COURT OF APPEALS
DECISION
DATED AND FILED

September 4, 2003

Cornelia G. Clark
Clerk of Court of Appeals

Appeal No. 02-2635 **Cir. Ct. No. 02-CV-23 B2**

STATE OF WISCONSIN **IN COURT OF APPEALS**
DISTRICT II

MEQUON MEDICAL ASSOCIATES,

PLAINTIFF-APPELLANT,

V.

S.T.O. INDUSTRIES, INC., STO CORPORATION, CHAMPION EXTERIOR INSULATION & FINISH SYSTEMS: DIVISION OF CHAMPION COMPANIES OF WISCONSIN, INC. AND JAHN & SONS, INC.,

DEFENDANTS-RESPONDENTS.

APPEAL from a judgment of the circuit court for Ozaukee County: THOMAS R. WOLFGRAM, Judge. *Affirmed*.

Before Deininger, P.J., Dykman and Lundsten, JJ.

¶1 PER CURIAM. Mequon Medical Associates appeals a judgment dismissing its complaint against S.T.O. Industries, Inc., STO Corporation (collectively referred to as STO), Champion Exterior Insulation & Finish Systems

(Champion), and Jahn & Sons, Inc. (Jahn). The dispositive issue is whether the economic loss doctrine bars Mequon's lawsuit. We agree with the trial court that it does, and therefore affirm.

¶2 Mequon's amended complaint states the following. It owns an office building completed in 1984. Incorporated into the building structure is a product known as an Exterior Insulation Finish System (Exterior System). STO designed and manufactured the Exterior System and supplied it to Champion. Champion sold the Exterior System to Mequon. Jahn installed the Exterior System during construction of Mequon's building.

¶3 In the mid-1990's, Mequon discovered building damage that it attributed to defects in the Exterior System. That discovery eventually resulted in this lawsuit, commenced in 2002. The amended complaint presented claims against STO for strict liability, negligent design and manufacture, negligent instructions and warnings regarding the Exterior System's use, and intentional concealment of defects in the Exterior System. Mequon sued Champion for strict product liability and negligence in the sale of a defective product, and sued Jahn for its allegedly negligent installation of the Exterior System during construction.

¶4 All of the defendants moved to dismiss the amended complaint, asserting failure to state a claim. The trial court granted the motions to dismiss, relying on the economic loss doctrine and on WIS. STAT. § 893.89 (1999-2000),[1] the statute of limitations for actions concerning damage to real property. That decision is the subject of this appeal.

[1] All references to the Wisconsin Statutes are to the 1999-2000 version unless otherwise noted.

¶5 Whether a complaint sufficiently states a claim is a question of law that this court reviews *de novo*. ***Wausau Tile, Inc. v. County Concrete Corp.***, 226 Wis. 2d 235, 245, 593 N.W.2d 445 (1999). In deciding this question, we assume that all facts alleged in the complaint are true. ***Id.*** If the pleaded facts reveal an apparent right to recover under any legal theory, they are sufficient to state a claim. ***Hillcrest Golf & Country Club v. City of Altoona***, 135 Wis. 2d 431, 434-35, 400 N.W.2d 493 (Ct. App. 1986).

¶6 The economic loss doctrine bars all of Mequon's claims. Under that doctrine, the purchaser of a product cannot recover from its maker or seller in tort for damages that are solely economic. *See* ***Kailin v. Armstrong***, 2002 WI App 70, ¶27, 252 Wis. 2d 676, 643 N.W.2d 132. In such cases, the exclusive remedy is contractual. ***Id.*** Here, with regard to STO, Mequon first contends that the doctrine does not apply because Mequon purchased the Exterior System from Champion and Mequon had no contract with STO. However, the economic loss doctrine applies even where there is no contract between a manufacturer and "remote commercial purchasers." *See* ***Daanen & Janssen, Inc. v. Cedarapids, Inc.***, 216 Wis. 2d 395, 403-13, 573 N.W.2d 842 (1998).

¶7 Next, Mequon argues for an exception to the doctrine because the damage extended beyond the Exterior System to other parts of its building. *See* ***Wausau Tile***, 226 Wis. 2d at 247 (doctrine does not apply if damage is to property other than the defective product itself). However, "[d]amage by a defective component of an integrated system to either the system as a whole or other system components is not damage to 'other property' …." ***Id.*** at 249. In ***Bay Breeze Condominium Ass'n, Inc. v. Norco Windows, Inc.***, 2002 WI App 205, ¶26, 257 Wis. 2d 511, 651 N.W.2d 738, we held: "[T]he economic loss doctrine applies to building construction defects when … the defective product is a

component part of an integrated structure or finished product." Such is the case here.

¶8 Finally, with regard to STO, Mequon argues that the economic loss doctrine does not apply to its claim of intentional misrepresentation. However, misrepresentation claims are permitted under the economic loss doctrine only if the alleged misrepresentation induced the purchase of the product. *See* ***Kailin***, 252 Wis. 2d 676, ¶30. Here, the amended complaint did not allege that STO's misrepresentation induced Mequon to buy the Exterior System. Therefore, the amended complaint was not sufficient to state a claim under WIS. STAT. § 802.03(2), requiring that allegations of fraud must be stated with particularity.[2]

¶9 As against Jahn, Mequon contends that the doctrine does not preclude its tort claim because Jahn did not make or sell the Exterior System, but merely installed it. *See* ***Daanen***, 216 Wis. 2d at 400-01 (economic loss doctrine bars suits against manufacturers for damages caused by a defective product). However, the economic loss doctrine also bars a claim for negligent provision of services, such as installation, if the services were incidental to the sale of a product. *See* ***Biese v. Parker Coatings, Inc.***, 223 Wis. 2d 18, 20, 28-29, 588 N.W.2d 312 (Ct. App. 1998). Installing the Exterior System was a service that was "incidental" to producing the product.

[2] The definition of fraud for purposes of WIS. STAT. § 802.03(2) includes the intentional concealment of a material fact. *See* ***Putnam v. Time Warner Cable***, 2002 WI 108, ¶27, 255 Wis. 2d 447, 649 N.W.2d 626.

¶10 As against Champion, Mequon relies solely on the arguments it makes as to STO and Jahn. We have rejected those arguments, and consequently affirm the dismissal as to Champion as well.

By the Court.—Judgment affirmed.

This opinion will not be published. WIS. STAT. RULE 809.23(1)(b)5 (2001-02).