

STATE OF MICHIGAN  
IN THE 17th CIRCUIT COURT FOR KENT COUNTY

GIVE 'EM A BRAKE SAFETY, INC.,  
a Michigan corporation,

Plaintiff,

vs.

Case No. 14-06904-CKB

HON. CHRISTOPHER P. YATES

J. SLAGTER & SONS CONSTRUCTION,  
COMPANY, a Michigan corporation;  
INTERNATIONAL FIDELITY INSURANCE  
COMPANY, a New Jersey company; and  
WESTERN SURETY COMPANY, a South  
Dakota company,

Defendants.

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OPINION AND ORDER GRANTING DEFENDANTS' COUNTER-MOTION FOR  
SUMMARY DISPOSITION ON COUNTS NINE, ELEVEN, AND THIRTEEN

When a private landowner wants to develop property, the landowner typically hires a general contractor, which in turn hires subcontractors to work on the project. If a subcontractor does not get paid, the landowner usually gets sued even if the general contractor is to blame. But when the State of Michigan or a political subdivision has work to be done on its land, the landowners are really the taxpayers, whom the government does not want to expose to lawsuits by disgruntled subcontractors. Thus, our Legislature devised a bond system for public-works projects that insulates taxpayers from lawsuits and liability. Here, Plaintiff Give 'Em a Brake Safety, Inc. ("GEAB") seeks to recover on bonds issued by Defendants International Fidelity Insurance Company ("IFIC") and Western Surety Company ("Western") because the general contractor hired by the government, Defendant J. Slagter & Sons Construction Company ("J. Slagter"), did not pay GEAB for rental equipment that GEAB

Before the Court can consider the merits of the parties' dispute, the Court must determine whether Plaintiff GEAB's claims on the bonds in Counts Nine, Eleven, and Thirteen are barred by the one-year limitations period set forth in MCL 570.104. That statute provides in pertinent part as follows:

[A] bond may be prosecuted and a recovery had at any time within 1 year after the completion and acceptance of the project, by any person, firm or corporation to whom any money shall be due and payable on account of having performed any labor or furnished any materials or supplies in the erection, repairing or ornamentation of any such building or works, in the name of the people of this state for the use and benefit of such person, firm or corporation[.]

See MCL 570.104. By all accounts, GEAB did not initiate this action for recovery on a bond for any of the three projects "within 1 year after the completion and acceptance of the project,"<sup>2</sup> as mandated by MCL 570.104, but GEAB nonetheless has invited the Court to invoke the doctrine of equitable estoppel to circumvent the seemingly applicable statutory bar prescribed by MCL 570.104. This the Court cannot do.

As our Supreme Court has explained, "equitable estoppel is a judicially created exception to the general rule that statutes of limitation run without interruption." Cincinnati Ins Co v Citizens Ins Co, 454 Mich 263, 270 (1997). "It is essentially a doctrine of waiver that extends the applicable period for filing a lawsuit by precluding the defendant from raising the statute of limitations as a bar" to a civil action. Id. Because equitable estoppel operates in derogation of statutes of limitations that our Legislature has enacted, its widespread application threatens the very separation of powers that entrusts to our Legislature the power to make laws. See, e.g., Trentadue v Buckler Automatic Lawn

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<sup>2</sup> Plaintiff GEAB has acknowledged that "[t]he present action was initiated more than one year after the date of acceptance." See Brief in Support of Plaintiff's Motion for Partial Summary Disposition at 4, ¶ 14. The Court appreciates GEAB's forthright concession, which simplifies the task of resolving the competing motions for summary disposition.

Sprinkler Co, 479 Mich 378, 405-407 (2007). Thus, the Court must exercise extraordinary caution in considering any application of equitable estoppel to override a statute of limitations.

