

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

ROBERT TWIGG,	:	
	:	DOCKET NO. 15-00662
Plaintiff / Appellant,	:	
	:	
vs.	:	
	:	1911 MDA 2016
SUSQUEHANNA SUPPLY COMPANY AND	:	
SUSQUEHANNA SUPPLY & CONSTRUCTION	:	
COMPANY,	:	
Defendants / Appellees	:	APPEAL / 1925(b)

OPINION AND ORDER

Issued Pursuant to Pennsylvania Rule of Appellate Procedure 1925(a)

This Court issues the following Opinion and Order pursuant to P.R.A.P. 1925(a). This is an appeal of an Order entered October 24, 2016 granting the motion for summary judgment but reserving entry of the judgment to allow time for an opinion prior to the taking of an appeal.¹ On November 23, 2016, Appellant Robert Twigg filed the instant appeal. On December 13, 2016, Mr. Twigg filed his Concise Statement of Matters Complained of on Appeal indicating that the Court erred in entering the Order. The Court entered the Order because it believes that this lawsuit is time-barred. Mr. Twigg commenced suit by filing a complaint on March 26, 2015 for breach of an alleged oral employment agreement entered in 1973.

BACKGROUND.

In 1973 Mr. Twigg worked for the Williamsport Area School District (“WASD”) and worked part time for Appellee Susquehanna Supply Company (“Susquehanna Supply”).² In the

¹The Court entered an Order on October 24, 2016 and intended to reserve entering judgment to allow time to prepare an opinion. On or about September 30, 2016, this case was transferred to the Undersigned and argument on pending motion for summary judgment was scheduled for October 3, 2016. Jury selection was scheduled for October 18, 2016, and trial for November 9, 2016. Prior to the jury selection, Counsel were notified that the Court intended to grant the motion and jury selection was cancelled. Upon the filing of the appeal on November 23, 2016, the Court did not believe it could proceed further in this matter under PA. R.A.P. 1701.

² For ease of reference, the Court will reference only Susquehanna Supply Company. In its Answer, Appellees averred that Susquehanna Supply & Construction was not registered in Pennsylvania until 1982.

summer of 1973, Timothy Crotty offered full time employment to Mr. Twigg at Susquehanna Supply.³ In his deposition, Mr. Twigg testified as to his understanding of the offer made to him in 1973.

I would have a company automobile that would be provided by the company, Mr. Crotty said that I would not be giving up anything. I would have the same benefits, Mr. Crotty did elaborate on the health care, the health insurance coverage, claiming that it was one of the better ones out there, and Mr. Crotty said that he had no pension fund at that time, but that he would initiate something for me. Deposition of Robert Twigg, May 4, 2016, attached to Defendants' Motion for Summary Judgment as Exhibit "B," ("Twigg Depo."), at 37:15-23.

Mr. Twigg never asked that the employment terms be put in writing. Twigg Depo., 40:18.

Mr. Twigg resigned from WASD and on October 1, 1973 became employed full-time with Susquehanna Supply. No pension was ever developed and none was ever presented to Mr. Twigg. Twigg Depo., 49:15-22. Mr. Twigg had a conversation with management about a pension fund in the 1970s. Twigg Depo., 49-50. Again in the 1980s, Mr. Twigg had a conversation about a pension fund with management. Twigg Depo., 49-50. Mr. Twigg described it as "awkward" and "up in the air." Twigg Depo., 50:18. "Mr. Crotty said he would look into it." Twigg Depo., 50:18. After that, management instituted a 401(k) plan. Twigg Depo., 51:10-13; 52:15-20.

