

STATE OF MICHIGAN
COURT OF APPEALS

DONALD ROMAIN,

Plaintiff-Appellee,

v

NORTH CENTRAL ERECTORS, INC., and
FRED FEDAK,

Defendants-Appellants.

UNPUBLISHED

September 24, 2002

No. 231262

Crawford Circuit Court

LC No. 00-005116-CZ

Before: Smolenski, P.J., and Neff and Bandstra, JJ.

PER CURIAM.

Defendants appeal from an order of the trial court granting judgment to plaintiff on a motion for summary disposition. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Following a contract dispute, plaintiff filed an action against defendants in 1987. A consent judgment was entered and agreed to by the parties on January 12, 1990. The judgment required that defendants pay plaintiff \$15,000 on or before April 30, 1990. No payment was made before or since that date.

The instant action is not a new action but instead “an action . . . upon the [previous] judgment . . . for a new judgment or decree.” MCL 600.5809(3). Accordingly, we reject defendants’ arguments that the current action is barred by principles of res judicata or collateral estoppel.

We further reject defendants’ argument that this action is barred by the statute of limitations. Defendants rely on the statutory language that “the period of limitations is ten years for an action founded upon a judgment or decree rendered in a court of record of this state . . . from the time of the rendition of the judgment or decree.” *Id.* Because the present claim was not filed until March 14, 2000, which was more than ten years after the original judgment date of January 12, 1990, defendants claim that the limitations bar applies.

However, the statute further states that an action may be brought or maintained “*after the claim first accrued* . . . within the applicable period of time prescribed . . .” MCL 600.5809(1) (Emphasis added). Accordingly, our Court has held that recovery under MCL 600.5809(3) “is limited to . . . installments *accruing within* the ten years preceding the commencement of [the]

enforcement action.” *Rzadkowolski v Pefley*, 237 Mich App 405, 411-412; 603 NW2d 646 (1999) (Emphasis added).

No cause of action accrues with respect to a payment required to be made in the future until payment is not forthcoming on the date specified. Here, plaintiff had no cause of action against defendants when the January 12, 1990 consent judgment was entered by the court; the cause of action first accrued when defendants failed to make payment as required by that judgment by April 30, 1990. As a result, plaintiff had ten years from that date to bring this action for a new judgment and the trial court correctly so reasoned in holding that the March 14, 2000 complaint was not subject to the limitations bar.

We affirm.

/s/ Michael R. Smolenski

/s/ Janet T. Neff

/s/ Richard A. Bandstra