The Court's review of the standards for invoking equitable estoppel leads ineluctably to the conclusion that Plaintiff GEAB cannot avail itself of that equitable doctrine. Indeed, a party "who seeks to invoke the doctrine generally must establish that there has been (1) a false representation or concealment of a material fact, (2) an expectation that the other party will rely on the misconduct, and (3) knowledge of the actual facts on the part of the representing or concealing party." Cincinnati Ins, 454 Mich at 270. GEAB has not presented any evidence to satisfy any of those three elements. Because our Supreme Court "has been reluctant to recognize an estoppel in the absence of conduct clearly designed to induce 'the plaintiff to refrain from bringing an action within the period fixed by the statute'" of limitations, Lothian v City of Detroit, 414 Mich 160, 177 (1982), any party invoking equitable estoppel must present substantial evidence of such misconduct by the defendant. In this case, GEAB has offered nothing of the sort.

Plaintiff GEAB simply contends that the language of each bond's endorsement modified the 60-day written-notice requirement prescribed by MCL 570.102,<sup>3</sup> and thereby led GEAB to believe that it could postpone the submission of its claim on each bond until after the State of Michigan had paid the general contractor, *i.e.*, J. Slagter, and the general contractor had either paid or shirked its obligations to its subcontractors. But that endorsement language refers to the notice requirement of

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<sup>3</sup> Under MCL 570.102, a subcontractor "shall within 60 days after furnishing the last material or supplies or performing the last work covered by his subcontract, serve a written notice in duplicate upon the board of officers or agents contracting on behalf of the state, county, city, village, township or school district . . . that he is a subcontractor for the doing of some part of such work, which he shall specify in his notice and that he relies upon the security of the bond by this act required to be given by the principal contractor[.]"

MCL 570.102, rather than the one-year period of limitations prescribed by MCL 570.104 and cited by the defendants, so the Court cannot rely on equitable estoppel to excuse GEAB's failure to meet the one-year deadline set forth in MCL 570.104. The weakness of GEAB's position comes through clearly in GEAB's attempt to articulate some alternative deadline or approach to the one-year period of limitations prescribed by MCL 570.104. Specifically, GEAB argues as follows:

The Defendant surety companies, by having the endorsement language expand their liability and require only one notice, when two were required statutorily, must either be viewed as extending/tolling the statutory statute of limitations, of MCL 570.104, to a time that is reasonable with the time authorized in the bond for presenting claims, or the bond and endorsement language render the statutory language ambiguous[.]

See Plaintiff Give 'Em a Brake Safety, Inc.'s Reply Brief at 7. Manifestly, a standard based upon "a time that is reasonable with the time authorized in the bond for presenting claims" constitutes no meaningful limitation whatsoever, and an interpretation that renders the pellucid statutory language of MCL 570.104 "ambiguous" must be rejected as wholly unworkable. As a result, the Court must reject GEAB's reliance upon each bond's endorsement as a justification for invoking the doctrine of equitable estoppel,<sup>4</sup> and therefore must grant summary disposition to the defendants based upon a straightforward application of the one-year limitations period prescribed by MCL 570.104.

### III. Conclusion

For all of the reasons set forth in this opinion, the Court must grant summary disposition to the defendants under MCR 2.116(C)(7) and (10) with respect to Plaintiff GEAB's claims in Counts

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<sup>4</sup> In doing so, the Court readily distinguishes the principal authority cited by Plaintiff GEAB, McDonald v Farm Bureau Ins Co, 480 Mich 191 (2008). There, our Supreme Court had to address equitable tolling in the context of "a contractual limitations period in an insurance policy," see id. at 193, as opposed to a legislatively established statute of limitations. And even in that context, our Supreme Court refused to apply the doctrine of equitable tolling. See id. at 204-205.

Nine, Eleven, and Thirteen of the complaint. GEAB's failure to initiate those claims within one year "after the completion and acceptance" of the three projects at issue operates as an absolute bar under MCL 570.104 against GEAB's effort to recover on the bonds for those projects. Therefore, the only recourse available to GEAB involves seeking compensation from Defendant J. Slagter, which served as the general contractor on those projects.

IT IS SO ORDERED.

Dated: February 12, 2015



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HON. CHRISTOPHER P. YATES (P41017)  
Kent County Circuit Court Judge