

STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE COUNTY OF KENT

FLURESH, LLC,

Plaintiff,

v.

AERCO INTERNATIONAL,
INC. and R.L. DEPPMANN,

Defendant,

Case No.22-02325-CBB

Hon. Curt A. Benson

OPINION AND ORDER

REC'D & FILED

APR 24 2026

HON. CURT A. BENSON
17TH CIRCUIT COURT

INTRODUCTION

The Court heard oral argument defendant's motions for summary disposition on February 5, 2026. The Court took the matter under advisement and now issues the following order.

STANDARD OF REVIEW

Under MCR 2.116(C)(10), summary disposition is proper when no genuine issue exists regarding any material fact and the moving party deserves judgment or partial judgment as a matter of law. When evaluating these motions, courts examine the pleadings, admissions, and other evidence the parties have submitted, MCR 2.116(G)(5), viewing everything most favorably toward the nonmoving party. *Quinto v Cross & Peters*, 451 Mich 358, 362; 547 NW2d 314 (1996). The moving party must initially support its position with documentary evidence. *Id.* This requirement can be met by presenting affirmative evidence negating an essential element of the nonmoving party's claim or by showing the court that the nonmoving party's evidence cannot establish an essential element of that claim. *Lowrey v LMPS & LMPJ, Inc*, 500 Mich 1, 7; 890 NW2d 344 (2016) (cleaned up).

After the moving party satisfies its burden, responsibility shifts to the nonmoving party to show that a genuine issue of disputed fact exists. *Quinto*, 451 Mich at 362. When the nonmoving party bears the burden of proof at trial on a dispositive issue, that party cannot simply rely on allegations or denials in pleadings but must go beyond the pleadings to present specific facts demonstrating that a genuine issue of material fact exists. *Id.*; MCR 2.116(G)(4). When the opposing party fails to present documentary evidence establishing that a material factual dispute exists, the motion should be granted. *Id.*; MCR 2.116(G)(4).

When deciding a motion brought under MCR 2.116(C)(10), the court reviews the evidence most favorably toward the party opposing the motion. *Maiden*, supra at 120; *Quinto* 451 Mich. at 362-363. Additionally, when deciding motions for summary disposition, the court cannot make factual findings or weigh credibility, *Manning v. Hazel Park*, 202 Mich App 685, 689; 509 NW2d 874 (1993). The factual allegations in the affidavits, depositions, admissions, or other documentary evidence of the party opposing the motion must be treated as true. *Bullock v Automobile Club of Michigan*, 432 Mich. 472, 475; 444 NW2d 114 (1989), quoting with approval 7 Callaghan's Michigan Pleading & Practice (2d ed), § 43.12, p 30.

FACTS

Plaintiff Fluresh is a cultivator, grower, processor, and supplier of cannabis products. Fluresh operates a grow facility located in Adrian, Michigan. Defendant Aerco is a manufacturer of water heaters and defendant R.L. Deppmann ("Deppmann") is a stocking and manufacturer representative of HVAC and plumbing components. Fluresh was in the market for a new water heater to be used at its grow facility and approached Deppmann for a recommendation. Deppmann recommended and sold a water heater to Fluresh which was manufactured by Aerco.

The damages which gave rise to this case occurred when the water heater at issue leached nickel into the water used to irrigate the cannabis crop cultivated by Fluresh. The inclusion of nickel in the water made the cannabis crop unsafe for consumption resulting in the total loss of the crop as well as a need to replace the parts in the water heater to prevent further damage.

The Supply Chain

Relevant to this dispute, but not joined as parties, are several manufacturers, engineers, contractors, and their agents which make up the total supply chain that resulted in the water heater at issue being installed. It is important to understand the roles that each party played in this supply chain, because this opinion will turn on whether or not Fluresh had the opportunity to protect itself throughout the process of negotiating, purchasing, installing, and using the water heater.

When Fluresh set out to build and design its Adrian growing facility, it hired the JDI Group, LLC ("JDI") to act as its architect and engineer. JDI was responsible for selecting the equipment necessary to outfit the facility. Fluresh hired Krieghoff Lenawee ("KL") as its general contractor responsible for the building of the facility. KL subcontracted with Adrian Mechanical Services ("AMS") for the plumbing in the facility. AMS was Deppmann's customer and AMS purchased the water heater at issue from Deppmann.

