2019 IL App (1st) 180901-U

FIRST DISTRICT,
SECOND DIVISION
July 16, 2019

No. 1-18-0901

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

MIGUEL SUAREZ, Plaintiff-Appellant, v. ALTHOFF INDUSTRIES, INC., a Delaware Corporation, Defendant-Appellee.	)	Appeal from the Circuit Court of Cook County, Illinois. No. 17 L 10693 The Honorable Patricia O'Brien Sheahan, Judge Presiding.

JUSTICE MASON delivered the judgment of the court.
Presiding Justice Lavin concurred in the judgment.
Justice Hyman dissented.

ORDER

¶ 1 *Held*: Plaintiff's complaint against third-party electrical contractor filed more than two years after plaintiff knew or should have known that his injuries were wrongfully caused properly dismissed as time-barred.

¶ 2 On July 13, 2015, plaintiff-appellant, Miguel Suarez, was injured at work when a machine he was maintaining was turned on by a co-worker who could not see Suarez from the room in which the machine's power switch was located. More than two years later, Suarez sued

defendant-appellee, Althoff Industries, Inc., an electrical contractor, alleging, among other things, that Althoff was negligent in installing the switch in that location. Althoff moved to dismiss the complaint pursuant to section 2-619(a)(5) of the Illinois Code of Civil Procedure (735 ILCS 5/2-619(a)(5) (West 2016)), on the ground that the suit was not commenced within the applicable two-year limitations period. 735 ILCS 5/13-201 (West 2016) (requiring commencement of action for personal injuries within two years of the date the cause of action accrues). The trial court granted the motion, finding that Suarez's claims against Althoff were time-barred. Suarez timely appealed. Because we agree that Suarez's complaint against Althoff was untimely, we affirm.

¶ 3 Suarez was employed by Edgar A. Weber & Company, d/b/a Weber Flavors, a flavor supplier to the food industry. On July 13, 2015, as he was engaged in maintenance work on a fudge-mixing machine, a co-worker in another room, at the direction of Suarez's boss, activated the power switch for the mixer. As a result, Suarez suffered the amputation of several fingers and other permanent injuries to his right hand.

¶ 4 Shortly after the accident, Suarez retained a lawyer. Within a month, Suarez filed a workers compensation claim against Weber and began receiving benefits under the Illinois Workers Compensation Act. 820 ILCS 305/1, *et seq.* (West 2014) (Act).

¶ 5 Suarez did not return to work for almost a year. When he returned in June 2016, due to the injuries to his hand, he was assigned to perform janitorial duties.

¶ 6 Shortly after Suarez returned to work, a co-worker told him how the accident had happened. In October of that year, another individual showed Suarez the machine's power switch, which had now been re-located near or on the machine. Suarez also learned that the Occupational Health and Safety Administration (OSHA), the arm of the U.S. Department of

Labor responsible for workplace safety (29 U.S.C. § 651, *et seq.*), had at some point removed the machine from Weber's premises.

¶ 7 About a year later, in September 2017, Suarez saw an Althoff truck on the premises and when he asked a co-worker who they were, he was told Althoff did electrical work for Weber. Suarez then recalled that before his accident, he had seen Althoff's trucks on the premises. Suarez claimed that at that point he first became aware that electrical work at the Weber facility may have been performed by Althoff.

¶ 8 Suarez then consulted a different law firm and his three-count complaint against Althoff was filed on October 20, 2017. Suarez asserted claims for (i) negligence based on Althoff's conduct in placing the switch in a location where someone operating the switch could not see the machine, (ii) product liability for allegedly designing and installing the switch for the machine in a defective manner by placing it in another room,[1] and (iii) willful and wanton conduct.

¶ 9 Althoff moved to dismiss under section 2-619(a)(5), arguing that the statute of limitations barred Suarez's claims because they were filed more than two years after his cause of action accrued. In particular, Althoff argued that the sudden and traumatic nature of Saurez's injury triggered the commencement of the two-year limitations period on the date of the injury.

¶ 10 The circuit court granted Althoff's motion finding that Suarez failed to file within the applicable two-year limitations period.

¶ 11 A motion to dismiss under section 2-619 admits the legal sufficiency of the complaint, and asserts an affirmative defense or other matter that defeats the claim. 735 ILCS 5/2-619(a)(5) (West 2016); *Patrick Engineering, Inc. v. City of Naperville*, 2012 IL 113148, ¶ 31. Section 2-

[1]Although not relevant to our decision, the viability of any product liability claim was marginal given that Suarez did not allege that the "product," *i.e.*, the switch, was defective, only that it was improperly placed.

