COURT OF APPEALS
DECISION
DATED AND FILED

December 22, 2015

Diane M. Fremgen
Clerk of Court of Appeals

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. *See* WIS. STAT. § 808.10 and RULE 809.62.

Appeal No. 2014AP2775 **Cir. Ct. No. 2012CV013189**

STATE OF WISCONSIN **IN COURT OF APPEALS**
DISTRICT I

SANDRA BREZONICK , INDIVIDUALLY AND SPECIAL ADMINISTRATOR OF THE ESTATE OF JOHN BREZONICK,

PLAINTIFF-APPELLANT,

V.

A. W. CHESTERON COMPANY, CRANE COMPANY, GEORGIA PACIFIC, LLC, PREVIOUSLY KNOWN AS GEORGIA PACIFIC CORPORATION, OWENS ILLINOIS, INC., RAPID AMERICAN CORPORATION, TRANE US, INC., UNION CARBIDE CORPORATION, WEIL MCLAIN COMPANY, A/K/A MARLEY WYLAIN COMPANY AND LADISH COMPANY,

DEFENDANTS,

EMPLOYERS INSURANCE COMPANY OF WAUSAU, MILLER BREWING COMPANY, PABST BREWING COMPANY, SPRINKMANN SONS CORPORATION, TRAVELERS CASUALTY AND SURETY COMPANY AND WISCONSIN ELECTRIC POWER COMPANY,

DEFENDANTS-RESPONDENTS.

APPEAL from an order of the circuit court for Milwaukee County: MARY M. KUHNMUENCH, Judge. *Reversed and cause remanded*.

Before Curley, P.J., Brennan, J., and Daniel L. LaRocque, Reserve Judge.

¶1 BRENNAN, J. Sandra Brezonick appeals the summary judgment order dismissing her claims against Pabst Brewing Company, Miller Brewing Company, Wisconsin Electric Power Company ("WEPCO"), and Sprinkmann Sons Corporation, as well as those defendants' relevant insurers (collectively "the Defendants").[1] She claims the Defendants, in varying ways, are liable for exposing her husband John Brezonick to asbestos, which she asserts led to the development of John's mesothelioma and eventually his death. Following motions for summary judgment, the circuit court dismissed Sandra's claims against the Defendants, concluding that those claims were barred by the construction statute of repose, WIS. STAT. § 893.89 (2013-14).[2]

¶2 Sandra claims that WIS. STAT. § 893.89 does not bar her claims against the Defendants because she believes: (1) the undisputed evidence shows that John's injuries arose from maintenance and repair work, rather than work making improvements to real property; (2) airborne asbestos is not a "deficiency or defect" in construction of an improvement to real property; (3) § 893.89(4), the "maintenance exception" to the construction statute of repose, exempts the

[1] Numerous other defendants were also named in the complaint; however, claims relating to those defendants are not before this court.

[2] All references to the Wisconsin Statutes are to the 2013-14 version unless otherwise noted.

premises owners—that is, Pabst, Miller, and WEPCO—from protection from liability; and (4) § 893.89 is unconstitutional as applied to Sandra. We conclude that the circuit court erred in determining that Sandra's claims are barred by the construction statute of repose because the record reveals that all of the Defendants here failed in their burden of showing that John's injuries arose from work intended to make improvements to real property. As such, we reverse the circuit court's grant of summary judgment and remand this case back to the circuit court for further proceedings.

BACKGROUND

¶3 In December 2012, John and Sandra Brezonick filed a complaint claiming that John sustained injuries from asbestos exposure while he was working as a steamfitter in the Milwaukee area between 1966-2000. As relevant here, the complaint set forth negligence, product liability, and WIS. STAT. § 101.11 safe place statute claims against numerous defendants. Pabst, Miller, and WEPCO were named in the complaint as owners and operators of premises where asbestos was allegedly used during the relevant time period, while Sprinkmann was named as an installer and supplier of asbestos products.

¶4 John died from mesothelioma in November 2013. The circuit court entered an order naming Sandra as Special Administrator to the estate. A claim for wrongful death as to all the Defendants was added soon thereafter.

¶5 The complaint generally alleged that John worked as a steamfitter for various contractors at numerous job sites in the Milwaukee area from 1966 to 2000. Part of his job included installing and providing maintenance to boilers, pipes, gaskets, and other materials. Beginning in about 1966, John was allegedly exposed to and inhaled airborne asbestos fibers released while working with

asbestos-containing products, and while working in proximity to others using or removing such products.

