motions to dismiss.

Here, as in American Stores Properties, the Bakers did not bring a negligent misrepresentation claim against SCBI pursuant to Section 552 of the Restatement (Second) of Torts. SCBI was a third-party agency engaged to administer and enforce the UCC relating to building permits. SCBI was not a design professional, an architect, or an engineer where the narrow exception to the economic loss doctrine has been accepted and applied. The Bakers pled only one negligence claim against SCBI and it was for ordinary negligence. Although this Court must conclude that the common pleas court erred when it failed to apply the economic loss doctrine, we must proceed to examine whether SCBI may have an independent statutory duty to the Bakers to avoid economic loss.

II. Whether SCBI Had A Statutory Duty To Avoid Economic Losses To The Bakers?

SCBI next contends that it did not owe a statutory duty to the Bakers pursuant to the UCC and the PCCA. This Court disagrees.

Section 102 of the CCA, 35 P.S. § 7210.102, provides:

(a) Findings.-The General Assembly finds as follows:

(1) Many municipalities within this Commonwealth have no construction codes to provide for the protection of life, health, property and the environment and for the safety and welfare of the consumer, general public and owners and occupants of buildings and structures. Consumers and occupants may be at risk from substandard construction.

....

(b) Intent and purpose.-It is the intent of the General Assembly and the purpose of this act:

(1) To provide standards for the protection of life, health, property and environment and for the safety and welfare of the consumer, general public and the owners and occupants of buildings and structures. (emphasis added).

Further, Section 501 of the PCCA, 35 P.S. § 7210.501, provides:

(a) Adoption of ordinance.-

(1) In order to administer and enforce the provisions of this act, municipalities shall enact an ordinance concurrently adopting the Uniform Construction Code as their municipal building code and the International Fuel Gas Code for the purposes described in 302(a). Municipalities may adopt the Uniform Construction Code and incorporated codes and the International Fuel Gas Code by reference.

....

(b) Municipal administration and enforcement.-This act may be administered and enforced by municipalities in any of the following ways:

(1) By the designation of an employee to serve as the municipal code official to act on behalf of the municipality for administration and enforcement of this act.

(2) By the retention of one or more construction code officials or third party agencies to act on behalf of the

municipality for administration and enforcement of this act. (emphasis added).

Here, it is undisputed that SCBI was a certified third-party agency under Section 501(b)(2) of the PCCA, 35 P.S. § 7210.501(b)(2). Prior to the construction of their residence, the Bakers were required to obtain a building permit from SCBI, the third-party agency, hired by Somerset Township to ensure the Bakers' compliance with the PCCA. The Bakers paid SCBI a fee in the amount of \$4226.00 to obtain a building permit which initiated the administration and enforcement process of inspections under the PCCA. SCBI, as the construction code official, was required to inspect all construction for which the permit was issued and to notify the permit holder whether they complied or failed to comply with the UCC.⁷ In fact, SCBI was required, as a third-party agency, to

⁷ 34 Pa. Code § 403.64 provides:

(a) A construction code official shall inspect all construction for which a permit was issued. The permit holder shall insure that the construction is accessible for inspection. An inspection does not bar prosecution or other legal action for violation of the Uniform Construction Code. (emphasis added).

....

(c) The construction code official shall notify a permit holder if construction complies with the Uniform Construction Code or fails to comply with the Uniform Construction Code. (emphasis added).

....

(f) A construction code official shall conduct a final inspection of the completed construction work and file a final inspection report that indicates compliance with the Uniform Construction Code.

(g) A third-party agency under contract with a permit holder shall submit a copy of the final inspection report to the property owner, builder, and the lender designated by the builder. (emphasis added).

carry “errors and omission liability insurance” for any potential misfeasance.⁸ Contrary to SCBI’s argument that this provision does not contemplate coverage for economic loss, the “errors and omissions liability” insurance is “[a]n agreement to indemnify for loss sustained because of a mistake or oversight by the insured—though not for loss due the insured’s intentional wrongdoing.” Black’s Law Dictionary 816 (8th Ed. 2004). It would be ludicrous to believe that the regulatory requirement that code official inspectors possess “errors and omissions liability” insurance was not intended to cover the liability at issue here.

Accordingly, this Court affirms the common pleas court denial of SCBI’s motion for summary judgment based upon SCBI’s statutory duty and remands to the common pleas court for further proceedings.

BERNARD L. MCGINLEY, Judge

⁸ 34 Pa. Code § 401.12 (liability insurance) provides:

(a) A third-party agency shall carry errors and omissions liability insurance in at least the amount of \$1 million for each person and each occurrence to satisfy claims or judgments for property damage or personal injury or both. (emphasis added).

(b) As a condition for obtaining and renewing certification, a third-party agency shall submit to the Department satisfactory evidence that it has obtained errors and omissions liability insurance as required by this section. A certification of renewal will not be issued unless the third-party agency provides proof of insurance which shall consist of a certificate of insurance or copy of the declaration page from the insurance policy setting forth the effective date, expiration date and policy coverage in the amounts required.

