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IN THE COURT OF COMMON PLEAS

SUMMIT COUNTY, OHIO

ALBERT THROWER	)	CASE NO. CV 02-06-3447
Plaintiff	)	JUDGE BOND
-vs-	)	
MARGARET KAMBOURIS, et al.	)	**FINAL ORDER** SUMMARY JUDGMENT
Defendants	)	

This cause came before the Court on Defendant's Motion for Summary Judgment. Upon consideration thereof, this Court finds the following facts and conclusions of law.

Standard of Law

Pursuant to Civ.R. 56(C), summary judgment is proper if: (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. Temple v. Wean United, Inc. (1977), 50 Ohio St.2d 317, 327, 364 N.E.2d 267. The party seeking summary judgment initially bears the burden of informing the trial court of the basis for the motion and identifying portions of the record demonstrating an absence of genuine issues of material fact as to the essential elements of the nonmoving party's claims. Dresher v. Burt (1996), 75 Ohio St.3d 280, 293, 662 N.E.2d 264. The movant must point to some evidence in the record of the type listed in Civ.R. 56(C) in support of his motion. Id. Once this burden is satisfied, the nonmoving party has

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the burden, as set forth in Civ.R. 56(E), to offer specific facts showing a genuine issue for trial. Id.

Further, the Supreme Court of Ohio has addressed the situation where a non-moving party fails to respond to an adverse motion for summary judgment.

> ...Thus, it might appear that the nonmoving party must respond to an adverse motion for summary judgment or face the entry of judgment against him. However, this court has stated that even where the nonmoving fails completely to respond to the motion, summary judgment is improper unless reasonable minds can come to only one conclusion and that conclusion is adverse to the nonmoving party...Accordingly, as the burden is upon the moving party to establish the non-existence of any material factual issues, the lack of a response by the opposing party cannot, of itself, mandate the granting of summary judgment. Morris v. Ohio Cas. Ins. Co. (1988) 35 Ohio St. 3d 45, 47.

Facts

This case is a breach of contract action based on the stop-payment of a check that Defendant, Margaret Kambouris, presented to Plaintiff, Albert Thrower ("Thrower"), for payment of rent in 1988. In August 1988, Plaintiff was doing business as College Rentals. He was arrested on various criminal charges. At that time, the property the Defendant was living in was forfeited to the State. When Defendant learned that Thrower had been arrested, she stopped payment on her rent check. However, Defendant continued to live at that property for another year and continued to make rent payments to the proper source.

Defendant filed a Motion for Summary Judgment on May 9, 2003. Plaintiff did not respond.

Defendant has also filed a counter claim asking the Court to declare Plaintiff Albert Thrower a vexatious litigator. Defendant has also moved for summary judgment as to the counter claim. Plaintiff has not responded.

Plaintiff's Claim

R.C. 1303.16(C) provides that the statute of limitations for an action to enforce an obligation of a party to a check must be brought within three years after dishonor or ten years after the date of the check.

This Court finds that the check that is the source of Plaintiff's Complaint was written August 25, 1988 and dishonored not later than December 1988. This case was initiated in June 2002, almost fourteen years later. Therefore, Plaintiff's Complaint for any recovery based on said check is clearly barred by the statute of limitations.

Additionally, Plaintiff's Complaint also alleges breach of contract and fraud. However, Defendant has produced no evidence of a written contract upon which he bases this claim. Therefore, this Court determines that Plaintiff's claim is barred by the six year statute of limitations provided under R.C. 2305.07.

Therefore, this Court finds that no issue of fact remains to dispute that Plaintiff's Complaint is excluded in its entirety by the statute of limitations. As such, Defendant's Motion for Summary Judgment as to Plaintiff's Claim is GRANTED.

Defendant's Counterclaim

Defendant Kambouris has filed a counter claim requesting the Court declare Albert Thrower a vexatious litigator pursuant to R.C. 2323.52. R.C. 2323.52 provides in part:

> (A) As used in this section:
>
> (1) "Conduct" has the same meaning as in section 2323.51 of the Revised Code.
>
> (2) "Vexatious conduct" means conduct of a party in a civil action that satisfies any of the following:
>
> (a) The conduct obviously serves merely to harass or maliciously injure another party to the civil action.

(b) The conduct is not warranted under existing law and cannot be supported by a good faith argument for an extension, modification, or reversal of existing law.

(c) The conduct is imposed solely for delay.

(3) "Vexatious litigator" means any person who has habitually, persistently, and without reasonable grounds engaged in vexatious conduct in a civil action or actions, whether in the court of claims or in a court of appeals, court of common pleas, municipal court, or county court, whether the person or another person instituted the civil action or actions, and whether the vexatious conduct was against the same party or against different parties in the civil action or actions. . .

(C) A civil action to have a person declared a vexatious litigator shall proceed as any other civil action, and the Ohio Rules of Civil Procedure apply to the action.

R.C. 2323.52, the vexatious litigator statute, is constitutional in its entirety. Mayer v. Bristow (2000), 91 Ohio St. 3d 3, 740 N.E.2d 656, syllabus. "Finding a person is a vexatious litigator can be based upon his behavior in a single action or multiple civil actions." Buoscio v. Macejko (February 14, 2003), 7th Dist. No. 00-CA-00138, 2003 Ohio 689 at 4.

This case is one of eleven cases Plaintiff filed simultaneously in Cuyahoga County. It appears all of these actions were instituted based on checks written during 1988. Recovery based on a twelve year old check or an alleged twelve year old contract is clearly not warranted under existing statute of limitations law in Ohio. Plaintiff did not put forward a single good faith argument to this Court for the extension, modification or reversal of any existing Ohio law that would warrant the filing of the instant claim. Defendant Kambouris was forced to retain legal counsel and expend finances and time in defending a law suit that clearly had no basis for recovery under Ohio Law.

Additionally, Plaintiff filed this action in Cuyahoga County, although Summit County was clearly the proper jurisdiction, thereby costing the Defendant additional legal expenses and harassment to move the case to the proper jurisdiction. Finally, this Court finds that Plaintiff has

further misused Court resources by filing this frivolous lawsuit at the expense of the taxpaying public, due to his abuse of the *in forma pauperis* device. Thus resulting in needless expense to the named Defendant, while he abuses the legal system free of charge.

Additionally, this Court takes judicial notice of the evidence, presented in Defendant's Exhibits attached to her Motion for Summary Judgment, of Mr. Thrower's long history of unwarranted *pro-se* litigation, merely to support the fact that Plaintiff Thrower is extremely familiar with the legal system. Although Plaintiff is *pro se* in this action, he cannot assert that he is not familiar with the requirements of the legal system in Ohio, nor his responsibility to not pursue frivolous actions, such as this one, as instructed to him in other courts.

Therefore this Court makes a specific finding that Plaintiff Albert Thrower satisfies the definition of a vexatious litigator as defined in R.C. 2323.52, in that he acted in bad faith in bringing the instant case that was not warranted under existing law. Accordingly, Defendant's Motion for Summary Judgment as to the counter claim is GRANTED. This Court declares Albert Thrower a vexatious litigator pursuant to R.C. 2323.52(A)(3)(b) and further orders that Albert Thrower is required to obtain leave from the Court in order to initiate any legal action in Summit County Court of Common Pleas pursuant to R.C. 2323.52(D).

IT IS SO ORDERED.

Judge Bond

JUDGE JANE BOND

cc. Attorney Terrence Steele
Albert Thrower, *pro se*
Summit County Clerk of Courts

I certify this to be a true copy of the original
Diana Zaleski, Clerk of Courts

Katie Ann Deputy