¶6 In April 2014, all the Defendants filed individual motions for summary judgment. Each motion included affirmative-defense claims based upon WIS. STAT. § 893.89, the construction statute of repose. Following oral argument, the circuit court granted the Defendants' motions for summary judgment based upon § 893.89.

¶7 In evaluating whether Sandra's claims were barred by WIS. STAT. § 893.89, the circuit court found that the statute only barred the claims if three requirements were met:

> (1) the defendant is an owner or occupier of the property, or a person involved in the improvement to real property; (2) [Sandra's] claims relate to some allegedly faulty aspect of the improvement to real property; and (3) the claim has been brought outside the [ten-year] exposure period.

The circuit court acknowledged that the parties did not contest requirements one and three—that is, it was undisputed that all of the Defendants were either owners or occupiers of real property, or persons involved in the improvement to real property, *and* that Sandra's claims were brought outside the ten-year exposure period. Accordingly, the court only considered requirement two—whether Sandra's claims related to an allegedly faulty aspect to the improvement to real property, as opposed to maintenance and repair. Reviewing the evidence, the court concluded that, with regard to all the Defendants, John's exposure to asbestos resulted from improvements to real property. Finding all three of WIS. STAT. § 893.89's statutory requirements met, the court granted the Defendants' motions for summary judgment. Sandra appeals.

STANDARD OF REVIEW

¶8 This case comes to us after the circuit court dismissed Sandra's claims against the Defendants in response to the Defendants' motions for summary judgment. Upon review of a circuit court's decision on summary judgment, we apply the same standards used by the circuit court, as set forth in WIS. STAT. § 802.08. ***Krier v. Vilione***, 2009 WI 45, ¶14, 317 Wis. 2d 288, 766 N.W.2d 517. First, we must determine if the pleadings state a claim. ***Green Spring Farms v. Kersten***, 136 Wis. 2d 304, 315, 401 N.W.2d 816 (1987). If the plaintiff has stated a claim and the pleadings show the existence of factual issues, then we must examine whether the party moving for summary judgment has presented a defense that would defeat the claim. *See* ***Lambrecht v. Estate of Kaczmarcyzk***, 2001 WI 25, ¶22, 241 Wis. 2d 804, 623 N.W.2d 751. If the moving party has made a *prima facie* case, the court examines the pleadings, affidavits, depositions, or other proof of the opposing party to determine whether disputed facts exist, or whether reasonable conflicting inferences may be drawn from undisputed facts, therefore requiring a trial. *See* ***id.*** Evidentiary facts, as set forth in the affidavits or other proof of the moving party, are taken as true if not contradicted by opposing affidavits or other proofs. ***L.L.N. v. Clauder***, 209 Wis. 2d 674, 684, 563 N.W.2d 434 (1997). Keeping these standards in mind, we turn to Sandra's claims.

DISCUSSION

¶9 All of Sandra's arguments on appeal arise from her disagreement with the circuit court's conclusion that her claims against the Defendants are barred by the construction statute of repose, to wit, WIS. STAT. § 893.89. "Generally speaking, ... § 893.89 provides that persons involved in improvements to real property may not be sued more than ten years after substantial completion

of a project." ***Kalahari Dev., LLC v. Iconica, Inc.***, 2012 WI App 34, ¶6, 340 Wis. 2d 454, 811 N.W.2d 825. As relevant here, the statute states:

> [N]o cause of action may accrue and no action may be commenced ... against the owner or occupier of the property or against any person involved in the improvement to real property after the end of the exposure period, to recover damages ... for any injury to the person, or for wrongful death, arising out of any deficiency or defect in the ... supervision or observation of construction of, the construction of, or the furnishing of materials for, the improvement to real property....

See § 893.89(2). The purpose of the statute "is to provide protection from long-term liability for those involved in the improvement to real property." ***Kohn v. Darlington Cmty. Sch.***, 2005 WI 99, ¶62, 283 Wis. 2d 1, 698 N.W.2d 794 (emphasis omitted).

