STATE OF MICHIGAN

COURT OF APPEALS

NICOLE LITWALK, ROBERT LITWALK, MARVA DAVIS, VITO BRUNO, NANCY OSAK, GERRARD MEMERING, JENNY MEMERING, KATHLEEN MULAR, ROBERT NEUMANN, CLARENCE DAVIS, TONY FOSTER, AND JACQUELINE FOSTER,

Plaintiffs-Appellees,

v

YPSILANTI COMMUNITY UTILITIES AUTHORITY,

Defendant-Appellant.

UNPUBLISHED
June 11, 2025
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No. 370881
Washtenaw Circuit Court
LC No. 22-001474-NZ;

LAMONT STONE AND ALICE STONE,

Plaintiffs-Appellees,

v

AUGUSTA CHARTER TOWNSHIP, AUGUSTA CHARTER TOWNSHIP REPRESENTATIVES/EMPLOYEES/AGENTS, AND YPSILANTI COMMUNITY UTILITIES AUTHORITY REPRESENTATIVES/EMPLOYEES/AGENTS,

Defendants,

and

YPSILANTI COMMUNITY UTILITIES AUTHORITY,

Defendant-Appellant.

No. 370882
Washtenaw Circuit Court
LC No. 22-001762-NZ

Before: YATES, P.J., and YOUNG and WALLACE, JJ.

PER CURIAM.

In this consolidated case involving claims for property damage under Michigan's Sewage Disposal System Event (SDSE) exception to governmental immunity, MCL 691.1401 *et seq*., defendant Ypsilanti Community Utilities Authority (YCUA) claims an appeal of right from the trial court's order denying its motion for summary disposition pursuant to MCR 2.116(C)(7) and (10) without prejudice, based on a finding that the motion was premature because discovery had not yet been completed. Defendant argues that it should not be required to conduct any further discovery in this case because it will drain defendant's resources and because plaintiff has failed to plead sufficient allegations to avoid governmental immunity. Defendant also argues that plaintiffs cannot prove that YCUA knew or in the exercise of reasonable diligence should have known about the defect that plaintiff alleges to have caused the subject property damage, and that it took reasonable steps to remedy the defect in a reasonable time. We disagree and affirm.

I. BACKGROUND

The parties agree that, on February 13, 2022, defendant discovered a 24-inch diameter concrete pipe in its Snow Road Pump Station's footprint had collapsed. As a result, defendant made various attempts at repairs. As a part of those efforts, discharge flow from the Martz Road Pump Station to the Snow Road Pump Station was ceased. Capacity within the sewer mains was then relied upon by defendant to store wastewater until a bypass could be completed; however, that evening, defendant began receiving notifications that residents were experiencing sewer backups. In response, defendant then restarted the Martz Road Pump Station, which released sewage into the Huron River, in order to avoid further backups into the affected properties.

Plaintiffs allege that they were among residents whose property was damaged as a result of these backups. Plaintiffs Nicole and Robert Litwalk, Tony and Jacqueline Foster, Vito Bruno, Nancy Osak, Gerrad and Jenny Memering, Cathleen Mular, Robert Neuman, and Clarence and Marva Davis brought suit against defendant in November 2022 (the Litwalk plaintiffs). Plaintiffs Alice and Lamont Stone brought suit against defendant approximately one month later (the Stone plaintiffs).

In their complaint, the Litwalk plaintiffs alleged that numerous well-known defects in defendant's sewage disposal system resulted in surcharging throughout the system and the flooding of their respective basements and other properties with raw sewage on February 13, 2022. They further alleged that defendant knew of these defects, or in the exercise of reasonable diligence should have known of these defects, that it failed to remedy the defects, and that the defects in defendant's sewage disposal system were a substantial proximate cause of the flooding at plaintiffs' properties and the damages suffered by plaintiffs. Similar arguments were made in the complaint filed by the Stone plaintiffs. On April 21, 2023, the trial court entered a stipulated order consolidating the two cases for discovery and all pretrial proceedings.

