

IN THE COURT OF COMMON PLEAS FOR THE STATE OF DELAWARE
IN AND FOR KENT COUNTY

Donald Hudson and	:	C.A. No. 04-08-0019AP
Carmen Hudson,	:	
	:	
Plaintiffs-Below/	:	
Appellants,	:	
	:	
vs.	:	
	:	
S & L Contractors, Inc.	:	
	:	
Defendants-Below/	:	
Appellee.	:	

Upon Defendant’s Motion for Summary Judgment

Date submitted: January 5, 2005
Date decided: January 7, 2005

Defendant’s Motion for Summary Judgment is granted.

Donald and Carmen Hudson, 121 Thorn Hill Court, Dover, Delaware 19904, Pro Se Plaintiffs Below/Appellant.

Scott E. Chambers, Esquire, Schmittinger & Rodriguez, P.A. 414 South State Street, Post Office Box 497, Dover, Delaware 19903-0497, Attorney for Defendant Below/Appellee.

Trader, J.

In this civil appeal from the Justice of the Peace Court, S & L Contractors (S & L) has filed a motion to dismiss on the grounds that this cause of action for breach of contract is barred by the three-year statute of limitations found in 10 Del.C. Sec. 8106. The plaintiffs, Donald Hudson and Carmen Hudson (Hudson), assert that S & L acknowledged the subsisting demand and that that act removed the case from the bar of the statute. Since there is no direct and unqualified admission of liability, Hudson's claim is barred by 10 Del.C. Sec. 8106.

The relevant facts are as follows: On April 14, 2004, Hudson filed a civil action against S & L in Justice of the Peace Court #16. On July 22, 2004, the magistrate entered judgment on behalf of Hudson and against S & L for the costs of the proceedings. From that decision, Hudson filed a timely appeal to this court together with a complaint and praecipe. S & L has filed a motion for summary judgment contending that the plaintiffs' claim is barred by the applicable statute of limitations.

10 Del.C. Sec. 8106 provides in pertinent part as follows:

No action to recover damages for trespass, no action to regain possession of personal chattels, no action to recover damages for the detention of personal chattels, no action to recover a debt not evidenced by a record or by an instrument under seal, no action based on a detailed statement of the mutual demands in the nature of debit and credit between parties arising out of contractual or fiduciary relations, no action based on a promise, no action based on a statute, and no action to recover damages caused by an injury unaccompanied with force or resulting indirectly from the act of the defendant shall be brought after the expiration of 3 years from the accruing of the cause of such action.

The breach of warranty occurs at the time of the sale of the faulty product.

Harvey v. Sears, Roebuck & Co., 315 A.2d 599 (Del. Super. Ct. 1973). The statute is

activated at the time of the breach. *DiBiase v. A&D*, 351 A.2d 865 (Del. Super. Ct. 1976). However, an unqualified acknowledgement of a subsisting debt will take the case out of the statute of limitations. *Snyder v. Baltimore Trust Co.*, 532 A.2d 624, 626 (Del. Super.Ct. 1986); *Insurance Co. of North American v. NVF Co.*, 2000 WL 305338, *2 (Del. Super.). But the acknowledgement of the subsisting demand must be “clear, distinct and unequivocal” in order to remove the bar of the statute. *Id.*

In the case at bar, S & L agreed to build a house for Hudson pursuant to an agreement of sale dated June 29, 1998. Hudson alleges that S & L installed the wrong brand of windows in their house and that the windows allowed air into the home. At a deposition, Mrs. Hudson stated that she first noticed the problem with the windows in the winter of 1999 or the winter of 1998. Hudson’s claim was first filed in the Justice of the Peace Court on April 14, 2004. Unless there was a “clear, distinct and unequivocal” acknowledgement of liability within three years of the date of filing of the claim, Hudson’s claim is barred by the statute of limitations set forth in 10 Del.C. Sec. 8106.

Hudson asserts that S & L’s letter of April 16, 2001 removes the case from the bar of the applicable statute of limitations. The letter marked as “Plaintiff’s Exhibit 3” states as follows:

This letter is to acknowledge our conversation from April 13, 2001 that the MW window representatives are going to try one more time to solve your problem by upgrading your windows. In the event that the upgraded windows do not solve the air infiltration problem, S & L Contractors will replace the MW windows with Silverline windows.

I conclude that this letter constitutes an offer of compromise rather than a “clear, distinct and unequivocal” acknowledgement of liability. Under those circumstances, there is no conduct of S & L that removes the case from the bar of the statute.

Based on the above analysis, the plaintiffs' claim is barred by the applicable statute of limitations. Accordingly, the defendant's motion for summary judgment is granted.

IT IS SO ORDERED.

Merrill C. Trader
Judge