¶10 The party seeking protection under the construction statute of repose bears the burden of showing that the work causing the alleged injury was an improvement to real property, as opposed to maintenance and repair. *See* ***Lambrecht***, 241 Wis. 2d 804, ¶6 (defendant bears the burden of proving an affirmative defense). To meet that burden, the Defendants must show that John's injuries were caused by work that qualifies as an improvement to real property, to wit, "[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." *See* ***Kohn***, 283 Wis. 2d 1, ¶17 (quotation marks and citations omitted).

¶11 Sandra raises the following arguments with respect to the circuit court's application of WIS. STAT. § 893.89 to her claims against the Defendants: (1) the undisputed evidence shows that John's injuries arose from maintenance and repair work, rather than work intended to make improvements to

real property; (2) airborne asbestos is not a "defect or deficiency" in construction of an improvement to real property; (3) § 893.89(4), the "maintenance exception" to the construction statute of repose, exempts the premises owners—that is, Pabst, Miller, and WEPCO—from protection from liability; and (4) § 893.89 is unconstitutional as applied to Sandra.

¶12 To begin, we note that there is no dispute in the record regarding the work John was engaged in, e.g., removing and replacing pipes, removing and replacing gaskets, repacking valves, and so on. Thus, our focus on review is the legal question: whether that work was an improvement to the property or maintenance. We review the circuit court's legal conclusions *de novo*. *See* ***Kohn***, 283 Wis. 2d 1, ¶12.

¶13 In passing WIS. STAT. § 893.89, the legislature expressly chose "to protect persons or entities which make permanent improvements to real property, not to absolve those who make regular repairs or do maintenance work." ***Peter v. Sprinkmann Sons Corp.***, 2015 WI App 17, ¶23, 360 Wis. 2d 411, 860 N.W.2d 308. "Whether an item is an 'improvement to real property' under § 893.89 is a question of law that we review de novo." ***Kohn***, 283 Wis. 2d 1, ¶12. The party seeking protection under the statute of repose bears the burden of showing that the work involved an improvement to property. *See* ***Lambrecht***, 241 Wis. 2d 804, ¶6 (defendant bears the burden of proving an affirmative defense).

¶14 WISCONSIN STAT. § 893.89's reference to an "improvement to real property" means: "A permanent addition to or betterment of real property [1] that enhances its capital value and [2] that involves the expenditure of labor or money and [3] is designed to make the property more useful or valuable as distinguished from ordinary repairs." ***Kohn***, 283 Wis. 2d 1, ¶17 (brackets, quotation marks, and

citation omitted). By contrast, maintenance has been defined as the "work of keeping something in proper condition; upkeep." ***Hocking v. City of Dodgeville***, 2010 WI 59, ¶48, 326 Wis. 2d 155, 785 N.W.2d 398 (quotation marks and citation omitted).

¶15 Sandra argues that the circuit court erred when it applied WIS. STAT. § 893.89 to bar her claims against the Defendants because she believes the undisputed evidence demonstrates that John's exposure to asbestos with respect to each of the Defendants resulted from maintenance and repair work, rather than from improvements to real property. Upon our review of the parties' briefs and the record, we conclude that the Defendants have failed to show the three ***Hocking*** factors above. We note that although there is some evidence supporting the Defendants' contentions that the work exposing John to asbestos was involved in improvements to property, there is at least equal evidence that it was maintenance. There is no evidence of the design or purpose of each project John worked on, that is, whether the work was intended to be a permanent improvement or maintenance, and no evidence of an increase in the capital value to the property from the work. Both are factors suggested in ***Hocking*** and ***Kohn*** as indicative of improvement. Thus, we conclude the Defendants failed to meet their burden of showing the work was for improvement to real property and, as such, summary judgment was inappropriate. We address the evidence concerning each of the Defendants in turn.

Pabst

¶16 With respect to John's asbestos exposure at Pabst, the circuit court found that John: "installed new piping and replaced existing piping … on a large machine used in the beer brewing process" and also "replaced mash frames, an

essential component to the beer brewing process." The circuit court noted that Sandra claimed that John "was exposed to airborne asbestos while performing this work at Pabst." Sandra argues that the circuit court's findings are insufficient to establish that John's exposure to asbestos at Pabst resulted from improvements to real property as opposed to maintenance and repair. We agree.

