

**83-LW-1685 (10th)**

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Daniel R. Richards, Plaintiff-Appellee

v.

Gold Circle Stores, Defendant-Appellant, Columbia Gas of Ohio, Defendant-Appellee.

No. 83AP-367 (REGULAR CALENDAR).  
10th District Court of Appeals of Ohio, Franklin County.  
Decided on October 27, 1983.

APPEAL from the Court of Common Pleas of Franklin County.

MR. JOHN WILE and MR. CHARLES W. GAYTON, for plaintiff-appellee.

MESSRS. KNEPPER, WHITE, ARTER & HADDEN, MR. LOUIS E. GERBER, and MS. JUDITH E. TRAIL, for appellant.

MESSRS. PORTER, WRIGHT, MORRIS & ARTHUR, MR. RUDOLPH JANATA, and MR. CRAIG D. BARCLAY, for defendant-appellee.

MESSRS. FROST, FREYTAG & HUNTER, and MR. ROBERT E. FROST, for Six Industries, Inc.

MR. MICHAEL M. HARAN, and MR. JAMES P. FLOOD, for Jack Conie & Sons Corp.

DECISION

NORRIS, J.

Defendant, Gold Circle Stores, appeals from a judgment of the trial court granting summary judgment to third-party defendant, Jack Conie & Sons Corp., on Gold Circle's cross-claim.

Plaintiff, a water meter repairman, alleging that he had been injured by the explosion of natural gas on Gold Circle's premises, filed suit in 1982 against Gold Circle, Columbia Gas, Six Industries, Inc., and Conie. Gold Circle filed a third-party complaint against Six Industries, the general contractor who built the store for Gold Circle in 1969, and a cross-claim against Conie, the subcontractor who installed gas lines on the premises, seeking indemnification in both instances should Gold Circle be found liable to plaintiff.

Conie moved for summary judgment on the ground that the claims against it were barred by the ten-year statute of limitations found in R.C. 2305.131, since its work had been completed prior to September 1, 1969.

Gold Circle raises one assignment of error:

"The court erred in sustaining the motion of third party defendant Jack Conie & Sons Corp. for summary judgment on the basis that the claim against it was barred by the ten year statute of limitations imposed by Ohio Revised Code Section 2305.131."

R.C. 2305.131 reads as follows:

"No action to recover damages for any injury to property, real or personal, or for bodily injury or wrongful death, arising out of the defective and unsafe condition of an improvement to real property, nor any action for contribution or indemnity for damages sustained as a result of said injury, shall be brought against any person performing services for or furnishing the design, planning, supervision of construction, or construction of such improvement to real property, more than ten years after the performance or furnishing of such services and construction. This limitation does not apply to actions against any person

in actual possession and control as owner, tenant, or otherwise of the improvement at the time the defective and unsafe condition of such improvement constitutes the proximate cause of the injury or damage for which the action is brought."

Gold Circle asserts that its claim against Conie is based upon an implied contract of indemnity and is therefore governed by the limitation found in R.C. 2305.07, which requires actions upon contracts not in writing to be brought within six years after the cause of action accrues, as opposed to the limitation found in R.C. 2305.131, which it says governs only the bringing of causes of action based on tort. It arrives at that position by arguing that the provisions of R.C. 2305.131 are ambiguous and therefore must be narrowly construed to apply only to actions in tort by third parties against those persons performing construction services.

We disagree. It is difficult to envision how the statute could be worded to more clearly apply to the cause of action asserted by Gold Circle against Conie—it is an action for indemnity for any damages it may sustain as the result of an injury to plaintiff arising out of the defective and unsafe condition of an improvement to real property. The General Assembly's purpose in enacting the limitation clearly was to bar actions brought more than ten years after the performance of the construction, whether the action is asserted by the person who sustains the bodily injury, or is based upon a claim for indemnity for damages which must be paid by another claimant as the result of that injury.

Because we find that the provisions of R.C. 2305.131 clearly apply to the cause of action brought by Gold Circle against Conie on the theory of indemnity arising out of an implied contract, the assignment of error is overruled. We do not decide whether R.C. 2305.131 applies to any cause of action which Gold Circle may have based upon an express written contract for indemnity or contribution.

The assignment of error is overruled, and the judgment of the trial court is affirmed.

Judgment affirmed.

WHITESIDE, P.J., and McCORMAC, J., concur.