COURT OF APPEALS
DECISION
DATED AND FILED

June 24, 1999

Marilyn L. Graves
Clerk, Court of Appeals
of Wisconsin

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* § 808.10 and RULE 809.62, STATS.

No. 98-3034

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

WELDING SHOP, LTD.,

PLAINTIFF-APPELLANT,

V.

SILENT STALKER, INC., WESTERN HERITAGE INSURANCE COMPANY, AND ABC INSURANCE COMPANY,

DEFENDANTS,

VICKERS ENGINEERING, INC.,

DEFENDANT-THIRD-PARTY PLAINTIFF-RESPONDENT,

V.

SENTRY INSURANCE COMPANY,

THIRD-PARTY DEFENDANT.

APPEAL from an order of the circuit court for La Crosse County: STEVEN L. ABBOTT, Judge. *Affirmed.*

Before Dykman, P.J., Vergeront and Roggensack, JJ.

DYKMAN, P.J. Welding Shop, Ltd. appeals from an order dismissing its action against Vickers Engineering, Inc., for negligently manufacturing the mounting pins that Welding Shop used when assembling its tree stands. The circuit court dismissed the suit after determining that it was barred under the economic loss doctrine. Welding Shop contends that because Vickers' negligence caused damage to "other property" (i.e. the tree stands), the economic loss doctrine does not apply. We disagree and conclude that the mounting pins are a component part of the tree-stand system; therefore, the doctrine applies. Accordingly, we affirm.

BACKGROUND

The Welding Shop (d/b/a Trailhawk Treestands) designs, produces and sells deer hunting tree stands. In 1990, it purchased the patent rights to a hanging tree-stand system with the intent of improving the system's overall design. It contracted with Silent Stalker, Inc., to produce a mounting pin to use when securing the stand to a tree. Silent Stalker subcontracted with Vickers Engineering to produce the pins. Vickers sent prototypes of the pins to Silent Stalker, which sent them to Welding Shop to examine and test. After the pins passed rigorous safety tests without incident, Welding Shop ordered several batches of the pins.

Welding Shop began shipping its tree-stand systems with the mounting pins to retailers and wholesalers for resale. Soon thereafter, Welding

Shop received calls from consumers who complained that when they stepped onto the tree stand, the mounting pin snapped, causing the stand to fall. The Welding Shop immediately began recalling the product.

Welding Shop contacted Silent Stalker and was informed for the first time that Silent Stalker had subcontracted with Vickers to manufacture the pins. Welding Shop then contacted Vickers about producing replacement pins. The replacement pins were made and sent to consumers. Welding Shop incurred significant losses as a result of the defective pins, and was forced into bankruptcy.

Welding Shop sued Silent Stalker and its insurer, Western Heritage Insurance Company, for breach of warranties and for negligence. Welding Shop then amended its complaint to add Vickers as a defendant, alleging negligence and strict products liability. Vickers, Silent Stalker and Western Heritage each brought motions for summary judgment.[1] Vickers' motion alleged that Welding Shop's complaint failed to state a cause of action because its negligence and strict products liability claims were barred under the economic loss doctrine. The circuit court granted Vickers' motion. Welding Shop appeals.

STANDARD OF REVIEW

We review summary judgment decisions de novo, using the methodology set out in § 802.08(2), STATS. *See* ***M&I First Nat'l Bank v. Episcopal Homes Management, Inc.***, 195 Wis.2d 485, 496, 536 N.W.2d 175, 182 (Ct. App. 1995). We note that summary judgment is only appropriate when there

[1] Welding Shop settled its claims against Silent Stalker and Western Heritage prior to the hearing.

is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. *See* ***id.*** at 496-97, 536 N.W.2d at 182.

