STATE OF MICHIGAN

COURT OF APPEALS

ROBERT R. GRINZINGER,

Plaintiff-Appellee,

v

ISABELLA COUNTY,

Defendant-Appellant.

UNPUBLISHED
December 18, 1998

No. 201589
Isabella Circuit Court
LC No. 96-009320 CK

Before: Cavanagh, P.J., and Markman and Smolenski, JJ.

PER CURIAM.

In this case involving claims for breach of contract and age discrimination, defendant appeals by leave granted the order denying its motion for summary disposition. We reverse.

Defendant raises several grounds for its argument that the trial court erred in denying summary disposition of plaintiff's claim that defendant breached an agreement to purchase plaintiff's service credits from his previous employer. We will first address defendant's contention that this claim is barred by the statute of limitations.

Both parties agree that the applicable period of limitation is the six-year period found in MCL 600.5807(8); MSA 27A.5807(8), which provides as follows:

> No person may bring or maintain any action to recover damages or sums due for breach of contract, or to enforce the specific performance of any contract unless, after the claim first accrued to himself . . . he commences the action within the periods of time prescribed by this section.
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> * * *
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> (8) The period of limitations is 6 years for all other actions to recover damages or sums due for breach of contract.

Rather, the disputed issue in this case is when did plaintiff's breach of contract claim accrue. In general, a claim accrues when suit may be brought. *Harris v Allen Park*, 193 Mich App 103, 106; 483 NW2d 434 (1992). With respect to contract actions, the period of limitations begins to run on the date of the contract breach. *Id*.

In the instant case, plaintiff testified at his deposition that defendant agreed in November, 1968, to purchase his retirement credits from his former employer. Plaintiff testified that before the transfer could be accomplished both defendant and his prior employer, a city, had to pass certain legislation known as "Act 88," and that both defendant and the city had passed this legislation before plaintiff left the city's employ and began his employment with defendant sometime in December, 1968. Plaintiff testified that "I figured I was all set at that point." Plaintiff testified that in early 1969 an audit report revealed that the transfer of his service credit from the city to defendant had not occurred. Plaintiff testified that before the audit report he had not known that the transfer had not occurred because "I figured it was done." Plaintiff testified that shortly thereafter he appeared before defendant's newly formed board of commissioners and was told by one of the commissioners that the board did not have to do "'what the old board agreed to do.'" Assuming that plaintiff had an enforceable contract with defendant whereby the county agreed to purchase plaintiff's service credits with the city, the undisputed facts reveal that plaintiff learned no later than sometime in 1969 that the county had not purchased and did not intend to purchase plaintiff's prior service credits. Because plaintiff did not file suit until approximately twenty-seven years later, we conclude that his breach of contract claim is barred by the statute of limitations. Accordingly, we conclude that the trial court erred in failing to grant defendant's motion for summary disposition of plaintiff's breach of contract claim pursuant to MCR 2.116(C)(7). *Patterson v Kleiman*, 447 Mich 429, 431-435; 526 NW2d 879 (1994); *Smith v YMCA of Benton Harbor/St Joseph*, 216 Mich App 552, 554; 550 NW2d 262 (1996). In light of our disposition of this issue, we decline to address defendant's remaining contentions with respect to plaintiff's breach of contract claim.

Next, defendant argues that the trial court erred in denying defendant's motion for summary disposition of plaintiff's age discrimination claim. Specifically, defendant claims that plaintiff has failed to establish a prima facie case of either disparate treatment or disparate impact. We agree.

To establish a prima facie case of age discrimination under the disparate treatment theory, a plaintiff must show "that he was a member of a protected class and that he was treated differently than persons of a different class for the same of similar conduct." *Plieth v St Raymond Church*, 210 Mich App 568, 572; 534 NW2d 164 (1995). In this case, plaintiff failed to set forth any evidence indicating that defendant purchased the service credits of any other employees who were vested in another retirement plan. Thus, plaintiff failed to set forth a prima facie case of age discrimination under the disparate treatment theory because plaintiff failed to produce any evidence that he was treated differently than persons in a different class who were *similarly situated* to plaintiff. *Id*.

To establish a prima facie case under the disparate impact theory, a plaintiff must show that he was a member of a protected class and that a facially neutral employment practice burdened a protected class more harshly than others. *Roberson v Occupational Health Centers Of America, Inc*, 220 Mich App 322, 329-330; 559 NW2d 86 (1996). In this case, employees who are much

younger than plaintiff but who have also become vested in another retirement plan are impacted by defendant's resolution 94-03. Thus, because plaintiff has failed to establish that defendant's resolution 94-03 burdens older employees more harshly than younger employees, we conclude that plaintiff failed to assert a prima facie case of age discrimination under the disparate impact theory. *Id.* See also *Koester v Novi*, 458 Mich 1, 19-20; 580 NW2d 835 (1998); *Plieth, supra*.

Accordingly, we conclude that the trial court erred in failing to grant defendant's motion for summary disposition of plaintiff's age discrimination claims pursuant to MCR 2.116(C)(10). *Plieth, supra* at 571.

Reversed.

/s/ Mark J. Cavanagh
/s/ Stephen J. Markman
/s/ Michael R. Smolenski