

STATE of MICHIGAN  
in the MICHIGAN SUPREME COURT

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**PAULETTE STENZEL,**

Plaintiff/Appellee,

v

**BEST BUY CO., INC.** a Foreign  
Corporation for Profit and **SAMSUNG  
ELECTRONICS AMERICA, INC.** a  
Foreign Corporation, for Profit,

Defendants/Appellants.

Supreme Court No. 156262  
Court of Appeals No. 328804

Lower Court No. 14-000427-NO  
Honorable Rosemarie Aquilina

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**PLAINTIFF/APPELLEE'S RESPONSE TO  
DEFENDANT/APPELLANT SAMSUNG'S BRIEF ON APPEAL**

*ORAL ARGUMENT REQUESTED*

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## JURISDICTIONAL STATEMENT

A final Order dismissing the Plaintiff's case in the Ingham County Circuit Court was entered on July 27, 2015 (Docket Entries 69 and 70).

Plaintiff Paulette Stenzel filed a timely Claim of Appeal on August 11, 2015, pursuant to MCR 7.204.

The Michigan Court of Appeals, issued a published decision on December 22, 2016, reversing the Trial Court's granting of Defendant Best Buy's Motion for Summary Disposition based upon causation. The Court of Appeals also held in this Opinion that based upon the prior precedent of *Williams v Arbor Home, Inc*, 254 Mich App 439; 656 NW2d 873 (2002), vacated in part on other grounds 469 NW2d 898 (2003) that Defendant Samsung was not properly added as a party to this case and affirmed the Trial Court's granting of summary disposition as to Defendant Samsung. The Court of Appeals' Opinion disagreed with the holding of *Williams* and requested that the Court of Appeals convene a Special Panel pursuant to MCR 7.215(J)(2). (Joint Appendix, pp. 219a-226a, Court of Appeals' December 22, 2016, Opinion).

On January 17, 2017, the Court of Appeals ordered that a Special Panel be convened pursuant to MCR 7.215(1) to resolve the conflict between this case and *Williams*. The Order allowed the parties to file Supplemental Briefs. (Joint Appendix p. 227a, Court of Appeals' January 17, 2017, Order).

A Special Panel was convened pursuant to MCR 7.215(J) to resolve a conflict between *Stenzel v Best Buy Co, Inc*, 318 Mich App; 411; 898 NW2d 236 (2016) and *Williams v Arbor Home, Inc*, 254 Mich App 439; 656 NW2d 873 (2002), vacated in part on other grounds 469 Mich 898 (2003).

The conflict concerned the interpretation of and interplay between MCL 600.2957(2) and MCR 2.112(K)(4).

On June 27, 2017, a majority Opinion of the Special Panel held that there existed a conflict on a matter of procedure between the provisions of the court rule and the statute. The conflict was relative to whether a party must file a motion for leave to amend a pleading to add an identified nonparty at fault to an action, as provided by MCL 600.2957(2), or simply file an amended pleading as a matter of course or right, as provided by MCR 2.112(K)(4), absent the need to seek court authorization for the amendment. The majority opinion also concluded that there is no conflict between the statute and the court rule on the substantive principle and intended outcome that a party will, in fact, be given an opportunity to pursue and litigate an amended pleading, assuming compliance with the 91-day deadline.

Accordingly, the Trial Court's Order granting Summary Disposition in favor of Samsung was reversed. A Concurring Opinion was also filed which also reversed the granting of Summary Disposition in favor of Samsung, (Joint Appendix, pp. 228a-242a, Court of Appeals' special panel's June 27, 2017 Opinion).

Appellant Samsung filed an Application for Leave to this Court on August 8, 2017, which was granted by this Court on April 4, 2018. (Joint Appendix, p. 243a).

**COUNTER- STATEMENT of QUESTIONS PRESENTED**

**I. WHETHER THE COURT OF APPEALS SPECIAL PANEL CORRECTLY HELD THAT THERE IS A CONFLICT BETWEEN MCL 600.2957(2) AND MCR 2.112(K)?**

Plaintiff/Appellee says "Yes."

