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**IN THE
COURT OF APPEALS OF INDIANA**

MIRAR DEVEOPMENT, INC.,)

Appellant,)

vs.)

LELAND MARK SCOTT,)

Appellee.)

No. 45A03-0702-CV-82

APPEAL FROM THE LAKE CIRCUIT COURT
The Honorable Lorenzo Arredondo, Judge
Cause No. 45C01-0305-CC-00141

October 30, 2007

MEMORANDUM DECISION – NOT FOR PUBLICATION

MATHIAS, Judge

Mirar Development, Inc. (“Mirar”) appeals the judgment of the Lake Circuit Court in favor of Leland Mark Scott (“Scott”) in Scott’s action seeking payment for work performed as a sub-contractor on behalf of Mirar. Upon appeal, Mirar presents two issues, which we restate as: (1) whether the applicable statute of limitations bars Scott’s action; and (2) whether the amount awarded to Scott was proper.

We affirm.

Facts and Procedural History

In 1994, Scott was in business as L. Scott Electric, an electrical sub-contractor who provided residential electronic services for Mirar, a residential general contractor.¹ Scott provided electrical sub-contracting services for Mirar from 1991 through 1996. In 1994, at Mirar’s request, Scott provided labor and materials for the installation of electrical systems in a residence in Illinois owned by Peter and Patricia Kroner (“the Kroners”). Scott completed work on the Kroner residence in December 1994. Some of the work done by Scott on the Kroner residence was not specified in the original blueprints provided by Mirar. Upon completion of the work on the Kroner residence, Scott sent an invoice to Mirar for the work done in the amount of \$24,515. The invoice stated, under the heading “Terms,” “net 10 days.” Appellant’s App. pp. 16-17. Mirar made no complaint or objection to the quality or cost of the work and materials provided by Scott at the Kroner residence.

¹ L. Scott Electric went out of business in 1996, and the claims of L. Scott Electric were transferred to Leland Mark Scott, who brought the present action in his own name.

When the Kroners and Mirar became embroiled in a dispute about payment, Mirar filed suit against the Kroners in Illinois for the balance due on the construction, which included the amount Mirar owed Scott. Scott and Mirar's owner and president Mike Stallings ("Stallings") agreed that Scott would not be paid until the litigation between Mirar and the Kroners was concluded. Scott then aided Mirar in its litigation against the Kroners by testifying on Mirar's behalf at trial. On August 18, 1998, the Illinois trial court entered judgment in favor of Mirar for the amount sued upon, \$48,000, plus ten percent pre-judgment interest. On January 5, 1999, the Kroners paid Mirar \$67,422.55. This included the money Mirar owed to Scott. Upon appeal, the Illinois Appellate Court upheld the monetary judgment and remanded for determination of attorney fees. See Mirar Dev., Inc. v. Kroner, 720 N.E.2d 270, 275 (Ill. App. Ct. 1999). Apparently, however, the Illinois trial court awarded no attorney fees upon remand, despite the instructions from the Appellate Court.

On January 11, 1999, Mirar offered to pay Scott \$8,650.81, i.e. the \$24,515 balance owed to Scott less \$15,864.19, which Mirar claimed was one-half of the legal fees it incurred in the action against the Kroners.² Scott filed suit against Mirar on May 5, 2003, seeking recovery of \$24,515 plus pre-judgment interest. Mirar filed an answer on November 3, 2003, asserting *inter alia* the affirmative defense of the expiration of the statute of limitations. A bench trial was held on November 13, 2006. On January 24, 2007, the trial court entered findings of fact and conclusions of law in which it

² The evidence revealed that Mirar paid the attorney who represented it in the Kroner litigation \$17,705.

determined that Scott was entitled to \$24,515, plus pre-judgment interest from January 6, 1999, which was the day after the Kroners paid Mirar. Mirar now appeals.

