STATE OF MICHIGAN

COURT OF APPEALS

BLOOMFIELD WOODWARD AVENUE ASSOCIATES LIMITED PARTNERSHIP,

Plaintiff-Appellant,

v

R. E. DAILEY & COMPANY,

Defendant-Appellee.

UNPUBLISHED
June 7, 1996

No.177241
LCNo.93-452667-CK

Before: MacKenzie, P.J., and Cavanagh and T.L. Ludington*, JJ.

PER CURIAM.

Plaintiff appeals as of right from an order granting summary disposition in favor of defendant. We affirm.

In 1984, plaintiff contracted with defendant for the construction of an office building. Defendant finished the building in 1985, and plaintiff took occupancy in early 1986. In late 1986 and early 1987, plaintiff discovered leaks in several sections of the building's roof. In December 1987, plaintiff began to experience problems with the fire protection system that had been installed in the garage. According to plaintiff, defendant promised in 1988 to repair the defects at no cost to plaintiff. Repairs were undertaken, but were not successful. Plaintiff ultimately had to take additional action at its own expense to repair the roof and to replace the garage sprinkler system.

In 1993, plaintiff filed this action alleging breach of the construction contract and breach of warranty. A second amended complaint alleged promissory estoppel based on defendant's unfulfilled post-contract, post-construction promises to repair the defects in the sprinkler system and roof. The trial court granted summary disposition in favor of defendant, ruling that the claims were barred under

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* Circuit judge, sitting on the Court of Appeals by assignment.

MCL 600.5839(1); MSA 27A.5839(1), and that the claims were precluded by the integration and modification provisions of the parties' construction contract.

Plaintiff contends that the trial court erred in holding that its claims were time-barred under MCL 600.5839(1); MSA 27A.5839(1), which precludes claims against contractors more than six years after taking occupancy of a building. Specifically, plaintiff maintains that its cause of action was not time-barred because it was not based on the parties' construction contract, but on a promissory estoppel theory as set forth in *Huhtala v Travelers Ins Co*, 401 Mich 118; 257 NW2d 640 (1977). We find no error.

In *Huhtala*, the plaintiff was injured in an accident while a passenger in a vehicle insured by the defendant. The plaintiff sued the insurer more than three years after the accident, not asserting a claim arising out of the accident, but rather the breach of the defendant's promise of a settlement. One of the issues before the Supreme Court was whether the three-year personal injury statute barred the claim. The Court stated that it is the "nature and origin" of an action that determines which limitations period should be applied. 401 Mich 131. Because the plaintiff's claim arose from a promise allegedly made by the defendant, and not from the accident, the Court held that the six-year contracts statute of limitations applied to the plaintiff's action.

In this case, the nature and origin of plaintiff's claim is directly linked to its assertion that defendant constructed and would not satisfactorily repair a defective building, contrary to the parties' original agreement. The claim involves an on-going problem stemming from the contractual relationship, and not an independent relationship that spontaneously arose several years after the building was completed. Unlike *Huhtala*, the parties' negotiations and defendant's cooperation in attempting to resolve the problems arose out of the construction contract, and not out of a separate and distinct agreement. Accordingly, the trial court did not err in ruling that plaintiff's claim was untimely under MCL 600.5839(1); MSA 27A.5839(1) because it was commenced more than six years after plaintiff took occupancy of the building.

Even if plaintiff's claim were not time-barred, it would still fail because the elements of promissory estoppel are not present in this case. Promissory estoppel arises when (1) one party makes a promise, (2) which the promisor should reasonably expect to induce action or forbearance on the part of the promisee or a third person, (3) which does in fact induce such action or forbearance, and (4) in circumstances in which the promise must be enforced in order to avoid injustice. *State Bank of Standish v Curry*, 442 Mich 76, 83; 500 NW2d 104 (1993); *Ypsilanti Twp v General Motors Corp*, 210 Mich App 128, 132-133; 506 NW2d 556 (1993). The sine qua non of the theory of promissory estoppel is that the promise must be clear and definite. *State Bank of Standish, supra*, pp 84-85; *Ypsilanti Twp, supra*, p 134.

Here, the only evidence of an independent "promise" to fix the roof was a June 1993 letter from defendant stating that any "work done on the roof requires the approval of J.P. Stevens so that the warranty stays in effect. As soon as we receive their approval, we will let you know." This is not a clear and definite promise to cure a defect. Moreover, because the letter was sent more than six years after plaintiff took occupancy of the building -- and thus after the period of limitation had run -- plaintiff cannot claim that the letter caused it to forbear from filing a timely suit against defendant regarding the roof.

With regard to the fire protection system, defendant's 1988 correspondence affirmatively stated that "Professional Sprinkler will return to the site and reconstruct the fire protection system using Dry Pendent Sprinkler Heads, with proper fittings," and hence would appear to have promised to cure the defective system. However, there is nothing to indicate that plaintiff reasonably relied on the promise. *State Bank of Standish, supra; Ypsilanti Twp, supra*. As noted, plaintiff first experienced problems with the fire protection system in December 1987. Defendant's subcontractor attempted to repair the system in the autumn of 1988. During the following months, plaintiff discovered that the system was still malfunctioning. Although plaintiff repeatedly contacted defendant and requested that it cure the defects, there is nothing to indicate that defendant made any additional promises to repair or replace the system. Under these circumstances, plaintiff had approximately three years in which to file a timely action. Despite this period of time, and despite defendant's alleged inaction, plaintiff made no effort to commence an action to compel defendant to perform. Reliance on a three year old promise at the expense of allowing the limitations period to expire does not constitute reasonable reliance. Compare *City of Birmingham v Cochrane Roofing & Metal Co,* 547 So 2d 1159 (Ala, 1989).

This disposition makes it unnecessary to address plaintiff's remaining claim.

Affirmed.

/s/ Barbara B. MacKenzie
/s/ Mark J. Cavanagh
/s/ Thomas L. Ludington