Defendant/Appellant Samsung says "No"

The Trial Court says "No"

The Court of Appeals' Special Panel says "Yes"

**II. WHETHER A PARTY MAY AMEND A COMPLAINT UPON RECEIPT OF A NOTICE OF NONPARTY FAULT WITHOUT FIRST FILING A MOTION TO AMEND?**

Plaintiff/Appellee says "Yes."

Defendant/Appellant Samsung says "No"

The Trial Court says "No"

The Court of Appeals' Special Panel says "Yes"

**III. WHETHER THE AMENDMENT RELATES BACK TO THE DATE THE COMPLAINT WAS FILED?**

Plaintiff/Appellee says "Yes."

Defendant/Appellant Samsung says "No"

The Trial Court says "Did not address"

The Court of Appeals' Special Panel says "Yes"

## COUNTER-STATEMENT of FACTS

The Plaintiff purchased a Samsung refrigerator/freezer from the Defendant Best Buy Co., Inc. on May 21, 2011, and contracted with Best Buy to deliver and install the Samsung refrigerator/freezer at the Plaintiff's home on or about May 31, 2011. (Joint Appendix p. 62a, Amended Complaint, paragraphs 6-7).

On or about May 31, 2011, Best Buy did install the Samsung refrigerator/freezer and connected its water dispenser and/or ice maker to a preexisting water line in the Plaintiff's home. (Joint Appendix p. 62a, Amended Complaint, paragraph 7).

Approximately two (2) days after the installation, the water line connected to the Samsung refrigerator/freezer began spraying water out onto the Plaintiff's kitchen floor. (Joint Appendix pp. 62a-63a, Amended Complaint, paragraph 8).

Plaintiff testified that she began to clean up the water damage from the refrigerator in her bare feet and slipped and fell on the wet steps with her wet feet while attempting her second trip from the kitchen with the basket of wet towels. (Joint Appendix pp. 162a-165a, Deposition of Paulette Stenzel, pp. 69-74 and 77-78).

Plaintiff was severely injured by her fall. She filed a lawsuit against Best Buy on April 29, 2014. (Joint Appendix p. 1a, Docket Entry 1). Best Buy filed their Answer to the Plaintiff's Complaint on June 30, 2014.

Best Buy filed a Motion for Leave to File Notice of Non-Party at Fault naming Samsung Electronics of America, Inc. (hereafter referred to as Appellee Samsung) as a Non-Party at Fault on March 16, 2015, almost 9 months after they filed their Answer and



approximately 10 months after the expiration of the 3-year Statute of Limitations for a product liability claim (Joint Appendix p. 1a, Docket Entry 40). Plaintiff objected to this Motion. At oral argument on **April 1, 2015**, (emphasis added) the Trial Court granted Best Buy's Motion for Leave to File Notice of Non-Party at Fault naming Defendant Samsung and an Order was entered on April 20, 2015, (Joint Appendix p. 1a. Docket Entry 49).

Best Buy also filed a Motion for Summary Disposition on the Plaintiff's Complaint (Joint Appendix p. 1a, Docket Entry 35) which was orally argued one week later on **April 8, 2015**. (Emphasis added). Best Buy argued that the Plaintiff's injuries were not foreseeable in relation to the negligent conduct that the Plaintiff alleged in her Complaint. Their motion was granted and the case against Best Buy was dismissed with an Order entered on July 8, 2015, (Joint Appendix p. 1a, Docket Entry 63).

On May 11, 2015, the Plaintiff filed an Amended Complaint adding Defendant Samsung as a party Defendant (Joint Appendix p. 1a, Amended Complaint and Docket Entry 52).

Defendant Samsung did not file an Answer to the Plaintiff's Amended Complaint and instead filed a Motion for Summary Disposition based upon foreseeability and a Statute of Limitations defense. (Joint Appendix p. 1a, Docket Entries 58, 59). The Trial Court granted Defendant Samsung's Motion on both of these grounds and a final Order dismissing the Plaintiff's case was entered on July 27, 2015, (Joint Appendix p. 1a, Docket Entry 6).

