STATE OF MICHIGAN

COURT OF APPEALS

EDWARD P. MANTURUK and TECHNICAL COLD EXTRUSIONS, INC., a/k/a TCE, Plaintiffs-Appellants, v GENERAL MOTORS CORPORATION, AIDA ENGINEERING, INC., and AIDA ENGINEERING, LTD., Defendants-Appellees.	UNPUBLISHED July 14, 2000 No. 211722 Wayne Circuit Court LC No. 96-602655-CK

Before: Zahra, P.J., and Saad and Gage, JJ.

PER CURIAM.

Plaintiffs appeal as of right from the trial court's order granting defendants' motions for summary disposition pursuant to MCR 2.116(C)(7) and (C)(10). We affirm.

FACTS

Plaintiff Technical Cold Extrusions, Inc. (TCE) was a supplier to General Motors Corporation (GM) of Quad-Four engine parts known as "follower shells." TCE produced the parts on cold forming presses manufactured by defendant Aida Engineering, Ltd.[1] Plaintiff Manturuk is TCE's owner and president, and was a sales representative for Aida at all relevant times. According to plaintiffs, they created and developed a cold forming tooling process that significantly reduced the cost of manufacturing follower shells on Aida presses.

In 1984, TCE began developing cold forming tooling to be used to supply follower shells to GM's Rochester Products Division (RPD). On September 2, 1986, TCE submitted to RPD a price quotation for its production of follower shells. On November 14, 1986, RPD notified Manturuk of its intention to enter a sourcing contract for its requirements of follower shells for the 1987 GM model

[1] Defendant Aida Engineering, Ltd., is based in Japan, and defendant Aida Engineering, Inc. is its wholly owned U.S. subsidiary. We will refer to both Aida defendants generally as "Aida."

year. Thereafter, GM issued a blanket purchase order to TCE, under which GM agreed to purchase RPD's required quantity of follower shells from TCE for the model year. GM acknowledged the possibility that TCE would be granted contracts for production of follower shells for future model years. GM also retained the option to purchase plaintiffs' tooling process and indicated it was investigating the potential for developing a "Shared Technology Agreement" with TCE. Plaintiffs contend that GM promised on several subsequent occasions that it would enter a long-term supply contract with TCE and purchase plaintiffs' follower shell tooling process.

During production under the blanket purchase order, GM's demand for follower shells outpaced TCE's ability to produce the parts. As a result, in September 1987, GM entered negotiations with Aida to purchase several cold forming presses that would be used to produce follower shells in-house. It is undisputed that, by February 1988, Manturuk knew of GM's plan to install Aida presses equipped with plaintiffs' tooling process at the RPD facility. Concerned that GM's purchase of the presses direct from Aida might result in disclosure of its tooling process to TCE competitors, TCE entered a nondisclosure agreement with GM on March 21, 1988. That agreement required GM to maintain the TCE process "in the same manner in which it maintains similar information of its own" for a period of two years.

In May 1988, a dispute between plaintiffs and GM arose over GM's alleged supply of poor quality "slugs" that were the raw material used in TCE's production of follower shells. Plaintiffs contended the slugs damaged TCE's presses and, as a result, TCE was unable to produce follower shells for RPD. Several correspondences between Manturuk and GM representatives in May and June 1988 evidence a deterioration in the litigants' business relationship as a result of production problems allegedly attributed to poor quality slugs. On June 23, 1988, GM Senior Buyer John McDaniel informed Manturuk that GM had acquired two Aida presses, which were being used to produce follower shells. It is undisputed that the presses GM acquired from Aida were equipped with plaintiffs' tooling process. On June 24, 1988, McDaniel sent a letter to Manturuk, stating that GM was canceling the blanket purchase order due to TCE's failure to deliver follower shells in accordance with the order.

On June 23, 1994, plaintiffs filed the present suit. In their first-amended complaint, plaintiffs allege breach of contract, fraud, unfair competition,[2] breach of warranty and conspiracy. Defendants brought motions for summary disposition as to each of those claims. The trial court dismissed plaintiffs' breach of contract, fraud and unfair competition claims on the grounds that they are barred by the applicable statutes of limitations. The trial court further ruled that plaintiffs' claim for breach of a sales representative agreement against Aida failed based on an accord and satisfaction.[3]

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[2] As will be discussed, *infra*, plaintiffs conceded that the claims under the "unfair competition" heading in their first-amended complaint are essentially claims of misappropriation of a trade secret and unjust enrichment.

