

Autovest, L.L.C. v Weems
2021 NY Slip Op 32068(U)
September 20, 2021
Supreme Court, Bronx County
Docket Number: 34697/2020E
Judge: Rubén Franco
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX - IAS PART 26

AUTOVEST, L.L.C.

Index No. 34697/2020E

Plaintiff,

-against-

**MEMORANDUM
DECISION/ORDER**

ROSINE CARRIE WEEMS,

Defendant.

Rubén Franco, J.

This is an action for breach of contract. Defendant moves to dismiss the Complaint pursuant to (CPLR 3211 [a] (5)) on the grounds that the claims are barred by the statute of limitations under the Uniform Commercial Code (UCC) § 2-725 (1). Plaintiff opposes on the grounds that its claims are brought timely under North Carolina General Statute (NCGS) § 1-47.

On February 27, 2014, defendant entered into a contract with non-party Deacon Jones Kia (Dealer) to purchase a vehicle (Contract). The Dealer assigned the Contract to First Investors Financial Services, who in turn, assigned it to plaintiff.

Defendant defaulted on the Contract on June 14, 2015, and shortly thereafter, she moved to New York. On October 1, 2015, First Financial repossessed the Vehicle and sold it on January 21, 2016, which allegedly resulted in a payment deficiency. On February 5, 2016, First Financial sent a default letter to defendant and on December 7, 2020, plaintiff commenced this action to recover the amount of \$18,504.99 from defendant.

In support of dismissal, defendant argues as follows: First, that since the statute of limitations is procedural, the law of the forum state, which is New York, applies; alternatively, Texas law should apply since the cause of action accrued in Texas because First Investors Financial

Services, Inc. was a Texas resident and defendant defaulted in Texas. Second, that both New York and Texas have adopted the UCC, which has a four-year statute of limitations for contracts for the sale of goods; that the cause of action accrued on June 14, 2015 when defendant defaulted in making payments, and plaintiff commenced the action on December 7, 2020, approximately one-and one-half years after the four-year limitations period expired.

In opposition, plaintiff makes two arguments. First, that the applicable law is NCGS § 1-47 since the parties contractually agreed to be governed by laws of North Carolina and the court should apply the law selected in the Contract; and that defendant resided in North Carolina at the time the Contract was executed. Second, that under North Carolina law, the applicable statute of limitations is ten years, thus plaintiff's action could have been commenced anytime up to February 5, 2026; and that the cause of action accrued on February 5, 2016, when First Financial sent a default letter to defendant.

Standard for Review

On a motion pursuant to CPLR 3211, a Complaint must be liberally construed (CPLR 3026), the factual allegations therein must be accepted as true, the plaintiff must be given the benefit of all favorable inferences therefrom, and the court must decide only whether the facts alleged constitute any cause of action recognized under New York law (*Cortlandt St. Recovery Corp. v Bonderman*, 31 NY3d 30, 38 [2018]; *DeMicco Bros., Inc. v Consolidated Edison Co. of N.Y., Inc.*, 8 AD3d 99, 99-100 [1st Dept 2004]; see *TIAA Global Invs., LLC v One Astoria Sq. LLC*, 127 AD3d 75, 85 [1st Dept 2015]). CPLR 3211 (a) (5) provides a ground for dismissal based on the statute of limitations.

Choice of Law

It is well settled that contractual choice of law provisions typically apply only to substantive issues (*see Portfolio Recovery Associates, LLC v King*, 14 NY3d 410 [2010]; *Tanges v Heidelberg N. Am.*, 93 NY2d 48 [1999]), and the statute of limitations is considered procedural because it pertains to the remedy rather than the right (*id.*; quoting *Martin v Dierck Equip. Co.*, 43 NY2d 583 [1978]). Unless there is an express intention in the agreement that a specific statute of limitations was to apply to a dispute, the choice of law provision cannot be read to encompass the limitations period (*see Portfolio Recovery Associates, LLC v King*, 14 NY3d 410 at 416).

Unlike substantive law, “matters of procedure are governed by the law of the forum state” (*Royal Park Investments SA/NV v Stanley*, 165 AD3d 460 [1st Dept 2018]). CPLR 202 is a part of New York's procedural law (*2138747 Ontario, Inc. v Samsung C & T Corporation*, 31 NY3d 372 [2018]). Inasmuch as New York is the forum state, its procedural laws apply to determine whether plaintiff's claims are time-barred.

Statute of Limitations

CPLR 202 should be applied to determine whether claims are time-barred (*see Global Fin. Corp. v Triarc Corp.*, 93 NY2d 525 [1999]). CPLR 202 provides, in relevant part, that “[a]n action based upon a cause of action accruing without the state cannot be commenced after the expiration of the time limited by the laws of either the state or the place without the state where the cause of action accrued.” Consequently, when a nonresident sues on a cause of action accruing outside New York, CPLR 202 requires the cause of action to be timely under the limitation periods of both New York and the jurisdiction where the cause of action accrued (*Global Fin. Corp. v Triarc Corp.*, 93 NY2d 525 [1999]), and the shorter of the two will be applied (CPLR 202).

To determine the applicable limitations period under New York law, the court must determine whether the six-year period for breach of contracts under CPLR 213 applies, or the four-year period for breach of a sale of goods agreement under the UCC § 2-725 (*see Dormitory Authority of State of N.Y. v Baker*, 218 AD2d 515 [1st Dept 1995]; *Canadian Overseas Ores Ltd. v Compania de Acero Del Pacifico S.A.*, 528 FSupp 1337 [SDNY 1982]; *see also Hagman v Swenson*, 149 AD3d 1 [1st Dept 2017]).

To determine the limitations period where the cause of action accrued, if the claimed injury is an economic one, the courts typically look to “where the plaintiff resides and sustains the economic impact of the loss” (*Global Fin. Corp. v Triarc Corp.*, 93 NY2d at 529).

The court determines that plaintiff’s claims are time-barred. Plaintiff resides in New York and under the applicable New York law, the UCC four-year statute of limitations for breach of contract for the sale of goods governs. New York’s limitations period is the shortest of the different states that may have had a nexus with the Contract, or with defendant’s circumstances. Thus, New York’s four-year period applies (CPLR 202).

The court considered the remaining arguments and found them unavailing.

Accordingly, defendant’s motion to dismiss is granted.

This constitutes the Decision and Order of the court.

Dated: September 20, 2021



Rubén Franco, J.S.C.

HON. RUBÉN FRANCO