MEMORANDUM DECISION

APPELLANT PRO SE

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IN THE COURT OF APPEALS OF INDIANA

Greg S. Schafer,
Appellant,

v.

Menards,
Appellee.

March 18, 2022

Court of Appeals Case No. 21A-SC-1782

Appeal from the Porter Superior Court

The Honorable Mary A. DeBoer, Special Judge

Trial Court Cause No. 64D04-2010-SC-2139

Brown, Judge.

[1] Greg S. Schafer, *pro se*, appeals the trial court's order which entered summary judgment in favor of Menard, Inc. ("Menards"). We affirm.

Facts and Procedural History

[2] On January 6, 2013, Schafer signed a special order contract for the purchase of a custom door from Menards. Approximately two or three weeks later, the door was shipped to Schafer. The day after delivery, Schafer noticed a small crack in one part of the door's decorative glass and notified Menards.

[3] On October 6, 2020, more than seven years later, Schafer filed a complaint against Menards alleging that "a door [he] purchased from Menards was defective on delivery." Appellant's Appendix Volume II at 11 (capitalization omitted). On June 24, 2021, Menards filed a Brief in Support of Dismissal alleging that Schafer's claim should be dismissed because he failed to file his claim within the statute of limitations period. Menards attached a copy of the special order contract. On July 19, 2021, the trial court held a hearing at which Schafer appeared *pro se*. Schafer testified that he had purchased the door in 2013, received the door at a job site two to three weeks later, "[his] carpenters . . . stood the door up by the opening," "put it right on the stoop," "put it in the door," and "temporarily set it in there for the evening." Transcript at 5. Schafer stated that, upon returning the next day, he learned there was a crack in the internal glass of the door, which grew in size over the course of the next few days. Schafer testified "[t]he next morning [he] complained about the glass" and a salesman "came right out." *Id.* at 17. Schafer stated that, for approximately the next year, Menards "continued to say [they would] send

[him] the piece of glass [a]nd [he] said [he would] not accept the piece of glass" because he believed he should be sent "the door system . . . the door with the hinges on it," which would not have required him to remove the glass from the door and install new glass. *Id.* Schafer agreed that, over the next seven years, he continued to negotiate until finally deciding to file his complaint.

[4] Schafer introduced multiple exhibits, including written warranties for an exterior steel door from Midwest Manufacturing ("Midwest"),[1] the manufacturer which Schafer claimed had constructed the door, which provided:

> [Midwest] warrants your MASTERCRAFT exterior steel door against manufacturing defects in materials and workmanship for limited lifetime from purchase date when installed in accordance with MASTERCRAFT'S installation instructions . . . . Insulated glass units carry a separate lifetime warranty against material obstruction of your vision resulting from film formation between interior glass surfaces (seal failure). This warranty does not cover breakage of glass . . . .
>
> Solely at [Midwest's] option, [Midwest] will repair or replace any part(s) that fails due to manufacturing or material defects . . . .
>
> These warranties do not apply with respect to . . . improper installation . . . .

Appellant's Appendix Volume II at 55. Schafer also introduced a copy of the special order contract with Menards, which included the quantity of doors ordered, the custom door's specifications, the pre-tax price, and Menards' terms and conditions, which stated "[a]ny and all claims under this contract must be

[1] At the hearing, when the court asked Schafer if it had occurred to him to sue Midwest, Schafer stated that Midwest was a wholly owned subsidiary of Menards.

brought within one year of purchase," and "[p]urchaser's exclusive remedy, if any product is defective or fails to conform to the terms of the contract, is replacement of the product." *Id.* at 51.

[5] The court took the matter under advisement. On July 21, 2021, the court issued an order which stated it granted Menards' motion to dismiss.

Discussion

[6] We observe that Menards attached the special order contract to its motion to dismiss and, at the hearing, Schafer introduced multiple exhibits which included the contract, photographs of the door's glass, a Menards estimate form, and Midwest's express warranties for an exterior steel door.[2] Because the parties presented evidence outside the pleadings for the trial court's consideration, Menards' motion to dismiss will be treated as a motion for summary judgment. *See* Ind. Trial Rule 12(B) ("If, on a motion, asserting the defense number (6), to dismiss for failure of the pleading to state a claim upon which relief can be granted, matters outside the pleading are presented to and not excluded by the court, the motion shall be treated as one for summary judgment and disposed of as provided in Rule 56."); *New Albany-Floyd Cty. Educ. Ass'n v. Ammerman*, 724 N.E.2d 251, 255 n.7 (Ind. Ct. App. 2000)

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[2] We note that although Schafer is proceeding *pro se*, such litigants are held to the same standard as trained counsel and are required to follow procedural rules. *Evans v. State*, 809 N.E.2d 338, 344 (Ind. Ct. App. 2004), *trans. denied*. "This court will not indulge in any benevolent presumptions on [their] behalf, or waive any rule for the orderly and proper conduct of [their] appeal." *Ankeny v. Governor of State of Ind.*, 916 N.E.2d 678, 679 n.1 (Ind. Ct. App. 2009) (citation omitted), *reh'g denied*, *trans. denied*.

