

SUPREME COURT OF NEBRASKA

Ag Valley Cooperative, Non-Stock v. Servinsky Engineering, PLLC, et al.

Ag Valley Co-op v. Servinsky Engr., 311 Neb. 665 (2022) · No. No. S-20-709 · Decided June 3, 2022

SUMMARY

The Nebraska Supreme Court affirmed summary judgments dismissing claims arising from the collapse of a prefabricated grain bin. The court held that the contractor's claim was governed by Nebraska's construction statute of repose, while the product liability claims against manufacturers were governed by Nebraska's product liability statute of repose. The court also upheld summary judgment for an engineering firm because the evidence did not establish its involvement in designing or manufacturing the grain bin or its component door.

CASE DETAILS

COURT	Supreme Court of Nebraska
WRITING FOR THE COURT	Stacy, J.; Heavican, C.J.; Miller-Lerman, J.; Cassel, J.; Funke, J.; Freudenberg, J.; Weimer, District Judge
JURISDICTION	Nebraska
DECIDED	June 3, 2022
DOCKET	No. S-20-709
DISPOSITION	affirmed
PROCEDURAL POSTURE	Ag Valley appealed from orders of the Lancaster County District Court granting summary judgment to Servinsky, Heartland, Chief, and Johnson. The Nebraska Supreme Court moved the appeal to its docket on its own motion.
STANDARD OF REVIEW	Summary judgment is reviewed to determine whether the pleadings and admitted evidence show no genuine issue of material fact or ultimate inference and whether the moving party is entitled to judgment as a matter of law; the evidence is viewed in the light most favorable to the nonmoving party. Statutory interpretation and the determination of which statute of repose applies are reviewed independently as questions of law.
PRECEDENTIAL VALUE	published precedential opinion

PARTIES

Ag Valley Cooperative, Non-Stock v. Servinsky Engineering, PLLC, Johnson System, Inc., Heartland Building Systems, Inc., Chief Industries, Inc.

TOPICS

construction law

products liability

statute of limitations

summary judgment

statutory interpretation

PRACTICE AREAS

construction law

products liability

commercial litigation

civil procedure

appellate procedure

QUESTIONS PRESENTED

1. Whether summary judgment was proper for Servinsky when Ag Valley offered evidence that Servinsky had provided engineering services to Johnson generally but no evidence specifically tying Servinsky to the subject grain bin or skid-loader door.
2. Whether Ag Valley's claim against Heartland, the general contractor, was governed by the 10-year construction statute of repose in Neb. Rev. Stat. § 25-223 rather than the product liability statute of repose in § 25-224.
3. Whether, for purposes of Neb. Rev. Stat. § 25-224(2)(a), the relevant product was the entire Titan model CB50 grain-bin system, including its component parts, or only the skid-loader door manufactured in Michigan.

HOLDINGS

1. Summary judgment was proper for Servinsky because its evidence that it had no involvement in designing or manufacturing the subject grain bin or skid-loader door was not controverted by competent evidence; generalized evidence that Servinsky had provided engineering services to Johnson did not create a genuine issue of material fact.
2. Ag Valley's claim against Heartland was governed by the 10-year statute of repose in Neb. Rev. Stat. § 25-223 because Heartland was the general contractor responsible for constructing and installing the grain-bin system, not a manufacturer, seller, or lessor subject to § 25-224.
3. For purposes of Neb. Rev. Stat. § 25-224(2)(a), 'the product' means the completed product placed on the market and sold or leased to the consumer for use or consumption, including its original component parts. The statute contemplates one state of manufacture and one repose period for each completed product, so the location where an individual component was manufactured is immaterial.

KEY QUOTATIONS

“For purposes of Nebraska’s statute of repose, it is immaterial where the product’s various component parts were manufactured; a claim brought against the manufacturer of a component part will be governed by the same repose period as applies to the manufacturer of the completed product.” (691)

“We expressly hold that reference to “the product” in § 25-224(2)(a)(i) and (ii) means the product that was placed on the market and sold to the consumer for use or consumption, and it necessarily includes the product’s original component parts.” (691-692)

FACTUAL BACKGROUND

Ag Valley contracted with Heartland in 2007 to construct a grain storage facility in Nebraska. The facility included a Chief Titan model CB50 grain bin, whose primary components were manufactured by Chief in Nebraska and whose customized skid-loader door was manufactured by Johnson in Michigan and incorporated into the bin. Construction was completed and the bin was placed into service in November 2007; the bin collapsed without warning on August 6, 2017. Ag Valley filed suit on March 20, 2018, alleging defective design, manufacture, installation, and construction.

