[Cite as *Smith v. Kamberling*, 2013-Ohio-1211.]

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

Gary Smith,	:	
Plaintiff-Appellant,	:	
v.	:	No. 12AP-693 (C.P.C. No. 11 CV 14455)
Lori Kamberling,	:	(REGULAR CALENDAR)
Defendant-Appellee.	:	

D E C I S I O N

Rendered on March 28, 2013

Moore & Yaklevich, and *John A. Yaklevich*, for appellant.

Maguire & Schneider LLP, and *Trina N. Goethals*, for appellee.

APPEAL from the Franklin County Court of Common Pleas

TYACK, J.

{¶ 1} Gary Smith is appealing from the dismissal of his lawsuit against Lori Kamberling. He assigns a single error for our consideration:

> THE TRIAL COURT ERRED IN DISMISSING PLAINTIFF-APPELLANT'S COMPLAINT PURSUANT TO CIV. R. 12(B)(6) ON STATUTE OF LIMITATIONS GROUNDS.

{¶ 2} Smith alleges that he loaned Kamberling money which she did not repay. Apparently, Smith started lending money in 2001. He did not file suit until November 22, 2011. The applicable statute of limitations for an oral contract is six years under R.C. 2305.07.

{¶ 3} The complaint filed on Smith's behalf alleges no specific dates, but does allege an additional loan made in 2006 in the sum of $1,732.77.

{¶ 4} The trial court found the statute of limitations had run as to all the loans because no time for repayment had been agreed upon when the loans were made. Therefore, the court concluded that the statute of limitations began running when the loan course of conduct began.

{¶ 5} The trial court relied upon *Mines v. Phillips*, 37 Ohio App.3d 121, 122 (11th Dist.1987), where the court was confronted with the question: "When does the six-year statute of limitations begin to run against a claim based upon an oral promise to pay money where there is no definite time for payment stipulated?" The court held that "the statute began to run from the date the initial promise was made. Most of the cases considering this specific issue have so held particularly when a loan was involved." (Citations omitted.) *Id.*

{¶ 6} In considering a motion to dismiss under Civil Rule 12(B)(6), a court must consider only the facts alleged in the complaint and any material incorporated into it. See Civ.R. 12(B); Civ.R. 10(C); *State ex rel. Crabtree v. Franklin Cty. Bd. of Health*, 77 Ohio St.3d 247, 249, (1997) fn. 1. At this stage, the court "must presume that all factual allegations of the complaint are true and make all reasonable inferences in favor of the non-moving party." *Mitchell v. Lawson Milk Co.*, 40 Ohio St.3d 190, 192 (1988). "Then, before we may dismiss the complaint, it must appear beyond doubt that plaintiff can prove no set of facts warranting a recovery." *Id.* "[A]s long as there is a set of facts, consistent with the plaintiff's complaint, which would allow the plaintiff to recover, the court may not grant a defendant's motion to dismiss." *York v. Ohio State Highway Patrol*, 60 Ohio St.3d 143, 145 (1992). "Thus, to survive a motion to dismiss for failure to state a claim upon which relief can be granted, a pleader is ordinarily not required to allege in the complaint every fact he or she intends to prove." *State ex rel. Hanson v. Guernsey Cty. Bd. of Commrs.*, 65 Ohio St.3d 545, 549 (1992).

{¶ 7} Generally speaking, in order to state a claim for breach of contract, a party must allege the existence of a binding contract, that the non-breaching party performed its contractual obligations, that the other party failed to fulfill its contractual obligations without legal excuse, and that the non-breaching party suffered damages as a result of the breach.

{¶ 8} Ohio ascribes to what is known as notice pleading. According to Civ.R. 8(A), a complaint shall contain: "(1) a short and plain statement of the claim showing that the party is entitled to relief, and (2) a demand for judgment for the relief to which the party claims to be entitled."

{¶ 9} While perhaps inartfully drafted, we conclude that the complaint meets the notice pleading requirements of Civ.R. 8(A).

{¶ 10} The affirmative defense of statute of limitations is generally not properly raised in a Civ.R. 12(B)(6) motion, as it usually requires reference to materials outside the complaint. *See Galbreath v. Martin*, 10th Dist. No. 12AP-324, 2013-Ohio-80, ¶ 9. " 'If however, the existence of an affirmative defense is obvious from the face of the complaint, a court may grant a Civ.R. 12(B)(6) motion on the basis of the affirmative defense.' " *Id.*, quoting *Cristino v. Ohio Bur. of Workers' Comp.*, 10th Dist. No. 12AP-60, 2012-Ohio-4420, ¶ 21.

{¶ 11} Here, it cannot be determined from the face of the complaint whether some or all of Smith's claims are barred by the statute of limitations. The trial court erred in dismissing Smith's case based on the statute of limitations where it is unclear from the face of the complaint if Smith's claims were actually time barred.

{¶ 12} Kamberling may well prevail at the summary judgment stage of this proceeding, but in an abundance of caution, and making all reasonable inferences in favor of Smith, the case should be remanded to allow Smith to present his case. In addition, the 2006 loan fell within six years of the date Smith filed his complaint.

{¶ 13} We, therefore, reverse the trial court's total dismissal of the lawsuit and sustain the sole assignment of error. We remand the case to the Franklin County Court of Common Pleas for further proceedings in accordance with this decision.

Judgment reversed and remanded with instructions.

BRYANT and BROWN, JJ., concur.