619(a)(5) allows for the involuntary dismissal of an action that "was not commenced within the time limited by law." 735 ILCS 5/2-619(a)(5) (West 2016). We accept as true all well-pleaded facts and draw reasonable inferences from those facts in favor of the plaintiff as the nonmoving party. *Chicago Title Insurance Co. v. Teachers' Retirement System*, 2014 IL App (1st) 131452, ¶ 13. When ruling on a 2-619 motion, courts may consider "pleadings, depositions, affidavits, and other evidence offered by the parties." *Young v. McKiegue*, 303 Ill. App. 3d 380, 382 (1999). We review a dismissal under section 2-619 *de novo*. *Khan v. Deutsche Bank AG*, 2012 IL 112219, ¶ 17; *Mabry v. Village of Glenwood*, 2015 IL App (1st) 140356, ¶ 12.

¶ 12 A claim for personal injury "shall be commenced within two years of when the cause of action accrues." 735 ILCS 5/13-202 (West 2014). The statute begins to run when a party knows, or reasonably should know, both that an injury has occurred and that it was wrongfully caused. At that point, "the party is under an obligation to inquire further to determine whether an actionable wrong was committed." *Nolan v. Johns-Manville Asbestos*, 85 Ill. 2d 161, 171 (1981). The discovery rule tolls the statute of limitations until the injured party knows or reasonably should know that (i) he or she is injured and (ii) the injury was wrongfully caused. *Mitsias v. I-Flow Corp.*, 2011 IL App (1st) 101126, ¶ 21. While the point at which a plaintiff knows or reasonably should know about an injury and it wrongful cause can present a factual question (*Nair v. Bloom*, 383 Ill. App. 3d 867, 870 (2008) (citing *Witherell v. Weimer*, 85 Ill. 2d 146, 156 (1981)), when the relevant facts admit of only one conclusion, the issue may be determined as a matter of law. *Golla v. General Motors Corp.*, 167 Ill. 2d 353, 358 (1995) (timeliness of plaintiff's complaint properly resolved on summary judgment).

¶ 13 Citing *Golla*, Althoff advocates a "bright-line" rule to the effect that if a plaintiff's injury is the result of a sudden and traumatic event, the discovery rule will never apply and the two-year

statute of limitations will always start to run on the date of the injury. We disagree with this rigid approach to the accrual of a cause of action.

¶ 14 In *Golla*, plaintiff was injured in a motor vehicle accident in which her seat moved violently forward causing trauma to her left shoulder as a result of the seat belt restraint. Plaintiff's injuries appeared relatively minor at first. More than two years after the accident, she was diagnosed with a much more serious condition and sued General Motors claiming her automobile was defective. Affirming dismissal of the plaintiff's complaint as untimely, our supreme court stated: "[T]his court has repeatedly held that where the plaintiff's injury is caused by a 'sudden and traumatic event,' such as the automobile accident that occurred in this case, the cause of action accrues, and the statute of limitations begins to run, on the date the injury occurs." *Id.* at 362. Althoff contends that because Suarez admits that the injuries to his hand were the result of a sudden and traumatic event, we need look no further to conclude that his complaint filed more than two years after the date of the accident is untimely.

¶ 15 Althoff reads too much into *Golla*. The real issue in *Golla* as it pertains to the discovery rule was not that plaintiff was unaware of a defect in her vehicle—she clearly was as a result of the violent movement of her seat during the collision, leading the court to conclude that, on the date of accident, plaintiff knew of her injury and its wrongful cause. Rather, the issue in *Golla* regarding discovery concerned plaintiff's claimed lack of awareness of the *extent* of the injury to her shoulder as a result of the accident. And there *is* a bright line rule in that context: the limitations period commences "when the plaintiff is injured, rather than when the plaintiff realizes the consequences of the injury or the full extent of her injuries." *Id.* at 365. Nothing in *Golla* or any other reported Illinois decision brought to our attention holds that the discovery rule can never postpone the accrual of plaintiff's cause of action when plaintiff's injuries are the

result of a sudden and traumatic event. See *Lowe v. Ford Motor Co.*, 313 Ill. App. 3d 418, 421 (2000) (emphasis added) (plaintiff killed in a rollover accident; "This is certainly a sudden, traumatic event which should prompt some investigation by the injured party and *trigger the application of the discovery rule*."). We reject Althoff's contrary contention.

