gardner. As compensation for his management services he was to receive $150,000 per year from the partnership.

4. Elmer Baumgardner executed at least one legal document in the capacity of general partner, Energy Resources, Ltd.

5. This Court found in its September 8, 1983 Opinion that Elmer R. Baumgardner was in fact a general partner in Energy Resources, Ltd.

6. Robert C. Embry, Jr. withdrew his preliminary objection alleging his limited partnership status in Energy Resources, Ltd.

ORDER OF COURT

NOW, this 8th day of June, 1984, the defendants are directed to respond to the supplemental interrogatories, all as set forth in the Opinion attached hereto, without delay.

In addition, defendants, Elmer Baumgardner and Robert C. Embry, are hereby prohibited from asserting or otherwise contending that they are other than general partners in Energy Resources, Limited Partnership.

Exceptions are granted the defendants.

FRANKLIN COUNTY SPECIAL EDUCATION CENTER V. STEVE BLACK, INC., ET AL., C.P. Franklin County Branch, No. A.D. 1983 - 181

Civil Action - Statute of Limitations - Amended Complaint

1. Where a lawsuit is based on the failure of a chilling unit in an air conditioner, the statute of limitations begins to run when the unit failed.

2. The statute of limitations is tolled when plaintiff filed a Praecipe for Issuance of Writs of Summons in Trespass and Assumpsit.

Anthony Stefanon, Esquire, Counsel for plaintiff
Daniel L. Sullivan, Esquire, Counsel for defendant, Steve Black, Inc.

Eileen F. Schoenhofen, Esquire, Counsel for defendant, Borg-Warner Corp.

OPINION AND ORDER

EPPINGER, P.J., August 30, 1984:

Plaintiff, the Franklin County Special Education Center, constructed its building in 1977. Defendant, Steve Black, Inc., was hired to install an air conditioning system. The system included a hermetic turbopak chilling unit purchased from the defendant, York Division of Borg-Warner Corporation, manufacturer of the unit.

On July 7, 1981, the air conditioning system shut down due to the failure of the chilling unit. The plaintiff had to pay $13,135.59 in order to have the system repaired and put back into operation.

Plaintiff has pleaded causes of action against Black and Borg-Warner for breach of express warranties, breach of implied warranties, negligence and strict liability in tort. The plaintiff now seeks to amend its complaint to add Count VI against Borg-Warner in assumpsit for inadequate service, maintenance, and repair of the equipment. Borg-Warner contends that the essence of the count is a negligence, rather than a contract cause and it introduces a new cause of action after the expiration of a two-year statute of limitations.

In a memorandum filed for the pretrial conference, plaintiff states that it relies, in support of the proposed amended complaint (Count VI), upon the implied duty of workmanlike performance which arises in every contract where a party purports to have skill in a business and undertakes such business for hire, citing 8 P.L.E. *Contracts,* §369, p. 425; *John Conti Co., Inc. v. Donovan,* 358 Pa. 566, 57 A.2d 872 (1948); *Elderkin v. Gaster,* 447 Pa. 118, 288 A.2d 771 (1972), footnote 13; and *Waugh v. Shunk,* 20 Pa. 130 (1852). Plaintiff asserts that the parties entered into oral contracts for the service, maintenance, and repair of the air conditioning system.

Even were we to assume, as Borg-Warner argues, that this additional count must be brought in negligence, it is not outside the statute of limitations, 42 Pa.C.S.A. §5524(7). Whether the cause sounds in negligence or assumpsit, the statute of limitations

LEGAL NOTICES, cont.

child and your failure to appear may affect the court's decision on whether to end your rights to Katina Marie Wetzel. You are warned that even if you fail to appear at the scheduled hearing, the hearing will go on without you and your rights to Katina Marie Wetzel may be ended by the Court without your being present.

YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER OR CANNOT AFFORD ONE, GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW TO FIND OUT WHERE YOU CAN GET LEGAL HELP.

Legal Reference Service of Franklin-Fulton Counties
Franklin County Courthouse
Chambersburg, Pennsylvania 17201
Telephone number: (717) 264-4125, Ext. 213

MARTIN AND KORNFIELD
Donald L. Kornfield
Attorney for Plaintiff
17 North Church Street
Waynesboro, PA 17268
(717) 762-3188

2-15, 2-22, 3-1

NOTICE IS HEREBY GIVEN TO ALL persons interested or who may be affected, by Joy's House of Beauty, Inc., 120 West Second Street, Waynesboro, Pennsylvania, a business corporation, that it filed with the Department of State of the Commonwealth of Pennsylvania, at Harrisburg, Pennsylvania, on the 29th day of November, 1984, a certificate of election by its shareholders to dissolve the said corporation, and that the board of directors is now engaged in winding up and settling the affairs of said corporation.

ULLMAN, PAINTER AND MISNER
Attorneys at Law
10 East Main Street
Waynesboro, Penna.

2-8, 2-15

began to run when the chilling unit failed and ceased to function on July 7, 1981. See *Twp. of Marple v. Kelly,* 52 Del. 225, 228 (1964); *A.J. Aberman, Inc. v. Funk Bldg. Corp.,* 278 Pa. Super. 385, 395-6, 420 A.2d 594, 599 (1980); *Thorpe v. Schoenbrun,* 202 Pa. Super. 375, 377, 195 A.2d 870, 872 (1963). The statute was tolled on June 21, 1983, when plaintiff filed a Praecipe for issuance of Writs of Summons in Trespass and Assumpsit against the defendants with the Prothonotary of Franklin County. Pa. R.C.P. 1007; *Benn v. Linden Crane Corp.,* 370 F. Supp. 1269, 1278 (E.D.Pa. 1973).

Neither is it of significance whether the cause is raised in negligence or assumpsit. While the essence of the additional count involves the negligence of Borg-Warner, the real question is whether the defendant performed the contract in a workmanlike manner; therefore the count is properly brought in assumpsit. *Spanard v. Duquesne Light Co.,* 118 P.L.J. 354, 355 (1970).[1]

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[1] *Spanard* is factually similar to our case. Plaintiffs hired a general contractor to prepare specifications for and supervise the installation of an electrical heating system consisting of electric ceiling cable within a dwelling to be constructed for plaintiffs. The cable failed due to improper design and supervision of the installation. When defendant improperly corrected the defects and damage, plaintiffs brought their action in assumpsit to recover the costs incurred in repairs and installation of a new heating system. Defendants moved to strike the assumpsit claim because the action sounded in tort rather than assumpsit. The court held that "while the burden of the plaintiffs' action is the negligence of the defendant, the real question is whether the defendant properly performed its contract. Therefore, plaintiffs' action, while sounding in tort, was properly brought in assumpsit. See *Seigel v. Struble Brothers, Inc.,* 150 Pa. Super. 343." *Spanard,* at 355.

ORDER OF COURT

August 30, 1984, the application of the plaintiff for leave to amend its complaint against the defendant, York Division of Borg-Warner Corporation to add Count VI is granted.

COMMONWEALTH V. RIDEOUT, C.P., Franklin County Branch, No. 50 of 1983

Criminal Law - Sentencing Guidelines