

STATE OF MICHIGAN  
COURT OF APPEALS

---

STATE TREASURER,

Plaintiff-Appellee,

v

DAVID M. SINUTKO,

Defendant-Appellant.

---

UNPUBLISHED

December 26, 2000

No. 215309

Oakland Circuit Court

LC No. 97-000230-CZ

Before: Griffin, P.J., and Holbrook, Jr., and Murphy, JJ.

PER CURIAM.

In this action to collect on a student loan, defendant appeals as of right from the order granting plaintiff's motion for summary disposition pursuant to MCR 2.116(C)(9) based on defendant's failure to state a valid defense to the claim asserted against him. We affirm.

Defendant first argues the trial court lacked subject-matter jurisdiction because plaintiff relied on a federal statute authorizing the award of collection costs. "Jurisdiction is a question of law that this Court reviews de novo." *Bass v Combs*, 238 Mich App 16, 23; 604 NW2d 727 (1999), citing *Jeffrey v Rapid American Corp*, 448 Mich 178, 184; 529 NW2d 644 (1995). The jurisdiction of the circuit courts is conferred by the Michigan Constitution and by statute. Const 1963, art 6, § 13; MCL 600.605; MSA 27A.605. "Circuit courts are courts of general jurisdiction, and have original jurisdiction over all civil claims and remedies 'except where exclusive jurisdiction is given by the constitution or by statute to some other court or where the circuit courts are denied jurisdiction by the constitution or statutes of this state.'" *Cherry Growers, Inc v Agricultural Marketing & Bargaining Bd*, 240 Mich App 153, 160; 610 NW2d 613 (2000), quoting *Farmers Ins Exchange v South Lyon Community Schools*, 237 Mich App 235, 241; 602 NW2d 588 (1999), quoting MCL 600.605; MSA 27A.605. Our Constitution provides:

Sec. 13. The circuit court shall have original jurisdiction in all matters not prohibited by law; appellate jurisdiction from all inferior courts and tribunals except as otherwise provided by law; power to issue, hear and determine prerogative and remedial writs; supervisory and general control over inferior courts and tribunals within their respective jurisdictions in accordance with rules

of the supreme court; and jurisdiction of other cases and matters as provided by rules of the supreme court. [Const 1963, art 6, § 13.]

Defendant has cited no authority which would deprive the circuit court of subject-matter jurisdiction in this case. State courts routinely interpret and apply federal law. See, e.g., *Pierson Sand & Gravel, Inc v Keeler Brass Co*, 460 Mich 372, 380-381; 596 NW2d 153 (1999); *Demings v City of Ecorse*, 127 Mich App 608, 616, 621; 339 NW2d 498 (1983), aff'd in part, remanded in part 423 Mich 49 (1985). Unless the federal law vests the federal courts with exclusive jurisdiction, the states and federal courts share concurrent jurisdiction. In *Gulf Offshore Co v Mobil Oil Corp*, 453 US 473; 101 S Ct 2870; 69 L Ed 2d 784 (1981), the United States Supreme Court clarified that the state courts have subject-matter jurisdiction over causes of action arising out of federal law unless federal law expressly confers exclusive jurisdiction to the federal courts. *Gulf Offshore Co, supra* at 477-479. "It is black letter law [ ] that the mere grant of jurisdiction to a federal court does not operate to oust a state court from concurrent jurisdiction over the cause of action." *Id.* at 479. Because the federal statute authorizing collection costs, 20 USC § 1091a, does not provide for exclusive jurisdiction of the federal courts under this provision, the trial court properly exercised subject-matter jurisdiction.

Defendant next argues the trial court's award of \$6,682.26 in collection costs was unsupported and without basis in fact. "Issues concerning the interpretation and application of statutes are questions of law for this Court to decide de novo." *Lincoln v General Motors Corp*, 461 Mich 483, 489-490; 607 NW2d 73 (2000). "This Court reviews a trial court's decision with respect to a motion for summary disposition de novo." *Village of Dimondale v Grable*, 240 Mich App 553, 563; 618 NW2d 23 (2000). "Summary disposition under MCR 2.116(C)(9) is proper if a defendant fails to plead a valid defense to a claim." *Id.* at 564. "A motion under MCR 2.116(C)(9) tests the sufficiency of a defendant's pleadings by accepting all well-pleaded allegations as true. If the defenses are so clearly untenable as a matter of law that no factual development could possibly deny plaintiff's right to recovery, then summary disposition under this rule is proper." *Id.* at 564 (citations omitted).

Collection costs are an element of plaintiff's damages which are not only expressly authorized, but are mandated, by federal statute. 20 USC § 1091a(b)(1). The relevant provision of the Higher Education Act states:

(b) Assessment of costs and other charges. Notwithstanding any provision of State law to the contrary –

(1) a borrower who has defaulted on a loan made under this title *shall be required to pay*, in addition to other charges specified in this title, reasonable collection costs[.] [20 USC § 1091a(b)(1) (emphasis added).]

Contrary to defendant's argument on appeal, plaintiff indicated to the trial court that collection costs "are mandated by the U.S. Government pursuant to federal regulation." Plaintiff explained: "They're based upon the lump sum of [ ] loan deficiency in this case, in excess of \$24,000, which is approximately today about \$31,000." Furthermore, the promissory notes on the loan contained an agreement to collection costs.

We conclude that plaintiff provided sufficient evidence supporting its request for collection costs. Plaintiff attached to its complaint a sworn statement of claims. The summary of claims form listed eleven separate disbursements, and also listed the interest and collection costs attributable to each disbursement. The form was notarized and signed by the manager of the Michigan Higher Education Assistance Authority. The trial court properly granted summary disposition to plaintiff for the entire amount requested, including collection costs, pursuant to MCR 2.116(C)(9), based on defendant's failure to assert a valid defense. The trial court did not err in awarding plaintiff collection costs as authorized by statute.

Finally, defendant argues that the amount of collection costs constituted a liquidated damages clause which was unenforceable because the amount was unreasonable. We first note that defendant failed to raise this issue through administrative proceedings with the Treasury. The trial court, in reliance on *US v LA Tucker Truck Lines, Inc*, 344 US 33; 73 S Ct 67; 97 L Ed 2d 54 (1952), stated that because defendant failed to challenge the collection costs with the Treasury in the manner prescribed by statute, an "administrative determination, such as an assessment is final and secure from collateral attack." We agree.

Furthermore, defendant does not specify a liquidated damages clause in the promissory notes. "A liquidated damages provision is simply an agreement by the parties fixing the amount of damages in case of a breach." *UAW-GM Human Resource Center v KSL Recreation Corp*, 228 Mich App 486, 508; 579 NW2d 411 (1998). The contractual provision for collection costs is not a liquidated damages clause because it does not represent an agreed-upon damages amount in the event of breach. Moreover, the award of collection costs was not based solely on the promissory notes. Plaintiff relied on the federal statute, which required collection costs to be assessed.

The award of collection costs was authorized by federal statute and supported by documentary evidence. Defendant failed to challenge the Treasury's initial assessment of collection costs as a portion of the amount owed in an administrative proceeding. The trial court did not err in awarding \$6,682.26 in collection costs to plaintiff.

Affirmed.

/s/ Richard Allen Griffin  
/s/ Donald E. Holbrook, Jr.  
/s/ William B. Murphy