2015 IL App (1st) 143053-U

No. 1-14-3053

Fourth Division
August 27, 2015

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IN THE

APPELLATE COURT OF ILLINOIS

FIRST DISTRICT

KENNETH ALLEN, SANDRA ALLEN, JACQUELINE FORD, WILLIE FORD, BERNICE HOUSTON, ANDREW HOUSTON, SUSAN LIMPER, and HANS LIMPER, on behalf of themselves and on behalf of all persons similarly situated, Plaintiffs-Appellants, v. YRC WORLDWIDE, INC., ROADWAY EXPRESS, INC. ARCADIS U.S. INC., and LINCOLN LIMITED, Defendants-Appellees.	)	Appeal from the Circuit Court of Cook County. No. 13CH25113 13CH28153 Honorable Martin, Leroy Judge, presiding.

JUSTICE COBBS delivered the judgment of the court.
Presiding Justice Fitzgerald Smith and Justice Ellis concurred in the judgment.

O R D E R

¶ 1 *Held*: Plaintiffs' medical monitoring claim against defendants for allegedly contaminating residents' water supply was barred by statute of limitations. Though plaintiffs may not have known exactly who was at fault, statute of limitations period commenced from the moment plaintiffs knew of their wrongful injury. Plaintiffs' claim for property damage barred by the *Moorman* doctrine, as the only damage plaintiffs alleged was economic damage.

¶ 2 Plaintiffs brought two separate class actions against defendants, YRC Worldwide Inc., Roadway Express, Inc. (together, YRC), Arcadis U.S. Inc. (Arcadis), and Lincoln Limited, alleging they were responsible for contaminating the village water supply with vinyl chloride. Plaintiffs' complaint requested that defendants fund periodic medical monitoring for plaintiffs to determine if they are suffering from any of the increased risks associated with vinyl chloride. A separate complaint sought property damages arising from the contamination. The trial court consolidated the cases.

¶ 3 Defendants filed a motion to dismiss the medical monitoring claim, alleging that plaintiffs failed to state a claim for medical monitoring, and that the claim was barred by the statute of limitations. Defendants also filed a motion to dismiss the property damage claim, and argued that the only damage to plaintiffs' property were economic damages barred by the *Moorman* doctrine. The trial court granted both motions with prejudice. Plaintiff appeals. For the reasons that follow, we affirm.

¶ 4 BACKGROUND

¶ 5 Plaintiffs, residents of the Village of Sauk Village (Sauk Village), brought two class actions against YRC in 2013. Both complaints allege that leaks from YRC's trucking facility contaminated Sauk Village's wells with harmful vinyl chloride. Arcadis, an environmental engineering firm, allegedly prepared reports from 1993 until 1996 on behalf of YRC to the Illinois Environmental Protection Agency (IEPA), stating that chemical spills on YRC property did not pose a threat to the Sauk Village well. The complaints alleged that in 2009, vinyl chloride was detected in one of the wells Sauk Village operates to supply water to its residents. Further, the complaints alleged that vinyl chloride is a synthetic chemical that is dangerous to those who drink or bathe in water containing the chemical. The Illinois Attorney General ordered either that the water be treated or that the contaminated well be shut down in May 2009.

One of the two complaints requested that the court order that defendants fund periodic medical monitoring for Sauk Village residents to determine whether the vinyl chloride caused any medical harm to plaintiffs. The other of the two complaints alleged that plaintiffs suffered property damage and decreased property values because of the contaminated water. The cases were eventually consolidated.