¶17 After finding that John, while at Pabst, "installed new piping and replaced existing piping" and "replaced mash frames," the circuit court went on to find that John's work "created permanent additions and improvements to the property that contributed to overall efficiency and decreased operating costs." However, the court reached this legal conclusion without pointing to any facts in the record to support its finding, and without acknowledging Sandra's evidence of maintenance and repair work. Viewing all of the evidence in the light most favorable to Sandra, as the non-moving party, the installation and replacement of pipes and mash frames must be viewed as routine maintenance.

¶18 The mere fact that John worked to install and replace pipes and mash frames while at Pabst does not, in and of itself, show that John's work was an improvement to real property. Without more, a factfinder could just as easily construe the installation and replacement of pipes and mash frames as maintenance and repair work. On motion for summary judgment, the burden was on Pabst, as the moving party, to show that the undisputed evidence conclusively demonstrated that replacing pipes and mash frames, in this instance, amounted to 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." ***Kohn***, 283 Wis. 2d 1, ¶17 (quotation marks and citation omitted). Pabst did not do that.

¶19 Additionally, we note that there is other evidence in the record that Sandra claims shows that John was exposed to asbestos while doing maintenance and repair work at Pabst. For instance, John testified:

> I was given the job of repacking and refurbishing all the valves on [the] No. 2 pasteurizer….
>
> Like I say, the pasteurizer, pretty good-sized machine. We were doing everything from some new piping or replacing existing piping on it, to the nozzles inside that sprayed the warm water on when the beer cans or bottles went through to be pasteurized. A lot of them had to be changed. Just general maintenance of the whole machine.

Repacking required John to remove old gaskets and rope packing from valves, clean the valves, fit new gaskets and packing, polish valves, and reinstall valves. Sandra cites to testimony in the record that the only gaskets on the market at that time contained asbestos.

¶20 Addressing his work replacing mash frames, John testified he worked re-packing and replacing gaskets, which wear out and leak. John stated that Pabst had "a schedule" for replacing the mash frames and they would "do these now, and then the next time we'll do these"; "it was just kind of a semi[-]maintenance routine thing that they had some type of schedule for."

¶21 This evidence, when viewed in the light most favorable to Sandra, suggests that the work that John was performing at Pabst was maintenance and repair. As such, we reverse the circuit court's grant of summary judgment to Pabst.

Miller

¶22 The circuit court found that John "worked at the Miller Brewery on several occasions from 1971 to 1976, and again from 1997 to 2000." The court

found that John's "primary work" at Miller, with respect to his claims of asbestos exposure, "was creating new pipe installations, removing old pipes, and installing completely new lines." The circuit court concluded that "[c]reating new pipe installations and removing and replacing existing old pipes constitutes a permanent addition to, and betterment of, the property" and therefore John engaged in work constituting improvements to real property.

¶23 Sandra first argues that the circuit court's express finding—that "the primary work that [John] engaged in at Miller was creating new pipe installations, removing old pipes, and installing completely new lines"—should be construed as maintenance and repair when viewed in the light most favorable to her claims. We agree. Neither the circuit court nor Miller point to undisputed evidence[3] in the record to show that creating "new pipe installations, removing old pipes, and installing completely new lines" is not maintenance or that it amounts to a "permanent addition to or betterment of real property that enhances its capital value" or that John's work was "designed to make the property more useful or valuable." *See* ***Kohn***, 283 Wis. 2d 1, ¶17 (quotation marks and citation omitted). Based upon the evidence submitted, it is also reasonable to presume that the pipe work John performed was intended to restore the mechanical systems at issue to their original state and was therefore maintenance and repair work.

¶24 Sandra also argues that the circuit court failed to acknowledge other evidence in the record that shows that John's exposure to asbestos while at Miller

[3] Miller cites to evidence of three different jobs that John allegedly performed at Miller: a short-term project that lasted two to three weeks in the 1960s, several small jobs John performed between 1971 and 1976, and an installation project he completed between 1997 and 2000.

was the result of maintenance and repair work. Specifically, she points to deposition testimony from Craig Chiaverotti and Jack Potosnyak, two of John's fellow steamfitters, who testified that the work John performed at Miller was for purposes of upkeep and repair and was, therefore, maintenance.