¶ 16 Accordingly, because we conclude that the discovery rule can potentially be applied in the context of this case, we examine the facts relevant to the accrual of Suarez's cause of action against Althoff to determine whether the timeliness of his complaint can be determined as a matter of law. See *Beacham v. Walker*, 231 Ill. 2d 51, 61 (2008) (ruling on motion to dismiss may be affirmed on any ground appearing the record); *BDO Seidman, LLP v. Harris*, 379 Ill. App. 3d 918, 923 (2008) (same).

¶ 17 There is no dispute that Suarez knew of his injury on the day it occurred. The only question then is when he knew or should have known that it was wrongfully caused. Suarez maintains that when he returned to work, he learned only that his injury resulted from the wrongful conduct of a co-worker in powering on the machine while he was working on it. Thus, he claims that having identified the "wrongful cause" of his injuries, he had no reason to investigate further. We disagree.

¶ 18 Initially, we find that the statute was not tolled during the period Suarez was off work. As noted, Suarez retained a lawyer who pursued a workers compensation claim promptly following the injury. We find it highly likely, even in the context of a claim under the Act (which is not dependent on any "wrongful" conduct by the employer, but is instead based on the existence of an accidental workplace injury), that Suarez's lawyer would have inquired and been advised as to how the machine happened to turn on while Suarez was working on it. The nature of the occurrence—an industrial machine turning on while a worker has his hands in the machine—

strongly suggests wrongful conduct, whether as a result of human error or a defect in the machine itself. Given the limitation on recovery under the Act, most lawyers would have explored the potential for any possible third-party claims. See Illinois Supreme Court Rule 224 (eff. Jan. 1, 2018) (permitting pre-suit discovery "for the sole purpose of ascertaining the identity of one who may be responsible in damages"); Ill. Sup. Ct. R. 224, Committee Comments (adopted Aug. 1, 1989) (noting such discovery "will be of particular benefit in industrial accident cases where the parties responsible may be known to the plaintiff's employer, which may immunize itself from suit."). The most rudimentary investigation would have revealed that the machine was turned on by means of a switch located away from the machine and operated by a person who could not see the machine or Suarez, which would have, in turn, prompted further inquiry into how that obviously unsafe condition came to exist. Thus, given Suarez's prompt pursuit of a claim following his injury, the statute commenced to run and his suit against Althoff more than two years later is time-barred.

¶ 19 It is of no moment that the Act imposes liability without fault on the employer and, in return, prohibits common-law suits by employees against the employer. See *Locasto v. City of Chicago*, 2016 IL App (1st) 151369, ¶ 10 (purpose of Act to allow recovery without proof of fault for accidental injuries that happen in work place during course of work). The question is not whether Suarez calculated that because he could not sue Weber at common law, there was no "wrongful" conduct. Rather, the objective inquiry is whether a reasonable person, possessed of the facts available or discoverable on reasonable investigation, would have suspected that the cause of the injury was wrongful.

¶ 20 As his argument relates to Althoff, Suarez focuses on when he knew or should have known of the fact that Althoff did electrical work on the premises and presumably installed the switch where it was originally located. Stated differently, Suarez contends the relevant inquiry is when he learned the identity of the party who wrongfully caused his injury, rather than when he knew or should have known that, whoever was responsible, the cause was wrongful. Suarez maintains that he did not know until September 2017 that Althoff had done electrical work at the property before his injury and likely installed the switch. He urges us to find that an issue of fact exists regarding the date his cause of action accrued against Althoff and that, under the discovery rule, the timeliness of his complaint should not have been resolved as a matter of law.

¶ 21 At some point an injured party learns sufficient information concerning his or her injury and its cause that would have put a reasonable person on inquiry to determine possible involvement of wrongful conduct. *Knox College v. Celotex Corp*, 88 Ill. 2d 407, 416 (1981). This notion of wrongful cause embodied in the discovery rule consists of two elements: (i) sufficient information to conclude that another's actions caused plaintiff's injury, and (ii) reasonable knowledge that the action was wrongful. *Mitsias*, 2011 IL App (1st) 101126, ¶¶ 22, 23. "Sufficient information" involves more than "a mere suspicion that wrongdoing might have occurred in order to trigger the limitations period." *Id.* ¶ 24. But "[t]he phrase 'wrongfully caused' does not mean knowledge of a *specific* defendant's negligent conduct or knowledge of the existence of a cause of action." (Emphasis in original.) *Castello v. Kalis*, 352 Ill. App. 3d 736, 744 (2004) (quoting *Young*, 303 Ill. App. 3d at 388). Once sufficient information becomes available, "the burden is upon the injured person to inquire further as to the existence of a cause of action." (Internal quotation marks omitted.) *Id*. (quoting *Witherell v. Weimer*, 85 Ill. 2d 146, 156 (1981).