In the 1980s, Susquehanna Supply promoted Mr. Twigg from job superintendent to general superintendent, changing the employment contract. Twigg Depo., 37:4-9; 43. In the late 1990s, Mr. Twigg had another conversation about a pension plan with Mr. Crotty. Twigg Depo., 53:16-25. As to that conversation, Mr. Twigg remembers asking "how things were coming along for my pension or a pension fund, and he [Mr. Crotty] said I am not able to do anything now." Twigg Depo., 54:1-8. Mr. Twigg described that last meeting as "what perhaps put the

³ In his deposition, Mr. Crotty testified that he was general manager in 1970 and became president probably in 1973 and remained president at the time of the deposition. Deposition of Timothy Crotty on May 4, 2016, attached to Defendant's Motion for Summary Judgment as Exhibit "D," ("Crotty Depo.") at 7:18-19; 8:4-8.

icing on the cake.” Twigg Depo., 56: 5-18. Mr. Twigg sent a letter dated September 22, 2005 to try and force the issue. Twigg Depo., 57:25; 63:18. Deposition of Geraldine Twigg, Mr. Twigg’s Wife, dated May 4, 2016, attached to Defendants’ Motion for Summary Judgment as Exhibit “C,” at 9:16. Mr. Twigg was laid off December 31, 2013 and was never called back to work. Twigg Depo., 64:6-8.

DISCUSSION

On March 6, 2015 Mr. Twigg filed a complaint containing only one count, breach of contract as to an alleged oral employment agreement entered in 1973. The four year statute of limitations period applies to oral contracts and this action. 42 Pa.C.S. § 5525(3); *see also*, Cole v. Lawrence, 701 A.2d 987, 989 (Pa. Super. 1997); *see also*, Admissions to the Motion for Summary Judgment, ¶¶ 33-35. The cause of action accrues when the breach occurs. *Id.* In the present case, assuming for the sake of argument that a breach occurred as to a pension, the breach occurred when Mr. Twigg commenced employment with Susquehanna Supply and no pension was set up. That was more than forty years ago. It occurred each time Mr. Twigg asked about the pension and no commitment was made, up to and including ten years prior to suit.

Mr. Twigg contends that the employment agreement constituted a continuing contract for which the statute of limitations did not begin to run until after the employment terminated in December 2013. When a contract for services is considered one continuing contract, the statute of limitations begins to run when the breach occurs or the contract is terminated. *See*, Thorpe v. Schoenbrun, 195 A.2d 870 (Pa. Super. 1963); *see also*, GAI Consultants, Inc. v. Homestead Borough, 120 A.3d 417 (Pa. Cmwlth. 2016)(analyzing continuing contract cases). Typically the types of contracts considered as one continuing contract have been contracts for professional services or marital agreements. *Id.*

Thorpe, supra, involved a contract for professional services. In Thorpe, an ophthalmologist provided medical services. In the midst of treatment, the patient stopped seeing the doctor and stopped paying. The Court concluded that the doctor and patient “entered into a continuing contract of interrelated services performed for the purpose of preserving” the patient’s eyesight and that the contract extended to the last doctor visit. Thorpe, 195 A.2d at 872-74; GAI Consultants, 120 A.3d at 425. The test is “whether the services were performed under one continuous contract, whether express or implied, with no definite time fixed for payment, or were rendered under several separate contracts.” Thorpe, 195 A.2d at 378. The Court further stated as follows.

If services are rendered under an agreement which does not fix any certain time for payment or for the termination of the services, the contract will be treated as continuous, and the statute of limitations does not begin to run until the termination of the contractual relationship between the parties." Thorpe, supra, citing, 22 P.L.E., Limitation of Actions § 56.

The present case does not involve a contract for services. Here an employee has sued his employer for failing to provide a pension despite knowing throughout no pension had been set up. In each decade, Mr. Twigg asked about the pension and Susquehanna Supply made no commitment to providing a pension. In the 1980s, Susquehanna Supply instituted a 401(k) retirement plan which Mr. Twigg utilized. Mr. Twigg described a meeting about the pension in the 1990s as “icing on the cake.” Mr. Twigg attempted to force the issue in 2005 without obtaining any commitment. In sum, Mr. Twigg believed for decades that Susquehanna Supply was in breach of the agreement but did not bring action to force the issue until forty years later. The Court believes this suit is time-barred.

For these reasons, the Court respectfully requests that its Order be affirmed and summary judgment be entered in favor of Appellees.

BY THE COURT,

January 27, 2017

Date

Richard A. Gray, J.

c: N. Randall Sees, Esq. – Counsel for Plaintiff/Appellant
J. David Smith, Esq. & Beau A. Hoffman, Esq., – Counsel for Defendants/Appellees
Prothonotary (LG)
Superior & (1)