

IN THE COURT OF COMMON PLEAS OF THE STATE OF DELWARE
IN AND FOR NEW CASTLE COUNTY

DELAWARE HOMES AND)
RENOVATIONS, INC.)
A Delaware Corporation,)
)
Plaintiff,)
)
v.)
)
NEW CASTLE COUNTY)
DEPARTMENT OF LAND USE,)
)
Defendant/Third Party Plaintiffs,)
)
v.)
)
RONALD L. BETTS,)
CECILIA A. BETTS, and)
KEVIN HAYDEN,)
)
Third-Party Defendants.)

C. A. No.: 05-03-449
Arbitration Case

Submitted: September 4, 2007
Decided: September 27, 2007

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ORDER
ON THIRD-PARTY DEFENDANT KEVIN HAYDEN'S
MOTION FOR SUMMARY JUDGMENT

Third-Party Defendant Kevin Hayden, (hereinafter “Hayden”), brings this Motion for Summary Judgment pursuant to Court of Common Pleas *Civil Rule 56*, to dismiss New Castle County Department of Land Use’s (hereinafter “the County”) third party claim against him.

The procedural history of these proceedings adopted from the County’s answering brief indicates on March 1, 2006, Plaintiff, Delaware Homes and Renovations (hereinafter “Homes”) filed an amended Complaint against Defendant/Third Party Plaintiff, New Castle County Department of Land Use to recover funds paid by Homes to County as sewer impact fees, which were later refunded to Third Party Defendants, Ronald L. Betts, Cecilia A. Betts (hereinafter “Betts”), and Kevin Hayden (hereinafter “Hayden”), as record owners of the property for which the impact fees were originally assessed.

On or about September 28, 2006, County filed an Answer to the Amended complaint and County filed a Third Party Complaint, against “Betts” and “Hayden”. On March 27, 2007 Hayden filed a Motion for Summary Judgment contending that the refund was appropriately refunded to the correct party and that the County’s claim was time barred. On April 3, 2007, Homes filed a response to Hayden’s motion arguing Section 40.14.260 of the UDC does not apply however, taking no position on the granting or denial of the Motion. On May 3, 2007 County filed a response to Hayden’s Motion for Summary Judgment arguing that the claim against Hayden was not time barred however, requesting the granting of Hayden’s Motion for Summary Judgment on the grounds that the payment was properly paid pursuant to law.

On May 5, 2007, oral argument was presented and the Court ordered briefing. On July 5, 2007, Hayden filed an opening brief in support of his Motion for Summary Judgment. On August 3, the County filed its Answering Brief, which argues that the refund was paid properly pursuant to the Code provisions, but denied that its claim against the third-party is time-barred. Homes did not file a brief, but has communicated through Hayden's counsel that it does not oppose the motion, and Hayden did not file a reply brief. On September 21, 2007, Homes forwarded a letter to the Court where it continued to maintain its position not opposing Hayden's motion, but argues that the Code provision *UDC § 40.14.260* upon which the County relies is not applicable to these proceedings.

FACTS

The relevant facts in this matter revolve around sewer impact fees Plaintiff, Homes paid to the County in order to receive Certificates of Occupancy for two properties located in Middletown, Delaware. When Plaintiff paid the fees, the Homes were under contract for purchase. Hayden had contracted to purchase one property, and the other was under contract with Third Party Defendants Ronald Betts and Cecilia Betts.

After Homes paid the fees to the County and sold the properties to Hayden and Betts, New Castle County determined that a refund was proper. The County notified the then current landowners Hayden and Betts that a refund for the fees was available; the landowners thereafter applied for and received the refund. Plaintiff instituted this action claiming that New Castle County erroneously paid the refund to the current homeowners and seeks to recover payment from the County. The County contends that it correctly

paid the refund in accordance with New Castle County Code Section 40.14.260(d), and joined Third-Party Defendants Hayden and Betts for indemnification, if it was found liable for payment to the wrong parties.

