

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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SKY WAY, INC.,

Plaintiff-Appellant,

v

JACO AIRCRAFT, INC.,

Defendant-Appellee.

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UNPUBLISHED

May 7, 1996

No. 175163

LC No. 92-231545 CK

Before: Wahls, P.J., and Reilly and O'Connell, JJ.

PER CURIAM.

Plaintiff appeals as of right the order of the trial court granting summary disposition pursuant to MCR 2.116(C)(7) and (8) in favor of defendant. We affirm.

In May, 1988, plaintiff purchased a Merlin IIB Cargo Courier aircraft from defendant. Defendant had represented that the Merlin was capable of carrying a payload of 2600 pounds. However, plaintiff experienced continual engine difficulties when operating the airplane at its represented capacity. When plaintiff conducted a required maintenance inspection, which included weighing and re-balancing the aircraft, plaintiff discovered that the Merlin weighed 663 pounds more than defendant had represented. This weight discrepancy reduced the useful payload of the aircraft from 2600 pounds to 1937 pounds. The discrepancy also explained the difficulties plaintiff had encountered when operating the airplane.

On November 12, 1992, plaintiff brought suit, alleging breach of contract, breach of warranty, and fraudulent misrepresentation. Defendant moved for summary disposition, contending that plaintiff's cause of action was governed by the four-year statute of limitations set forth in article 2 of the Uniform Commercial Code. MCL 440.2725(1); MSA 19.2725(1). Because plaintiff failed to commence suit until four years, six months after the cause of action allegedly arose, defendant submitted, plaintiff's claims were barred. The circuit court found that all of plaintiff's claims were governed by the four-year limitations period of the UCC, and, accordingly, ruled that plaintiff's action was time barred. This appeal follows.

## I

Plaintiff's breach of contract and breach of warranty claims are barred by the four-year limitations period of article 2 of the UCC. MCL 440.2725(1); MSA 19.2725(1). The UCC provisions in issue provides that "[a]n action for breach of any contract for sale must be commenced within 4 years after the cause of action has accrued." The statute also states that "[a] cause of action accrues when the breach occurs, regardless of the aggrieved party's lack of knowledge of the breach." MCL 440.2725(2); MSA 19.2725(2).

Here, the parties do not contest that the sale of the aircraft is properly subject to the UCC. The sale took place in May, 1988. The breach occurred at the time of sale, because at that time defendant supplied an aircraft that did not conform with the contract and warranty terms. Plaintiff did not commence suit until November, 1992. Because more than four years passed between the date of breach and the date that suit was commenced, the claims are barred.

## II

Plaintiff's fraudulent misrepresentation claim is also barred by the four-year limitations period set forth in MCL 440.2725(1); MSA 19.2725(1). While plaintiff argues that this claim sounds in tort, rather, than contract, and is subject to the six-year limitations period for fraud actions set forth in MCL 600.5813; MSA 27A.5813, plaintiff's attempt to characterize what is essentially a breach of contract action as an action in fraud is precluded by the economic loss doctrine.

The identical argument was made under indistinguishable facts in *Huron Tool and Engineering Co v Precision Consulting Services, Inc.*, 209 Mich App 365; 532 NW2d 541 (1995), upon which plaintiff inexplicably attempts to rely.<sup>1</sup> In *Huron Tool*, the plaintiff purchased a computer software system from the defendant, and the defendant represented that the system was able to perform certain tasks. Unfortunately, the system was not, in fact, able to perform as defendant had represented. The plaintiff brought suit, claiming breach of contract, breach of warranty, fraud and misrepresentation. Significantly, the "[p]laintiff also argued that its fraud claim was independent of its contractual claims and, therefore, outside the scope of the UCC statute of limitations." *Id.*, pp 367-368.

This Court first ruled that the economic loss<sup>2</sup> doctrine did not necessarily encompass all intentional tort claims, such as fraudulent misrepresentation. However, we emphasized that for such a claim to fall outside of the economic loss doctrine, the alleged fraud had to be extraneous to the contract itself. Where the alleged fraud is interwoven with the contract, it is properly considered part of the contract, and is subject to the restrictions of the economic loss doctrine, such as the statute of limitations subject to contracts. *Id.*, pp 372-373.

Applying this concept, the *Huron Tool* panel ruled that the plaintiff's allegation that the defendant had intentionally misrepresented the capabilities of its software system fell squarely within the economic loss doctrine. The defendant, quite simply, had intentionally breached the parties' contract. Such an action, though characterized as fraud by the plaintiff in an attempt to benefit from a more liberal

statute of limitations, was simply a breach of contract and warranty claim. Because plaintiff had suffered only economic damages stemming from a breach of contract, its fraud claims were barred by the economic loss doctrine adopted by our Supreme court in *Neibarger v Universal Cooperatives, Inc*, 439 Mich 512; 486 NW2d 612 (1992). *Huron Tool, supra*, p 375.

The present case is indistinguishable from *Huron Tool*. In *Huron Tool*, the defendant misrepresented the capabilities of a software system; here, defendant misrepresented the capabilities of an aircraft. In *Huron Tool*, the plaintiff characterized the defendant's actions as both breach of contract and breach of warranty and fraudulent misrepresentation; the instant plaintiff has done the same. In *Huron Tool, supra*, p 375, this Court ruled that because the defendant's actions were not extraneous to the contract, but, rather, were "indistinguishable from the terms of the contract and warranty that plaintiff allege[d] were breached," the economic loss doctrine applied to the plaintiff's fraud claims. Similarly, the present plaintiff's fraudulent misrepresentation claim is nothing but a recasting of its breach of contract and warranty claims. The claim is, accordingly, restricted to the remedies set forth in the UCC. Because plaintiff's contractual claims are barred by the four-year limitations period set forth in the UCC, so is plaintiff's claim of fraudulent misrepresentation. *Huron Tool, supra; Neibarger, supra*.

Affirmed.

/s/ Myron H. Wahls

/s/ Maureen Pulte Reilly

/s/ Peter D. O'Connell

<sup>1</sup> The *Huron Tool* panel presents an extensive discussion of why fraud in the inducement did not exist under the facts of that case (despite the fact that the plaintiff in *Huron Tool* did not allege fraud in the inducement). For the reasons set forth in *Huron Tool*, fraud in the inducement does not exist in the present case. For an example of a situation in which fraud in the inducement does apply, see *Samuel D Begola Services, Inc v Wild Brothers*, 210 Mich App 636; 534 NW2d 217 (1995).

<sup>2</sup> The economic loss doctrine provides that "[w]here a purchaser's expectations in a sale are frustrated because the product he bought is not working properly, his remedy is said to be in contract alone, for he has suffered only 'economic' losses." *Huron Tool, supra*, p 368, quoting *Kennedy v Columbia Lumber & Mfg Co*, 299 SC 335, 345; 384 SE2d 730 (1989) (internal quotation marks omitted).