

the Veterans to require an employee to scrutinize every individual seeking entry through the main door and the failure to check the agnet's membership deprived the club of any reasonable expectation of privacy.

Before the trial court may modify or set aside a penalty imposed by the Board for a violation of the Code, it must make findings of fact on the material issues different from those made by the Board. *1212 Corp.*, supra. In the present case, our findings do not differ significantly from those made by the Board. The imposed penalty is fixed.

ORDER OF COURT

NOW, this 11th day of September, 1986, the Fulton Overseas Veterans Association's appeal from the Pennsylvania Liquor Control Board's order of March 6, 1985 is dismissed.

FRANKLIN COUNTY SPECIAL EDUCATION CENTER JOINT AUTHORITY V. W. R. GRACE & COMPANY, ET AL., C.P. Franklin County Branch, A.D. 1985-301

Strict Liability - Economic Losses

1. A plaintiff who alleges that a latent defect in defendant's products has caused a risk of injury to people or to plaintiffs other property may bring a claim in product liability.
2. One who sues for purely economic loss must sue in contract rather than tort.
3. Where plaintiff pleads damage to rugs, walls and ceilings as a result of a latent defect in defendant's roof, they allege the requisite elements for a strict liability cause of action.

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J. McDowell Sharpe, Esquire, Counsel for Defendant, Bird, Inc.

John J. Sylvanus, Esquire, Counsel for Defendant, W.R. Grace & Company, Inc.

Edward C. German, Esquire, Counsel for Defendants, Vernon R. Shields and Donald G. Williams, t/d/b/a etc., now E.I. Group

Denis M. DiLoreto, Esquire, Attorney for Defendant, Draco Development Corporation



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OPINION AND ORDER

WALKER, J., September 23, 1986:

Plaintiffs, Franklin County Special Education Joint Authority and Franklin County Special Education Center Joint Committee, contracted with architects, a general contractor, a roofing sub-contractor, and other entities to build a special education center. Approximately six years after completion of the center, the roof began leaking as a result of blistering and cracking of the roofing membrane that was designed, manufactured and supplied by defendant, Bird & Son, Inc.

Plaintiffs allege that, as a result of the leaking, saturated tiles fell from ceilings, rugs became warped, and the building's electrical system was damaged. Plaintiffs filed a complaint in March, 1986, to recover for these damages. Their complaint asserts various theories of liability, including breach of warranty, strict liability, and negligence. Defendant responded with several preliminary objections; the only one still in dispute is whether plaintiffs may sue in strict liability for damage to property other than the roof itself. Both parties briefed and argued the matter.

Defendant states that plaintiff cannot recover for damage to the building's rugs, walls, and ceilings under strict liability in tort. Since these are only "economic losses", defendant contends, plaintiff may only sue in contract.

It is true that, under Pennsylvania law, one who sues for purely economic loss must sue in contract rather than tort. *Industrial Uniform Rental Co. v. International Harvester Co.*, 317 Pa. Super. 65, 463 A.2d 1085, (1983). *Johnson v. General Motors Corp.*, Pa. Super. , 502 A.2d 1317 (1986).

However, "economic loss" only refers to loss of benefit of a contractual bargain; it does not encompass damage to people or to other property that is caused by defendant's product. A plaintiff who alleges that a latent defect in defendant's product has caused a risk of injury to people or to plaintiff's other property may bring a claim in products liability. *Pennsylvania Glass Sand Corp. v. Caterpillar Tractor Co.*, 652 F.2d 1165 (3d Cir. 1981). *Philadelphia Nat'l Bank v. Dow Chem. Co.*, 605 F. Supp. 60 (E.D. Pa. 1985). This is exactly what the plaintiffs here have done. Accordingly, defendant's preliminary objection that plaintiffs fail to state a cause of action for strict liability must be dismissed.



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NOTICE IS HEREBY GIVEN that a hearing will be held before the Franklin County Court of Common Pleas on April 27, 1987, at 2:30 o'clock p.m. in Courtroom No. 2 of the Franklin County Courthouse, on the Petition of the Greencastle-Antrim Board of School Directors to approve the private sale of real estate of the School District situate on Washington Street, Greencastle, Franklin County, Pennsylvania.

