

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

BANK OF AMERICA, N.A.,)	
)	
Plaintiff,)	
)	
v.)	C.A. No. 2005-10-400
)	
JAMES TROTH,)	
)	
Defendant.)	

Submitted: January 3, 2007
Decided: January 18, 2007

James Troth
327 Walden Road
Wilmington, DE 19803
Defendant, Pro Se

Stephen P. Doughty, Esquire
Lyons, Doughty & Veldhuis, P.C.
15 Ashley Place, Suite 2B
Wilmington, DE 19804
Attorneys for Plaintiff

ORDER

In the pending motion before the Court, defendant, James Troth (hereinafter “Troth”) moves to dismiss the proceedings on the basis of *10 Del. C. § 8106* alleging this action is time barred because it was brought after the three year statute of limitations. Plaintiff in this action seeks to recover the sum of \$7,311.22, with any unpaid interest on the basis of an unpaid debt resulting from a line of credit which the defendant allegedly obtained from plaintiff.

Troth argues that the pending action should be dismissed on the basis of *§ 8106* because the last transaction action on the account was September 11, 2002 and this

proceeding was not filed until October 24, 2005, which is beyond the three-year statute of limitations. Defendant has submitted as part of this motion an account statement which indicates a payment due on November 4, 2002. That statement indicates a minimum payment due of \$226.71, which includes a late payment fee and over credit limit surcharges.

Plaintiff agrees that the statute of limitation set forth in § 8106 has application to these proceedings. However, plaintiff argues that the statute of limitations does accrue until there has been a default on the agreement between the parties. In *Kaplan v. Jackson*, Del. Super., 1994 WL 45429 (1994), the Delaware Superior Court held that a cause of action for breach contract accrues at the time of the breach. If the Court finds a contract continuous in nature, Delaware statute of limitations does not typically begin to run until the termination of the entire contract.

The documents submitted by plaintiff indicate that the amount due \$5,212.50 was due on November 4, 2002. Therefore, assuming that the breach occurs on the date after the amount was due for failure to make payment, then plaintiff would have three years from November 5, 2002 to bring an action before it would be time barred by § 8106. This action was filed on October 4, 2005, which is less than three years from November 5, 2002. Accordingly, it is within the three year period prescribed by statute.

Because the action was filed before three years, the defendant's motion to dismiss on the basis that it is time barred is hereby Denied. The Clerk will schedule the matter for pretrial conference.

SO ORDERED this 18th day of January, 2007

Alex J. Smalls
Chief Judge

Troth2-ORD Jan 07