Judges Copy

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF IOWA
CENTRAL DIVISION

MICHAEL J. WRIGHT and PATRICIA J. WRIGHT,	*	
	*	4-99-CV-90560
Plaintiffs	*	
v.	*	
SNE ENTERPRISES, INC. and PAYLESS CASHWAYS, INC.,	*	ORDER
Defendants.	*	

Before the Court is Defendant Payless Cashways, Inc.'s Motion for Summary Judgment filed April 18, 2000. Briefs have been filed on both motions. The Court declines to hold oral arguments. The matter is submitted.

I. Facts

Plaintiffs, Michael J. Wright and Patricia J. Wright ("the Wrights"), purchased Crestline brand windows and doors from Payless Cashways, Inc. ("Payless") in 1994 to build their new home. *See* Pls.' Aff. at 1. According to the Wrights, "[s]hortly after installation of said windows and doors, [we] began experiencing leakage problems." Mem. of Authorities in Supp. of Resistance to Mot. for Summ. J. at 1 (hereinafter "Plaintiff's Brief"). The water leaks damaged drywall, wood, carpet surrounding the windows and doors and a cedar-walled sunroom in the basement of the house. *See id.* The Wrights contacted a Crestline sales representative in 1994 who came out to examine the leakage. *See id.* The sales representative applied caulk around the windows and doors, but this failed to stop the leaks. *See id.*

In hopes of finding a solution, the Wrights contacted their roofer in October 1995 to

determine whether their newly installed roof leaked. *See* Pls.' Aff. at 1. However, after examining the roof, the roofer found nothing amiss. *See id.* In June 1996 the Wrights contacted a chimney repairman who was unable to find any problems with the chimney after inspection. *See id.* In addition, the Wrights had a contractor remove and replace all the siding from their house in November 1996 in order to apply silicone caulk to "all of the nailing flanges on the windows and doors and cover with Tyvek brand house wrap." Pls.' Ex. 4 This also failed to solve the leakage problem. *See id.* Finally, the Wrights contacted two additional contractors in May 1998 and October 1998, respectively, and were told that the windows and doors were the source of the house's leaks. *See id.*

On August 27, 1999, the Wrights brought suit in Poweshiek County District Court against both Payless and the window and door manufacturer SNE Enterprises, Inc. ("SNE") claiming the following:

Count I: Breach of Warranty

Count II: Breach of Express Warranty and Negligence

Count III: Breach of Implied Warranty

Count IV: Breach of Implied Warranty of Merchantability

The case was subsequently removed to this Court by Defendant SNE pursuant to 28 U.S.C. § 1332(a).

Prior to the filing of this lawsuit, Payless, on July 21, 1997, filed a voluntary petition with the United States Bankruptcy Court for the Western District of Missouri seeking relief under Chapter 11 of the Bankruptcy Code. *See* Statement of Undisputed Facts in Supp. of Mot. for Summ. J. By order of November 19, 1997 the Bankruptcy Court confirmed Payless' Reorganization Plan. *See* Defs.' Ex. D (hereinafter "Confirmation Order"). As outlined in the

Confirmation Order, Payless was "discharged and released from all claims and interests that arose before the Confirmation Date." *Id.*

The motion for summary judgment centers around when the Wrights' claim against Payless "arose" for bankruptcy purposes. The Wrights contend that their claim did not arise "until 1998, a date at which time the Plaintiffs were informed that the leakage source in their home was the windows and doors sold by [Payless] to Plaintiffs." Plaintiffs' Brief at 4. Payless' position is that the Wrights' claim arose when the windows and doors were sold to them, i.e. pre-petition, and that the issue is a matter of law that can be decided by the Court.

