

[Cite as *Francis David Corp. v. Scrapbook Memories & More*, 2010-Ohio-82.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 93376

FRANCIS DAVID CORP.

PLAINTIFF-APPELLEE

vs.

SCRAPBOOK MEMORIES & MORE, ET AL.

DEFENDANTS-APPELLANTS

**JUDGMENT:
REVERSED, JUDGMENT VACATED,
AND CASE REMANDED WITH INSTRUCTIONS**

Civil Appeal from the
Shaker Heights Municipal Court
Case No. 07-CVI-01392

BEFORE: Rocco, P.J., Celebrezze, J., and Sweeney, J.
RELEASED: January 14, 2010

JOURNALIZED:

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N.B. This entry is an announcement of the court's decision. See App.R. 22(B) and 26(A); Loc.App.R. 22. This decision will be journalized and will become the judgment and order of the court pursuant to App.R. 22(C) unless a motion for reconsideration with supporting brief, per App.R. 26(A), is filed within ten (10) days of the announcement of the court's decision. The time period for review by the Supreme Court of Ohio shall begin to run upon the journalization of this court's announcement of decision by the clerk per App.R. 22(C). See, also, S.Ct. Prac.R. 2.2(A)(1).

KENNETH A. ROCCO, P.J.:

{¶ 1} Defendants-appellants, Scrapbook Memories & More and Theresa A. Seyferth, appeal from a municipal court order denying their motion to vacate the default judgment entered against them on the ground that the judgment was void for lack of subject matter jurisdiction. We are compelled to agree with appellants that the judgment was void. Therefore, we must reverse the municipal court's decision, vacate the judgment entered against appellants, and remand with instructions for the municipal court to dismiss this case for lack of subject matter jurisdiction.

{¶ 2} This action was filed on August 17, 2007 as a small claims complaint in the Shaker Heights Municipal Court. The plaintiff, appellee Francis David Corp., doing business as First Hudson Leasing, complained that appellant Scrapbook Memories & More had entered into a 48-month lease for credit card processing equipment commencing March 31, 2003, and that \$1,450.75 remained due and payable on the lease. The complaint alleged that appellant Seyferth guaranteed Scrapbook Memories' lease obligations. Appellee therefore sought judgment against both appellants in this amount plus interest, attorneys' fees, and costs. Appellants did not appear. The magistrate recommended that the court enter judgment against both appellants for \$1,450.75 plus interest at eight percent, plus court costs.

The court adopted this recommendation and entered judgment accordingly on December 21, 2007.

{¶ 3} On April 6, 2009, appellants filed a motion to vacate the judgment entered against them because it was void for lack of subject matter jurisdiction. The municipal court denied the motion to vacate on May 12, 2009, stating that it would not apply *Cheap Escape Co., Inc. v. Haddox*, 120 Ohio St.3d 493, 2008-Ohio-6323, retrospectively. Appellants timely instituted the present appeal on May 22, 2009.

{¶ 4} Appellee has moved to dismiss this appeal as moot because it filed a satisfaction of judgment in the municipal court. Satisfaction of a judgment normally renders any appeal from that judgment moot. *Blodgett v. Blodgett* (1990), 49 Ohio St.3d 243, 245. However, this general rule presupposes that the lower court had jurisdiction over the subject matter of the action. *Id.*; see, also, *Nextel West Corp. v. Franklin Cty. Bd. of Zoning Appeals*, Franklin App. No. 03AP-625, 2004-Ohio-2943, ¶5. “[I]f the [lower] court did not have subject- matter jurisdiction over the action, its ‘judgment’ is void ab initio and a nullity. Therefore, no ‘satisfaction’ of such void judgment * * * could occur.” *Nextel West*, *supra*, at ¶5 (quoting a memorandum decision in a prior appeal of that matter). Consequently, an appeal may proceed on the question whether the trial court had subject matter jurisdiction, even if the judgment was allegedly satisfied. The only

issue appellants raise in this appeal is the municipal court's subject matter jurisdiction. This issue is not rendered moot by the alleged satisfaction of the judgment. See *Cook Family Invest. v. Billings*, Lorain App. No. 07CA009281, 2009-Ohio-73. Therefore, we overrule the motion to dismiss.