[3] Plaintiffs' breach of warranty claim against GM was dismissed per stipulation of the parties and is not at issue on this appeal. Plaintiffs also do not challenge the trial court's dismissal of their conspiracy claim or its denial of injunctive relief on appeal.

STANDARD OF REVIEW

We review a trial court's grant or denial of a motion for summary disposition de novo. *Spiek v Dep't of Transportation*, 456 Mich 331, 337; 572 NW2d 201 (1998). When considering a motion premised on MCR 2.116(C)(7), the nonmovant's well-pleaded allegations must be accepted as true and construed in the nonmovant's favor. *Dewey v Tabor*, 226 Mich App 189, 192; 572 NW2d 715 (1997). "[T]he court must consider not only the pleadings, but also any affidavits, depositions, admissions, or documentary evidence that has been filed or submitted by the parties." *Horace v City of Pontiac*, 456 Mich 744, 749; 575 NW2d 762 (1998). If no facts are in dispute, whether the claim is statutorily barred is a question of law. *Dewey, supra*. A motion for summary disposition under MCR 2.116(C)(10) tests whether there is factual support for a claim. *Spiek, supra*; *Radtke v Everett*, 442 Mich 368, 374; 501 NW2d 155 (1993). A court must consider the affidavits, pleadings, depositions, admissions or any other documentary evidence submitted in a light most favorable to the nonmoving party in deciding whether a genuine issue of material fact exists. *Ritchie-Gamester v City of Berkley*, 461 Mich 73, 76; 597 NW2d 517 (1999); *Rollert v Dep't of Civil Service*, 228 Mich App 534, 536; 579 NW2d 118 (1998). All reasonable inferences are resolved in the nonmoving party's favor. *Hampton v Waste Mgt of MI, Inc*, 236 Mich App 598, 602; 601 NW2d 172 (1999).

ANALYSIS

A. Breach of Contract

Plaintiffs first argue that the trial court erred in dismissing their several breach of contract claims on the basis that the claims were untimely filed. We disagree.

In their first-amended complaint, plaintiffs allege GM breached the blanket purchase order by failing to utilize TCE as its sole source for follower shells, by appropriating and utilizing plaintiffs' tooling process without compensating TCE, by failing to provide the specified raw materials during the period of the contract, and by failing to compensate TCE for damages to equipment due to poor quality raw material slugs. The general period of limitations for a breach of contract claim is six years. MCL 600.5807(8); MSA 27A.5807(8). Plaintiffs rely on several discussions between Manturuk and GM representatives as proof that they first became aware that GM breached the blanket purchase order on June 23, 1988. Plaintiffs claim, therefore, their June 23, 1994, complaint was timely. Significantly, a claim of breach of contract accrues on the date a party fails to perform under the contract, regardless of whether the plaintiff knows of the invasion of a legal right. *HJ Tucker & Assocs, Inc v Allied Chucker & Engineering Co*, 234 Mich App 550, 562; 595 NW2d 176 (1999); *Adams v Detroit*, 232 Mich App 701, 706; 591 NW2d 67 (1998). The claim accrues on the date of the breach, not the date the breach is discovered. *Id*. Thus, whether plaintiffs first learned of a breach on June 23, 1988, is not determinative of the present issue. Rather, the operative dates in determining when plaintiffs' breach of the purchase order claims accrued are the date GM obtained follower shells from a source other than TCE and the date TCE's equipment was damaged by the allegedly defective slugs.

Undisputed evidence establishes that GM acquired Aida presses that were equipped with plaintiffs' tooling process and installed the presses in the RPD facility. Manturuk acknowledged during

deposition that GM had acquired the presses prior to June 1988, and that he was told in June 1988 that the Aida machines purchased by GM "were making good parts." Plaintiffs alleged in their first-amended complaint: "On information and belief, about May or June 1988, GM and RPD manufacturing [sic] parts which were the subject of the Source Agreement, by using AIDA JAPAN presses equipped to use the Process." According to Manturuk's affidavits filed below, plaintiffs did not learn that GM was producing parts utilizing their tooling process until June 23, 1988. However, it is undisputed that on June 23, 1988, Manturuk was told that GM *was manufacturing* the follower shells on the Aida presses it had acquired. Therefore, GM had, in fact, manufactured the follower shells using the process at some date prior to June 23, 1988.

