STATE OF MICHIGAN

COURT OF APPEALS

HUTCHINSON FLUID MANAGEMENT SYSTEMS, INC, also known as NEW FAYETTE, INC,

Plaintiff-Appellant,

v

DH HOLDINGS CORPORATION,

Defendant-Appellee,

and

DANAHER CORPORATION and FTP EUROPE LTD,

Defendants.

UNPUBLISHED
October 15, 2020

No. 351647
Hillsdale Circuit Court
LC No. 19-000577-CH

Before: MURRAY, C.J., and CAVANAGH and CAMERON, JJ.

PER CURIAM.

Plaintiff-appellant Hutchinson Fluid Management Systems, Inc. ("Hutchinson") appeals the trial court's order, which granted summary disposition in favor of defendant-appellee DH Holdings Corporation ("DH Holdings"). We affirm.

I. BACKGROUND

This matter stems from DH Holdings's alleged failure to remediate environmentally contaminated real estate that it sold to Hutchinson S.A. in the 1990s. On November 21, 1995, Hutchinson S.A. agreed to purchase stock and certain assets, including the subject property, from DH Holdings, Danaher Corporation, and FTP Europe Ltd. The parties agreed that January 11, 1996, would be the closing date. As part of the agreement, DH Holdings agreed to

remediate environmental conditions that existed on the property. Specifically, § 9.3 of the agreement provided as follows:

> (b) After the Closing Date, the Seller hereby covenants and agrees (i) to remediate environmental conditions existing as of the Closing Date at any of the Company's Real Property, . . . to bring such properties into compliance with applicable Environmental Law and (ii) to obtain environmental permits or otherwise remedy operational conditions necessary to achieve compliance with environmental permit requirements necessary for the current use, occupancy or operation of the Company's assets and business under Environmental Law ("Remedial Activities").
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> (f) With respect to any Remedial Activity, Seller's obligation shall be deemed satisfied when the lead environmental regulatory agency with jurisdiction indicates that applicable Environmental Laws have been complied with, or alternatively that the Remedial Activity may cease ("Closure"). If both Purchaser and Seller agree, they may elect to have the conclusion of any Remedial Activity determined by a mutually satisfactory environmental expert in lieu of obtaining Closure.

At some point thereafter, Hutchinson acquired all of Hutchinson S.A.'s rights and obligations under the Agreement. In August 1998, the Michigan Department of Environmental Quality ("MDEQ") informed Hutchinson that it had received a "closure report" concerning storage tanks on the property, and DH Holdings indicated that it was preparing to submit a remedial action plan "for the control of subsurface contamination present at the" property to the MDEQ. However, DH Holdings acknowledged in May 1999 that remediation activities had not yet commenced on the property. Although DH Holdings assured Hutchinson that it would provide Hutchinson with "all written communications" regarding remediation on the property after the remediation plan was submitted to the MDEQ, it is unclear what remediation activities took place after May 1999. In 2018, Hutchinson began inquiring whether DH Holdings had ever obtained approval from an environmental regulatory agency regarding the property. A representative from Danaher responded in a December 2018 e-mail that "DH Holdings believe[d] that it [had] fully discharged its responsibilities under the Purchase Agreement and that th[e] matter was closed by mutual agreement of the parties in or around 1999."

In August 2019, Hutchinson filed a complaint against DH Holdings, alleging breach of contract.[1] Specifically, Hutchinson alleged that DH Holdings "breached the Agreement by failing and refusing to abide by [its] obligations under Sections 9.3(b) and 9.3(f) of the Agreement." In lieu of answering the complaint, DH Holdings filed a motion for summary disposition and argued, in relevant part, that Hutchinson's claim was barred by the relevant statute of limitations. Hutchinson opposed the motion, arguing that the claim was timely filed under MCL 600.5807(9)

[1] Danaher Corporation and FTP Europe Ltd were also named as defendants. However, they were later dismissed from the action.

because DH Holdings did not breach the agreement until December 2018. After hearing oral argument, the trial court granted summary disposition in favor of DH Holdings. This appeal followed.

II. STANDARDS OF REVIEW

"This Court reviews de novo a trial court's ruling on a motion for summary disposition." *Loweke v Ann Arbor Ceiling & Partition Co, LLC*, 489 Mich 157, 162; 809 NW2d 553 (2011). MCR 2.116(C)(7) provides for summary disposition when an action is barred by a "statute of limitations[.]" With respect to motions for summary disposition brought under MCR 2.116(C)(7), the Court in *RDM Holdings, Ltd v Continental Plastics Co*, 281 Mich App 678, 687; 762 NW2d 529 (2008), observed the following:

> Under MCR 2.116(C)(7) . . . , this Court must consider not only the pleadings, but also any affidavits, depositions, admissions, or other documentary evidence filed or submitted by the parties. The contents of the complaint must be accepted as true unless contradicted by the documentary evidence. This Court must consider the documentary evidence in a light most favorable to the nonmoving party. If there is no factual dispute, whether a plaintiff's claim is barred under a principle set forth in MCR 2.116(C)(7) is a question of law for the court to decide. If a factual dispute exists, however, summary disposition is not appropriate. [Citations omitted.]

Questions involving the proper interpretation and application of a contract are reviewed de novo. *Rory v Continental Ins Co*, 473 Mich 457, 464; 703 NW2d 23 (2005).

III. ANALYSIS

Hutchinson argues that the trial court erred by granting summary disposition in favor of DH Holdings under MCR 2.116(C)(7). We disagree.

