**IN THE COURT OF APPEALS OF IOWA**

No. 7-490 / 06-1622
Filed November 15, 2007

**STEVEN AND CANDACE BRADLEY,**
**Husband and Wife, and MELANIE MENSTER,**
Plaintiffs-Appellants,

**vs.**

**GREG MANTERNACH, d/b/a**
**GREG MANTERNACH CONSTRUCTION**
**and GORDON BLOCK,**
**d/b/a CASTLE WOOD DESIGNS, INC.,**
Defendants-Appellees.

**MARVIN WINDOWS,**
Defendant-Appellee/Cross-Appellant.

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**GREG MANTERNACH, d/b/a**
**GREG MANTERNACH CONSTRUCTION,**
Third-Party Plaintiff,
vs.

**RICHARD BROCKMAN,**
**CASCADE LUMBER COMPANY and**
**MARVIN WINDOWS, INC.,**
Third-Party Defendants.

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Appeal from the Iowa District Court for Jones County, Thomas M. Horan, Judge.

Plaintiffs appeal from the district court's order granting summary judgment in favor of the defendants; a defendant cross appeals a district court order. **AFFIRMED.**

Cynthia Sueppel, Cedar Rapids, for appellant Steven Bradley.

A. John Arenz, Dubuque, for appellee Greg Manternach.

Thomas Boyd, Minneapolis, Minnesota, and Randall Rings, Cedar Rapids, for appellee Marvin Windows.

Matthew Nagle, Cedar Rapids, for appellee Cascade Lumber.

Castle Wood Designs, c/o Gordon S. Block, Chandler, Arizona, pro se.

Heard by Sackett, C.J., and Huitink and Vogel, JJ. Baker, J. takes no part.

**VOGEL, J.**

Steven and Candace Bradley and Melanie Menster brought an action against Greg Manternach, d/b/a Greg Manternach Construction, Gordon Block, d/b/a/ Castle Wood Designs, Inc., and Marvin Windows, Inc. based upon damage to their home caused by water infiltration and resulting in personal injury.[1] The Bradleys and Menster appeal from the district court's order granting summary judgment in favor of the defendants. Because we agree with the district court that the statutes of limitations had run, thereby barring the plaintiffs' property damage and personal injury claims, we affirm.

**I. Background Facts and Proceedings**

In 1995, the Bradleys began the process of building a home. They hired Castle Wood Designs to create blueprints for the home and Manternach Construction to build the home. The Bradleys purchased the windows for the home from Cascade Lumber and Manternach Construction installed the windows, which were manufactured by Marvin Windows. Construction of the

[1] The Bradleys' petition and amended petition involved many claims and multiple defendants. The only remaining claims on appeal are negligence claims for property damage and for Menster's personal injury against Castle Wood Designs; breach of an oral contract, breach of express warranty, breach of implied warranty, and negligence claims for property damage and Menster's personal injury against Manternach Construction; and negligence claims for property damage and Menster's personal injury against Marvin Windows.

Richard Brockman was named as a defendant, but later dismissed with prejudice from the suit. The Bradleys also dismissed a negligence claim for Candace Bradley's personal injuries and conceded a negligent misrepresentation claim against Manternach Construction; dismissed a negligence claim for Candace Bradley's personal injuries against Castle Wood Designs; dismissed a negligence claim for Candace Bradley's personal injuries and breach of express warranty claim; and conceded a breach of implied warranty claim against Marvin Windows. Additionally, the Bradleys asserted a breach of contract claim against Castle Wood Designs that was not dismissed by the district court's summary judgment ruling and a breach of implied warranty claim against Castle Wood Designs that was dismissed by the district court's summary judgment ruling, but does not raise these claims on appeal.

home was completed in November of 1996. In the spring of 1997, the Bradleys began to notice problems with water intruding into their home. Candace Bradley first noticed the wood stain used on the window trim was dripping beneath some windows. The walls underneath the windows were also damp. The wood trim on some of the windows was turning black. The Bradleys contacted Manternach Construction and others to remedy the situation. In spite of the repairs, the water problems persisted over the next few years. In 2000, the Bradleys' daughter, Melanie Menster, observed water running into the house from a window on the first floor. The amount of water was significant, damaging carpeting that had to be replaced and leaked into the lower level of the home. The Bradleys also testified to other problems such as water pooling on the floor of the kitchen, water leaking through a kitchen window, then pooling on the kitchen counter, and water leaking into the garage.

