

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

Empire Sports & Entertainment, Inc.,	:	
Plaintiff-Appellant,	:	
v.	:	No. 26AP-346
	:	(C.P.C. No. 24CV-2014)
The Memorial Tournament,	:	(ACCELERATED CALENDAR)
Defendant-Appellee.	:	

D E C I S I O N

Rendered on October 27, 2026

On brief: *Strip, Hoppers, Leithart, McGrath & Terlecky Co., L.P.A., Kenneth R. Goldberg, and Loni R. Fultz*, for appellant. **Argued:** *Loni R. Fultz*.

On brief: *Squire Patton Boggs LLP, Lauren Kuley, Ellen Phillips, and Elizabeth P. Trebbien*, for appellee. **Argued:** *Lauren Kuley*.

APPEAL from the Franklin County Court of Common Pleas

BOGGS, P.J.

{¶ 1} Plaintiff-appellant, Empire Sports & Entertainment, Inc. (“Empire”), appeals the judgment of the Franklin County Court of Common Pleas which granted the motion for summary judgment of defendant-appellee, The Memorial Tournament (“Memorial”). For the following reasons, we affirm the trial court’s judgment.

I. PROCEDURAL HISTORY AND FACTS

{¶ 2} On April 3, 2024, Empire filed an amended complaint asserting claims against Memorial for breach of oral contract, breach of contract implied in fact, preliminary and permanent injunction, and declaratory judgment. As stated in its complaint, Empire is a ticket reseller and sports hospitality package provider for live events in Ohio and the United States. Memorial hosts the Memorial Tournament, an annual professional golf

tournament which takes place at the Muirfield Village Golf Club in Dublin, Ohio. Empire stated in its complaint that, around 2013, it began purchasing large amounts of bundled tickets from Memorial for the tournament. Empire would separate the bundled tickets into individual days and then sell those tickets to the public.

{¶ 3} In 2016, Empire alleged that Memorial accidentally provided Empire with “approximately \$30,000-\$60,000 worth of tickets to the tournament, in addition to those [Empire] had purchased.” (Am. Compl. at 2.) Empire stated that two days after it received the additional tickets, which Empire had already unbundled, it was alerted by Memorial of the error. Empire alleged that it agreed to return and rebundle the tickets. Empire stated that Memorial, through its Director of Sales and Marketing, agreed to “permit [Empire] to purchase tickets to the tournament in a bundled, single-day format at any time, in perpetuity.” *Id.* at 3. Empire continued to buy bundled tickets from Memorial for the tournament over the next several years.

{¶ 4} In 2023, however, Memorial notified Empire that it was changing its ticket purchasing process for the 2024 tournament and would no longer sell tickets to ticket brokers, such as Empire. *Id.* at 4. Empire alleged in its amended complaint that Memorial continues to refuse to sell tickets to Empire and has denied the existence of an oral contract. Empire requested relief in compensatory damages in excess of \$25,000, injunctive relief to enjoin Memorial from refusing to sell tickets to Empire, a declaratory judgment finding that a valid agreement exists for Empire to buy tickets from Memorial in perpetuity, and for an award of litigation expenses, attorney fees, and any other such relief the court finds just and equitable.

{¶ 5} On February 25, 2025, Memorial filed an amended motion for summary judgment. Memorial argued that Empire lacked standing as it failed to allege or prove any sort of concrete injury, that no contract existed between Memorial and Empire, and that the statute of frauds bars Empire’s claim.

{¶ 6} On March 13, 2026, the Franklin County Court of Common Pleas granted Memorial’s motion for summary judgment. The trial court found that Empire sufficiently alleged an injury to establish that it possessed standing for its claims. But the trial court also found that the statute of frauds barred Empire’s claims, as the alleged contract necessarily could not be completed within one year as, under the facts alleged by Empire,

the alleged contract would allow Empire to purchase tickets from Memorial in “perpetuity.” The trial court determined that there was no scenario in which the contract could have been completed in one year, in accordance with R.C. 1335.05. The trial court also found that, as Empire’s breach of contract claims were barred by the statute of frauds, judgment on the rest of its claims must also be entered in favor of Memorial. The trial court thereby granted Memorial’s motion for summary judgment.

{¶ 7} Empire now appeals.

II. ASSIGNMENTS OF ERROR

{¶ 8} On appeal, Empire asserts the following:

[1.] The trial court erred in holding that the contract between Empire and Memorial is barred by the Statute of Frauds and is, therefore, unenforceable.

[2.] The trial court erred in holding that Memorial is entitled to judgment on Empire’s claims for preliminary and permanent injunction and declaratory judgment, on the basis that Empire’s breach of contract claims are barred by the Statute of Frauds.