¶25 Chiaverotti testified that he worked with John in the 1970s through the late 1990s as a steamfitter at the Miller Brewery. He described John as his "partner" and stated that they "were running maintenance for [Miller] just about all the time." Chiaverotti said that, while working at Miller, he and John worked "replacing old [pipes] with the new so that wouldn't increase the value of the facility"; and that they also did other "maintenance" work, including "repacking" leaky steam valves on a "need to replace basis." Chiaverotti explained that he and John "would go and clean pasteurizers, we would do piping, you know, clean the piping, clean the heat exchangers, repack valves," and that one of John's tasks during this job was removing insulation from heat exchangers, which created dust. Chiaverotti testified that he and John worked at Miller Brewery "[p]acking the stems, removing and repairing leaks."

¶26 Potosnyak testified that he worked with John as a steamfitter at the Miller Brewery in the late 1960s and early 1970s. He stated that, while at Miller, John "update[ed]" piping and equipment, a job that included removing existing steam piping and thermal system insulation. Removing insulation from the piping at Miller caused dust to get on John's clothing and body.

¶27 In response to the testimony of maintenance and repair set forth by Sandra, Miller points to its own evidence that it claims demonstrates that John's work made improvements to real property. We conclude that this evidence is not stronger than Sandra's evidence that it was maintenance related. Accordingly, we

conclude that Miller has not met its burden and that summary judgment is inappropriate. As such, we reverse the circuit court's grant of summary judgment to Miller.

WEPCO

¶28 When considering John's work for WEPCO, the circuit court found that John:

> worked on several jobs at two WEPCO facilities – Oak Creek and Valley Plant … in the mid 1960[]s, during the 1980[]s, and 1997. The primary work that [John] engaged in at WEPCO facilities was creating new pipe installations, removing old pipes, and installing completely new lines.

Sandra claims that John was exposed to airborne asbestos while performing this work. Based upon its findings, the circuit court went on to conclude that:

> the work [John] engaged in at WEPCO facilities constitutes improvements to real property. Creating new pipe installations and removing and replacing existing old pipes constitutes a permanent addition to, and betterment of, the property. The completed project and materials used created permanent additions and improvements to the property that contributed to overall efficiency and decreased operating costs. Accordingly, this court finds that the work [John] engaged in at WEPCO facilities constitutes "improvements to real property" for the purposes of the statute of repose.

(Citations omitted.)

¶29 Again, Sandra argues that it is also reasonable to infer from the circuit court's findings that John's work "[c]reating new pipe installations and removing and replacing existing old pipes" is maintenance and repair work meant to restore the existing mechanical systems to their original condition, and that the circuit court's findings that John's work "contributed to overall efficiency and decreased operating costs" is an erroneous legal conclusion. We agree. All

maintenance fits that description generally. WEPCO has produced no evidence to show what the design or purpose of the work was, or whether it increased the capital value of the property. Moreover, Sandra points to other evidence in the record that supports her conclusion that maintenance and repair work exposed John to asbestos.

¶30 For instance, Sandra points to Potosnyak's testimony that from 1969 to the mid-1970s he and John worked for Grunau at WEPCO's Oak Creek Power Plant "renewing steam piping, doing maintenance work on valves and so on." Potosnyak testified that the work involved removing old insulation from high pressure steam pipes. Sandra cites to evidence that all thermal insulation material at that time contained asbestos. Sandra also relies on testimony from Chiaverotti in which he states that he worked on the same crew as John in the late 1970s and early 1980s and that they worked at WEPCO facilities removing steam pipe. The work required John to remove old insulation, which contained asbestos. As best we can tell from the briefs, this evidence appears undisputed and at least creates an inference, when viewed in the light most favorable to Sandra, that some of John's work at WEPCO was maintenance and repair.

¶31 WEPCO relies on evidence in the record showing that some of the work John did for WEPCO was new construction or renovation, work that was certainly improvements to real property. Perhaps, but there is also evidence in the record that, when viewed in the light most favorable to Sandra, shows that some of John's work exposing him to asbestos was maintenance and repair. In sum, WEPCO has failed to meet its burden of showing that all of Sandra's claims were from work involved in improvements to property, and we reverse the circuit court's grant of summary judgment to WEPCO.

Sprinkmann

¶32 With respect to Sandra's claims against Sprinkmann, the circuit court found as follows:

> Sprinkmann was an independent insulation contractor who was responsible for the installation, removal, and maintenance of asbestos-insulating piping at a number of various sites. Sprinkmann did insulation work at a number of sites over the years, and this insulation work included repair as well as installing new insulation. … [John] testified that he worked at these locations around these times, was exposed to airborne asbestos as a result, and that this exposure was a cause of his mesothelioma.

