[Cite as *Oelschlager v. White*, 2009-Ohio-6618.]

STATE OF OHIO	)	IN THE COURT OF APPEALS
	)ss:	NINTH JUDICIAL DISTRICT
COUNTY OF SUMMIT	)	

JAMES OELSCHLAGER	C. A. No. 24551
Appellee	
v.	APPEAL FROM JUDGMENT ENTERED IN THE
WILLIAM WHITE	COURT OF COMMON PLEAS COUNTY OF SUMMIT, OHIO
Appellant	CASE No. CV 2008-02-1179

DECISION AND JOURNAL ENTRY

Dated: December 16, 2009

DICKINSON, Presiding Judge.

INTRODUCTION

{¶1} Based only on an oral agreement, James Oelschlager loaned his employee, William White, $350,000 without any discussion of when the money should be repaid. Mr. White never made any payments on the loan. Seven years later, after Mr. Oelschlager fired Mr. White and heard from Mr. White's lawyer regarding a possible lawsuit for wrongful termination, Mr. Oelschlager sued Mr. White for return of the $350,000. Mr. White unsuccessfully moved for summary judgment based on a six-year statute of limitations. At trial, the parties disputed whether the loan was without a stipulated date for repayment versus a conditional loan due when Mr. White became able to pay. As the trial determined that factual issue, which affected the statute of limitations dispute, this Court cannot analyze whether the trial court made a mistake in denying summary judgment based on the statute of limitations defense.

BACKGROUND

{¶2} The parties agree on the basic facts of this case. Mr. Oelschlager made a total of three loans to his employee, Mr. White, with the first one being in September 2000 and the third one in August 2001. The loans totaled $350,000. The parties did not explicitly discuss any repayment terms at the inception of the loans, including if or when the monies must be repaid. It is undisputed that Mr. White has never repaid the money and Mr. Oelschlager never demanded repayment while Mr. White continued to work for him. Mr. Oelschlager terminated Mr. White's employment in November 2007. He admitted that he never demanded repayment from Mr. White at any time before filing the complaint in this case on February 7, 2008.

{¶3} Mr. White testified at trial that Mr. Oelschlager had orally forgiven the loan months before he filed the complaint in this case. He also argued that Mr. Oelschlager had frequently loaned money to other employees without requiring repayment and that his only reason for suing in this case was that Mr. White had threatened to sue him for wrongful termination. At trial, the parties disagreed about whether the loan was expected to be paid when Mr. White became financially able to do so. They further disagreed regarding whether Mr. White was ever financially able to pay off the loan. Mr. White testified, however, that, due to the sale of a vacation home into which he had invested the final $100,000 of loan proceeds, he received $100,000 in 2003 or 2004, but did not return the money to Mr. Oelschlager at that time. Mr. White also testified that he could have made payments on the loan while working for Mr. Oelschlager, but he does not believe he ever could have paid off the entire $350,000 loan.

{¶4} After Mr. Oelschlager filed claims against Mr. White for breach of an oral agreement and unjust enrichment, Mr. White moved for summary judgment on both claims, arguing that the statute of limitations had expired on each of them. The trial court denied the

motion, holding that Mr. White had not shown that he was entitled to judgment as a matter of law. During trial, Mr. White moved for a directed verdict on both claims on the basis of the statute of limitations and also moved for directed verdict on the unjust enrichment claim, arguing that Ohio does not permit such a claim if there is an express contract between the parties. On that basis, the trial court granted a directed verdict for Mr. White on the unjust enrichment claim. The unjust enrichment claim is not part of this appeal.

SUMMARY JUDGMENT

{¶5} Mr. White's sole assignment of error is that the trial court incorrectly denied his motion for summary judgment before trial. Specifically, he has argued that, if there is no stipulated date for repayment of an oral loan agreement, and no demand for repayment is made within the limitations period provided by Section 2305.07 of the Ohio Revised Code, the six-year statute of limitations for breach of that agreement begins to run on the date the loan was made. Mr. Oelschlager has responded that this was not a loan without a stipulated repayment date. He has argued that this was a conditional loan, due to be repaid when Mr. White became financially able to do so. Therefore, according to Mr. Oelschlager, the statute of limitations began to run in this case sometime after Mr. White sold his vacation home and arguably had the ability to repay the loan.

{¶6} Section 2305.07 provides that "an action upon a contract not in writing, express or implied, . . . shall be brought within six years after the cause thereof accrued." The parties agree that the six-year statute of limitations of Section 2305.07 applies to their oral contract, but disagree about when the time began to run. The Ohio Supreme Court does not appear to have ever determined when a cause of action accrues for this type of oral loan agreement.

{¶7} Mr. White has cited the Eleventh District Court of Appeals for its adoption of the majority view that, if the parties have not stipulated a definite time for repayment, the six-year statute of limitations begins to run against a claim based on an oral promise to pay money on the date the original promise is made. *Mines v. Phillips*, 37 Ohio App. 3d 121, 122 (1987). The court in *Mines* based its decision on a review of case law from other states and the fact that the bright-line rule would "eliminate[ ] any controversy as to when the cause of action accrues or the more nebulous 'expiration-of-reasonable-time' rule." *Id.*; see also Jay M. Zitter, Annotation, *When Statute of Limitations Begins to Run Against Action Based On Unwritten Promise To Pay Money Where There Is No Condition Or Definite Time For Repayment*, 14 A.L.R. 4th 1385 (1982) (pointing to the basis of the majority view that such a loan is payable on demand and, therefore, is payable immediately so the cause of action must accrue immediately).