Initial discovery was conducted in this matter and, on July 31, 2023, the trial court entered an order extending the discovery cutoff date to July 5, 2024. On February 29, 2024, plaintiffs served notices on defendant for the taking of the deposition of a representative (or representatives)

of defendant with knowledge of various issues pertaining to the sewage disposal system, and the allegations made in this case, with the time and date of the deposition(s) to be agreed upon by the parties. The notice also required the representative(s) to produce a long list of documents at the deposition.

On March 8, 2024, approximately four months prior to the discovery cutoff date, defendant filed a motion for summary disposition pursuant to MCR 2.116(C)(7) and (10). Defendant argued that plaintiffs had failed to make the requisite showing to set forth a claim under the sewage disposal system event exception to governmental immunity. More specifically, defendant argued that plaintiffs had not identified any defect that was known or in the exercise of reasonable diligence should have been known by defendant, that it could not be disputed that the pipe collapse was repaired by defendant in a reasonable time pursuant to MCL 691.1417(3)(a)-(e), and that defendant was entitled to summary disposition as a result. In addition, defendant argued that it was entitled to dismissal because plaintiffs could not prove that the subject defect was a substantial proximate cause of the sewer disposal system event and their property damage.

On March 11, 2024, plaintiffs filed a notice of the taking of the deposition of defendant's director, Luther Blackburn (i.e., another representative of defendant), whose affidavit had been attached in support of defendant's motion for summary disposition. On March 15, 2024, plaintiff filed a motion to compel defendant to produce the above-referenced representatives for depositions, including Blackburn. That same day, defendant filed a motion to stay discovery pending the hearing on its motion for summary disposition. Following argument on the motion to stay, the trial court announced that discovery was temporarily stayed.

On April 3, 2024, the Stone plaintiffs responded to defendant's motion for summary disposition, arguing that their complaint demonstrated that they properly pled a claim against defendant. Regarding defendant's assertion that it was entitled to dismissal pursuant to MCR 2.116(C)(10), they argued that dismissal was premature because discovery was not yet completed. In support of that argument, the Stone plaintiffs argued that defendant had attached an affidavit in support of their motion authored by its director, Blackburn, a witness defendant refused to produce for deposition. Additionally, the Stone plaintiffs noted that defendant had opened a bidding process for improvements to the Snow Road Pump Station, which would have included additional pipes, and that a violation notice had been sent to defendant by the Department of Environment, Great Lakes and Energy which inquired about insufficient bypass pumping pertaining to the subject incident, meaning that additional discovery on those issues would likely create additional questions of fact in this matter.

On April 4, 2024, the Litwalk plaintiffs filed their response to defendant's motion, arguing (a) that defendant failed to offer any evidence to support its allegation that it was entitled to governmental immunity under MCL 691.1417(2), (b) that dismissal was premature because the period for discovery had not yet expired, (c) that plaintiff had provided sufficient evidence to create a question of fact pursuant to MCL 691.1417(c) on the issue of whether defendant knew or in the exercise of reasonable diligence should have known about the defect, that there was also a question of fact as to whether defendant failed to take reasonable steps in a reasonable amount of time to repair the defect prior to the accident, and (d) that there was a questions of fact on the issue of proximate causation. In support, they relied upon defendant's own documents that allegedly evidenced knowledge of the defectively designed pipe, the fact that defendant intentionally turned

off the Martz Road Pump Station indefinitely, and the opinion of plaintiff's expert witness, L. David Givler, an engineer, which was submitted via an affidavit. In his affidavit, Givler had opined that, "[i]f YCUA had engaged in a visual inspection program of the 24-inch sewer pipe, it would have been able to identify structural defects that had developed due to sulfuric acid corrosion prior to its collapse. This would have provided YCUA with sufficient time to implement corrective measures before the 24-inch pipe's failure." In addition, as the Litwalk plaintiffs noted, Givler's affidavit indicated that defendant had sufficient time to correct the design defect in both the 24-inch pipe and the Martz Road Pump Station and that defendant could have turned the Martz Road pumps back on prior to the flooding that occurred to plaintiffs' properties. Finally, according to the Litwalk plaintiffs, the detailed analysis contained in Givler's affidavit also created a question of fact on the issue of whether the subject defects were a substantial proximate cause of plaintiffs' damages.

