STATE OF MICHIGAN

COURT OF APPEALS

COMMERCIAL COIN LAUNDRY SYSTEMS, Plaintiff-Appellant,	UNPUBLISHED December 20, 2005
v	No. 256026 Kent Circuit Court
MICHAEL A. McGRAW, Defendant-Appellee.	LC No. 03-003018-CZ

Before: Whitbeck, C.J., and Bandstra and Markey, JJ.

PER CURIAM.

In this breach of contract action, plaintiff appeals by right from an order granting defendant's motion for summary disposition pursuant to MCR 2.116(C)(7). The parties' contract provided plaintiff with the exclusive rights to provide laundry machines in an apartment complex owned in part by defendant. The trial court ruled that plaintiff's action for breach of contract was untimely under the six-year statute of limitations for contracts because the effective date of the parties' contract was April 23, 1992, and plaintiff's complaint was not filed until April 2, 2003. We affirm.

This Court reviews de novo a trial court's grant of summary disposition based on a statute of limitations. *Mayberry v Gen Orthopedics, PC*, 474 Mich 1, 5; 704 NW2d 69 (2005).

The lease at issue in this case provides:

> Lessor [defendant] covenants and agrees that Lessor will not install or operate, nor permit any person, firm, or corporation (other than lessee) to install or operate, in said premises, or elsewhere in said building(s), any laundry equipment, at any time during the period that this Lease shall continue in full force and effect. [Commercial lease, ¶ 5.]

At the time of contract, there were approximately 125 washer/dryer units already in the complex that were owned by defendant. Plaintiff argues that because the specific language of paragraph five prohibits defendant from allowing laundry machines not owned by plaintiff to be "operate[d]" by other persons, each time a machine not owned by plaintiff was operated in the complex a separate breach occurred and a subsequent claim accrued. We disagree.

The limitations period to recover damages for breach of contract is six years. MCL 600.5807(8). The limitations period begins to run when the claim accrues. A legal claim generally accrues "at the time the wrong upon which the claim is based was done regardless of the time when damage results." MCL 600.5827. Similarly, a breach of contract action accrues on the date of the breach, not the date the breach is discovered. *Michigan Millers Mut Ins Co v West Detroit Bldg Co, Inc*, 196 Mich App 367, 372 n 1; 494 NW2d 1 (1992).

In support of its claim that a continual breach of the contract occurred each time a non-Commercial coin laundry machine was operated, plaintiff relies on this Court's ruling in *HJ Tucker and Associates, Inc v Allied Chucker and Engineering Co*, 234 Mich App 550; 595 NW2d 176 (1999), and *Harris v City of Allen Park*, 193 Mich App 103; 483 NW2d 434 (1992). In *HJ Tucker, supra* at 562, this Court ruled that "claims for payments [for unpaid commissions] due under the contract between the parties are analogous to claims for payments under an installment contract," and under installment contracts, "'[e]very periodic payment made that is alleged to be less than the amount due . . . constitutes a continuing breach of contract and the limitation period runs from the due date of each payment." *Id.* at 563, quoting *Harris, supra* at 107. Similarly, in *Harris, supra* at 107, this Court stated that "[p]ension benefits are similar to installment contracts and the period of limitation runs from the date each installment in due."

The present case involves neither a pension agreement nor a contract resembling an installment contract. The parties' lease contract simply does not contemplate separate installment payments where a breach could arise from a failed performance or payment on a separate installment. The parties contract was a simple lease agreement with rent coming from a percentage of revenue generated by the machines. As our Supreme Court noted, an installment contract is "'[a] contract requiring or authorizing the delivery of goods in separate lots, *or payments in separate increments, to be separately accepted*.'" *Twichel v MIC Gen Ins Corp,* 469 Mich 524, 532 n 5; 676 NW2d 616 (2004), quoting Black's Law Dictionary (7th ed). In this case, there was no separate acceptance or separate installment procedures within the parties lease agreement. Therefore, we find that plaintiff's breach of contract claim accrued on the date defendant admitted it first breached the agreement: April 23, 1992.[1] Plaintiff's April 2, 2003 complaint was therefore untimely under the six-year statute of limitations for contract actions. MCL 600.5807(8).

Finally, plaintiff argues that the "continuing wrong" theory served to extend the period of limitations for its breach of contract action because defendant's contractual obligation not to install or permit others to operate laundry machines was a continuous contractual obligation. We disagree.

Plaintiff's argument under this issue fails to consider this Court's holding in *Blazer Foods, Inc v Restaurant Properties Inc*, 259 Mich App 241, 251; 673 NW2d 805 (2003), that the continuous wrong theory applies to a very narrow class of legal claims that simply do not include an action for a breach of contract. The *Blazer* Court stated that the doctrine of continuing wrong

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[1] Defendant does not dispute that a breach of the contract occurred when the contract was instituted because it owned laundry machines within the complex.

typically applies only to trespass, nuisance and civil rights claims. *Id.* at 247. The *Blazer* Court acknowledged that the continuing wrong theory may apply when one party continued to perform on a personal service contract and the other party refused payment. *Id.* at 250-251.

But the instant case, involving a ten-year lease agreement, clearly does not involve a personal service agreement where one party has continued its performance despite not being paid. Here, plaintiff's breach of contract claim centers around defendant's allowing some tenants to have their own washing machines in strict prohibition of the contract. Thus, plaintiff alleges that defendant failed to perform properly under the contract. The *Blazer* decision makes clear that there is no authority for applying the continuing wrong theory to the contractual dispute at issue here. *Blazer, supra* at 251 n 6. Following *Blazer,* we find the continuing wrong theory inapplicable to this type of claim.

We affirm.

/s/ William C. Whitbeck
/s/ Richard A. Bandstra
/s/ Jane E. Markey