

**United States Court of Appeals
FOR THE EIGHTH CIRCUIT**

No. 05-2943

The Colonial Press, Inc,

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Plaintiff-Appellant,

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v.

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Cothran Printing Equipment, Inc.;
Cothran's Graphic Arts Equipment
Company,

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Appeal From the United States
District Court for the
District of Nebraska.

Defendants-Appellees,

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[UNPUBLISHED]

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Komori Corporation, a corporation;
Komori America Corporation,

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Defendants.

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Submitted: January 13, 2006

Filed: April 14, 2006

Before BYE, HEANEY, and COLLOTON, Circuit Judges.

PER CURIAM.

The Colonial Press, Inc. (Colonial) appeals the district court's¹ grant of summary judgment to Cothran Printing Equipment, Inc., et al. (Cothran), in Colonial's diversity suit, alleging breach of express and implied warranties based on mechanical problems with a printing press it purchased from Cothran. The district court held that Colonial's claims were barred by the four-year² statute of limitations, because the printing press was delivered on or about July 10, 1999 and Colonial did not file its complaint until July 8, 2004. The district court also rejected Colonial's "future performance" exception³ argument, holding that, although the exception applied, Colonial's complaint conclusively demonstrated that it "discovered" the alleged breach "[a]lmost immediately following installation of the Press." (Appellees' App. at 21.) Therefore, the district court concluded, even with the exception, the limitations period began to run "almost immediately following the installation of the Press" on July 10, 1999, and the four-year period expired prior to July 8, 2004—the date that Colonial filed its complaint. (Id.)

After careful consideration of Colonial's arguments and upon de novo review, Grand Island Express v. Timpte Indus., Inc., 28 F.3d 73, 74 (8th Cir. 1994), we affirm on the basis of district court's well-reasoned memorandum and order, see 8th Cir. R. 47B.

¹The Honorable Richard G. Kopf, United States District Judge for the District of Nebraska.

²Neb. Rev. Stat. U.C.C. § 2-725(1). Although the purchase agreement included a choice of law provision naming Colorado law as controlling, the district court correctly applied the more generous statute of limitations provided by Nebraska law.

³Neb. Rev. Stat. U.C.C. § 2-725(2).