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CPLR 213: Contract Statute of Limitations Applied to Architect's Malpractice Action

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CPLR 213: Contract statute of limitations applied to architect’s malpractice action

In determining both the appropriate remedy and the applicable statute of limitations, New York courts historically have looked to the theory of liability underlying the cause of action. This “essence” or “gravamen” test has presented a particular problem in malpractice actions, where liability may be deemed to arise from either the contractual relationship of the parties or the defendant’s breach of a duty of care. The traditional approach has been to view suits based on a failure to use due care as essentially tortious and

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Since early common law, courts have held that contracts to use due care are analytically tortious and therefore governed by the 3-year statute of limitations. See Webber v. Herkimer & M. St. R.R., 109 N.Y. 311, 16 N.E. 358 (1888). This approach has remained viable
to apply the 3-year statute of limitations.\textsuperscript{39} Revising this conceptual framework in \textit{Sears, Roebuck & Co. v. Enco Associates},\textsuperscript{40} the Court of Appeals recently held that, where the duty of care arises out of a contractual relationship, the plaintiff may take advantage of the 6-year statute of limitations.\textsuperscript{41}

In 1967, the plaintiff, Sears, Roebuck & Co., entered into a Standard Form (A.I.A.)\textsuperscript{42} contract with an architect who agreed to

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The courts have permitted a separate contract claim to be maintained, however, where the agreement between the parties either warrants that the work will be done in a specific manner or guarantees a particular result. See, e.g., Robins v. Finestone, 308 N.Y. 543, 127 N.E.2d 330 (1955); Glens Falls Ins. Co. v. Reynolds, 3 App. Div. 2d 686, 159 N.Y.S.2d 95 (3d Dep't 1957); Stitt v. Gold, 33 Misc. 2d 273, 225 N.Y.S.2d 536 (Sup. Ct. Queens County), aff'd mem., 17 App. Div. 2d 642, 230 N.Y.S.2d 677 (2d Dep't 1962); Board of Educ. v. Mancuso Bros., 25 Misc. 2d 122, 204 N.Y.S.2d 410 (Sup. Ct. Madison County 1960).

\textsuperscript{39} CPLR 214(4)-(6) governs many tort actions and provides that

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the following actions must be commenced with three years:
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  \item 4. an action to recover damages for an injury to property;
  \item 5. an action to recover damages for a personal injury . . . ;
  \item 6. an action to recover damages for malpractice . . . .
\end{itemize}
\end{quote}


\textsuperscript{41} 43 N.Y.2d at 395-96, 372 N.E.2d at 558, 401 N.Y.S.2d at 771. CPLR 213(2), the general statute of limitations governing contract actions requires that "an action upon a contractual obligation or liability express or implied" be commenced within 6 years of accrual. Although there have been attempts to reduce this statutory period, they have been unsuccessful. \textit{Second Preliminary Report of the Advisory Committee on Practice and Procedure}, [1958] N.Y. LEGIS. Doc. No. 13, 67. Actions on contracts for the sale of goods, however, are governed by a shorter 4-year limitations period. N.Y.U.C.C. § 2-725(1) (McKinney 1964).

\textsuperscript{42} The standard form contract generally used by architects, \textit{Standard Form Agreement Between Owner and Architects}, Am. INST. ARCH. (A.I.A.) Doc. No. B141 (13th ed. 1977) [hereinafter cited as A.I.A. contract], expressly provides that an architect is "not required to make exhaustive or continuous on-site inspections . . . but "shall endeavor to guard the owner against defects . . . in the Work of the Contract" and "[certify the quality of the contractor's work] to the best of [his] knowledge, information and belief." Id. at 3-4. One
design and supervise the construction of a system of ramps leading to the plaintiff’s parking facilities. In 1970, 2 years after the project had been completed, cracks appeared and threatened the “structural integrity of the ramp system.” Claiming that the ramp was improperly designed, Sears commenced suit against the architect in 1972. The plaintiff’s complaint set forth causes of action in breach of contract, breach of implied warranty and breach of a professional duty of care. Damages were alleged in the amount of $1,000,000, the cost of replacing the defective ramp and $350,000, representing profits lost while repairs were being made. Reasoning that the warranty and contract counts were in reality malpractice claims, the trial court held that all three counts were barred by the 3-year statute of limitations. The Appellate Division, Second Department, affirmed. On appeal, the Court of Appeals modified the appellate division’s decision and reinstated the plaintiff’s malpractice and contract claims.