Plaintiffs' assertion that they did not believe GM would use the presses equipped with their tooling process prior to compensating plaintiffs does not toll the statute of limitations. The evidence introduced below establishes as a matter of law that GM obtained follower shells from a source other than TCE and allegedly appropriated and utilized plaintiffs' process on some date prior to June 23, 1988. Thus, regardless of whether plaintiffs actually knew GM had produced follower shells on the presses equipped with their process prior to June 23, 1988, or whether plaintiffs believed GM would compensate them for their process prior to using the process, plaintiffs' breach of contract claims regarding GM's in-house production of follower shells utilizing plaintiffs' process are barred by the statute of limitations. MCL 600.5807(8); MSA 27A.5807(8); *HJ Tucker & Assocs, Inc*; *Adams, supra*.[4]

We further conclude that any breach in connection with GM's provision of alleged defective raw material slugs and GM's failure to compensate TCE for damage caused by the slugs occurred prior to June 23, 1988. Plaintiffs allege within their first-amended complaint that GM delivered the defective slugs before May 1988. It is undisputed that the damage to TCE's presses allegedly caused by the slugs occurred prior to June 23, 1988. In fact, plaintiffs acknowledge that the June 23, 1988, meeting with GM's McDaniel concerned possible resolutions of production problems that resulted from the slug-damaged presses. Therefore, plaintiffs' June 23, 1994, breach of contract claims related to the slugs are untimely. MCL 600.5807(8); MSA 27A.5807(8); *HJ Tucker & Assocs, Inc*; *Adams, supra*.[5]

Plaintiffs next contend that the trial court erred in dismissing as untimely their claims that GM breached the nondisclosure agreement and that Aida breached confidentiality agreements with plaintiffs.

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[4] Plaintiffs' allegation that GM wrongfully terminated the blanket purchase order fails under the same reasoning. GM failed to obtain RPD's requirement of follower shells from TCE on a date prior to June 23, 1988, and the wrongful termination allegation goes only to damages for the alleged breach of the requirement contract.

[5] Given our conclusion that plaintiffs' breach of contract claims in regard to the blanket purchase order are barred by the general six-year statute of limitations, MCL 600.5807(8); MSA 27A.5807(8), we need not consider whether the circumstances demand application of the Uniform Commercial Code, MCL 440.1101 *et seq*.; MSA 19.1101 *et seq*., and, specifically, whether the claims are barred by the UCC's four-year statute of limitations, MCL 440.2725(1); MSA 19.2725(1).

Those breach of contract claims are also subject to the general six-year statute of limitations. MCL 600.5807(8); MSA 27A.5807(8).

Plaintiffs allege that GM breached the nondisclosure agreement by failing to protect its tooling process from disclosure. Plaintiffs claim that the breach occurred on June 23, 1988, when GM's McDaniel informed Manturuk that GM had acquired Aida presses that were equipped with plaintiffs' tooling process and had been producing follower shells with those presses. Plaintiffs further allege that Aida breached confidentiality agreements by selling the presses equipped with plaintiffs' process to GM. Notwithstanding plaintiffs' allegations, the evidence introduced below establishes as a matter of law that the alleged breaches occurred prior to June 23, 1988.

In their brief on appeal, plaintiffs acknowledge that, as of February 1988, Manturuk knew Aida presses equipped with plaintiff's tooling process were to be purchased by GM and placed in GM's RPD facility. Plaintiffs claim, however, that they believed GM would purchase the process prior to using the Aida presses. On March 21, 1988, TCE and GM entered the nondisclosure agreement to ensure that GM would protect plaintiffs' confidential process from competitors. On April 6, 1988, Manturuk, in his capacity as Aida's sale representative, sent a letter to GM thanking GM for purchasing "the Aida Engineering system using TCE's processes." Another letter sent by Manturuk to GM on April 26, 1988, inquired as to whether GM had disclosed plaintiffs' process to TCE competitors. Manturuk acknowledged during deposition that, as of April 26, 1988, he believed GM had revealed to a TCE competitor a confidential drawing relevant to plaintiffs' process. Given that undisputed evidence, GM's alleged breach of the nondisclosure agreement for "failing to protect" plaintiffs' tooling process occurred prior to April 26, 1988. Furthermore, plaintiffs admit that Aida sold GM presses equipped with plaintiffs' process prior to June 23, 1988. Therefore, any alleged breach of confidentiality agreements by Aida occurred prior to that date. Accordingly, the breach of confidentiality agreement claims are also barred by the statute of limitations. MCL 600.5807(8); MSA 27A.5807(8); *HJ Tucker & Assocs, Inc*; *Adams, supra*.[6]

Plaintiffs claim that GM breached a contract with plaintiffs by failing to grant TCE a three-year extension of the requirement contract for follower shells also lacks merit. There is no evidence that GM was obligated to extend its purchase order beyond production of the 1987 model year. In fact, in a November 14, 1986, letter, GM stated that future sourcing with TCE was dependent on TCE's ability to produce additional volumes of follower shells in subsequent years. At most, that letter was an affirmation by GM that it would consider entering additional sourcing contracts at some point in the future, not a contract for requirements for future model years.

