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NJ Passes on the Integrated Product Doctrine in Construction Defect Cases

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The New Jersey Supreme Court recently provided additional guidance on the economic-loss doctrine in the context of a construction defect case. In *Dean v. Barrett Homes, Inc., et al*, 204 N.J. 286 (2010), the Court reversed the Appellate Division and trial court, ruling that the plaintiff homeowners were not precluded from pursuing claims against the manufacturer of their home's exterior finish by virtue of the New Jersey Products Liability Act, N.J.S.A. 2A:58C-1 to 11 (the Act).

The ruling is quite narrow, however, as the Court framed the issue before it as, "whether, and in what circumstances . . . remote purchasers should be permitted to pursue a tort remedy against [a] manufacturer," for an allegedly defective product. In reaching its decision, the Court was called upon to consider whether or not it would adopt "the integrated product doctrine" as a corollary to the economic-loss rule. Ultimately, the Court concluded that while the integrated product doctrine did not apply to the facts of *Barrett Homes*,

the economic-loss rule nevertheless limited the plaintiffs' recovery to damages related solely to the structure of the home, exclusive of the home's exterior, i.e., Exterior Insulation and Finish System (EIFS).

The economic-loss rule bars tort remedies and strict liability when the only claim is for the damage to the product itself. The rule evolved as part of the common law, largely as an effort to establish the boundary line between contract and tort remedies.

In recent years, the federal courts, including the Third Circuit, have expanded the economic-loss rule through the adoption of the "integrated product doctrine." The courts have used this theory to extend the economic-loss rule to preclude tort-based recovery when a defective product is incorporated into another product and causes damage.

The plaintiffs in *Barrett Homes* purchased their home in 2002 from its original owners. The house was built in 1995 by Barrett Homes, Inc., who utilized EIFS that was designed and manufactured by Sto Corporation (Sto). Prior to purchasing the property, the plaintiffs hired a professional to conduct a home inspection. The inspection report identified con-

cerns regarding the EIFS and recommended that the plaintiffs retain an expert or contact the manufacturer before proceeding with the purchase of the house. The plaintiffs, however, did not read the report or make the inquiries suggested. As a result, the plaintiffs' insurer would not transfer their existing homeowner's policy to the new property because the insurer would not cover a stucco exterior. Without any further investigation of the EIFS, the plaintiffs obtained an insurance policy with another carrier and proceeded to purchase the property.

The plaintiffs noticed problems with the EIFS approximately one year after moving into the home, and eventually learned that if moisture penetrates through the EIFS, it has no means to escape. They hired an industrial hygienist who inspected the home and discovered toxic mold attributed to leaks in the EIFS. The plaintiffs never claimed any personal injuries from the mold, but eventually removed and replaced all the EIFS.

The plaintiffs then sued numerous parties, including Sto, on a theory that the EIFS was defective. Sto, however, successfully moved for summary judgment, and the trial court dismissed the products liability claim against Sto. The trial court reasoned that, although the plaintiffs claimed that the EIFS was defective, they sought to recover the cost of replacing the EIFS — a claim that is statutorily barred by the Act.

The plaintiffs appealed, arguing that

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the trial court erred by invoking the economic-loss rule. They asserted that their products liability claim should be permitted to proceed because they had no alternate contract or other remedy available as a remote purchaser. The Appellate Division affirmed the trial court's grant of summary judgment, concluding that the economic-loss rule precluded recovery because the plaintiffs' claims for damages focused on the cost of replacing the defective product itself. The Appellate Division recognized that its conclusion would foreclose all of the plaintiffs' potential remedies against Sto, but concluded that the "integrated product doctrine" equitably and appropriately balanced the different policies served by tort and contract law.

A majority of the Supreme Court disagreed. Tracing the history and underlying policies of the act, the Court focused on the definition of "harm" and noted that the Act represented a codification of the economic-loss rule. The Supreme Court noted that the Appellate Division's decision in *Marrone v. Greer & Polman Constr., Inc.*, 405 N.J. Super. 288, 302-03 (App. Div. 2009) — which rejected a products-liability claim for consequential damages also involving the replacement of EIFS — had reasoned that "the house is the 'product' and it cannot be subdivided into component parts for purposes of supporting a [Products Liability Act] cause of action." The *Marrone* Court concluded that the EIFS was not separate from the house, but was integrated into it, thereby making the EIFS and the house a single "product" for the purpose of the act's definition of "harm."

In *Barrett Homes*, however, the Court expressly side-stepped the issue of wheth-

er it would adopt the integrated product doctrine. Instead, the Court reasoned that the doctrine would not alter the outcome of the case because the analysis turns on whether the EIFS was sufficiently integrated into the home so as to become part of the structure for purposes of broadly applying the economic-loss rule. The Court relied on two California decisions that declined to apply the integrated product doctrine to products used in residential construction, concluding that while the EIFS was affixed to the exterior walls to create a moisture barrier, it did not become an integral part of the structure itself. EIFS remained, therefore, a separate product for purposes of the Court's analysis.

That conclusion did not alter the ultimate effect of the economic-loss rule. The economic-loss rule still precluded the plaintiffs from a recovery under the act for damage to the EIFS itself. Thus, any recovery by the plaintiffs was limited to the damage the EIFS caused to the home's "structure or its environs." The Court held firm to the fundamental tenet of the act that it creates a cause of action solely for the harm caused by the defective products but not for harm to the product itself. As the Court observed, the New Jersey Legislature did not intend the act to be a catch-all remedy that would fill the gap created when ordinary contract remedies — breach of contract, statutory cause of action, or express or implied warranty claims — were unavailable.

In a noteworthy concurrence and dissent, Justice Roberto Rivera-Soto criticized the Court's conclusion that the EIFS system was not sufficiently integrated into the home so as to be part of the overall

house structure. Justice Rivera-Soto reasoned that:

The notion that an exterior finish that can only be removed by extensive demolition work is not 'integrated' into the structure to which it is attached is so fanciful, so nonsensical, that it beggars the imagination. It is a conclusion that can germinate only in the minds of lawyers and can find root only in the rarified environment of this court's decisions; it cannot, however, long survive in the atmosphere of the real world.

Justice Rivera-Soto would not join in what he characterized as the Court's "unexplained, unexplainable and unnecessary departure from reality."

In the end, the Court's decision in *Barrett Homes* provides remote purchasers with a cause of action, albeit a limited one, against product manufacturers. The Court's avoidance of the integrated product doctrine provides a framework which can be utilized by remote purchasers to pursue claims against manufacturers. The Court's analysis would appear to permit remote purchasers to pursue manufacturers of not only allegedly defective exterior finish systems, but other products used in building homes such as roofs and siding which may also, at least in the Court's view, not be "sufficiently integrated into the home." Needless to say, it will be interesting to observe the extent to which the Court's decision expands a product manufacturer's liability and exposure in future construction defect litigation. ■