STATE OF MICHIGAN

COURT OF APPEALS

FRANCESCO SECCHI and PIERINA SECCHI,

Plaintiffs-Appellees,

v

BRAIBANTI DOTT. INGG.M., G. & C. S.p.A., BRAIBANTI GROUP CORPORATION and BRAIBANTI CORPORATION,

Defendants-Appellants,

and

PRODUCT LIABILITY ADVISOR COUNCIL, INC.,

Amicus Curiae.

UNPUBLISHED
January 31, 1997

No. 190440
LC No. 93-001619

Before: Reilly, P.J., and Wahls and N.O. Holowka,* JJ.

PER CURIAM.

Defendants appeal by leave granted[1] from the trial court's denial of defendants' motion for summary disposition pursuant to MCR 2.116(C)(7).[2] We reverse.

Defendants argue that an industrial pasta-processing line is an improvement to real property within the meaning of the statute of repose, MCL 600.5839; MSA 27A.5839. We agree. The statute provides in pertinent part:

> (1) No person may maintain any action to recover damages for any injury to property, real or personal, or for bodily injury or wrongful death, arising out of the defective and unsafe condition of an improvement to real property, nor any action for contribution or indemnity for damages sustained as a result of such injury, against any state licensed architect or professional engineer performing or furnishing the design or supervision of

> construction of the improvement, or against any contractor making the improvement, more than 6 years after the time of occupancy of the completed improvement, use, or acceptance of the improvement, or 1 year after the defect is discovered or should have been discovered, provided that the defect constitutes the proximate cause of the injury or damage for which the action is brought and is the result of gross negligence on the part of the contractor or licensed architect or professional engineer. However, no such action shall be maintained more than 10 years after the time of occupancy of the completed improvement, use, or acceptance of the improvement. [MCL 600.5839(1); MSA 27A.5839(1).]

Statutes of repose "are construed to advance the policy that they are designed to promote. They prevent stale claims and relieve defendants of the protracted fear of litigation." *Frankenmuth Mutual Ins Co v Marlette Homes, Inc*, 219 Mich App 165, 170; ___ NW2d ___ (1996). MCL 600.5839; MSA 27A.5839 was enacted to relieve architects and engineers from open-ended liability for alleged defects in their workmanship. *Witherspoon v Guilford*, 203 Mich App 240, 245; 511 NW2d 720 (1994). The statute was amended in 1985 to extend the same protection to contractors. *Id*. Recently, this Court adopted the Sixth Circuit's construction of a similar Ohio statute in *Adair v The Koppers Co, Inc*, 741 F2d 111 (CA 6, 1984), and held that the *Adair* Court's analysis is consistent with the purpose of Michigan's statute of repose. *Pendzsu v Beazer East, Inc*, 219 Mich App 405, 411; ___ NW2d ___ (1996) (holding that the relining of coke ovens and blast furnaces was integral to the use of a factory and, therefore, constituted an improvement to real property). We too adopt the same analysis.

An improvement is a "permanent addition to or betterment of real property that enhances its capital value and that involves the expenditure of labor or money and is designed to make the property more useful or valuable as distinguished from ordinary repairs." *Pendzsu, supra*, pp 410-411. In applying the definition of improvement, the test "is not whether an addition can be removed without damage to the land, but if it adds to the value of the realty, for the purposes for which it was intended to be used." *Id*. A court should consider the nature of the improvement and its intended permanence, as well as whether a modification adds to the value of the property for the purposes of its intended use. *Id*. The component must be considered in light of the system:

> The issue is whether a component of a system which is definitely an improvement to real property is an improvement to real property itself. However, to artificially extract each component from an improvement to real property and view it in isolation would be an unrealistic and impractical method of determining what is an improvement to real property. Frequently, as in this case, an improvement to real property is going to consist of a complex system of components. [*Id*. (quoting *Adair, supra*, 741 F2d 115).]

Considering the affidavits, depositions and documentary evidence presented by defendants, we conclude that the macaroni dryer was an improvement to real property and, thus, plaintiffs' action is barred by MCL 600.5839; MSA 27A.5839. Contrary to plaintiff's assertions, we will not view the

macaroni dryer in isolation. *Pendzsu, supra,* p 411. The dryer was a component of a production line that was installed in 1969 and is integral to the usefulness of the Prince Macaroni plant. The building was specifically designed and constructed to accommodate seven pasta production lines on the second floor, which are interconnected through the floor to packaging systems on the first floor. Without the macaroni dryer, the production line would not be able to process and package the pasta. Thus, there is no genuine issue of material fact that the macaroni dryer is an essential component of the pasta production line.

Furthermore, defendants are within the class of parties afforded protection under the statute of repose. Defendants designed, manufactured and installed the pasta production line. The production line was not a standardized product; rather, it was customized to meet the unique needs of the Prince Macaroni factory. Accordingly, the trial court erred in refusing to apply the statute of repose to plaintiffs' claims against defendants. See *Sonnier v Chisholm-Ryder Co, Inc,* 909 SW2d 475 (Tex, 1995), answer conformed to 70 F3d 14 (CA5, 1995), corrected 1995 US APP LEXIS 36145 (CA5, 1995); *Ball v Harnischfeger Corp,* 877 P2d 45 (Okla, 1994).

Reversed.

/s/ Maureen Pulte Reilly
/s/ Myron H. Wahls
/s/ Nick O. Holowka

[1] This case was remanded to this Court for consideration as if on leave granted, pursuant to a November 17, 1995, Supreme Court order. Justice Levin directed this Court to consider *Sonnier v Chisholm-Ryder Co, Inc,* 909 SW2d 475 (Tex, 1995), and *Ball v Harnischfeger Corp,* 877 P2d 45 (Okla, 1994). *Secchi v Braibanti Dott Ingg M,* 450 Mich 914 (1995).

[2] Although defendants based their motion on MCR 2.116(C)(10), it is clear that the trial court reviewed and denied the motion pursuant to MCR 2.116(C)(7).