In reaching this result, Judge Jones, writing for a unanimous Court, reaffirmed the holding in Paver & Wildfoerster v. Catholic High School Association, wherein the Court suggested that the...
remedy requested, rather than the nature of the theory of liability, should control the determination of which limitations period is applicable.\(^2\) Pointing out that the obligations of the parties would not have arisen but for their contractual relationship, the Court stated that the 6-year statute of limitations was applicable regardless of the form in which the cause of action was "verbalized."\(^3\)

Moreover, according to the Court, the plaintiff should be permitted to introduce evidence to establish failure to conform to professional standards of care as well as breach of a contractual duty.\(^4\) Since "the selection of the applicable statute of limitations is related to the remedy sought,"\(^5\) however, the Court reasoned that the recoverable damages should be limited to those that normally flow from breach of contract.\(^6\) Thus, in the Court's view, the plaintiff could recover only the cost of replacing the defective ramps; the loss of anticipated profits, usually available only in tort actions,\(^7\) would be

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architecture to recover damages resulting from the faulty construction of a school building. Departing from the traditional "essence" or "gravaman" approach, see nn. 3 & 6 and accompanying text supra, the Paver Court held that the controversy was cognizable in either contract or tort and therefore was not time-barred although the 3-year statute of limitations for malpractice had run. 38 N.Y.2d at 672, 345 N.E.2d at 566, 382 N.Y.S.2d at 23.

\(^2\) 38 N.Y.2d at 676, 345 N.E.2d at 569, 382 N.Y.S.2d at 25. Although the Paver Court stressed that the "essence test" is especially inappropriate in arbitration proceedings, it suggested that its holding might not be limited to actions to compel arbitration. See id. at 676, 345 N.E.2d at 569, 382 N.Y.S.2d at 25; 1 WK&M ¶ 214.10, at 2-289 n.35, 214.14, 214.22a, at 2-312.

\(^3\) 43 N.Y.2d at 396, 372 N.E.2d at 558, 401 N.Y.S.2d at 770. The Sears Court reaffirmed the traditional rule that malpractice actions for personal injury are essentially tortious and therefore governed by CPLR 214-a or 214(6). 43 N.Y.2d at 396, 372 N.E.2d at 558, 401 N.Y.S.2d at 770. For a discussion of the different policy considerations underlying statutes of limitation applicable to causes of action against medical professionals, see Acts, Recommendations and Study relating to the Statute of Limitations [1942] N.Y. LAW REV. COMM'N REP. 129, 167-72.

\(^4\) 43 N.Y.2d at 396, 372 N.E.2d at 558, 401 N.Y.S.2d at 771. Generally, damages in breach of contract actions are designed to "place the aggrieved party in the same economic position he would have had if the contract had been performed." J. CALAMARI & J. PERILLO, THE LAW OF CONTRACTS § 205, at 327 (1970) (footnote omitted); see Martin v. Julius Dierck Equip. Co., 43 N.Y.2d 583, 589, 374 N.E.2d 97, 99-100, 403 N.Y.S.2d 185, 188 (1978); 1 J. SUTHERLAND, A TREATISE ON THE LAW OF DAMAGES § 50, at 186 (4th ed. 1916) [hereinafter cited as SUTHERLAND]. Tort damages, on the other hand, are available to redress all consequences naturally and proximately flowing from the wrong, including lost profits. 1 T. SEDGWICK, A TREATISE ON THE MEASURE OF DAMAGES § 111a, at 195 (9th ed. 1912) [hereinafter cited as SEDGWICK]. The SUTHERLAND, supra, § 48, at 183-84; see Martin v. Julius Dierck Equip. Co., 43 N.Y.2d at 589, 374 N.E.2d at 100, 403 N.Y.S.2d at 188.