¶ 22 *Mitsias*, upon which Suarez relies, is readily distinguishable. In *Mitsias*, plaintiff had a pain pump after shoulder surgery. 2011 IL App (1st) 101126, ¶ 6. The plaintiff experienced severe pain and was later diagnosed with destruction of her shoulder cartilage. *Id.* She sued the surgeon for medical malpractice, but did not bring a products liability claim. *Id.* ¶ 7. Two years later, the plaintiff discovered previously unavailable medical literature that connected her injury to the pain pump. *Id.* ¶¶ 8-10. The plaintiff then sued the pain pump manufacturers, alleging that the pump caused the destruction of cartilage in her shoulder. *Id.* ¶ 10. Reversing the dismissal of plaintiff's complaint as untimely, we concluded that the plaintiff did not slumber on her rights as she filed a medical malpractice suit within two years of her injury and the delay in bringing the products liability suit could not be attributed to lack of diligence. *Id.* Because new medical literature was unavailable before the initiation of the plaintiff's medical malpractice lawsuit, the plaintiff could not have known that she was wrongfully injured by a defect in the pain pump and the two-year statute of limitations did not begin to run. *Id.* ¶ 54.

¶ 23 Here, even accepting Suarez's claim that despite his retention of a lawyer he did not know how the accident happened until he returned to work, by October 2016, at the latest, Suarez knew: he was injured because a co-worker activated the machine from a remote location where the worker could not see him or the machine; after his injury, the power switch was moved so that anyone activating it could see the machine; and OSHA investigated the incident and, at some point, removed the machine from Weber's premises. Armed with that knowledge, a reasonable person would have inquired as to how the power switch was initially placed in another room, who was responsible for its location there, and who moved it after the accident. This case does not fall into the category of "unknowable" causes that will toll the time within which suit must be filed.

¶ 24 The circumstances here are more akin to *Castello*. There, plaintiff's attempt, long after the expiration of limitations period, to join a defendant who had misread the results of her earlier pap smears was deemed untimely because within the limitations period, plaintiff knew that the diagnosis of her cervical cancer had been missed by other medical professionals who had misread more recent pap results. 352 Ill. App. 3d at 749. Like Suarez, the plaintiff in *Castello* argued that the timeliness of her complaint should have been measured from the date she learned the identity of a particular defendant who was potentially at fault for the missed diagnosis. Rejecting this argument, we stated:

> "Like the plaintiff in *Wells* [*v. Travis*, 284 Ill. App. 3d 282 (1996)], the essence of plaintiff's position here is that [the plaintiff] should not have been charged with knowledge sufficient to trigger the running of the limitations period as to any particular defendant until she knew or reasonably should have known that her injury was caused by *that defendant*. As stated in *Wells*, our supreme court has expressly disavowed any such interpretation of the discovery rule." (Emphasis in original.) *Id.*

The same conclusion was reached in *Hoffman v. Orthopedic Systems, Inc.*, 327 Ill. App. 3d 1004, 1008, 1010-11 (2002). There, plaintiff was told shortly after "fairly simple" back surgery that "everything that could go wrong went wrong" and that she had liver and kidney failure, gastrointestinal bleeding, and other complications. *Id.* at 1006. A few months later, plaintiff consulted an attorney regarding a medical malpractice claim. *Id.* at 2007. When she returned to the same hospital more than two years later, plaintiff was told that her injuries were caused by a defective operating table and she commenced suit against the manufacturer. *Id.* at 1007-08. Dismissal of the product liability suit as untimely was affirmed:

> "Although [plaintiff's] suspicion of wrongful causation was limited to an investigation as to whether medical malpractice was committed, rather than whether a product liability action existed, * * * the term 'wrongfully caused,' does not mean knowledge by a plaintiff of a specific defendant's negligent act.
>
> Plaintiff's failure to pursue a more thorough inquiry to find the cause of her injuries does not excuse her from failing to comply with the statute of limitations." *Id.* at 1010-11.

¶ 25 Here, well within the limitations period, Suarez knew not only of the wrongful conduct of his co-worker, but also knew or should have known, based on the original location and post-accident re-location of the power switch, others were potentially at fault. But he did nothing to investigate. His chance sighting of an Althoff truck on the premises a year later provided no information that a reasonable inquiry a year (or more) earlier would not have yielded.

