

Court of Appeals, State of Michigan

ORDER

James F Lessenberry v Elias Barlia

Docket No. 284741

LC No. 05-036296-CB

Pat M. Donofrio
Presiding Judge

E. Thomas Fitzgerald

Henry William Saad
Judges

The Court orders that the motion for immediate consideration is GRANTED.

Pursuant to MCR 7.205(D)(2) and MCR 7.216(A)(1) and (7), the Court orders that the circuit court's March 20, 2008 order granting partial summary disposition of counts 1, 2, and 3 of defendants-counterplaintiffs' first amended countercomplaint is AMENDED to reflect that claims and damages under those counts occurring before October 19, 2002 are dismissed. The original order incorrectly dismissed claims and damages occurring before October 19, 2003. Under the periods of limitation and repose set by MCL 450.1489(1)(f) and 450.1541a(4), the claims set forth in defendants' counts 1, 2, and 3 are barred more than three years after the date of the occurrence which gave rise to those claims. *Baks v Maroun*, 227 Mich App 472, 490; 576 NW2d 413 (1998), *overruled on other grounds by Estes v Idea Engineering*, 250 Mich App 270; 649 NW2d (2002); *Detroit Gray Iron & Steel Foundries, Inc v Martin*, 362 Mich 205, 217-218; 106 NW2d 793 (1961). Defendants' first countercomplaint was filed October 19, 2005, so claims and damages occurring more than three years earlier, before October 19, 2002, must be dismissed.

In all other respects the application for leave to appeal is DENIED for failure to persuade.

The Court retains no further jurisdiction.

A true copy entered and certified by Sandra Schultz Mengel, Chief Clerk, on



JUL 08 2008

Date

Sandra Schultz Mengel

Chief Clerk