In 2002, a portion of the brick was removed from the home, which revealed rotten, moldy wood and soaked insulation in a wall cavity. Further selective demolition found extensive water and mold damage to the home. Menster's claim stems from her allergic reaction to the mold in the Bradleys' home. The Bradleys and Menster filed a petition on July 28, 2003, which asserted property and personal injury claims against Castle Wood Designs and Manternach Construction. They amended their petition in June 2004 and asserted property and personal injury claims against Marvin Windows. Manternach Construction and Marvin Windows each filed a motion for summary judgment that asserted the Bradleys' and Menster's claims were barred by the statutes of limitations. Castle Wood Designs did not so move. Applying the

discovery rule, the district court found the undisputed facts established the statute of limitations on the Bradleys' property damage claims began running in the spring of 1997 when they first noticed water problems and the statute of limitations on Menster's personal injury claim began running in the summer of 2000 when her physician linked her increased allergic reactions to mold. The district court granted Manternach and Marvin Widows's motions for summary judgment and further extended the ruling to the claims against Castle Wood Designs. The Bradleys also requested and received court approval to demolish the home. The only issues remaining on appeal are: (1) whether the district court erred in applying the discovery rule to the Bradleys' property damage and Menster's personal injury claims; (2) whether the district court erred in extending the summary judgment ruling to a party (Castle Wood Designs) that did not move for summary judgment; and (3) whether the district court correctly granted the Bradleys' application for court approval to demolish their home.

**II. Summary Judgment Ruling**

We review the district court's grant of summary judgment for correction of errors at law. Iowa R. App. P. 6.4; *Stevens v. Iowa Newspapers, Inc.*, 728 N.W.2d 823, 827 (Iowa 2007). Summary judgment shall be granted when the entire record demonstrates there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. Iowa R. Civ. P. 1.981(3); *Stevens*, 728 N.W.2d at 827. We review the entire record in the light most favorable to the nonmoving party. *Stevens*, 728 N.W.2d at 827. "Application of a statutory limitation period to undisputed facts involves a pure question of law." *Diggan v. Cycle Sat, Inc.*, 576 N.W.2d 99, 102 (Iowa 1998)

(citing *Bob McKiness Excavating & Grating, Inc. v. Morton Bldgs., Inc.*, 507 N.W.2d 405, 408 (Iowa 1993) ("No fact question exists if the only dispute concerns the legal consequences flowing from undisputed facts.")); *see* 54 C.J.S. *Limitations of Actions* § 378 (2005) ("Where the facts are not disputed, the question whether the case is within the bar of the statute of limitations is one of law for the court . . . .).

**A. Statute of Limitations**

The plaintiffs assert that the district court erred when it found the statutory limitation periods had run and barred their property damage and personal injury claims. Under Iowa code sections 614.1(2) and (4) (2003), a five-year statute of limitation applies to the Bradleys' property damage claims and a two-year statute of limitations applies to Menster's personal injury claims. Limitation periods begin to run when a cause of action accrues, which is generally when the aggrieved party has the right to initiate and maintain the suit. *Scholte v. Dawson*, 676 N.W.2d 187, 190 (Iowa 2004) (citations omitted); *see Bob McKiness Excavating & Grating, Inc.*, 507 N.W.2d at 408 ("It is well settled that no cause of action accrues under Iowa law until the wrongful act produces loss or damage to the claimant." (citations omitted)).

The discovery rule is an exception to the regular application of the statute of limitations and provides that the limitations period does not begin to run "until the plaintiff knows or in the exercise of reasonable care should have known both the fact of the injury and its cause." *Woodroffe v. Hasenclever*, 540 N.W.2d 45, 47 (Iowa 1995); *see Brown v. Ellison*, 304 N.W.2d 197, 201 (Iowa 1981) (applying the discovery rule to an action based on oral contract for breach of

express warranty and breach of implied warranty), *overruled on other grounds, Franzen v. Deere & Co.*, 334 N.W.2d 730, 732 (Iowa 1983); *Sparks v. Metalcraft, Inc.*, 408 N.W.2d 347, 350 (applying the discovery rule to a cause of action based upon negligence). "Once a [plaintiff] learns information that would inform a reasonable person of the need to investigate, the [plaintiff] is on inquiry notice of all the facts that would have been disclosed by a reasonably diligent investigation." *Hallett Const. Co. v. Meister*, 713 N.W.2d 225, 231 (Iowa 2006) (citations omitted). "A [plaintiff] can be on inquiry notice without knowing 'the details of the evidence by which to prove the cause of action.'" *Id*. (quoting *Vachon v. State*, 514 N.W.2d 442, 446 (Iowa 1994)). Moreover, once a plaintiff is on inquiry notice, they are limited to the length of the statute of limitations to complete an investigation. *Sparks*, 408 N.W.2d at 353 (holding that "once claimants have knowledge of facts supporting an actionable claim they have no more than the applicable period of limitations to discover all the theories of action they may wish to pursue in support of that claim").