Plaintiffs have not pleaded acts or misrepresentations by defendants that constituted fraudulent concealment, which would toll the six-year limitations period. See MCL 600.5855; MSA 27A.5855. By all indications, GM's negotiation with Aida to acquire presses equipped with plaintiffs' process was

[6] To the extent plaintiffs have further alleged that GM's appropriation and utilization of the process constituted a breach of the nondisclosure agreement, that claim fails under the same reasoning discussed, *supra*, in connection with plaintiffs' allegation that GM breached the blanket purchase order by appropriating and utilizing the process.

known to plaintiffs. Although plaintiffs claim they believed GM would not use the presses that were equipped with their tooling process prior to purchasing the process, there is no evidence GM or Aida committed affirmative acts of misrepresentations that were designed to prevent plaintiffs from discovering their possible causes of action for breach of the nondisclosure agreement or any other confidentiality agreement. See *Phinney v Perlmutter*, 222 Mich App 513, 562-563; 564 NW2d 532 (1997); *Witherspoon v Guilford*, 203 Mich App 240, 248; 511 NW2d 720 (1994).

B. Fraud

Plaintiffs next argue that the trial court erred in dismissing their fraud claims as untimely. We disagree. Plaintiffs first contend defendants made fraudulent misrepresentations that they would keep plaintiffs' tooling process confidential and would protect and refrain from infringing on plaintiffs' proprietary interest in the process. Fraud claims are subject to the general six-year statute of limitations. MCL 600.5813; MSA 27A.5813. The statute of limitations for a fraud claim begins to run when a plaintiff is aware of an injury that presents a possible cause of action. MCL 600.5827; MSA 27A.5827; *Moll v Abbott Laboratories*, 444 Mich 1, 17-18; 506 NW2d 816 (1993); *Shields v Shell Oil Co*, 237 Mich App 682, 691; 604 NW2d 719 (1999). We view the circumstances objectively to determine whether a plaintiff has discovered or should have discovered a cause of action for purposes of determining the date a claim accrues. *Moll, supra*; *Shields, supra*.

Given the evidence discussed, *supra*, establishing that any breach by GM or Aida of the nondisclosure contract or a confidentiality agreement occurred prior to June 23, 1988, we conclude plaintiffs knew or should have known of a possible cause of action for fraud prior to that date. In particular, Manturuk's acknowledgment that, on April 26, 1988, he believed GM had disclosed a drawing of plaintiff's tooling process to a TCE competitor indicates plaintiffs were on notice of possible fraud. Moreover, Manturuk admitted that, as early as February 1988, he was aware of Aida's sale of presses equipped with plaintiffs' process to GM. Thus, plaintiffs knew or should have known prior to June 23, 1988, of any alleged fraud based on GM's or Aida's utilization of the tooling process in a manner inconsistent with plaintiffs' confidential and proprietary interests. MCL 600.5827; MSA 27A.5827; *Moll, supra*; *Shields, supra*. Therefore, those claims are barred by the statute of limitations. MCL 600.5813; MSA 27A.5813.

To the extent plaintiffs allege fraud in connection with GM's supply of alleged defective slugs, that claim is also untimely. As discussed, *supra*, it is undisputed that the damage to TCE's presses allegedly caused by GM's shipment of defective slugs occurred prior to June 23, 1988. Consequently, plaintiffs knew or should have known of a fraud claim based on GM's supply of the slugs prior to that date and the claim is barred by the statute of limitations. MCL 600.5813; MSA 27A.5813.