¶ 26 The conclusion is inescapable that Saurez knew his injury was wrongfully caused shortly after it occurred and, by October 2016, well within the two-year limitations period, Suarez knew or should have known that *someone* improperly installed the power switch for the machine. Because it is undisputed that he took no action to investigate further, his untimely filing of the complaint against Althoff more than two years after his injury cannot be saved by the discovery rule.

¶ 27 Affirmed.

¶ 28 JUSTICE HYMAN, dissenting:

¶ 29 I respectfully dissent. The issue is whether the discovery rule tolls the statute of limitations? I believe that it does.

¶ 30 Suarez's complaint and affidavit establish he suffered a life-altering injury when a co-worker, in another room and unable to see Suarez, activated a mixer that Suarez was cleaning by

hand. Suarez returned to work about a year later. He alleges that he had no knowledge that Althoff had been responsible for installing the Mixer's power switch until about a year later after he had returned to work. Specifically, Suarez argues that the "discovery rule" applies so the statute of limitations tolled until he could go back to work. Only then that Suarez learn that OSHA had intervened and the machine's switch had been moved. And he learned his co-workers were told not to talk to him about his accident.

¶ 31 Eventually Suarez became aware that Althoff had done electrical work for his employer. As the majority states, "when the relevant facts admit of only one conclusion, the issue may be determined as a matter of law." *Supra* ¶ 12 (citing *Golla*, 167 Ill. 2d 358). And I agree that "Sufficient information" involves more than "a mere suspicion that wrongdoing might have occurred in order to trigger the limitations period." *Supra* ¶ 21 (citing *Mitsias*, 2011 IL App (1st) 101126, ¶ 24). But this case presents facts quite different from *Golla*, where there was no interim with "unknowable" facts regarding causation; even though the extent of the injury was not yet evident. The plaintiff knew the seat belt and car manufacturer were the cause. Here, the cause—the activation of the mixer—was obvious. But a possible wrongful cause committed by anyone other than his employer was something Suarez could not have known until he returned to work. I believe a question of fact exists as to when Suarez had actual or constructive knowledge of Althoff's role in the installation of the switch to the extent that he had more than just a suspicion, precluding summary judgment. See *LaManna v. G.D. Searle & Co.*, 204 Ill. App. 3d 211, 218 (1990) ("Plainly, suspicion is not the same as reasonably knowing.").

¶ 32 The statute of limitations begins to run when a party knows, or reasonably should know, both that an injury has occurred *and* that it was wrongfully caused. *Nolan v. Johns-Manville Asbestos*, 85 Ill. 2d 161, 171 (1981). Even though the burden falls on the injured person to

inquire further as to the existence of a cause of action (*supra* ¶ 21), Suarez maintains that he reasonably believed that only his employer and its employees were responsible for his injuries until he found out that Althoff could have been involved. In October 2017, about one month later, he sued Althoff.

¶ 33 *Mitsias* is instructive. This court held that the plaintiff remained unaware of another source of the injury until later published medical literature suggested a link between pain pumps and plaintiff's condition. *Mitsias,* 2011 IL App (1st) 101126, ¶ 2. In other words, plaintiff could not have known she was wrongfully injured and the question of when she knew or should have known that her injury *might* have been wrongfully caused was a disputed question of fact that could not be resolved on a motion to dismiss. *Id*. ¶ 52. We noted our supreme court's concern that "plaintiffs should investigate their claims with diligence without being 'held to a standard of knowing the inherently unknowable.' " *Mitsias*, 2011 IL App (1st) 101126, ¶ 31. (quoting *Nolan v. Johns-Manville Asbestos*, 85 Ill. 2d 161, 171 (citing *Urie v. Thompson*, 337 U.S. 163, 169 (1949)). ¶ 31. The unknowable in *Mitsias* was the pain pump and its effects; here, until Suarez's return to work he was understandably unaware of Althoff's electrical work.

¶ 34 A Fifth District medical malpractice case expressed the prerequisite for the triggering of the statute of limitations as "when there is a concurrence of the actual or constructive knowledge of both the physical problem and the *possibility* that someone is at fault for its existence." (Emphasis added.) *Roper v. Markle*, 59 Ill. App. 3d 706, 710 (1978) (plaintiff's cause of action for medical malpractice against doctor who negligently performed surgery did not accrue until plaintiff learned that resulting infection was due to doctor's negligence). *Roper* found that foreign substance medical malpractice cases to be similar to trauma cases in that the time when a plaintiff discovers the injury is "obviously also the time when he or she knew or should have

known both that he has been injured and that the injury is the result of another's negligence." *Id*. at 711. "In situations where the problem itself would not cause a reasonable person to suspect that its origination is in someone's negligence, the earliest time at which the plaintiff should become so aware commences the statute's running." *Id*. at 715. So too here.