On April 22, 2024, the trial court entered an order denying defendant's motion for summary disposition without prejudice, finding that the motion was premature because discovery was not yet complete, lifted the order staying discovery, and ordered that discovery proceed.

This appeal by defendant followed.[1]

II. ANALYSIS

A. STANDARD OF REVIEW

We review de novo a trial court's decision on a motion for summary disposition to determine whether the moving party was entitled to judgment as a matter of law. *ER Zeiler Excavating, Inc v Valenti Trobec Chandler Inc*, 270 Mich App 639, 643; 717 NW2d 370 (2006).

> A motion made under MCR 2.116(C)(10) tests the factual support for a claim, and should be granted when there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. When the burden of proof at trial would rest on the nonmoving party, the nonmovant may not rest upon mere allegations or denials in the pleadings, but must, by documentary evidence, set forth specific facts showing that there is a genuine issue for trial. A genuine issue of material fact exists when the record, drawing all reasonable inferences in favor of the nonmoving party, leaves open an issue upon which reasonable minds could differ.
>
> When deciding a motion for summary disposition under this rule, a court must consider the pleadings, affidavits, depositions, admissions, and other documentary evidence then filed in the action or submitted by the parties in the light most favorable to the nonmoving party. [*Healing Place at North Oakland*

[1] Subsequent to the filing of the claim of appeal, this Court entered an order consolidating these appeals. *Litwalk v Ypsilanti Community Utilities Auth*, unpublished Court of Appeals order issued May 2, 2024 (Docket Nos. 370881 and 370882).

Med Ctr v Allstate Ins Co, 277 Mich App 51, 55-56; 744 NW2d 174 (2007) (quotation marks, citations, and alteration brackets omitted).]

MCR 2.116(C)(7) allows for summary disposition where the claim is barred by governmental immunity. *Maiden v Rozwood*, 461 Mich 109, 118; 597 NW2d 817 (1999). Parties may support a motion under MCR 2.116(C)(7) by affidavits, depositions, admissions, or other documentary evidence. *Id*. at 119. But, unlike a motion under subsection (C)(10), a movant under MCR 2.116(C)(7) is not required to file supportive material, and the opposing party need not reply with supportive material. *Id*. "The contents of the complaint are accepted as true unless contradicted by documentation submitted by the movant." *Id*. (citation omitted). "To survive a motion for summary disposition, brought under MCR 2.116(C)(7), the plaintiff must allege facts warranting the application of an exception to governmental immunity." *Smith v Kowalski*, 223 Mich App 610, 616; 597 NW2d 463 (1997).

B. SEWAGE BACKUPS AND THE GTLA

The Governmental Tort Liability Act (GTLA), MCL 691.1401, *et seq*., provides the legal framework for governmental immunity from tort liability in the state of Michigan. MCL 691.1407(1) states:

> Except as otherwise provided in this act, a governmental agency is immune from tort liability if the governmental agency is engaged in the exercise or discharge of a governmental function. Except as otherwise provided in this act, this act does not modify or restrict the immunity of the state from tort liability as it existed before July 1, 1965, which immunity is affirmed.