Third-Party Defendant, Kevin Hayden, now brings his Motion for Summary Judgment, seeking dismissal of the Third Party complaint filed against him by New Castle County. He argues that; (1) the refund was both appropriate and refunded to the correct party [in accordance with New Castle County Code Section 40.14.260], and (2) the County's claim is time-barred because the refund was made on July 31, 2002 and this action was not filed by the County until September 29, 2006 which is outside of the three-year statute of limitations required by Delaware law for recovery of personal chattels. (*10 Del. C. § 8106*)

ANALYSIS

In order to prevail on a Motion for Summary Judgment, the moving party must prove that there are no genuine issues as to any material fact and that it is entitled to judgment as a matter of law. *Browning-Ferris, Inc. v. Rockford Enterprises, Inc.* 642 A.2d 820, 823 (Del. Super. 1993). In reviewing the record, the Court must review all facts and all reasonable inferences in the light most favorable to the non-moving party. *Stein v. Griffith*, 2002 WL 32072578 at 1 (Del. Com. Pl. Dec. 12, 2002).

Third-Party Defendant Hayden moves for dismissal of the Third-Party complaint based upon the statute of limitations found in *10 Del.C. §8106*. This code provision bars actions for recovery of personal chattel after three years accrues from the cause of action. Hayden's reasoning is that the above-referenced statute section governs these claims

because the refunds issued by the County are personal chattels. Because the refund was issued to Hayden in 2002, and New Castle County did not file the Third-Party Complaint until September 29, 2006, Hayden contends that this action is time-barred and should be dismissed.

New Castle County argues, on the other hand, that although the general rule according to the statute, is that the statute of limitations begins to run three years after the cause of action arises, an exception applies when an action commences against a third party based upon indemnification. In those matters, Delaware follows the rule as announced in *Chesapeake Utilities Corp v. Chesapeake and Potomac Tel. Co. of Maryland*, 401 A.2d 101, 102 (Del.Super. 1979):

“The general rule is that a claim for indemnity based on tort does not accrue, and the limitation period does not begin to run, at the time of injury. Instead, the claim accrues and the statute begins to run, only when the cause of action for indemnity arises, or the indemnitee’s liability is fixed and discharged. The determining factor is the point at which the indemnitee suffers loss or damage through payment of a claim after judgment or settlement.”

According to the reasoning presented in *Chesapeake*, if a complaint is filed against a Third Party-Defendant based on a claim for indemnification, the statute cannot begin to run until the Third Party Plaintiff suffered some damage by paying a settlement or judgment in the matter. The effect of this rule in the instant case would be that the statute of limitations has not even begun to run because no judgment has been entered by any Court on these claims.

I am inclined to agree with the County’s argument with regards to the statute of limitations. The indemnification exception is applicable because the complaint filed by the County against Third-Party Defendant Hayden is for the purpose of indemnification in the event Homes were to receive a judgment against the County. Hayden’s analysis

lacks merit because it fails to recognize the indemnification exception to the statute, and is therefore too narrow in scope.

Hayden's first argument but addressed here involves the construction and applicability of the New Castle County statute regarding refunding fees. The relevant portion of the code section is 40.14.260(d), which states in part:

"If any fees collected during any fiscal year are not expended or encumbered by contract within the ten (10) fiscal years immediately following the fiscal year of payment for sewer...the Manager of the Department shall mail a notice to all then current land owners. The notice shall advise that the owner of the address (for which the impact fee had been paid) is entitled to a refund thereof." (Emphasis added).

Because Plaintiff paid the fees to the County, it alleged it is entitled to receive the refund, and reasons that the above-referenced code section does not apply. Plaintiff's position is that it was erroneously required to pay the impact fees and once collected, the County returned the fees to the wrong person. Thus, it is Plaintiff's claim that the fees were never required to be collected and the impact issue is not relevant.

Hayden argues the County collected the fees pursuant to New Castle County Code Southern Sewer Service Area (SSSA). To fund the SSSA, the County enacted a Sewer Impact Fee in Chapter 40 of the New Castle County Code, commonly referred to as the Unified Development Code "(UDC)". Therefore, the refund payment pursuant to Section 40.14.260(d) was proper.

This argument misstates the position of Homes. The amended complaint alleged Homes paid the fees to the County when no impact fee was required under the New Castle County Code. This is disputed by Hayden, who argues that at the time the property was sold, the "UDC" required the impact fees to be paid. Further, Hayden argues that the fee paid by Homes was passed on to the purchaser at the time of

settlement. Therefore, he reasons that equity requires that the homeowner be entitled to the refund.

Because there are several issues of material fact which include, the basis for the fee payment, whether it was passed on to the purchaser, and the application of the UDC, a motion for summary judgment is not appropriate at this stage of the proceeding.

For the foregoing reasons, Third-Party Defendant Kevin Hayden's Motion for Summary Judgment is hereby DENIED.

SO ORDERED this 27th day of September, 2007

Alex J. Smalls
Chief Judge.