

Commonwealth Of Kentucky

Court Of Appeals

NO. 1998-CA-001856-MR

COBLIN, PORTER &
ASSOCIATES, ARCHITECTS

APPELLANT

v. APPEAL FROM FRANKLIN CIRCUIT COURT
HONORABLE ROGER CRITTENDEN, JUDGE
ACTION NO. 97-CI-00532

BOARD OF EDUCATION
OF FRANKLIN COUNTY, KENTUCKY

APPELLEE

AND: NO. 1998-CA-001943-MR

BOARD OF EDUCATION OF
FRANKLIN COUNTY, KENTUCKY

CROSS-APPELLANT

v. CROSS-APPEAL FROM FRANKLIN CIRCUIT COURT
HONORABLE ROGER CRITTENDEN, JUDGE
ACTION NO. 97-CI-00532

COBLIN, PORTER AND ASSOCIATES,
ARCHITECTS;
ALLIANCE CORPORATION; AND
RIVER CITY DEVELOPMENT CORPORATION

CROSS-APPELLEES

OPINION
VACATING IN PART AND REVERSING AND REMANDING IN PART
** **

BEFORE: EMBERTON, GUIDUGLI AND SCHRODER, JUDGES.

GUIDUGLI, JUDGE: This is an appeal by Coblin, Porter & Associates
(CPA) from an order of the Franklin Circuit Court entered July 1,

1998, denying its motion for summary judgment based upon the statute of limitations. In addition, the Appellee, Board of Education of Franklin County, Kentucky (the Board), cross-appeals from the order of the Franklin Circuit Court entered July 1, 1998, denying its motion for partial summary judgment and declaratory relief and requiring the Board to submit to binding arbitration. We vacate in part and reverse and remand in part.

The facts of the case are not in dispute. The Board constructed Western Hills High School (Western), which included the school building and gymnasium in the late 1970's and early 1980's. CPA did the design work for both the school and the gymnasium. The Board has had full use of the school and gymnasium since 1982. On or about July 1, 1995, the Board entered into a Management Agreement with Marriott Management Services Corporation (Marriott), whereby Marriott would undertake the responsibilities of managing the facilities owned by the Board in Franklin County. Robert Joseph Barley (Barley) was named Director of maintenance for Marriott pursuant to the agreement. Barley reported to the Board through Assistant Superintendent Joe McCorkle (McCorkle), who had been Assistant Superintendent in charge of Maintenance for the Board for seventeen years.

On March 13, 1996, Barley observed structural damage in the gymnasium walls of Western. Barley testified during his deposition that he observed the conduit cracking outwards in the walls around the gymnasium at Western. He further noted that the whole section of block wall had moved one-half inch outside the

building and shattered. Barley prepared a memorandum to McCorkle dated March 15, 1996, regarding the structural damage he observed at Western, which reads in pertinent part:

This is to inform you that on Wednesday, March 13, 1996, I observed some deterioration in the walls of the gym at Western Hills High School that I believe to be structural damage. There are six to seven blocks on the second tier level that appear to be cracked or crushed. The structural bars themselves are bending in and out. I believe it to be more that freeze and throw [sic]. I suggest that we have a certified engineer look at it. Please let me know who you would like for me to contact.

McCorkle confirmed during his deposition that he had received the memorandum from Barley concerning the structural damage at the Western gymnasium. He further stated that he was aware that Barley had performed some emergency remedial repairs to the gymnasium walls between March 13, 1996 and March 29, 1996, because of safety issues with regard to the students. The Board "officially" met on April 3, 1996, and discussed the issue of structural damage at the Western gymnasium.

The Board filed the lawsuit in question on March 31, 1997. CPA moved for summary judgment based upon the one-year statute of limitations relating to professional services found in KRS 413.245. The trial court ruled that the filing was timely in that the statute of limitations had not began to run until the Board "officially" met on April 3, 1996. This appeal followed. Other necessary facts will be referred to as needed.

Initially, we must note that under CR 56.03 the denial of a motion for summary judgment is not generally appealable because of its interlocutory nature. Transportation Cabinet,

Bureau of Highways, Commonwealth of Ky. V. Leneave, Ky. App., 751 S.W.2d (1988). However, an exception to the general rule exists where: "(1) the facts are not in dispute, (2) the only basis of the ruling is a matter of law, (3) there is denial of the motion, and (4) there is an entry of a final judgment with an appeal therefrom." Id. 37. This exception applies to the case sub judice. Both parties admits that the facts are not in dispute. The trial court denied a motion for summary judgment, which was based solely on a matter of law. Finally, the trial court entered a final judgment denying the motion for summary judgment from which CPA appealed.