DISCUSSION

The economic loss doctrine is a judicially created doctrine that bars a commercial purchaser of a product from suing the manufacturer, under negligence or strict products liability theories, for damages that are solely economic in nature.[2] *See* ***Daanen & Janssen, Inc. v. Cedarapids, Inc.***, 216 Wis.2d 395, 400, 573 N.W.2d 842, 844-45 (1998). Generally, economic loss is defined as damages that result from "inadequate value because the product 'is inferior and does not work for the general purposes for which it was manufactured and sold.'" ***Id.*** at 401, 573 N.W.2d at 845 (quoting ***Northridge Co. v. W.R. Grace & Co.***, 162 Wis.2d 918, 925-26, 471 N.W.2d 179, 181-82 (1991). However, the doctrine does not bar "a commercial purchaser's claims based on personal injury or damage to property other than the product, or economic loss claims that are alleged in combination with noneconomic losses." ***Id.*** at 402, 573 N.W.2d at 845. In a

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[2] Economic loss includes both direct and consequential economic loss. *See* ***Daanen & Janssen***, ***Inc. v. Cedarapids, Inc.***, 216 Wis.2d 395, 401, 573 N.W.2d 842, 845 (1998). The supreme court distinguished between the two as follows:

> Direct economic loss may be said to encompass damage based on insufficient product value; thus, direct economic loss may be "out of pocket"—the difference in value between what is given and received—or "loss of bargain"—the difference between the value of what is received and its value as represented. Direct economic loss also may be measured by costs of replacement and repair. Consequential economic loss includes all indirect loss, such as loss of profits resulting from inability to make use of the defective product.

Northridge Co. v. W.R. Grace & Co., 162 Wis.2d 918, 926, 471 N.W.2d 179, 181-82 (1991) (quoting Note, *Economic Loss in Products Liability Jurisprudence*, 66 COLUM. L. REV. 917, 918 (1966)).

nutshell, economic loss is damage to a product itself or monetary loss caused by a defective product that does not cause personal injury or damage to other property. *See* ***id.***

Wisconsin first adopted the economic loss doctrine in ***Sunnyslope Grading Inc. v. Miller, Bradford & Risberg, Inc.***, 148 Wis.2d 910, 437 N.W.2d 213 (1989). In ***Sunnyslope***, a commercial contractor purchased backhoes from a manufacturer, who gave the contractor a written warranty limiting the manufacturer's liability. When the backhoes failed to perform properly, the contractor sued, seeking damages for the replacement parts, labor charges and lost profits not covered under the warranty. It made no claim for personal injury or damage to any property other than to the backhoes themselves. The supreme court held that "a commercial purchaser of a product cannot recover solely economic losses from the manufacturer under negligence or strict liability theories … where the warranty given by the manufacturer specifically precludes the recovery of such damages." ***Sunnyslope***, 148 Wis.2d at 921, 437 N.W.2d at 217-18.

The question of whether the economic loss doctrine applies when no privity of contract exists between the manufacturer and a remote commercial purchaser was left unanswered in ***Sunnyslope***, but was resolved in ***Daanen & Janssen***. In ***Daanen & Janssen***, 216 Wis.2d at 398, 573 N.W.2d at 843, a rock quarry operator sued the manufacturer of a defective "pitman" component that the quarry used in its crushing equipment. It alleged that the manufacturer was liable under negligence and strict products liability theories for the economic losses caused by the defective component. The manufacturer had given a warranty on the component to the retailer that purchased and then re-sold the component to the quarry operator, but the retailer did not pass the warranty on to the quarry operator; therefore, there was no privity between the parties. The supreme court

concluded that the operator's tort claims were barred by the economic loss doctrine even in the absence of privity:

> Application of the economic loss doctrine to tort actions between commercial parties is generally based on three policies, none of which is affected by the presence or absence of privity between the parties: (1) to maintain the fundamental distinction between tort law and contract law; (2) to protect commercial parties' freedom to allocate economic risk by contract; and (3) to encourage the party best situated to assess the risk [of] economic loss, the commercial purchaser, to assume, allocate, or insure against that risk.

Id. at 403, 573 N.W.2d at 846.

