

STATE OF MICHIGAN
COURT OF APPEALS

CHARLES MICHAEL,

Plaintiff-Appellant,

v

KENNETH PELLAND and WINIFRED
PELLAND,

Defendants-Appellees.

UNPUBLISHED
September 20, 2002

No. 229876
Wayne Circuit Court
LC No. 00-018921-CB

Before: Smolenski, P.J., and Talbot and Wilder, JJ.

PER CURIAM.

In this partnership case, plaintiff appeals as of right from the circuit court's order granting summary disposition in favor of defendants. The circuit court ruled that plaintiff's claims were time-barred. We affirm.

This Court reviews a trial court's decision to grant a motion for summary disposition under MCR 2.116(C)(7) de novo to determine if the moving party was entitled to judgment as a matter of law. *Rheaume v Vandenberg*, 232 Mich App 417, 420-421; 591 NW2d 331 (1998). When reviewing a motion under this rule, this Court considers all affidavits, pleadings and other documentary evidence submitted by the parties and, where applicable, construes the pleadings in favor of the nonmoving party. *Id.* at 421. Absent a disputed issue of fact, whether a cause of action is barred by a statute of limitations is a question of law that this Court reviews de novo. *Colbert v Conybeare Law Office*, 239 Mich App 608, 613-614; 609 NW2d 208 (2000). Further, this Court reviews the interpretation of statutes de novo as a question of law. *Id.* at 614.

In August 1978, plaintiff and defendant Kenneth Pelland formed a Michigan partnership called "Pelland & Michael," for the purpose of "acquiring, owning, developing and selling for a profit a vacant parcel of property" located on Cogswell Road in the city of Wayne. In September 1978, the partnership acquired the property for \$40,650. The partnership paid a cash down payment of \$7,000, made a prepayment of principal in the amount of \$4,788, and financed the remaining balance on land contract. The partnership paid these sums from capital contributed by both plaintiff and Kenneth Pelland.

Through the middle of 1980, both plaintiff and Kenneth Pelland contributed equal amounts of capital into the partnership, in order to make the regular land contract payments, pay the property taxes, and cover other professional fees. At that time, the relationship between the

partners broke down. In an effort to dissolve the partnership, plaintiff offered to either purchase Kenneth Pelland's interest in the partnership or sell his interest in the partnership to Kenneth Pelland. When the partners could not negotiate a purchase or a sale of partnership interest, plaintiff stopped contributing capital to the partnership. After July 1980, Kenneth Pelland made all of the land contract installment payments and paid all the property taxes.

In December 1983, Kenneth Pelland executed a land contract assignment that conveyed the partnership's interest in the property to himself and his wife, Winifred Pelland. Although plaintiff did not consent to the conveyance, letters exchanged between the parties' counsel at that time demonstrate that plaintiff was aware of the conveyance. In October 1984, the land contract vendors, Joseph L. Hayden and Lucille M. Hayden, conveyed the property to defendants by warranty deed. Defendants remained the owners of the property until they sold it in 1995 to Ford Motor Company. The instant action followed.

The circuit court granted summary disposition to defendants, ruling that plaintiff's claims were time-barred. On appeal, the pivotal issue is when the applicable statute of limitations began to run. Plaintiff argues that his claims arose in 1995; defendants counter that plaintiff's claims arose in 1983. We conclude that defendants' argument is correct. Plaintiff's claims arose in 1983, and are therefore time-barred.

As an initial matter, MCL 600.5827 provides that a claim accrues when the wrong is done, without regard to when the damage results. The term "wrong," as used in the accrual provision, refers to the date on which the plaintiff was harmed by the defendant's act, not the date on which the defendant acted. *Stephens v Dixon*, 449 Mich 531, 534-535; 536 NW2d 755 (1995). Two statutes of limitation are potentially applicable here. Pursuant to MCL 600.5807(8), a wronged party has six years to bring suit to recover damages or sums due for a breach of contract. That six-year period begins to run on the date the contract was breached. *Dewey v Tabor*, 226 Mich App 189, 193; 572 NW2d 715 (1997). Further, the six-year "catch-all" statute of limitations contained in MCL 600.5813 applies when the right to recovery arises from a statute. *National Sand, Inc v Nagel Construction, Inc*, 182 Mich App 327, 337 n 7; 451 NW2d 618 (1990). Regardless of which limitation period applies here, we conclude that plaintiff's suit is time-barred.