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Daniel and Christine Baker :
 :
 v. :
 :
 Reese Bros. and Knieriem :
 Construction and Somerset :
 County Building Inspections, LLC. :
 :
 Appeal of: Somerset County Building : No. 1546 C.D. 2011
 Inspections, LLC :

ORDER

AND NOW, this 19th day of October, 2012, the order of the Court of Common Pleas of Somerset County in the above-captioned matter is affirmed as to the denial of Somerset County Building Inspections, LLC's motion for summary judgment. The present matter is remanded to the common pleas court for further proceedings consistent with this opinion.

Jurisdiction relinquished.

BERNARD L. MCGINLEY, Judge

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Daniel and Christine Baker :
 :
 v. : No. 1546 C.D. 2011
 : Argued: April 18, 2012
 Reese Bros. and Knieriem :
 Construction and Somerset :
 County Building Inspections, :
 LLC. :
 :
 Appeal of: Somerset County Building :
 Inspections, LLC :

BEFORE: HONORABLE DAN PELLEGRINI, President Judge
HONORABLE BERNARD L. MCGINLEY, Judge
HONORABLE BONNIE BRIGANCE LEADBETTER, Judge
HONORABLE ROBERT SIMPSON, Judge
HONORABLE MARY HANNAH LEAVITT, Judge
HONORABLE P. KEVIN BROBSON, Judge
HONORABLE ANNE E. COVEY, Judge

OPINION NOT REPORTED

DISSENTING OPINION
BY JUDGE LEAVITT

FILED: October 19, 2012

Respectfully, I dissent.

The Bakers seek to hold Somerset County Building Inspections, LLC (Somerset) liable for the poor workmanship of the builder that the Bakers chose to build their new home. Essentially, the Bakers claim that Somerset was at fault for their own violations of the Pennsylvania Uniform Construction Code, as adopted by Somerset Township. However, Somerset was engaged by the municipality, not the Bakers, to provide professional services, and Somerset's errors and omissions

insurance policy covers its liability to clients, not to third parties that interact with clients, such as the Bakers.¹ It turns statutory scheme on its head to make Somerset responsible for the Bakers' violations of the Uniform Construction Code.

This is not to say Somerset had no duty of care to the Bakers. If a Somerset inspector negligently dropped a crowbar on the foot of a property owner while inspecting the property owner's wiring job, the inspector can be held liable. Somerset's commercial general liability insurer would answer for the foot injury.² It is only the inspector's professional negligence in *not* taking enforcement action against the property owner for a poor wiring job, for example, that cannot be pursued by the property owner.

The Pennsylvania Construction Code Act³ does not make inspectors the guarantors of the construction work done by or on behalf of property owners. To the contrary, the Act requires that the *builder or property owner* perform to a mandated uniform standard. *See* Section 102(b)(2) of the Construction Code Act,

¹ Section 501 of the Pennsylvania Construction Code Act, Act of November 10, 1999, P.L. 491, *as amended*, 35 P.S. §7210.501(a)(1), requires municipalities to adopt and enforce the Pennsylvania Uniform Construction Code. As was done here with Somerset County Municipal Cooperative, municipalities may “provide for the joint administration and enforcement of this act through an intermunicipal agreement under 53 Pa. C.S. Ch. 23 Subch. A (relating to intergovernmental cooperation).” 35 P.S. §7210.501(b)(3). Somerset County Municipal Cooperative contracted with Somerset to “act on behalf of the municipality for administration and enforcement of [the] act.” 35 P.S. §7210.501(b)(2). *See also* Reproduced Record at 253a-256a (agreement between Somerset County Municipal Cooperative and Somerset for administration and enforcement of the Uniform Construction Code).

² If the municipality cannot be sued for negligent enforcement of its building code, then neither can its agent, the inspector, who has derivative immunity. The inspector did everything on behalf of the municipality, not himself. He issued permits on behalf of the municipality, not himself. If the principal cannot be held liable, then neither can its agent.

³ Act of November 10, 1999, P.L. 491, *as amended*, 35 P.S. §§7210.101-7210.1103.

35 P.S. §7210.102(b)(2).⁴ Builders must perform to those standards, and that obligation never transfers to the inspector.

The majority believes otherwise. The majority writes that “[i]t would be ludicrous to believe that the regulatory requirement that code official inspectors possess ‘errors and omissions liability’ insurance was not intended to cover the liability at issue here.” Majority Slip Op. at 29. I disagree.

First, there are other reasons to explain the errors and omissions insurance. The insurance requirement is a way of qualifying inspectors. The person licensing the inspector knows that the licensee has successfully undergone the insurance company’s underwriting.

Second, if the legislature had intended to allow property owners to sue inspectors for professional malpractice, why does the statute not state, in plain terms, that inspectors can be sued by a property owner for issuing permits negligently? Here, the targets of a regulatory program, the Bakers, seek damages because they were allowed to violate the regulation. Such a bizarre outcome should be expressed, not implied, in statute.

