

STATE OF MICHIGAN
COURT OF APPEALS

MUNICIPAL EMPLOYEES RETIREMENT
SYSTEM,

Plaintiff-Appellant,

v

COMPUWARE CORPORATION,

Defendant-Appellee.

UNPUBLISHED
June 22, 2006

No. 268701
Eaton Circuit Court
LC No. 05-001652-CK

Before: Davis, P.J., and Sawyer and Schuette, JJ.

PER CURIAM.

Plaintiff appeals as of right from the circuit court's order granting summary disposition to defendant. We affirm. We decide this appeal without oral argument pursuant to MCR 7.214(E).

Plaintiff contracted with defendant for installation of the "MERS E-Pass-Payroll and Services System Project." The parties' agreement included the following provisions:

[T]his Agreement may be terminated . . . immediately by MERS if COMPUWARE defaults on the Agreement In the event of termination due to default by COMPUWARE, MERS may procure the services of other vendors and hold COMPUWARE liable for any excess costs occasioned thereby.

* * *

Any termination of this agreement pursuant to this paragraph shall be without prejudice to any other rights or remedies either party may be entitled to hereunder or at law and shall not affect any accrued rights or liabilities of either party nor the coming into or continuance in force of any provisions hereof which is expressly or by implication intended to come into or continue in force on or after such termination.

In response to a series of difficulties that plagued performance of the contract, plaintiff notified defendant by letter dated December 16, 2003, that plaintiff was exercising its option to terminate the agreement, and reminded defendant that plaintiff was entitled to seek alternative services and hold defendant liable for the excess costs.

Plaintiff engaged another service to complete the work defendant was originally expected to perform. But when plaintiff sought reimbursement for the attendant expenses, defendant refused to pay. Plaintiff commenced action on December 21, 2005.

Defendant moved for summary disposition, citing contractual language that “[n]o action arising out of this Agreement, regardless of the form, may be brought by either party more than one year after the cause of action has occurred,” and arguing that this period of limitation began to run when plaintiff declared defendant in default and terminated their agreement. Plaintiff argued that the provision obligating defendant to cover plaintiff’s costs in obtaining alternative service was a separate contractual obligation, breach of which did not occur until defendant refused to pay. The trial court agreed with defendant:

This case seems to fall squarely on the issue of when did the cause of action accrue and whether or not the fact that remedies were provided in another section can cause this contract to be read in a different way than would appear on its face. On its face it would appear that once there was a termination there was a default, once the default was, the parties have agreed under the terms of the contract that there is a one-year statute of limitations.

. . . I do not agree that that permissive clause to allow compensation for the cost of completing the project as provided in paragraph 5 is a remedy that would affect the paragraph regarding the statute of limitations provided under the terms of the contract. The . . . cause of action . . . clearly occurred at the time of the termination of the contract. And, whereas in January of 2004 the plaintiff did engage the services of another company, clearly at that time he was aware of the cost that would be associated with completing the project. . . . I believe that the cost of the completion of the contract was a remedy, that the breach did occur prior to that, the parties had agreed to a one-year limitation. That one year, in this Court’s opinion, did expire prior to the filing of this suit.

We review a trial court’s decision on a motion for summary disposition de novo as a question of law. *Ardt v Titan Ins Co*, 233 Mich App 685, 688; 593 NW2d 215 (1999). Contract interpretation likewise presents a question of law, calling for review de novo. *Archambo v Lawyers Title Ins Corp*, 466 Mich 402, 408; 646 NW2d 170 (2002). MCR 2.116(C)(7) authorizes motions for summary disposition based on periods of limitations. Whether a claim is time barred is a question of law, subject to review de novo. See *McKiney v Clayman*, 237 Mich App 198, 201; 602 NW2d 612 (1999).

Although the ordinary statute of limitations for actions based on breach of contract is six years from the accrual of the claim, MCL 600.5807(8), parties may contract for a shorter periods. *Rory & Woods v Continental Ins Co*, 473 Mich 457, 470; 703 NW2d 23 (2005). Here, the parties agree that the contractual one-year period of limitations applies. At issue is when the claim accrued.