II. Summary Judgment Standard

The plain language of Federal Rule of Civil Procedure 56(c) mandates the entry of summary judgment, after adequate time for discovery and upon motion, against a party who fails to make a showing sufficient to establish the existence of an element essential to that party's case, and on which that party will bear the burden of proof at trial. *See Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986); *see also Snow v. Ridgeview Med. Ctr.*, 128 F.3d 1201, 1205 (8th Cir. 1997) (citing *Bialas v. Greyhound Lines, Inc.*, 59 F.3d 759, 762 (8th Cir. 1995)). The trial judge's function is not to weigh the evidence and determine the truth of the matter, but rather, to determine whether there is a genuine issue for trial. *See Johnson v. Enron Corp.*, 906 F.2d 1234, 1237 (8th Cir. 1990); *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 249 (1986); *Celotex*, 477 U.S. at 323-24; *Matsushita Elec. Indus. v. Zenith Radio Corp.*, 475 U.S. 574, 586-87 (1986).

The precise standard for granting summary judgment is well-established and oft-repeated: summary judgment is properly granted when the record, viewed in the light most favorable to the nonmoving party and giving that party the benefit of all reasonable inferences, shows that there is

no genuine issue of material fact, and the moving party is entitled to judgment as a matter of law. *See* Fed. R. Civ. P. 56(c); *Harlston v. McDonnell Douglas Corp.*, 37 F.3d 379, 382 (8th Cir. 1994).

III. Discussion

Under 11 U.S.C § 362(a)(1) the filing of a bankruptcy petition "operates as a stay, applicable to all entities, of the commencement or continuation, including the issuance or employment of process, of a judicial, administrative, or other action or proceeding against the debtor that was or **could have been** commenced before the commencement of the case under this title, or to recover a claim against the debtor that arose before the commencement of the case under this title." 11 U.S.C.A. § 362(a)(1) (West 1997) (emphasis added).

According to U.S.C. § 101(4) a "claim" is defined as a "right to a payment, whether or not such a right is reduced to a judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal equitable, secured or unsecured." 11 U.S.C.A. § 101(4)(A) (West 1997). Congress intended "claim" in the context of bankruptcy proceedings to be interpreted broadly, noting that "the bill contemplates that all legal obligations of the debtor no matter how remote or contingent, will be able to be dealt with in bankruptcy. It permits the broadest possible relief in the bankruptcy court." *Grady v. A.H. Robins Co.*, 839 F.2d 198, 199-202 (4th Cir. 1988) (quoting H.R. Rep. No. 95-595, at 309 (1977), S. Rep. No. 95-989, at 21-22 (1978), *reprinted in* 1978 U.S.C.C.A.N.N. 5787, 5807-08); *See also Johnson v. Home State Bank*, 501 U.S. 78 (1991).

Indeed, the law governing what is discharged in bankruptcy is fairly broad in scope. *See* 11 U.S.C.A. § 1141(D)(1) (West 1997) ("the confirmation of a [bankruptcy] plan discharges the debtor from **any** debt that arose before the date of such confirmation . . . ." (emphasis added));

See also 11 U.S.C.A. § 524(a)(2) ("A discharge in a case under this title . . . operates as an injunction against the commencement or continuation of an action, the employment of process, or an act, to collect or recover from, or offset any such debt as a personal liability of the debtor, whether or not discharge of such debt is waived.").

In support of its Motion for Summary Judgment, Payless cites Iowa case law concerning when a cause of action accrues. Most courts, however, have held that the question of when a cause of action accrues is governed by federal bankruptcy law. *See Vanston Bondholders Protective Comm. v. Green*, 329 U.S. 156 (1946); *Fairfield Communities v. Daleske*, 142 F.3d 1093, 1095 (8th Cir. 1998) (applying federal bankruptcy law to conduct of defendant to determine when claim arose); *Hassanally v. Republic Bank*, 208 B.R. 46, 55 (B.A.P. 9th Cir. 1997) (same); *Jensen v. California Dep't of Health Serv.*, 127 B.R. 27, 32 (B.A.P. 9th Cir. 1991) (same); *In re Jason Pharm., Inc.*, 224 B.R. 315, 319 (Bankr. D. Md. 1998) (same); *In re Edge*, 60 B.R. 690, 699 (Bankr. M.D. Tenn. 1986) (same); *But see Frenville v. Avellino & Bienes*, 744 F.2d 332, 337 (3rd Cir. 1985) (holding that threshold question as to when payment arises in bankruptcy case is determined by state law in absence of applicable federal law).