Third, the errors and omissions policy can come into play where the inspector’s mistake is one that caused him *not* to issue a permit that should have been issued. If the owner had to litigate to get the permit, attorneys’ fees might be imposed on the municipality. The municipality could seek indemnification from its inspector on whose negligent inspection it relied in pursuing the property owner for a violation of the Uniform Construction Code.

⁴ Section 102(b)(2) of the Construction Code Act states, in relevant part, that the intent and purpose of the Act is, *inter alia*, “to encourage standardization and economy in construction by providing *requirements for construction* and construction materials consistent with nationally recognized standards.” 35 P.S. §7210.102(b)(2) (emphasis added).

In any case, the damages sought by the Bakers are beyond those covered by the errors and omissions policy. Economic loss is defined as “damage for inadequate value, costs of repair and replacement of [a] defective product, [or] consequential loss of property, *without any claim of personal injury or damage to other property.*” *American Stores Properties, Inc. v. Spotts, Stevens & McCoy, Inc.*, 648 F.Supp.2d 707, 713 (E.D. Pa. 2009) (emphasis in original). Here, the regulation states, in relevant part, that “[a] third-party agency shall carry errors and omissions liability insurance in at least the amount of \$1 million for each person and each occurrence to *satisfy claims or judgments for property damage or personal injury, or both.*” 34 Pa. Code §401.12(a). However, the regulation does not require coverage for “inadequate value, costs of repair and replacement ... [or] consequential loss.” *American Stores*, 648 F.Supp.2d at 713. Thus, even if the insurance requirement was intended to establish liability to property owners, that liability is limited to property damage or personal injury, not economic losses.

Notably, the Construction Code Act already provides explicit penalties for building inspectors who fail to perform their responsibilities. In particular, building inspectors may be required to undertake remedial education or may be decertified for “just cause,” which includes failing to enforce the Uniform Construction Code. Section 701(g), (h) of the Construction Code Act, 35 P.S. §7210.701(g), (h). Nowhere, however, does the Construction Code Act or the regulations impose tort liability upon inspectors for professional negligence.

The plaintiffs should have done more due diligence on their contractor. They should have hired an architect or engineer to supervise their contractor’s work at the beginning, not the end. The Uniform Construction Code

was not intended to provide a safety net to those who suffer harm due to the poor craftsmanship of people that they, not the municipality, have hired to do work.

In sum, neither the Construction Code Act nor the regulations make inspectors liable for the builder's poor construction. Under the majority holding, a property owner can systematically violate the Uniform Construction Code, snow the inspector into granting approval, then get a new house built by a proper construction expert at the expense of the inspector. This does not make sense. Such an extraordinary result requires explicit language in the statute, and it is not there.

MARY HANNAH LEAVITT, Judge

Judge Brobson joins in this dissent.

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Daniel and Christine Baker :
 :
 :
 v. : No. 1546 C.D. 2011
 : Argued: April 18, 2012
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 Reese Bros. and Knieriem :
 Construction and Somerset :
 County Building Inspections, LLC. :
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 Appeal of: Somerset County Building :
 Inspections, LLC :

BEFORE: HONORABLE DAN PELLEGRINI, President Judge
HONORABLE BERNARD L. McGINLEY, Judge
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HONORABLE ROBERT SIMPSON, Judge
HONORABLE MARY HANNAH LEAVITT, Judge
HONORABLE P. KEVIN BROBSON, Judge
HONORABLE ANNE E. COVEY, Judge

OPINION NOT REPORTED

DISSENTING OPINION BY
JUDGE BROBSON

FILED: October 19, 2012

I respectfully dissent, because I do not believe that the General Assembly intended the Pennsylvania Construction Code Act (PCCA)¹ to protect consumers from purely economic losses caused by the failure of a property owner or its agent (*i.e.*, its chosen builder, architect, and/or contractor) to construct a home in conformance with the local building code

¹ Act of November 10, 1999, P.L. 491, No. 45, *as amended*, 35 P.S. §§ 7210.101-.1103.

ordinance. If we recognize such a private right of action, I fear the effect such a ruling would have on the cost of permitting for residential construction in this Commonwealth.

In this case, had Appellant Somerset County Building Inspections, LLC (SCBI) discovered the violations of the local building code ordinance earlier in the construction process, there is no question that the cost to bring the building into compliance with the code would have fallen on Appellees Daniel and Christine Baker (Bakers) and their agent Reese Bros. and Knieriem Construction, also a named defendant. I see nothing in the PCCA that causes me to believe that the economic burden for remedying violations shifts to the municipality or to its retained third-party inspection agency if the violations are later discovered by the homeowner and not the building inspector, but discovered nonetheless. The liability for such purely economic loss should remain, instead, with the individual or entity responsible for the cost of construction.²

P. KEVIN BROBSON, Judge

Judge Leavitt joins in this dissent.

² In this case, it may be that the Bakers' agent is judgment proof. In all likelihood, the Bakers relied to their detriment on the expertise of their agent in the construction of their home. Thus, I recognize that my proposed solution may seem harsh. Although I am sympathetic to the Bakers' plight, I believe that my position is the appropriate interpretation of the law, which ultimately must guide my judgment.