

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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GRZYWA, INC.,

Plaintiff-Appellant,

v

THOMAS MEAKIN and MEAKIN &  
ASSOCIATES, INC.,

Defendants-Appellees.

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UNPUBLISHED

May 5, 2000

No. 210604

Wayne Circuit Court

LC No. 96-606879-NZ

Before: Jansen, P.J., and Hoekstra and Collins, JJ.

PER CURIAM.

Plaintiff appeals as of right from an order granting defendants' motion for summary disposition pursuant to MCR 2.116(C)(7) (claim barred by statute of limitations). We affirm in part, reverse in part, and remand for further proceedings.

Plaintiff, which operates a bar in the city of Southgate, purchased liquor liability and general liability insurance policies from defendants in March 1992. Plaintiff alleged in its complaint that it paid over \$125,000 in premiums to defendant for two to three years; however, in its answers to interrogatories, plaintiff asserted that it paid defendants \$28,993.33 in premiums from March to June 1992. Plaintiff alleged that defendant Meakin represented that he worked with Avalon Insurance Company, registered in Bermuda, which had a solid history, was pretty good about paying claims, and was considered the best in the field for providing insurance to bars. In January 1993, Avalon was instructed to stop writing business and subsequently filed for liquidation. Plaintiff alleged that it paid more than \$150,000 in costs and attorney fees to defend claims that Avalon was supposed to have insured.

On February 21, 1996, plaintiff filed a five-count complaint alleging fraud, negligent misrepresentation, innocent misrepresentation, breach of fiduciary duty, and conversion. Defendants moved for summary disposition pursuant to MCR 2.116(C)(7), arguing that, given the nature of plaintiff's allegations, the complaint was time-barred under that the applicable three-year period of limitation provided in MCL 600.5805(8); MSA 27A.5805(8). The trial court agreed and summarily dismissed plaintiff's case.

On appeal, plaintiff maintains that the general six-year limitation period set forth in MCL 600.5813; MSA 27A.5813, applies to its claims of fraud and negligent misrepresentation. We agree. The question whether a plaintiff's claim is barred by the statute of limitations is one of law for the court to decide in the absence of disputed facts. *Soloway v Oakwood Hosp Corp*, 454 Mich 214, 230; 561 NW2d 843 (1997). This Court reviews de novo the grant or denial of a motion for summary disposition. *Spiek v Dep't of Transportation*, 456 Mich 331, 337; 572 NW2d 201 (1998); *Insurance Comm'r v Aageson Thibo Agency*, 226 Mich App 336, 340; 573 NW2d 637 (1997). When reviewing a motion for summary disposition under MCR 2.116(C)(7), a court must accept as true a plaintiff's well-pleaded factual allegations, affidavits, or other documentary evidence submitted and construe them in the plaintiff's favor. *Guerra v Garratt*, 222 Mich App 285, 289; 564 NW2d 121 (1997). If no facts are in dispute and reasonable minds could not differ concerning the legal effect of those facts, whether a plaintiff's claim is barred by the statute of limitations is a question for the court as a matter of law. *Id.* However, if a material factual dispute exists in such a manner that factual development could provide a basis for recovery, summary disposition is inappropriate. *Id.*

Chapter 58 of the Revised Judicature Act, MCL 600.5801 *et seq.*; MSA 27A.5801 *et seq.*, governs the times for pursuing various causes of action. Generally, three years is the limit to "recover damages . . . for injury to a person or property." MCL 600.5805(8); MSA 27A.5805(8). However, MCL 600.5813; MSA 27A.5813 provides a six-year limitation period for all personal actions not otherwise provided for in the statutes. It is established that the applicable limitations period for fraud or misrepresentation is six years under the general six-year limitation period. See *Blue Cross and Blue Shield of Michigan v Folkema*, 174 Mich App 476, 481; 436 NW2d 670 (1988); *Fagerberg v LeBlanc*, 164 Mich App 349, 353; 416 NW2d 438 (1987), citing *Kwasny v Driessen*, 42 Mich App 442; 202 NW2d 443 (1972). The crucial question, however, is whether the general six-year limitation period applies to the allegations underlying plaintiff's fraud and misrepresentation counts.

The applicable limitation period is determined by focusing on the nature of the interest allegedly harmed. *Blue Cross and Blue Shield, supra* at 480. This determination requires a claim to be read as a whole to arrive at the gravamen of a plaintiff's grievance. *Id.* When a complaint specifically pleads all of the necessary elements of fraud, the general six-year period of limitation governing fraud actions will apply to the fraud count. *Kuebler v Equitable Life Assurance Society of the United States*, 219 Mich App 1, 6; 555 NW2d 496 (1996). The burden of establishing the bar imposed by a statute of limitations is normally on the party asserting the defense. *Id.*

To establish a cause of action for fraud or misrepresentation, a plaintiff must prove (1) that the defendant made a material representation; (2) that the representation was false; (3) that when the defendant made the representation, the defendant knew that it was false, or made it recklessly without knowledge of its truth or falsity; (4) that the defendant made it with the intent that the plaintiff would act on it; (5) that the plaintiff acted in reliance on it; and, (6) that the plaintiff suffered injury. *Eerdmans v Maki*, 226 Mich App 360, 366; 573 NW2d 329 (1997); *Kuebler, supra*.

Our review of plaintiff's complaint reveals that plaintiff specifically pleaded each of the necessary elements of fraud and misrepresentation. Under MCR 2.116(C)(7), the trial court was required to accept plaintiff's well-pleaded allegations as true, and construe them in plaintiff's favor.

*Guerra, supra*. Therefore, the general six-year period of limitation, MCL 600.5813; MSA 27A.5813, applies to plaintiff's fraud and misrepresentation claims and, accordingly, those claims are timely. Therefore, the trial court erred in dismissing plaintiff's claims of fraud and misrepresentation pursuant to MCR 2.116(C)(7).

We reject, however, plaintiff's contention that this Court should reverse the trial court's ruling summarily dismissing the case in its entirety and remand for trial. Plaintiff does not challenge the trial court's dismissal of its claims for innocent misrepresentation, breach of fiduciary duty, or conversion on appeal. Therefore, the dismissal of those claims shall stand. *Meagher v Wayne State Univ*, 222 Mich App 700, 718; 565 NW2d 401 (1997). Further, defendants' motion and the trial court's ruling were predicated on MCR 2.116(C)(7) and, thus, the trial court was required to accept all well-pleaded allegations as true. *Guerra, supra*. However, defendants are not precluded on remand from testing the factual support for plaintiff's allegations of fraud and misrepresentation in an appropriate motion for summary disposition under MCR 2.116(C)(10).

Affirmed in part, reversed in part, and remanded for further proceedings. We do not retain jurisdiction.

/s/ Kathleen Jansen

/s/ Joel P. Hoekstra

/s/ Jeffrey G. Collins