MCL 600.5807(9) provides that "[t]he period of limitations is 6 years for an action to recover damages or money due for breach of contract[.]" "[T]he period of limitations runs from the time the claim accrues," and "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 a breach of contract action, the limitations period generally begins to run on the date that the breach occurs." *Seyburn, Kahn, Ginn, Bess, Deitch & Serlin, PC v Bakshi*, 483 Mich 345, 355; 771 NW2d 411 (2009).

In this case, Hutchinson argues that DH Holdings breached the agreement in December 2018. Hutchinson's argument requires interpretation of the parties' agreement. "The primary goal in the construction and interpretation of any contract is to honor the intent of the parties." *Klapp v United Ins Group Agency, Inc*, 468 Mich 459, 473; 663 NW2d 447 (2003). "Absent an ambiguity or internal inconsistency, contractual interpretation begins and ends with the actual words of a written agreement." *Universal Underwriters Ins Co v Kneeland*, 464 Mich 491, 496; 628 NW2d 491 (2001).

In this case, the parties agreed that, "[a]fter the Closing Date," DH Holdings would "remediate environmental conditions existing" on the property at the time of closing and would bring the property "into compliance with applicable Environmental Law[.]" The parties further agreed that DH Holdings's obligations under the agreement "[w]ith respect to any Remedial Activity" would "be deemed satisfied when the lead environmental regulatory agency with jurisdiction indicate[d] that applicable Environmental Laws ha[d] been complied with, or alternatively that the Remedial Activity [could] cease[.]" In the alternative, Hutchinson and DH Holdings agreed that they could "elect to have the conclusion of any Remedial Activity determined by a mutually satisfactory environmental expert[.]"

DH Holdings commenced remediation efforts on the property after closing occurred on January 11, 1996. In August 1998 and May 1999, the parties communicated about the remediation plan, and DH Holdings indicated that, once it submitted the draft remediation action plan to the MDEQ, it would provide Hutchinson with "all written communications" regarding remediation on the property. It is unclear what (if any) communication occurred between the parties in the months and years that followed May 1999. It is also unclear what remediation activities took place on the property. The record only reveals that, in 2018, Hutchinson began demanding that DH Holdings achieve closure under the agreement. Importantly, however, the affidavit of DH Holdings's vice president supports that DH Holdings's involvement with the property ended in November 1999. Specifically, DH Holdings's vice president averred that "DH Holdings'[s] involvement in the Property . . . ended when it last performed remediation services at the site on or about November 30, 1999[.]" It necessarily follows that, if DH Holdings was not engaging in remediation activities or attempting to achieve closure, DH Holdings stopped complying with the relevant terms of the agreement sometime around November 30, 1999.

Even so, Hutchinson argues that because the agreement did not impose a specific deadline for performance, "DH Holdings did not breach the Agreement until it repudiated the Agreement by informing Hutchinson on December 10, 2018 that DH Holdings no longer intended to achieve Closure." In *Stoddard v Mfr Nat'l Bank of Grand Rapids*, 234 Mich App 140, 163; 593 NW2d 630 (1999), this Court observed the following:

> Under the doctrine of repudiation or anticipatory breach, if, before the time of performance, a party to a contract unequivocally declares the intent not to perform, the innocent party has the option to either sue immediately for the breach of contract or wait until the time of performance. In determining whether a repudiation occurred, it is the party's intention manifested by acts and words that is controlling, not any secret intention that may be held. [Citations omitted.]

In the December 10, 2018 e-mail to Hutchinson, a representative for Danaher indicated as follows:

> It is our understanding that following the January 1996 closing of the sale . . . , investigation and remediation activities at the . . . site were conducted by mutual agreement between DH Holdings Corp. and your subsidiary, Hutchinson S.A. Our records reflect that those activities were completed in or around 1999 . . . . DH Holdings believes that it fully discharged its responsibilities under the Purchase

> Agreement and that this matter was closed by mutual agreement of the parties in or around 1999.

Thus, contrary to Hutchinson's argument on appeal, DH Holdings did not "unequivocally declare[] the intent not to perform" for the first time in December 2018. See *Stoddard*, 234 Mich App at 163. Rather, in December 2018, Hutchinson was informed that DH Holdings believed that it had "fully discharged its responsibilities under the Purchase Agreement and that th[e] matter was closed by mutual agreement of the parties in or around 1999." Thus, Hutchinson's argument that the breach occurred in December 2018 is without factual support. Although Hutchinson argues that it did not know until December 2018 that DH Holdings did not intend to honor the agreement, "[a] plaintiff need not know of the invasion of a legal right in order for [a] claim to accrue." *Dewey v Tabor*, 226 Mich App 189, 193; 572 NW2d 715 (1997) (quotation marks and citation omitted).

In sum, the undisputed evidence establishes that the alleged breach occurred in 1999 when DH Holdings's involvement with the property ended. When the complaint was filed in August 2019, it had been over 23 years since the parties had closed on the property and DH Holdings had not engaged in any activities relating to the property in over 19 years. Because there is no factual dispute that the statute of limitations was expired on the breach of contract action when the complaint was filed, the trial court did not err by granting summary disposition under MCR 2.116(C)(7).[2] See *RDM Holdings, Ltd*, 281 Mich App at 687.

Affirmed.

/s/ Christopher M. Murray
/s/ Mark J. Cavanagh
/s/ Thomas C. Cameron

[2] Because summary disposition was properly granted under MCR 2.116(C)(7), we need not address Hutchinson's argument that the trial court erred by granting summary disposition under MCR 2.116(C)(10). See *Attorney Gen v Pub Serv Comm*, 269 Mich App 473, 485; 713 NW2d 290 (2005) (holding that this Court will generally not decide moot issues).