Following the passage of the GTLA, disputes arose as to whether the preexisting immunity that was affirmed by MCL 691.1407(1) applied to cases alleging property damage for sewer backups caused by local government entities under the trespass-nuisance exception to governmental immunity. See, for example, *Hadfield v Oakland Co Drain Comm'r*, 430 Mich 139; 422 NW2d 205 (1988). But in April 2002, the Michigan Supreme Court held that MCL 691.1407 did not permit a trespass-nuisance exception to governmental immunity, thereby overruling *Hadfield* and other cases that had retained local government exceptions to immunity that were recognized through 1964, i.e., before the enactment of the GTLA in 1965 (which included actions against local governmental entities pertaining to the flow of sewage on private property). *Pohutski v City of Allen Park*, 465 Mich 675; 641 NW2d 219 (2002).[2] But just prior to the issuance of *Pohutski*, the Michigan legislature enacted 2001 PA 222, which added §§ 16 through 19 of the GTLA, i.e., MCL 691.1416 to 691.1419, thereby creating a mechanism for local governmental units to provide compensation when a defect in a sewer system causes property damage. *Id*. at 705-706.

As defendant notes, there is no dispute that YCUA is a governmental agency under the GTLA and that it was engaged in a governmental function at the time of the incident. As such,

[2] See *Hadfield*, 430 Mich at 200-205.

plaintiffs must have alleged facts warranting application of an exception to governmental immunity in order to survive a motion for summary disposition brought under MCR 2.116(C)(7). *Smith*, 223 Mich App at 616.

1. ADDITIONAL DISCOVERY

Defendant first argues on appeal that requiring further discovery in this matter is unwarranted because "requiring YCUA to engage in extensive discovery, including multiple depositions, before the trial court will consider YCUA's motion defeats the entire purpose of governmental immunity." Defendant provides no analysis as to why its assertion is true and, instead, merely quotes several cases that stand for the proposition that a plaintiff must plead sufficient allegations to avoid governmental immunity.

As plaintiffs argue, generally, a motion for summary disposition is premature before the completion of discovery on a disputed issue. *Peterson Novelties, Inc v City of Berkley*, 259 Mich App 1, 24-25; 672 NW2d 351 (2003). That said, summary disposition maybe be appropriate if further discovery does not stand a reasonable chance of uncovering factual support for the position of the opposing party. *Id*. at 25.

Defendant's argument that further discovery in this matter was not warranted is without merit, and we find its actions in this matter incongruous with its argument. Defendant's motion for summary disposition under MCR 2.116(C)(10) relied upon the affidavit of its director, Blackburn, for various propositions, including the assertion that it lacked the requisite notice of the defect pursuant to the GTLA, yet defendant brazenly refused to allow plaintiffs to examine Blackburn as to or regarding those very opinions or any other matters when it flatly refused to allow plaintiffs to depose him. The record confirms that notices for the taking of the depositions of Blackburn and other witnesses controlled by defendant were served upon defendant pursuant to the Michigan Court Rules. In response, defendant filed a motion to stay, pending the hearing of its motion for summary disposition. The trial court granted that motion to stay, but subsequently denied defendant's dispositive motion *without prejudice* because discovery was not yet completed and ordered discovery to continue. Rather than allow the depositions to be conducted, defendant filed a claim of appeal, thereby thwarting the notices that had been served by plaintiffs and ensuring that the only portion of their representatives' testimony that would be available on appeal was the self-serving affidavit of Blackburn. Thus, defendant's actions in preventing the discovery sought by plaintiffs demonstrate that there was a reasonable chance that plaintiffs would uncover additional factual support for their position with further discovery. See *Peterson Novelties, Inc*, 259 Mich App at 25.

As a result, we agree with the trial court's finding that defendant's motion for summary disposition was premature because discovery was not yet completed.