The harsh results that may be perceived from the application of the statute of limitations and the discovery rule stem from legislative policy decisions and not from judicial application. *See Schlote*, 676 N.W.2d at 194 (stating statutes of limitations "have come into the law not through the judicial process but through legislation. They represent a public policy about the privilege to litigate . . ."); *Gates v. John Deere Ottumwa Works*, 587 N.W.2d 471, 475 (Iowa 1998) (discussing the discovery rule recognizes that public interest in predictability and finality of litigation overrides the harsh results for an individual plaintiff).

The plaintiffs specifically argue the district court erred when, applying the discovery rule, it found the statutes of limitations began running for the Bradleys' property damage claims in the spring of 1997 and for Menster's personal injury damage claims in the summer of 2000. We assume without deciding that the discovery rule applies to all of the plaintiffs' claims. *See Sparks v. Metalcraft Inc.*, 408 N.W.2d 347, 352 (Iowa 1987) (determining it was unnecessary to decide whether the discovery rule applied to claims that would be barred even if the discovery rule did apply).

**1. Property Damage Claims**

First, we examine the Bradleys' property damage claims. In the spring of 1997, the Bradleys observed wood trim turning black and wood stain running beneath some windows on the west side of the home. Aware that water was intruding into their home, they began having the problems repaired by Manternach, Cascade Lumber, and Moehl Millwork. Candace Bradley, fully aware of the ongoing problem, testified that "from 1997 to the year 2000, it was a real annoyance."

The undisputed record at summary judgment demonstrated that the Bradleys knew of significant water intrusion problems with their home in the spring of 1997. *See Franzen v. Deere and Co.*, 377 N.W.2d 660, 662-63 (Iowa 1985) (citing *Friends University v. W.R. Grace & Co.*, 608 P.2d 936 (Kan. 1980) (finding the statute of limitations began to run when the plaintiff knew its roof leaked, even though the plaintiff did not learn of the exact cause of the leakage until it obtained independent expert advice five years later)). Therefore, the Bradleys were put on inquiry notice at this time, but they did not file their property

damage claims until 2003 and 2004, after the water problems only grew worse. *See Franzen*, 377 N.W.2d at 662-63 ("[T]he duty to investigate does not depend on exact knowledge of the nature of the problem that caused the injury. It is sufficient that the person be aware that a problem existed"). We agree with the district court that the Bradleys' property damage claims are barred by the applicable statute of limitations. *See Diggan*, 576 N.W.2d at 102 (stating it is a matter of law whether the statute of limitations applies to undisputed facts).

The Bradleys argue that the property damage claim is not based upon "some stain running under some windows or darkening of wood trim" but is based upon structural damage to their home caused by the water intrusion. This argument fails because the question is not what the plaintiff knew, but "[w]hat might [the plaintiff] have known, by the use of the means of information within his reach, with the vigilance which the law requires of him." *Sparks*, 408 N.W.2d at 351. Furthermore, the cause of the visible exterior problems and the cause of the growing interior structural damage are the same. *See Gates*, 587 N.W.2d at 474 (stating a latent injury is one where the plaintiff fails to discover the injury and the cause of the injury). It is clear that the Bradleys knew of the cause of the structural damage to their home in the spring of 1997, and therefore were put on inquiry notice at that time. *See id*. (rejecting multiple statute of limitations for the same incident). The statute of limitations began to run when the Bradleys knew of the water infiltration and they cannot have a second statute of limitations for the growing and later discovered structural damage to their home. *See LeBeau v. Dimig*, 446 N.W.2d 800, 802-803 (Iowa 1989) (holding the discovery rule did

not apply when an accident caused a minor injury and the major injury was not discovered until later).

