

[Cite as *Reddick v. Lazar Bros., Inc.*, 2010-Ohio-5136.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 94424

KENDRA L. REDDICK

PLAINTIFF-APPELLEE

vs.

LAZAR BROTHERS, INC.

DEFENDANT-APPELLANT

**JUDGMENT:
AFFIRMED**

Civil Appeal from the
Cleveland Heights Municipal Court
Case No. CVI 0900853

BEFORE: Gallagher, A.J., Boyle, J., and Sweeney, J.

RELEASED AND JOURNALIZED: October 21, 2010

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SEAN C. GALLAGHER, A.J.:

{¶ 1} This cause came to be heard upon the accelerated calendar pursuant to App.R. 11.1 and Loc.R. 11.1, the trial court records, and briefs of counsel.

{¶ 2} Appellant Lazar Brothers, Inc., d.b.a. Stanley Steemer (“Stanley Steemer”) appeals the Cleveland Heights Municipal Court’s judgment in favor of appellee Kendra Reddick. For the reasons set forth below, we affirm.

{¶ 3} On May 20, 2006, Reddick contracted with Stanley Steemer to clean the tile floors in her kitchen and bathrooms and some upholstered furniture. A Stanley Steemer employee cleaned the tile and grout using an alkaline-based cleaner, which Reddick claimed caused staining on some but not all of the tiles. On May 27, 2006, Stanley Steemer returned to Reddick's house to clean the tiles again. When the stains could not be removed, Stanley Steemer sent a certified tile technician to Reddick's house, who told her the tile was either defective or had been stained prior to Stanley Steemer's cleaning on May 20. Reddick stopped payment on her check to Stanley Steemer, which included the cost of cleaning both the tile and the furniture.

{¶ 4} On August 19, 2009, Reddick filed a small claims complaint against Stanley Steemer in Cleveland Heights Municipal Court. The case was heard before a magistrate who found in Reddick's favor. Stanley Steemer filed objections to the magistrate's report, arguing that Reddick's complaint was not timely filed and that there was no evidence that Stanley Steemer damaged the tile.

{¶ 5} On November 20, 2009, the trial court denied Stanley Steemer's objections and adopted the magistrate's findings. Judgment was entered in favor of Reddick in the amount of \$2,867.07, which represented the amount it

would cost her to replace the damaged tile, minus what she owed Stanley Steemer for cleaning her upholstery.

{¶ 6} On appeal, Stanley Steemer raises one assignment of error, arguing that the trial court abused its discretion by overruling the objections of Stanley Steemer and adopting the magistrate's report.

{¶ 7} First, Stanley Steemer argues that Reddick's complaint was not filed within the applicable statute of limitations, which it contends is two years under R.C. 2305.10(A). Reddick argues this is a breach of contract case, and therefore is subject to a 15-year statute of limitations under R.C. 2305.06.

{¶ 8} R.C. 2305.10(A) sets forth the statute of limitations for actions based on a product liability claim, an action for bodily injury, or an action for injury to personal property. This statute of limitations does not apply to Reddick's claim for relief for damage to her real property, the damaged floor tiles in her house. See *Young v. McCleese* (July 13, 1998), Ross App. No. 97CA2351.

{¶ 9} Instead, we find this action was premised on a breach of contract, which allows a plaintiff 15 years to bring an action. R.C. 2305.06; see, also, *Livchak v. Logsdon Sons, Inc.*, Lorain App. No. 01CA007966, 2002-Ohio-5941 (court found claim for breach of services was governed by R.C. 2305.06).

{¶ 10} Even assuming this is not a breach of contract, we find the only other applicable statute of limitations would be R.C. 2305.09(D). This statute provides a four-year statute of limitations for an injury to the rights of a plaintiff not arising on contract nor enumerated in R.C. 2305.10, which would include tortious damage to real property. *Commonwealth Real Estate Investors v. Paolone*, Mahoning App. No. 09 MA 51, 2010-Ohio-751.

{¶ 11} Both parties acknowledged at trial that Stanley Steemer provided Reddick with a written document that set forth the terms of its agreement to clean the tiles and upholstery; this contract was admitted into evidence as Exhibit A. Reddick filed her complaint just over three years after the damage occurred to her floor tiles. This is well within the 15-year statute of limitations under R.C. 2305.06, as well as within the four-year statute of limitations under R.C. 2305.09(D). We find Reddick's complaint was timely filed.

{¶ 12} Next Stanley Steemer argues that the magistrate's decision was against the manifest weight of the evidence. Specifically, it argues that Reddick failed to produce an expert report and photographs of the stained tiles to support her case.

{¶ 13} On appellate review, to the extent that the trial court's determination rests upon findings of fact, those findings will not be overturned unless they are against the manifest weight of the evidence. *C.E.*

Morris Co. v. Foley Construction Co. (1978), 54 Ohio St.2d 279, 376 N.E.2d 578. In reviewing a trial court's disposition of objections to a magistrate's report, an appellate court will not reverse the trial court's decision if it is supported by some competent, credible evidence. *Seasons Coal Co. v. Cleveland* (1984), 10 Ohio St.3d 77, 80, 461 N.E.2d 1273.

{¶ 14} Reddick testified that when Stanley Steemer's technician first looked at her floor tile, he noted on the contract there was no existing discoloration to the tiles. She testified that while the cleaning work was being performed, both she and the technician noticed spots appearing on the tiles on the kitchen floor. The technician told Reddick that the spots would disappear once the floor was completely dry; however, the spots remained even after the floor dried. Reddick testified that approximately 50 percent of the tiles on her kitchen floor were stained, and no tiles in her bathroom were stained. Stanley Steemer sent another technician to Reddick's house on May 27 to reclean the tile, but he was unable to remove the stains.

{¶ 15} Reddick testified she contacted Coit cleaning service to try to remove the stains. The Coit technician told Reddick that the cleaning solution used by Stanley Steemer was too hard on her tiles and that the stains on her tiles were permanent. Reddick produced an estimate to replace the stained tiles in her kitchen.

{¶ 16} Terry Lazar, owner and president of Lazar Brothers Inc., testified that he had never been to Reddick's house. He testified that his company was not responsible for the staining because his technician used an alkaline-based chemical to clean the tiles and grout. Lazar also testified that if his company's chemicals caused the stains, then all of the tiles would be stained and not just some of the tiles. He argued that based on his certified tile technician's opinion, the stained tiles must have been defective or were that way prior to his company's work for Reddick.

{¶ 17} Stanley Steemer did not produce any evidence that the tiles were defective or had prior staining. Reddick testified that its employee acknowledged the stains showed up during the initial cleaning process on May 20. Reddick proved by a preponderance of the evidence that Stanley Steemer caused the damage to her floor tiles. We find the trial court's decision is supported by competent, credible evidence, and we will not reverse it.

{¶ 18} Stanley Steemer's assignment of error is overruled.

Judgment affirmed.

It is ordered that appellee recover from appellant costs herein taxed.

The court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate be sent to the municipal court to carry this judgment into execution.

A certified copy of this entry shall constitute the mandate pursuant to
Rule 27 of the Rules of Appellate Procedure.

SEAN C. GALLAGHER, ADMINISTRATIVE JUDGE

MARY J. BOYLE, J., and
JAMES J. SWEENEY, J., CONCUR