

IN THE COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY
FIRST JUDICIAL DISTRICT OF PENNSYLVANIA
CIVIL TRIAL DIVISION

ALLIANZ VERSICHERUNG AG
and ROBERT BOSCH
CORPORATION

v.

GENERALI IARD, formerly Generali
France Assurances (incorrectly
identified as Assurance France
Generali f/n/a Concorde Assurances)
and TOGUM CONSTRUCTEUR
ENSEMBLEIER EN INDUSTRIE
ALIMENTAIRE

SEPTEMBER TERM, 2012

NO. 00593

COMMERCE PROGRAM

CONTROL NO. 14052275

DOCKETED

JUL 15 2014

CIVIL ADMINISTRATION

ORDER

AND NOW, this 15th day of July, 2014, upon
consideration of the motion for summary judgment of Generali IARD, formerly Generali France
Assurances (incorrectly identified as Assurance France Generali f/n/a Concorde Assurances),
and any response thereto, it is hereby

ORDERED

that the motion is **GRANTED**.

BY THE COURT:



GLAZER, J.

Allianz Versicherung Ag Etal Vs Assurance Fr-ORDOP



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**IN THE COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY
FIRST JUDICIAL DISTRICT OF PENNSYLVANIA
CIVIL TRIAL DIVISION**

ALLIANZ VERSICHERUNG AG	:	
and ROBERT BOSCH	:	
CORPORATION	:	SEPTEMBER TERM, 2012
	:	
v.	:	NO. 00593
	:	
GENERALI IARD, formerly Generali	:	COMMERCE PROGRAM
France Assurances (incorrectly	:	
identified as Assurance France	:	CONTROL NO. 14052275
Generali f/n/a Concorde Assurances)	:	
and TOGUM CONSTRUCTEUR	:	
ENSEMBLEIER EN INDUSTRIE	:	
ALIMENTAIRE	:	

OPINION

GLAZER, J.

July 15, 2014

Before the court is the motion for summary judgment of defendant, Generali IARD, formerly Generali France Assurances. For the reasons set forth below, defendant's motion is granted.

FACTS AND PROCEDURAL BACKGROUND

Plaintiffs, Robert Bosch Corporation (hereinafter "Bosch") and Allianz Versicherung AG (hereinafter "Allianz"), commenced the instant action for contractual indemnity, contribution, unjust enrichment, and common law indemnity against defendants Generali IARD, formerly Generali France Assurances (incorrectly identified as Assurance France Generali f/n/a Concorde Assurances) (hereinafter "Generali") and Togum Constructeur Ensembleier En Industrie Alimentaire (hereinafter "Togum"). This case arises out of an injury sustained by Patrick Cella

(hereinafter “Cella”) in which he subsequently filed an action in the Court of Common Pleas of Philadelphia County, Pennsylvania (hereinafter “underlying action”) against Togum and Bosch.

Cella alleged in the underlying action that he suffered an injury on February 21, 1996 while using a gumball making machine manufactured by Togum. Togum had subsequently filed for bankruptcy and Bosch purchased its patents and trademarks (hereinafter “the purchase”). Allianz, as Bosch’s insurer, assumed Bosch’s defense in the underlying action. Further, Bosch filed cross-claims against Togum and Generali.

Plaintiffs allege that Togum had an insurance policy with Generali (hereinafter “Generali policy”). As a part of the purchase, plaintiffs allege that Togum agreed to indemnify Bosch and assigned all of the benefits of the Generali policy. The parties settled the underlying action and Bosch paid Cella \$700,000.00 on August 25, 2000 and his attorney \$10,000.00 on September 28, 2000 (hereinafter “settlement payment”). See defendant Generali’s motion for summary judgment, Exhibit G. Subsequently, on December 22, 2000, the cross-claims against Togum and Generali were dismissed as Bosch chose to pursue the claims against Generali and Togum in France.

