

IN THE COURT OF COMMON PLEAS, FRANKLIN COUNTY, OHIO

WARREN R. KRAFT, :
 :
 Plaintiff, :
 :
 vs. : Case No. 16CVC11-11005
 :
 OMCO BUILDING LLC, et al., : Judge Cain
 :
 Defendants. :

DECISION AND ENTRY GRANTING DEFENDANT’S, DAVIS WINCE, LTD., MOTION
FOR SUMMARY JUDGMENT, FILED MAY 18, 2017

Rendered this ____ day of June 2017.

CAIN, J.

This matter is before this Court on Defendant’s, Davis Wince, Ltd. (hereinafter “Davis”), Motion for Summary Judgment, filed May 18, 2017. This motion is unopposed and is now ripe for decision.

The present action is one for a slip and fall. Plaintiff alleges that on November 22, 2014 he slipped and fell on a driveway owned by Defendant, OMCO Building LLC. In regards to Davis, Plaintiff alleges that between 2003 and 2005 Davis negligently designed the driveway, which led to Plaintiff’s fall. Davis now moves the Court for Summary Judgment as to Plaintiff’s claim against it.

Summary judgment was established through Civ. R. 56 as a procedural device to terminate litigation when there is no need for a formal trial. Norris v. Ohio Std. Co. (1982), 70 Ohio St. 2d 1. The rule mandates that the following be established: (1) that there is no genuine issue of any material fact; (2) that the moving party is entitled to judgment as a

matter of law; and (3) that reasonable minds can come to but one conclusion and, viewing the evidence most strongly in favor of the non-moving party, that conclusion is adverse to the non-moving party. Bostic v. Connor (1988), 37 Ohio St. 3d 144.

Summary judgment will not be granted unless the movant sufficiently demonstrates the absence of any genuine issue of material fact. A “party seeking summary judgment, on the ground that the nonmoving party cannot prove its case, bears the initial burden of informing the trial court of the basis for the motion, and identifying those portions of the record that demonstrate the absence of a genuine issue of material fact on the essential element(s) of the nonmoving party’s claims.” Dresher v. Burt (1996), 75 Ohio St. 3d 280, 293. Civ. R. 56(C) sets forth an exclusive list of documentary evidence that a court may consider when reviewing a motion for summary judgment.

In accordance with Civ. R. 56(E), when a properly supported motion for summary judgment is made, the nonmoving party may not rest upon the mere allegations or denials contained in the pleadings but must come forward with specific facts demonstrating a genuine issue of fact for trial. If the nonmoving party does not so respond, summary judgment, if appropriate, shall be entered against him.

The present motion is easy for the Court to decide. In it, Davis argues that Plaintiff filed his claim against it outside of the applicable statute of repose. The Court agrees. R.C. 2305.131(A)(1) states:

Notwithstanding an otherwise applicable period of limitations specified in this chapter or in section 2125.02 of the Revised Code and except as otherwise provided in divisions (A)(2), (A)(3), (C), and (D) of this section, no cause of action to recover damages for bodily injury, an injury to real or personal property, or wrongful death that arises out of a defective and unsafe condition of an improvement to real property and no cause of action for contribution or indemnity for damages sustained as a result of bodily injury, an injury to real or personal property, or wrongful death that arises out of a

defective and unsafe condition of an improvement to real property shall accrue against a person who performed services for the improvement to real property or a person who furnished the design, planning, supervision of construction, or construction of the improvement to real property later than ten years from the date of substantial completion of such improvement.

Pursuant to the above statute, Plaintiff needed to bring any claim against Davis within ten years of the date that an improvement to real property was completed. In the present matter, Plaintiff alleges that Davis performed its work on the property between 2003 and 2005. Therefore, based upon the allegations contained in Plaintiff's Complaint, Plaintiff needed to file his claim against Davis by the end of 2005 at the latest. The present matter was not filed until November 18, 2016, well outside of the above statute of repose.

Davis's argument is not only supported by the allegations contained in Plaintiff's Complaint. Attached to its motion, Davis submits the affidavit of one of its partners, Matt Canterna. In this affidavit, Mr. Canterna states that based upon a review of Davis's records, it is his determination that the work performed on the subject property was completed more than ten years before Plaintiff filed his Complaint. Again, this evidence shows that Plaintiff filed his claim against Davis outside of the applicable statute of repose. Either way you look at it, Plaintiff's claim against Davis was filed outside of the statute of repose and must be dismissed.

As a final note, Plaintiff cannot rely on the fact that he is a *pro se* Plaintiff to avoid the rules of this Court. "It is well-established that *pro se* litigants are presumed to have knowledge of the law and legal procedures and that they are held to the same standard as litigants who are represented by counsel." Sabouri v. Ohio Dept. of Job & Family Services (Franklin, 2001), 145 Ohio App. 3d 651, 654. Plaintiff did not respond to the present motion and the Court will not respond for him. As such, there is nothing before the Court to

contradict the arguments made by Davis. Plaintiff's claim against Davis was not filed within the statute of repose and is barred.

After review and consideration, the Court finds Defendant's, Davis Wince, Ltd., motion to be well-taken, and is hereby GRANTED. Defendant, Davis Wince, Ltd., is hereby dismissed from this action.

IT IS SO ORDERED.

Copies to:

Warren R. Kraft
Plaintiff

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Counsel for Defendant, Davis Wince, Ltd.

Cornelius J. O'Sullivan Jr.
Counsel for Defendant, Hanlin Rainaldi Construction Corp.

John E. Vincent
Counsel for Defendant, Celeste Townhomes LLC

Richard W. Cline
Counsel for Defendant, OMCO Building LLC

Franklin County Court of Common Pleas

Date: 06-29-2017

Case Title: WARREN R KRAFT -VS- OMCO BUILDING LLC ET AL

Case Number: 16CV011005

Type: DECISION/ENTRY

It Is So Ordered.



/s/ Judge David E. Cain

Court Disposition

Case Number: 16CV011005

Case Style: WARREN R KRAFT -VS- OMCO BUILDING LLC ET AL

Motion Tie Off Information:

1. Motion CMS Document Id: 16CV0110052017-05-1899980000

Document Title: 05-18-2017-MOTION FOR SUMMARY
JUDGMENT - DEFENDANT: ROBERT S DAVIS LTD

Disposition: MOTION GRANTED