In December 1983, Kenneth Pelland executed a land contract assignment that conveyed the partnership's interest in the partnership property to himself and his wife. MCL 449.10(1) states the following regarding the conveyance of a partnership's real property:

Where title to real property is in the partnership name, any partner may convey a title to such property by a conveyance executed in the partnership name; but the partnership may recover such property unless the partner's act binds the partnership under the provisions of paragraph [1] of section 9,¹ or unless such property has been conveyed by the grantee or a person claiming through such grantee to a holder for value without knowledge that the partner, in making the conveyance, has exceeded his authority.

¹ MCL 449.9.

Further, MCL 449.9(1) states:

Every partner is an agent of the partnership for the purpose of its business, and the act of every partner, including the execution in the partnership name of any instrument, for apparently carrying on in the usual way the business of the partnership of which he is a member binds the partnership, unless the partner so acting has in fact no authority to act for the partnership in the particular matter, and the person with whom he is dealing has knowledge of the fact that he has no such authority.

Finally, MCL 449.9(2) states:

An act of a partner which is not apparently for the carrying on of the business of the partnership in the usual way does not bind the partnership unless authorized by the other partners.

The evidence indicates that Kenneth Pelland was not carrying on partnership business in the usual manner, he was not authorized by plaintiff to make the conveyance, and defendants were not bona fide purchasers. MCL 449.9(1); MCL 449.9(2); MCL 449.10(1). Thus, Kenneth Pelland lacked authority to convey the property to himself and his wife. According to the language of MCL 449.10(1), the partnership therefore had a claim to “recover” the property. *Backowski v Solecki*, 112 Mich App 401, 406-408; 316 NW2d 434 (1982). The applicable statutes do not say that the conveyance is “void” and that the real property remains in the partnership, as plaintiff claims. Instead, the unauthorized conveyance gave plaintiff a right to file a circuit court action on behalf of the partnership, in order to “recover” the property. MCL 449.10(1). In fact, a letter from 1983, drafted and sent by plaintiff’s then counsel, admitted knowledge of the conveyance as well as the applicable rule of law:

It is our position that Mr. Pelland’s conveyance of the partnership’s interest in the land contract was made without authority and is therefore voidable. It is our intention, if necessary, to commence an action in the name of the partnership against Mr. Pelland for recovery of the property.

This correspondence illustrates that plaintiff was aware of the conveyance and his cause of action under MCL 449.10(1).

A claim accrues when the wrong is done. MCL 600.5827. Because Kenneth Pelland did not have authority to convey the property to himself and his wife in 1983, and because plaintiff was aware of the conveyance and his cause of action under MCL 449.10(1), plaintiff’s claim clearly accrued in 1983. Plaintiff had six years to bring suit under a breach of partnership contract theory pursuant to MCL 600.5807(8), or six years under MCL 600.5813 under a theory arising from a statute, namely the applicable portions of the Uniform Partnership Act. MCL 449.1 *et seq.* Therefore, plaintiff’s suit became time-barred in 1989. MCL 600.5807(8); MCL 600.5813.

Plaintiff claims that the statute of limitations did not begin to run until defendants conveyed the property to Ford in 1995. Plaintiff’s argument is based on his theory that the real property in question remained in the partnership until that point. We disagree. Under MCL

449.10(1), “any partner may convey a title to such [real] property by a conveyance executed in the partnership name.” Although Kenneth Pelland wrongly transferred the property to himself and his wife, under MCL 449.10(1), title to the partnership property was transferred out of the partnership and the transfer was not void. The plain language of the statute explains that in these circumstances, after the transfer, the partnership “may recover” the property. Despite threatening to file suit to recover the property, plaintiff never did so. Contrary to plaintiff’s assertion, the property is no longer recoverable. MCL 449.10(1); MCL 600.5807(8); MCL 600.5813. Despite the fact that the sale of the property in 1995 allows plaintiff to more easily estimate his monetary damages, it is “the fact of identifiable and appreciable loss, and not the finality of monetary damages, that gives birth to the cause of action.” *Luick v Rademacher*, 129 Mich App 803, 806; 342 NW2d 617 (1983).