Discussion and Decision

1. Statute of Limitations

Mirar first claims that the trial court erred in concluding that Scott's claim was not barred by the applicable statute of limitations. The party pleading a statute of limitations bears the burden of proving that the action was commenced beyond the statutory time allowed. Nash v. Howell, 709 N.E.2d 1033, 1035 (Ind. Ct. App. 1999). Actions on contracts not in writing must be commenced within six years after the cause of action accrues. Ind. Code § 34-11-2-7 (1999).³ The question before us is when Scott's cause of action accrued. When a cause of action accrues is generally a question of law for the courts to determine. Strauser v. Westfield Ins. Co., 827 N.E.2d 1181, 1185 (Ind. Ct. App. 2005). We review questions of law de novo. Raab v. Town of Schererville, 766 N.E.2d 790, 792 (Ind. Ct. App. 2002), trans. denied.

Mirar argues that Scott's cause of action accrued on the date that Scott's invoice indicated that payment was due, i.e. ten days after the billing date. Mirar further contends that any subsequent agreement between itself and Scott to extend the due date amounts to an agreement to extend the statute of limitations, which, pursuant to statute, must be in writing. See Ind. Code § 34-11-9-1 (1999) ("An acknowledgment or promise is not evidence of a new or continuing contract, for the purpose of taking the case out of

³ Similarly, actions on written contracts for the payment of money must be brought within six years. Ind. Code § 34-11-2-9 (1999).

the operation of this article [i.e., limitation of actions], unless the acknowledgment or promise is . . . in writing . . . and signed by the party to be charged by the acknowledgment or promise.”).

Scott argues that the agreement between Scott and Mirar to delay payment until the conclusion of the Kroner litigation was not an agreement to extend the statute of limitation. Instead, it was simply an agreement that payment would not be due until the conclusion of the Kroner litigation. We agree with Scott.

Scott and Stallings agreed that Scott would not be paid until the litigation between Mirar and Kroner was concluded. When asked about the due date indicated on the invoice, and whether Mirar ever agreed to payment on a different date, Stallings testified, “[Y]es.” Tr. p. 106. When asked if he had agreed that Scott would not be paid until the Kroner lawsuit was completed, Stallings testified, “[Y]es, when the lawsuit was completed, that’s correct.” Tr. p. 95. And when asked if Mirar’s payment to Scott “was not going to be due until the lawsuit with [the] Kroners was complete,” Stallings replied, “I think that was understood, yes.” Tr. pp. 95-96.

Thus, there was evidence supporting the trial court’s conclusion that the parties agreed that payment would not become due until after the Kroner litigation was completed, which happened in 1999. When Mirar refused to pay Scott in full after the Kroner litigation was complete, the contract was breached, and Scott’s action accrued. Before that time, payment was not due, the contract had not yet been breached, and the limitations period had not yet begun to run. Thus, when Scott filed suit in 2003, it was

well within the applicable six-year limitation which began to run in 1999 when the payment came due.⁴

Mirar cites Estate of Hann v. Hann, 614 N.E.2d 973, 976 (Ind. Ct. App. 1993), for the proposition that Scott's action accrued at the time the services rendered ceased. At issue in Hann was a quantum meruit action for the fair market value of services rendered. Id. Here, Mirar never convincingly explains why Scott's action should be viewed as one for quantum meruit instead of breach of an unwritten contract. Quantum meruit is an equitable doctrine permitting recovery where the circumstances are such that "under the law of natural and immutable justice there should be recovering as though there had been a promise." King v. Terry, 805 N.E.2d 397, 400 (Ind. Ct. App. 2004) (quoting Bayh v. Sonnenburg, 573 N.E.2d 398, 408 (Ind. 1991)). It is the absence of a contractual relationship that allows a claim in quantum meruit, and a contract precludes application of quantum meruit. Id.

Here, there is no absence of a contractual relationship.⁵ Scott had worked as a sub-contractor for Mirar for some time and continued to do so after the work on the Kroner residence was complete. As explained by Scott at trial, after Mirar won a bid,

⁴ It is not entirely clear as to whether Indiana courts should apply the "discovery rule" to toll the statute of limitations in breach of contract actions. Compare Meisenhelder v. Zipp Express, Inc., 788 N.E.2d 924, 930 (Ind. Ct. App. 2003), and Perryman v. Motorist Mut. Ins. Co., 846 N.E.2d 683, 687-88 (Ind. Ct. App. 2006) (both applying discovery rule to breach of contract actions), with New Welton Homes v. Eckman, 830 N.E.2d 32, 35 (Ind. 2005) (concluding that the discovery rule did not apply to toll a one-year contractual limitation provision). Here, we need not decide whether the discovery rule is applicable because we conclude that Scott's action was brought within six years of the actual breach of the contract, not when Scott discovered the breach.