¶ 6 Defendants filed a motion to dismiss under section 2-615 of the Code of Civil Procedure (the Code) alleging that plaintiffs failed to state a claim for medical monitoring. 735 ILCS 5/2-615 (West 2012). Defendants further argued that the medical monitoring claim should also be dismissed under section 2-619 of the Code, because the two-year statute of limitations for personal injury actions ran in 2011. 735 ILCS 5/2-619 (West 2012). Defendants attached a 2009 letter from the IEPA notifying Sauk Village residents that vinyl chloride was detected in their water system and that it could present long-term health risks. As for the claim for property damage, defendants argued that plaintiffs failed to allege how the vinyl chloride actually damaged their property. Defendants argued that considering Sauk Village took measures to remedy the contamination in 2009 and there was no allegation that the vinyl chloride remained on the property, there was no damage to plaintiffs' property. Further, plaintiffs could not recover for decreased property values as a result of the stigma attached with the previous contamination, because such damages would be economic in nature and barred by *Moorman Manufacturing Co. v. National Tank Co.*, 91 Ill. 2d 69 (1982). Separately, Arcadis alleged that it owed no duty to plaintiffs, who were not a party to its contract to prepare environmental reports for YRC.

¶ 7 Plaintiffs responded that the statute of limitations did not begin run until 2012, when they discovered defendants as a possible cause of the contamination. Plaintiffs attached a letter from K-Plus Engineering, dated July 19, 2012, identifying YRC as a potential source of the well's

contamination. Moreover, plaintiffs argued that expert testimony could prove plaintiffs suffered property damage by way of reduced property values.

¶ 8 On May 28, 2014, the trial court granted defendants' motion to dismiss the property damage claim with prejudice. The court found plaintiffs' property damage claim sought purely economic damages, and was barred by *Moorman*. On September 4, 2014, the trial court denied plaintiffs' motion to reconsider its dismissal of the property damage claim. On the same day, it granted defendants' motion to dismiss the medical monitoring claim. The trial court held that plaintiffs failed to sufficiently allege an injury in their claim for medical monitoring and that the claim was barred by the statute of limitations.

¶ 9 Plaintiffs appeal, arguing that their alleged need for medical testing is a sufficient allegation of injury to state a claim. Additionally, plaintiffs contend that the statute of limitations did not begin to run from when plaintiffs became aware of the vinyl chloride in the drinking water, but rather from when they became aware that defendants were responsible. Finally, plaintiffs argue that the trial court erred in finding that their claim for property damage was barred by the *Moorman* doctrine.

¶ 10 ANALYSIS

¶ 11 We review a trial court's order dismissing a claim under sections 2-615 and 2-619 of the Code *de novo*. *In re Chicago Flood Litigation,* 176, Ill. 2d 179, 189 (1997). As such, all well-pleaded factual allegations are to be taken as true. *Id.* A complaint is properly dismissed when it is clear from the pleadings that a plaintiff could prove no set of facts that would entitle the plaintiff to relief. *Krueger v. Lewis*, 342 Ill. App. 3d 467, 470 (2003). While plaintiff is only required to allege the facts that will be proven, we disregard legal or factual conclusions unsupported by specific factual allegations. *Lipinski v. Martin J. Kelly Oldsmobile, Inc.*, 325 Ill. App. 3d 1139, 1144 (2001).

¶ 12 Statute of Limitations

¶ 13 Plaintiffs allege that the court erred in finding its claim for medical monitoring barred by the statute of limitations, as they did not discover that defendants were responsible for the contamination until engineers discovered that defendants were a possible cause. Plaintiffs claim that they could not have known that the vinyl chloride was the result of any sort of wrongful conduct prior to this point, as vinyl chloride is a "legal" product. Plaintiffs point to a 2012 letter from the IEPA, stating that it was still investigating the cause of the contamination, as evidence that plaintiffs could not have discovered the cause of the contamination until 2012.

¶ 14 Defendants respond that the statute of limitations began to run from the moment plaintiffs discovered the alleged injury in 2009. Thus, plaintiff's claims were barred no later than 2011, as a cause of action for personal injury damages must be commenced within two years of the establishment of the claim. 735 ILCS 5/13-202 (West 2012). They argue that even if plaintiffs did not know who was responsible for the contamination, they had a duty to investigate who was at fault when they discovered their injury, but failed to do so.