Relying on MCL 449.30, plaintiff also argues that his action for an accounting cannot begin to run until after the dissolution and winding up of the partnership. The statute provides: “[o]n dissolution the partnership is not terminated, but continues until the winding up of partnership affairs is completed.” MCL 449.30. Plaintiff claims that the partnership was never dissolved and that there was no winding up period. Therefore, plaintiff argues that the statute of limitations has not yet begun to run. We disagree.

MCL 449.43 provides that the right to an accounting accrues at the date of dissolution of the partnership:

The right, to an account of his interest shall accrue to any partner, or his legal representative, as against the winding up partners or the surviving partners or the person or partnership continuing the business, at the date of dissolution, in the absence of any agreement to the contrary.

Further, MCL 449.29 describes the meaning of the term “dissolution”:

The dissolution of a partnership is the change in the relation of the partners caused by any partner ceasing to be associated in the carrying on as distinguished from the winding up of the business.

Here, the evidence indicates a definite “change in the relation of the partners” in 1983, when Kenneth Pelland transferred the real property out of the partnership, to himself and his wife. MCL 449.29. Although Kenneth Pelland’s act was wrongful, title to the only partnership asset was transferred out of the partnership. MCL 449.10(1). The law is well settled that when a partnership no longer holds assets or ceases to do the business for which it was organized, a partnership is dissolved. *Schwier v Hurlburt*, 184 Mich 698, 702; 151 NW 603 (1915); *Potter v Tolbert*, 113 Mich 486, 489; 71 NW 849 (1897). Because Kenneth Pelland made an affirmative act to remove himself from a two-partner partnership, because the partnership no longer had any assets, and because plaintiff had stopped contributing capital to the partnership despite the terms of the partnership agreement, the evidence overwhelmingly shows that the partnership was “dissolved” in 1983.

Moreover, in a suit for dissolution and an accounting of an alleged partnership, our Supreme Court held that a claim for undistributed profits which the plaintiff failed to assert for six years from the time the partnership stopped doing business was presented too late.

Swiatkowski v Kroll, 331 Mich 179, 183; 49 NW2d 128 (1951). This instant case is similar, although over sixteen years passed from the time when the partnership could be considered “dissolved.” Hence, like *Swiatkowski*, this matter was presented too late, and plaintiff’s argument that the partnership is still intact, and that this suit can still be instituted, is incorrect. *Id.*

Plaintiff also argues that this Court should interpret his claims as mixed questions of law and fact, and should allow further factual development in the circuit court. However, because plaintiff’s suit became time-barred in 1989, further factual development would be futile. Our Supreme Court discussed the policies underlying the statute of limitations, as follows:

Statutes of limitations are intended to “compel the exercise of a right of action within a reasonable time so that the opposing party has a fair opportunity to defend”; “to relieve a court system from dealing with ‘stale’ claims, where the facts in dispute occurred so long ago that evidence was either forgotten or manufactured”; and to protect “potential defendants from protracted fear of litigation.” [*Moll v Abbott Laboratories*, 444 Mich 1, 14; 506 NW2d 816 (1993), quoting *Bigelow v Walraven*, 392 Mich 566, 576; 221 NW2d 328 (1974).]

The limitations period here expired in 1989, over ten years before plaintiff filed his complaint. This is an example of the type of stale claim that statutes of limitation were meant to prevent. Plaintiff’s claims are time-barred and summary disposition was appropriate. *Moll, supra* at 14; *Bigelow, supra* at 576.

Affirmed.

/s/ Michael R. Smolenski
/s/ Michael J. Talbot
/s/ Kurtis T. Wilder