

STATE OF MICHIGAN
COURT OF APPEALS

ANN SENESKI,

Plaintiff-Appellant,

v

NACOLAH LIFE INSURANCE COMPANY and
JACK GERWIN,

Defendants-Appellees.

UNPUBLISHED

December 30, 2003

No. 242633

Oakland Circuit Court

LC No. 2000-021118-CK

Before: Fitzgerald, P.J., and Neff and White, JJ.

PER CURIAM.

Plaintiff appeals as of right from circuit court orders granting defendants' motions for summary disposition. We affirm in part and reverse in part. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Defendant Gerwin, an insurance agent for defendant Nacolah's predecessor, sold an adjustable life insurance policy to plaintiff in 1988. Plaintiff claimed that Gerwin misrepresented the terms of the policy and that Nacolah improperly sought to cancel it. The trial court ruled that the claims for fraud and breach of contract against Gerwin and the claim for breach of contract against Nacolah were barred by the statute of limitations. Whether a cause of action is barred by the statute of limitations is a question of law that is reviewed de novo on appeal. *Insurance Comm'r v Aageson Thibo Agency*, 226 Mich App 336, 340-341; 573 NW2d 637 (1997).

A fraud claim must be brought within six years from the time the claim accrues. MCL 600.5813; *Kwasny v Driessen*, 42 Mich App 442, 445-446; 202 NW2d 443 (1972). The general limitations period to recover damages for breach of contract is also six years. MCL 600.5807(8). The limitations period begins to run when the claim accrues. A claim accrues "at the time the wrong upon which the claim is based was done regardless of the time when damage results." MCL 600.5827.

Gerwin made the alleged misrepresentations in 1988, more than six years before plaintiff filed suit. The accrual of a fraud claim is not extended until the plaintiff discovers or should have discovered the claim. *Boyle v General Motors Corp*, 468 Mich 226, 231; 661 NW2d 557 (2003). Therefore, the trial court correctly determined that plaintiff's fraud claim against Gerwin was time-barred.

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). To the extent plaintiff claims that Nacolah issued a policy contrary to the terms represented by Gerwin, the claim accrued in 1988 when the policy was issued. Because that was more than six years before plaintiff filed suit, the claim is untimely.

To the extent plaintiff claims that Nacolah's actions in attempting to cancel the policy and demanding additional premiums were contrary to the April 1995 representations and a breach of the insurance contract, the claim accrued in 1999 when such actions were taken. Because that was less than six years before plaintiff filed suit, the circuit court erred in granting defendant Nacolah's motion to this extent.

Affirmed as to Gerwin. Affirmed in part and reversed in part, and remanded for further proceedings consistent with this opinion, as to Nicolah. We do not retain jurisdiction.

/s/ E. Thomas Fitzgerald

/s/ Janet T. Neff

/s/ Helene N. White