[Cite as *Armengau v. Barton*, 2026-Ohio-4589.]

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

Javier H. Armengau,	:	
Plaintiff-Appellant,	:	No. 26AP-127 (C.P.C. No. 24CV-4850)
v.	:	(REGULAR CALENDAR)
Jennifer L. Barton f.k.a. Jennifer L. Young,	:	
Defendant-Appellee.	:	

D E C I S I O N

Rendered on November 19, 2026

On brief: *Javier H. Armengau*, pro se. **Argued:** *Javier H. Armengau.*

On brief: *Vernau Law LLC*, and *Adam K. Vernau*, for appellee. **Argued:** *Adam K. Vernau.*

APPEAL from the Franklin County Court of Common Pleas

JAMISON, J.

{¶ 1} Plaintiff-appellant, Javier H. Armengau, appeals from the January 16, 2026 decision and entry of the Franklin County Court of Common Pleas granting the motion to dismiss of defendant-appellee, Jennifer L. Barton, formerly known as Jennifer L. Young. For the reasons that follow, we affirm the judgment of the trial court.

I. FACTS AND PROCEDURAL HISTORY

{¶ 2} On June 20, 2024, appellant filed a complaint against appellee in the trial court alleging breach of fiduciary duty, theft, and conversion. In that complaint, appellant alleged that in 2011, he entered into a lease/purchase agreement with the owner, Aimee Lambert, of a property on Rays Circle, Dublin, Franklin County, Ohio. That same year, appellant began a "personal relationship" with appellee. (June 20, 2024 Compl. at ¶ 7.) In July of 2012, Lambert contacted appellant and asked if it was possible to accelerate the

purchase of the property. At the time, appellant was unable to qualify for a mortgage because his tax returns for 2011 and 2012 were not complete. Appellant met with a mortgage broker to arrange the purchase of the property. A down payment of $10,000 was required for the purchase of the property. Appellant issued a check to appellee to cover the down payment. The loan was subsequently approved. Appellant and appellee attended the closing and were given keys to the property. The deed was recorded on October 29, 2012.

{¶ 3} Appellant alleged that there was an arrangement between he and appellee wherein appellant was to purchase the property from appellee at the price of the balance of the mortgage. In the alternative, if the property was sold, the proceeds were to be paid to appellant. On July 7, 2014, appellant was sentenced to nine and a half years in prison at the Ohio Department of Rehabilitation and Correction ("ODRC"). During his incarceration, he was aware that appellee was attempting to sell the Rays Circle property. Appellant's girlfriend, Nicole Sill, was communicating with appellee regarding the sale of the property. Appellant "repeatedly confirmed" that the funds from the sale would be forwarded to Sill for appellant. (Compl. at ¶ 27.) After closing of the sale, appellee stopped communicating with Sill. Appellant alleged that he repeatedly attempted to contact appellee, but appellee ignored his communications. Upon his release from ODRC, appellant attempted to contact appellee via phone, email, and regular mail. Appellee did not respond.

{¶ 4} Appellee, through counsel, answered appellant's complaint on July 16, 2024.

{¶ 5} On August 23, 2024, appellee filed a motion to dismiss appellant's complaint based on the statute of frauds and the expiration of the statute of limitations. Appellant filed a memorandum in opposition to appellee's motion. Appellee replied to appellant's memorandum in opposition.

{¶ 6} On January 16, 2026, the trial court issued a decision and entry granting appellee's motion to dismiss. The trial court determined that appellant's claims were barred by the four-year statute of limitations. It also determined that the alleged oral agreement between the parties was never reduced to writing as required by the statute of frauds.

{¶ 7} It is from that decision and entry that appellant now appeals.

II. ASSIGNMENT OF ERROR

{¶ 8} Appellant assigns the following as trial court error:

> The trial court erred when it granted Appellee's Motion to Dismiss based upon O.R.C. §1335, Ohio's Statute of Frauds, and O.R.C. §2305.07 and 2307.09, which limits the claims to the Statute of Limitations without considering material facts presented by Appellant that would still entitle Appellant to recover for his losses.

III. STANDARD OF REVIEW

{¶ 9} Generally, "[w]hen reviewing a decision on a Civ.R. 12(B)(6) motion to dismiss for failure to state a claim upon which relief can be granted, this court's standard of review is de novo." *Beverly v. Ohio State Hwy. Patrol*, 2026-Ohio-3455, ¶ 10 (10th Dist.). Under a de novo review, we must independently examine the complaint to determine whether the dismissal was appropriate. *Id.* In doing so, we use the same standard that the trial court used, but we do not defer to the trial court's analysis or conclusions. *Id.* A motion filed, pursuant to Civ.R. 12(B)(6), tests the sufficiency of the complaint. *Id.* at ¶ 9. In reviewing such a motion, the court must view the complaint in a light most favorable to the plaintiff, presuming all factual allegations to be true and making all reasonable inferences in favor of the plaintiff. *Id.* A complaint is properly dismissed when it appears, beyond doubt, that the plaintiff can prove no set of facts entitling him or her to relief. *Id.* "Although factual allegations in the complaint are taken as true, 'unsupported conclusions of a complaint are not considered admitted . . . and are not sufficient to withstand a motion to dismiss.' " *Justice v. Jefferson-Pilot Life Ins.*, 1998 Ohio App. LEXIS 6250, *6 (10th Dist. Dec. 24, 1998), quoting *State ex rel. Hickman v. Capots*, 45 Ohio St.3d 324, 324 (1989).

