

UNITED STATES DISTRICT COURT FOR THE  
DISTRICT OF NEW HAMPSHIRE

Town of Wolfeboro

v.

Civil No. 12-cv-130-JD

Wright-Pierce, Inc.

O R D E R

Wolfeboro brought suit against Wright-Pierce, Inc. after Wolfeboro's wastewater treatment system, which was designed by Wright-Pierce, failed.

I. First Motion for Judgment as a Matter of Law

At the close of Wolfeboro's case and before presenting its defense, Wright-Pierce moved for a directed verdict pursuant to Federal Rule of Civil Procedure 50(a). The court took the motion under advisement, and the trial continued.

"If the court does not grant a motion for judgment as a matter of law made under Rule 50(a), the court is considered to have submitted the action to the jury subject to the court's later deciding the legal questions raised by the motion." Fed. R. Civ. P. 50(b). After a party has been fully heard on an issue, the court may grant a motion for judgment as a matter of law if "a reasonable jury would not have a legally sufficient evidentiary basis to find for the party on that issue." Cham v.

Station Operators, Inc., 685 F.3d 87, 93 (1st Cir. 2012). “The court considers all of the evidence and reasonable inferences drawn from the evidence in the light most favorable to the non-moving party and may not evaluate the credibility of the witnesses or the weight of the evidence.” Id. (internal quotation marks omitted).

Under the applicable standard, there was a legally sufficient evidentiary basis to support each of Wolfeboro’s claims at the close of Wolfeboro’s case.

Wright-Pierce also raised a legal issue in its Rule 50(a) motion, contending that Wolfeboro’s claims for negligent and fraudulent misrepresentation were barred by New Hampshire’s economic loss rule. “The economic loss doctrine is a ‘judicially-created remedies principle that operates generally to preclude contracting parties from pursuing tort recovery for purely economic or commercial losses associated with the contract relationship.’” Wyle v. Lees, 162 N.H. 406, 410 (2011) (quoting Plourde Sand & Gravel v. JGI Eastern, 154 N.H. 791, 794 (2007)). Under the economic loss doctrine, a plaintiff who has contracted with the defendant cannot recover in tort unless the defendant owes him “an independent duty of care outside the terms of the contract.” Wyle, 162 N.H. at 410. Exceptions to the doctrine exist for claims of negligent misrepresentation as inducement to

enter a contract or that are unrelated to the performance of the contract. Id. at 412. In addition, an exception may be recognized for claims of professional negligence. Plourde Sand, 154 N.H. at 796.

In this case, Wolfeboro was not seeking “purely economic or commercial losses” because Wright-Pierce’s actions damaged Wolfeboro’s property, the Wolfe 1A site. As a result, Wolfeboro was seeking, at least in part, recovery for property damage. In addition, exceptions for misrepresentation and special relationship likely apply here.<sup>1</sup> Further, the court is not persuaded that the economic loss doctrine would bar the fraud claim in this case.

## II. Second Motion for Judgment as a Matter of Law

After it concluded its defense, Wright-Pierce renewed its motion of judgment as a matter of law under Rule 50(a). There was a legally sufficient evidentiary basis to support each of Wolfeboro’s claims at the close of all of the evidence. For the reasons stated above, the economic loss doctrine does not bar any of Wolfeboro’s claims in this case.

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<sup>1</sup>Apparently recognizing the professional negligence exception to the economic loss doctrine, Wright-Pierce did not challenge Wolfeboro’s professional negligence claim on that ground.

Conclusion

For the foregoing reasons, the defendant's motion for judgment as a matter of law (document no. 166) and the defendant's oral motion renewing its motion for judgment as a matter of law are denied.

SO ORDERED.

/s/ Joseph A. DiClerico, Jr.  
Joseph A. DiClerico, Jr.  
United States District Judge

May 12, 2014

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