On or about September 24, 2003, Bosch and Allianz requested reimbursement from Generali for the settlement payment. However, Generali refused to reimburse the plaintiffs. Plaintiffs then filed an action in France on December 30, 2004 to obtain indemnification of or contribution of the money that they paid out in the settlement. However, the French court dismissed the claims. On September 6, 2012, plaintiffs filed the instant action.

DISCUSSION

I. Standard of Review

The court shall enter judgment whenever there is no genuine issue of any material fact as to a necessary element of the cause of action or defense that could be established by additional discovery. Pa.R.C.P. 1035.2. A motion for summary judgment is based on an evidentiary record that entitles the moving party to a judgment as a matter of law. Note to Pa.R.C.P. 1035.2. When considering the merits for summary judgment, a court views the record in the light most favorable to the non-moving party, and all doubts as to the existence of a genuine issue of material fact must be resolved against the moving party. Jones v. SEPTA, 565 Pa. 211, 772 A.2d 435, 438 (Pa. 2001). Further, the court may grant summary judgment only where the right to such a judgment is clear and free from doubt. Marks v. Tasman, 527 Pa. 132, 589 A.2d 205, 206 (Pa. 1991).

The statute of limitation for a claim of unjust enrichment is four (4) years. Cole v. Lawrence, 701 A.2d 987, 989 (Pa. Super. 1997). Moreover, an action for unjust enrichment accrues at the time of breach. Id. Further, claims for common law indemnity and contractual indemnity, as they are contractual in nature, have a four (4) year statute of limitation. See 42 Pa.C.S.A. §5525(a)(8). A contract claim accrues for statute of limitations purposes “when there is an existing right to sue forthwith on the breach of contract” and “when plaintiff first could have maintained [its] action to a successful conclusion.” Leedom v. Spano, 436 Pa. Super. 18, 28, 647 A.2d 221, 226 (1994).

Plaintiffs allege that [o]n or about September 24, 2003, Allianz made a demand upon Generali for reimbursement of the Bosch/Allianz settlement payment in the Cella Action.” See plaintiffs’ memorandum of law in opposition to Generali’s motion for summary judgment, p. 5.

Further, plaintiffs allege, “[a]fter Generali refused to reimburse Allianz for such payment, Allianz commenced an action in France on December 30, 2004 to recover.” Id. As it is not identified when Generali refused the demand, the latest date for the breach to occur is December 30, 2004, the commencement of the French action. Thus, the statute of limitation ran on December 30, 2008. The instant action was not filed until September 6, 2012 and therefore this court finds the causes of action for unjust enrichment, common law indemnity, and contractual indemnity are barred by the statute of limitation.

The statute of limitation for a claim of contribution is six (6) years. Pennsylvania Nat. Mut. Cas. Ins. Co., v. Nicholson Const. Co., 542 A.2d 123, 126 (Pa. Super. Ct. 1988). Further, “the statute does not begin to run until the time judgment is entered in favor of the original plaintiff.” Mattia v. Sears, Roebuck & Co., 531 A.2d 789, 789, 792 (Pa. Super. Ct. 1987) (citation omitted). Plaintiffs allege that the claim for contribution is not barred by the statute of limitation because defendant has not considered the French action. Specifically, plaintiffs attempt to argue that because Allianz had a right to appeal the French action until March 6, 2014, that the claim for contribution filed on September 6, 2012, is well within the expiration of the right to appeal and thus not time barred. However, this court sees no validity in plaintiffs’ argument. The statute of limitation began to run at the time of judgment of the original plaintiff, Cella. The last payment pursuant to the settlement was paid out on September 28, 2000. Thus, the statute of limitation ran on September 28, 2006. Therefore, this court finds that the claim for contribution is barred.

CONCLUSION

In light of the evidence, summary judgment is granted in favor of defendant Generali IARD, formerly Generali France Assurance.

BY THE COURT:



GLAZER, J.