C. Unfair Competition

Plaintiffs also argue that the trial court erred in dismissing their unfair competition claims against GM and Aida as untimely. We first note that plaintiffs conceded below that the allegations under the "unfair competition" heading within their first-amended complaint are essentially claims for misappropriation of trade secrets and unjust enrichment. A claim of misappropriation of a trade secret

is subject to a three-year statute of limitations. MCL 600.5805(8); MSA 27A.5805(8). Contrary to plaintiffs' argument, "the misappropriation of trade secrets is not a continuing offense. The wrong occurs at the time of the improper acquisition." *Shatterproof Glass Corp v Guardian Glass Co*, 322 FSupp 854, 869 (ED Mich, 1970),[7] citing *Russell v Wall Wire Products Co*, 346 Mich 581; 78 NW2d 149 (1956). Here, the alleged misappropriations occurred when Aida sold presses to GM equipped with plaintiffs' tooling process and GM produced follower shells using the process. As discussed, *supra*, Aida's sale of the presses and GM's production on the presses began at some date prior to June 23, 1988. Thus, the alleged misappropriation by GM or Aida occurred more than three years prior to plaintiffs' June 23, 1994, filing of the instant suit and the trial court properly dismissed those claims as untimely. MCL 600.5805(8); MSA 27A.5805(8).[8]

Plaintiffs' unjust enrichment claims also fail. Plaintiffs argued below that Aida's sale of presses equipped with plaintiffs' process and GM's use of the process to produce follower shells in-house without compensating plaintiffs were inequitable given plaintiffs' proprietary interest in the process. The elements of unjust enrichment are: "(1) receipt of a benefit by the defendant from the plaintiff and (2) an inequity resulting to the plaintiff because of the retention of the benefit by the defendant." *Barber v SMH (US), Inc*, 202 Mich App 366, 375; 509 NW2d 791 (1993), citing *Dumas v Auto Club Ins Ass'n*, 437 Mich 521, 546; 473 NW2d 652 (1991). The law operates to imply a contract in such instances to avoid unjust enrichment. *Id*., citing *Martin v East Lansing School Dist*, 193 Mich App 166, 177; 483 NW2d 656 (1992). A contract will be implied in equity only if there is no express contract already covering the subject matter. *Id*.

On appeal, plaintiffs do not challenge the trial court's dismissal of their unjust enrichment claim against GM on the basis that there was an express contract between the parties. However, plaintiffs argue that the trial court erred in dismissing a similar claim against Aida because there was no express contract between TCE and Aida. Plaintiffs' argument is undermined by the following allegation in their first-amended complaint:

> Between 1985 and 1988, TCE and AIDA US and/or AIDA JAPAN entered in to [sic] numerous contracts concerning the Process, TCE's confidential and proprietary cold metal forming processes and technology, and relating to the conduct of business between the parties, including, but not limited to, the Representative Agreement.

Moreover, Manturuk asserts within an affidavit, "AIDA agreed that it would maintain and protect the confidentiality of any manufacturing processes or trade secrets which I developed and disclosed to AIDA." Given the alleged contracts between TCE and Aida, we refuse to imply any contract in equity. *Id*.

D. Accord and Satisfaction

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[7] Affirmed and remanded 462 F2d 1115 (ED Mich, 1972), cert den 409 US 1039; 93 S Ct 518; 34 L Ed 2d 487 (1972).

[8] Insofar as plaintiffs may be said to have alleged a claim of conversion, that claim is also untimely under MCL 600.5805(8); MSA 27A.5805(8).

Last, plaintiffs argue that the trial court erred in dismissing their claim against Aida for breach of a sales representative agreement on the basis of an accord and satisfaction. We disagree. Plaintiffs allege Aida has failed to fully compensate Manturuk for services rendered as an Aida sales representative. According to plaintiffs, Manturuk was not informed of or paid for numerous sales prospects he developed for Aida.

The record demonstrates that there was a bona fide dispute concerning the fees and commissions that were due Manturuk, that checks were tendered as full satisfaction of the disputed claims, and that plaintiffs were aware of the condition that attached to acceptance of those checks as payment in full. See *Nationwide Mut Ins Co v Quality Builders, Inc*, 192 Mich App 643, 646-647; 482 NW2d 474 (1992). On March 7, 1989, and February 6, 1990, Aida issued four checks totaling $467,096 in sales commissions and engineering fees to Manturuk. According to the condition set forth on the back of the final check, the amount was paid "[i]n full settlement and satisfaction of all remaining claims against Payor for Sales Commissions and Engineering, Fees regarding Rochester Products thru 1989." Notwithstanding that plaintiffs crossed out that condition, they were informed of the condition that attached to acceptance of the check and their acceptance of the money could not be severed from acceptance of the condition. *Id.* at 647. Accordingly, the trial court properly dismissed the contract claim arising out of the alleged breach of the sales representative agreement.

Affirmed.

/s/ Brian K. Zahra
/s/ Henry William Saad
/s/ Hilda R. Gage