

DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FOURTH DISTRICT
January Term 2011

MICHAEL CUDAHY,
Appellant,

v.

RONALD L. FICK and DUNWODY, WHITE & LANDON, P.A.,
Appellees.

No. 4D09-440

[February 23, 2011]

PER CURIAM.

Appellant Michael Cudahy appeals an order dismissing with prejudice his claims against Ronald Fick and Dunwody, White & Landon, P.A. Cudahy was the remainder beneficiary of a qualified personal residence trust established to hold Cudahy's mother's house. Fick was Cudahy's mother's attorney. Cudahy raised several issues in this appeal: (1) whether the trial court erred in denying Cudahy's motion to amend the complaint; (2) whether the statute of limitations warrants dismissal of Cudahy's complaint with prejudice; and (3) whether the defendants owed the plaintiff a duty.

We agree with Cudahy that pursuant to Florida Rule of Civil Procedure 1.190(a) he had the right to amend the complaint once because Fick had not filed a responsive pleading and he had not previously amended his complaint. The supreme court's decision in *Boca Burger, Inc. v. Forum*, 912 So. 2d 561 (Fla. 2005), supports Cudahy's position that his right to amend once did not expire since Fick had not yet filed a responsive pleading. We reverse on this one issue alone and remand to allow Cudahy leave to amend the complaint. Because the other issues raised by Cudahy may recur after the trial court considers his amended complaint, we do not address them at this time.

Reversed.

POLEN, LEVINE, JJ., and GREENHAWT, SUSAN, Associate Judge, concur.

* * *

Appeal from the Circuit Court for the Fifteenth Judicial Circuit, Palm Beach County; Thomas H. Bardkull, III, Judge; L.T. Case No. 502008CA0032112XXXXM.

Marjorie Gadarian Graham of Marjorie Gadarian Graham, P.A., Palm Beach Gardens, and Alan C. Espy of Alan C. Espy, P.A., Palm Beach Gardens, for appellant.

Debra A. Jenks and Jay W. Eng of Schwed McGinley & Kahle, LLC, Palm Beach Gardens, for appellees.

Not final until disposition of timely filed motion for rehearing.