

NOTICE: This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

2020 IL App (3d) 180716-U

Order filed February 28, 2020

IN THE
APPELLATE COURT OF ILLINOIS
THIRD DISTRICT

2020

THE VILLAGE OF ONARGA,)	Appeal from the Circuit Court
)	of the 21st Judicial Circuit,
Plaintiff-Appellee,)	Iroquois County, Illinois.
)	
v.)	
)	
ATLAS EXCAVATION, INC.;)	
SODEMANN & ASSOCIATES, INC.;)	
FEHR-GRAHAM & ASSOCIATES, LLC;)	Appeal No. 3-18-0716
ENVIRONMENT ONE CORPORATION;)	Circuit No. 18-L-3
and THE HANOVER INSURANCE)	
COMPANY,)	
)	
Defendants)	
)	
(Atlas Excavation, Inc. and The Hanover)	
Insurance Company,)	Honorable
)	James B. Kinzer
Defendants-Appellants).)	Judge, Presiding.

JUSTICE O'BRIEN delivered the judgment of the court.
Justices Carter and Wright concurred in the judgment.

ORDER

¶ 1 *Held:* Certified question answered: In an owner's claim for damages stemming from allegedly defective construction, the four-year statute of limitations provided under section 13-214(a) of the Code of Civil Procedure (735 ILCS 5/13-214(a) (West

2018)) begins to run from the time that the owner, or its privity, knew or should have reasonably known of such act or omission giving rise to its claims.

¶ 2 Plaintiff Village of Onarga filed a complaint against defendants Atlas Excavation, Inc., The Hanover Insurance Company and others to recover for damages allegedly sustained as a result of deficient work by Atlas on a sewer project. The trial court denied Atlas and Hanover's question for appeal. We answer the certified question as follows: the four-year statute of limitations provided under section 13-214(a) of the Code of Civil Procedure (735 ILCS 5/13-214(a) (West 2018)) begins to run from the time that the owner, or its privity, knew or should have reasonably known of such act or omission giving rise to its claims and not at the time of final completion of the project.

¶ 3 **FACTS**

¶ 4 Plaintiff Village of Onarga, a municipal corporation, hired defendant Atlas Excavation, Inc., to build a sanitary sewer collection system to service its residents, replacing septic drain fields. Defendant The Hanover Insurance Company was the surety for Atlas on the project. Atlas became involved in the project in 2008, when Onarga accepted its bid to construct the sewer system. On January 8, 2009, Onarga and Atlas executed a contract requiring Atlas to install the sewer system. Also on January 8, 2009, Onarga executed the notice to proceed that authorized Atlas to begin work on or before January 12, 2009, and required the work to be substantially completed by May 6, 2010. Final completion was due by July 5, 2010, and required approval by Onarga. Hanover issued performance and payment bonds to Atlas also on January 8, 2009. Atlas began work on the project on January 12, 2009.

¶ 5 Atlas "substantially completed" its work in July 2010, with its asserted final completion in August 2010. In November 2010, Atlas was advised by letter that there were deficiencies in the

sewer system per Onarga's complaints. Discussion took place with Atlas throughout 2011, 2012, and 2013. In 2014, Onarga hired an excavator to remove the system's pumps in order to investigate the problems. Discussions between the parties continued to take place throughout 2016.

¶ 6 In February 2018, Onarga filed a verified complaint against Atlas and Hanover, alleging breach of contract, breach of express and implied warranties and negligence against Atlas and breach of the performance bond against Hanover. The complaint also included claims against Sodemann and Associates, Inc., Fehr-Graham and Associates, Inc. (Sodemann's successor) and Environment One Corp., other entities involved in the project. The complaint set forth 15 alleged deficiencies and argued that problems arose immediately after Atlas began building the sewer system. Atlas and Hanover moved to dismiss on the basis that the four-year statute of limitations to bring the complaint had expired.