¶ 15 In most tort cases, a cause of action accrues from the moment of the alleged injury. *Hermitage Corp. v. Contractors Adjustment Co.*, 166 Ill. 2d 72, 77 (1995). The discovery rule however tolls the beginning of the limitations period until the plaintiff knows or reasonably should know of both the injury and that it was wrongfully caused. *Nolan v. Johns-Manville Asbestos*, 85 Ill. 2d 161, 170-71 (1981). Once a party is aware of the injury and realizes that it was wrongfully caused, the statute of limitations begins running and the plaintiff must conduct an inquiry to see if the wrong is actionable. *Id.* If a plaintiff wishes that the discovery rule be applied when confronted with a motion to dismiss based on the statute of limitations, a plaintiff must provide sufficient facts to justify the use of the discovery rule and provide an alternative date of discovery. *Id.* at 84-85.

¶ 16 We find *Castello v. Kalis*, 352 Ill. App. 3d 736 (2004) instructive. In *Castello*, a plaintiff sued a medical practice in 1998 after discovering that the defendants failed to recognize signs of cervical cancer when examining pap smears from the plaintiff in 1996 and 1997. *Id.* at 739. More than two years later, plaintiff's medical expert reviewed a pap smear slide taken by defendants in 1993, and discovered that the practice failed to detect signs of cancer on this slide as well. *Id.* at 740. Plaintiff attempted to add the cytotechnologist who misread the 1993 pap smear as a defendant, and argued that although she knew her injury was wrongfully caused in 1998, she had no way of knowing that the 1993 pap smear was also misread until her expert discovered it. *Id.* at 749. The court rejected plaintiff's argument holding that a plaintiff does not need to know of a specific defendant's negligent act for the limitations period to begin to run. *Id.* at 750. Rather, the limitations period commenced when plaintiff was aware "that the cause of her problems stemmed from another's negligence and not from natural causes." *Id.* The plaintiff then had a duty to conduct an inquiry into the source of her injury. *Id.* at 749-50.

¶ 17 Similarly, in *Dancor International, Ltd. v. Friedman, Goldberg & Mintz*, the plaintiff argued that it could not have known of defendant accountant's professional malpractice until the plaintiff's second set of accountants opined that the defendant deviated from the standard of care. 288 Ill. App. 3d 666, 673 (1997). Accordingly, the plaintiff asserted that the discovery rule should have postponed the statute of limitations until that point. *Id.* However, the court held that the discovery rule does not delay the statute of limitations from when the plaintiff has actual knowledge of a claim, but from when the plaintiff "has a reasonable belief that the inquiry was caused by wrongful conduct thereby creating an obligation to inquire further on that issue." *Id.* Accordingly, the statute of limitations began to run from when the plaintiff discovered problems with its books and records, not from when the accountants discovered the malpractice. *Id.* at 674.

¶ 18 Though plaintiffs argue that they were unaware that the vinyl chloride made its way to the water wrongfully, vinyl chloride is a man-made chemical and is not naturally in water. If it is dangerous to drink or bathe in, it is obvious that the chemical's presence in their bathing and drinking water was the result of wrongful conduct. Even if ownership of vinyl chloride is "legal," placing the allegedly dangerous chemical in someone's bathing or drinking water plainly would be wrongful. As the court stated in *Castello*, the limitations period begins from when a plaintiff is aware that its injuries were not the product of natural causes, but of another's wrongdoing.

¶ 19 Further, even though plaintiffs may not have actually known who was at fault until 2012, plaintiffs were under an obligation to conduct an inquiry as to the cause of their injuries. Just as the limitations period in *Castello* began from when the plaintiff was aware of her wrongful injury, despite not knowing everyone who was at fault for her injuries, the limitations period for plaintiffs' medical monitoring claim commenced in 2009 when they were aware they were drinking and bathing in contaminated water.