IV. LEGAL ANALYSIS

{¶ 10} In his sole assignment of error, appellant alleges that the trial court erred when it granted appellee's motion to dismiss based upon the statute of frauds and the expiration of the statute of limitations. Initially, it should be noted that the statute of frauds and the expiration of the statute of limitations are affirmative defenses. *Galbreath v. Martin*, 2013-Ohio-80, ¶ 10 (10th Dist.); *Stafford v. Columbus Bonding Ctr.*, 2008-Ohio-3948, ¶ 12 (10th Dist.). "Because affirmative defenses typically rely on matters outside the complaint, they normally cannot be raised in a Civ.R. 12(B)(6) motion." *Cristino v. Bur. of*

Workers' Comp., 2012-Ohio-4420, ¶ 21 (10th Dist.). "If, however, the existence of an affirmative defense is obvious from the face of the complaint, a court may grant a Civ.R. 12(B)(6) motion on the basis of the affirmative defense." *Id.*

{¶ 11} In response to appellee's statute of frauds claim, appellant argues, in part, that he partially performed under the parties' alleged oral contract. Partial performance removes an agreement from the operation of the statute of frauds. *Gunsorek v. Heartland Bank*, 124 Ohio App.3d 735, 740 (10th Dist. 1997). "[A] party seeking to invoke the doctrine of part performance must establish that he has performed acts in exclusive reliance on an oral contract, and that such acts have changed his position to his prejudice." *LHPT Columbus The, L.L.C. v. Capitol City Cardiology, Inc.*, 2014-Ohio-5247, ¶ 35 (10th Dist.). In this matter, appellant's complaint alleged that as part of the parties' oral agreement, he provided $10,000 as a down payment for the property. Taken as true, this is an act of reliance on an oral contract that changed appellant's position to his prejudice. Thus, the application of the affirmative defense of statute of frauds was not obvious on the face of the complaint and it was inappropriate for the trial court to decide that issue at the motion to dismiss stage of the proceedings. However, as will be demonstrated below, the application of the affirmative defense of expiration of the statute of limitations was obvious on the face of the complaint, and the trial court properly granted appellee's motion to dismiss in that regard.

{¶ 12} "Generally, a cause of action accrues and the statute of limitations begins to run at the time the wrongful act was committed." *Mattlin Holdings L.L.C. v. First City Bank*, 2010-Ohio-3700, ¶ 7 (10th Dist.). In some cases, the discovery rule, which appellant attempts to invoke here, applies. Under the discovery rule, "the statute of limitations does not begin to run until the plaintiff discovers or, through the exercise of reasonable diligence, should have discovered a possible cause of action." *Id.* In this matter, the property at issue was sold on October 24, 2014. Appellant alleged that, pursuant to the parties' oral contract, he was entitled to the proceeds of that sale. Appellant's complaint was not filed until June 20, 2024. It is undisputed that this action was commenced outside of the four-year statute of limitations for a contract not in writing, breach of fiduciary duty, theft, and conversion. R.C. 2305.07(A); R.C. 2905.09(B) and (D).

{¶ 13} Appellant makes several arguments in support of his claim that the trial court erred in ruling that his complaint was barred by the aforementioned statute of limitations. First, he argues that pursuant to the discovery rule, the statute of limitations did not begin to run until January 2024. Appellant reasons that it was reasonable for him to believe that appellee was holding his money until he was released from prison. Thus, according to appellant, he was not aware of his claims until appellee did not return his money after his release on December 27, 2023. Appellant's argument is belied by the face of his complaint. Appellant was aware that appellee was selling the property during his incarceration. The proceeds from the sale were to be forwarded to appellant "immediately" upon closing. (Compl. at ¶ 25.) It is undisputed that closing on the sale of the property occurred on or about October 24, 2014. Following the sale of the property, appellant's then-girlfriend was communicating with appellee about the funds. Nowhere in appellant's complaint does he allege that appellee said she would forward him the money upon his release. Thus, allowing a reasonable amount of time for the proceeds to be forwarded to appellant, he was clearly aware of his claims by January 1, 2015, at the latest. As previously noted, appellant's complaint was not filed until June 20, 2024, long after the expiration of the four-year statute of limitations. It follows that the discovery rule does not save appellant's claims from the statute of limitations.

