



IN THE CIRCUIT COURT OF KANAWHA COUNTY, WEST VIRGINIA

IN RE: YEAGER AIRPORT LITIGATION

Civil Action No. 16-C-7000

THIS DOCUMENT APPLIES TO:

**CENTRAL WEST VIRGINIA REGIONAL
AIRPORT AUTHORITY, INC.,**

Plaintiff,

v.

Civil Action No. 17-C-825 KAN

TRIAD ENGINEERING, INC., et al,

Defendants.

**ORDER GRANTING DEFENDANT HANSON READY MIX, INC.'S
MOTION FOR SUMMARY JUDGMENT**

On October 15, 2018, Plaintiff, Central West Virginia Regional Airport Authority, Inc., by counsel, and Hanson Ready Mix, Inc. (Hanson), by counsel, appeared before the Panel for a hearing on Hanson's *Motion for Summary Judgment* (Transaction ID 62313332). Having maturely considered the filings and the arguments of counsel, and having conferred with one another to insure uniformity of their decision, as contemplated by Rule 26.07(a) of the West Virginia Trial Court Rules, the Presiding Judges unanimously find no genuine issue of material fact exists as to Plaintiff's claims against Hanson and, therefore, Hanson is entitled to judgment on Plaintiff's claims as a matter of law. The Panel **GRANTS** Hanson's Motion for Summary Judgment.

Plaintiff's sole allegation against Hanson is for providing concrete for the Taxiway A project at the Yeager Airport. [Amended Complaint, para 6.]

Hanson submitted an unopposed Affidavit of David Hescht stating that: a) Arrow Concrete n/k/a Hanson mixed the concrete as designed at its plant in Winfield, West Virginia in

batches to go to the project; b) Arrow Concrete n/k/a Hanson delivered the concrete to Ahern/Kokosing in 10 cubic yard loads, and dumped the product on ground at Yeager Airport; c) once the concrete product was delivered in its raw form, Arrow Concrete n/k/a Hanson had no further contact and/or control of the product.

Arrow Concrete n/k/a Hanson's delivery ticket expressly states:

**We do not guarantee the finished results obtained from this load of concrete.
Too many factors not under our control can affect the ultimate results.**

The Uniform Commercial Code Governs Hanson's Sale of Concrete
and Its Potential Liability Arising from the Sale.

Article 2 of the Uniform Commercial Code (the "UCC") governs transactions in "goods." West Virginia Code § 46-2-102. "Goods" means all things which are movable at the time of identification to the contract for sale. West Virginia Code § 46-2-105.

Ready-mix concrete is movable at the time of contract, the sale of which has been uniformly determined to be governed by the UCC. *Shelly Materials, Inc. v. Great Lakes Crushing, Ltd.*, 2013 WL 6810660 (not reported in N.E.2d) (given that a concrete company's ready-mix concrete could be transported from the plant to the construction site, the concrete constituted "goods," and thus Uniform Commercial Code (UCC), not common law, governed); *Ramos v. JJ Mottes Company*, 2016 WL 6128093 (not reported in A.3d) (an agreement for "ready-mix concrete" to be provided by a supplier to a job site is a transaction in goods governed by Article 2 of the Uniform Commercial Code); *Gavco v. Brayman*, 2016 WL 4658262 (not reported in A.3d) (Pennsylvania Uniform Commercial Code, Article 2, Sales, 13 Pa.C.S.A. §§ 2101-2725 (UCC), applies in this case because the purchase order involved sales of concrete, which are transactions in goods).

Plaintiff's Claims Against Hanson for Breach of Contract
and Breach of Warranties are Time Barred.

West Virginia Code § 46-2-725 provides that an action for breach of any contract for sale must be commenced within four years after the cause of action has accrued. A “cause of action accrues when the breach occurs, regardless of the aggrieved party's lack of knowledge of the breach. A breach of warranty occurs when tender of delivery is made ...” W.Va. Code § 46-2-725(2).

West Virginia Code § 46-2-725 constitutes a statute of repose. The limitation period begins to run when the concrete is delivered regardless of when the damages are incurred. *Taylor v. Ford Motor Company*, 185 W.Va. 518, 408 S.E.2d 275 (1991). Moreover, W.Va. Code § 46-2-725 supersedes any other general statute of limitation, including W. Va. Code § 55-2-6. *Greer Limestone Co. v. Nestor*, 175 W.Va. 289, 332 S.E.2d 589 (1985).

Plaintiff's original Complaint was filed on June 14, 2017, based on concrete that was delivered more than a decade ago. Accordingly, Plaintiff's claims against Hanson are time barred and should be dismissed.

Based upon the foregoing findings and conclusions, Hanson Ready Mix, Inc.'s Motion for Summary Judgment on all claims raised in Plaintiff's Amended Complaint is **GRANTED**. The Court **ORDERS** all claims against Hanson Ready Mix, Inc. **DISMISSED WITH PREJUDICE**. The Court notes and preserves the objections of any party aggrieved by this Order.

The Court finds there is no just reason for delay and directs entry of a final judgment, as provided in Rule 54(b) of the West Virginia Rules of Civil Procedure. The parties are hereby advised: (1) that this is a final order; (2) that any party aggrieved by this order may file an appeal directly to the Supreme Court of Appeals of West Virginia; and (3) that a notice of appeal

and the attachments required in the notice of appeal must be must be filed within thirty (30) days after the entry of this Order, as required by Rule 5(b) of the West Virginia Rules of Appellate Procedure.

It is so **ORDERED**.

ENTER: December 7, 2018.

/s/ John A. Hutchison
Lead Presiding Judge
Yeager Airport Litigation