



SUPERIOR COURT OF NEW JERSEY
LAW DIVISION: CIVIL PART
ESSEX VICINAGE

DOCKET NO.: ESX-L-2702-16

Densply LLC,
Plaintiff,

v.

Tri-State Dental, Inc., Vito Clavelli, Frank Clavelli, Dominick Clavelli, et al.,
Defendants.

OPINION

Petrillo, J.S.C.

I. FACTUAL AND PROCEDURAL BACKGROUND

This matter comes before the court on defendants’ motion for summary judgment on the ground that plaintiff’s claims are barred by the statute of limitations under Delaware law.¹

Plaintiff, Dentsply LLC (“Dentsply”), filed its complaint on April 14, 2016, alleging tortious conduct and fraud against Tri-State Dental, Inc. (“Tri-State”), and individual defendants Vito Clavelli, Frank Clavelli, and Dominick Clavelli (collectively “the Clavelli defendants”). The complaint alleged manipulation and submission of false invoices in connection with the Advanced Dental Education Program (“ADEP”) promotional scheme spanning more than a decade. Dentsply claims it suffered losses exceeding \$4.9 million in free products as a result.

Defendants, Tri-State and the Clavelli defendants, move for summary judgment relying on the three-year statute of limitations for such claims under Delaware law, as incorporated in the governing Distributorship Agreement dated

¹ This motion was initially denied by a different court on December 18, 2024. Following the denial, the movant sought reconsideration and recusal. Both motions were granted on May 12, 2025, and the matter transferred to this court. This court reviews the motion anew without regard to the prior court’s decision and unbound by that determination in any way. There is a scheduled trial date of January 20, 2026.

October 11, 2006. Defendants assert in their Statement of Undisputed Material Facts (“SUMF”) that Dentsply had knowledge of the essential facts giving rise to its claim no later than March or April 2013. Thus, they argue that because the complaint was filed more than three years after accrual all claims are time-barred.

Plaintiff opposes, arguing: (1) it was not a signatory to the Distributorship Agreement containing the Delaware choice-of-law provision; (2) the Delaware limitation period is irrelevant, and New Jersey’s six-year period should apply; and (3) defendants have waived the statute of limitations defense by their conduct and timing of raising the issue.

Defendants reply, supporting their entitlement to summary judgment and dismissing the legal and factual bases of plaintiff’s opposition.

The court agrees with the arguments offered in support of the motion. Summary judgment is **GRANTED**.

II. LEGAL STANDARD FOR SUMMARY JUDGMENT

Under R. 4:46-2(c), the moving party is entitled to summary judgment if, considering all competent evidence and legitimate inferences in favor of the non-movant, there is no genuine issue of material fact and the movant is entitled to judgment as a matter of law. See Brill v. Guardian Life Ins. Co. of America, 142 N.J. 520 (1995); Liberty Surplus Ins. Corp. v. Nowell Amoroso, P.A., 189 N.J. 436, 445-46 (2007). Only competent, documented evidentiary materials that lead to substantial issues of fact can defeat the motion. Brill, 142 N.J. at 520.

III. ANALYSIS

A. Contractual Choice of Law Clause

The dispositive issue is whether Delaware’s statute of limitations applies. The relationship between Dentsply (and its parent/affiliates) and Tri-State is governed by the Distributorship Agreement dated October 11, 2006. Def. SUMF ¶2; Def. Ex. A. This agreement contains an express choice of law clause, requiring application of Delaware law and, specifically, the Delaware statute of limitations:

“No action to recover damages for trespass, no action to regain possession of personal chattels, no action to recover damages for the

detention of personal chattels, no action to recover a debt not evidenced by a record or by an instrument under seal, no action based on a detailed statement of the mutual demands in the nature of debit and credit between parties arising out of contractual or fiduciary relations, no action based on a promise, no action based on a statute, and no action to recover damages caused by an injury unaccompanied with force or resulting indirectly from the act of the defendant shall be brought after the expiration of 3 years from the accruing of the cause of such action...”

Del. Code Ann. tit. 10, § 8106(a) (“Actions subject to three-year limitations”)

Plaintiff argues it is not bound by the Delaware limitation period as it is not a signatory to the Agreement, and that its claims relate to fraudulent conduct, not breach of contract.

B. Plaintiff is Bound by the Distributorship Agreement

Defendants’ submissions establish that Tri-State and its principals were operating as distributors for plaintiff’s parent (Dentsply International, Inc.) and, at all relevant times, plaintiff LLC and its Caulk division administered ADEP through this distributor relationship. Def. SUMF ¶¶1-5; Pl.’s Counter SUMF ¶¶1-6. The factual underpinnings of plaintiff’s claims are inextricably tied to the parties’ distributor arrangement and invoicing protocol governed by the Agreement.