CPA's sole argument on appeal is that the one-year statute of limitations for professional services found at KRS 413.245 began to run on March 15, 1996, the date of the memorandum notifying McCorkle of the structural damage at Western. Thus CPA contends the Board's lawsuit filed on March 31, 1997, is time barred. We agree. The purpose of any statute of limitations period is to restrict the time period, otherwise unlimited, in which a lawsuit may be filed. Bowling v. Commonwealth of Ky., Ky., 964 S.W.2d 803 (1998). The statute of limitations period for professional services is found at KRS 413.245, which reads:

Notwithstanding any other prescribed limitations of actions which might otherwise appear applicable, except those provided in KRS 413.140, a civil action, whether brought in tort or contract, arising out of any act or omission in rendering or failing to render, professional services for others shall be brought within one (1) year from the date of the occurrence or from the date when the cause of action was, or reasonably should

have been, discovered by the party injured.
Time shall not commence against a party under
legal disability until removal of the
disability.

"Professional services" are defined by KRS 413,243 as "any service rendered in a profession required to be licensed, administered and regulated as professions in the Commonwealth of Kentucky..." An architect is a professional within the meaning of this statute. See Old Mason's Home of Kentucky, Inc., v. Mitchell, Ky. App., 892 S.W.2d 304 (1995).

CPA argues that the one (1) year statute of limitations period began to run on March 15, 1996, when Barley, Director of Maintenance for Marriott, the firm contractually responsible for managing Western, notified McCorkle, Assistant Superintendent in charge of Maintenance for the Board, by memorandum of the structural damage at the Western gymnasium. The Board, however, argues that it, the "party injured", was not unaware of the situation until April 3, 1996, when the Board "officially" met and discussed the structural damage at Western gymnasium. Therefore, the Board argues the statute of limitations period did not begin to run until April 3, 1996, and, thus, its filing was timely.

This appears to be an issue of first impression in the Commonwealth. Neither party has cited to any statute or case-law directly on point and our research has not produced any direct authority that clearly answers the question at bar: did the statute of limitations begin to run when McCorkle was notified of the structural damage or did the statute of limitations begin to run when the Board officially convened and discussed the

structural damage. However, we believe that agency/principal rules apply to this situation. Based upon agency rules the statute of limitations commenced on March 15, 1996, when McCorkle became aware of the structural damage at the Western gymnasium.

As Assistant Superintendent in charge of Maintenance for the Board, McCorkle was the Board's agent in charge of matters relating to maintenance. "It is well settled that the principal is chargeable with, and bound by, the knowledge of or notice to his agent received while the agent is acting as such within the scope of his authority and in reference to a matter over which his authority extends." Brown v. Physicians Mut. Ins. Co., Ky. App., 679 S.W.2d 836 (1984); United Fuel Gas Co. v. Jude, Ky., 355 S.W.2d 664 (1962). There is no doubt that the structural damage at the Western gymnasium was a matter over which McCorkle's authority extended. Further, there is no question that McCorkle was acting within his scope of authority when he received the memorandum from Barley notifying him of the situation at the Western gymnasium. Therefore, the party injured, the Board, is charged with the knowledge of the structural damage that its agent, McCorkle, received on March 15, 1996.

The Board argues that it is not bound by the knowledge of its agent because individual action by the board members is ineffective to bind the Board. The Board cites supporting case authority for this contention. However, the Board misunderstands the central issue in this appeal, which is not action but notice. The action of any of the board members and its power to bind the

Board is not in dispute, but rather the knowledge of the Board's agent and the Board's constructive notice of the structural damage is a key factor. The Board's argument in this regard is thus misguided. The Board further argues that the statute of limitations must be strictly construed in favor of the sovereign where the government is plaintiff and refers us to general language contained in Corpus Juris Secundum and American Jurisprudence Second to support this argument. However, without citing specific, controlling authority, we find this argument unpersuasive.

The discovery rule contained in KRS 413.245 commences the running of the statute of limitations at such time as the injury is discovered. "The 'discovery rule' as applied to civil actions filed in a court of law, tolls the running of the statute of limitations in situations where the cause of action is not reasonably discoverable until the plaintiff knows, or in the exercise of reasonable care should know, that the injury has occurred." Gray v. Comm., . Trans. Cabinet, Dept. Of Highways, Ky. App., 973 S.W.2d 61 (1997) (citations omitted). We find that the Board became constructively aware of the structural damage at the Western gymnasium through its agent in charge of maintenance on March 15, 1996. Therefore, the lawsuit filed by the Board on March 31, 1997, is time barred.

We note that the Board cross-appealed in this lawsuit based upon the trial court's decision to enforce the arbitration clause contained in the contract between it and CPA. However, when the statute of limitations has run, the trial court lacks

jurisdiction to hear that matter. Bluegrass Concrete Construction Company, Inc., v. Com., Ky. App., 664 S.W.2d 936 (1983). As such, any decision rendered by the trial court in this matter is vacated. Moreover, because we find that this lawsuit is time barred, the issue raised on the cross-appeal is moot.

For the forgoing reasons, we reverse the decision of the trial court on the issue of the statute of limitations, vacate its decision to enforce the arbitration clause, and remand this case to the trial court with instructions to dismiss the action because it was filed outside the applicable statute of limitations period.

ALL CONCUR.

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