

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

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GERALD KERBERSKY and LINDA KERBERSKY,

Plaintiffs–Appellants,

v

ADOLFSON & PETERSON, INC.,

Defendant–Appellee.

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UNPUBLISHED

July 26, 1996

No. 183180

LC No. 92-27666-NO

Before: Hood, P.J., and Markman and A. T. Davis,\* JJ.

PER CURIAM.

Plaintiffs appeal as of right from an order granting summary disposition in favor of defendant pursuant to MCR 2.116(C)(7). Plaintiffs filed suit after plaintiff Gerald Kerbersky fell from a ladder that plaintiffs alleged was negligently constructed, installed or attached by defendant. The trial court held that plaintiffs' claim was barred by the statute of repose. We affirm.

Plaintiffs argue that MCL 600.5839; MSA 27A.5839 (statute of repose for architects, engineers and contractors) is not applicable to the facts of this case because they are suing defendant under a products liability theory. However, plaintiffs did not properly plead a products liability claim and support each allegation with specific facts. MCR 2.111; *Kramer v Dearborn Heights*, 197 Mich App 723, 725; 496 NW2d 301 (1993). In their complaint, plaintiffs only specifically allege nuisance. Manufacturers of defective products cannot be held liable under nuisance theories. *Detroit Bd of Ed v Celotex Corp*, 196 Mich App 694, 709; 493 NW2d 513 (1992). Moreover, plaintiffs did not allege that defendant was the manufacturer of the ladder. Additionally, plaintiffs cannot amend their pleadings because they have not provided any evidence or documentation that defendant manufactured the steel ladder involved in this case. Defendant appears only to have been the general contractor on the project.

Plaintiffs further argue that the statute of repose is not applicable to them because at the time the construction was completed, contractors were not yet protected by the statute of repose for any construction projects completed before March 31, 1986, the effective date of the amendment that added contractors as a protected party. The statute of repose provides that the amendment applies to

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

all causes of actions that accrue after March 31, 1986. MCL 600.5839(6); MSA 27A.5839(6). It states in this regard:

The changes to subsection (1) made by this 1985 amendatory act shall apply only to a cause of action which accrues on or after the effective date of this 1985 amendatory act and shall not apply to a cause of action which accrues before the effective date of this 1985 amendatory act.

Since a cause of action accrues when a party is injured and plaintiff Gerald Kerbersky was injured in 1990, the amendment including contractors as a protected party is clearly applicable to this case. *Employers Mutual Casualty Co v Petroleum Equipment, Inc*, 190 Mich App 57, 64; 475 NW2d 418 (1991).

Plaintiffs argue that their claim should not be time barred before it even accrued. This argument is without merit. The purpose of MCL 600.5839; MSA 27A.5839 is to allow liability for up to six years only for negligent improvement on a building after the improvement has been completed (except for gross negligence, which is not relevant in this case). This limitation applies regardless of when the cause of action actually accrued.

Plaintiffs further argue that the statute of repose is not applicable because the improvement on the Cohodas building was never completed in that the improvement did not follow design specifications. Since the improvement was accepted, however, the statute of repose applies. MCL 600.5839(1); MSA 27A.5839(1). Defendant established that the final date of acceptance of the improvement was on October 9, 1975.

Plaintiffs argue that the addition of the ladder should not be considered an improvement for statute of repose purposes. However, the ladder was a necessary part of an overall building improvement project and therefore is considered to be an improvement. Moreover, the ladder was “integral . . . and useful to the structure,” and it was a “permanent” addition. Thus, the ladder, in and of itself, can be considered an improvement for statute of repose purposes. *Fennell v John J Nesbitt, Inc*, 154 Mich App 644, 651; 398 NW2d 481 (1986).

Affirmed.

/s/ Harold Hood  
/s/ Stephen J. Markman  
/s/ Alton T. Davis