{¶8} In response, Mr. Oelschlager has cited the Eighth District Court of Appeals decision in *Dandrew v. Silver*, 8th Dist. No. 86089, 2005-Ohio-6355, for the proposition that, if parties to an oral loan agreement have not specified a time for repayment, the statute of limitations begins to run when the lender requests payment and the borrower fails to pay. The court in *Dandrew* pointed out that the statute of limitations does not begin to run until a cause of action has accrued and, in the case of a loan, "no cause of action accrues until the debt is due to be repaid." *Id.* at ¶14 (quoting *Beard v. Bradley*, 5th Dist. No. 85-CA-24, 1986 WL 6451 at *2 (May 16, 1986)). Citing this authority, Mr. Oelschlager has argued that the loan was not due to be repaid until he made a demand. Thus, because he had made no demands for payment before filing this lawsuit, Mr. Oelschlager has argued that the statute of limitations did not begin to run until the day he filed his complaint against Mr. White.

{¶9} Mr. Oelschlager has also argued that, even if this Court were inclined to adopt the approach of the Eleventh District in *Mines*, it is not applicable to the facts of this case. He has argued, as he did at trial, that this was not an oral loan contract without a stipulated date of repayment, but a conditional loan due when the condition occurred. Specifically, Mr. Oelschlager has argued that the parties agreed the loan would be repaid when Mr. White became financially able to do so, therefore, the statute of limitations did not begin to run until the condition occurred.

{¶10} "An obligation to repay a loan 'when able' does not accrue immediately so as to start the running of the statute of limitations. Such a promise to repay is conditional, and the lender's cause of action accrues when the ability to pay arises." *Crawford v. Kring*, 7th Dist. No. 97-CO-15, 1998 WL 635879 at *2 (Sep. 8, 1998). In this case, there was a dispute at trial regarding whether the parties had agreed, as part of the contract, that Mr. White would repay the loans when he became financially able to do so. Mr. White and Mr. Oelschlager each testified that his initial impression was that Mr. White would repay the money when he was "back on [his] feet" or when "fortunes improved," but both admitted that they never actually discussed repayment in any way. According to Mr. White, the unspoken impression of the parties cannot be considered a pivotal contract term. According to Mr. Oelschlager, the unspoken impression shared by both parties dictated that the statute of limitations began to run against his claim when Mr. White became financially able to repay the loan, probably after he sold the vacation home in 2003 or 2004.

{¶11} This Court need not determine when the statute of limitations begins to run on a claim for breach of an oral loan agreement with no stipulated repayment date because any error that may have occurred at the summary judgment phase is harmless in light of what happened at

trial. There were genuine issues of material fact, determined at trial, regarding whether this was a conditional loan and when the triggering condition occurred. The trial court instructed the jury that "[Mr. Oelschlager] is entitled to a judgment in [the amount of $350,000] if [Mr. White] has had the financial ability to repay the loan, unless [Mr. White] has proven his affirmative defense [of waiver]." All eight jurors signed the general verdict form in favor of Mr. Oelschlager. The jury further answered a special interrogatory finding that, while he was working for Mr. Oelschlager, Mr. White had the financial ability to repay the loans.

{¶12} Mr. White's motion for summary judgment was based on the statute of limitations. As a factual dispute regarding the statute of limitations was subsequently determined at trial, this Court is not at liberty to scrutinize the pretrial denial of a summary judgment motion based on the statute of limitations defense. *Cont'l Ins. Co. v. Whittington*, 71 Ohio St. 3d 150, syllabus (1994). At trial, the parties presented evidence that revealed the existence of genuine issues of material fact regarding the defense raised by Mr. White in his motion for summary judgment. Regardless of whether the record before the trial court at the time of the summary judgment motion revealed the factual dispute, "[a]ny error in the denial of the motion was rendered moot or harmless since a full and complete development of the facts at trial (as opposed to the limited factual evidence elicited upon discovery) showed that [Mr. Oelschlager was] entitled to judgment." *Id.* at 156. Therefore, Mr. White's assignment of error is overruled.

CONCLUSION

{¶13} Mr. White's sole assignment of error is overruled because "[a]ny error by a trial court in denying a motion for summary judgment is rendered moot or harmless if a subsequent trial on the same issues raised in the motion demonstrates that there were genuine issues of material fact supporting a judgment in favor of the party against whom the motion was made."

Cont'l Ins. Co. v. Whittington, 71 Ohio St. 3d 150, syllabus (1994). The judgment of the Summit County Common Pleas Court is affirmed.

Judgment affirmed.

There were reasonable grounds for this appeal.

We order that a special mandate issue out of this Court, directing the Court of Common Pleas, County of Summit, State of Ohio, to carry this judgment into execution. A certified copy of this journal entry shall constitute the mandate, pursuant to App.R. 27.

Immediately upon the filing hereof, this document shall constitute the journal entry of judgment, and it shall be file stamped by the Clerk of the Court of Appeals at which time the period for review shall begin to run. App.R. 22(E). The Clerk of the Court of Appeals is instructed to mail a notice of entry of this judgment to the parties and to make a notation of the mailing in the docket, pursuant to App.R. 30.

Costs taxed to appellant.

CLAIR E. DICKINSON
FOR THE COURT

CARR, J.
BELFANCE, J.
CONCUR

APPEARANCES:

JOHN F. HILL, and JOY MALEK OLDFIELD, attorneys at law, for appellant.

DAVID P. BERTSCH, attorney at law, for appellee.