

IN THE DISTRICT COURT OF THE VIRGIN ISLANDS
DIVISION OF ST. THOMAS AND ST. JOHN

PACIFIC BUSINESS CAPITAL CORP.,	)	
	)	
Plaintiff,	)	
	)	
v.	)	
	)	Civil No. 2004-159
LITTLE SWITZERLAND, INC. and, L.S.	)	
WHOLESALE INC.,	)	
	)	
Defendants.	)	
	)	
	)	
	)	

APPEARANCES:

Marshall A. Bell, Esq.
St. Thomas, VI 00801
Attorney for Plaintiff

Karin A. Bentz, Esq.
St. Thomas, VI 00801
Attorney for Defendants

GÓMEZ, C.J.

ORDER

Before the Court is the Defendants' motion to dismiss for failure to state a claim.

FACTS

In 1999, Little Switzerland Inc. and L.S. Wholesale Inc. ("the Defendants") entered into a series of written contracts with La Bijoux, in which the Defendants agreed to pay \$290,020.41 in exchange for goods. On November 15, 2004, Pacific Business Capital Corp. ("PBCC"), assignee of La Bijoux, filed suit against

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the Defendants for breach of contract. PBCC alleges that the Defendants have breached the contracts by refusing to pay the balances due. On November 15, 2005, the Defendants filed this motion to dismiss for failure to state a claim. The Defendants argue that PBCC's complaint is barred by the statute of limitations. PBCC has not opposed the motion.¹

DISCUSSION

Motions to dismiss for failure to state a claim on which relief could be granted are decided in accordance with Federal Rule of Civil Procedure 12(b)(6) ("Rule 12(b)(6)"). All material allegations are taken as admitted, all facts are construed in a light most favorable to the non-moving party, and all reasonable inferences are drawn for the non-moving party's benefit. *Jenkins v. McKeithen*, 395 U.S. 411, 421 (1969); *Alston v. Parker*, 363 F.3d 229, 223 (3d Cir. 2004). The Court will grant the motion only if no set of facts in support of the claims pled would entitle the plaintiff to relief. *Conley v. Gibson*, 355 U.S. 41, 45-46 (1957).

Furthermore, where the complaint shows that the claim is barred by the statute of limitations, this defense may be

¹On January 10, 2006, PBCC filed a Certificate of No Opposition to Defendant's Motion to Dismiss pursuant to Local Rule of Civil Procedure 56.1, which was applicable at the time this motion was filed.

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asserted by a motion to dismiss for failure to state a claim. *Bethel v. Jendoco Const. Corp.*, 570 F.2d 1168, 1174 (3d Cir. 1978) (citing *Hanna v. United States Veterans' Admin. Hospital*, 514 F.2d 1092, 1094 (3d Cir. 1975))(stating that "the limitations defense may be raised on a motion under Rule 12(b)(6), but only if 'the time alleged in the statement of a claim shows that the cause of action has not been brought within the statute of limitations'").

ANALYSIS

The contracts at issue are for the sale of goods. The Uniform Commercial Code ("UCC") applies to contracts for the sale of goods. V.I. Code Ann. tit. 11A § 2-102. Pursuant to V.I. Code Ann. tit. 11A § 2-725,

- (1) An action for breach of any contract for sale must be commenced within four years after the cause of action has accrued....
- (2) A cause of action accrues when the breach occurs....

To grant the Defendants' 12(b)(6) motion to dismiss, the date of breach must be apparent on the face of the complaint. See *Bethel*, 570 F.2d at 1174 (noting that "[i]f the bar is not apparent on the face of the complaint, then it may not afford the basis for a dismissal of the complaint under Rule 12(b)(6)").

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Here, PBCC's complaint shows that the contracts for the sale and purchase of goods from La Bijoux were entered into in 1999. Furthermore, PBCC's verified complaint states:

13. Since 1999 PBCC has repeatedly demanded that Defendants perform their obligations under the contracts by making payment in full for all of the merchandise purchased.

14. Defendants, and each of them, have breached the written contracts by refusing to pay the amounts due thereunder....

(Compl. ¶¶ 13-14.)

The complaint does not, however, allege the date when the contracts were breached, nor does it allege the date on which payments became due under the contract. The complaint only alleges that at some unspecified time, the Defendants refused to pay the amounts due. These allegations are insufficient to show that PBCC's complaint is time-barred on its face. *See Goodman v. Praxair, Inc.*, 494 F.3d 458, 466 (4th Cir. 2007)(holding that the complaint did not allege sufficient facts to show that the statute of limitations had run where the complaint only alleged that the defendant "failed and refused to pay", but did not state the date of breach).

Because the complaint does not allege when the breach occurred, the Court cannot determine when PBCC's cause of action accrued. Accordingly, it is not apparent from the face of the

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complaint that the cause of action is barred by the statute of limitations.

CONCLUSION

For the foregoing reasons,

It is hereby **ORDERED** that Defendants' motion to dismiss for failure to state a claim is **DENIED**.

October 9, 2007

s_____
Curtis V. Gómez
Chief Judge

Courtesy Copies:

Honorable G.W. Barnard
Marshall Bell, Esq.
Karen Bentz, Esq.
Olga Schneider
Lydia Trotman
Claudette Donovan
Renée André