

IN THE COURT OF APPEALS OF OHIO
TENTH APPELLATE DISTRICT

Gracie McBroom,	:	
	:	
Plaintiff-Appellant,	:	
	:	
v.	:	No. 11AP-601
	:	(C.P.C. No. 10CVH-11-17301)
Wayne Dickerson, President and CEO	:	
and Metal Building Components,	:	(REGULAR CALENDAR)
International, LP,	:	
	:	
Defendants-Appellees.	:	

D E C I S I O N

Rendered on February 2, 2012

Gracie McBroom, pro se.

Dinsmore & Shohl, LLP, Mark C. Bissinger and Nicole M. Loucks, for appellees.

APPEAL from the Franklin County Court of Common Pleas

TYACK, J.

{¶1} Plaintiff-appellant, Gracie McBroom, appeals the decision of the Franklin County Court of Common Pleas granting appellees' motion to enforce forum selection and motion to dismiss the complaint. For the following reasons, we affirm the decision of the trial court with instructions.

{¶2} McBroom brings one assignment of error:

THE TRIAL COURT ERRED IN SUSTAINING THE APPELLEES' MOTION TO ENFORCE FORUM-SELECTION CLAUSE AND TO DISMISS APPELLANT'S ACTIONS, WHEN THERE WAS FRAUD PRESENT, FILED MAY 3, 2011.

{¶3} This is a dispute between pro se litigant McBroom, and defendants-appellees, Metal Building Components International, LP ("MBCI"), and Wayne Dickinson¹, President and CEO of MBCI.

{¶4} In July 2003, a company named North Coast sold MBCI's roof panel product to McBroom and provided her with MBCI's limited warranty for that product. McBroom's December 2010 amended complaint claims that MBCI breached its contract with McBroom, that it negligently misrepresented its products, and that it intentionally inflicted emotional distress. McBroom also made a claim of "connivance." In addition, McBroom claimed fraud, in that MBCI substituted terms of a sample contract for the ones found in the signed contract.

{¶5} On April 22, 2011, McBroom filed a document titled "Claim: Legal Malpractice," which purported to state a claim against MBCI's counsel for legal malpractice. MBCI responded by filing a motion to strike and a motion for sanctions on May 3, 2011. MBCI also filed that day a motion to enforce a forum-selection clause and dismiss the complaint pursuant to Civ.R. 12(B).

{¶6} In response to that motion, McBroom filed a May 6, 2011 motion "TO STRIKE IMPROPER EVIDENCE OF MOTION OF DEFENDANTS METAL BUILDING COMPONENTS INTERNATIONAL, L.P. AND WAYNE DICKINSON TO ENFORCE

¹ Defendant's name is Wayne Dickinson per his affidavit signed April 26, 2011.

FORUM SELECTION CLAUSE AND DISMISS COMPLAINT." And she also filed with the trial court on May 9, 2011 "PLAINTIFF'S ADDENDUM TO, MOTION OF PLAINTIFF, GRACIE MCBROOM, IS ASKING THE COURT NOT TO GRANT THE REQUEST OF THE ABOVE ATTORNEYS TO WITHDRAW FROM REPRESENTATION OF DEFENDANTS."

{¶7} The trial court reviewed all these motions and issued a June 14, 2011 decision. A final appealable order was journalized on June 30, 2011. The order denied all of McBroom's motions and MBCI's May 3, 2011 motion for sanctions. The order also granted MBCI's May 3, 2011 motion to strike and its motion to enforce the forum-selection clause. As a result, the trial court sustained the motion to dismiss the complaint. McBroom timely filed her notice of appeal.

{¶8} McBroom's assignment of error asserts that the trial court was wrong in granting MBCI's motion to enforce the forum selection provision and the resulting motion to dismiss the complaint.

{¶9} MBCI filed their motions on May 3, 2011. MBCI's motions contain three arguments: (1) defendant Wayne Dickinson, a resident of Texas, should be dismissed because the trial court lacked personal jurisdiction over him; (2) all claims that McBroom has asserted are covered under the forum-selection clause, which requires all claims under the warranty to be pursued in Harris County, Houston, Texas; and (3) McBroom's tort claims should be dismissed because they fail to state a claim.

{¶10} MBCI argues that none of the substantive arguments that McBroom asserts in her appellate brief were ever raised by her in the trial court and therefore are waived as a matter of law. We agree.

{¶11} Ordinarily, reviewing courts do not consider questions not presented to the court whose judgment is sought to be reversed. *State ex rel. Quarto Mining Co. v. Foreman*, 79 Ohio St.3d 78, 81, 1997-Ohio-71. A party who fails to raise an argument in the court below waives his or her right to raise it on appeal. *State ex rel. Zollner v. Indus. Comm.*, 66 Ohio St.3d 276, 278, 1993-Ohio-49. More specifically, a party who does not respond to an adverse party's motion for summary judgment may not raise issues on appeal that should have been raised in response to the motion for summary judgment. *Gentile v. Ristas*, 160 Ohio App.3d 765, 787, 2005-Ohio-2197. An appellate court must, therefore, limit its review of the case to the arguments contained in the record before the trial court. *Litva v. Richmond*, 172 Ohio App.3d 349, 2007-Ohio-3499, ¶18.

{¶12} McBroom's only response to MBCI's May 3, 2011 motion to dismiss was her May 6, 2011 motion and her May 9, 2011 addendum. These two documents do not offer any evidence or argument that the forum-selection clause is unreasonable or that its inclusion in the warranty is a result of fraud.

{¶13} McBroom's documents also failed to present any evidence or argument that the trial court had personal jurisdiction over Dickinson. Once the issue of personal jurisdiction has been raised, the burden falls on the plaintiff to establish personal jurisdiction. *Star Seal of Ohio, Inc. v. Tri State Pavement Supplies, L.L.C.*, 10th Dist. No. 09AP-969, 2010-Ohio-2324, ¶8.

{¶14} Since McBroom raised no issues regarding jurisdiction and the validity of the forum-selection clause in the trial court, McBroom's assignment of error is overruled.

{¶15} Therefore, we affirm the judgment of the trial court with respect to the decision that the forum-selection clause is valid and that the trial court lacks personal jurisdiction over Dickinson.

{¶16} However, the trial court's final order does not specify that the case was dismissed without prejudice. McBroom is not precluded from bringing a claim under the warranty in Harris County, Texas. This point was conceded by MBCI's counsel in oral argument. We therefore instruct the Franklin County Court of Common Pleas to modify its judgment to a dismissal without prejudice.

*Judgment affirmed
with instructions.*

KLATT and FRENCH, JJ., concur.
