

IN THE SUPREME COURT OF FLORIDA

CASE NO. 63,704

JOHN W. KEMP,

Petitioner,

vs.

MURPHY MANUFACTURING COMPANY,

Respondent.

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REPLY BRIEF OF PETITIONER ON THE MERITS

**FILED**  
SID J. WHITE  
JAN 9 1984  
CLERK, SUPREME COURT.  
By \_\_\_\_\_  
Chief Deputy Clerk

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and

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I.

INTRODUCTION

The parties will alternately be referred to herein as they stand on appeal and as follows: petitioner as "KEMP;" and respondent as "MURPHY." The symbol "R" shall stand for the record on appeal.

All emphasis appearing in this brief is supplied by counsel unless otherwise noted.

II.

STATEMENT OF CASE AND FACTS

Petitioner stands on the statement of case and facts contained in his main brief. It should be noted and emphasized that the subject accident occurred on August 14, 1979, and on April 15, 1980--just eight months after occurrence of the accident--the 12th year after delivery by MURPHY of the subject truck body ended. The trial court and the District Court of Appeal held here, without question, that petitioner's action was time barred because he did not sue within that eight-month period.

In its brief on the merits, MURPHY argues that in his answers to interrogatories, "Plaintiff admitted knowing of the alleged defect prior to the date of the accident." In fact, KEMP admitted knowing of a "danger" (not a defect), and admitted that the problem was the absence of a latch. He did report the condition to his supervisor.

III.

POINT INVOLVED ON THE MERITS

WHETHER ON THIS RECORD--PROPERLY VIEWED--THE TRIAL COURT ERRED IN RENDERING THE SUMMARY FINAL JUDGMENT APPEALED ON TIME BAR GROUNDS.

IV.

ARGUMENT

ON THIS RECORD--PROPERLY VIEWED--THE TRIAL COURT ERRED IN RENDERING TIME BAR SUMMARY FINAL JUDGMENT AGAINST PETITIONER.

Petitioner relies on the argument contained in his main brief. He would address the following reply to the arguments advanced by MURPHY in its brief:

1. The "plaintiff knew of the allegedly dangerous condition before the accident ever occurred" argument contained in MURPHY'S brief is scandalously specious. KEMP had no cause of action which could be time barred in the first place until the subject accident occurred. The fact that he might have known of the danger ahead of time would raise a contributory/comparative negligence or assumption of risk/comparative negligence defense only. Questions in this regard would be submitted to the jury on a comparative negligence basis. The jury would then be apprised of the fact that KEMP is a truck driver and not an engineer who was forced to work under dangerous conditions.

2. It simply cannot be held that the period of eight months held to bar suit here is as a matter of law a reasonable time to sue without depriving KEMP of his constitutionally guaranteed right of access to the courts.

3. The "CATES five months period unreasonable but KEMP eight-month period reasonable" advanced by MURPHY at page 7 of its brief only serves to clearly demonstrate the confusion in law which would be created by rendering a decision on the merits here along the lines argued for by MURPHY.

V.

CONCLUSION

It is respectfully submitted that for the reasons stated herein and in KEMP'S main brief on the merits, the decision sought to be reviewed must be quashed and the cause remanded with eventual directions to enter an order striking MURPHY'S time bar defense.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I DO HEREBY CERTIFY that a true copy of the foregoing Reply Brief of Appellant was mailed to the following counsel of record this 5th day of January, 1984.

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\_\_\_\_\_  
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