Between December 2018 and April 2019 AMS and Deppmann engaged in talks for the purchase of several water heaters. The talks ultimately culminated in Deppmann sending AMS a product submittal packet which included specifications on all the water heaters being purchased, including the water heater at issue — the Innovation 800. Deppmann claims that at no point during the communications with AMS was it mentioned that the water heaters being purchased needed to be compatible with reverse osmosis water. Plaintiff maintains that through communications with various agents, Deppmann was aware that Fluresh intended to use reverse osmosis water and despite that knowledge he recommended the Innovation 800.

In May of 2019 AMS sent purchase orders to Deppmann, one of which was for the Innovation 800. Deppmann in turn issued a purchase order to Aerco for the Innovation 800 water heater.

Before the purchase of the water heaters, in January of 2019, plaintiff alleges that representatives from JDI and Deppmann communicated via telephone call to discuss whether the water heaters produced by Aerco could handle reverse osmosis water. After those calls, Deppmann reached out to an Aerco representative who confirmed that their Innovation series of water heaters could handle reverse osmosis water. That information was shared with the JDI representative and the Innovation 800 was ultimately purchased.¹ Plaintiff states that at all times, Deppmann was aware of the intended use of the heater, the nickel plating within the heater, and Fluresh's intention to use reverse osmosis water.

Defendant' argue that the proper process by which the product submittal packet produced by Deppmann should have made its way to JDI was first, a handoff of the packet to AMS, then AMS to the general contractor KL, then finally a handoff by KL to JDI. This review protocol was not followed and in fact AMS never forwarded the product submittal packet to KL who then could not provide it to JDI. Deppmann contends that had protocol been followed, there were several points at which as contractors and engineers could have spotted the nickel-plated electrodes in the Innovation 800 and the damage avoided.

Plaintiff rejects the defendant's proposed submittal process and argues that Deppmann should have produced the submittal packet directly to JDI. The technical data sheet attached to the submittal packet calls for an express written statement of release be provided by JDI for the Innovation 800 specifically. This, the plaintiff argues, puts an obligation on Deppmann to send the submittal directly to JDI. Fluresh would have no reason to inquire or seek out technical specifications on their own given the representations made throughout the purchase process that the Innovation 800 was appropriate for reverse osmosis water applications. Therefore, even if Fluresh and JDI had not relied on Deppmann's representations, the defendant still had obligation to provide the submittal directly to JDI. Had plaintiff's proposed process been followed, plaintiff argues that the damage to the crop could have been avoided.

LAW AND ANALYSIS

The Economic Loss Doctrine in general

As a general rule, economic losses arising from commercial transactions are not recoverable in tort. *Quest Diagnostics, Inc v MCI WorldCom, Inc*, 254 Mich App 372, 376; 656 NW2d 858 (2002). The doctrine is designed to preserve the boundary between contractual remedies for breach and tort-based damages. *Neibarger v Universal Coops, Inc*, 439 Mich 512, 520–523; 486 NW2d 612 (1992). Under the doctrine, purely economic losses are recoverable, if at all, in contract rather than tort. *Id.* at 520 (explaining that when a purchaser's expectations are frustrated because a product fails to function properly, the purchaser "has suffered only

¹ Deppmann points out in its brief that there are different "grades" of reverse osmosis water and that the Innovation heaters are in fact compatible with basic level filtration levels of reverse osmosis water but not the "high purity" or "ultra-pure" grade used by Fluresh.

economic losses” and is therefore limited to contractual remedies) (quotation marks and citations omitted).

The Michigan Supreme Court formally adopted the doctrine in *Neibarger*, holding that when a plaintiff seeks to recover economic losses caused by a defective product purchased for commercial purposes, the Uniform Commercial Code provides the exclusive remedy. 439 Mich at 527–528. The Court emphasized that the doctrine rests on a fundamental distinction: commercial transactions involving the sale of goods are governed by contract law, whereas cases involving defective products that cause personal injury or property damage are governed by tort law. *Id.* at 520–521. Thus, application of the doctrine requires examining both the nature of the damages and the underlying policies of contract and tort law. *Id.* at 531.

