



The Statute of Limitations May Be Shortened by Contractual Provisions Included in an Invoice or Application for Employment

Alicia W. Birach (Summer Associate)

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Traditionally, parties to an agreement have been able to shorten the period of limitations in which a party can bring a claim by contract. Michigan does not have a policy or statute prohibiting the modification of periods of limitation by contract. Recent court decisions have expanded this rule to allow for provisions imposing such limitations to be included in an application for employment and an invoice.

The court in *Clark v. DaimlerChrysler Corp.* upheld a provision in an employment contract which shortened the number of months an employee has to bring a claim against their employer to six months from the date that the subject of the claim occurred. The court determined that a party who signs an agreement, in the absence of coercion, mistake or fraud, is presumed to know and understand the document they are signing and therefore is bound by its terms.

In reaching this conclusion, the court determined that an unambiguous contract provision that provides for a shortened period of limitations will be enforced as written unless the provision violates law or public policy, or is otherwise unenforceable under traditional contract defenses. As the court stated in *Clark*, "[i]n order for a contract or contract provision to be considered unconscionable, both procedural and substantive unconscionability must be present." Procedural unconscionability occurs when one party has no realistic alternative to accepting the contract provision or terms. Substantive unconscionability occurs when a contract provision or term is not substantively reasonable. A term will not be considered substantively unreasonable just because it is harmful to one party and helpful to the other. A term will only be considered substantively unreasonable when the inequity of the term is so extreme that it shocks the conscience.

In *Liparoto Construction, Inc. v. General Shale Brick, Inc.*, the court determined that a contract provision included by Lincoln Brick in an invoice was valid. The provision limited the period of time in which



Liparoto Construction, Inc. had to bring a claim against Lincoln Brick from four years under the UCC to one year under the contract.

The court found that the contract provision was not unconscionable, and was therefore valid, because *Liparoto* had realistic alternatives to accepting the provision. The company could have chosen not to accept the goods under the terms and purchased the goods from a different supplier. The court also noted in its decision that something to consider when determining if a contract provision is substantially unconscionable is if a defect would be detectable within the shortened period of limitations.

The current trend in case law demonstrates the courts' willingness to enforce contract provisions included in documents other than the contract itself. It is assumed that a party to an agreement has read over and understands the language of the document, and by signing or receiving something under the document, indicates acceptance of its terms. Companies should be mindful of these recent court decisions, both to use as a tool and something to be watchful for when entering into agreements or accepting something from others.

