

STATE OF MICHIGAN
COURT OF APPEALS

CITIZENS INSURANCE COMPANY,

Plaintiff- Appellant,

and

BOB’S FORD, INC.,

Plaintiff/Cross- Appellant,

v

BARD MANUFACTURING COMPANY,

Defendant/Third-Party Plaintiff/
Cross-Appellee,

and

CONSOLIDATED INDUSTRIES
CORPORATION,

Defendant- Appellee/Third-Party
Defendant,

and

DAVID COLLINS d/b/a COLLINS ELECTRIC
COMPANY,

Defendant.

UNPUBLISHED

December 19, 1997

No. 196247

Ingham Circuit Court

LC No. 94-079125-CK

Before: Young, P.J., and Markman and Smolenski, JJ.

PER CURIAM.

Plaintiffs appeal as of right the order granting summary disposition to defendants in this case arising out of a fire at an automobile dealership owned by Bob's Ford, Inc., and insured by Citizens Insurance Company. Plaintiffs claim that the 1994 fire was caused by a defective furnace manufactured by Consolidated Industries Corporation (Consolidated), sold by Bard Manufacturing Company (Bard) under its own nameplate, and installed in Bob's Ford's dealership by Collins Electric Company in 1984. The trial court held that plaintiffs' exclusive remedy was under the Uniform Commercial Code, MCL 440.1101 *et seq.*; MSA 19.1101 *et seq.*, and that their causes of action were barred by the UCC's four-year statute of limitation, MCL 440.2725; MSA 19.2725. We affirm.

Plaintiffs first argue that the trial court erred in applying the "economic loss doctrine" to claims they contend are grounded in tort as opposed to contract law. We disagree. In *Neibarger v Universal Cooperatives, Inc.*, 439 Mich 512; 486 NW2d 612 (1992), our Supreme Court held 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." *Id.* at 527-528. Because Bob's Ford, Inc., is a commercial business and it purchased the furnace for commercial purposes, and because the damage to its automobile dealership was purely economic, under *Neibarger*, the UCC provides the exclusive remedy. Despite plaintiffs' claim that the *Neibarger* rule is harsh and should not be applied in this case, the following explanation from *Neibarger* demonstrates the broad scope of the Court's holding:

[I]f a commercial purchaser were allowed to sue in tort to recover economic loss, the UCC provision designed to govern such disputes, which allows limitation or elimination of warranty and consequential damages, require notice to the seller, and limit the time in which such a suit must be filed, could be entirely avoided. In that event, Article 2 would be rendered meaningless and, as stated by the [United States] Supreme Court in [*East River Steamship Corp v Transamerica Delaval, Inc.*, 476 US 858, 866; 106 S Ct 2295; 90 L Ed 2d 865 (1986)], "contract law would drown in a sea of tort." [*Id.* at 528.]

We do not believe that the express *Neibarger* holding can be avoided simply by distinguishing *Neibarger* on its facts. Therefore, we conclude that plaintiffs' causes of action are governed by the UCC. Moreover, because plaintiffs do not challenge the trial court's conclusion that their claims are precluded if the UCC statute of limitation applies, we affirm the trial court's order granting summary disposition to defendants.

Plaintiffs also contend that they should have been allowed to amend their complaints to assert independent claims for fraud in the inducement, which this Court has held are not barred by the economic loss doctrine. See *Huron Tool and Engineering Co v Precision Consulting Services, Inc.*, 209 Mich App 365; 532 NW2d 541 (1995). Again, we disagree. Plaintiffs argue that Bob's Ford was fraudulently induced into purchasing the furnace because defendants made false representations concerning the true manufacturer's identity by selling under the Bard nameplate a furnace actually manufactured for Bard by Consolidated. We agree with the trial court's conclusion that amendment was not justified because plaintiffs' fraud claims go essentially to the quality and characteristics of the

furnace purchased. Plaintiffs have not alleged that either defendant engaged in any wrongdoing independent of their alleged breach of contract and warranty. See *Huron Tool, supra*. Therefore, we conclude that the trial court did not abuse its discretion in denying plaintiffs' motion to amend. *Weymers v Khera*, 454 Mich 639, 658; 563 NW2d 647 (1997).

Affirmed.

/s/ Robert P. Young, Jr.

/s/ Stephen J. Markman

/s/ Michael R. Smolenski