{¶ 5} Appellee has also suggested that this appeal must be automatically stayed because one of the appellants, Theresa Seyferth, has filed for bankruptcy court protection in the Eastern District of Wisconsin. Appellee alleges that Scrapbook Memories & More is a trade name used by Ms. Seyferth, implying that both appellants are involved in the bankruptcy. There is no evidence to support this allegation. In fact, appellee obtained a joint and several judgment against both defendants, implying that they are not one and the same. Ms. Seyferth's bankruptcy petition does not affect this appeal with respect to appellant Scrapbook Memories & More. Any stay with respect to Ms. Seyferth is automatic and does not depend on any action by this court. Consequently, we will proceed to decide this appeal.

{¶ 6} Appellants argue that the municipal court lacked subject-matter jurisdiction to enter the judgment against them because the municipal court's jurisdiction is limited to actions having a territorial connection to the court and this action has no such connection. The subject-matter jurisdiction of municipal courts was recently clarified by the Ohio Supreme Court in *Cheap Escape*, supra. The court began its analysis by noting that municipal courts

are created by statute and their subject-matter jurisdiction is defined by statute. *Id.* at ¶7. R.C. 1901.18 defines the subject-matter jurisdiction of the municipal courts as follows:

“Except as otherwise provided in this division or section 1901.181 of the Revised Code, subject to the monetary jurisdiction of municipal courts as set forth in section 1901.17 of the Revised Code, a municipal court has original jurisdiction within its territory in all of the following actions or proceedings * * *.”

{¶ 7} The actions or proceedings listed include claims for breach of contract such as the claim made in *Cheap Escape* and the claim made here. R.C. 1901.18(A)(3).

{¶ 8} In *Cheap Escape*, the Ohio Supreme Court determined that R.C. 1901.18 was ambiguous because the words “within its territory” “could refer to either ‘original jurisdiction’ or the list of actions in the statutory subsections.” *Cheap Escape*, at ¶12. “It is simply unclear from the statutory language whether the General Assembly intended to limit municipal court subject-matter jurisdiction to territorial matters or to give the municipal courts subject-matter jurisdiction over all matters suitable for municipal court review so long as the court sits within its territory when it disposes of a dispute.” *Id.* It resolved this ambiguity by reading R.C. 1901.18 in *pari materia* with related statutes. The court concluded that because other statutes defined the municipal courts’ territorial jurisdiction, it would be redundant to construe the phrase “within its territory” to refer to

the area in which the municipal court may sit. The court then determined that “the only other logical way to read the phrase is as a limit on the types of actions that a court may hear. Thus, the phrase ‘original jurisdiction within its territory in all of the following actions’ means that a municipal court may hear only those matters listed in R.C. 1901.18(A)(1) through (12) that have a territorial connection to the court.” *Id.* at ¶16.

{¶ 9} Appellee seemingly agrees with appellants that, under *Cheap Escape’s* construction of R.C. 1901.18, the municipal court did not have subject-matter jurisdiction over this case. More important, the complaint does not disclose any basis for finding a territorial connection between this case and the municipal court. The Shaker Heights Municipal Court has jurisdiction within the municipal corporations of Shaker Heights, University Heights, Beachwood, Pepper Pike, and Hunting Valley in Cuyahoga County. R.C. 1901.02(A) and (B). The complaint states that appellee is located in Independence, Ohio and that appellants are located in Racine, Wisconsin. While it is not clear where the lease agreement was executed or performed, there is no indication that it was executed or performed in any of the municipal corporations within the municipal court’s jurisdiction. Therefore, the municipal court did not have subject-matter jurisdiction.

