

Spectrum International Holdings, Inc., Appellant, v. Joyce International, Inc., Respondent.

1423

SUPREME COURT OF NEW YORK, APPELLATE DIVISION, FIRST DEPARTMENT

273 A.D.2d 84; 709 N.Y.S.2d 815; 2000 N.Y. App. Div. LEXIS 6600

June 13, 2000, Decided

June 13, 2000, Entered

COUNSEL: [*1] For Plaintiff-Appellant: Richard A. Spehr.

For Defendant-Respondent: Philip R. Hoffman.

JUDGES: Concur--Tom, J. P., Mazzarelli, Lerner and Buckley, JJ.

OPINION: [*84] Order, Supreme Court, New York County (Beatrice Shainswit, J.), entered January 21, 2000, which granted defendant's motion to dismiss the complaint as time-barred, unanimously affirmed, without costs.

The subject stock purchase agreement plainly provides that [*85] to sue thereunder for breach of representation and warranty, the buyer must both give the seller notice of its claim and commence its action within one year after the agreement's closing. Accordingly, since plaintiff buyer did not commence this action against defendant seller for breach of the seller's contractual representations and warranties within the contractually established one-year limitation period, the action is time-barred. We have considered plaintiff's remaining arguments and find them unavailing.

Concur--Tom, J. P., Mazzarelli, Lerner and Buckley, JJ.