Plaintiff Paulette Stenzel filed a timely Claim of Appeal to the Michigan Court of Appeals on August 11, 2015.

The Michigan Court of Appeals on December 22, 2016, published a decision reversing the Trial Court's granting of Best Buy's Motion for Summary Disposition based upon causation. The Court of Appeals also held in this Opinion that based upon the prior precedent of *Williams v Arbor Home, Inc*, 254 Mich App 439; 656 NW2d 873 (2002), vacated in part on other grounds 469 NW2d 898 (2003), that Defendant Samsung was not properly added as a party to this case and affirmed the Trial Court's grant of summary disposition as to Defendant Samsung. The Court of Appeals' Opinion disagreed with the holding of *Williams* and requested that the Court of Appeals convene a Special Panel pursuant to MCR 7.215(J)(2). (Joint Appendix pp. 219a-226a, Court of Appeals, December 22, 2016, Opinion).

The Court of Appeals on January 17, 2017, ordered that a Special Panel be convened pursuant to MCR 7.215(1) to resolve the conflict between this case and *Williams* and allowed the parties to file supplemental briefs. (Joint Appendix p. 227a, Court of Appeals' January 17, 2017, Order).

A Special Panel of the Court of Appeals was convened pursuant to MCR 7.215(J) to resolve a conflict between *Stenzel v Best Buy Co, Inc*, 318 Mich App; 411; 898 NW2d 236 (2016) and *Williams v Arbor Home, Inc*, 254 Mich App 439; 656 NW2d 873 (2002), vacated in part on other grounds 469 Mich 898 (2003). (Joint Appendix pp. 228a-242, Court of Appeals' Special Panel Decision).

The conflict concerned the interpretation of and interplay between MCL 600.2957(2) and MCR 2.112(K)(4).

On June 27, 2017, a majority Opinion of the Special Panel held that there existed a conflict on a matter of procedure between the provisions of the court rule and the statute. The conflict was relative to whether a party must file a motion for leave to amend a pleading to add an identified Non-Party at Fault to an action, as provided by MCL 600.2957(2), or can the party simply file an amended pleading as a matter of course or right, as provided by MCR 2.112(K)(4). The majority Opinion also concluded that there is no conflict between the statute and the court rule on the substantive principle and intended outcome that a party will, in fact, be given an opportunity to pursue and litigate an amended pleading, assuming compliance with the 91-day deadline. (Joint Appendix pp. 228a-242, Court of Appeals' Special Panel Decision).

Accordingly, the Trial Court's Order granting Summary Disposition in favor of Samsung was reversed. A concurring Opinion also reversed the granting of Summary Disposition in favor of Samsung, (Joint Appendix pp. 228a-242a, Court of Appeals' Special Panel Decision).

Appellant Samsung filed an Application for Leave to Appeal to this court on August 8, 2017 which was granted by this Honorable Court on April 4, 2018. (Joint Appendix p. 243a).

**LAW and ARGUMENT**

**I. THE COURT OF APPEALS SPECIAL PANEL CORRECTLY HELD THAT THERE IS A CONFLICT BETWEEN MCL 600.2957(2) AND MCR 2.112(K)**

**Appellate Standard of Review**

The Michigan Supreme Court reviews a trial court's decision regarding a motion for summary disposition de novo. *Dressel v Ameribank*, 468 Mich 557, 561; 664 NW2d 151 (2003). They review issues of statutory interpretation de novo. *Fisher v Fisher*, 276 Mich App 424, 427; 741 NW2d 68 (2007).

They review de novo issues concerning the interpretation of statutes and court rules, *Estes v Titus*, 481 Mich 573, 578-579; 751 NW2d 493 (2008), and questions regarding whether an action is barred by a period of limitations, *Caron v Cranbrook Ed Community*, 298 Mich App 629, 635; 828 NW2d 99 (2012).

