

DEAN v. BARRETT HOMES—IS YOUR PRODUCT INTEGRATED?

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In a recent decision that impacts building product manufacturers, the New Jersey Supreme Court ruled that a homeowner's product liability claim against a manufacturer of stucco siding is not barred by the economic loss rule or integrated product doctrine. The Court found that the economic loss rule did not apply because the stucco siding was not an "integral" part of the plaintiffs' home, but rather, was a separate and distinct product that could have caused structural damage to the home. To find otherwise, said the Court, "would be to preclude these plaintiffs, and any other similarly situated home purchaser, from pursuing products liability relief against the manufacturer of an allegedly defective product affixed or adhered to the outside of the home for damage done by the product to the home." *Dean v. Barrett Homes, Inc.*, 204 N.J. 286, 289 (2010).

In *Dean v. Barrett Homes, Inc.*, the plaintiffs purchased a home that, several years earlier, had been built with an Exterior Insulation and Finish System ("EIFS") manufactured by defendant Sto Corporation. An EIFS, often called synthetic stucco, is affixed to the exterior of a building and operates as a combined insulation and wall finish system. *Id.* at 290. The Court described, "[a]s we understand it, the EIFS was affixed to the exterior walls to create a moisture barrier, much like exterior vinyl siding." *Id.* at 303. Approximately one year after purchasing the home, the plaintiffs detected black lines on their home's exterior. They blamed this on toxic mold that had allegedly developed due to moisture that had penetrated the EIFS. *Id.* at 290. Plaintiffs ultimately removed and replaced the EIFS and sued defendant Sto Corporation for strict products liability under

New Jersey's Product Liability Act ("NJPLA"). *Id.* at 291.

The NJPLA permits a plaintiff to recover for "harm," which it defines as certain personal injuries and "physical damage to property, other than the product itself." See N.J.S.A. 2A:58C-1(b)(2). This is a codification of the economic loss rule, which bars tort recovery when a plaintiff's claim only involves damage to the product itself. The *Dean* Court noted that the Third Circuit has used the integrated product doctrine to "extend the economic loss rule to preclude tort-based recovery when a defective product is incorporated into another product which the defective product then damages." *Id.* at 298. The federal court's view, said the *Dean* Court, is that "harm to the product itself" means "harm to whatever else the defective product became integrated into." *Id.*

Acknowledging the interplay between the economic loss doctrine and the integrated product doctrine, the *Dean* Court framed the issue before it as "whether the EIFS was sufficiently integrated into the [plaintiffs'] home to become a part of the structure for purposes of broadly applying the economic loss rule." *Id.* at 302. This was not a novel question, as the New Jersey Appellate Division already had decided the exact same issue. In *Marrone v. Greer & Polman Construction Inc.*, 405 N.J. Super. 288 (App. Div. 2009), the plaintiff alleged that a defective EIFS caused structural damage to his home and asserted a NJPLA claim against the same EIFS manufacturer named in the *Dean* case. The court dismissed the claim, concluding that "the house is the 'product,' and it cannot be subdivided into its

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component parts for purposes of supporting a PLA cause of action.” *Id.* at 297. It further remarked that allowing a tort remedy under those circumstances “would subject component manufacturers to potentially unlimited liability.” *Id.* at 303. Therefore, the *Marrone* Court used the integrated product doctrine to bar plaintiff’s product liability claim under the codified economic loss rule.

Consistent with this approach, the trial court in *Dean* dismissed the plaintiffs’ NJPLA claim against the EIFS manufacturer. The Appellate Division affirmed and followed *Marrone* in concluding that the EIFS “was an integrated component of the finished product of that house.” *Dean v. Barrett Homes, Inc.*, 406 N.J. Super. 453, 470 (App. Div. 2009), *rev’d in part*, 204 N.J. 286 (2010). The Supreme Court, however, did not follow suit and instead cast significant doubt upon the developing precedent that favored component part manufacturers.

The *Dean* Court opined that a product, like an EIFS, that is attached to or included as part of the structure of a house is “not necessarily considered to be an integrated part thereof.” *Dean*, 204 N.J. at 302. The Court gave as an example, asbestos, which has not been deemed to be integrated into buildings where it is found. *Id.* It also noted the significance of two rulings in California where the courts declined to find that certain building products were “integrated” into the overall structure of a house. In *Jimenez v. Superior Court*, 58 P.3d 450 (Cal. 2002), the California Supreme Court allowed home buyers to recover in strict liability for damage that their windows caused to other parts of the home, and in *Stearman v. Centex Homes*, 92 Cal Rptr. 2d 761 (Cal Ct. App. 2000), the appellate court permitted plaintiffs to recover in tort for damages to their home caused by a defective foundation. *Dean*, 206 N.J. at 302-03.

Following the lead of these two California rulings, the *Dean* Court held that the plaintiffs’ EIFS “did not become an integral part of the structure itself, but was at all times distinct from the house.” *Id.* at 303 (emphasis added). Viewing the EIFS and the house as separate products, the Court ruled that the plaintiffs could proceed with their strict liability claim against the EIFS manufacturer for damages that the EIFS allegedly caused to the structure of plaintiffs’ house. It also held, however, that the plaintiffs could not recover the costs of removing and replacing the EIFS under the NJPLA because those damages constituted harm to the product itself, and thus, were barred by the economic loss rule. *Id.* at 303-05.

In New Jersey, plaintiffs likely will jump on the opportunity to test the limits of the *Dean* decision, with the hopes that they too will be allowed to assert statutory product liability claims against various types of building product manufacturers. However, efforts to extend that ruling may be met with resistance within the Supreme Court itself. Justice Rivera-Soto issued a scathing dissent in *Dean*, stating that the majority court’s conclusion that the EIFS is a separate and distinct product from the house “defies basic common sense.” *Id.* at 307. Justice Rivera-Soto further articulated that “[t]he 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.” *Id.* at 308. The dissenting Justice also cited cases from twenty different jurisdictions that, in his view, support the proposition that an EIFS system is

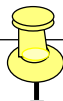
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integrated into a building and, thus, subject to the economic loss rule. The majority of states that have analyzed EIFS systems have, indeed, reached that conclusion. See *Keck v. Dryvit Sys.*, 830 So. 2d 1, 6-7 (Ala. 2002); *Pro Con, Inc. v. J&B Drywall, Inc.*, 20 Mass. L. Rep. 466 (Mass. Super. Ct. 2006); *Wilson v. Dryvit Sys.*, 206 F. Supp.2d 749, 753-54 (E.D.N.C. 2002); *Pugh v. Gen. Terrazzo Supplies, Inc.*, 243 S.W.3d 84, 92 (Tex. App. 2007); *Mequon Med. Assocs. v. S.T.O. Indus.*, 2003 WI App 225, 267 Wis. 2d 961, 671 N.W.2d 717 (Wis. Ct. App. 2003).

It will be interesting to see if courts in other jurisdictions become hesitant, as did the New Jersey Supreme Court, to find that component building products are “integral” to the structure of a home, and thus, subject to the economic loss rule. It is undoubtedly an issue worth tracking. Certainly in New Jersey, building product manufacturers whose products are considered components of a larger product or structure should expect to be the target of an increasing number of claims under New Jersey’s Product Liability Act.

**NJDA Seminar****November 11, 2011****Women and the Law****Hilton Woodbridge****8:30 am — 12:30 pm**