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LIMITATIONS OF ACTION—APPLICABLE STATUTE—THIRD-PARTY INJURY PROVISION AGREED TO BY CONTRACTOR SUBJECT TO CONTRACT LIMITATION ONLY—More than two years following an accident in which they sustained personal injuries when their car fell into defendant's excavation, plaintiffs filed a diversity action in a federal court stating inter alia a cause of action based upon a third-party beneficiary contract entered into by defendant street contractor and the City of Philadelphia for which he was working. The contract provided in essence that defendant alone would be liable for damage sustained by any third party "irrespective of whether or not such injuries . . . be due to negligence or the inherent nature of the work." The district court dismissed the complaint on the ground that it was barred by the applicable state two year statute of limitations "for injuries wrongfully done to the person."¹ On appeal, *held*, reversed. The

¹ Pa. Stat. Ann. (Purdon, 1953) tit. 12, §34: "Every suit hereafter brought to recover damages for injury wrongfully done to the person, in case where injury does not result in death, must be brought within two years from the time when the injury was done and not afterwards. . . ."

action is limited solely by the Pennsylvania "contract without specialty" statute,² which permits commencement of an action within six years of breach. *Thompson v. Erb*, (3d Cir. 1957) 240 F. (2d) 452.

It is generally held that where a repair or construction contract between a contractor and a municipality provides that the contractor shall be liable for all damages caused by his work, a person who is subsequently injured may recover on a third-party beneficiary contractual theory.³ Application in the principal case of a contract, rather than a personal injury statute of limitations appears to be a mechanical outgrowth of this contract doctrine, emphasizing the form of the action and not the cause. While the court admitted that if the injuries were "wrongfully done," the action, though in contract, would be barred by the two year statute,⁴ it then proceeded to interpret "wrongful" restrictively as if it meant "tortious." Plaintiff did not allege any tort liability and the court thus found that the action on the contract was immune from the shorter personal injury limitation. This holding is contrary to the weight of authority.⁵ It has been frequently held that where a statute limits the time within which an action for "injuries to the person" may be brought, the statute is applicable to all actions designed to recover for personal injuries, regardless of the form of the action.⁶ Jurisdictions having personal injury statutes similar to that of Pennsylvania have generally followed this view,⁷ and a recent New Jersey case involving a similar third-party beneficiary contract reached a result opposed to that of the principal case.⁸ A strong policy argument dictates a construction directed at the shorter limitation period in personal injury actions since evidence is usually wholly oral and is likely to be obscured by delay through death, absence, or failure of memory.⁹ There is, however, some authority to the contrary which allows the form of action to govern the choice of statute.¹⁰ In a few jurisdictions the problem has been resolved by more careful draftsmanship, making clear which statute would govern in a given situation.¹¹ Pennsylvania's personal injury statute of limitations does not

² *Id.*, §31, which provides that all actions of "debt grounded upon any . . . contract without specialty . . . shall be commenced and sued within . . . six years. . . ."

³ 49 L.R.A. (n.s.) 1171 (1914); 1 CONTRACTS RESTATEMENT §145, comment *a*, illus. 3 (1932).

⁴ *Jones v. Boggs & Buhl, Inc.*, 355 Pa. 242, 49 A. (2d) 379 (1946).

⁵ Cases collected at 157 A.L.R. 763 (1945).

⁶ *Id.* at 766.

⁷ E.g., *Andrianos v. Community Traction Co.*, 155 Ohio St. 47, 97 N.E. (2d) 549 (1951); *Bodne v. Austin*, 156 Tenn. 353, 2 S.W. (2d) 100 (1927); *Finch v. Albers Super Market, Inc.*, (6th Cir. 1943) 136 F. (2d) 191 (interpreting the Kentucky statute).

⁸ *Burns v. Bethlehem Steel Co.*, 20 N.J. 37, 118 A. (2d) 544 (1955).

⁹ *Andrianos v. Community Traction Co.*, note 7 *supra*, at 52.

¹⁰ Cases collected at 157 A.L.R. 763 at 777 (1945).

¹¹ Ore. Rev. Stat. (1953) §12.110: "An action for . . . any injury to the person or rights of another, not arising on contract, . . . shall be commenced within two years. . . ." E.g., Mass. Laws. Ann. (1952) c. 260, §2A; Minn. Stat. (1953) §541.07.

appear to require the strict construction given in the principal case which seems to be in conflict with previous state precedent.¹² No statutory definition limits the meaning of "wrongful" to negligent, intentional, or any other specific type of wrongful act. It is indicated by prior Pennsylvania decisions that the courts have regarded "wrongful" as synonymous with "giving rise to a cause of action," and in personal injury cases have found it to be immaterial whether the cause resulted from a breach of contract or a tort without a contract.¹³ The words of the statute are general, and there is nothing to indicate that a general class was not intended to be covered, viz., "Every suit to recover damages for injuries wrongfully done to the person."¹⁴ Such an interpretation would appear to have been especially warranted with respect to the present contract, in which defendant has assumed strict liability for personal injuries. While the assumption was contractual in form, its effect is to eliminate the necessity of plaintiff's specific allegation of duty and breach. This concession should not be expanded by lengthening the period for bringing an action beyond the normal personal injury statutory period. To do so places an additional and unwarranted burden on the defendant.

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¹² The prevailing view in Pennsylvania was well summarized in the oft-quoted opinion of *Nightingler v. Johnson*, 18 Pa. D. & C. 47 at 48 (1932): ". . . what did the legislature mean by 'every suit hereafter brought to recover damages for injury wrongfully done to the person.' It meant, of course, every suit, be it assumpsit, trespass, trespass on the case, or any other kind of a suit by which damages for personal injuries could be collected."

¹³ *Bradley v. Laubach & Pffieger*, 23 Pa. Dist. R. 151 (1914).

¹⁴ *Rodebaugh v. Philadelphia Traction Co.*, 190 Pa. 358, 42 A. 953 (1899).