⁵ In its appellant's brief, Mirar impliedly admits that there was a contract by arguing that some of the work done by Scott on the Kroner residence was "outside the Scott/Mirar contract." Br. of Appellant at 12 (emphasis added).

Scott would meet with Stallings at the job site and “walk through the job and go over the project. And then we would start the job immediately for him.” Tr. p. 14. Scott indicated that this is what happened with the work on the Kroner residence. This indicates an agreement between the parties, i.e. a contractual relationship. We therefore conclude that Scott’s action against Mirar is for breach of contract. As such, it accrued when the breach occurred, not when Scott’s services ceased, as would be the case in a quantum meruit action.

Mirar also claims that Scott’s action was one on an account stated. But even if we treated Scott’s action as being on an account stated, an account stated is an agreement between the parties which operates as a contract. See B.E.I., Inc. v. Newcomer Lumber & Supply Co., Inc., 745 N.E.2d 233, 236 (Ind. Ct. App. 2001). Because an account stated operates as a contract, an action thereon is not equivalent to an action for quantum meruit. Again, Scott’s action is for breach of contract which accrued when the breach occurred—when Mirar did not pay Scott in full after the conclusion of the Kroner litigation. Scott’s action was filed well within six years of this breach. The trial court therefore did not err in concluding that Scott’s action was not barred by the applicable six-year statute of limitations.

2. Propriety of Amount Awarded

Mirar next argues that the amount the trial court ordered it to pay Scott was improper. Mirar first argues that the award improperly includes charges for work performed by Scott which was not included in the original blueprints provided by Mirar. Mirar claims that Scott made agreements directly with Kroner to work on a pool house, a

barn, and entrance gates without “pricing discussions or negotiations with Mirar.” Appellant’s Br. p. 10. Although the evidence favoring Mirar may have supported such a contention, the evidence favoring the trial court’s decision does not. See McLemore v. McLemore, 827 N.E.2d 1135, 1139 (Ind. Ct. App. 2005) (appellate court considers only the evidence supporting the trial court’s judgment along with the reasonable inferences to be drawn therefrom). Viewing the evidence favorable to the trial court’s judgment, we observe that Scott testified that all the work done on the Kroner residence, including the work which was not included in the original blueprints, was done with the approval of Stallings. Therefore, we cannot conclude that the trial court erred in including charges for such work in the award to Scott.

Mirar also contends that the trial court, in determining the amount it awarded to Scott, should have taken into consideration the legal expenses Mirar incurred in collecting what it was owed from the Kroners. Mirar, viewing Scott’s action as one sounding in the equitable doctrine of quantum meruit, argues that it is unfair for Scott to agree to be paid only after the conclusion of the Kroner litigation and benefit from Mirar’s prosecution of the action against the Kroners, but require Mirar to pay for all the legal expenses without contribution from Scott. We are not persuaded.

First, as discussed above, Scott’s action was for breach of contract, not quantum meruit. Further, the trial court found that Scott never agreed with Mirar to shoulder any portion of Mirar’s legal expenses, and there is evidence to support this conclusion. Specifically, when asked if he had ever agreed to help pay Mirar’s legal expenses in collecting the money the Kroners owed Mirar, Mr. Scott testified, “No.” Tr. p. 26.

Moreover, the trial court found that Scott and Mirar agreed to delay payment until the conclusion of the Kroner litigation, not that Scott agreed to be paid only if Mirar recovered from the Kroners, and there is evidence to support this finding. Scott testified that he “agreed to get paid when the Kroner case was resolved,” and that he “had agreed that when . . . this [Kroner] case was resolved, that I would be paid in full.” Tr. pp. 18-19. When asked if his agreement with Mirar was that he would “wait till the conclusion of the Kroner case before you got paid,” Scott answered, “Correct.” Tr. p. 51. It thus appears that Mirar would have had to pay Scott at the conclusion of the Kroner litigation regardless of the outcome of that case. We therefore cannot say that the trial court erred by not offsetting Scott’s recovery by a share of Mirar’s legal expenses.

Affirmed.

NAJAM, J., and BRADFORD, J., concur.