New Jersey law recognizes and enforces valid contractual choice of law clauses. See McCarrell v. Hoffmann-La Roche, Inc., 227 N.J. 569, 593-94 (2017); Liberty Surplus, 189 N.J. 436. Courts should apply the choice of law provision barring exceptional circumstances, such as if the forum state has a substantial interest in maintaining the claim or the result would be unreasonable. McCarrell, 227 N.J. at 593-94. No such circumstances are demonstrated here. Plaintiff cannot avoid the consequences of the contractual clause merely because the Dentsply LLC entity did not independently sign the agreement; the actions and liability pled all flow directly from conduct under the distributor arrangement.

Furthermore, the Agreement was drafted and presented by plaintiff’s corporate family and signed by Tri-State without modification. Def. SUMF ¶3; Def. Ex. B. The business dealings, claims, and alleged harm are all derivatives of and intertwined with this contract. Plaintiff’s attempt to distinguish its legal identity from the contracting party is unavailing given this substantive and operational overlap.

C. Delaware's Statute of Limitations Controls

Delaware Code § 8106 prescribes a three-year limitations period for actions of this type. See Def. SUMF ¶5; Def. Br. at 9. Delaware is an “occurrence rule” jurisdiction: the period runs from the date of the wrongful act, regardless of whether plaintiff is ignorant of its claim. ISN Software Corp. v. Richards, Layton & Finger, P.A., 226 A.3d 727, 732 (Del. 2020); Wal-Mart Stores, Inc. v. AIG Life Ins. Co., 860 A.2d 312, 319 (Del. 2004). The cause of action accrues at the time of injury for torts and at breach for contract actions. Delaware only allows tolling if the injury or act was “inherently unknowable” and the claimant is blamelessly ignorant. Id.

D. Accrual of Plaintiff's Claims

The uncontroverted facts demonstrate plaintiff possessed, or should have possessed, all information required to file suit before April 14, 2013:

- In March 2013, a Dentsply sales representative (Ryan Witt) visited Monmouth Medical Center and found product discrepancies. Def. SUMF ¶¶7, 10; Miller Dep.
- Burke Miller was immediately notified and conferred with Mark Nolan. The investigation expanded rapidly, and internal communications referenced a significant number of fraudulent invoices by Tri-State. Def. SUMF ¶12; Nolan Dep. at 64.
- By early April 2013, Tri-State and Dentsply personnel were exchanging messages concerning the imminent termination of Tri-State's distributorship. Def. SUMF ¶¶ 19, 20-25; Def. Ex. F.
- The last invoice related to the disputed ADEP promotion was submitted by Tri-State on March 6, 2013. Def. SUMF ¶26; Def. Ex. G.

These facts are not genuinely disputed; plaintiff admits to this sequence of facts. Pl. Counter SUMF ¶¶ 7–18.

Plaintiff's assertion that it “concluded with certainty” that fraud occurred on April 16, 2013 (see Compl. ¶ 42) provides the outer boundary of accrual. But the record, including emails, texts, and deposition testimony, indicate Dentsply was aware or should have been aware of the essential elements of its claim no later than

early April 2013. The occurrence rule and applicable Delaware law require that accrual begin at this point.

E. No Tolling Is Warranted

Plaintiff's claim of continuing investigations or uncertainty is insufficient under Delaware precedent. Ignorance alone will not delay the running of the limitation period unless the facts are "inherently unknowable and the claimant is blamelessly ignorant." Wal-Mart, 860 A.2d at 319. Here, plaintiff launched an investigation, gathered facts, communicated with Tri-State, and ultimately terminated the business relationship after uncovering discrepant invoices.

Plaintiff cannot evade accrual on the basis of "ongoing investigation" or "uncertainty." Delaware law is unforgiving: "Ignorance alone will not delay the running of a statute of limitations." Wal-Mart, 860 A.2d at 319; Def. Br. at 9. Plaintiff's investigation revealed the very same facts pled in the Complaint by April 2013 at the latest. See also Compl. ¶42 (plaintiff's own allegation that Dentsply "concluded with certainty" on April 16, 2013 that Tri-State was "falsifying" data). Nothing in the record suggests that facts giving rise to the claim were concealed or unknowable in a manner that satisfies Delaware's blameless ignorance doctrine. See Wal-Mart, 860 A.2d at 319 n. 24 (citing Coleman v. PriceWaterhouseCoopers, LLC, 854 A.2d 838, 842 (Del. 2004)).

F. Plaintiff's Arguments in Opposition

1. Plaintiff's Corporate Identity does not Bar Application of Delaware Law

Plaintiff's assertion that Dentsply LLC is not a signatory to the Agreement ignores the substantive relationship underlying its claims. Plaintiff was the beneficiary and administrator of the distributor arrangement. The evidence establishes Dentsply LLC acted through Group entities in the conduct under review. The legal fiction that the LLC is not subject to the Agreement is rebutted by the factual record and the integrated nature of their business. See also Coleman, 854 A.2d 838 (Delaware law applies where contract governs relationship giving rise to claims).

