

STATE OF MICHIGAN
COURT OF APPEALS

VANESSA JOHNSON,

Plaintiff-Appellant,

v

PARKER & SONS ROOFING & CHIMNEY,
INC., LARRY PARKER, and F. LAX
CONSTRUCTION COMPANY, d/b/a FRED LAX
CONSTRUCTION COMPANY,

Defendants,

and

STATE FARM FIRE AND CASUALTY
COMPANY,

Defendant-Appellee.

UNPUBLISHED
February 22, 2007

No. 271779
Oakland Circuit Court
LC No. 04-060976-CK

Before: O'Connell, P.J., and Saad and Talbot, JJ.

PER CURIAM.

Plaintiff appeals the grant of partial summary disposition in favor of defendant based on expiration of a homeowner's insurance policy contractual limitations period. We reverse and remand.

Plaintiff hired Parker & Sons Roofing & Chimney, Inc. to replace the roof on her residence. In July 2002, following the removal of the old roofing material and placement of a tarp, but before installation of the new roof, a rainstorm occurred resulting in the intrusion of water within the home and damage to the residence and personal property contained therein. Mold growth also occurred as a result of the water intrusion. Plaintiff hired defendant, F. Lax Construction Company, to make repairs to the home caused by the water damage. Due to alleged errors in the repairs, additional water damage was incurred to the property in 2003 and 2004. Defendant was plaintiff's homeowner's insurer for the property at all relevant times. This appeal pertains only to the damages attributable to the 2002 incident.

Plaintiff filed a claim with defendant, for the loss date of July 21, 2002, and was assigned claim number 22-M203-309 by defendant. The parties concur that defendant remitted payment

to plaintiff for some of the claimed damages and ancillary living expenses incurred as a result of the water damage. On December 2, 2002, defendant issued correspondence to plaintiff regarding this claim, which stated in relevant part:

Based upon the results of our discussions, site inspection and investigation, it was determined that damage to your home was caused by mold.

Damage resulting from this cause of loss is not covered by your policy.

Defendant proceeded to elucidate the policy provision that specifically excluded loss due to mold. The letter also included policy language indicating the necessity to initiate a cause of action for coverage “within one year after the date of loss or damage.”

Defendant paid plaintiff for non-mold-related damages after issuance of the December 2, 2002 letter. On February 20, 2004, defendant remitted to plaintiff the last payment for her July 2002 claim. The letter accompanying the final payment cited defendant’s claim numbers 22-M203-309 and 22-M223-546, for the July 21, 2002 and February 2, 2003 dates of loss, and stated, in pertinent part:

We regret to inform you that State Farm Fire and Casualty Company formally denies any further liability under the above-captioned policy regarding Claims 22-M203-309 and 22-M223-546.

Defendant filed a motion for summary disposition seeking, in part, dismissal of plaintiff’s damage claims from 2002 as time-barred. Plaintiff asserted the one-year limitations period in defendant’s policy of insurance was tolled pursuant to MCL 500.2833(1)(q), asserting her complaint was timely filed because the formal denial of her claim by defendant did not occur until February 20, 2004, and that the December 2, 2002, letter constituted a formal denial only with regard to claims arising from mold damage but not the water intrusion. The trial court granted defendant summary disposition on this issue, determining that the denial of plaintiff’s claim had occurred on December 2, 2002, when defendant issued the letter refusing coverage for loss due to mold. This Court reviews decisions regarding summary disposition de novo. *Waltz v Wyse*, 469 Mich 642, 647; 677 NW2d 813 (2004). Whether a cause of action is barred by the statute of limitations is a question of law that is also reviewed de novo. *Pohutski v City of Allen Park*, 465 Mich 675, 681; 641 NW2d 219 (2002).

Initially, this Court observes that, although defendant sought summary disposition pursuant to MCR 2.116(C)(8) and (C)(10), MCR 2.116(C)(7) is the appropriate rule for summary disposition based on statutory or contractual limitations periods. In reviewing such a motion:

[A] court must accept as true the plaintiff’s well-pleaded factual allegations and construe them in the plaintiff’s favor. The court must look to the pleadings, affidavits, or other documentary evidence to determine whether there is a genuine issue of material fact. If no facts are in dispute, and reasonable minds could not differ on the legal effect of those facts, whether the plaintiff’s claim is barred by the statute of limitations is a question for the court as a matter of law. However, if a material factual dispute exists such that factual development could provide a

basis for recovery, summary disposition is inappropriate. [*Guerra v Garratt*, 222 Mich App 285, 289; 564 NW2d 121 (1997).]

Notably, neither party disputes the applicability of tolling in accordance with MCL 500.2833, which states in relevant part:

(1) Each fire insurance policy issued or delivered in this state shall contain the following provisions:

* * *

(q) That an action under the policy may be commenced only after compliance with the policy requirements. An action must be commenced within 1 year after the loss or within the time period specified in the policy, whichever is longer. The time for commencing an action is tolled from the time the insured notifies the insurer of the loss until the insurer formally denies liability.

Hence, the only dispute centers on when the contractual limitations period accrued. The resolution of this dispute involves a determination of whether defendant's December 2, 2002, letter comprised a formal denial of all liability arising from the July 2002 water intrusion.

A "formal denial" of liability is required to be explicit. *Mt Carmel Mercy Hosp v Allstate Ins Co*, 194 Mich App 580, 587; 487 NW2d 849 (1992). The plain language of the December 2, 2002, letter states that "damage to your home was caused by mold" and that "[d]amage resulting from this cause of loss is not covered by your policy." The letter, although addressing policy exclusions from coverage for mold damage or expenses of mold remediation provides no reference or discussion of other causes of water damage or expenses claimed by plaintiff or a specific denial of any such additional claims. Plaintiff does not dispute her preclusion from pursuing any claims for mold damage to her property arising from the July 2002 incident. However, contrary to defendant's assertion that the December 2, 2002 letter comprised a formal denial of liability, is the February 20, 2004, which contains a specific and explicit disavowal of any additional liability for plaintiff's July 2002 damage claim. The existence of this later correspondence, coupled with plaintiff's assertions that defendant continued to interact and address claims related to the July 2002 water intrusion subsequent to issuance of the December 2, 2002 letter, established the existence of a genuine issue of material fact regarding whether defendant's December 2, 2002, correspondence constituted a formal denial of plaintiff's claim. The existence of this factual issue precluded the grant of summary disposition.

We reverse the partial grant of summary disposition in favor of defendant and remand to the circuit court for further proceedings. We do not retain jurisdiction.

/s/ Peter D. O'Connell
/s/ Henry William Saad
/s/ Michael J. Talbot