

DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FOURTH DISTRICT
January Term 2006

MEDICAL JET, S.A.,
Appellant,

v.

SIGNATURE FLIGHT SUPPORT - PALM BEACH, INC.,
Appellee.

No. 4D05-1760

[April 26, 2006]

MAY, J.

The plaintiff appeals an adverse summary judgment finding the statute of limitations barred its claim for breach of contract. It argues the trial court erred in determining the date upon which its cause of action accrued. We agree and reverse.

The plaintiff is an Argentine business and owns an aircraft registered in Argentina. It provides medical air ambulance services and executive flights in Argentina. In 1998, the plaintiff entered into an agreement with the defendant to inspect and repair the plaintiff's aircraft. According to the allegations, the defendant represented that it had current certification from Argentina's national aircraft regulatory authority, the Direccion Nacional de Aeronavetabilidad [DNA]. After conducting the contracted services, the defendant returned the aircraft to the plaintiff on April 23, 1998.

Allegedly, the DNA grounded the aircraft on May 14, 1999, when it failed to pass its annual inspection because the defendant lacked a current DNA certification number. The plaintiff filed its complaint on August 28, 2003 and its second amended complaint on June 14, 2004.

On June 29, 2004, the defendant filed a motion to dismiss and strike the plaintiff's second amended complaint. It argued, among other things, the plaintiff's claim for breach of contract was barred by the statute of limitations. The trial court denied the motion.

On December 28, 2004, the defendant filed a motion for a judgment on the pleadings, making the same argument previously made in the motion to dismiss. The trial court granted the motion. It is from this order that the plaintiff appeals.

The plaintiff argues that its cause of action did not accrue until the DNA grounded the plane and it sustained damage. The defendant responds the plaintiff's cause of action accrued the moment it breached the contract, i.e., the day it returned the plane to the plaintiff, April 23, 1998, having been repaired by a company without DNA certification.

Section 95.11(2)(b), Florida Statutes (2003) provides that “[a] legal or equitable action on a contract, obligation, or liability founded on a written instrument” must be commenced within five years. “[A] cause of action cannot be said to have accrued, within the meaning of the statute of limitations, until the action may be brought.” *State Farm Mut. Auto. Ins. Co. v. Lee*, 678 So. 2d 818, 821 (Fla. 1996) (citing *Loewer v. N.Y. Life Ins. Co.*, 773 F. Supp. 1518, 1521 (M.D. Fla. 1991)). The elements for bringing a cause of action for breach of contract are: (1) a valid contract; (2) material breach; and (3) damages. *J.J. Gumberg Co. v. Janis Servs., Inc.*, 847 So. 2d 1048, 1049 (Fla. 4th DCA 2003) (quoting *Abbott Labs. Inc. v. Gen. Elec. Capital*, 765 So. 2d 737, 740 (Fla. 5th DCA 2000)).

While the delayed discovery doctrine is inapplicable to a breach of contract action, the real issue is when the plaintiff's cause of action accrued. See, e.g., *Fed. Ins. Co. v. S.W. Fla. Ret. Ctr., Inc.*, 707 So. 2d 1119 (Fla. 1998); *In re: Receivership of Armor Ins. Co.*, 775 So. 2d 367 (Fla. 2d DCA 2000); *Abbott Labs. Inc.*, 765 So. 2d at 740. In an action for breach of contract, the action accrues when the last element giving rise to the cause of action takes place. See § 95.031(1), Fla. Stat. (2003).

Had the plane never been grounded by the DNA, the plaintiff would not have sustained any damage. Thus, the actual breach, the defendant's failure to have certification at the time it inspected and repaired the aircraft, could not be the accrual date for the cause of action. We therefore reverse and remand the case to the trial court for reinstatement of the plaintiff's second amended complaint.

Reversed and Remanded.

GROSS, J. and IMPERATO, CYNTHIA G., Associate Judge concur.

* * *

Appeal from the Circuit Court for the Fifteenth Judicial Circuit, Palm Beach County; Thomas H. Barkdull, III, Judge; L.T. Case No. 50-2003-CA-009217-XXCDAJ.

Richard G. Fowler of Roth, Rousso, Katsman & Schneider, L.L.P., Aventura, for appellant.

John M. Murray, Michael G. Shannon and Christopher E. Doran of Murray, Marin & Herman, P.A., Tampa, for appellee.

Not final until disposition of timely filed motion for rehearing.