\(^5\) 43 N.Y.2d at 396-97, 372 N.E.2d at 558-59, 401 N.Y.S.2d at 771. Lost profits are a form of consequential damages usually not permitted in actions for breach of contract. E.g., Griffin
unavailable in the instant case, since the 3-year statutory period for tort damages had passed.\textsuperscript{58}

In focusing on the remedy requested rather than the underlying theory of liability to determine whether the plaintiff's claim was time barred, the Court of Appeals has expanded the \textit{Paver} holding, previously thought to pertain only to arbitration proceedings,\textsuperscript{59} and made it applicable to the broader area of actions at law. In so doing, the Court in effect, has rejected well-established legal precedent\textsuperscript{60} and heralded a significant shift in the criteria for determining which limitations periods are applicable in malpractice suits for pecuniary or property damage. The \textit{Sears} opinion suggests that where the plaintiff seeks damages traditionally associated with contract actions, he may take advantage of the 6-year limitations period if any facts exist which indicate breach of contractual obligation. Thus, while plaintiffs who wait more than 3 years before filing a claim generally will be precluded from recovering consequential damages, some form of relief will now be available.

It is submitted that this extension of the period during which professionals\textsuperscript{61} may be held liable is inconsistent with the legislative intent underlying CPLR 214(6), the malpractice statute of limitations. In holding that the 6-year limitations period may be applica-
ble in suits against professionals, the Sears Court appeared to rely on the legislature’s failure to enact a proposal which would have expressly included contract claims within the 3-year limitation provision. The validity of the Court’s inference is questionable, however, since the legislative purpose in creating a separate statute of limitation for malpractice actions was to ensure that “malpractice involving property damage . . . [which could] be based on contract theory” would be governed by the 3-year rather than the 6-year statute of limitation.\(^2\)

The Sears decision appears to raise additional questions concerning the liability of professionals such as attorneys and accountants whose relationships with clients are based on implied contracts. Under the “essence” approach, a plaintiff who brought suit within the 3-year limitations period could recover all of the damages proximately flowing from the wrong, since the cause of action was deemed tortious in nature. It therefore was unnecessary for courts using the “essence” test to draw clear distinctions between “benefit of the bargain” damages and those representing plaintiff’s consequential loss. Under the Sears approach, however, this problematic distinction will become important, since a plaintiff who delays for more than 3 years is permitted to recover contract damages but not his consequential losses. It is suggested that the lower courts must be extremely careful to preserve this distinction when applying the Sears holding to future malpractice suits. While such a differentiation may be difficult to make, particularly in cases involving attorneys and accountants, the failure to do so will result in the extension of a professional’s tort liability well beyond the length of time prescribed by the New York statute.

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\(^2\) See 43 N.Y.2d at 395 n.1, 372 N.E.2d at 558 n.1, 401 N.Y.S.2d at 770 n.1.

\(^3\) Fifth Preliminary Report to the Legislature by the Senate Finance Committee and the Assembly Ways And Means Committee Relative to the Revision of the Civil Practice Act, [1961] N.Y. Legis. Doc. No. 15 1, 56; see CPLR 214(6).

\(^4\) Generally, the negligence of accountants or attorneys results in consequential loss. See, e.g., Vooth v. McEachen, 181 N.Y. 28, 73 N.E. 488 (1905); Flynn v. Judge, 149 App. Div. 278, 133 N.Y.S. 794 (2d Dep’t 1912). Thus, it may be difficult to apply the Sears holding to such professionals.