

record." Beverly Enterprises, Inc. v. Trump, 182 F.3d 183, 190 n.3 (3d Cir. 1999); Pension Benefit Guar. Corp. v. White Consol. Indus. Inc., 998 F.2d 1192, 1196 (3d Cir. 1993).

According to the complaint, plaintiff is the operator of the Sofitel Hotel located at the corner of 17th and Sansom Streets in Philadelphia. On December 7, 1998, defendant and plaintiff¹ entered into a standard agreement titled "Standard Form of Agreement Between Owner and Construction Manager" ("contract"). Defendant was to make renovations and construct an addition, which it did between April, 1999 and the spring of 2000. Sofitel opened to the public in May, 2000. Plaintiff alleges that "shortly after opening," guests reported leaks in the ceilings of several bathrooms that appeared to originate in the bathrooms on the floor above. The complaint further alleges that La Liberte reported the leaks to Keating as they were discovered and, over the course of "several months," the defendant's representatives investigated and repaired the leaks by tightening shower drain bolts. After events in the "several months" after the opening of the Sofitel in May, 2000, plaintiff discovered new leaks in 2004. La Liberte thereupon completely dismantled a shower on the 14th floor and discovered that it had been constructed incorrectly and in a manner that caused damage

1. At the time plaintiff was organized as a limited partnership. The complaint states that La Liberte became a limited liability company organized under Delaware law in December, 2001.

to the materials used. On April 6, 2007, La Liberte filed a complaint in this court seeking damages.

II.

Keating argues that the complaint must be dismissed with prejudice because the four-year statute of limitations under Pennsylvania law that governs claims of breach of contract, breach of implied warranty, and breach of express warranty has run. See 42 Pa. Cons. Stat. Ann. § 5525(a). It maintains that the statute of limitations began to run when the plaintiff became aware of the bathroom leaks, that is, in May, 2001 after the opening of the Sofitel and, therefore, had run three years before it filed this action. La Liberte counters that while it became aware of the leaks in 2001, its causes of action did not accrue until it discovered the construction defects in 2004 when a series of new leaks spurred it to dismantle one of its showers. Furthermore, says La Liberte, the complaint pleads facts sufficient to toll the statute of limitations under the "repair doctrine." See Keller v. Volkswagen of America, Inc., 773 A.2d 642, 646 (Pa. Super. 1999); see also Amodeo v. Ryan Homes, Inc., 595 A.2d 1232 (Pa. Super. 1991).

The parties agree that the Pennsylvania four-year statute of limitations governs the plaintiff's claims. See 42 Pa. Cons. Stat. Ann. § 5525(a). Under Pennsylvania law the statute of limitations begins to run in latent construction defect cases on the date the injured party "becomes aware, or by the exercise of reasonable diligence, should have become aware,

of the defect." Romeo & Sons, Inc. v. P.C. Yesbak & Son, Inc., 652 A.2d 830, 834 (Pa. 1995). Furthermore, the "repair" doctrine tolls the statute of limitations only if "repairs were attempted, representations were made that the repairs would cure the defects, and the plaintiff relied upon such representations." Amodeo, 595 A.2d at 1237.

On the record currently before us, we cannot say that the complaint fails to state a claim upon which we can grant relief. In the few months after opening its doors to the public in May, 2001, La Liberte became aware of "leaks" in 2001, reported them to a third party, and had them repaired as it would any minor problem.² The complaint alleges that upon receiving reports of new leaks in 2004, it deconstructed one of its bathrooms and discovered the construction defects that are the subject of this lawsuit.³ The fact that La Liberte became aware of certain leaks in mid-2001 does not require us to conclude on the present state of the record that it likewise knew of the construction defects at the heart of this action or should have known of said defects before it discovered them in 2004. This action was filed in April, 2007, that is, within four years of the alleged discovery of the defects in 2004. Whatever facts may

2. The parties contest whether plaintiff reported the leaks to the defendant or a third party. It is sufficient to state that La Liberte contacted an entity or entities and that repairs were performed to stop the leaking by tightening the bolts.

3. Defendant disputes that the leaks were "new" or different. As this is a motion to dismiss, we take the facts as alleged in the complaint.

develop as the discovery proceeds, plaintiff's action is not time barred based on the allegations in the complaint.

Accordingly, the motion of the defendant to dismiss the complaint for failure to state a claim upon which relief can be granted will be denied.

