

[Cite as *Primesolutions Securities, Inc. v. Winter*, 2016-Ohio-4708.]

# Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT  
COUNTY OF CUYAHOGA

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JOURNAL ENTRY AND OPINION  
No. 103961

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**PRIMESOLUTIONS SECURITIES, INC., ET AL.**

PLAINTIFFS-APPELLANTS

vs.

**CHARLES WINTER, ET AL.**

DEFENDANTS-APPELLEES

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**JUDGMENT:**  
**REVERSED AND REMANDED**

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Civil Appeal from the  
Cuyahoga County Court of Common Pleas  
Case No. CV-15-851312

**BEFORE:** Keough, P.J., E.T. Gallagher, J., and Laster Mays, J.

**RELEASED AND JOURNALIZED:** June 30, 2016

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KATHLEEN ANN KEOUGH, P.J.:

{¶1} This cause came to be heard upon the accelerated calendar pursuant to App.R. 11.1 and Loc.R. 11.1. The purpose of an accelerated appeal is to allow the appellate court to render a brief and conclusory opinion. *Crawford v. Eastland Shopping Mall Assn.*, 11 Ohio App.3d 158, 463 N.E.2d 655 (10th Dist.1983); App.R. 11.1(E).

{¶2} Appellants, Primesolutions Securities, Inc. and Victor Bull (“appellants”) appeal from the trial court’s decision dismissing its application to vacate arbitration awards. For the reasons that follow, we reverse and remand for further proceedings.

{¶3} In April 2014, appellees, Charles and Jennifer Winter, filed claims with Financial Industry Regulatory Authority (“FINRA”) arbitration against appellants for negligence, violations of the Ohio Securities Act, breach of contract, breach of fiduciary duty, and respondeat superior, relating to appellants’ alleged failures in supervising its agents’ handling of the Winters’ investments. On September 11, 2015 and following an arbitration hearing, FINRA through an arbitration panel, found that appellants were jointly liable to the Winters and awarded them compensatory damages, interest, and costs.

{¶4} Also in April 2014, similar claims were filed with FINRA arbitration against appellants by Jeremiah and Lisa Lang. Following arbitration on those claims, the arbitration panel award the Langs damages similar to those awarded to the Winters.

{¶5} The Winters filed an application to confirm their arbitration award and for entry of judgment against appellants on September 17, 2015 at 11:23 a.m. in their home

county, at the Wayne County Court of Common Pleas, with service sent by certified mail to appellants on September 18. On that same day, the Langs filed an application to confirm their arbitration award in their home county, at the Ashland County Court of Common Pleas. Also on September 17, 2015 at 3:09 p.m., appellants filed an application to vacate both arbitration awards in the Cuyahoga County Court of Common Pleas. Even though the Winters and Langs received separate arbitration awards, the appellants sought relief from both awards under the same filing. The application claimed that the arbitration panel erred in failing to postpone the arbitration hearings due to the unavailability of the brokerage agent who allegedly engaged in misconduct in handling the Winters' and Langs' investments. Therefore, the application requested the court to vacate both the Winter and Lang awards.

{¶6} On September 18, 2015, appellants appointed a special process server to serve the Winters and Langs with the application to vacate. On that same day, the process server served the Winters at their residence. The Langs were never served. Appellants were served with notice of the Wayne County action via ordinary mail service in November 2015 after a series of unsuccessful attempts to serve them by certified mail and by process server.

{¶7} In October 2015, the Winters, on behalf of both themselves and the Langs, moved for dismissal of the Cuyahoga County action contending that Cuyahoga county lacked jurisdiction because an action to confirm the arbitration was filed in Wayne and Ashland counties first. The trial court agreed and dismissed the case finding, "[the trial

court] does not have subject matter jurisdiction due to lawsuits involving the same subject matter currently pending in Ashland County and Wayne County, respectively.”

{¶8} It is from this order that appellants appeal, raising as its sole assignment of error that the trial court erred in dismissing its application to vacate the arbitration award against the Winters for lack of subject matter jurisdiction.<sup>1</sup> Specifically, appellants contend that because they served the Winters in the Cuyahoga County case before the Winters served them with the Wayne County case, the case was proper in Cuyahoga County. We agree.

{¶9} The Winters moved to dismiss the case pursuant to Civ.R. 12(B) contending that the Cuyahoga County Court of Common Pleas lacked jurisdiction to consider appellants’ action because the jurisdiction of Ashland and Wayne counties were invoked first, thus acquiring exclusive subject matter jurisdiction with respect to the arbitration awards appellants were attempting to vacate. The issue of subject matter jurisdiction is a question of law that we review de novo. *Bank of Am. v. Macho*, 8th Dist. Cuyahoga No. 96124, 2011-Ohio-5495, ¶ 7.

{¶10} A court has jurisdiction to rule on a controversy between parties if it has obtained personal jurisdiction over the parties, and possesses subject matter jurisdiction over the parties’ claims. A court obtains personal jurisdiction over a defendant by service of process, or by the defendant’s voluntary appearance. *Maryhew v. Yova*, 11

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<sup>1</sup>The Langs are not parties to the appeal. Therefore, the dismissal as it pertains to the Langs has not been challenged and will not be addressed in this appeal.