2. THE SEWAGE DISPOSAL SYSTEMS EVENT EXCEPTION TO GOVERNMENTAL IMMUNITY

Defendant argues that plaintiffs did not sufficiently plead and cannot prove that YCUA knew or in the exercise of reasonable diligence should have known that the subject pipe would

collapse. Further, defendant argues that YCUA took reasonable steps to remedy the defect after collapse.[3]

As defendant notes, the provisions of MCL 691.1417 must be read together and in the context of the GTLA as a whole, meaning that plaintiffs must show all five elements of subsection (3) and two additional requirements contained in subsection (4) in order to avoid governmental immunity, relying upon this Court's decision in *Willett v Waterford Charter Twp*, 271 Mich App 38, 50; 718 NW2d 386 (2006). Specifically, MCL 691.1417 states as follows:

> (1) To afford property owners, individuals, and governmental agencies greater efficiency, certainty, and consistency in the provision of relief for damages or physical injuries caused by a sewage disposal system event, a claimant and a governmental agency subject to a claim shall comply with this section and the procedures in sections 18 and 19.1.
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> (2) A governmental agency is immune from tort liability for the overflow or backup of a sewage disposal system unless the overflow or backup is a sewage disposal system event and the governmental agency is an appropriate governmental agency. Sections 16 to 19 abrogate common law exceptions, if any, to immunity for the overflow or backup of a sewage disposal system and provide the sole remedy for obtaining any form of relief for damages or physical injuries caused by a sewage disposal system event regardless of the legal theory.
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> (3) If a claimant, including a claimant seeking noneconomic damages, believes that an event caused property damage or physical injury, the claimant may seek compensation for the property damage or physical injury from a governmental agency if the claimant shows that all of the following existed at the time of the event:
>
> (a) The governmental agency was an appropriate governmental agency.
>
> (b) The sewage disposal system had a defect.
>
> (c) The governmental agency knew, or in the exercise of reasonable diligence should have known, about the defect.
>
> (d) The governmental agency, having the legal authority to do so, failed to take reasonable steps in a reasonable amount of time to repair, correct, or remedy the defect.
>
> (e) The defect was a substantial proximate cause of the event and the property damage or physical injury.

[3] Although defendant also argued the issue of causation in the motion for summary disposition filed in the trial court, it has abandoned that issue on appeal.

> (4) In addition to the requirements of subsection (3), to obtain compensation for property damage or physical injury from a governmental agency, a claimant must show both of the following:
>
> (a) If any of the damaged property is personal property, reasonable proof of ownership and the value of the damaged personal property. Reasonable proof may include testimony or records documenting the ownership, purchase price, or value of the property, or photographic or similar evidence showing the value of the property.
>
> (b) The claimant complied with section 19.

Defendant does not dispute that YCUA is an appropriate governmental agency or that the collapsed pipe was a defect. Instead, as noted above, defendant only argues on appeal that (1) plaintiffs did not sufficiently plead and cannot prove that YCUA knew or in the exercise of reasonable diligence should have known that the pipe would collapse, and that (2) it took reasonable steps to remedy the defect after collapse.

(a) PLEADING NOTICE OF THE DEFECT

Defendant argues that there is no actual identification in the Litwalk plaintiffs' complaint of any alleged defect or any way in which YCUA knew or should have known of a defect. We disagree. The Litwalk plaintiffs alleged that a sewage disposal system failure occurred prior to February 13, 2022, which required the temporary installation of a bypass pump by defendant that was defectively operated and maintained and that, when defendant's sewage disposal system surcharged, sewer water back flowed through the system, through private property lateral lines and into the properties of plaintiffs. Plaintiffs also alleged that the sewage disposal system had construction, design, maintenance, operation and/or repair defects about which defendant knew or, in the exercise of reasonable diligence should have known. Further, plaintiffs alleged that defendant knew or in the exercise of reasonable diligence should have known of the defects in the sewage disposal system, and that, despite having a reasonable amount of time to repair the defects, defendant failed to do so. Finally, they alleged that their damages were a direct and proximate result of those defects, and that the defects were a substantial proximate cause of the flooding and damage of plaintiffs' properties by sewage and other debris.

