

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

KEITH MCDOWELL,)	
Plaintiff)	CIVIL ACTION
)	
v.)	
)	
RAYMOND INDUSTRIAL EQUIPMENT,)	No. 00-5945
LTD.,)	
Defendant)	

MEMORANDUM

Padova, J.

February , 2001

This matter arises on Defendant’s Motion to Dismiss Pursuant to F.R.C.P. 12. Plaintiff has filed a response. For the reasons that follow, the Court grants Defendant’s Motion and dismisses the case.¹

I. Background

Plaintiff Keith McDowell was seriously injured in a forklift accident on October 30, 1996. At the time of the accident, he was employed by Central National Gottesman, Inc. in its Lindenmeyr Paper Company plant. Plaintiff filed suit in state court against Arbor Material Handling Inc. and The Raymond Corporation, the parent company of the instant Defendant Raymond Industrial Equipment, Ltd. Plaintiff filed the instant suit in state court in October 2000 claiming negligence, breach of warranty, and strict liability. Plaintiff asserts that The Raymond Corporation affirmatively mislead him into believing that it, and not the instant Defendant, manufactured the forklift. He claims that

¹Given this disposition, the Court need not address Defendant’s alternate motion to dismiss the punitive damages claims.

under the discovery rule and the fraudulent concealment doctrine, the statute of limitations against the instant Defendant did not arise until June 28, 2000, when it discovered the real manufacturer of the lift. Defendant removed the case to this Court, and now seeks to dismiss the case on the basis of the expiration of the statute of limitations.

II. Legal Standard

A claim may be dismissed under Federal Rule of Civil Procedure 12(b)(6) only if the plaintiff can prove no set of facts in support of the claim that would entitle her to relief. ALA, Inc. v. CCAIR, Inc., 29 F.3d 855, 859 (3d Cir. 1994). The reviewing court must consider only those facts alleged in the complaint and accept all of the allegations as true. Id.

III. Discussion

The statute of limitations on these claims is two years. See 42 Pa. Cons. Stat. Ann. § 5524 (Supp. 2000). The statute of limitations period began to run on October 30, 1996, the date of the accident. Accordingly, the statutory period expired on October 30, 1998. Plaintiff filed the instant suit on October 3, 2000, in the Court of Common Pleas of Philadelphia County, well beyond the expiration of the regular statutory period.

Plaintiff does not dispute that he filed the suit after October 30, 1998. However, he asserts that because he did not know the true identity of the manufacturer, and because he was affirmatively misled by Defendant's agent as to the identity of the manufacturer, the start of the statutory limitations period was delayed until June 28, 2000, when Plaintiff ascertained that Defendant was the manufacturer. (Pl.'s Amended Compl. ¶ 4.)

As a general rule, a party asserting a cause of action is under a duty to use all reasonable diligence to be properly informed of the facts and circumstances upon which a potential right of

recovery is based, and to institute suit within the prescribed statutory period. Walters v. Ditzler, 227 A.2d 833, 835 (1967). The statute of limitations begins to run as soon as the right to institute and maintain a suit arises; lack of knowledge, mistake or misunderstanding do not toll the running of the statute of limitations. Pocono Int'l Raceway, Inc. v. Pocono Produce, Inc., 468 A.2d 468, 471 (Pa. 1983). Once the statutory period has expired, the party is barred from bringing suit unless it establishes that an exception applies.

Plaintiff first contends that the “discovery rule” applies to delay the running of the statute of limitations. Under the discovery rule, the statute of limitations is tolled until the plaintiff knows or in exercise of reasonable diligence should have known: (1) that he has been injured, and (2) that his injury has been caused by another’s conduct. See Bradley v. Ragheb, 633 A.2d 192, 193 (Pa. Super. Ct. 1993), appeal denied, 658 A.2d 791 (Pa. 1994). The court must, before applying the exception, “address the ability of the damaged party, exercising reasonable diligence, to ascertain the fact of a cause of action.” Pocono Int'l Raceway, Inc., 468 A.2d at 471.

The discovery rule does not apply in this case. The discovery rule exception is designed to address the inability of the injured plaintiff to know of the injury or its cause. Pocono Int'l Raceway, Inc., 468 A.2d at 471. Here, the obstacle at issue was the Plaintiff’s ability to identify the proper defendant, rather than to identify an injury and cause. The plaintiff’s knowledge of the existence of the injury and cause is not disputed, and in any case is evidenced by the filing of the state suit against the Defendant’s parent company within the original limitations period.