In elaborating on those policies, the Court explained that tort remedies in products liability are not grounded in agreement but in duties imposed by law and public policy, particularly the goal of allocating the risk of unsafe products to manufacturers and encouraging product safety. *Id.* at 523. By contrast, parties to a commercial sale of goods are free to allocate risks through negotiated terms, including warranties, disclaimers, and limitations of remedies. Where the only harm is economic and arises after such an agreement, tort law’s safety-driven policies are not implicated. *Id.*

Plaintiff’s claim defendants breached a duty that was separate from of the Uniform Commercial Code.

The question presented is whether the economic loss doctrine bars plaintiff’s tort claims. “The economic loss doctrine is derived from the Uniform Commercial Code (UCC).” *Quest Diagnostics, supra*, 254 Mich. App. at 376.

Fluresh makes two arguments.

For its first argument, plaintiff contends that the economic loss doctrine does not apply because Fluresh had no opportunity to protect itself through contract: it had no contractual relationship with Deppmann or Aerco, was not part of the distribution chain (which ran only from Aerco to Deppmann to AMS), and the alleged misrepresentations occurred prior to and separate from the sale of the water heater. In these circumstances, plaintiff maintains it could not have negotiated warranties or other contractual protections and applying the doctrine would improperly leave it without any remedy for negligent misrepresentations made outside a contractual framework.

For its second argument, Fluresh argues that its claim arises from a duty independent of any sale of goods because Deppmann and Aerco voluntarily provided expert technical advice to JDI regarding the suitability of the Innovation water heaters for reverse osmosis water and did so outside of any contractual relationship. According to plaintiff, this conduct falls within Michigan’s common-law rule (consistent with Restatement (Second) of Torts § 552 (1977)) that imposes liability on those who negligently supply information for the guidance of others, where they fail to exercise reasonable care and the information is relied upon by the recipient or a foreseeable third party.

In advancing this second argument, Fluresh emphasizes that the defendants knew the information was being provided to an engineer working on a cannabis facility, understood it would be used to select equipment for that project, and could foresee that Fluresh, through its agent JDI, would rely on it and suffer harm if it proved inaccurate. Accordingly, Fluresh argues, it has stated a cause of action under Restatement (Second) of Torts § 552 (1977), a statement of law that Michigan has formally adopted. See *L. Offs. of Lawrence J. Stockler, P.C. v. Rose*, 174 Mich. App. 14, 36, 436 N.W.2d 70, 82 (1989).

Plaintiff's claims are barred by the economic loss doctrine

In its three briefs opposing the defendants' motions, plaintiff relies heavily on *Quest Diagnostics*. In determining whether the economic loss doctrine applies to any given situation, the Court of Appeals in *Quest Diagnostics* described the test as follows:

On the basis of *Neibarger* and its progeny, we conclude that parties to a transaction for goods are precluded recovery in tort for economic loss caused by inferior products where: (1) the parties or others closely related to them had the opportunity to negotiate the terms of the sale of the good or product causing the injury, and (2) their economic expectations can be satisfied by contractual remedies.

Id., at 380.

The first part of the *Quest Diagnostics* test is easily met. Although plaintiff Fluresh did not directly purchase the water heater at issue, it acted through a network of closely related entities responsible for the design, procurement, and installation of the equipment. Fluresh retained JDI Group, LLC as its architect and engineer, entrusting it with the responsibility of selecting appropriate equipment for the facility. Fluresh also retained Kriehoff Lenawee as general contractor, which in turn subcontracted with Adrian Mechanical Services ("AMS") for plumbing work. AMS ultimately purchased the subject water heater from defendant Deppmann.

This layered structure does not insulate Fluresh from the doctrine; to the contrary, it demonstrates that Fluresh operated through agents and contractors who collectively had the opportunity to negotiate the terms and specifications of the purchase. Fluresh's own argument proves the point: one of the facts central to Fluresh's claim is that, before AMS purchased the water heater, representatives of JDI and Deppmann discussed whether the water heater could handle reverse osmosis water. That discussion underscores that the precise risk at issue was identified before the sale. It could have been addressed through specifications, warranties, or other contractual protections. Under these circumstances, Fluresh, through its closely related parties, had a meaningful opportunity to negotiate the terms of the transaction.