Regarding the Stone plaintiffs, while defendant acknowledges that their complaint alleged that a collapsed pipe caused a backup in their home, and that plans were in place to upgrade and install a parallel sewer system because the sewage disposal system was inadequate, defendant argues that the allegations in the Stone plaintiffs' complaint are insufficient to show knowledge of the defect by YCUA. Again, we disagree. The Stone plaintiffs also alleged in their complaint that defendant failed to timely shut down and/or divert the sewage system, and that sewage continued to backup and flow into plaintiff's home for multiple hours. The Stone plaintiffs also alleged that, when the sewer system collapsed, defendant attempted to use various bypass pumps, and that this diversion cause the sewage to back up and flow into their home. Further, the Stone plaintiffs alleged that defendants knew, or with the exercise of reasonable diligence should have known, about the defect, including the allegations that defendant knew about the collapsed pipe for hours prior to the backup, that defendants were contacted for several hours about the sewage backup,

and that defendant knew, or with the exercise of reasonable diligence should have known, that defendant's actions following the collapse would result in sewage backing into plaintiffs' home.

(b) EVIDENCE OF NOTICE OF A DEFECT

Next, defendant argues that, even if plaintiffs have pleaded in avoidance of governmental immunity, the trial court nonetheless erred by denying defendant's motion for summary disposition. Defendant argues that plaintiffs' claims fail as a matter of law because defendant has submitted evidence, via the affidavit of its expert witness, Blackburn, that defendant lacked the notice required by statute and plaintiffs failed to present evidence to the contrary.

As previously discussed, plaintiffs rightly countered defendant's argument by noting that defendant relied upon an affidavit signed by a defense witness that defendant refused to present for deposition, despite the fact that plaintiff sent defendant a notice for the taking of his deposition prior to the close of discovery. Yet plaintiffs have also countered the affidavit of Blackburn with the affidavit of Givler. In his affidavit, Givler delineated extensive records and other materials that he reviewed regarding this matter. As detailed below, Givler's affidavit constitutes evidence supporting plaintiffs' assertion that the subject defects existed for a very long time prior to February 2022 and that defendant knew about the defects, or in the exercise of reasonable diligence, should have known about the defects.

The following is a nonexhaustive summary of the opinions contained in Givler's affidavit, which details the defects that caused plaintiffs' damages and supports plaintiffs' argument regarding notice. Givler opined that it was clear from the evidence that there were several defects with the subject sewer system that were known or should have been known by defendant prior to February 13, 2022, and that, if defendant had a preventative maintenance program for its sanitary sewer mains and implemented it, then defendant would have known of the defects in the 24-inch diameter force main, which caused or contributed to the subject collapse. Givler also opined that, if defendant had an emergency preparedness and response plan (EPRP), as demanded by the standard or care, to address the 24-inch diameter pipe collapse, it would have included a protocol for monitoring sewage levels in the collection system as a means for avoiding the discharge of sewage into residential basements; however, it had no EPRP and no such protocol that would have protected plaintiffs' houses from sewage intrusions during the 17-hour period of time during which the Martz Road Pump Station was shut down.

Givler's affidavit also listed several design defects in support of the allegations against defendant. First, he said that the Martz Road Pump Station violated industry standards in that it lacked adequate storage capacity for emergency operations, which was a design defect. Second, he said the 24-inch pipe was smaller than upstream mains and formed a bottleneck in the wastewater collection system, which was also a design defect. Third, he said that defendant should have realized that the pipe was more vulnerable to deterioration due to the fact that it was significantly smaller in size than upstream pipes, which was another design defect. More specifically, according to Givler, design plans showed that the sewer pipes upstream of the failed 24-inch pipe had a diameter of 42 inches, which meant the upstream pipe had a flow area measuring 1385.4 square inches, while the downstream pipe had a flow area measuring 452.4 square inches. He said the upstream pipe had much more capacity because its flow area was more than three times the flow area of the 24-inch pipe. Accordingly, he said that drastic reduction of

size and capacity could cause two problems: (1) the bottleneck could clog up with debris and (2) the bottleneck causes pressurization or surcharging of the smaller pipe. He further said the 24-inch pipe was a reinforced concrete pipe (RCP) that is typically used as gravity pipe, not pressure pipe, and that pipe pressurization triggered by the reduction in pipe size and capacity can stress the aged joint seals of the pipe, discharge sewage into the pipe trench and undermine the pipe. He also said the 24-inch pipeline was composed of reinforced concrete instead of corrosion-resistant material, such as polyvinylchloride (PVC), and that the use of concrete made the pipe susceptible to corrosion from sulfuric acid and other acids that are in the sewage, thereby shortening the service life of the pipe.

