STATE OF MICHIGAN

COURT OF APPEALS

ARTHUR KOBIERZYNSKI,

Plaintiff-Appellant,

v

GENERAL RETIREMENT SYSTEM and GRS GRAND HOTEL CORPORATION,

Defendants-Appellees.

UNPUBLISHED
January 28, 2000

No. 215690
Grand Traverse Circuit Court
LC No. 97-016402-CK

Before: Markey, P.J., and Murphy and R. B. Burns*, JJ.

PER CURIAM.

Plaintiff appeals as of right from the trial court order that granted summary disposition to defendants pursuant to MCR 2.116(C)(7), because the applicable statute of limitations' period had expired. Plaintiff was one of the two founding general partners in Grand Traverse Development Company which in turn owned defendant GRS Grand Hotel Corporation. Defendant GRS Grand Hotel Corporation is currently owned by defendant General Retirement System. Plaintiff's lawsuit involves contract issues arising from his former interest in Grand Traverse Development Company and defendant GRS Grand Hotel Corporation and the acquisition of the two entities by defendant General Retirement System.

In 1982, General Retirement System purchased a twenty percent limited partnership interest in the Grand Traverse Development Company. In 1987, plaintiff negotiated the sale of his limited partnership interest back to the company. The settlement agreement, dated July 13, 1987, called for the payment of $205,000 to plaintiff over the next three years, use of the Grand Traverse resort so long as the Grand Traverse Development Company owned the property, and fifty percent of any proceeds over $205,000 for the sale of plaintiff's partnership interest between 1987 and July 13, 1992.

On February 24, 1988, defendants, through the acquisition and consolidation of previously made loans and mortgages and the advance of additional money to Grand Traverse Development Company, increased their interest in the Grand Traverse Development Company from twenty percent to

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* Former Court of Appeals judge, sitting on the Court of Appeals by assignment.

sixty percent. Plaintiff contends that this action resulted in a breach of the July 13, 1987 agreement and requires payment to him for the sale of his partnership interest to defendants.

Plaintiff first came to believe that defendants purchased his partnership interest in the late 1980's. In furtherance of this belief, plaintiff's counsel wrote defendants on August 28, 1990, May 10, 1991, and April 10, 1992, asking for documents regarding their business interest in Grand Traverse Development Company. In the April 1992 letter, plaintiff's attorney stated that plaintiff "has been informed that [defendants] purchased a partnership interest in Grand Traverse Development Company Limited Partnership. If that is true, [plaintiff] may be owed money pursuant to the terms of the Settlement Agreement attached."

Two years later, on February 10, 1994, plaintiff's counsel again wrote defendants asserting his belief that the 1987 agreement was breached. "My client believes that [defendants] acquired his former partnership interest for $1,800,000 without compensating him in violation of his agreement with Paul Nine and Grand Traverse Development Company dated July 13, 1987. . . . [Plaintiff] would be willing to negotiate a resolution of his claims out of court. If we do not hear from you by February 28, 1994 I have been instructed by my client to file a damage action against [defendants]."

Plaintiff filed this lawsuit on August 11, 1997. The circuit court granted defendants' motion for summary disposition and dismissed plaintiff's complaint, finding that the six-year statute of limitations for breach of contract expired in February 1994, six years following the alleged breach in February 1988 (i.e., defendants' increased interest in the development company without payment to plaintiff). The court further ruled that plaintiff's fraudulent concealment claim failed because more than two years passed following plaintiff's acknowledgment that he knew he could pursue a claim for breach.

This Court reviews the circuit court's grant of summary disposition de novo. *Pinckney Community Schools v Continental Casualty Co*, 213 Mich App 521, 525, 540 NW2d 748 (1995). Therefore, this Court must review the record in the same manner as the trial court to determine whether defendant was entitled to judgment as a matter of law. *Phillips v Deihm*, 213 Mich App 389, 398; 541 NW2d 566 (1995).

Plaintiff argues that the six-year statute of limitations began running on July 13, 1992, the date listed on the settlement agreement as the end of the five-year period during which a sale of plaintiff's partnership interest would require payment to him. Plaintiff further argues that the additional two years allowed for fraudulent concealment applies here and begins running when a plaintiff knows that he has a cause of action, not when he only has a hunch. We disagree.

A wronged party has six years to bring suit to recover for a breach of contract. MCL 600.5807(8); MSA 27A.5807(8). The six year period begins to run on the date the contract was breached. *Dewey v Tabor*, 226 Mich App 189, 193; 572 NW2d 715 (1997). Plaintiff identified the breach as occurring in February 1988, when defendants increased their ownership percentage in Grand Traverse Development Company from twenty percent to sixty percent. Therefore, the six-year statute of limitations requires that his claim for breach of contract be brought by February 1994. However, plaintiff's complaint was not filed until August 1997.

Plaintiff also contends that defendants fraudulently concealed the facts surrounding this cause of action when defendants refused to provide him with relevant documents which he requested in August 1990, May 1991, and April 1992. Plaintiff claims that, because he did not have access to the facts to support his claim until after discovery was commenced, the additional two year statute of limitations for fraudulent concealment should apply in this case. We disagree. MCL 600.5855; MSA 27A.5855, provides, in pertinent part:

> If a person who is or may be liable for any claim fraudulently conceals the existence of the claim . . . from the knowledge of the person entitled to sue on the claim, the action may be commenced at any time within 2 years after the person who is entitled to bring the action discovers, or should have discovered, the existence of the claim . . . .

This Court and the Michigan Supreme Court have repeatedly noted that any knowledge of a cause of action by a plaintiff takes the matter out of an issue of fraudulent concealment. *Sautter v Ney*, 365 Mich 360, 363; 112 NW2d 509 (1961); *Phinney v Perlmutter*, 222 Mich App 513, 534-537; 564 NW2d 532 (1997). It is not necessary, as plaintiff argues, that he has concrete evidence and knowledge of all the facts involved in the matter. *Lemson v General Motors*, 66 Mich App 94, 97; 238 NW2d 414 (1975). Plaintiff acknowledged that he knew of defendants' increased interest in Grand Traverse Development Company in the late 1980's and early 1990's. This is sufficient to show that he was aware of his cause of action at that time.

Moreover, plaintiff explicitly stated in his February 10, 1994, letter to defendant that he knew he had a cause of action that he would pursue if defendants did not settle with him. This letter was written more than two years before plaintiff filed his complaint. Therefore, even if plaintiff could show fraudulent concealment by defendants, his February 1994 letter illustrates his knowledge of his potential action. Therefore, upon de novo review, we find that the trial court did not err in granting summary disposition to defendants pursuant to MCR 2.116(C)(7).

Affirmed.

/s/ Jane E. Markey
/s/ William B. Murphy
/s/ Robert B. Burns