

Court of Claims of Ohio

The Ohio Judicial Center
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Columbus, OH 43215
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OHIO SCHOOL FACILITIES
COMMISSION

Plaintiff/Counter Defendant

v.

JOHN DOE INDIVIDUALS, et al.

Defendants

and

RIVERSIDE MASONRY L.L.C. dba
C&R MASONRY OF MICHIGAN, et al.

Defendants/Cross-Claim
Defendants

and

GREENWICH INSURANCE CO.

Defendant/Counter
Plaintiff/Third-Party
Plaintiff/Counter Defendant

v.

WELLSTON CITY SCHOOL DISTRICT
BOARD OF EDUCATION

Third-Party Defendant/Counter
Plaintiff/Cross-Claim Plaintiff

[Cite as *Ohio School Facilities Comm. v. John Doe Individuals*, 2008-Ohio-2447.]

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Case No. 2005-07704-PR

Judge Joseph T. Clark
Referee John W. McCormac

JUDGMENT ENTRY

{¶1} On March 28, 2008, the referee issued a decision recommending judgment for defendant/cross-claim defendant/counter plaintiff, J & H Reinforcing and Structural Erectors, Inc. (J&H), on its motion for summary judgment as to the amended complaint filed by plaintiff/counter defendant, Ohio School Facilities Commission (OSFC), the counterclaim/cross-claim of Wellston City School District Board of Education (Wellston), and the cross-claims filed by defendant/cross-claim defendant and cross-claim plaintiff, Riverside Masonry L.L.C., d.b.a. C&R Masonry of Michigan (C&R), and defendant/counter plaintiff/third-party plaintiff/counter defendant/cross-claim plaintiff, Greenwich Insurance Co. (Greenwich).

{¶2} Civ.R. 53(D)(3)(b)(i) states, in part: “A party may file written objections to a magistrate’s decision within fourteen days of the filing of the decision, whether or not the court has adopted the decision during that fourteen-day period as permitted by Civ.R. 53(D)(4)(e)(i).” OSFC and Wellston timely filed three objections.

{¶3} In their first objection, OSFC and Wellston argue that the referee erred in finding that the four-year statute of limitations in R.C. 1302.98 barred their cause of action against J&H. They note that R.C. 1302.98 is a general statute of limitations and that as such it does not apply to the state. See *Ohio Dep’t of Transp. v. Sullivan* (1988), 38 Ohio St.3d 137 (holding that the state is exempt from a generally worded statute of limitations unless there is express language to the contrary). The second and third objections merely restate arguments that were considered and rejected by the referee.

{¶4} J&H contends that *Sullivan* does not apply to the facts of this case inasmuch as J&H entered into a contract with Wellston and was paid by Wellston from the school district’s funds. According to J&H, OSFC merely authorized Wellston to execute the contract. Thus, J&H maintains that OSFC may assert its claim only through Wellston and that Wellston is subject to the statute of limitations such that an exemption is not warranted.

{¶5} “While the state of Ohio is not subject to the general requirements of statutes of limitations, unless specifically provided for in the statute, the state’s exemption is an attribute of sovereignty only. The exemption from limitations does not extend to school districts or boards of education. *Ohio Dept. of Transp. v. Sullivan* (1988), 38 Ohio St.3d 137, 139, 527 N.E.2d 798, 799-800; *State ex rel. Bd. of Edn. v.*

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Gibson (1935), 130 Ohio St. 318, 4 O.O. 352, 199 N.E. 185, paragraph two of the syllabus. 'A board of education or school district, clothed with the capacity to sue and be sued, is thereby rendered amenable to the laws governing litigants, including the plea of the statute of limitations.' Id." *Beavercreek Local Schools v. Basic, Inc.*, (1991), 71 Ohio App.3d 669, 684-685. See also *Columbus Bd. of Educ. v. Armstrong World Indus.* (1993), 89 Ohio App.3d 846, 856 (holding that pursuant to *Beavercreek*, the statute of limitations applied such that the board's cause of action was time-barred).

{¶6} Upon review of the record, the magistrate's decision and the objections, the court finds that the magistrate did not err in finding that the cause of action asserted against J&H was not timely filed. In addition, the court finds that the magistrate has properly determined the factual issues and appropriately applied the law. Therefore, the objections are OVERRULED and the court adopts the magistrate's decision and recommendation as its own, including findings of fact and conclusions of law contained therein. Judgment is rendered in favor of J&H. The clerk shall serve upon all parties notice of this judgment and its date of entry upon the journal.

JOSEPH T. CLARK
Judge

cc:

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SJM/cmd
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