{¶ 14} Second, appellant claims that the statute of limitations does not bar his claims because the continuing tort doctrine applies. In support of this argument, appellant contends that the most recent tortious conduct occurred in January 2024 when he demanded the proceeds and they were not turned over to him. Additionally, appellant alleges that there is "constant, new damage" until he receives the proceeds from the property's sale. (Appellant's Brief at 11.) For example, appellant alleges that because the funds were not provided to him, appellant's daughter was forced into homelessness. This argument fails for several reasons. First, the face of appellant's complaint does not establish a continuing tort. Although appellant's complaint alleges that appellee's "withholding of [appellant's] funds continues to cause irreparable harm," the complaint fails to specifically identify the harm. (Compl. at ¶ 37.) Indeed, the complaint makes no mention of his daughter's homelessness.

{¶ 15} Second, even if we were to accept the complaint's conclusory statement of continuing harm as true, this continuing harm appears to be solely affecting appellant's children who are not parties to this action. Moreover, the complaint fails to identify his children, their ages, and the specific harm they suffered. Finally, appellant's argument fails because the continuous tort doctrine simply does not apply. In *Columbus Bd. of Edn. v. Armstrong World Industries, Inc.*, 89 Ohio App.3d 846, 856 (10th Dist. 1993), we found that the continuous tort doctrine did not apply even though the plaintiff alleged that asbestos remained in the building. In so holding, we found that the property damage caused by the asbestos was not a continuing injury. *Id.* "[T]he most equitable and rational method of determining when the cause of action accrued is when the [claimant] knew or should have known it was injured." *Id.* at 856-857. Just like the continuing presence of asbestos in the building at issue in *Columbus Bd. of Edn.*, the alleged continued deprivation of the property's sales proceeds from appellant did not constitute a continuing injury. By the face of the complaint, appellant knew or should have known he was injured as soon as he was not *immediately*, or shortly thereafter, provided with the sale proceeds.

{¶ 16} Furthermore, if we were to accept appellant's continuous tort argument, it would effectively eliminate the statute of limitations in cases alleging conversion or theft of money. By appellant's logic, any claimant could circumvent the statute of limitations in these cases by simply alleging that the theft or conversion caused them to have insufficient funds for expenses years after the expiration of the statute of limitations. Based on the foregoing, we find that the continuous tort doctrine does not apply in this case.

{¶ 17} Finally, appellant alleges that the doctrine of equitable estoppel prevents appellee from asserting the affirmative defense of the expiration of the statute of limitations. More specifically, appellant asserts that appellee misrepresented that she would release the funds from the property's sale to appellant, and appellant detrimentally relied on that misrepresentation. Again, appellant's argument fails for multiple reasons. First, the only legal authorities appellant cites in support of his arguments are from the Eighth District Court of Appeals, *Moore v. Schiano*, 117 Ohio App.3d 326 (8th Dist. 1996), and the Butler County Court of Common Pleas, *Doe v. Fairfield School Dist.*, 2003 Ohio Misc. LEXIS 121 (C.P. 2003). Neither of these cases are controlling on this court. Furthermore, both of those cases found that equitable estoppel did not apply.

{¶ 18} Second, appellant misapplies the doctrine of equitable estoppel. Appellant asserts that the misrepresentation that creates an equitable estoppel issue is appellee's alleged promise to forward him the proceeds of the property sale. However, in order to invoke the doctrine of equitable estoppel regarding the statute of limitations, the misrepresentation must prevent the claimant from filing a complaint within the statute of limitations period. *Cain v. Panitch*, 2018-Ohio-1595, ¶ 39 (10th Dist.). Equitable estoppel does not apply when the misrepresentation is "related to the merits of plaintiff's claims" and " 'in no way . . . concern[] the statute of limitations or a promise of settlement." *Lottridge v. Gahanna-Creekside Invests., L.L.C.*, 2015-Ohio-2168, ¶ 21 (10th Dist.), quoting *Kegg v. Mansfield*, 2001 Ohio App. LEXIS 2035, *15 (5th Dist. Apr. 30, 2001). Here, the alleged misrepresentation cited by appellant relates to the merits of his claims, not the statute of limitations or potential settlement. As such, the doctrine of equitable estoppel does not apply in this case.

{¶ 19} Based on the foregoing, although the trial court erred in dismissing appellant's complaint, in part, due to the statute of frauds, it correctly dismissed the complaint as barred by the statute of limitations. Appellant's sole assignment of error is overruled.

V. CONCLUSION

{¶ 20} Although the trial court erred in its application of the statute of frauds, it correctly applied the statute of limitations in granting appellee's motion to dismiss. As such, the judgment of the Franklin County Court of Common Pleas is affirmed. *Joyce v. General Motors Corp.*, 49 Ohio St.3d 93, 96 (1990) ("We have consistently held that a reviewing court is not authorized to reverse a correct judgment merely because erroneous reasons were assigned as the basis thereof.").

Judgment affirmed.

BOGGS, P.J., and MENTEL, J., concur.

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