

Courts Clash Over Application of the Discovery Rule to Breach of Contract Claims

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By **Louis A. DePaul** and **Carolyn O. Boucek** | October 11, 2019



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The discovery rule permits a plaintiff to file its claims even after the statute of limitations has expired, provided that the plaintiff was reasonably unaware, despite due diligence, that the plaintiff's injuries were caused by another's wrongdoing, see *Gleason v. Borough of Moosic*, 15 A.3d 479, 484 (Pa. 2011); see also, *Fine v. Checcio*, 870 A.2d 850 (Pa. 2005). The discovery rule balances forcing defendants to defend against stale claims with offering diligent plaintiffs an opportunity to recover for their injuries. See *Gleason*, 15 A.3d at 484–85; *Pocono International Raceway v. Pocono Produce*, 468 A.2d 468, 471 (Pa. 1983); and, *Carlino v. Ethicon*, 208 A.3d 92, 104 (Pa. Super Ct. 2019).

When Does the Discovery Rule Apply?

Generally, courts apply the discovery rule to tort causes of action like negligence, products liability and medical malpractice. See *Carlino*, 208 A.3d at 104 (the discovery rule applied to toll the statute of limitations as to the plaintiff's products liability claim); *Caro v. Glah*, 867 A.2d 531, 537 (Pa. 2004) (the discovery rule applied to toll the statute of limitations in a medical malpractice lawsuit); *Garvey v. Rosanelli*, 601 A.2d 1334 (Pa. Commw. Ct. 1992) (holding that the discovery rule can apply to claims for latent construction defects). In many instances, the discovery rule is also applied to breach of contract actions. However, there is currently a split among the Pennsylvania intermediate appellate courts regarding the application of the discovery rule.

In a recent decision issued in August of this year, *Carulli v. North Versailles Township Sanitary Authority*, ___ A.3d ___, No. 751 C.D. 2017 (Pa. Commw. Ct. August 13, 2019), the Pennsylvania Commonwealth Court refused to apply the discovery rule to a breach of contract matter. In doing so, the Commonwealth Court recognized that the Pennsylvania Superior Court applies the discovery rule to all causes of action—

including breach of contract—but, in determining not to apply the rule, the Commonwealth Court ultimately relied on the Pennsylvania Supreme Court’s silence regarding the issue.

Carulli involves a 2002 contract between North Versailles Township Sanitary Authority (the authority) and Port Vue regarding Port Vue’s replacement of terra cotta sewer pipes along a road within the authority’s jurisdiction. In 2003, Port Vue notified the Authority that it completed the contract, and the authority paid Port Vue in accordance with that contract.

Nine years later, in 2012, the sewer pipes allegedly failed, flooding a local home with raw sewage. When the authority investigated the flood, the authority discovered that Port Vue failed to replace a segment of the sewer pipe as required by the 2002 contract. Accordingly, the authority filed suit against Port Vue in 2012 for breach of the contract.

Port Vue filed a post-trial motion arguing that the discovery rule was inapplicable. On appeal, the Commonwealth Court agreed with Port Vue, refused to apply the discovery rule and held that Pennsylvania’s four-year statute of limitations began to run at the time Port Vue allegedly breached the contract by failing to replace all of the sewer pipe in the early 2000s.

The Commonwealth Court suggested that the discovery rule, a judicially created equitable doctrine itself, could be appropriately applied to equitable causes of action such as promissory estoppel and unjust enrichment, but held that the discovery rule should not extend to apply to written negotiated contracts, see *Crouse v. Cyclops Industries*, 745 A.2d 606 (Pa. 2000) (applying the discovery rule to a promissory estoppel claims); *Ruddy v. Mt. Penn Borough Municipal Authority*, Nos. 1120 C.D. 2013, 1200 C.D. 2013, 2014 WL 1852002 at *2–3 (Pa. Commw. Ct. 2014) (applying the discovery rule to an unjust enrichment claim).

The court’s refusal to apply the discovery rule to negotiated contracts draws a line in the sand between legal and equitable claims.

Carulli is in direct contradiction with Pennsylvania Superior Court precedent holding that the discovery rule applies to all causes of action, including actions based on the breach of a written contract. See e.g., *Morgan v. Petroleum Products Equipment*, 92 A.3d 823, 828 (Pa. Super. Ct. 2014) (“the discovery rule in Pennsylvania applies to all causes of action, including breach of contract”).

Other Jurisdictions Are Split Regarding the Issue

In support of its decision in *Carulli*, the Commonwealth Court pointed to numerous other states such as New York, New Jersey and Wisconsin that also refuse to apply the discovery rule to written negotiated contracts, as in *Carulli* (citing *ACE Securities. v. DB Structured Products*, 36 N.E.3d 623, 627–28 (N.Y. 2015), *County of Morris v. Fauver*, 707 A.2d 958, 972–73 (N.J. 1998), and *CLL Associates Limited Partnership v. Arrowhead Pacific*, 497 N.W.2d 115 (Wisc. 1993)). By contrast, several jurisdictions, like California, agree with the Pennsylvania Superior Court and apply the discovery rule to breach of contract actions, (citing *El Pollo Loco v. Hashin*, 316 F.3d 1032, 1039 (9th Cir. 2003) (citing in turn *April Enterprises v. KTTV*, 147 Cal. App. 3d 805, 830–31 (Cal. Ct. App. 1983)) and *Gust, Rosenfeld & Henderson v. Prudential Insurance*, 898 P.2d 964, 968 (Ariz. 1995)).

As to which approach will prevail across the board in Pennsylvania, only time and the Supreme Court of Pennsylvania will tell.

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