Second, plaintiff's economic expectations were capable of being addressed through the contractual framework governing the project. The transaction at issue was not an isolated sale, but part of a comprehensive commercial undertaking governed by multiple contracts: between Fluresh and its engineer, between Fluresh and its general contractor, between the contractor and subcontractor, and ultimately between the subcontractor and the product supplier. Within this structure, Fluresh could have allocated the risk of product performance, required specific compatibility assurances, or secured warranties running through the contractual chain. The

economic loss doctrine presumes that commercial entities like Fluresh will protect their interests through contracts rather than filing tort claims.

Fluresh offers no explanation why it, or any other sophisticated commercial entity engaged in a complex enterprise involving multiple contracts among architects, engineers, general contractors, subcontractors, and product suppliers, would be unable to protect its own interests through contractual arrangements.

Plaintiff also attempts to avoid this result by characterizing defendants' conduct as the tort of negligent misrepresentation under Restatement (Second) of Torts § 552 (1977), pointing to alleged pre-sale statements that the water heater was suitable for use with reverse osmosis water. Specifically, Fluresh asserts that, before the purchase, its engineer, JDI Group, LLC, inquired whether Aerco's "Innovation" line was compatible with reverse osmosis ("RO") water and would not leach contaminants. That inquiry was relayed by Deppmann to Aerco's applications engineering group, which advises on product suitability for particular uses. An Aerco applications engineer responded: "Innovations will work fine with reverse osmosis filtered water." That statement was conveyed back to JDI and formed the basis for the recommendation and ultimate selection of the product.

As an aside, on these facts, the alleged misrepresentation is indistinguishable from an express warranty. "An affirmation of fact or promise made by the seller to the buyer which relates to the goods and becomes part of the basis of the bargain creates an express warranty that the goods shall conform to the affirmation or promise." MCL 440.2313(1)(a). Although the statement was made to JDI, rather than directly to AMS as the purchaser, that circumstance may affect who may enforce the warranty, but it does not alter the essential character of the statement as part of the bargain for the goods.

Moreover, even if this case is not pleaded as a breach of warranty action, the existence of a warranty or warranty-like representation underscores the commercial nature of the transaction. The statements at issue concern only the quality and fitness of the product itself. Any information conveyed by Deppmann was incidental to its role as a seller and distributor of the water heater, not the provision of independent professional services for a fee.

In *Bailey Farms, Inc. v. NOR-AM Chemical Co.*, 27 F.3d 188 (6th Cir., 1994), a Michigan farming corporation sued the manufacturer of a soil fumigant after its watermelon crop failed, alleging that the defendant's sales representative negligently misinformed it about the product's proper use. The plaintiff attempted to avoid the economic loss doctrine by arguing that the problem was not a defect in the product itself, but rather faulty advice that led to misuse and resulting crop loss. Like Fluresh here, the plaintiff's asserted a claim for negligent misrepresentation. *Id.*, at 191.

The Sixth Circuit, applying Michigan law, rejected this distinction and held that the claims were barred by the economic loss doctrine as articulated in *Neibarger*. The court reasoned that the essence of the dispute was a commercial transaction for goods that failed to meet the buyer's expectations, causing purely economic losses. Even though the damaged crops constituted "other property," their loss was within the commercial expectations of the purchase and thus governed by the Uniform Commercial Code (UCC). *Id.* The court further held that the

plaintiff's negligent misrepresentation claim could not proceed in tort because it arose from the same contractual relationship and did not involve a duty independent of the contract. *Id.* Finally, the court concluded that the transaction was predominantly for the sale of goods, not services, making the UCC the exclusive source of remedies. *Id.*

In sum, the losses alleged by plaintiff are purely economic and arise from the failure of the product to perform as expected. Because Fluresh, through its closely related parties, had the opportunity to negotiate the terms of the transaction, and because its expectations could have been protected through contract, its tort claims are barred by the economic loss doctrine.

CONCLUSION

Aerco International, Inc.'s motion for summary disposition is GRANTED.

R.L. Deppman's motion for summary disposition is GRANTED.

IT IS ORDERED.

This order resolves all pending claims and closes the case.

Dated: April 24, 2026
at Grand Rapids, Michigan.



Honorable Curt A. Benson