

MSC Opinion: Statute of limitations found in MCL 600.5839 only applies to tort actions

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In *Miller-Davis Co. v. Aherns Construction, Inc.*, Case No. 139666, the Michigan Supreme Court held that the statute of limitations found in MCL 600.5807 applies to contract actions and the statute of limitations found in MCL 600.5839 only applies to tort actions. In reaching this conclusion, the Court overruled *Travelers Ins. Co. v. Guardian Alarm Co. of Michigan*, 231 Mich. 473 (1998) and *Michigan Millers Mut. Ins. Co. v. Detroit Bldg Co.*, 196 Mich. App. 367 (1992), both of which had expanded the scope of MCL 600.5839 to include contract actions. While the limitations period in MCL 600.5839(1) runs from the time of occupancy, use, or acceptance of the improvement, the statute of limitations clock does not begin to run under MCL 600.5807(8) until the date the claim first accrued.

In this case, the plaintiff argued that the six-year statute of limitations should be calculated under MCL 600.5807(8) and that the claim first accrued in 2003 when the roof was removed and the construction defect was discovered. The Court reversed the Court of Appeals opinion because this matter concerned an alleged breach of a construction contract, MCL 600.5807 applied, and therefore plaintiff's case was not automatically time-barred. Instead, the Court remanded the case back to the Court of Appeals for a determination of when the claim accrued.

Miller-Davis Co., was the general contractor hired to improve and construct new buildings on the grounds of the Battle Creek and Kalamazoo YMCA Camp. This included the construction of a natatorium. The certificate of occupancy was issued on June 11, 1999. Soon after, however, the YMCA began to notice significant condensation in the natatorium. Defendant performed follow-up work to correct the problem. However, the excessive moisture problem continued. Eventually defendant refused to perform any follow-up work. Plaintiff hired another contractor who removed the existing roof and discovered that the work was defective—it did not conform to the plan's specifications. Defendant argued, however, that the defect was caused by the removal process.

Plaintiff sued in May 2005 alleging breach of contract. Defendant filed a motion for summary disposition under MCR 2.116(C)(7) arguing that, under MCL 600.5839(1), plaintiff's suit was time-barred because it was filed after the expiration of the six-year period specified in that statute. Plaintiff argued that MCL 600.5807(8) applied, and therefore the six-year period did not begin running until the plaintiff discovered the design defect in 2003. The trial court denied defendant's motion without addressing the applicability of MCL 600.5839(1). Following a bench trial, the court found defendant liable for the defect and entered a judgment in plaintiff's favor for \$348,851.50.

Defendant appealed and argued that MCL 600.5839(1) applies to this cause of action, and therefore the suit was time-barred. The Court of Appeals agreed. In reaching this conclusion, the court relied on the *Michigan Millers* decision. In *Michigan Millers*, the plaintiff sued its contractor for negligence and breach of contract when the restaurant roof collapsed. Without analysis, the court said it was

“clear” that the statute of limitations period in MCL 600.5839(1) applied to “any action to recover damages for any injury to property...” 196 Mich. App. 367(emphasis added). The *Michigan Miller* court took this to mean any action at law, rather than any tort action.

The Michigan Supreme Court disagreed. In its opinion, the Court reviewed the language of MCL 600.5805, 5807, and 5839. It noted that subsection 5807 has no reference to injuries to person or property, whereas the remaining two sections specifically reference those damage claims. The Court noted that in its previous decision in *Huhtala v. Travelers Ins. Co.*, 410 Mich. 118 (1977), it clarified that MCL 600.5805 applied to tort actions and MCL 600.5807 applied to breach of contract actions. While the *Huhtala* decision did not address whether MCL 600.5839 applied to breach of contract actions, the Sixth Circuit Court of Appeals recently expanded the *Huhtala* decision and concluded that, using the same reasoning, MCL 600.5839 applied only to tort actions, not to contract disputes. *Garden City Osteopathic Hosp. v. HBE Corp.*, 55 F.3d 1126 (6th Cir. 1995)

Accordingly, the Court ruled that MCL 600.5839(1) only applies to tort actions for “injury to property” or “bodily injury or wrongful death”. The statute of limitations which governs this case is MCL 600.5807. Further, it overruled *Michigan Millers* and *Travelers Ins. Co.*, both of which reached the opposite conclusion. Finally, the case was remanded to the Court of Appeals to determine when the claim accrued, which is critical to determining whether plaintiff filed this action within the six-year statute of limitations in MCL 600.5807.