("Although the trial court specifically granted Holman's motion to dismiss and did not rule on his motion for summary judgment, we must nevertheless treat the former as a motion for summary judgment on review.").

[7] Summary judgment is appropriate only where there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. Ind. Trial Rule 56(C); *Mangold ex rel. Mangold v. Ind. Dep't of Natural Res.*, 756 N.E.2d 970, 973 (Ind. 2001). All facts and reasonable inferences drawn from those facts are construed in favor of the nonmovant. *Mangold*, 756 N.E.2d at 973. Our review of a summary judgment motion is limited to those materials designated to the trial court. *Id.* We must carefully review a decision on summary judgment to ensure that a party was not improperly denied its day in court. *Id.* at 974.

[8] Schafer argues the trial court erred "when it failed to honor the Express lifetime warranty that [Midwest] provided" and applied an incorrect statute of limitations. Appellant's Brief at 21. He claims the contract was one for services instead of goods because "the Special Order Contract with Menards was substantially a service contract to fabricate a custom door with leaded glass." *Id.* at 13.

[9] "In Indiana, statutes of limitation are favored because they afford security against stale claims and promote the peace and welfare of society." *Morgan v. Benner*, 712 N.E.2d 500, 502 (Ind. Ct. App. 1999), *reh'g denied*, *trans. denied*. "They are enacted upon the presumption that one having a well-founded claim

will not delay in enforcing it." *Id.* "The defense of a statute of limitation is peculiarly suitable as a basis for summary judgment." *Id.* at 502-503. "The nature or substance of the cause of action, rather than the form of the action, determines the applicable statute of limitations." *King v. Terry*, 805 N.E.2d 397, 400 (Ind. Ct. App. 2004).

[10] Ind. Code § 26-1-2-725 provides:

> (1) An action for breach of any contract for sale must be commenced within four (4) years after the cause of action has accrued. By the original agreement the parties may reduce the period of limitation to not less than one (1) year, but may not extend it.
>
> (2) A cause of action accrues when the breach occurs, regardless of the aggrieved party's lack of knowledge of the breach. A breach of warranty occurs when tender of delivery is made, except that where a warranty explicitly extends to future performance of the goods and discovery of the breach must await the time of such performance, the cause of action accrues when the breach is or should have been discovered.

[11] Schafer does not dispute that, if the four-year statute of limitations is applicable, his action against Menards was untimely filed. Rather, he asserts that Ind. Code § 34-11-2-11, which provides for a ten-year statute of limitations, should apply because the contract between him and Menards was a service contract instead of a contract for the sale of goods. Ind. Code § 34-11-2-11 provides: "An action upon contracts in writing other than those for the payment of money . . . must be commenced within ten (10) years after the cause of action accrues."

[12] The sale of goods is governed by Indiana's version of the Uniform Commercial Code. *See* Ind. Code § 26-1-2 *et seq*. Ind. Code § 26-1-2-725 applies to "[a]n action for breach of any contract for sale." Ind. Code § 26-1-2-106 provides that a "'[c]ontract for sale' includes both a present sale of goods and a contract to sell goods at a future time." "Goods" are "all things (including specially manufactured goods) which are movable at the time of identification to the contract for sale." Ind. Code § 26-1-2-105(1). A sale of goods also includes contracts for the sale of "future goods" that are "not both existing and identified." Ind. Code § 26-1-2-105(2). The record reveals that the special order Contract stated "1" under "Qty Ordered," included the "Unit Price," and under "Description," stated in part "Lite, Single, Door, Steel, Tuscany," "Liquid Crystal Accent," "Left Hand Inswing," "Continuous Aluminum sill," "Satin Nickel Hinges," "No Kickplate," and "Interior Primed Ready to Paint, Exterior Primed Ready to Paint." Appellant's Appendix Volume II at 51. Based upon the record, we conclude that the special order contract was one for the sale of goods. *See Stardust Ventures, LLC v. Roberts*, 65 N.E.3d 1122, 1126-1127 (Ind. Ct. App. 2016) (finding that a contract to produce a customized houseboat was a contract for the sale of a good within the meaning of Indiana's version of the Uniform Commercial Code). Accordingly, Schafer's action was untimely and the entry of summary judgment in favor of Menards was proper.

[13] For the foregoing reasons, we affirm.

[14] Affirmed.

May, J., and Pyle, J., concur.