STATE OF MICHIGAN

COURT OF APPEALS

CHRISTOPHER BELL, KAREN BREWER, and JOHN DOE,

Plaintiffs-Appellants,

v

MICHIGAMUA,

Defendant-Appellee,

and

UNIVERSITY OF MICHIGAN REGENTS,

Defendant.

UNPUBLISHED
May 22, 2007

No. 274533
Washtenaw Circuit Court
LC No. 06-000144-CH

Before: Cooper, P.J., and Murphy and Neff, JJ.

PER CURIAM.

In this breach of contract action, plaintiffs appeal as of right from a circuit court order granting defendant Michigamua's motion for summary disposition pursuant to MCR 2.116(C)(7) (statute of limitations). We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

This Court reviews de novo a circuit court's summary disposition ruling. *Beaudrie v Henderson*, 465 Mich 124, 129; 631 NW2d 308 (2001). "Whether a period of limitations applies to preclude a party's pursuit of an action constitutes a question of law that we review de novo." *Detroit v 19675 Hasse*, 258 Mich App 438, 444; 671 NW2d 150 (2003). Despite that Michigamua premised its motion on incorrect grounds, the circuit court correctly observed that MCR 2.116(C)(7) applies in this case. *Computer Network, Inc v AM Gen Corp*, 265 Mich App 309, 312; 696 NW2d 49 (2005).

> Under MCR 2.116(C)(7), summary disposition is proper when a claim is barred by the statute of limitations. In determining whether summary disposition was properly granted under MCR 2.116(C)(7), this Court "consider[s] all documentary evidence submitted by the parties, accepting as true the contents of the complaint unless affidavits or other appropriate documents specifically

contradict them." [*Waltz v Wyse*, 469 Mich 642, 647-648; 677 NW2d 813 (2004), quoting *Fane v Detroit Library Comm*, 465 Mich 68, 74; 631 NW2d 678 (2001).]

The Legislature has afforded plaintiffs six years in which to pursue breach of contract claims. MCL 600.5807(8). The Legislature also has provided that this six-year period commences when the claim has accrued, and that "the 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. "For contract actions, the period of limitation generally begins to run on the date of the breach of the contract." *Harris v City of Allen Park*, 193 Mich App 103, 106; 483 NW2d 434 (1992).

Plaintiffs commenced this action on February 6, 2006. A review of the amended complaint reflects no specific allegation that on or after February 6, 2000, Michigamua breached the November 1989 agreement pursuant to which it promised to cease all activities and references relating to Native American culture. As the circuit court accurately summarized, the paragraphs describing Michigamua's breaches document only (1) incidents occurring between September 1993 and December 1994, (2) unspecified "pseudo-Native American activities" of which Karen Brewer became aware on February 9, 2000, and (3) a nonspecific allegation that John "Doe became aware of such activities of Michigamua between November 1, 1989 and February 6, 2000." Plaintiffs neither alleged with specificity elsewhere in the complaint nor presented any evidence substantiating that Michigamua breached the November 1989 agreement within the six-year breach of contract period of limitation.[1] Indeed, in plaintiffs' appellate brief, they concede, "Both parties agree that any possible activities of members of Defendant Michigamua that might constitute a breach of the promise outlined in the document in question would have occurred prior to February 6, 2000 . . . ."

Plaintiffs contend that the general rule, that the period of limitation applicable in contract actions begins to run on the date of a breach, does not apply here because only in February 2000 did they learn of their right to sue pursuant to the November 1989 agreement. But this Court repeatedly has rejected the proposition that a discovery rule may operate to toll accrual of the breach of contract period of limitation. "'A plaintiff need not know of the invasion of a legal right in order for the [breach of contract] claim to accrue.'" *Dewey v Tabor*, 226 Mich App 189, 193; 572 NW2d 715 (1997), quoting *Harris*, *supra* at 106; see also *Scherer v Hellstrom*, 270 Mich App 458, 463 n 2; 716 NW2d 307 (2006) (overruling the circuit court's application of a discovery rule to delay the commencement of the breach of contract period of limitation). This Court has stated that "[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

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[1] Plaintiffs attached to their response to Michigamua's motion for summary disposition an affidavit of Dr. Cheryl Samuels, who recalled that while a U-M student "during the middle 1980's" she at least once "heard Indian-style drumming." Samuels further averred that sometime during her years as a graduate student, between 1987 and 1997, she heard "other Native students with whom [she] associated telling [her] that they continued to hear [the drumming] whenever they were in or near the Michigan Union in the evening" during Michigamua meetings. Even accepting Samuels's testimony as nonhearsay evidence of Michigamua's activities, the activities she describes all predated February 6, 2000.

App 367, 372 n 1; 494 NW2d 1 (1992) (emphasis added); see also *Adams v Detroit*, 232 Mich App 701, 706; 591 NW2d 67 (1998).[2]

Plaintiffs incorrectly suggest that the circuit court should not have considered the breach of contract period of limitation because Michigamua failed to raise it. Plaintiffs acknowledge that Michigamua premised its motion for summary disposition in part on a period of limitation, albeit one governing tort actions. In ruling on the summary disposition motion, however, the circuit court is not constrained to rely on the specific grounds raised by the parties, *Computer Network*, *supra* at 312, and MCR 2.116(I)(1) directs a court to "render judgment without delay" when the pleadings and facts show that a party is entitled to judgment as a matter of law. To the extent that plaintiffs suggest that the circuit court improperly ruled on the basis of the contract period of limitation before they could prepare a response to this issue, they fail to explain how they suffered prejudice or how this Court's refusal to vacate the circuit court's order would be "inconsistent with substantial justice," MCR 2.613(A), especially where the circuit court reached the correct result. There is no claim that there exists evidence or that an amended complaint could be filed reflecting the occurrence of contract breaches that took place after February 6, 2000.

Because the circuit court recognized that the six-year breach of contract period of limitation accrues at the time of a breach, and because the court correctly found no allegation or evidence that Michigamua breached the November 1989 agreement anytime within the six-year period of limitation, on or after February 6, 2000, we conclude that the circuit court properly granted Michigamua summary disposition pursuant to MCR 2.116(C)(7).[3]

Affirmed.

/s/ Jessica R. Cooper
/s/ William B. Murphy
/s/ Janet T. Neff

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[2] The only case plaintiffs proffer in support of their contention, *Holmes v Ins Co of North America*, 288 F Supp 325 (WD Mich, 1968), is distinguishable on its facts.

[3] Because the circuit court correctly found that the contract action, which was the sole count in the complaint, was time-barred, we need not address whether plaintiffs could recover personal injury-related damages arising from the breach of contract.