¶ 7 In August 2018, Onarga voluntarily nonsuited Sodemann, Fehr-Graham and Environment One based on expiration of the statute of limitations. In response to the motion to dismiss filed by Atlas and Hanover, Onarga argued that the claims against them were not barred by the statute of limitations pursuant to the single endeavor rule. In September 2018, Onarga filed an amended verified complaint, including claims against Atlas, Hanover, Sodemann, Fehr-Graham and Environment One. The claims mirrored the previous complaint. Prior to a scheduled hearing on September 24, 2018, Onarga again voluntarily nonsuited the claims against Sodemann, Fehr-Graham and Environment One. Following a hearing, the trial court denied Atlas and Hanover's motion to dismiss. In October 2018, Atlas and Hanover filed an answer to the complaint, including affirmative defenses, a counterclaim and third-party complaints. Atlas and Hanover also moved to certify a question for interlocutory appeal. The trial court certified the following question for interlocutory appeal in November 2018:

“In regards to an owner[']s claim for damages stemming from allegedly defective construction, does the four-year statute of limitations provided under 735 ILCS 5/13-214(a) begin to run from (A) the time that the owner, or its privity, knew or should reasonably have known of such act or omission giving rise to its claims, or (B) the time of final completion of the construction project?”

Atlas and Hanover timely sought leave to appeal under Illinois Supreme Court Rule 308 (eff. July 1, 2017), which this court granted.

¶ 8

ANALYSIS

¶ 9

Atlas and Hanover submit the answer to the certified question is that the statute of limitations began to run when Onarga knew that Atlas’s work was deficient. Onarga counters that the single endeavor doctrine applies and tolls the statute of limitations until the project is completed.

¶ 10

Illinois Supreme Court Rule 308 (eff. July 1, 2017) governs certified questions and provides for a permissive appeal of an interlocutory appeal that was certified by the trial court and involves a “question of law as to which there is substantial ground for difference of opinion” and an immediate appeal will materially advance the end of the litigation. The reviewing court is limited to answering the certified question and does not rule on the propriety of any underlying orders. *P.J.’s Concrete Pumping Service, Inc. v. Nextel West Corp.*, 345 Ill. App. 3d 992, 998 (2004).

¶ 11

A section 2-619 motion to dismiss asserts that expiration of the statute of limitations is an affirmative matter barring the complaint. 735 ILCS 5/2-619(a)(9) (West 2018). When considering a section 2-619 motion, the court construes the pleadings and any supporting documents in a light most favorable to the nonmovant. *Czarobski v. Lata*, 227 Ill. 2d 364, 369 (2008). The trial court

should dismiss the case where it finds no set of facts can be proved on which it could grant relief. *Falk v. Northern Trust Co.*, 327 Ill. App. 3d 101, 105 (2001). On appeal, the reviewing court considers “ ‘whether the existence of a genuine issue of material fact should have precluded the dismissal, or absent such an issue of fact, whether dismissal is proper as a matter of law.’ ” *Czarobski*, 227 Ill. 2d at 369 (quoting *Kedzie & 103rd Currency Exchange, Inc. v. Hodge*, 156 Ill. 2d 112, 116-17 (1993)).

¶ 12 Statutes of limitations are designed to prevent the prosecution of stale claims and to ensure evidence is not lost and memories do not fade. *Guzman v. C.R. Epperson Construction, Inc.*, 196 Ill. 2d 391, 400 (2001). The common law discovery rule implicates the statute of limitations when the plaintiff “knew, or reasonably should have known” that it was injured and the injury was wrongfully caused. *Benton v. Vonnahmen*, 288 Ill. App. 3d 199, 205 (1997). Per the discovery rule, the statute of limitations is triggered when a person injured knows sufficient information about the injury to be put on notice to determine whether actionable conduct was involved. *Id.* Although the question of a party’s knowledge is generally an issue of fact, the trial court may determine it as a question of law when the pleadings result in only one conclusion. *Id.* at 206.

¶ 13 The applicable statute of limitations provides:

“Actions based upon tort, contract or otherwise against any person for an act or omission of such person in the design, planning, supervision, observation or management of construction, or construction of an improvement to real property shall be commenced within 4 years from the time the person bringing an action, or his or her privity, knew or should reasonably have known of such act or omission.” 735 ILCS 5/13-214(a) (West 2018).

¶ 14 The statute of limitations on construction negligence actions is triggered when the plaintiff “ ‘knows or reasonably should know it has been injured and that this injury was wrongfully caused.’ ” *M & S Industrial Co. v. Allahverdi*, 2018 IL App (1st) 172028, ¶ 37 (quoting *Swann & Weiskopf, Ltd. v. Meed Associates, Inc.*, 304 Ill. App. 3d 970, 975 (1999)). “Wrongfully caused” does not mean the plaintiff must know of the defendant’s specific conduct or knowledge that a cause of action exists. *Id.* ¶ 41. (citing *Castello v. Kalis*, 352 Ill. App. 3d 736, 744 (2004)). A plaintiff knows its injury was wrongfully caused when it possesses information about the injury sufficient to alert a reasonable person to inquire whether an actionable claim exists. *La Salle National Bank v. Skidmore, Owings & Merrill*, 262 Ill. App. 3d 899, 902 (1994).