¶ 20 Plaintiffs' allegation that they needed an engineer to discover who was at fault is irrelevant. Just as in *Dancor*, the court did not toll the statute of limitations despite the plaintiffs' alleged need for an accountant to determine whether he had a cause of action, the statute of limitations commenced in our case in 2009, despite plaintiffs' alleged need for an engineer. Plaintiffs should have conducted an investigation, including hiring a professional if necessary, as soon as they discovered their alleged wrongful injury. Sauk Village hired K-Plus Engineering to discover the potential cause of the contamination. In plaintiffs' counsel's oral arguments to the trial court, he explained that his firm was hired by the plaintiffs, and they in turn retained engineers. "[S]hortly after," the engineers discovered that defendants were allegedly responsible.

Plaintiffs fail to allege why they could not have hired someone to conduct an investigation in 2009, after they were put on notice of their injury.

¶ 21 Plaintiffs argue that their case is comparable to *Mitsias v. I-Flow Corp.*, 2011 IL App (1st) 101126. In *Mitsias*, the plaintiff brought a medical malpractice claim against physicians who performed surgery on her. *Id.* ¶ 2. Over two years later, she sought to add a claim against the manufacturer of a medical device that the physicians installed during her surgery. *Id.* ¶ 3. The court found that the statute of limitations did not bar the claim because she could not reasonably discover that the manufacturer might have been a potential cause of the injury because "the causal link was as yet unknown to science." *Id.* ¶ 28.

¶ 22 Unlike in *Mitsias*, plaintiffs do not claim that defendants were discovered as the cause of the contamination as a result of some newly discovered scientific technique. As we stated in *Heredia v. O'Brien*, 2015 IL App (1st) 141952, ¶ 35, the holding in *Mitsias* is limited to where the potential wrongful cause was "inherently unknowable," not where the discovery was merely difficult. Plaintiffs do not allege that it was scientifically impossible in 2009 to discover that defendants were responsible for their injury.

¶ 23 Plaintiffs also cite to an unpublished case from the Northern District of Illinois, *Muniz v. Rexnord Corp.*, which found that the limitations period did not commence until plaintiffs discovered the source of the contamination of their water. 04 C 2405, 2006 WL 1519571 (2006). We note that "[u]npublished federal decisions are not binding or precedential in Illinois courts," although we may follow the same reasoning if we find it persuasive. *Solargenix Energy, LLC v. Acciona, S.A.*, 2014 IL App (1st)123403, ¶ 39 n.10 (quoting *King's Health Spa, Inc. v. Village of Downers Grove*, 2014 IL App (2d) 130825, ¶ 63). We do not find the reasoning in *Muniz* persuasive. *Muniz* based its decision on the fact that the plaintiffs had not yet consulted an attorney, a distinction for which we find no basis. *Muniz*, 2006 WL 1519571 at *4. The law in

Illinois is clear that the limitations period begins to run from when a party is aware that it suffered an injury and that the injury was wrongfully caused.

¶ 24 Therefore, we find that Plaintiffs' failure to investigate their alleged injury did not toll the statute of limitations and plaintiffs' medical monitoring claim was time-barred when it was filed in 2013. Accordingly, we need not address whether plaintiffs complaint adequately states a claim for medical monitoring.

¶ 25 *Moorman* Doctrine

¶ 26 Plaintiffs argue that the contamination of the water flowing through plaintiffs' homes constituted property damage that is recoverable under the *Moorman* doctrine, as it resulted in lower property values. Moreover, plaintiffs claim that Sauk Village was required to filter out the well to render the water fit for drinking, and the residents will need to pay higher taxes. Finally, plaintiffs assert that economic damages are recoverable when accompanied by claims for personal injury, and their property damage claim is accompanied by a claim for medical monitoring.

¶ 27 Defendants respond that plaintiffs' claims of property damages are conclusory and insufficient. Defendants point out that the temporary contamination of Sauk Village's water ended in 2009. Plaintiffs do not allege there is a need to remove the chemical from their property and or that the chemical had any lasting effects on plaintiffs' properties. Defendants contend that the only damages that plaintiffs actually allege they have suffered are lower property values caused by the "stigma" associated with the chemical spill, and that sort of damage is purely economic and barred by the *Moorman* doctrine.