Plaintiff next asserts that the fraudulent concealment doctrine applies. That doctrine allows for the tolling of the statute of limitations where a defendant or his agent actively mislead the plaintiff as to the identity of the proper defendants until after the statute of limitations has expired.

Montanya v. McGonegal, 757 A.2d 947, 950 (Pa. Super. Ct. 2000). In order for the exception to apply, the defendant's conduct does not require intent to deceive; unintentional fraud or concealment is sufficient. Molineux v. Reed, 532 A.2d 792, 794 (Pa. 1987). The defendant must have committed some affirmative independent act of concealment upon which the plaintiffs justifiably relied. Kingston Coal Co. v. Felton Mining Co., Inc., 690 A.2d 284, 291 (Pa. Super. Ct. 1997). The plaintiff has the burden of proving active concealment through clear and convincing evidence." Hubert v. Greenwald, 743 A.2d 977, 981 (Pa. Super. Ct. 1999).

Plaintiff contends that Raymond Corporation, the parent of the instant Defendant and the defendant in the state court action, misled Plaintiff as to the identity of the manufacturer of the forklift in the following manner:

1. The Raymond Corporation . . . did not deny plaintiff's allegation that it was the manufacturer of the subject forklift with specificity
2. In response to requests for production of documents in the state case, . . . The Raymond Corporation, . . . offered billing invoices identifying the instant defendant as a "shipper" and "originating carrier," and not the manufacturer, of the subject forklift
3. In response to requests for production of documents in the state case, . . . The Raymond Corporation . . . offered as evidence the manufacturer's specification plate attached to the subject forklift, reasonably identifying The Raymond Corp. as the manufacturer²
4. In response to requests for production of documents in the state case, . . . The Raymond Corporation . . . submitted the Owner/Operator Manual for the subject forklift, which failed to identify [sic] the instant defendant as the manufacturer of the subject forklift and affirmatively stated that all trademarks associated with the product were registered to the Raymond Corp.

(Pl.'s Resp. ¶5.)

Assuming, inter alia, that the Raymond Corporation can be construed as the instant

²"The Raymond Corporation" appears along the side of the name plate. (Pl.'s Resp. Ex. C.)

Defendant's "agent," the allegations here, accepted as true, do not establish by clear and convincing evidence an affirmative act of concealment, even unintentionally. The Raymond Corporation, in its answer to the original state court complaint, denied that it manufactured the forklift.³ As for the supposedly misleading disclosures the Raymond Corporation made during the course of discovery in the state case, there is nothing in those alleged disclosures that would either establish that Raymond Corporation was the manufacturer, or foreclose any other entity from being the manufacturer. The Plaintiff's belief that the Raymond Corporation was the manufacturer was based on the incorrect notion that the disclosures foreclosed the possibility that the Raymond Corporation was not the manufacturer, and that some other entity was. Furthermore, the invoice which stated that the instant Defendant was the "shipper" did not foreclose the possibility that Defendant was also the manufacturer. The fact that the Raymond Corporation, in providing the invoice, did not explicitly tell the Plaintiff that the Defendant was both the shipper and the manufacturer is not concealment, because the Raymond Corporation did not have any obligation to set forth this information. In summary, nothing in Plaintiff's allegations points to an affirmative act by the Raymond Corporation to conceal the identity of the true manufacturer of the forklift, let alone the existence of such an affirmative act by clear and convincing evidence. Plaintiff's mistake or misunderstanding regarding the correct defendant's identity does not toll the running of the statute of limitations. See Pocono Int'l Raceway, Inc., 468 A.2d at 471.

Thus, the Court concludes that neither the discovery rule nor the fraudulent concealment

³The Raymond Corporation affirmatively denied the allegations that it was engaged in "the design, fabrication, manufacture, assembling, placarding, labeling, inspection, testing, repairing, placarding, labeling, inspection, testing, repairing, selling and/or leasing of fork-lift," with the exception that it admitted only to engaging in the "design of the . . . forklift." (Raymond Corp.'s Ans. ¶ 6.)

doctrine applies here to toll the two-year statute of limitations on the instant case. The Court therefore grants Defendant's Motion to dismiss the Complaint in its entirety. An appropriate Order follows.

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Defendant)	

ORDER

AND NOW, this day of February, 2001, upon consideration of Defendant Raymond Industrial Equipment Ltd.'s Motion to Dismiss (Doc. No. 6), and any responses thereto, **IT IS HEREBY ORDERED** that said Motion is **GRANTED** and the above-captioned action is **DISMISSED** with prejudice. The Clerk of the Court shall close this case for statistical purposes.

BY THE COURT:

John R. Padova, J.