**THERE IS A CONFLICT BETWEEN MCL 600.2957(2) AND MCR 2.112(K)**

The majority response of the Court of Appeals Special Panel held that there existed a conflict on a matter of procedure between the provisions of the court rule and the statute. The conflict is relative to whether a party must file a motion for leave to amend a pleading to add an identified Non-Party at Fault to an action, as provided by MCL 600.2957(2), or whether a party can simply file an amended pleading as a matter of course or right, as provided by MCR 2.112(K)(4). (Joint Appendix p. 228a, Court of Appeals' Special Panel Decision).

“When called upon to interpret and apply a court rule, this Court applies the

principles that govern statutory interpretation. *Haliw v Sterling Hts*, 471 Mich 700, 704-705; 691 NW2d 753 (2005); see also *Fleet Business Credit, LLC v Krapohl Ford Lincoln Mercury Co*, 274 Mich App 584, 591; 735 NW2d 644 (2007). “Court rules should be interpreted to effect the intent of the drafter, the Michigan Supreme Court.” *Fleet Business*, 274 Mich App at 591. Clear and unambiguous language contained in a court rule must be given its plain meaning and is enforced as written. *Id.*

“To determine whether there is a real conflict between a statute and a court rule, both are read according to their plain meaning.” *Staff v Johnson*, 242 Mich App 521, 530; 619 NW2d 57 (2000).” (Joint Appendix p. 233a, Court of Appeals’ Special Panel Decision).

The Special Panel of the Court of Appeals in determining that there was a conflict between the Court Rule and the Statute held as follows:

“ [t]he Supreme Court appreciated that the statute only speaks of amendment of a pleading by way of motion and leave granted, certainly realizing that the procedure is unnecessarily cumbersome and not conducive to judicial expediency and efficiency because a trial court, ultimately, has no discretion whatsoever in its ruling and is required to grant leave without exception.

In our view, it would defy logic not to recognize or conclude that our Supreme Court, understanding the procedural difference between amendment by right and amendment by leave, intentionally deviated from the statutory language in order to streamline and simplify the process, allowing a party as a matter of right or course to amend a pleading within the 91-day period. The Supreme Court plainly did not deviate from the statutory language unwittingly or inadvertently. While there is no conflict between MCR 2.112(K)(4) and MCL 600.2957(2) with respect to the substantive principle and intended outcome that a party will, in fact, be given an opportunity to pursue and litigate an amended pleading, if done in

timely fashion, there is a conflict concerning the amendment procedure itself. Although the conflict might be deemed hyper-technical, it is nonetheless a conflict because the Legislature only contemplated amendment by leave and our Supreme Court called for amendment as a matter of course or right.” (Joint Appendix p. 234a, Court of Appeals’ Special Panel Decision).

In *Williams v Arbor Home, Inc*, 254 Mich App 439; 656 NW2d 873 (2002) the Court of Appeals held that there was no conflict between the provisions of MCL 600.2957(2) and MCR 2.112(K)(4) regarding the filing of an Amended Complaint naming a Non-Party at Fault. The *Williams* Court rejected the plaintiff’s argument that the court rule and statute are in conflict and that the court rule should therefore prevail. Instead, the Court adopted the defendant’s argument that the statute merely includes more detail than does the court rule. Reading the statute and court rule together, the Court held that a defendant is required to file a motion and obtain leave of the court before filing an Amended Complaint naming a party identified in a Notice of Non-Party at Fault.

The *Williams* Court’s opinion, respectfully erred because there is a conflict between the court rule and the statute; the court rule does not require a Motion prior to the filing of an Amended Complaint and the court rule does. The *Williams* Court failed to follow the precedent of the Court of Appeals case of *Staff v Johnson*, 242 Mich App 521; 619 NW2d 57 (2000) which held that there was a conflict. The *Staff* Court went on to hold that:

“When resolving a conflict between a statute and a court rule, the court rule prevails if it governs practice and procedure. *People v Strong*, 213 Mich App 107, 112; 539 NW2d 736 (1995). The Supreme Court is given exclusive rulemaking authority in matters of

practice and procedure. Const 1963, art 6, § 5; *McDougall v Schanz*, 461 Mich 15, 26; 597 NW2d 148 (1999). See also MCR 1.104 ("Rules of practice set forth in any statute, if not in conflict with any of these rules [the court rules], are effective until superseded by rules adopted by the Supreme Court.")” *Staff* at 530-531.

