

**COURT OF APPEALS
DECISION
DATED AND FILED**

February 8, 2001

Cornelia G. Clark
Clerk, Court of Appeals
of Wisconsin

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See WIS. STAT. § 808.10 and RULE 809.62.

No. 99-0850

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT IV**

**TODD R. SILBAUGH AND AMY LYNN SILBAUGH, HIS
WIFE,**

PLAINTIFFS-APPELLANTS,

v.

**STRANG, INC., F/K/A STRANG PARTNERS, INC., A
WISCONSIN CORPORATION, AND CONTINENTAL CASUALTY
COMPANY,**

DEFENDANTS-RESPONDENTS.

APPEAL from an order of the circuit court for Dane County:
MARK A. FRANKEL, Judge. *Affirmed.*

Before Dykman, P.J., Vergeront and Roggensack, JJ.

¶1 PER CURIAM. Todd Silbaugh and Amy Lynn Silbaugh appeal from an order dismissing their personal injury action. The issues are whether a

certain statute of repose is unconstitutional and whether this case is exempt from that statute because of fraud, concealment, or misrepresentation. We affirm.

¶2 The Silbaughs' complaint alleged that Todd was injured when he fell from a fixed ladder leading to the roof of a hospital building. Respondent Strang, Inc., is an architectural firm. The Silbaughs alleged that the ladder was not designed consistently with safety standards provided by the administrative code and certain standard-setting organizations. The trial court dismissed the complaint on the ground that the statute of repose set forth in WIS. STAT. § 893.89 (1997-98)¹ bars the claim because Todd's injury occurred more than ten years after completion of the project.

¶3 On appeal, the Silbaughs argue that this statute of repose violates article I, section 9 of the Wisconsin Constitution, and also the right to due process under the federal constitution. Similar arguments were recently addressed in *Aicher v. Wisconsin Patients Comp. Fund*, 2000 WI 98, 237 Wis. 2d 99, 613 N.W.2d 849. In that opinion, the supreme court held that certain statutes of repose in the area of medical malpractice were constitutional. *Id.* at ¶6. We conclude that the resolution of these issues in *Aicher* also compels the same result for the Silbaughs' arguments in this case.

¶4 The second issue relates to the Silbaughs' argument that the statute of repose does not apply because Strang committed fraud and concealed and misrepresented the ladder's condition, and therefore this case falls under the exemption in WIS. STAT. § 893.89(4)(a).² The circuit court rejected the argument.

¹ All references to the Wisconsin Statutes are to the 1997-98 version unless otherwise noted.

² WISCONSIN STAT. § 893.89 provides in relevant part:

(continued)

On appeal, the Silbaughs argue that because there was a dispute of material fact, summary judgment was not proper on this issue.

¶5 The Silbaughs' argument is that Strang concealed or misrepresented the ladder's condition by not filing a "completion statement," as required by WIS. ADMIN. CODE § Ind 50.13(3). That provision required the supervising architect, engineer, or designer to file a written statement with the department certifying that, to the best of his or her knowledge, construction had been performed "in substantial compliance with the plans and specifications." The Silbaughs assert that in this provision the word "specifications" refers to applicable standards provided by the administrative code. In other words, the architect is required to certify that the construction has been performed in accordance with the plans and the administrative code. They contend that by failing to file the statement, Strang concealed or misrepresented the fact that the ladder did not comply with the code.

¶6 We disagree with their interpretation. We do not read this provision to require an architect to certify compliance with the administrative code. As used here, "specifications" cannot reasonably be understood to include all legal requirements for structural design. In the context of building completion, it is much more reasonable to read "specifications" as referring to architectural specifications for construction materials and techniques.

¶7 Applying this interpretation of the statute, to show concealment or misrepresentation, the Silbaughs would first have to show that the plans or specifications called for the ladder to be safer than what was actually installed.

(4) This section does not apply to any of the following:

(a) A person who commits fraud, concealment or misrepresentation related to a deficiency or defect in the improvement to real property.

However, we have not been provided with any information about the plans or specifications, and therefore the Silbaughs have not shown on appeal that there is a dispute of material fact as to whether Strang's alleged failure to file the completion statement had the effect of concealing or misrepresenting the ladder's failure to comply with the plans or specifications.

By the Court.—Order affirmed.

This opinion will not be published. *See* WIS. STAT. RULE 809.23(1)(b)5 (1999-2000).

