

OPINION SUMMARY
MISSOURI COURT OF APPEALS EASTERN DISTRICT

TIMOTHY BALL,)	ED95984
)	
Plaintiff/Appellant,)	Appeal from the Circuit Court
v.)	of St. Charles County
)	
FRIESE CONSTRUCTION CO.,)	Honorable Nancy L. Schneider
)	
Defendant/Respondent.)	Filed: September 20, 2011

Timothy Ball (Appellant) appeals from the circuit court's entry of summary judgment in favor of Friese Construction Co. (Respondent) on Appellant's petition seeking damages for breach of the implied warranty of habitability, fraud and violations of the Missouri Merchandising Practices Act. The circuit court found that Appellant's claims were barred by the statute of limitations.

On appeal, Appellant argues the circuit court erred in granting summary judgment in favor of Respondent because the statute of limitations was tolled pursuant to Section 561.100 RSMo 2006, in that (1) the damages were not capable of ascertainment until 2009, and (2) Appellant suffered multiple items of damage over a period of years.

AFFIRMED.

Division Three Holds: The damages Appellant sustained in 2001, coupled with engineering reports Appellant received in 2002, would have put a reasonably prudent person on notice of a potentially actionable injury. Also, Appellant did not sustain multiple items of damage of the nature that would toll the statute of limitations pursuant to Section 516.100. Thus, Appellant's lawsuit, filed in 2010, was barred by the five-year statute of limitations.

Opinion by: Sherri B. Sullivan, J. Robert G. Dowd, Jr., P.J., and Mary K. Hoff, J., concur.

Attorney for Appellant: Charles W. Gray, Jr.

Attorney for Respondent: Joel D. Brett

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