The contractual limitation provision specifies, “one year after the cause of action has occurred” (emphasis added), not “accrued.” Plaintiff suggests that the meaning of “occurred” presents a question of fact for resolution at trial. We disagree. “Occurrence” and “accrual” are virtual synonyms for this purpose. Although one could suggest that a cause of action occurs

when it is commenced, such a reading would be nonsensical in this instance; the contract could hardly be read to provide that no cause of action may be brought more than a year after the cause of action was brought. Instead, “occurred” must mean when a claim arising from the contract has come into existence, or accrued.

“A claim accrues, for purposes of the statute of limitations, when suit may be brought. For contract actions, the period of limitation generally begins to run on the date of the breach of the contract.” *Harris v City of Allen Park*, 193 Mich App 103, 106; 483 NW2d 434 (1992) (citations omitted).

If plaintiff’s letter, dated December 16, 2003, declaring defendant in default marks accrual of the claim, then plaintiff’s commencement of action on December 21, 2005, was untimely. But plaintiff argues that defendant’s refusal to reimburse the expenses connected with obtaining another service to do the work defendant was originally expected to perform, which plaintiff dates to November 15, 2005, constituted a separate violation of a separate contractual provision, itself causing the period of limitations to start anew.

Plaintiff notes that defendant’s duty to compensate it for obtaining cover in the event of defendant’s breach is separately spelled out, as is language keeping all contractual provisions in force even in the event of default. Plaintiff thus points out that defendant was not only contractually obliged to provide certain service, but was also obliged to compensate plaintiff for expenses incurred in obtaining cover for defendant’s failure in that regard. What is in dispute is whether plaintiff could commence action over defendant’s refusal to provide that compensation more than a year after plaintiff terminated the contract in the first instance.

Plaintiff relies on the general rule of contract law that “the failure of a distinct part of a contract does not void valid, severable provisions.” *Samuel D Begola Services, Inc v Wild Bros*, 210 Mich App 636, 641; 534 NW2d 217 (1995). However, if that general rule underscores the existence of a contractual obligation to compensate plaintiff for its resort to an alternative service, it does not necessarily support the assertion that defendant’s refusal in this regard triggered a separate one-year limitation period.

Failure to make payments under an installment contract causes the applicable period of limitations to run anew from each missed payment. *Sparta State Bank v Covell*, 197 Mich App 584, 587; 495 NW2d 817 (1992). However, the special treatment of installment contracts is statutory in nature. *Id.*, citing MCL 600.5836.

The contractual provision obligating defendant to compensate plaintiff for expenses attendant to its breach is not a contractual term wholly independent of the obligation to complete the main purpose of the contract, but one closely related to, indeed derivative of, that obligation. That provision is simply an expression of the common-law principle that damages for breaching a contract include the costs incurred in securing elsewhere what the breaching part has failed to deliver. See *Farm Credit Services Of Michigan’s Heartland, PCA v Weldon*, 232 Mich App 662, 679; 591 NW2d 438 (1998); Ferrey, *Inverting choice of law in the wired universe*, 45 Wm & Mary L Rev 1839, 1952-1953 (2004). As the trial court noted, plaintiff here attempts to enforce a remedy that became actionable at the moment of the breach.

Plaintiff protests that the amounts required to induce an alternative service to do the work involved were not known until after those transactions were completed. But the law does not require, or necessarily permit waiting for, all compensable expenses to be incurred before a suit to recover them is commenced.¹ Plaintiff could have sought satisfaction for anticipated costs of obtaining cover at the moment that plaintiff declared defendant in default.

Because plaintiff's claim accrued, or "occurred," upon plaintiff's declaration that defendant was in breach of their agreement, and termination of it, the trial court correctly granted defendant summary disposition on the ground that plaintiff's action was untimely.

Affirmed.

/s/ Alton T. Davis
/s/ David H. Sawyer
/s/ Bill Schuette

¹ For example, personal injury judgments involving future pain and suffering, or lost wages, are determined as best the factfinder may in timely lawsuits.