Vickers contends that these two holdings are controlling and bar recovery in this case. The Welding Shop argues that ***Northridge*** is controlling. In ***Northridge***, 162 Wis.2d at 921, 471 N.W.2d at 180, the owners of two buildings brought a negligence and strict products liability suit against a manufacturer of the fireproofing material that was installed in their buildings. The owners sued after discovering that the asbestos in the fireproofing material was contaminating the air in the building. They argued that the economic loss doctrine did not apply because the material did not break down or fail to perform its intended function; instead, it caused actual physical harm to the property by creating an unreasonable risk to health and safety. The manufacturer argued that the property owners did not allege any physical harm to either persons or property, and that any alleged losses were solely economic. The supreme court concluded that because the property owners were claiming that the asbestos material caused damage to property other than the product itself (i.e. the building), the economic loss doctrine did not apply. *See* ***id.*** at 937-38, 471 N.W.2d 186-87.

Welding Shop contends that there are several parallels between ***Northridge*** and this case. It points out that similar to the property owners in ***Northridge***, it is not claiming that the defective product failed in its intended use, but rather that the defective product caused damage to other property. It explains that the mounting pin by itself, similar to the fireproofing material when stored in a can, was harmless. It was only when these products were used as intended that they caused damage to other property. The asbestos material contaminated the air, which then damaged the property, and the mounting pin, once installed, damaged the tree stand. Welding Shop argues that because the defective mounting pin caused damage to the tree stand, the economic loss doctrine should not apply. We disagree.

We have held that when the defective product is a component part of an integrated system, the other component parts in the system, or the system as a whole, do not qualify as "other property" under the economic loss doctrine. *See* ***Cincinnati Ins. Co. v. AM Int'l***, 224 Wis.2d 456, 591 N.W.2d 869 (Ct. App. 1999) (holding that a gear was a component part of a printing press's integral system); ***Midwhey Powder Co. v. Clayton Indus.***, 157 Wis.2d 585, 460 N.W.2d 426 (Ct. App. 1990) (deciding that defective turbines connected to steam generators were an integral part of a total energy saving system); *see also* ***Midwest Helicopters Airways, Inc. v. Sikorsky Aircraft***, 849 F. Supp. 666 (E.D. Wis.) (concluding that a defective tail rotor drive system was a component of a helicopter's integral system) *aff'd*, 42 F.3d 1391 (7th Cir. 1994). Welding Shop essentially concedes in its brief that the mounting pin is an integral component part when it asserts that: "The mounting pin … is an essential part of the treestand. The treestand is only so much metal, plastic and nylon without it." In light of these statements, the tree-stand system cannot be considered "other property."

The Welding Shop contends that these "component part" cases are inapplicable because "none [of them] were concerned with safety hazards or even potential hazards," and that ***Northridge*** therefore should be controlling. We disagree with both parts of this assertion. ***Midwest Helicopters Airways*** involved a products liability suit in which the plaintiff's helicopter crashed because of a defective tail rotor drive system—clearly a safety hazard. As for the second part of the assertion, the supreme court has recently limited its holding in ***Northridge***, to apply only to cases involving highly dangerous substances. *See* ***Wausau Tile, Inc. v. County Concrete Corp***., No. 97-2284, slip op. at 26 (Wis. Sup. Ct. May 28, 1999). In ***Wausau Tile***, a manufacturer of concrete pavers sued one of its suppliers for selling it defective aggregate used in producing the pavers. Wausau Tile relied on ***Northridge*** to argue that because the defective aggregate caused damage to its pavers (i.e. other property), its claim was not barred under the economic loss doctrine. The Court rejected this argument, stating that it "developed the ***Northridge*** rule in response to the unique facts of that case." ***Id.*** at 24. It added that the rule was only intended "to address the special public safety concerns present in claims involving contamination by inherently hazardous substances like asbestos." ***Id.*** at 26. The court ultimately concluded that because Wausau Tile's case did not involve a substance like asbestos, the ***Northridge*** exception was inapplicable. *See* ***id.*** at 27.

Contrary to the Welding Shop's contentions, this case does not involve a substance as unique as asbestos. ***Wausau Tile*** limits ***Northridge*** to the facts of that case. We therefore decline to extend the ***Northridge*** exception to apply in this case. Accordingly, we affirm.

By the Court.—Order affirmed.

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