

THE CURIOUS CASE OF MICHIGAN’S STATUTE OF LIMITATIONS FOR FRAUD

by Morley Witus

According to an unbroken line of cases, the limitations period for fraud and misrepresentation is 6 years, pursuant to Michigan’s residual statute of limitations for “all other” actions, MCL 600.5813. *E.g.*, *Boyle v Gen Motors Corp*, 468 Mich 226 (2003); *Sweet v Shreve*, 262 Mich 432, 435 (1933); *Adams v Adams*, 276 Mich App 704, 710 (2007); *Kuebler v Equitable Life Assurance Society of the United States*, 219 Mich App 1 (1996); *Agristor Financial Corp v Van Sickle*, 967 F2d 233, 236 (CA 6, 1992).

Why doesn’t fraud fall under the 3 year limitations period for actions involving “injury to a person or property” as provided in MCL 600.5805(10)? The few courts that have considered this question explained that § 5805 would apply if there was injury to specific physical property, but fraud involves only financial loss. *See Blue Cross and Blue Shield v Folkema*, 174 Mich App 476 (1988); *Garden City Osteopathic Hosp v HBE Corp*, 55 F3d 1126, 1135 (CA 6, 1995); *Case v Goren*, 43 Mich App 673 (1972).

The problem is that the Michigan Supreme Court has flatly rejected this interpretation of what is covered by § 5805. In *Local 1064, RWDSU AFL-CIO v Ernst & Young*, 449 Mich 322 (1995), the Court held that accounting malpractice

was governed by § 5805 even though it involved purely financial injury: “§ 5805 applies to common-law tort claims even when the alleged damages are solely pecuniary. . . § 5805 prescribes the limitation periods for traditional common-law torts, regardless of whether the damages sought are for pecuniary or physical injury.” *Id.* at 326, 328.

While *Local 1064* did not involve fraud, it did squarely hold that § 5805 applies to financial injuries arising from common law torts. There’s no apparent reason why this would not apply to fraud. Fraud and misrepresentation are common law torts. *E.g.*, *Zine v Chrysler Corp*, 236 Mich App 261 (1999) and *Overton v Anheuser-Busch Co*, 205 Mich App 259 (1994) (both referring to “the common law tort of fraud”); *Williams v Polgar*, 391 Mich 6 (1974); *Restatement (Second) of Torts* §§ 525, 552. It would seem to follow that fraud and misrepresentation are governed by the 3 year limitations period in § 5805.

Apparently no court decision has considered whether, in light of *Local 1064*, there remains any basis for the traditional view that fraud falls outside the ambit of § 5805. Courts presumably will continue to say that fraud comes under the 6 year period in § 5813 until presented with the argument that *Local 1064* has eliminated the basis for the traditional view.

It's possible the courts might find some other defensible rationale for the traditional view. Or they might decide that the traditional view is just too well entrenched in the case law to change now, even if there is no longer any basis for it. (In Gulliver's Travels, Jonathan Swift explained the inertia of *stare decisis*, which he defined as "a maxim among ... lawyers, that whatever has been done before may legally be done again: and therefore they take special care to record all the decisions formerly made against common justice and the general reason of mankind.")

We won't know the answer until someone raises this issue. Until then, we are left with an odd incongruity in Michigan law. That's not the worst thing in the world. As Justice Jackson once suggested, sometimes we just have to live with certain enigmas and anomalies in the law: "To pull one misshapen stone out of the grotesque structure is more likely simply to upset its present balance between adverse interests than to establish a rational edifice." *Michelson v US*, 335 US 469, 486 (1948).

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