Plaintiff's argument that it is not a signatory to the Agreement is, for all practical and legal purposes here, a fiction. The record and plaintiff's own allegations make clear that its claims arise from, and are inextricably linked with, the parties' business governed by the Agreement. An entity that stands in the shoes

of or administers rights under a contract which defines the operational relationship cannot invoke corporate technicalities to avoid a bargained-for choice of law clause. *Id.* at 842 (Delaware law applies where contract governs substance of the relationship). Plaintiff's attempt to artificially subdivide responsibility among Dentsply, its parents, and its divisions, is unsupported and self-defeating.

Plaintiff's position is especially untenable given that the Agreement was drafted by Dentsply's related entities, presented to Tri-State on a take-it-or-leave-it basis, and signed without modification. See Def. SUMF ¶3; Def. Ex. B (Clavelli Dep. at 55)).

2. Waiver of Statute of Limitations Defense

Plaintiff argues defendants waived the defense by delay and lack of pursuit. However, defendants duly asserted statute of limitations as an affirmative defense in their answer and timely moved for summary judgment prior to trial, after development of the factual record. Pl. Opp. Br. at 14; Def. Reply Br. Courts do not generally find waiver of fundamental affirmative defenses absent clear, intentional relinquishment or prejudicial affirmative conduct misleading a plaintiff. Plaintiff cites Williams v. Bell Tel. Lab., Inc., 132 N.J. 109 (1993) and Zaccardi v. Becker, 88 N.J. 245 (1982), but the circumstances here are distinguishable—defendants' position was maintained and advanced at the summary judgment stage.

Plaintiff's reliance on Williams and Zaccardi is misplaced. Those cases involved parties who actively conducted litigation through trial or otherwise acted inconsistently with pursuit of timeliness defenses over substantial periods, or in a manner that affirmatively prejudiced the other side. Here, in contrast:

- Defendants timely pled statute of limitations as an affirmative defense. Def. Answer, Affirmative Defenses ¶5.
- The motion was brought before trial, after close of fact discovery.
- Plaintiff does not identify any specific prejudice or reliance attributable to the manner or timing of the defense raising.
- The delay in seeking summary disposition is not per se waiver; plaintiff's own cited authorities require inconsistent conduct rising to the level of estoppel or fundamental unfairness, neither of which are present here.

Simply put, defendants' inclusion of the limitations defense in their answer and invocation pre-trial is fully consistent with their rights; to accept plaintiff's argument

would mean an affirmative defense is always waived unless immediately litigated, a proposition wholly unsupported in the law or facts of record.

3. New Jersey's Interest does not Override Contractual Choice of Law

Plaintiff contends New Jersey's interest should defeat the contract choice of law provision. However, as discussed, New Jersey courts routinely enforce agreed-upon choice of law clauses, especially between sophisticated parties. No exceptional circumstances, public policy concern, or unreasonable result is demonstrated. Plaintiff's own evidence confirms the relevant conduct, and parties were subject to the distributor relationship originating in Delaware jurisdiction.

Plaintiff's fallback that some undefined "New Jersey interest" should override the contract is similarly unavailing. As even plaintiff concedes, New Jersey courts enforce contractually chosen law absent a "substantial interest" or "exceptional circumstances" making the result unreasonable. McCarrell, 227 N.J. at 593; Def. Br. at 7–8. No such circumstances are present; Plaintiff is a sophisticated Delaware LLC that affirmatively chose Delaware law for disputes arising out of this business. The transaction's locus in New Jersey is not sufficient to overcome the express contract terms. McCarrell, *supra*.

Plaintiff bears the burden of demonstrating that New Jersey's interest supersedes an express choice of law. See McCarrell, 227 N.J. at 593-95. Here, plaintiff is a Delaware LLC, the contract selects Delaware law, and both parties are sophisticated commercial actors. No evidence supports a claim that fundamental fairness or New Jersey public policy is contravened by enforcing the Delaware limitation.

4. Unresolved Factual Disputes Regarding Accrual

The only "dispute" is the exact date plaintiff was on notice. The precision suggested as necessary is a red herring and not required by Delaware law. Plaintiff's allegations, deposition testimony, the contents of internal communications and the Complaint itself all demonstrate knowledge as of early April 2013 at the very latest. Plaintiff's assertion that the exact knowledge date is "uncertain" is belied by its admissions and cannot create a genuine issue of material fact on this record under the law of Delaware.

IV. CONCLUSION

For all the foregoing reasons, the statute of limitations applicable to this action is that of Delaware—three years under § 8106. Plaintiff possessed all material facts necessary to file suit before April 14, 2013. Having filed its complaint after the expiration of the limitations period, and there being no viable tolling or waiver argument based on the record, summary judgment must be **GRANTED**. Plaintiff's complaint is barred by the applicable three-year Delaware statute of limitations, and no legal or equitable ground exists to save it. Plaintiff's efforts to avoid its own contractual undertakings and the consequences of an untimely suit are without merit, both factually and legally.

A memorializing order granting the motion will be filed simultaneously with this opinion.