

STATE OF MICHIGAN
COURT OF APPEALS

RICHARD P. CAPRICCIOSO,

Plaintiff-Appellee,

v

HENRY FORD HEALTH SYSTEMS,

Defendant-Appellant.

UNPUBLISHED

December 21, 2001

No. 225516

Wayne Circuit Court

LC No. 99-910422-CK

Before: Meter, P.J., and Jansen and Gotham*, JJ.

PER CURIAM.

Defendant appeals by leave granted from a circuit court order denying its motion for summary disposition pursuant to MCR 2.116(C)(7), (8), and (10). We reverse. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Defendant offered full-time employees a salary continuation benefit of full pay for one year in the event the employee became disabled. Plaintiff was terminated from defendant's employ in January 1991 and his right to benefits was terminated. Plaintiff later claimed that the circumstances leading to his dismissal were caused by a disability and sued defendant for breach of contract. Following dismissal of that action, plaintiff filed this action. Defendant claimed that the suit, which was filed some eight years after the claim accrued, was time barred. Whether a cause of action is barred by the statute of limitations is a question of law that is reviewed de novo on appeal. *Ins Comm'r v Aageson Thibo Agency*, 226 Mich App 336, 340-341; 573 NW2d 637 (1997).

A claim for damages for breach of contract must be brought within six years after the claim first accrued. MCL 600.5807(8). A breach of contract claim 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). When a claim is brought against an insurance company for breach of a group policy covering a company's employees, the claim accrues when the employee's claim for benefits is denied. *Strachura v Metropolitan Life Ins Co*, 123 Mich App 190, 194-195; 333 NW2d 219 (1983) (Cavanagh, P.J., dissenting), rev'd for reasons stated in dissent 417 Mich 1100.20 (1983). This action, however, is against the employer for breach of an agreement arising out of the employment relationship. Specifically, plaintiff claims that in connection with employing plaintiff, defendant agreed that employees

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

“who became disabled during their employment and were prevented from performing their duties would receive” the salary continuation benefit. Because the benefit is tied to the employment relationship, the cause of action accrued when the employment relationship ended and defendant notified plaintiff that his right to benefits was terminated as well. *Shah v Nu-Kote Int’l, Inc*, 898 F Supp 496, 504 (ED Mich, 1995), aff’d 106 F3d 401 (CA 6, 1997). Therefore, plaintiff’s claim accrued no later than January 21, 1991, when he was fired.

Plaintiff initially filed suit for breach of contract on October 18, 1996, ninety-five days before the six-year limitations period expired, and the case was later removed to federal court. Pursuant to MCL 600.5856, the limitations period is tolled “during the pendency of a prior suit between the parties where the prior action was not adjudicated on the merits.” *Sherrell v Bugaski*, 169 Mich App 10, 17; 425 NW2d 707 (1988). A prior action in the federal court tolls the limitations period as to any pendant state law claims alleged in the complaint. *Lee v Grand Rapids Bd of Ed*, 148 Mich App 364, 369-370; 384 NW2d 165 (1986); *Annabel v C J Link Lumber Co*, 115 Mich App 116, 121; 320 NW2d 64 (1982), rev’d in part on other grounds 417 Mich 950 (1983). After the case was removed to federal court, plaintiff alleged a federal law claim under ERISA and a pendant state law claim for breach of contract. The state law claim was dismissed on February 4, 1997, for reasons other than an adjudication on the merits, when plaintiff voluntarily withdrew it from his complaint. Therefore, the limitations period began to run again at that time and expired in May 1997. Because plaintiff filed this action more than two years after the limitations period expired, the trial court erred in denying defendant’s motion for summary disposition.

Reversed.

/s/ Patrick M. Meter
/s/ Kathleen Jansen
/s/ Roy D. Gotham