III. DISCUSSION

{¶ 9} We review a grant of summary judgment de novo. *Capella III LLC v. Wilcox*, 2010-Ohio-4746, ¶ 16 (10th Dist.), citing *Andersen v. Highland House Co.*, 2001-Ohio-1607, ¶ 5. Under a de novo standard of review, the court of appeals independently reviews the record and affords no deference to the trial court’s decision. *Premiere Radio Networks, Inc. v. Sandblast, L.P.*, 2019-Ohio-4015, ¶ 6 (10th Dist.), citing *Holt v. State*, 2010-Ohio-6529, ¶ 9 (10th Dist.).

{¶ 10} “[S]ummary judgment is only proper when ‘(1) no genuine issue as to any material fact remains to be litigated; (2) the moving party is entitled to judgment as a matter of law; and (3) it appears from the evidence that reasonable minds can come to but one conclusion, and viewing such evidence most strongly in favor of the party against whom the motion for summary judgment is made, that conclusion is adverse to that party.’” *Gilbert v. Summit Cty.*, 2004-Ohio-7108, ¶ 6, quoting *Temple v. Wean United, Inc.*, 50 Ohio St.2d 317, 327 (1977). In ruling on a motion for summary judgment, the trial court must construe the evidence and resolve all doubts in favor of the nonmoving party. *Premiere Radio*

Networks, Inc. at ¶ 6, citing *Pilz v. Ohio Dept. of Rehab. & Corr.*, 2004-Ohio-4040, ¶ 8 (10th Dist.). The party moving for summary judgment bears the initial burden of informing the trial court of the basis for the motion and identifying those portions of the record which demonstrate the absence of a genuine issue of fact on a material element of the nonmoving party's case. *Dresher v. Burt*, 1996-Ohio-107, ¶ 17. If the movant satisfies its initial burden, then the nonmoving party has a reciprocal burden, as outlined in Civ.R. 56(E) to "set forth specific facts showing that there is a genuine issue for trial. If the party does not so respond, summary judgment, if appropriate, shall be entered against the party."

A. Assignment of Error No. 1

{¶ 11} We now turn to Empire's first assignment of error, wherein it argues that the trial court erred in finding the purported contract between Empire and Memorial was barred by the statute of frauds.

{¶ 12} The statute of frauds is codified in R.C. 1335.05 and states:

No action shall be brought whereby to charge the defendant . . . upon an agreement that is not to be performed within one year from the making thereof; unless the agreement upon which such action is brought, or some memorandum or note thereof, is in writing and signed by the party to be charged therewith or some other person thereunto by him or her lawfully authorized.

{¶ 13} The Supreme Court of Ohio has interpreted R.C. 1335.05, noting that:

For over a century, the "not to be performed within one year" provision of the Statute of Frauds, in Ohio and elsewhere, has been given a literal and narrow construction. The provision applies only to agreements which, by their terms, cannot be fully performed within a year; . . . thus, where the time for performance under an agreement is indefinite, or is dependent upon a contingency which may or may not happen within a year, the agreement does not fall within the Statute of Frauds.

Sherman v. Haines, 73 Ohio St.3d 125, 127 (1995).

{¶ 14} Consequently, "a promise which is not likely to be performed within a year, and which in fact is not performed within a year, is still not within the Statute of Frauds if at the time the contract is made, there is a possibility in law and in fact that full performance . . . may be completed before the expiration of a year." *Ford v. Tandy Transp., Inc.*, 86 Ohio App.3d 364, 382 (4th Dist. 1993). See also *Lightbody v. Rust*, 2003-Ohio-3937, ¶ 40 (8th

Dist.) (oral contracts that potentially may be completed within one year are outside of the statute of frauds). Alternatively, if an oral contract is incapable of being performed within a year of its making, the contract is within the statute of frauds and is therefore unenforceable. *Hummel v. Hummel*, 133 Ohio St. 520 (1938), paragraph one of the syllabus. *See also Jacobs v. Joseph E. Copp Co.*, 123 Ohio St. 146, 154 (1930) (“Every statute of fraud contemplates the existence of a cause of action, which, but for the inhibition of the statute, might be maintained.”).

