

SUPERIOR COURT
OF THE
STATE OF DELAWARE

FERRIS W. WHARTON
JUDGE

NEW CASTLE COUNTY COURTHOUSE
WILMINGTON, DE 19801-3733

March 15, 2016

Jerzy Wirth
312 Riblett Lane
Wilmington, DE 19808

Richard L. Abbott, Esquire
Abbott Law Firm, LLC
724 Yorklyn Road, Suite 240
Hockessin, DE 19707

RE: Wirth v. Seitz, et al.
C. A. No. N14C-07-013 FWW

Upon the Plaintiff's Motion for Reargument - DENIED

Dear Mr. Wirth and Mr. Abbott:

At the conclusion of argument on Plaintiff's Motion for Reargument, the Court said that it would issue its decision on the motion along with its decision on Defendants' as yet unfiled supplemental motion for summary judgment. Having reviewed the case law after the issue came into focus at oral argument, the Court has determined that it should issue its decision today. For the following reasons, Plaintiff's Motion for Reargument is **DENIED**.

FACTUAL AND PROCEDURAL BACKGROUND

Plaintiff initiated this action against Defendants on July 7, 2014 seeking damages as a result of alleged breaches by Defendants of two factoring agreements and two promissory notes and personal guarantees.¹ Each factoring agreement was paired with a promissory note and personal guarantee executed the same day.² The first pair was executed on April 16, 2010 and the second pair was executed on July 12, 2010.³

Defendants moved for summary judgment.⁴ At oral argument on February 2, 2016 on that motion the Court *sua sponte* raised a statute of limitations question as to the April agreements. Those agreements appeared to have termination dates of April, 2011, which would put them outside of the three year statute of limitations period for bringing an action based on them.⁵ Because Plaintiff offered no argument that the agreements did not terminate in April, 2011, the Court entered partial summary judgment for Defendants and against Plaintiff on all claims related to the April, 2010 agreements.⁶

The next day, on February 3rd, Plaintiff moved for reargument.⁷ His motion referenced Paragraph 9.3 of the April factoring agreement which reads:

¹ D.I. 1.

² *Id.* The second factoring agreement, dated July 12, 2010, was not attached to the Complaint, but was produced subsequently.

³ D.I. 1 at Exs. A, B, and C. *See supra* note 2.

⁴ D.I. 36.

⁵ 11 *Del. C.* § 8106(a).

⁶ D.I. 70.

⁷ D.I. 72.

9.3 Continuing **Obligations.** In the event of any termination of this Agreement, Client shall continue to deliver Receivables information to Factor and turn over all collections to Factor as herein provided until all Obligations shall have been fully paid and satisfied, and until then this Agreement shall remain in full force and effect as to and be binding upon Client. Factor shall be entitled to retain its security interest in all existing and future Receivables and other security and collateral, as mentioned above.⁸

THE PARTIES' CONTENTIONS

Plaintiff contends this provision extends the date the factoring agreement terminates until such date as all of Defendants' obligations are satisfied in full.⁹

He seeks reargument because he contends the Court erred by failing to consider Paragraph 9.3 when it granted Defendants partial summary judgment.¹⁰

Defendants argue that the Court did not misapprehend any facts or law, or overlook any applicable legal principle or decision in granting partial summary judgment, and, therefore, Plaintiff is not entitled to relief under Superior Court Civil Rule 59(e).¹¹

DISCUSSION

Normally, the Court would not entertain an argument raised for the first time in a motion for reargument.¹² The Court will consider Plaintiff's argument in this

⁸ D.I. 1 at Ex. B.

⁹ D.I. 72

¹⁰ *Id.*

¹¹ D.I. 68.

¹² *Nieves v. All Star Title, Inc.*, 2010 WL 2977966 (Del.Super.2010).

instance, however, because the statute of limitations issue was raised by the Court at oral argument, and the Court believes Plaintiff may have been caught off guard by it.

The question before the Court is whether Paragraph 9.3 of the factoring agreement, in contractually extending the termination date of the agreement indefinitely, also extends the statute of limitations indefinitely. In other words, may the parties contractually agree to extend or waive the three year statute of limitations period of 10 *Del. C.* § 8106(a)? If they may, the Court misapprehended the terms of the factoring agreement and Plaintiff is entitled to relief. If they may not extend or waive the statute of limitations by contract, the Motion for Reargument must be denied. A review of the relevant case law makes it clear that the parties cannot do what Plaintiff argues they have done in Paragraph 9.3.

In *Shaw v. Aetna Life Insurance Company*¹³ an accident insurance policy provided for a three year statute of limitations which began 90 days after an injury. The plaintiff argued that the three year contractual limitation period applied, while the defendant contended that a shorter statutory period applied.¹⁴ The Court held that a contractual period of limitations which attempted to lengthen or extend the statutory period violates public policy.¹⁵ “Two parties contracting between

¹³ 395 A.2d 384 (Del.Super.1978).

¹⁴ *Id.* at 386.

¹⁵ *Id.*

themselves cannot agree to circumvent the law as mandated by the legislature in its attempt to protect the public interests.”¹⁶ “Where contractual provisions circumvent statutory law, the statute overrides the contract.”¹⁷ “[A] contract provision for a longer period of limitation than provided by the applicable statute would be void as against public policy.”¹⁸

Paragraph 9.3 cannot override the three year statute of limitations contained in 11 *Del. C.* § 8106(a). It is void as against public policy as determined by the legislature. Accordingly, the Court did not misapprehend any facts or law, nor did it overlook any applicable legal principle or decision when it granted partial summary judgment.

CONCLUSION

For the foregoing reasons, Plaintiff’s Motion Defendant’s Motion for Reargument is **DENIED**.

IT IS SO ORDERED.

Very truly yours,



Ferris W. Wharton, Judge

cc: Prothonotary

¹⁶ *Id.* at 387.

¹⁷ *Thayer v. Tandy Corporation*, 1987 WL 3745 (Del.1987).

¹⁸ *Bear Stearns Mortgage Funding Trust 2006-SL1 v. EMC Mortgage LLC*, 2015 WL 139731 (Del.Ch.2015) * note 17, quoting *Menefee, ex rel. Menefee v. State Farm Mut. Ins. Co.*, 1986 WL 630314 at *1 (Del. Super.1986).