Ohio St.3d 154, 156, 464 N.E.2d 538 (1984). The “subject matter jurisdiction of a court is a court’s power to hear and decide a case upon its merits[.]” *Morrison v. Steiner*, 32 Ohio St.2d 86, 290 N.E.2d 841 (1972), paragraph one of the syllabus. A court’s subject matter jurisdiction is invoked by the filing of a complaint. *See Wilson v. Ohio Dept. of Rehab. & Corr.*, 73 Ohio App.3d 496, 499, 597 N.E.2d 1148 (10th Dist.1991). Once a court of competent jurisdiction acquires jurisdiction over an action, its authority continues until the matter is completely and finally disposed of, and no court of co-ordinate jurisdiction may interfere with its proceedings. *John Weenink & Sons Co. v. Cuyahoga Cty. Court of Common Pleas*, 150 Ohio St. 349, 82 N.E.2d 730 (1948), paragraph three of the syllabus.

{¶11} “As between courts of concurrent and coextensive jurisdiction, the one whose power is first invoked by the institution of proper proceedings *and* the service of the required process acquires the right to adjudicate upon the whole issue and to settle the rights of the parties to the exclusion of all other tribunals.” (Emphasis added.) *Miller v. Court of Common Pleas*, 143 Ohio St. 68, 70, 54 N.E.2d 130 (1944). Generally then, the jurisdictional priority rule operates only if the second action is between the same parties and involves the same claims or causes of action as the first. *State ex rel. Sellers v. Gerken*, 72 Ohio St.3d 115, 117, 647 N.E.2d 807 (1995).

{¶12} However, the priority rule has also been applied where the causes of action and relief requested in the two lawsuits are not exactly the same. *Id.* Whether the claims or causes of action in both cases are sufficiently identical for the priority rule to

apply is dependent upon whether “each of the actions comprises part of the ‘whole issue’ that is within the exclusive jurisdiction of the court whose power is legally first invoked.”

*State ex rel. Racing Guild of Ohio v. Morgan*, 17 Ohio St.3d 54, 56, 476 N.E.2d 1060 (1985). In determining whether the two cases concern the same “whole issue,” courts consider whether “the ruling of the court subsequently acquiring jurisdiction may affect or interfere with the resolution of the issues before the court where suit was originally commenced.” *Michaels Bldg. Co. v. Cardinal Fed. S. & L. Bank*, 54 Ohio App.3d 180, 183, 561 N.E.2d 1015 (8th Dist.1988).

{¶13} In this case, where both Wayne and Cuyahoga counties have concurrent jurisdiction, each court has obtained both subject matter jurisdiction over the parties’ claims, and personal jurisdiction over the parties themselves; thus, both courts, standing alone, have obtained jurisdiction to rule on the controversy between the parties. Furthermore, the action in Wayne county seeks to confirm the arbitration award in favor of the Winters against the appellants and the appellants’ action in Cuyahoga county seeks to vacate the Winters’ arbitration award; thus the two lawsuits are sufficiently identical for the jurisdictional priority rule to be utilized. Therefore, the jurisdictional priority rule “breaks the tie” in these situations by vesting exclusive jurisdiction “to adjudicate upon the whole issue and to settle the rights of the parties” in the court that obtained service of process first. *Miller*.

{¶14} In this case, appellants were able to achieve personal service on the Winters on September 18, 2015, by special process server. The Wayne County action was not

served on the appellants until November 2015 by regular U.S. Mail. Therefore, as a result, the Cuyahoga County Court of Common Pleas had exclusive jurisdiction over the matter.

{¶15} The Winters contend that appellants willfully evaded service of the Wayne County action; thus appellants should be deemed constructively served, at least for the purposes of the jurisdictional priority rule. However, whether appellants willfully evaded service after the Winters were served with the Cuyahoga County action is of no consequence to the jurisdictional question before this court. The Winters had already been served and the jurisdiction of Cuyahoga County was properly invoked against the Winters before the appellants engaged in any alleged evasion. Appellants' actions taken after the Winters were served is irrelevant under the facts of the case. *Compare B-Dry Sys. v. Kronenthal*, 2d Dist. Montgomery Nos. 17130 and 17619, 1999 Ohio App. LEXIS 3080 (June 30, 1999) (evasion of service of process occurred prior to the competing action being filed in another jurisdiction).

{¶16} The Winters also argue that because the Langs were never served by appellants, the jurisdiction of Cuyahoga County was not properly invoked. We disagree. The Winters have failed to support this argument with any case law; however, in the absence of an assertion that the Langs are an indispensable party, the failure to serve the Langs only prevents Cuyahoga County from having jurisdiction over the Langs; it has no effect on the action against the Winters. *See Bank One, Columbus, NA v. O'Brien*, 10th Dist. Franklin Nos. 91 AP-165 and 91AP-440, 1991 Ohio App. LEXIS 6390 (Dec. 31,



1991).

{¶17} Accordingly, because the Winters were served with the Cuyahoga County action before the appellants were served with the Wayne County action, Cuyahoga County has exclusive jurisdiction in the matter as it pertains to the arbitration award in favor of the Winters and against appellants. The trial court erred in dismissing the case for lack of jurisdiction.

{¶18} The assignment of error is sustained.

{¶19} Judgment reversed, case remanded for further proceedings.

It is ordered that appellants recover from appellees 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.

KATHLEEN ANN KEOUGH, PRESIDING JUDGE

EILEEN T. GALLAGHER, J., and  
ANITA LASTER MAYS, J., CONCUR