The court went on to consider whether the work engaged in by Sprinkmann employees, which exposed John to asbestos, made improvements to real property. In doing so, the court found:

> Sprinkmann's work included projects where large portions of existing piping systems and the associated insulation were removed and replaced. Pipe work and insulation installation constitute a permanent addition to, and betterment of, that property. The completed projects and materials used created permanent additions and improvements to the property that contributed to overall efficiency and decreased operating costs. Furthermore, the pipes and insulation are not something that is going to be readily [disassembled] and moved to another location. Accordingly, this court finds that the relevant work Sprinkmann engaged in constitutes "improvements to real property."

(Citation omitted.)

¶33 Sandra argues that the circuit court's finding that "Sprinkmann's work included projects where large portions of existing piping systems and the associated insulation were removed and replaced" is insufficient to support its conclusion that Sprinkmann engaged in work constituting improvement to real property. We agree.

¶34 It is not enough for Sprinkmann to show that it replaced "large portions" of existing piping systems. Sprinkmann needed to produce some evidence demonstrating that the *purpose* in removing and replacing the existing pipes and accompanying insulation was to create 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." *See* ***Kohn***, 283 Wis. 2d 1, ¶17.

¶35 Instead, Sprinkmann argues that "common sense" dictates that its work made improvements to real property, citing to invoices, material registers, and other sales documents that show that Sprinkmann insulated hundreds of feet of piping and engaged in numerous man hours at each jobsite. But a project's size is not determinative of whether it is an improvement to real property or maintenance and repair. Viewing the evidence in the light most favorable to Sandra, "common sense" could also lead to the conclusion that Sprinkmann's work removing and replacing existing pipes and accompanying insulation was necessary to maintain and repair the relevant mechanical systems to ensure that they operated at their original capacity. Because Sprinkmann failed to meet its burden of showing the work was improvement related, we reverse the circuit court's grant of summary judgment to Sprinkmann.

Conclusion

¶36 In sum, the evidence on summary judgment, with respect to all the Defendants, was insufficient to establish that the work exposing John to asbestos made improvements to real property. General findings that John was exposed to asbestos while he, or others nearby, were installing new pipes, and replacing old pipes and insulation, is insufficient without additional evidence showing that the

projects "enhance[d the] capital value" of the property and made the property "more useful or valuable." *See* ***Kohn***, 283 Wis. 2d 1, ¶17. The fact that the projects were large, expensive, and involved is not enough.

¶37 In so holding, we reject the assertion made by several of the Defendants that our supreme court's holding in ***Hocking*** bars Sandra's claims. In ***Hocking***, our supreme court held that WIS. STAT. § 893.89(4)(c)[4] "distinguishes between suits arising from 'design' or 'planning' defects, which explicitly fall within the statute of repose, and suits arising from negligent maintenance of the property under § 893.89(4)(c)." ***Hocking***, 326 Wis. 2d 155, ¶¶47, 50 (footnote omitted). Some of the Defendants contend that the initial decision to use asbestos-containing materials is a defect in the initial design of the mechanical systems that John was working on or next to, and as such, under ***Hocking***, that decision is protected by the statute of repose. We disagree.

¶38 Sandra does not argue that asbestos products should never have been used in the initial design of the mechanical systems at issue; rather, she argues that John's exposure to asbestos resulted from a failure to prevent or control fiber release during later maintenance. Consequently, her claims do not touch upon the issue addressed in ***Hocking***.

¶39 For all of the foregoing reasons, we reverse the circuit court's grant of summary judgment as to all the Defendants, and remand the case back to the circuit court for further proceedings. We decline to address the other issues raised

[4] WISCONSIN STAT. § 893.89(4)(c) states that the construction statute of repose does not apply to "[a]n owner or occupier of real property for damages resulting from negligence in the maintenance, operation or inspection of an improvement to real property."

by Sandra, as a decision on any of these issues may be affected by the circuit court's future factfinding. *See* ***State v. Blalock***, 150 Wis. 2d 688, 703, 442 N.W.2d 514 (Ct. App. 1989) (Cases should be decided on the narrowest possible grounds.).

By the Court.—Order reversed and cause remanded.

Not recommended for publication in the final reports.