[Cite as *Midland Funding, L.L.C. v. Paras*, 2010-Ohio-264.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 93442

MIDLAND FUNDING, LLC

PLAINTIFF-APPELLEE

vs.

MARK PARAS

DEFENDANT-APPELLANT

JUDGMENT:
AFFIRMED

Civil Appeal from the
Cuyahoga County Court of Common Pleas
Case No. CV-656327

BEFORE: McMonagle, J., Kilbane, P.J., and Boyle, J.

RELEASED: January 28, 2010

JOURNALIZED:

APPELLANT

Mark Paras, pro se
4021 Riveredge Road
Cleveland, OH 44111

ATTORNEYS FOR APPELLEE

Sarah Ritz
James Oh
Javitch, Block & Rathbone, LLP
1100 Superior Avenue, 19th Floor
Cleveland, OH 44114

N.B. This entry is an announcement of the court's decision. See App.R. 22(B) and 26(A); Loc.App.R. 22. This decision will be journalized and will become the judgment and order of the court pursuant to App.R. 22(C) unless a motion for reconsideration with supporting brief, per App.R. 26(A), or a motion for consideration en banc with supporting brief per Loc.App.R. 25.1(B)(2), is filed within ten days of the announcement of the court's decision. The time period for review by the Supreme Court of Ohio shall begin to run upon the journalization of this court's announcement of decision by the clerk per App.R. 22(C). See, also, S.Ct. Prac.R. 2.2(A)(1).

CHRISTINE T. McMONAGLE, J.:

{¶ 1} Defendant-appellant Mark Paras appeals the trial court's judgment granting summary judgment in favor of plaintiff-appellee Midland Funding, LLC, and against him. We affirm.

{¶ 2} Midland Funding initiated this action against Paras in April 2008 to recover the outstanding balance on a Capital One credit card account that it had acquired through assignment. The customer agreement governing the account provided that "[t]his Agreement will be governed by Virginia law and Federal law." Paras's answer did not deny the allegations in the complaint, but only asserted that, under Virginia law, the statute of limitations had expired.

{¶ 3} Midland Funding filed a motion for summary judgment in which it contended that Paras failed to make the monthly payments under the agreement and the account was therefore closed in February 1998. Paras opposed the motion, arguing the following: (1) Midland Funding failed to respond to his discovery requests; (2) the agreement provided it was governed by Virginia and federal laws; and (3) the statute of limitations for Virginia and federal laws had expired.[1] The court granted Midland Funding's

[1] Under section 8.01-246(2) of the Virginia Code, the statute of limitations period

summary judgment motion. Paras raises three assignments of error for our review.

{¶ 4} Appellate review of summary judgments is de novo. *Grafton v. Ohio Edison Co.* (1996), 77 Ohio St.3d 102, 105, 671 N.E.2d 241; *Zemcik v. La Pine Truck Sales & Equip.* (1998), 124 Ohio App.3d 581, 585, 706 N.E.2d 860. The Ohio Supreme Court enunciated the appropriate test in *Zivich v. Mentor Soccer Club* (1998), 82 Ohio St.3d 367, 369-70, 696 N.E.2d 201, as follows:

{¶ 5} "Pursuant to Civ.R. 56, summary judgment is appropriate when (1) there is no genuine issue of material fact, (2) the moving party is entitled to judgment as a matter of law, and (3) reasonable minds can come to but one conclusion and that conclusion is adverse to the nonmoving party, said party being entitled to have the evidence construed most strongly in his favor."

{¶ 6} The party moving for summary judgment bears the burden of showing that there is no genuine issue of material fact and that it is entitled to judgment as a matter of law. *Dresher v. Burt* (1996), 75 Ohio St.3d 280, 292-293, 662 N.E.2d 264. Once the moving party satisfies its burden, the nonmoving party "may not rest upon the mere allegations or denials of the party's pleadings, but the party's response, by affidavit or as otherwise provided in this rule, must set forth specific facts showing that there is a

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applicable to claims on a written contract is five years. Under R.C. 2305.06, the statute of limitations applicable to claims on a written contract is 15 years.

genuine issue for trial." *Mootispaw v. Eckstein* (1996), 76 Ohio St.3d 383, 385, 667 N.E.2d 1197; Civ.R. 56(E). Doubts must be resolved in favor of the nonmoving party. *Murphy v. Reynoldsburg* (1992), 65 Ohio St.3d 356, 358-59, 604 N.E.2d 138.