{¶ 15} Central to our discussion is whether the alleged oral contract between Empire and Memorial can be fully performed within a year by its terms. Empire argues that, where performance under an agreement is indefinite or dependent upon a contingency and the contract is capable of being performed within one year, that agreement is not subject to the statute of frauds. To support its argument, Empire cites two cases. First, Empire directs us to *Kennedy v. Conrad*, 2004-Ohio-377, ¶ 18 (5th Dist.), wherein the Fifth District Court of Appeals found that an oral contract for services to be performed on a farm was contingent upon cattle being on the farm and that the defendant still owned the farm and was thus not subject to the statute of frauds, as the agreement could have been completed within a year or was for an indefinite period of time. Empire also cites *Firefighters Community Credit Union v. Woodside Mtg. Servs., Inc.*, 2019-Ohio-3363, ¶ 29 (8th Dist.), where the Eighth District Court of Appeals found that the statute of frauds did not apply to a mortgage servicing agreement, as it was contingent upon mortgage loans being originated, and “[t]here was no guarantee that any mortgage loans would be originated by Woodside or retained by the Credit Union for its own loan portfolio.” Empire argues that, similar to *Kennedy* and *Woodside*, the agreement between Empire and Memorial was subject to several contingencies such as the availability of bundled, single-day tickets, Memorial continuing to host the tournament, and Empire choosing to purchase tickets. Therefore, it argues the agreement was not subject to the statute of frauds.

{¶ 16} We are not persuaded, and we find Empire’s focus on contingencies inapposite, when the terms of the agreement intended the agreement to *not* be completed in one year. Empire argued that Memorial had “agreed to permit [Empire] to purchase tickets to the Memorial Tournament in a bundled, single-day format at any time, in perpetuity.” (Schaffer Aff. at 3.) Empire explicitly intended the agreement to not be

completed in one year but rather that it would continue in *perpetuity*. In *Lingo v. Ohio Cent. R.R., Inc.*, 2006-Ohio-2268, ¶ 47 (10th Dist.), this court stated that:

The agreement, by its own terms, evinces an intention of the parties of an agreement incapable of being performed within one year. *Pro Arts [Inc. v. K Mart Corp.]*, 580 F.Supp. 1073 (N.D.Ohio 1984)], *supra*, at 1075; *Robnolte [v. Kohart]*, 81 Ohio App. 1 (3d Dist. 1947)], *supra*, at 5. The purpose of the agreement was to inspect railcars over an extended period of time. See *Mills v. Mills* (1952), 70 Ohio L.Abs. 111, 127 N.E.2d 222. Specifically, the oral contract is incapable of being fully performed by the parties within one year because the terms of the agreement itself reveal that the parties did not intend the agreement to be completed within one year, as performance required Conrail to continually inspect and repair railcars before sending them to appellant. *Pro Arts*, *supra*, at 1075; *Robnolte*, at 5.

{¶ 17} Such is the situation between Empire and Memorial. The intent of the alleged agreement, according to the affidavit of Empire's Alex Schaffer, was for the agreement to continue indefinitely. By its express terms, the agreement could not be completed within one year, as full performance dictated that Memorial permit Empire to purchase tickets in a bundled, single-day format at any time, in perpetuity. While Empire argues that the contingencies make the timing of performance here "indefinite" and still possible to be performed in one year, we do not agree. In *Sibbring v. Columbus Fin. Planning Agency, Inc.*, 1982 Ohio App. LEXIS 15082, *17 (10th Dist. Feb. 18, 1982), this court highlighted the difference between an *indefinite time* to perform under an agreement, not subject to the statute of frauds, versus an agreement with an *indefinite duration*, which is subject to the statute of frauds. This court stated:

But the contract here is of a different character, for not only is it of indefinite duration but, by its terms, an obligation is imposed on the defendant which continues so long as the defendant and Resolute Paper Products Corp. exist. It is true that if Resolute Paper Products Corp. should place no orders with the defendant within the year, no commissions would be earned, but the defendant's contract would not thereby have been 'performed,' for it would then apply to any orders that might be accepted in succeeding years. Williston on Contracts, Rev. ed., Section 500. Unlike contracts which require the performance of a single act which may or may not be executed within a year, the contract here requires the defendant, for an unlimited period of time, to pay commissions on order

accepted from Resolute Paper Products Corp. and, therefore, is impossible of performance within a year.

Id. at *17-18.

{¶ 18} Here, Empire muddles indefinite terms and possible contingencies with an agreement of an indefinite duration, subject to the statute of frauds. We accordingly overrule Empire's first assignment of error.

B. Assignment of Error No. 2

{¶ 19} In Empire's second assignment of error, it argues that the trial court erred in granting summary judgment to Memorial on its claims for preliminary and permanent injunction and declaratory judgment. Empire rests this argument on its previous assignment of error that the trial court's holding on the statute of frauds was in error. As we have already determined that the statute of frauds applied to the agreement between the parties, we overrule Empire's second assignment of error.

IV. CONCLUSION

{¶ 20} Having overruled Empire's first and second assignments of error, we affirm the judgment of the Franklin County Court of Common Pleas.

Judgment affirmed.

BEATTY BLUNT and LELAND, JJ., concur.