However, the Staff Comment to the 1997 Amendment of MCR 2.112(K) clearly indicates that the amendment to the Court Rule by the Supreme Court was a procedural implement to MCL 600.2957 for the identifying and adding parties. This staff comment reads as follows:

**“Staff Comment to 1997 Amendment**

The November 6 amendment of MCR 2.112, relates to statutory changes made by 1995 PA 161 and 1995 PA 249.

New MCR 2.112(K) **governs the procedure for identifying non parties** whose conduct is claimed to be a cause of the injury, **and for adding them** as parties. See MCL 600.2957 and MCL 600.6304.” (Emphasis added).

The Court Rule MCR 2.112(K) references this statute and procedurally permits a plaintiff to add a non-party within 91 days after their identification *without* the need of a motion. This makes sense because the statute makes clear that once the party moves for leave to amend (which the non-party will have no notice of) the Court has no discretion to deny the leave to amend. The Supreme Court in implementing the procedure of MCR 2.112(K) was preserving judicial economy and minimizing the costs of the parties.

Moreover, Michigan courts have traditionally held that “statutes of limitations are regarded as procedural, not substantive, in nature.” *Lothian v City of Detroit*, 414 Mich 160, 166; 324 NW2d 9, 13 (1982). In the Michigan Supreme Court's case of *Gladych v*

*New Family Homes*, 468 Mich 594; 644 NW2d 705 (2003), the Court addressed a conflict between a court rule and a statute regarding statutes of limitations. *Id.* at 600. The Court explained that if a statute concerns a matter that is “purely procedural and pertains only to the administration of the courts,” the court rule controls. *Id.* If, however, the statute concerns “a principle of public policy, having as its basis something other than court administration,” the statute controls. *Id.*

Michigan Court of Appeals’ decisions issued after *Gladych* have found that statutes of limitations are procedural in nature. See *Davis v State Employees’ Ret. Bd.*, 272 Mich App 151, 160; 725 NW2d 56, 62 (2006) (“In a general sense, statutes of limitations are regarded as procedural in nature.”); *Hatcher v State Farm Mut. Auto. Ins.*, 269 Mich App 596, 605; 712 NW2d 744, 750 (2005) (noting that “[a] statute of limitations is a procedural, not substantive, rule”). See also, *Forest v Parmalee*, 402 Mich 348, 359; 262 NW2d 653 (1978); and *Buscaino v Rhodes*, 385 Mich 474; 189 NW2d 202 (1971).

Accordingly, the majority opinion of the Special Panel of the Court of Appeals correctly held that there was a procedural conflict between MCR 2.112(K)(4) and MCL 600.2957(2).

Alternately, the minority opinion of the Special Panel of the Court of Appeals comes to the conclusion that there is no conflict between the statute and the court rule, that the Plaintiff may amend her Complaint pursuant to the court rule, and that the



amended complaint is not barred by the statute of limitations citing *Bint v Doe*, 274 Mich App 232; 732 NW2d 156 (2007). (Joint Appendix p. 240a, Court of Appeals' Special Panel Minority Decision).

**II. THE SPECIAL PANEL OF THE COURT OF APPEALS CORRECTLY HELD THAT A PARTY MAY AMEND A COMPLAINT UPON RECEIPT OF A NOTICE OF NONPARTY FAULT WITHOUT FIRST FILING A MOTION TO AMEND**

**Appellate Standard of Review**

This Court reviews de novo issues concerning the interpretation of statutes and court rules, *Estes v Titus*, 481 Mich 573, 578-579; 751 NW2d 493 (2008), and questions regarding whether an action is barred by a period of limitations, *Caron v Cranbrook Ed Community*, 298 Mich App 629, 635; 828 NW2d 99 (2012).