{¶ 7} In his first assignment of error, Paras contends that under the agreement the Virginia statute of limitations applied. The Sixth Circuit Court of Appeals addressed this conflict of law issue in *Cole v. Milletti* (C.A.6, 1998), 133 F.3d 433:

{¶ 8} "The Ohio Supreme Court has adopted the Restatement (Second) of Conflict of Laws as the governing law for Ohio conflicts issues. *Lewis v. Steinreich*, 73 Ohio St.3d 299, 652 N.E.2d 981, 984 (1995); *Morgan v. Biro Mfg. Co., Inc.*, 15 Ohio St.3d 339, 474 N.E.2d 286, 288-89 (1984). When a conflict arises between two states' statutes of limitations, the Restatement provides:

{¶ 9} "'An action will be maintained if it is not barred by the statute of limitations of the forum, even though it would be barred by the statute of limitations of another state.'

{¶ 10} "Restatement (Second) of Conflict of Laws § 142(2). Section 142(2) thus requires Ohio courts to apply Ohio's statute of limitations to breach of contract actions brought in Ohio, even if the action would be time-barred in another state. See *Males v. W.E. Gates & Associates*, 29 Ohio Misc.2d 13, 504

N.E.2d 494, 494-95 (Ohio Com.Pl.1985) (applying Ohio's fifteen-year statute of limitations to a breach of contract action that would have been barred by Virginia's five-year statute); cf. *Mahalsky v. Salem Tool Co.*, 461 F.2d 581, 586 (6th Cir.1972) (holding this rule does not deny full faith and credit); *Mackey v. Judy's Foods, Inc.*, 867 F.2d 325, 328-29 (6th Cir.1989) (affirming the district court's application of a similar rule in Tennessee). There is no question that this rule is both fair and constitutional. See *Sun Oil Co. v. Wortman*, 486 U.S. 717, 722, 108 S.Ct. 2117, 2121, 100 L.Ed.2d 743 (1988) ("'[T]he Constitution does not bar application of the forum State's statute of limitations to claims that in their substance are and must be governed by the law of a different State.'"). *Charash* [*v. Oberlin College* (C.A.6, 1994),] 14 F.3d [291] at 299." *Cole* at 437.

{¶ 11} Thus, the Sixth Circuit Court of Appeals held that "[a]bsent an express statement that the parties intended another state's limitations statute to apply, the procedural law of the forum governs time restrictions on an action for breach, while the law chosen by the parties governs the terms of their contract." *Cole* at id.

{¶ 12} Here, there was no express statement in the agreement that the parties intended Virginia's statute of limitations to apply. Accordingly, Ohio's 15-year statute of limitations for written contracts applied and the

action was filed within that limitation. The first assignment of error is overruled.

{¶ 13} In his second assigned error, Paras contends that the trial court erred by failing to require Midland Funding to respond to his discovery requests.

{¶ 14} "A party seeking discovery must take the appropriate procedural steps to compel discovery." *Delguidice v. Randall Park Mall* (June 4, 1992), Cuyahoga App. No. 60625. Here, Paras did not file a motion to compel the alleged outstanding discovery. Thus, the trial court did not abuse its discretion, the standard applied to a trial court's ruling on discovery issues,[2] by not compelling the alleged outstanding discovery. The second assignment of error is overruled.

{¶ 15} In his final assignment of error, Paras contends that the trial court failed to consider the doctrine of res judicata. Specifically, Paras maintains that "the Florida Courts have already determined, as a matter of law, that the 'Agreement' was governed by Virginia Law * * *."

{¶ 16} The Ohio Supreme Court has explained that the doctrine of res judicata means that "a valid, final judgment rendered upon the merits bars all subsequent actions based upon any claim arising out of the transaction or

[2]Id.

occurrence that was the subject matter of the previous action." *Grava v. Parkman Twp.* (1995), 73 Ohio St.3d 379, 382, 653 N.E.2d 226.

{¶ 17} The record here is devoid of any evidence (or even indication) that any issue or claim in this case had previously been decided. The doctrine of res judicata therefore does not apply. Accordingly, the third assignment of error is overruled.

Judgment affirmed.

It is ordered that appellee recover from appellant costs herein taxed.

The court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate be sent to said court to carry this judgment into execution.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

CHRISTINE T. McMONAGLE, JUDGE

MARY EILEEN KILBANE, P.J., and
MARY J. BOYLE, J., CONCUR