PROCEDURAL HISTORY

Ag Valley filed suit in 2018 after a prefabricated grain bin collapsed, asserting construction-related claims against Heartland and product liability claims against Chief, Johnson, and Servinsky. The district court granted summary judgment to Servinsky on the merits, to Heartland under the construction statute of repose in Neb. Rev. Stat. § 25-223, and to Chief and Johnson under the product liability statute of repose in Neb. Rev. Stat. § 25-224(2)(a)(i). After the remaining claims and defendants were resolved, Ag Valley timely appealed. The Nebraska Supreme Court affirmed.

DISPOSITION

affirmed

CASES CITED

- Bohling v. Bohling, 309 Neb. 625, 962 N.W.2d 224 (2021)
- Porter v. Knife River, Inc., 310 Neb. 946, 970 N.W.2d 104 (2022)
- Moore v. Nebraska Acct. & Disclosure Comm., 310 Neb. 302, 965 N.W.2d 564 (2021)
- Hike v. State, 297 Neb. 212, 899 N.W.2d 614 (2017)
- Spilker v. City of Lincoln, 238 Neb. 188, 469 N.W.2d 546 (1991)
- Ehrenfelt v. Janssen Pharmaceuticals, Inc., 737 Fed. Appx. 262 (6th Cir. 2018)
- Dondlinger v. Nelson, 305 Neb. 894, 942 N.W.2d 772 (2020)
- Marksmeier v. McGregor Corp., 272 Neb. 401, 722 N.W.2d 65 (2006)
- McCaulley v. C L Enters., 309 Neb. 141, 959 N.W.2d 225 (2021)
- Fuelberth v. Heartland Heating & Air Conditioning, 307 Neb. 1002, 951 N.W.2d 758 (2020)
- Adams v. Manchester Park, 291 Neb. 978, 871 N.W.2d 215 (2015)
- Andres v. McNeil Co., 270 Neb. 733, 707 N.W.2d 777 (2005)
- Witherspoon v. Sides Constr. Co., 219 Neb. 117, 362 N.W.2d 35 (1985)
- Kubik v. Kubik, 268 Neb. 337, 683 N.W.2d 330 (2004)

- Farber v. Lok-N-Logs, Inc., 270 Neb. 356, 701 N.W.2d 368 (2005)
- Murphy v. Spelts-Schultz Lumber Co., 240 Neb. 275, 481 N.W.2d 422 (1992)
- Smith v. Butler Manuf. Co., 230 Neb. 734, 433 N.W.2d 493 (1988)
- Chief Indus. v. Great Northern Ins. Co., 268 Neb. 450, 683 N.W.2d 374 (2004)
- Whittle v. State, 309 Neb. 695, 962 N.W.2d 339 (2021)
- Pitts v. Genie Indus., 302 Neb. 88, 921 N.W.2d 597 (2019)
- Divis v. Clarklift of Nebraska, 256 Neb. 384, 590 N.W.2d 696 (1999)
- Nesladek v. Ford Motor Co., 46 F.3d 734 (8th Cir. 1995)
- In re Adoption of Yasmin S., 308 Neb. 771, 956 N.W.2d 704 (2021)
- Theunissen v. GSI Group, 109 F. Supp. 2d 505 (N.D. Miss. 2000)
- Two Denver Highlands v. Stanley Structures, 12 P.3d 819 (Colo. App. 2000)
- Bellemare v. Gateway Builders, Inc., 420 N.W.2d 733 (N.D. 1988)
- Craftsman Builder's Supply v. Butler Mfg., 974 P.2d 1194 (Utah 1999)
- Sonnier v. Chisholm-Ryder Co., Inc., 909 S.W.2d 475 (Tex. 1995)