¶ 35 Two additional medical malpractice cases are instructive: *Watkins v. Health & Hospitals Governing Comm'n*, 78 Ill. App. 3d 468, 471 (1979) (whether plaintiff should have known negligent cause of injury was question of fact), and *Young v. McKiegue*, 303 Ill. App. 3d 380, 386 (1999) (whether plaintiff should have known injury was wrongfully caused was factual issue).

¶ 36 In *Watkins*, the diabetic plaintiff filed her complaint more than two years after a leg amputation, but less than two years after learning of the hospital's negligence. *Watkins*, 78 Ill. App. 3d at 469. The court viewed the classification of an injury as traumatic, alone, as of no significance. *Id*. at 471. Instead, this court found the discovery rule controlled: the limitations period does not begin to run until the injured party discovers, or should have reasonably discovered, not only the nature of the injury but also the possibility that it was wrongfully caused. *Id*. at 472.

¶ 37 In *Young*, the defendant doctor maintained that the plaintiff's suspicions of malpractice sufficed to charge her with actual and constructive knowledge that her husband's death was wrongfully caused. *Young*, 303 Ill. App. 3d at 388. But the court held that an issue of fact existed as to whether plaintiff possessed the requisite knowledge before she received a medical expert's report, and remanded for a factual finding. *Id*. at 389-90. Basically, that a party knows or reasonably should know that an injury was wrongfully caused is not the same as a party being suspicious of a wrongful cause. *Id*. The statute of limitations remains suspended while the party

attempts to discover whether the injury was wrongfully caused. *Id*. at 390. "[S]uspecting wrongdoing clearly is not the same as knowing that a wrong was probably committed." *Id*.

¶ 38 The majority finds it "highly likely" that the attorney for his Workers' Compensation claim, a no-fault proceeding, would have inquired about the machine. *Supra* ¶ 18. The majority also emphasizes that his suit against Althoff is barred "given Suarez's prompt pursuit of a claim following his injury." *Supra* ¶ 18. Again, Suarez's promptness related to his no-fault workers' compensation claim. Rather than being "of no moment," Suarez's workers' compensation claim indicates only that his employer incurred liablity for his injury without any "wrongful" conduct. The majority presupposes the attorney (who is not his attorney in this appeal) contemplated a civil suit and then pursued discovery to determine possible issues. Supreme Court Rule 224 "permits" discovery and allows, with leave of court, limited discovery before filing a lawsuit. Ill. Sup. Ct. R. 224, Committee Comments (adopted Aug. 1, 1989). At issue is not what Suarez's previous attorney might have or even should have done; even assuming the attorney did inquire, he or she would presumably discover the location of the switch but Althoff's role in its installation would not be apparent.

¶ 39 Today's decision penalizes a factory worker for not realizing on the day he was injured that anyone other than his employer could have been responsible for placing the mixer's on-off switch in another room. The majority's view that the nature of this accident "strongly suggests wrongful conduct" is not a foregone conclusion. *Supra* ¶18. Manufacturers' recalls of all types of products occur just about daily; lawsuits based on design flaws or poor manufacturing also occur just about daily. In addition to being manually activated, it was reasonable to assume a faulty switch or even an electrical short as a possible reason for the mixer to have activated. Similarly,

it would be reasonable for Suarez to believe that if any human action would have been on the part of the employer or its employees.

¶ 40 Instead of concluding Suarez knew or should have known that *someone* improperly installed the power switch for the machine (*supra* ¶ 26) and therefore, Suarez should have pursued that avenue of inquiry from the day he was injured, our emphasis should be on the timing. Suarez was injured in July 2015; returned to work in June 2016; learned the mixer switch had been moved in October 2016; noticed the Althoff truck in the parking lot in September 2017; and filed suit in October 2017. At the very least, the statute of limitations should be tolled between July 2015 and June 2016, while he recovered from his injury. A question of fact exists as to when Suarez discovered or should have discovered Althoff's role. If Suarez did not know how the accident happened until he returned to work, and even if he realized by October 2016 "at the latest" (*supra* ¶ 23), his complaint was timely. I would reverse the trial court's grant of summary judgment.