According to Givler's affidavit, in addition to the fact that defendant should have known about those design defects, defendant should have realized that the pipe was vulnerable to deterioration simply based on its age alone because, according to defendant's position in this matter, the pipe had a 50-year design life and was installed in 1982, meaning it was 40 years old at the time of the collapse, which also meant that it had reached 80% of its design life. He indicated that the frequency of needed maintenance and repair of a sewer pipe increases with age. Also, because defendant possessed plans for the 24-inch pipe and an operation manual for the Martz Road Pump Station, and because defendant utilized those facilities on a daily basis, defendant should have known about their design defects. Further, because the 24-inch pipe was built in the 1980's, defendant should have had sufficient time to correct the defects prior to the subject flood incident. According to Givler, the failure of defendant to correct the above defects and/or to bypass the sewage flow in a timely manner, caused plaintiffs' homes to flood with sewage on February 13, 2022. Finally, a reasonable wastewater utility operator would have monitored the level of flow within the sewers to ensure that they did not become surcharged and jeopardize private property, yet during the approximately 17-hour period that the Martz Road Pump Station was shut down, there was no documentation that defendant was monitoring the flow level within the sewers serviced by the Martz Road Pump Station, which caused the sewers within the service area to become surcharged and eventually flood plaintiffs' homes with sewage.

As a result, based on the record before us, we find that questions of fact exist on the issue of whether defendant knew, or in the exercise of reasonable diligence should have known, about the defects that caused plaintiffs' damages.

(c) EVIDENCE OF REASONABLE STEPS TO REMEDY THE DEFECT IN A REASONABLE TIME

Lastly, defendant argues that it took reasonable steps, within a reasonable time, to remedy the pipe collapse. First, defendant's argument in this regard confuses the actual issue before us, which is whether defendant took reasonable steps within a reasonable time to remedy the *defect* or *defects* that caused plaintiffs' damages. The collapsed pipe was not the sole defect, despite defendant's allegation to the contrary. Rather, the defects consisted of the above-referenced design defects and other matters that caused the pipe to collapse, which resulted in the flooding. While defendant did submit evidence of steps it took to attempt to remedy the issues caused by the pipe after its collapse, defendant offered no evidence that it took steps to remedy the defects that led to the pipe's collapse. In addition, as to the steps that defendant did take, after it became aware of the collapsed pipe, questions of fact exist as to whether they were reasonable or made within a reasonable time. More specifically, the affidavit of Givler creates a question of fact as to whether

defendant's actions, in shutting down the Martz Road Pump Station without monitoring the sewage levels (as described above), was a reasonable step in its attempt to remedy the additional defects that existed after the 24-inch pipe collapsed, i.e., the flooding of raw sewage and other deleterious materials.

III. CONCLUSION

In summary, we find that the trial court did not err when it held that defendant's motion for summary disposition was premature because discovery had not yet been completed. We also hold that plaintiffs have pled sufficiently to avoid governmental immunity in this matter. Finally, we also hold, on the record before us, that questions of fact exist on the issues of whether defendant knew, or in the exercise of reasonable diligence should have known, about the subject defect or defects, and that questions of fact also exist as to whether defendant took reasonable steps to remedy the defect or defects in a reasonable time.

Affirmed.

/s/ Christopher P. Yates
/s/ Adrienne N. Young
/s/ Randy J. Wallace