

**IN THE COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY
FIRST JUDICIAL DISTRICT OF PENNSYLVANIA
CIVIL TRIAL DIVISION**

JUST WOOD INDUSTRIES,	:	December Term 2004
Plaintiff,	:	
v.	:	No. 0213
CAOBA DOOR, S.A.,	:	
Defendant.	:	Commerce Program
	:	
	:	726 EDA 2006

OPINION

BERNSTEIN, J.

Plaintiff, Just Wood Industries, Inc. (“Just Wood”) filed a complaint on December 7, 2004 against Defendant, Caoba Door, S.A. (“Caoba”) for breach of contract allegedly arising from Caoba’s failure to pay for doors and windows manufactured and delivered by Just Wood. On June 20, 2005, during the deposition of Gary Ahalt (“Ahalt”), Vice President and owner of Just Wood, Just Wood conceded that the allegations contained within the complaint were wrong. Ahalt testified that Just Wood did not manufacture and deliver doors and windows to Caoba. Rather, Caoba manufactured and delivered doors and windows to Just Wood. The claim was not for failing to pay for goods delivered but for delivering nonconforming goods.

On September 8, 2005, Caoba filed a Motion for Summary Judgment seeking dismissal of the complaint based on the erroneous allegations. On November 10, 2005, Just Wood filed a Petition to Amend the Complaint to correct the factual allegations and causes of action. On December 20, 2005, the court granted Just Wood leave to amend

the complaint and granted Caoba thirty days to file a motion for summary judgment based upon the allegations in the amended complaint.¹

On December 22, 2005, Just Wood filed an amended complaint. The amended complaint alleges that Caoba sold and delivered doors, windows and other goods to Just Wood, that Caoba represented that the goods were in accordance with the plans and specifications supplied by Just Wood, that Just Wood received the goods and paid for them prior to July and August 2001, that the goods delivered by Caoba were nonconforming and that as a result Just Wood suffered damages in the amount of \$50,429.60 to modify the goods.

On January 18, 2006, Caoba filed a second motion for summary judgment asserting the statute of limitations as a bar to the amended complaint. On February 23, 2006, this court granted the motion for summary judgment and dismissed the case with prejudice. On March 14, 2006, Just Wood appealed the February 23, 2006 order.

The Uniform Commercial Code (“UCC”) applies to all contracts for the sale of goods.² Under the UCC, the statute of limitations applicable to claims for breach of contract for the sale of goods is four years.³ A cause of action accrues under the UCC when the breach occurs, regardless of the aggrieved party’s lack of knowledge of the breach.⁴

In the case at bar, Caoba sold and delivered windows, doors and other goods to Just Wood before August 2001. Sometime prior to August 2001, Just Wood learned that

¹ This matter was assigned to the Honorable C. Darnell Jones, II from December 2004 to January 2006. In January 2006, this case was transferred to the undersigned.

² 13 Pa. C. S. § 2102.

³ 13 Pa. C. S. § 2725 (a).

⁴ 13 Pa. C. S. § 2725 (b).

the delivered goods were nonconforming.⁵ On July 10, 2001, August 14, 2001 and August 28, 2001, Just Wood was charged by its installer to refinish or construct the nonconforming or missing goods.⁶ Therefore, Just Wood was aware that its contract with Caoba had been breached before August 2001. Just Wood's amended complaint was filed on December 22, 2005. The amended complaint was filed approximately four months beyond the prescribed four year statutory period, and accordingly is barred by the applicable statute of limitations.

The original cause of action filed in this action in December 2004 does not toll the statute of limitations. An amendment which adds or changes the theory of recovery upon which relief is sought or changes the operative facts supporting the claim constitutes a new cause of action.⁷

Here, the amended complaint neither relates back nor amplifies the original complaint. The amended complaint is clearly a new cause of action. In the original complaint Just Wood alleged it was the seller of doors and windows and Caoba failed to pay for these goods. In the amended complaint, Just Wood alleges that it was the buyer of goods manufactured and sold by Caoba and that the goods sold were nonconforming.

The amended complaint even asserts different theories of recovery including false representation (Count I), failure to cure (Count II) and breach of warranty (Count III). These theories were not alleged in the original complaint and indeed could not have been

⁵ Deposition excerpts of Gary Ahalt pp. 73-139 attached hereto as Exhibit "C" to Defendant's Motion for Summary Judgment.

⁶ Change Orders attached as Exhibit "E" to Defendant's Motion for Summary Judgment; deposition excerpts of Gary Ahalt attached hereto as Exhibit "C" to Defendant's Motion for Summary Judgment pp. 134-138.

⁷ Rachlin v. Edmison, 813 A.2d 862 (Pa. Super. 2002).

contemplated due to the nature of the relationship alleged in the original complaint. The amended complaint amounts to a new cause of action.⁸

It is true that exact exhibits were attached to the complaint and the amended complaint. However, attaching the same exhibits does not alter the fact that the amended complaint constitutes a new cause of action, particularly since none of the exhibits demonstrate the precise relationship between Caoba and Just Wood.

For the foregoing reasons, the order of this court dated February 23, 2006 should be affirmed.

BY THE COURT,

Date:4/24/06

MARK I. BERNSTEIN, J.

⁸ Reynolds v. Thomas Jefferson University Hospital, 676 A.2d 1205 (Pa. Super. 1996).