STATE OF MICHIGAN

COURT OF APPEALS

CYNTHIA McCROY, as next friend of CLIFTON JONES, ANGELO JONES, and TASHA McCROY,

Plaintiffs-Appellants,

v

FORD MOTOR COMPANY, GENERAL ELECTRIC COMPANY, THOMAS GOODFELLOW, INC.,

Defendants-Appellees,

and

IRVING DUBRINSKY, PHILLIP DUBRINSKY ENT., W.C. ELECTRIC CO., and CITY OF DETROIT,

Defendants.

UNPUBLISHED
July 9, 1996

No. 170968
LC No. 93-319998

Before: Jansen, P.J., and Hoekstra and D. Langford Morris,* JJ.

PER CURIAM.

Appellants Clifton Jones, Angelo Jones, and Tasha McCroy, by their next friend, Cynthia McCroy, appeal as of right an order of the Wayne Circuit Court granting appellees' motions for summary disposition pursuant to MCR 2.116(C)(8) in this nuisance action. We affirm.

Appellants filed suit against appellees claiming that appellees contributed to the creation or maintenance of a nuisance near appellants' residence. Specifically, appellants alleged that Ford Motor Company (Ford) and General Electric Company (GE), who at one time owned the transformers which

* Circuit judge, sitting on the Court of Appeals by assignment.

were leaking PCB, knew or should have known that the materials were likely to create a nuisance. Appellants further alleged that Thomas Goodfellow, Inc (Goodfellow) was responsible for the nuisance because of its involvement in transporting the transformers to the site.

On appeal, appellants argue that the trial court erred in concluding that appellees could not be held liable under the law of nuisance and granting appellees' motions for summary disposition. We disagree. In general, even though a nuisance may exist, all actors are not liable for the damages stemming from the condition. *Cloverleaf Car Co v Phillips Petroleum Co*, 213 Mich App 186, 191; 540 NW2d 297 (1995). An actor is liable for a nuisance where the actor (1) created the nuisance, (2) owned or controlled the property from which the nuisance arose, or (3) employed another to do work from which the actor knew a nuisance would likely arise. *Id*.

Here, neither appellants' complaint nor appellants' amended complaint against these appellees alleged that they specifically created the nuisance, owned or controlled the property from which the nuisance arose, or employed another to do work from which they knew a nuisance would arise. At most, GE sold transformers to Ford, Ford sold scrap transformers to a third party, the owner and controller of the alleged nuisance site, and Goodfellow facilitated delivery of the scrap transformers to the third party.[1] Appellants' filing of an amended complaint in the instant case was of no consequence because the complaint, even with the additional allegations, still failed to state a cause of action in nuisance, the only cause of action specifically alleged.

With regard to appellants' claim that appellees "facilitated" the nuisance, this Court has previously recognized that manufacturers, sellers, and installers of defective products may not be held liable on a nuisance theory for injuries caused by the defects. *Detroit Bd of Ed v Celotex Corp (On Remand)*, 196 Mich App 694, 710; 493 NW2d 513 (1992). If, as here, a commercial transaction is involved, control of the nuisance at the time of injury is required. *Gelman Sciences, Inc v The Dow Chemical Co*, 202 Mich App 250; 508 NW2d 609 (1993). Because appellees here, as in *Gelman*, *supra*, and *Celotex*, *supra*, gave up ownership and control of the products when they were sold or delivered to the third party, they lacked the ability to abate whatever hazards the products posed and lacked control of the nuisance at the time of the injury. *Gelman*, *supra* at 252; *Celotex*, *supra* at 712. Accordingly, the trial court's grant of summary disposition was proper.

Affirmed.

/s/ Kathleen Jansen
/s/ Joel P. Hoekstra
/s/ Denise K. Langford Morris

[1]Our conclusion today accords with the conclusion reached by this Court in a previous unpublished opinion, *Lockett v Detroit*, unpublished opinion per curiam of the Court of Appeals, issued 02/27/91 (Docket Nos. 113241, 114884, 115600, 115601, 115602, 115910, 116330). In that consolidated case, this Court found that nuisance suits filed against different defendants on behalf of different plaintiffs,

but involving the same property and the same alleged nuisance by the same attorney who represents appellants, were properly dismissed pursuant to MCR 2.116(C)(8).