

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

WILLIAM M. YOUNG COMPANY,)
)
 Plaintiff,)
)
 v.) Civ. No. 03-0812
)
 PULTE HOME CORPORATION,)
)
 Defendant.)

MEMORANDUM ORDER

At Wilmington this 27th day of August, 2004, having reviewed defendant's motion for summary judgment (D.I. 46) and plaintiff's response thereto;

IT IS ORDERED that defendant's motion for summary judgment (D.I. 46) is denied in part, for the reasons that follow:

1. Defendant argues in its motion that plaintiff's suit is barred by the three year statute of limitations codified at 10 Del. C. § 8106, which "applies to actions based on a detailed statement of the mutual demands in the nature of debit and credit between parties arising out of contractual or fiduciary relations." Stifel Financial Corp. v. Cochran, 809 A.2d 555, 558 (Del. 2002). According to the record, defendant continued to make regular payments on its account with plaintiff until at least October 18, 2001; therefore, the filing of the

instant litigation on August 14, 2003 does not run afoul of the statute of limitations.

2. Having reviewed the record submitted by the parties, I further conclude that there are genuine issues of material fact relating to plaintiff's claim of loss in connection with the custom windows it stocked solely for the use of defendant. Therefore, the entry of judgment in favor of defendant is not justified at this juncture.

IT IS FURTHER ORDERED that, with regard to the remaining issue, that is, the amount (if any) due and owing plaintiff for materials supplied to defendant, resolution of the motion is stayed for the reasons that follow. Defendant has argued that judgment should be entered on its behalf because, in essence, there is no reasonable way to reconcile plaintiff's invoices and bills of lading with the amounts defendant has paid for the materials invoiced. I note in this regard that neither party presented for my examination any reconciliation efforts they undertook. I am left wondering what a jury is going to do with this record, when the parties themselves have not seen fit to make any apparent effort at organizing the information for purposes of discerning the truth. Therefore, the court will not resolve defendant's motion for summary judgment as to this issue until the parties present to me their best efforts at reconciling plaintiff's invoices and bills of lading with defendant's

payments. If the parties are serious about resolving this case, with their consent I will appoint a special master to help them with the accounting, pursuant to Fed.R.Civ.P. 53(a). Otherwise,

IT IS FURTHER ORDERED that:

1. On or before **September 17, 2004**, plaintiff shall submit its accounting/reconciliation, complete with references to the documents upon which the accounting relies and copies of the documents.

2. On or before **October 8, 2004**, defendant shall respond in kind.

3. The pretrial currently scheduled for October 7, 2004 at 4:30 p.m., and the jury trial currently scheduled to commence October 19, 2004, are both postponed until further order of the court.

Sue L. Robinson
United States District Judge