Here, statutory and case law support Payless' position that, for purposes of the bankruptcy court's Confirmation Order, the Wright's claim against Payless "arose" with the sale of the windows on or about June 1, 1994, prior to the confirmation of Payless' bankruptcy plan. *See Fairfield Communities*, 142 F.3d at 1095 (holding that defendant's conduct was basis for determining when claim arose); *See also McSherry v. TransWorld Airlines, Inc.*, 81 F.3d 739, 740-41 (8th Cir. 1996) (finding that Title VII claim under the Americans with Disabilities Act arose at time of termination, prior to defendant's bankruptcy confirmation and not upon receipt of right to sue letter); *Epstein v. Official Comm. of Unsecured Creditors*, 58 F.3d 1573, 1577 (11th

Cir. 1995) (a claim arises when "(i) events occurring before confirmation create a relationship . . . between the claimant and the debtor's product; and (ii) the basis for liability is the debtor's pre-petition conduct in designing manufacturing and selling the allegedly defective or dangerous product."); *In re Transportation Sys. Int'l, Inc.*, 110 B.R. 888, 894 (D. Minn. 1990) (claim arose at time acts were performed, despite the fact that plaintiff did not discover injury until after court confirmed bankruptcy), *aff'd on other grounds sub nom. Lovett v. Honeywell*, 930 F.2d 625 (8th Cir. 1991); *Grady*, 839 F.2d at 203 (holding that claim arose when contraceptive device was implanted in plaintiff); *Hassanally*, 208 B.R. at 55 (holding that claim arose pre-petition in accordance with debtor's conduct); *Jensen*, 127 B.R. at 32 (finding claim arose upon the sale of defective goods); *In re Jason Pharmaceuticals, Inc.*, 224 B.R. at 319 ("'right to payment' arose pre-petition, as the conduct giving rise to their claims occurred prior to the filing of Jason's bankruptcy proceedings"); *Pettibone Corp. v. Ramirez*, 90 B.R. 918, 926 (Bankr. N.D. Ill. 1988) (employing conduct-based focus to determine when claim arises against debtor); *In re Edge*, 60 B.R. at 699 (holding that a claim arises at the time of the negligent act) .

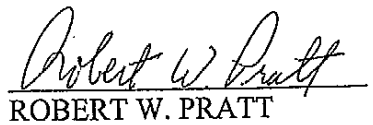
Apart from follow-up calls to Payless in an attempt to contact a Crestline representative, the Wright's only contact with Payless took place on or about June 1, 1994 when they purchased the allegedly defective windows and doors. The parties agree that any and all negligent conduct by Payless asserted by the Wrights occurred prior to the November 19, 1997 Confirmation Order. Despite the fact that the Wrights did not discover the source of the water leakage until after Payless' confirmation, the Court holds, as a matter of law, that they are barred from filing suit for their claim against Payless under the automatic stay provision of 11 U.S.C. § 362 because the claim arose when the Wrights purchased the windows and doors.

IV. Conclusion

When looked at in the light most favorable to Plaintiff, the record does not indicate any genuine issues of material fact upon which a reasonable jury could find in favor of Plaintiffs against Payless. The Court will address Plaintiffs' claims against Defendant SNE by a separate order. Therefore, Defendant Payless' Motion for Summary Judgment as to all of Plaintiffs' claims is **GRANTED**.

IT IS SO ORDERED.

Dated this 18th day of July, 2000.



ROBERT W. PRATT
U.S. DISTRICT JUDGE