IN THE COURT OF APPEALS OF IOWA

No. 6-675 / 05-1372
Filed October 11, 2006

BRADLEY SHARP, MARK BISHOP, BOB ACHEY, JERRY'S HOMES, INC., and CENTENNIAL PLACE APTS., L.P., and all others similarly situated,
Plaintiffs-Appellants,

vs.

TAMKO ROOFING PRODUCTS, INC.,
Defendant-Appellee.

Appeal from the Iowa District Court for Polk County, Douglas F. Staskal, Judge.

The plaintiffs appeal from the district court order granting the defendant's motion for summary judgment. **AFFIRMED.**

Kathryn S. Barnhill of Barnhill & Associates, P.C., West Des Moines, for appellants.

Wade Hauser, Des Moines, and J. Stan Sexton of Shook, Hardy & Bacon, L.L.P., Kansas City, Missouri, for appellee.

Considered by Huitink, P.J., and Zimmer and Eisenhauer, JJ.

EISENHAUER, J.

The plaintiffs appeal from the district court order granting the defendant's motion for summary judgment. They contend genuine issues of material fact exist. We review rulings on motions for summary judgment for errors at law. *Sain v. Cedar Rapids Cmty. Sch. Dist.,* 626 N.W.2d 115, 121 (Iowa 2001).

Despite a long procedural history, including a prior appeal to this court, *see Sharp v. Tamko Roofing Prod., Inc.*, No. 02-0728 (Iowa Ct. App. Nov. 15, 2004), the current appeal is limited to the grant of summary judgment in favor of TAMKO Roofing Products, Inc. (TAMKO), effectively ending this litigation. The plaintiffs all owned buildings that used TAMKO shingles. TAMKO's limited warranty for these shingles warrants that the shingles are free from manufacturing defects that will result in leaks for a period of twenty-five years. TAMKO also warrants that its shingles will resist high winds for a period of sixty months after the shingles have had the opportunity to seal down. The limited warranty also provides, "NO ACTION FOR BREACH OF THIS LIMITED WARRANTY SHALL BE BROUGHT LATER THAN ONE YEAR AFTER ANY CAUSE OF ACTION HAS ACCRUED."

The plaintiffs experienced problems with TAMKO's shingles because not enough sealant was applied to them when they were manufactured. As a result, the shingles lift off the roof with very little pressure and blow away in the wind. The plaintiffs experienced identical problems within the first several months after the shingles were installed. All of the problems first occurred prior to November 1998.

This cause of action was filed on March 9, 2001. On August 2, 2005, the district court granted TAMKO summary judgment on the basis that the plaintiffs' claims were barred by the one-year contractual statute of limitations. The court denied the plaintiffs' partial motion for summary judgment, which argued TAMKO's warranty was unconscionable. The case was dismissed.

When considering the propriety of granting or denying summary judgment, we review the record before the district court to determine whether a genuine issue of material fact existed and whether the district court correctly applied the law. *Sain*, 626 N.W.2d at 121. We review the facts in the light most favorable to the party resisting the motion. *McIlravy v. North River Ins. Co.,* 653 N.W.2d 323, 328 (Iowa 2002). The resisting party has the burden of showing a material issue of fact is in dispute. *Id*

We conclude the district court properly determined the plaintiffs have failed to show a genuine issue of material fact in dispute as to when they possessed knowledge of the breach of warranty. The difficulties with the shingles began years before the plaintiffs filed suit. The plaintiffs acknowledge in their brief that they were aware of problems with the shingles prior to November 1998. The one-year statute of limitations provided in TAMKO's warranty had passed prior to filing. The plaintiffs claim they did not know of the breach of warranty prior to the October 2000 discovery of TAMKO Research and Development documents that indicated TAMKO knew the shingles were defective. However, the facts before us clearly show the plaintiffs knew or should have known of the shingle defects prior to March 9, 2000.

We further conclude the district court properly determined the express warranty was not unconscionable and denied the plaintiffs' partial summary judgment. A contract is unconscionable "if it is such as no man in his senses and not under delusion would make on one hand, and as no honest and fair man would accept on the other." *Farmers Sav. Bank v. Gerhart,* 372 N.W.2d 238, 244 (Iowa 1985). The main thrust of the plaintiffs' argument is that the TAMKO has the sole discretion in deciding whether to honor the warranty, making it so one-sided as to be unreasonable and unconscionable. However, the warranty sets forth objective performance standards; the shingles must not leak or be blown off by wind. If the shingles fail to adhere to these performance standards, the consumer must show it is due to a defect in the product. This is not an impossible burden to meet, as the district court noted:

> The Plaintiffs have developed a great deal of evidence tending to prove that the TAMKO shingles are defective because they will not seal to each other and that the reason they will not seal to each other is that not enough sealant was applied in the manufacturing process. To the extent the roofs leaked because the shingles did not seal, or leaked because the shingles blew off, the Plaintiffs have met their burden under the warranty. However, it seems that the most typical problem consumers experienced with the shingles is that they blew off in wind. The Plaintiffs have gone further even than they need to in order to prevail under the wind warranty by determining *why* the shingles blew off the roof.

Because the district court properly granted summary judgment in favor of the defendant, we affirm.

AFFIRMED.