

STATE OF MICHIGAN

COURT OF APPEALS

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FRANKLIN AMTOWER, JOHN BARBUSCAK,  
SALLY BOUKMA, Personal Representative of Estate  
of Louise Allen, RICHARD CUMMINGS, ROGER  
DAVIS, THOMAS DEAGOSTINO, VAJENDRA  
DESAI, DEWANE ENGLERTH, DAVID FARBER,  
JEFFREY FARBER, CARL FREEMAN, PATRICIA  
HUTCHINSON, JAMES JOLLIFFE, GEORGE  
KRULL, GARY LAMBERT, THEO MERRILL,  
MAZHAR MUNIR, THOMAS NAWROT, LEONE  
RICHARDSON, PAUL TATSEOS, JOHN TRACY,  
BARRY MILLER, DENNIS CHAGNON and JOHN  
CHRIST,<sup>1</sup>

Plaintiffs–Appellants,

v

WILLIAM C. RONEY & CO d/b/a/ RONEY & CO,

Defendant–Appellee.

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UNPUBLISHED  
February 11, 1997

No. 165777  
Wayne Circuit Court  
LC No. 92-212189

Before: Young, P.J., and Corrigan and Taylor, JJ.

PER CURIAM.

Plaintiffs appeal by right the September 25, 1992, order granting defendant's motion for summary disposition pursuant to MCR 2.116(C)(10). We affirm in part and reverse in part.

Following the advice of defendant, an investment adviser, plaintiffs invested in a limited partnership known as the Certified Historic Income Properties VII Limited Partnership (CHIPS VII). Twelve of the plaintiffs, Franklin Amtower, Richard Bumb, Richard Cummings, Thomas DeAgostino, David Farber, Jeffrey Farber, Carl Freeman, Patricia Hutchinson, Gary Lambert, Paul Tatseos, Barry

Miller and John Christ, executed customer agreements with defendant. These agreements provided that any claims against defendant arising out of the CHIPS VII transaction would be submitted to binding arbitration within one year of the accrual of the cause of action.

Plaintiffs brought this action pursuant to the Michigan Consumer Protection Act, MCL 445.901 *et seq.*; MSA 19.418(1) *et seq.* Plaintiffs alleged that defendant misrepresented pertinent facts regarding the integrity of the CHIPS VII investment. Defendant moved for summary disposition against Amtower, Bumb, Cummings, DeAgostino, David and Jeffrey Farber, Freeman, Hutchinson, Lambert, Tatseos, Miller and Christ, arguing for outright dismissal or, alternatively, for an order to compel arbitration. Defendant argued that the arbitration agreement precluded these plaintiffs from obtaining relief from the courts. Defendant also argued that the action had been brought more than one year from the time the cause of action accrued. Defendant argued that the cause of action accrued in October, 1990, when plaintiffs were notified that the CHIPS VII investments were failing. Plaintiffs argued in response that the arbitration agreement was invalid because they had not made a knowledgeable waiver of rights. Plaintiffs also argued that the cause of action did not accrue until May 8, 1991, when they learned that the CHIPS VII general partner had misappropriated funds.

The trial court concluded that the arbitration agreement was valid and that the cause of action accrued in October, 1990. The trial court granted defendant's summary disposition motion. The trial court later denied plaintiff's motion for relief from order and for reconsideration pursuant to MCR 2.612.

On appeal, plaintiffs argue that the trial court erred when it determined that the cause of action accrued on October 15, 1990. Plaintiffs, however, do not challenge the trial court's determination that the arbitration agreement was valid.<sup>2</sup> Hence, plaintiffs are obligated to submit their claims to arbitration, and may not proceed with a judicial action against defendant, regardless of when their cause of action accrued.

Nevertheless, the trial court's determination of whether plaintiffs' action was time-barred was in error. Although the existence of a contract to arbitrate and its enforceability is a judicial question that cannot be decided by an arbitrator, *City of Huntington Woods v Ajax Paving Indus*, 196 Mich App 71, 74; 492 NW2d 463 (1992), procedural matters arising out of an arbitrable dispute are for the arbitrator, and not the court, to determine. *Bennett v Shearson Lehman-American Express, Inc*, 168 Mich App 80, 83; 423 NW2d 911 (1987). As such, the timeliness of bringing of an arbitration proceeding is a procedural issue to be determined by the arbitrator rather than the courts. *Id.*; see also *Nielsen v Barnett*, 440 Mich 1, 10; 485 NW2d 666 (1992). Therefore, the trial court erred in making a determination regarding when plaintiffs' cause of action accrued.

We affirm the trial court's determination that plaintiffs' disputes are arbitrable, vacate the court's determination regarding the timeliness of plaintiffs' claims, and remand to the trial court

with instructions to grant defendant's alternative motion to compel arbitration. We do not retain jurisdiction.

/s/ Robert P. Young, Jr.

/s/ Maura D. Corrigan

/s/ Clifford W. Taylor

<sup>1</sup> Although all twenty-four original plaintiffs are listed as appellants in this appeal, the order appealed is binding on only twelve: Franklin Amtower, Richard Bumb, Richard Cummings, Thomas DeAgostino, David Farber, Jeffrey Farber, Carl Freeman, Patricia Hutchinson, Gary Lambert, Paul Tatseos, Barry Miller and John Christ. The remaining plaintiffs were either dismissed or accepted mediation.

<sup>2</sup> A party's failure to argue an issue in its appellate brief constitutes abandonment of the issue. *Froling v Carpenter*, 203 Mich App 368, 373; 512 NW2d 6 (1994).