{¶ 10} Appellee argues that the municipal court “arguably” had subject-matter jurisdiction at the time it decided this case because the statute

was ambiguous and the supreme court's decision in *Morrison v. Steiner* (1972), 32 Ohio St.2d 86, implied that any municipal court would have subject-matter jurisdiction to decide a case for breach of contract. We disagree. However ambiguous the law may have been before the Ohio Supreme Court's decision in *Cheap Escape*, the Supreme Court's decision was conclusive on this issue. "[A] decision of the Supreme Court interpreting a statute is retrospective in its operation, because it is a declaration of what is and always was the correct meaning or effect of the enactment." *Anello v. Hufziger* (1988), 48 Ohio App.3d 28, 30. Therefore, the requirement that the case must have a territorial connection to the municipal court is and always was necessary to establish the court's subject-matter jurisdiction.

{¶ 11} "There are exceptions to the general rule [of retrospective operation], as illustrated by *Chevron Oil Co. v. Huson* (1971), 404 U.S. 97, 92 S.Ct. 349, 30 L.Ed.2d 296. A high court decision will not be applied retroactively if the decision meets three 'separate factors.' *Id.* at 106-107, 92 S.Ct. at 355-56. As applicable to the instant case, these three factors may be expressed in question form:

{¶ 12} "(1) Is the decision one of first impression that was not clearly foreshadowed?

{¶ 13} "(2) Will retrospective application retard the operation of the statute, considering its prior history, purpose and effect?

{¶ 14} “(3) Will the retrospective application produce substantial inequitable results (‘injustice or hardship’)?”

{¶ 15} *Anello*, supra, at 30. The Ohio Supreme Court has held that “the *Chevron Oil* test is not only consistent with Ohio law in addressing retroactive/prospective application of court decisions, but adds the important consideration of whether the decision addresses an issue of first impression.” *DiCenzo v. A-Best Prods. Co., Inc.*, 120 Ohio St.3d 149, 2008-Ohio-5327, ¶18.

{¶ 16} The Supreme Court’s decision in *Cheap Escape* was one of first impression, clarifying an ambiguity in R.C. 1901.18 that had always existed. The court found both potential interpretations of the statute to be reasonable, but chose one of them as the more sensible in light of surrounding statutes. We are not aware of any prior cases adopting or rejecting either of these interpretations before. The fact that this ambiguity was previously unexplored did not allow litigants to choose one construction over the other.

{¶ 17} Retrospective application of the holding in *Cheap Escape* would actually promote, not retard, the operation of R.C. 1901.18. The statute establishes the subject-matter jurisdiction of the municipal courts. Subject-matter jurisdiction is fundamental. It defines the court’s power to decide cases. Subject-matter jurisdiction can never be waived; any decision entered without subject-matter jurisdiction is void. *Pratts v. Hurley*, 102 Ohio St.3d 81, 2004-Ohio-1980, ¶11. If we were to apply *Cheap Escape*

prospectively we would, in effect, grant municipal courts jurisdiction which *Anello* tells us they never had.

{¶ 18} Finally, it will not be inequitable to apply *Cheap Escape* retrospectively. Appellee's protestations to the contrary, no one has a vested right or interest in a judgment that was void ab initio, no matter how much time elapses before it is challenged. Plaintiffs who chose to file their cases in courts whose subject-matter jurisdiction was questionable were not forced to do so; they were not prevented from filing in a court whose jurisdiction was clear. Their voluntary decision to file in a court of questionable subject-matter jurisdiction makes more palatable the few cases in which the passage of time may bar the plaintiff from refileing in the proper jurisdiction now.

{¶ 19} Therefore, we find the municipal court did not have jurisdiction over this case. The court erred by denying appellants' motion to vacate. We reverse this decision, vacate the municipal court's judgment in this case, and remand with instructions to dismiss the matter for lack of subject-matter jurisdiction.

Reversed, judgment vacated, and remanded with instructions.

It is ordered that appellants recover from appellee costs herein taxed.

The court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate be sent to said court to carry this judgment into execution.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

KENNETH A. ROCCO, PRESIDING JUDGE

FRANK D. CELEBREZZE, JR., J., and
JAMES J. SWEENEY, J., CONCUR