¶ 15 When construing a statute, the court’s goal is to ascertain and give effect to the legislature’s intent. *Alvarez v. Pappas*, 229 Ill. 2d 217, 228 (2008). To determine legislative intent, the first step is to consider the plain and ordinary language of the statute. *Id.* Language that is clear and unambiguous must be given effect as written. *Id.* In interpreting a statute, a court should not read into it exceptions, limitations or conditions conflicting with the legislative intent. *People ex rel. Sherman v. Cryns*, 203 Ill. 2d 264, 279 (2003).

¶ 16 Onarga submits that the statutory language of section 13-214 is broad enough to incorporate the single endeavor rule, which it argues defeats Atlas and Hanover’s statute of limitations defense. The single endeavor rule provides an exception to the general rule that a statute of limitation begins to run on the date payment is due on a contract. *Berg & Associates, Inc. v. Nelsen Steel & Wire Co.*, 221 Ill. App. 3d 526, 532 (1991). Under the single endeavor rule, a construction project is a single endeavor and the statute of limitations does not begin to run until the endeavor is completed rather than when payment is due on the construction contract. *Belleville Toyota, Inc. v. Toyota Motor Sales, U.S.A., Inc.*, 199 Ill. 2d 325, 355 (2002).

¶ 17 Onarga relies on *Santucci Construction Co. v. City of Danville*, 128 Ill. App. 3d 954, 957 (1984), in support of its position that the single endeavor rule preserves its claims against Atlas and Hanover’s statute of limitations defense. In *Santucci*, the court determined that “when a construction contract is involved, the period of limitation will begin to run against the contractor’s claim for payment prior to the completion of the contract only in very rare circumstances.” *Id.* The court cited *O’Brien v. Sexton*, 140 Ill. 517 (1892), for the proposition that a construction project is a single endeavor and the statute of limitations does not begin to run until the project is completed. *Santucci*, 128 Ill. App. 3d. at 957. According to Onarga, based on *Santucci*, because Atlas never finished the project, the statute of limitations did not begin to run and could not serve to bar its claim. In support of its interpretation that section 13-214(a) incorporates *Santucci*’s single endeavor doctrine, Onarga presents a public policy argument that its interpretation of the statute would prevent parties to a construction contract from having to engage in litigation to satisfy the limitations period while simultaneously trying to work together on the construction project. Onarga points to its ongoing discoveries of defects that occurred as late as 2014 as support that the project was never completed and the statute of limitations never started.

¶ 18 Atlas and Hanover dismiss *Santucci*, maintaining that the single endeavor rule has not been applied to defective construction claims since the four-year construction statute of limitations was adopted in section 13-214. Atlas and Hanover assert the single endeavor rule is applicable only to claims for nonpayment for construction services. They look to *In re Sardo Corp.*, No. 91 B 09826 (Bankr. N.D. Ill. June 11, 1996), as explanatory of its assertion. In *Sardo*, the bankruptcy court found that section 13-214(a) does not “toll the limitations period until the last item of work is rendered.” *Id.* at *5. Rather, the statute requires actions based on negligent construction to be commenced with the four-year statute of limitations set forth in section 13-214(a). *Id.* The *Sardo*

court noted that a construction negligence action must be filed within four years of when the plaintiff knew or reasonably should have known of the defendant's negligent acts or omissions as the statute instructs. *Id.*

¶ 19 We reject Onarga's argument that *Santucci* applies and dictates the resolution to this case. The plain language of section 13-214(a) does not include any mention of final completion of a project or the single endeavor rule as triggering the limitations period. Rather, as *Sardo* explains, the statute instructs the limitations period starts within four years of the negligent act or omission or within four years of the plaintiff's discovery that an injury occurred and it was wrongly caused. Based on the plain language of the statute, we conclude that section 13-214(a) provides the answer to the certified question. The statute states that actions must be brought within four years from the time the plaintiff or his or her privity knew or should have known of a negligent construction act or omission. We thus answer the certified question as follows: The statute of limitations begins to run when the owner knew or should have reasonably known of the act or omission giving rise to its claims. Onarga's cause of action arose when it knew or should have known Atlas's acts and omissions injured it. When that occurred must be determined by the trial court on remand.

¶ 20 CONCLUSION

¶ 21 We answer the certified question and remand.

¶ 22 Certified questions answered; cause remanded.