

Order

Michigan Supreme Court
Lansing, Michigan

July 29, 2011

Robert P. Young, Jr.,
Chief Justice

141838

Michael F. Cavanagh
Marilyn Kelly
Stephen J. Markman
Diane M. Hathaway
Mary Beth Kelly
Brian K. Zahra,
Justices

TARIEN A. HATCHER and MARKQUITA
FREDERICK, Co-Personal Representatives of
the Estate of Kimora N. Hatcher, Deceased,
Plaintiffs-Appellants,
and

TARIEN A. HATCHER, Individually,
MARKQUITA FREDERICK, Individually,
TARIEN A. HATCHER, as Next Friend of
Latariea Hatcher, a Minor, YVETTE HATCHER,
ISABEL L. KUHLMAN, and JOSEPH EARLE,
Plaintiffs,

v

SC: 141838
COA: 289208
Macomb CC: 2007-001452-NO

SENIOR HOME HEALTH CARE, INC.,
Defendant-Appellee.

On order of the Court, the application for leave to appeal the August 19, 2010 judgment of the Court of Appeals is considered, and it is DENIED, because we are not persuaded that the question presented should be reviewed by this Court. The plaintiffs have failed to show that the defendant had a legal duty to them separate and distinct from its contractual obligations. *Fultz v Union Commerce Assoc*, 470 Mich 460, 467 (2004). Although a contracting party's assumption of contractual obligations does not extinguish or limit separately existing common-law or statutory tort duties owed to noncontracting third parties in the performance of a contract, *Loweke v Ann Arbor Ceiling & Partition Co, LLC*, 489 Mich ____ (Docket No. 141168, decided June 6, 2011), the plaintiffs have not shown that the defendant had any such separate duty to them. The defendant, as the provider of a nondefective product to a customer, did not thereby acquire a duty to all unknown third parties who might be injured by the customer's misuse of the product.

CAVANAGH, MARILYN KELLY and HATHAWAY, JJ., would vacate the judgment of the Court of Appeals and remand this case to the Macomb Circuit Court for further proceedings consistent with this Court's opinion in *Loweke v Ann Arbor Ceiling & Partition Co, LLC*, 489 Mich ____ (Docket No. 141168, decided June 6, 2011).



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I, Corbin R. Davis, Clerk of the Michigan Supreme Court, certify that the foregoing is a true and complete copy of the order entered at the direction of the Court.

July 29, 2011

Corbin R. Davis

Clerk