Frederic G. Antoun, Jr., Solicitor
Greencastle-Antrim Board of
School Directors
412 Chambersburg Trust Building
Chambersburg, PA 17201

4-10, 4-17, 4-24

LEGAL ADVERTISEMENT

NOTICE IS HEREBY GIVEN THAT PATH VALLEY SPEEDWAY, INC. has been organized under the provisions of the Act of May 5, 1933, P.L. 364, as amended, and the Articles of Incorporation were filed with the Department of State on or about the 6th day of April, 1987.

The purposes of the Corporation are to engage in and do any lawful act concerning any lawful business for which corporations may be incorporated under the Business Corporation Law.

Richard L. Bushman, Esquire
16767 Path Valley Road
P.O. Box 51

LEGAL NOTICES, cont.

Spring Run, PA 17262-0051
(717) 349-7657

4-17-87

IN THE COURT OF COMMON PLEAS OF THE 39TH JUDICIAL DISTRICT OF FRANKLIN COUNTY PENNSYLVANIA — ORPHANS' COURT DIVISION

The following list of Executors, Administrators and Guardian Accounts, Proposed Schedules of Distribution and Notice to Creditors and REasons Why Distribution cannot be Proposed will be presented to the Court of Common Pleas of Franklin County, Pennsylvania, Orphans' Court Division for CONFIRMATION: May 7, 1987.

- BLACK:** First and final account, statement of proposed distribution and notice to the creditors of John M. Black and Gerald L. Black, Executors of the Estate of Viola P. Black, late of Chambersburg, Franklin County, Pennsylvania, deceased.
- FRISBY:** First and final account, statement of proposed distribution and notice to the creditors of Allen R. Frisby, Administrator for the Estate of John D. Frisby, late of the Borough of Mercersburg, Franklin County, Pennsylvania, deceased.
- GONTZ:** First and final account, statement of proposed distribution and notice to the creditors of Judy L. Shields and Rebecca E. Beardslee, Co-Executrices of the Estate of Lydia H. Gontz, late of Greene Township, Franklin County, Pennsylvania, deceased.
- HAWN:** First and final account, statement of proposed distribution and notice to the creditors of Adams County National Bank, Executor of the Estate of Paul J. Hawn, late of Quincy Township, Franklin County, Pennsylvania, deceased.

4-10, 4-17, 4-24, 5-1

The cases that defendant cites, *Industrial Uniform* and *Johnson*, are factually inapposite to the present controversy. Both of those cases involved purely economic losses. Also, the plaintiffs in those cases did not demonstrate that the defendants' products caused some risk of harm to people or to plaintiffs' other property.

In *Industrial Uniform*, plaintiff sued to recover the cost of repairing cracks that had appeared in the frames of trucks purchased from the defendant. The court found that since plaintiff had only pleaded economic loss and since there was no real evidence of potential harm to persons or to other property, defendant was entitled to summary judgment on plaintiff's tort claim.

Similarly, the plaintiff in *Johnson* sought damages for the premature deterioration of her car's transmission. That court found that there was no latent defect or sudden occurrence that caused plaintiff's transmission to break down. The only property injured was the product itself and there was no evidence of risk of harm to other property; therefore, the court concluded, the plaintiff was limited to pursuing a contractual action for loss of bargain.

As stated above, plaintiffs here have pleaded that rugs, walls, and ceilings were damaged as a result of a latent defect in defendant's roof. The present case is somewhat similar to the facts in *Pittsburgh Nat'l bank*. In that case, plaintiff alleged that defendant's defective product, a component in the building's mortar, caused a cracking of the building's exterior masonry. Plaintiff sought recovery for costs to repair and inspect the building, loss of its use, loss of customers, and loss of employee time. That court found that since plaintiff suffered more than economic loss and since defendant's product exposed people and other property to risk of damage, that plaintiff could proceed on a products liability claim.

This court is compelled to adopt the rationale and conclusion of *Pittsburgh Nat'l Bank*. Plaintiffs have pleaded the requisite elements that, if proven, would entitle them to relief under a strict liability cause of action.

ORDER OF COURT

September 23, 1986, the defendant's preliminary objections are dismissed.