**A PARTY MAY AMEND A COMPLAINT UPON RECEIPT OF A NOTICE OF NON-PARTY AT FAULT WITHOUT FIRST FILING A MOTION TO AMEND**

The Special Panel of the Court of Appeals held that the Plaintiff in this case may file a Complaint without filing a motion to amend pursuant to MCR 2.114(K)(4):

“[w]hether the Supreme Court had the authority to override or supersede the Legislature and modify and simplify the amendment process. This is not a difficult question to resolve. Again, the Michigan Constitution, art 6, §5, provides that ‘[t]he supreme court shall by general rules establish, modify, amend and simplify the practice and procedure in all courts of this state,’ and MCR 1.104 states that statutory rules of practice ‘are effective until superseded by rules adopted by the Supreme Court.’ In general, when a court rule conflicts with a statute, the court rule controls when the matter pertains to practice and procedure, but the statute prevails if the matter concerns substantive law. *People v McGuffey*, 251 Mich App 155, 165; 649 NW2d 801 (2002).

\* \* \*

It is beyond rational argument that the question whether a pleading can be amended as a matter of course or right or whether a motion for leave to amend must be filed is indeed purely an issue of practice and procedure, falling within the exclusive province of our Supreme Court. The matter does not concern substantive law. It was well within the realm of the Supreme Court's authority to alter the amendment procedure enacted by the Legislature. Accordingly, the procedure set forth in MCR 2.112(K)(4) governs, and plaintiff proceeded properly in timely filing an amended complaint against Samsung absent the need to file a motion for leave to amend." (Joint Appendix pp. 234a-235a, Court of Appeals' Special Panel Decision).

The *Staff* Court went on to hold that:

"When resolving a conflict between a statute and a court rule, the court rule prevails if it governs practice and procedure. *People v Strong*, 213 Mich App 107, 112; 539 NW2d 736 (1995). The Supreme Court is given exclusive rulemaking authority in matters of practice and procedure. Const 1963, art 6, §5; *McDougall v Schanz*, 461 Mich 15, 26; 597 NW2d 148 (1999). See also MCR 1.104 ("Rules of practice set forth in any statute, if not in conflict with any of these rules [the court rules], are effective until superseded by rules adopted by the Supreme Court.")" *Staff* at 530-531.

As stated above, the Staff Comment to the 1997 Amendment of MCR 2.112(K) clearly indicates that the amendment to the Court Rule by the Supreme Court was a procedural implement to MCL 600.2957 for the identifying and adding parties. This staff comment reads as follows:

**"Staff Comment to 1997 Amendment**

The November 6 amendment of MCR 2.112, relates to statutory changes made by 1995 PA 161 and 1995 PA 249.

New MCR 2.112(K) **governs the procedure for identifying non parties** whose conduct is claimed to be a cause of the injury, **and for adding them** as parties. See MCL 600.2957 and MCL 600.6304." (Emphasis added).

The Court Rule MCR 2.112(K) references this statute and procedurally permits a plaintiff to add a Non-Party at Fault within 91 days after their identification *without* the

need of a motion. This makes sense because the statute makes clear that once the party moves for leave to amend (which the non-party will have no notice of) the Court has no discretion to deny the leave to amend. The Supreme Court in implementing the procedure of MCR 2.112(K) was preserving judicial economy and minimizing the costs of the parties.

Accordingly, the majority holding of the Special Panel of the Court of Appeal's opinion that a party may amend a complaint upon receipt of a notice of nonparty fault without first filing a motion to amend was correct.

### **III. THE PLAINTIFF'S AMENDED COMPLAINT RELATES BACK TO THE DATE THE ORIGINAL COMPLAINT WAS FILED**

#### **Appellate Standard of Review**

This Court reviews de novo issues concerning the interpretation of statutes and court rules, *Estes v Titus*, 481 Mich 573, 578-579; 751 NW2d 493 (2008), and questions regarding whether an action is barred by a period of limitations, *Caron v Cranbrook Ed Community*, 298 Mich App 629, 635; 828 NW2d 99 (2012).

