

STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE COUNTY OF GRAND TRAVERSE

BROTHERHOOD MUTUAL INSURANCE
COMPANY, an Indiana Corporation,
as subrogee of Reverend Frederick
Becknell, a Michigan Citizen,
Plaintiff,

vs

File No. 93-11741-NP
HON. THOMAS G. POWER

MEIJER, INC., a Michigan Corporation,
CHARBROIL, INC., a division of W.C.
BRADLEY, INC., a Georgia Corporation
and MARSHALL GAS CONTROLS, INC.,
a/k/a MARSHALL BRASS CO., a/k/a
S.H. LEGGITT COMPANY, a Michigan
Corporation, Jointly & Severally,
Defendants;

Steven C. Berry (P26398)
Kenneth A. Puzycki (P45404)
Attorneys for Plaintiff

Evan L. MacFarlane (P26327)
Attorney for Defendants Charbroil/Meijer

George W. Beeby (P10620)
Attorney for Defendant Marshall Gas Controls

DECISION AND ORDER

Defendant Marshall Gas Controls (Marshall) filed a Motion for Summary Disposition. The Court issued a Pre-hearing Order directing the filing of a response and a reply. Plaintiff filed a response and Defendant filed a reply.

Pursuant to MCR 2.119(E)(3), the Court dispenses with oral arguments.

Defendant Marshall's motion contends that Plaintiff's complaint is a products liability action pursuant to MCL 600.2945; is barred by the applicable three-year statute of limitations, MCL 600.5805(9); and, therefore, summary disposition pursuant to MC] 2.116(C)(7) should be entered in its favor.

In *Witherspoon v Guilford*, 203 Mich App 240, 243 (1994), the Court held:

When reviewing a motion for summary disposition pursuant to MCR 2.116(C)(7), this Court must accept the plaintiff's well-pleaded allegations as true and construe them in favor of the plaintiff. If there are no facts in dispute, the question whether the claim is statutorily barred is one of law for the Court. *Smith v Ouality Const Co*, 200 Mich App 297, 299; 503 NW2d 753 (1993).

For the purposes of this motion, the facts as alleged in Plaintiff's complaint are not in dispute. Plaintiff's insured, Becknell, purchased a Charbroil gas grill from the Meijer store in December, 1989. Defendant Marshall was the manufacturer of a component part of the Charbroil gas grill. On March 14, 1990, while Plaintiff's insured was using the grill, it exploded and a resulting fire not only destroyed the grill but also caused damage to the insured's home. Plaintiff, pursuant to a homeowners policy of insurance, paid its insured over \$37,000.00 in settlement of the fire loss. Plaintiff's action is one in subrogation.

The complaint alleges that Defendant Marshall breached a warranty "that the parts it manufactured for the grill would be suitable for the on-going purposes for which goods are intended to be used." It is alleged that the fire was a result of the breach of warranty. By affidavit, Defendant Marshall submits that it is but a component part manufacturer and made no express warranty to Plaintiff's insured. There has been no counter-affidavit filed.

The Plaintiff's complaint was filed November 29, 1993. The issue presented by Defendant Marshall's motion is the controlling statute of limitations. Defendant Marshall asserts that Plaintiff's action is a products liability action subject to the three-year statute of limitations of MCL 600.5805(9). Plaintiff contends that the four-year statute of limitations provided in the Uniform Commercial Code, MCL 400.2725, is applicable. If Defendant Marshall is correct, the action was not timely brought, as the claim accrued on the date of the fire, March 14, 1990, and the action was brought more than three years later. If Plaintiff is correct, the action was timely, as it was filed within four years of the insured's purchase of the grill.

The Court, having reviewed the motion, response, briefs, and

court file, finds that there are no facts in dispute for purposes of the motion. The Court resolves the question whether Plaintiff's action is statutorily barred as a matter of law.

MCL 600.2945 defines a products liability action as follows:

As used in sections 2946 to 2949 and section 5805, "products liability action" means an action based on any legal or equitable theory of liability brought for or on account of death or injury to person or property caused by or resulting from the manufacture, construction, design, formula, development of standards, preparation, processing, assembly, inspection, testing, listing, certifying, warning, instructing, marketing, advertising, packaging, or labeling of a product or a component of a product.

MCL 600.5805(9) provides:

The period of limitations is 3 years for a products liability action. However, in the case of a product which has been in use for not less than 10 years, the plaintiff, in providing a prima facie case, shall be required to do so without benefit of any presumption.

In *Neibarger v Universal Cooperatives Inc*, 439 Mich 512 (1992), the Court addressed the four-year UCC and the three-year products liability statutes of limitation. In part, the Neibarger Court held:

Accordingly, we hold that where a plaintiff seeks to recover for economic loss caused by a defective product purchased for commercial purposes, the exclusive remedy is provided by the UCC, including its statute of limitations. (Neibarger, supra, 527-528)

In the cases before us, plaintiffs argue that their claims fall within the class of products liability actions defined in MCL 600.2945; MSA 27A.2945, and that the proper statutes of

limitation and accrual are those provided by the Revised Judicature Act, MCL 600.5805(9); MSA 27A. 5805 (9) and MCL 600.5833; MSA 27A.5833. We disagree for the reasons stated above. Application of the RJA to the cases before us would effectively negate Article 2 of the UCC; application of the economic loss doctrine ensures that the UCC will remain effective in aoverning commercial disputes, while the RJA serves to qovern noncommercial Products liability actions. (Emphasis added) (Neibaraer, sup a, 529)

Applying the above statutes and the Neibaraer decision to the motion before it, it is the finding of this Court that Plaintiff's action meets the definition of a products liability action involving a non-commercial product and is not an action "where a plaintiff seeks to recover for economic loss caused by a defective product purchased for commercial purposes." Accordingly, it is the finding of this Court that the applicable statute of limitations is MCL 600.5805(9), the three-year products liability statute of limitations. See, Hanson v Art Post American, 83 Mich App 553 (1978).

Defendant Marshall's Motion for Summary Disposition is granted.

IT IS SO ORDERED.

HON. THOMAS G. POWER
Circuit Judge,
DATED: 8/20/94