¶ 28 In *Moorman*, our supreme court held that damages that are purely economic in nature are not recoverable in a negligence action. *Moorman*, 91 Ill. 2d at 91. Economic loss describes "damages for inadequate value, costs of repair and replacement, or consequent loss of profits—

without any claim of personal injury or damage to other property. [citations.]" *Id.* at 82. Conclusory allegations of unspecified property damage are insufficient to withstand a motion to dismiss. *In re Chicago Flood*, 176, Ill. 2d at 203. An exception to the economic loss rule exists if a plaintiff has suffered actual injury to his person or property. *Id.* at 199 (citing *Moorman*, 91 Ill. 2d at 86).

¶ 29 In *Donovan v. County of Lake*, customers of a county operated water system sued the county in negligence for failing to chlorinate the water. 2011 IL App (2d) 100390, ¶ 20. The court found that the plaintiffs' allegations of property damage by way of a reduction in the resale price of plaintiffs' property was barred by the *Moorman* doctrine because it was not "property" possessed by the plaintiffs. *Id.* ¶ 56.

¶ 30 Here, any possible reduction in plaintiffs' property values because of the stigma attached to previous water contamination is purely economic in nature. While Sauk Village residents allege they will not be able to sell their homes for as much as they would have absent defendants' actions, the future purchase price of their homes is not "property" within their possession, but a "consequent loss of profits" barred by *Moorman*. 91 Ill. 2d at 82. Plaintiffs attempt to distinguish *Donovan* from the present case by arguing that since the plaintiffs in *Donovan* had a contract with the county to provide them water, any property damage was the result of a disappointed commercial expectation. However, the holding in *Donovan* applying the *Moorman* doctrine was not based on the existence of a contract. In fact, the court noted that a plaintiff cannot recover economic damages "regardless of the plaintiff's inability to recover in contract." *Donovan*, 2011 IL App (2d) 100390, ¶ 42 (citing *Anderson Electric, Inc. v. Ledbetter Erection Corp.*, 115 Ill. 2d 146, 153 (1986)).

¶ 31 Plaintiffs seem to argue that any contamination is *per se* property damage allowable under *Moorman*, and cites to *Board of Education of City of Chicago v. A C and S, Inc.*, 131 Ill.

2d 428 (1989). In *Board of Education*, the court found plaintiffs' complaint against the suppliers of asbestos materials was not barred by *Moorman* because the asbestos needed to be removed from the building. *Id.* at 446.

¶ 32 However, the plaintiffs in *Board of Education* sought compensation for having the asbestos removed from its property, not simply because the asbestos was on its property at one time. Our case is distinguishable from *Board of Education*, as the plaintiffs here do not allege that the vinyl chloride is still on their property and needs to be removed. Plaintiffs assert that simply because the vinyl chloride passed through their property, their property was damaged. They do not allege how this affected their property in any way, other than economic damage from an expected reduction in profits if they were to sell their property. This is insufficient under *Moorman*.

¶ 33 Plaintiffs also contend that they suffered property damage because Sauk Village's well still has traces of vinyl chloride. Plaintiffs argue that Sauk Village was forced to filter the water in the well and this will lead Sauk Village to impose higher taxes on its residents. However, that allegation appears nowhere in the pleadings. In a section 2-615 motion to dismiss, the court must consider only the allegations of the pleadings and not other evidence. *In re Chicago Flood*, 176 Ill. 2d at 203. Furthermore, damage to the well would not be an injury to plaintiffs, but to Sauk Village, which actually owns the well.

¶ 34 Finally, plaintiffs assert that they suffered personal injury by drinking and bathing in the contaminated water, and accordingly, their claims are not barred by the *Moorman* doctrine. As we have discussed above, plaintiffs' claims for medical monitoring are barred by the statute of limitations. Accordingly, we find that the trial court appropriately granted defendants' motions for summary judgment and we need not reach the question of whether Arcadis had a duty to plaintiffs.

¶ 35 CONCLUSION

¶ 36 For the reasons stated, we affirm the decision of the circuit court of Cook County granting defendants' motion for summary judgment.

¶ 37 Affirmed.