#### **The Plaintiff's Amended Complaint Relates Back to the Date the Original Complaint Was Filed**

Michigan courts have traditionally held that "statutes of limitations are regarded as procedural, not substantive, in nature." *Lothian v City of Detroit*, 414 Mich 160, 166; 324 NW2d 9, 13 (1982). In the Michigan Supreme Court's case of *Gladych v New Family Homes*, 468 Mich 594; 644 NW2d 705 (2003), the Court addressed a conflict between a court rule and a statute regarding statutes of limitations. *Id.* at 600. The Court explained

that if a statute concerns a matter that is “purely procedural and pertains only to the administration of the courts,” the court rule controls. *Id.* If, however, the statute concerns “a principle of public policy, having as its basis something other than court administration,” the statute controls. *Id.*

Michigan Court of Appeals’ decisions issued after *Gladych* have found that statutes of limitations are procedural in nature. See *Davis v State Employees’ Ret. Bd.*, 272 Mich App 151, 160; 725 NW2d 56, 62 (2006) (“In a general sense, statutes of limitations are regarded as procedural in nature.”); *Hatcher v State Farm Mut. Auto. Ins.*, 269 Mich App 596, 605; 712 NW2d 744, 750 (2005) (noting that “[a] statute of limitations is a procedural, not substantive, rule”). See also, *Forest v Parmalee*, 402 Mich 348, 359; 262 NW2d 653 (1978); and *Buscaino v Rhodes*, 385 Mich 474; 189 NW2d 202 (1971).

The majority Opinion of the Special Panel recognized that amendment by leave and amendment by right are two separate and distinct procedural mechanisms.

They also recognized that the Michigan Supreme Court, has exclusive authority with respect to all aspects of the court rules and procedure, Const 1963, art 6, §5.

MCL 600.2957(2), makes no mention of allowing or authorizing a party to file an amended pleading as a matter of right or within the 91-day window following identification of a Non-Party at Fault. It instead allows amendment by the filing of a motion for leave to amend which the court must grant.

This mechanism was characterized by the Special Panel as, “wasteful in regard to

time, energy, and resources, as to both the courts and litigants.” (Joint Appendix p. 233a, Court of Appeals’ Special Panel Decision).

The Special Panel held that there was no conflict between MCR 2.112(K)(4) and MCL 600.2957(2) with respect to the substantive principle and intended outcome that a party will, in fact, be given an opportunity to pursue and litigate an amended pleading. (Joint Appendix p. 233a, Court of Appeals’ Special Panel Decision).

The Michigan Constitution, art 6, §5, provides that “[t]he supreme court shall by general rules establish, modify, amend and simplify the practice and procedure in all courts of this state[,]” and MCR 1.104 states that statutory rules of practice “are effective until superseded by rules adopted by the Supreme Court.” In general, when a court rule conflicts with a statute, the court rule controls when the matter pertains to practice and procedure, but the statute prevails if the matter concerns substantive law. *People v McGuffey*, 251 Mich App 155, 165; 649 NW2d 801 (2002). The Special Panel held that the amendment of the complaint was a matter of procedure. (Joint Appendix p. 234a, Court of Appeals’ Special Panel Decision).

The Special Panel also held that the Supreme Court’s action in promulgating MCR 2.112(K)(4) was intended to provide assistance and details in implementing MCL 600.2957(2) where needed, not to nullify by silence the Legislature’s clear desire to allow the relation back of an amended pleading for purposes of a given period of limitations. (Joint Appendix p. 236a, Court of Appeals’ Special Panel Decision).

Accordingly, the Court of Appeals’ Special Panel properly held that the holding in

*Williams* should be overruled and the order granting Defendant Samsung's Motion for Summary Disposition be reversed.

**Even if *Williams* is Not Overturned, Appellant Moved For Leave to Amend Her Complaint**

Even if this Court does not agree with the Special Panel and upholds *Williams*, the Plaintiff Appellee did ask for leave to amend her Complaint on the record.