**2. Personal Injury Claim**

Next, we turn to Menster's personal injury claim. Menster, a college student at the University of Northern Iowa, returned to the Bradleys' home occasionally on weekends and during summer breaks. Her allergy symptoms became significantly worse when she was in the Bradleys' home. During one summer she told her mother that her allergy symptoms were "unbearable" and that she could not "stand being in [the Bradleys'] house." In August of 1999, Menster began receiving medical treatment when her allergy symptoms became more severe. Her physician determined she was allergic to a number of items, including mold. Menster connected being in the Bradleys' home with her enhanced allergy symptoms between the summer of 1999 and the summer of 2000. The undisputed record at summary judgment demonstrated that Menster was aware of her allergic reaction and connected those symptoms to the Bradleys' home by the summer of 2000; therefore, Menster was put on inquiry notice at this time. *See Perkins v. HEA of Iowa, Inc.*, 651 N.W.2d 40, 45 (Iowa 2002) (once a plaintiff knows or should know his condition is possibly compensable, he must investigate to determine whether it is compensable); *Ranney v. Parawax Co.*, 582 N.W.2d 152, 155-56 (Iowa 1998) (holding that the statute of limitations began to run once the plaintiff was diagnosed with Hodgkin's disease and suspected it was connected to his work-related chemical exposure). The statute of limitations for Menster's personal injury claim began to run in the summer of 2000, but Menster did not file her claim against Castle Wood Designs

and Manternach Construction until 2003 and against Marvin Windows until 2004. *See Diggan*, 576 N.W.2d at 102 (stating it is a matter of law whether the statute of limitations applies to undisputed facts). We agree with the district court that Menster's personal injury claims are barred by the applicable statute of limitations.

**B. Sua Sponte Summary Judgment**

The Bradleys and Menster also argue that the district court erred in sua sponte extending the favorable summary judgment ruling to defendant Castle Wood. The United States Supreme Court has held, where there are no issues of material fact in issue, a district court "possesses the power to enter summary judgments sua sponte, so long as the losing party was on notice that she had to come forward with all of her evidence." *Celotex Corp. v. Catrett*, 477 U.S. 317, 326, 106 S. Ct. 2548, 2554, 91 L. Ed. 2d 265 (1986); *Interco, Inc. v. Nat'l Surety Corp.*, 900 F.2d 1264, 1269 (8th Cir. 1990).

In the present case, summary judgment was granted in favor of all the defendants because all of the plaintiffs' claims were barred by the applicable statutes of limitations, regardless of the individual defendant. The Bradleys and Menster had notice the district court was considering summary judgment as to whether the statutes of limitations barred their claims and had the opportunity to come forward with any evidence that the statute of limitations did not bar their claims. The plaintiffs' claims were "founded on the same body of undisputed facts, and the facts and law related to claims against all defendants were fully argued by the parties." *Madewell v. Downs*, 68 F.3d 1030, 1050 (8th Cir. 1995). Additionally, the result of the ruling hinged wholly on the plaintiffs' conduct, which

the plaintiffs had the burden to prove, and not the various defendants' actions. *See Kendall/Hunt Publ'g. Co. v. Rowe*, 424 N.W.2d 235, 243 (Iowa 1998) (stating that the party claiming the discovery rule applies has the burden to plead and prove the exception to the normal statute of limitations period. We conclude that the district court did not err in sua sponte granting summary judgment in favor of Castle Wood Designs. *See Chrysler Credit Corp. v. Cathey*, 977 F.2d 447, 449 (8th Cir. 1992) (holding the district court did not err in sua sponte granting summary judgment when one party's right to summary judgment turned on the same issue as to another party's right to summary judgment).

**III. Order to Demolish the Bradleys' Home**

Marvin Windows cross appeals the district court's order granting the Bradleys' application for court approval for the demolition of their home. The district court has wide discretion in ruling on discovery issues and we review the district court's order for abuse of discretion. *See Farnum v. G.D. Searle & Co.*, 339 N.W.2d 384, 389 (Iowa 1983). On September 8, 2003, the Bradleys gave notice of their intent to demolish their home. The Bradleys, who moved out of the home in November of 2003, have incurred expenses in maintaining a home where they no longer live. The home has been available to the defendants for discovery purposes for more than two years. On September 13, 2006, the district court granted the Bradleys' application for court approval for the demolition of their home but ordered the home be preserved until December 31, 2006 to allow the defendants to complete any remaining discovery. We conclude the district court did not abuse its discretion in granting the Bradleys' motion. *See Hendricks v. Great Plains Supply Co.*, 609 N.W.2d 486, 491 (Iowa 2000)

(stating plaintiffs were not required to preserve a fire scene indefinitely and the demolition of a home seven weeks after a fire did not constitute spoliation of evidence).

**AFFIRMED.**