STATE OF MICHIGAN

COURT OF APPEALS

TECHNOLOGICAL ENTERPRISES, LTD., Plaintiff-Appellant,	UNPUBLISHED August 12, 2004
v	No. 245736 Macomb Circuit Court
KHAVAL KIKANI, a/k/a DHAVAL R. KIKANI, Defendant-Appellee.	LC No. 2002-004161-CZ

Before: Murray, P.J., and Markey and O'Connell, JJ.

PER CURIAM.

Plaintiff appeals as of right from a Macomb Circuit Court order granting summary disposition in favor of defendant on the basis that plaintiff, as a dissolved Illinois corporation, lacked the legal capacity to commence this independent action to renew a 1992 judgment that was entered in the Oakland Circuit Court. We affirm.

Plaintiff argues that the circuit court erroneously determined that it lacked the capacity under Illinois law to bring the present action. We disagree. We review a decision on a summary disposition motion de novo. *Schmalfeldt v North Pointe Ins Co*, 469 Mich 422, 426; 670 NW2d 651 (2003).

The parties agree that this issue is governed by Illinois law. The parties' arguments principally focus on an Illinois statute, 805 Ill Comp Stat Ann 5/12.80, which provides:

> The dissolution of a corporation either (1) by filing articles of dissolution in accordance with Section 12.20 of this Act, (2) by the issuance of a certificate of dissolution in accordance with Section 12.40 of this Act, (3) by a judgment of dissolution by a circuit court of this State, or (4) by expiration of its period of duration, *shall not take away nor impair any civil remedy available to or against such corporation, its directors, or shareholders, for any right or claim existing, or any liability incurred, prior to such dissolution if action or other proceeding thereon is commenced within five years after the date of such dissolution.* Any

> such action or proceeding by or against the corporation may be prosecuted or defended by the corporation in its corporate name. [Emphasis added.][1]

We begin by considering the plain language of this statute. On its face, the emphasized language appears to remove certain civil actions based on a right or claim existing prior to the dissolution of a corporation from whatever other restrictions there are in Illinois law against a dissolved corporation to bring suit if an action on the claim "is commenced within five years after the date of such dissolution." In this case, suit is being brought based on a judgment that was entered in 1992, which preceded plaintiff's dissolution in 1993. However, the present action was not filed until 2002, more than five years after the dissolution. Thus, the plain language of 805 Ill Comp Stat Ann 5/12.80 prevents plaintiff from having the legal capacity to bring this suit.

Plaintiff, however, argues that (1) 805 Ill Comp Stat Ann 5/12.80 does not apply because it only applies to claims existing at the time of dissolution, not to claims arising thereafter, and (2) that for this reason, the statutory five-year period does not constitute a bar to plaintiff's present action to renew the original judgment, which arguably did not accrue under MCL 600.5809(3) until after plaintiff's dissolution in 1993. We disagree. Plaintiff's claim to renew the judgment clearly accrued before plaintiff's dissolution, inasmuch as the judgment was entered in 1992. Under MCL 600.5809(3), an action "for a new judgment or decree" may be brought on a prior judgment within "the applicable period of limitations." Because it could have brought suit to renew the judgment at any point after the judgment was entered in 1992, plaintiff's claim for a renewed judgment accrued before its dissolution in 1993. Accordingly, the trial court correctly concluded that plaintiff lacked the capacity to bring or maintain this lawsuit.[2]

Neither *Canadian Ace Brewing Co v Joseph Schlitz Brewing Co,* 629 F2d 1183 (CA 7, 1980), nor *Citizens Electric Corp v Bituminous Fire & Marine Ins Co,* 68 F3d 1016 (CA 7, 1995), support plaintiff's position. The *Canadian Ace* Court applied Illinois law to suits brought by a dissolved corporation and individual former shareholders of that corporation. *Id.* at 1185 and n 2. In this regard, *Canadian Ace* notes that former shareholders of a corporation are permitted to bring an action on a judgment entered in favor of the corporation before its dissolution, based on a recognition of "the rights of former shareholders to succeed, *in their individual capacities,* to rights owned by their corporation prior to its dissolution." *Canadian Ace, supra* at 1186 (emphasis added). However, the only plaintiff in the present case is a dissolved corporation.

In *Citizens Electric,* suit was brought against a dissolved corporation for environmental contamination three days before the five-year period allowed by 805 Ill Comp Stat Ann 5/12.80

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[1] This is the current version of the statute, as amended, effective July 1, 2001. Although plaintiff has submitted an earlier version of the statute, there is no substantive difference between the current and former version with regard to the controlling language in this case.

[2] Further, even if 805 Ill Comp Stat Ann 5/12.80 did not apply, as defendant notes, under Illinois common law, dissolved corporations cannot not sue. *Henderson-Smith & Assoc, Inc v Nahamani Family Service Center, Inc,* 323 Ill App 3d 15, 19-20; 752 NE2d 33 (2001).

expired. *Citizens Electric*, *supra* at 1018. Eventually, after a settlement agreement was reached, the plaintiff class began garnishment proceedings against the dissolved corporation's insurers. *Id.* The court rejected application of 805 Ill Comp Stat Ann 5/12.80 because the garnishment action was brought as part of the same proceeding in which the suit against the dissolved corporation was brought and not as an independent suit. *Id.* at 1018, 1020. Unlike *Citizens Electric*, however, this case is an independent action initiated by the filing of a new complaint, not an enforcement action brought in the same case as that previously filed by plaintiff. Thus, *Citizens Electric* does not provide a basis for concluding that plaintiff had the capacity to bring the present suit.[3]

We also note that plaintiff's reliance on venue principles is misguided. Plaintiff's argument suggesting that the case was dismissed based on improper venue is simply incorrect. In granting defendant's motion for summary disposition, the circuit court did not address whether venue was proper in Macomb County. See *Keuhn v Michigan State Police*, 225 Mich App 152, 153; 570 NW2d 151 (1997) ("Venue relates to and defines the particular county or territorial area within the state or district in which the cause must be brought or tried."). While the circuit court mentioned that the present suit was brought in a different county than the one in which the original consent judgment was obtained, that remark was not directed to whether *venue* was proper in Macomb County, but instead to whether the present action should be considered a new action. It follows that plaintiff's reliance on Michigan venue statutes is misplaced.

In sum, we conclude that the circuit court properly granted summary disposition in favor of defendant. Under Illinois law, a dissolved corporation does not have the capacity to sue unless it is acting pursuant to a statutory exception to the common-law rule precluding a dissolved corporation from bringing suit. Plaintiff has not established the applicability of any statutory exception.

Affirmed.

/s/ Christopher M. Murray
/s/ Jane E. Markey
/s/ Peter D. O'Connell

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[3] Plaintiff also incorrectly relies upon *McGraw v Parsons*, 142 Mich App 22, 24-25; 369 NW2d 251 (1985), for that case held that an action on a judgment is a continuation of the original action for purposes of personal jurisdiction over a defendant. It did not address a party's capacity to sue.