At the April 1, 2015, hearing regarding Defendant Best Buy's motion to identify Samsung as a Non-Party at Fault, Plaintiff/Appellee orally moved to amend their Complaint within 91 days, which was denied by the Court contrary to MCL 600.2957(2) because the Court wanted to instead amend the Scheduling Order. The following colloquy took place during Best Buy's motion at oral argument:

“THE COURT: Your motion is granted, sir. You'll prepare the order?”

MR. TOWER: Yes.

THE COURT: Thank you.

MR. VILLAS: So, Your Honor, I have 91 days from the day of the order (to amend the complaint)?

THE COURT: No. What I'm going to do is ask you both to get together to revise the scheduling order because 91 now is not fair, is it counsel:

MR. TOWER: No, no.

THE COURT: So you both will stipulate to extend the scheduling order, and if you need me, please find me, and we will – the three of us will work together or we'll set a hearing. I'd prefer to not have another hearing if the three of us can work it out. I'm available most lunch hours. Please ruin one of mine.

MR. VILLAS: I wouldn't want to do that. I mean, the new Samsung attorney would want an input in the scheduling order.

THE COURT: Right.

MR. VILLAS: I mean, once we have to add him, I mean, we'll ask for a status conference with the new attorney. I mean, the order can say scheduling order suspended for now pending the adding of Samsung.

THE COURT: Well, the three of you can have a scheduling conference and then if you need my assistance, please ask for it. If not, you don't need it." (Joint Appendix pp. 44a-47a, April 1, 2015 Oral Argument).

The Plaintiff/Appellee orally made a request to amend her complaint to add Samsung as a Defendant within 91 days during the hearing. The Court denied the request to amend the Complaint to add Samsung, contrary to MCL 600.2957(2) and said she would convene a Scheduling Conference. Adding Appellee Samsung was also discussed throughout the hearing especially on pages 7-8 of the April 1, 2015, oral argument.

Motions made during a hearing do not need to be in written form pursuant to MCR 2.119(A)(1).

Unfortunately, one week after this oral argument the Trial Court granted Best Buy's Motion for Summary Disposition on causation so a scheduling conference never occurred. Plaintiff then filed her Amended Complaint pursuant to MCR 2.112(K) within 91 days.

The Plaintiff's request during oral argument complied with MCL 600.2957(2), and the Trial Court should have granted leave to allow the Plaintiff to amend her Complaint.

Accordingly, since the Court allowed this filing under MCR 2.112(K), and the Plaintiff requested leave to file an Amended Complaint, the Plaintiff should have been allowed to amend her Complaint to add Appellant Samsung as a Defendant pursuant to MCL 600.2957(2) and the Trial Court's Ruling on Samsung's Motion for Summary Disposition must be overturned.

**RELIEF REQUESTED**

Appellee Paulette Stenzel prays that this Honorable Court uphold the Court of Appeals' Special Panel's opinion overruling *Williams v Arbor Home, Inc*, 254 Mich App 439; 656 NW2d 873 (2002), vacated in part on other grounds 469 NW2d 898 (2003), and overturn the Trial Court's ruling granting Samsung's Motion for Summary Disposition and remand this matter back to the Trial Court for a trial by jury against Defendant Best Buy and Defendant Samsung and grant Appellee any other relief that this Honorable Court deems equitable.

Respectfully submitted

NOLAN, THOMSEN & VILLAS, P.C.

Dated: July 3, 2018

By:

/S/ Lawrence P. Nolan  
Lawrence P. Nolan (P25908)  
Gary G. Villas (P43399)  
Attorney for Plaintiff/Appellee



**CERTIFICATE OF SERVICE**

I certify that on July 3, 2018, I electronically filed **Plaintiff/Appellee's Response to Defendant/Appellant Samsung's Brief on Appeal** with the Clerk of the Court using the ECF System which will send notification of such filing to all ECF participants.

Dated: July 3, 2018

By:

/S/ Lawrence P. Nolan

Lawrence P. Nolan (P25908)

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