

STATE OF MICHIGAN
COURT OF APPEALS

JEFF QUINLAN and J.J. QUINLAN COMPANY,

Plaintiffs-Appellants,

v

ATLANTIC TOOL & DIE COMPANY,

Defendant-Appellee.

UNPUBLISHED

December 21, 2021

No. 355690

Oakland Circuit Court

LC No. 2020-180538-CB

Before: BOONSTRA, P.J., and GLEICHER and LETICA, JJ.

PER CURIAM.

For 23 years, Jeff Quinlan sold parts for Atlantic Tool & Die Company (ATD) to two Michigan companies. Under their oral contract, ATD agreed to pay Quinlan and his company, JJ Quinlan Co., commissions for the life of the parts sold. However, when ATD terminated this relationship, it stopped paying Quinlan commissions. The parties filed suits against each other, seeking a declaration of their rights and duties, as well as damages; ATD filed its action in Ohio four hours before Quinlan filed his suit in Oakland County, Michigan. The Oakland Circuit Court summarily dismissed Quinlan’s complaint as there was a pending action between the same parties based on the same claims. We affirm.

I. BACKGROUND

On November 27, 2019, ATD terminated Quinlan as its exclusive sales representative to two Michigan-based companies—Key Safety Systems (d/b/a Joyson) and Autoliv. ATD paid Quinlan commissions through the end of that month. Quinlan believed he was entitled to continued commissions for the parts sold to date pursuant to the parties’ oral agreement. The parties attempted to negotiate a resolution, but on March 25, 2020, Quinlan notified ATD by email that he would be filing suit. ATD did not respond. Instead, ATD filed a complaint in an Ohio court at 1:18 p.m. on March 27, without first notifying Quinlan. Quinlan filed the current action against ATD at 5:32 p.m. that same day. Quinlan was not served with the Ohio action until March 31.

Quinlan filed a motion to dismiss the Ohio action for failure to state a claim and raised challenges to jurisdiction and venue. ATD, on the other hand, filed a motion to dismiss the Michigan action pursuant to MCR 2.116(C)(6), as it had already commenced a lawsuit in Ohio

concerning the same subject matter. The parties agreed to postpone the hearing on the Michigan motion until the Ohio court resolved the motion to dismiss that action. The Ohio court ultimately denied Quinlan's motion to dismiss and retained jurisdiction over the action.

Quinlan then filed an answer and counterclaim in the Ohio action seeking the same relief as in his Michigan complaint: a declaration that ATD violated the Michigan Sales Representative Act, MCL 600.2961, by failing to pay Quinlan post-termination commissions, and damages pursuant to that failure. The Oakland Circuit Court subsequently granted ATD's motion to dismiss the Michigan action pursuant to MCR 2.116(C)(6), concluding that the Michigan action alleged "the same wrongs based on the exact same facts as those already pending in" the Ohio court.

II. ANALYSIS

Quinlan now challenges the Oakland Circuit Court's summary dismissal of his Michigan complaint. We review de novo a court's resolution of a motion for summary disposition under MCR 2.116(C)(6). *Valeo Switches & Detection Sys, Inc v Emcom, Inc*, 272 Mich App 309, 311; 725 NW2d 364 (2006). MCR 2.116(C)(6) provides for the summary dismissal of an action where "[a]nother action has been initiated between the same parties involving the same claim." "The rule is designed to stop parties from endlessly litigating matters involving the same questions and claims as those presented in pending litigation. In other words, its purpose is to prevent 'litigious harassment' involving the same questions as those in pending litigation." *Rowry v Univ of Michigan*, 441 Mich 1, 20-21; 490 NW2d 305 (1992) (RILEY, J., concurring) (citations omitted).

The Oakland Circuit Court did not err in determining that another action had been initiated between the parties involving the same claims. MCR 2.101(B) states that an action is commenced upon filing a complaint with the court and not upon service of process. "The word 'initiate' is a synonym of the word 'commence.'" *Fast Air, Inc v Knight*, 235 Mich App 541, 544; 599 NW2d 489 (1999), citing *Black's Law Dictionary* (5th ed). Reading MCR 2.101(B) together with MCR 2.116(C)(6), it is clear that the Ohio action was initiated before the Michigan action. ATD filed its complaint in Ohio four hours before Quinlan filed his complaint in Michigan. ATD's failure to notify Quinlan of its filing is of no legal consequence. Indeed, ATD likely filed the Ohio action *because* Quinlan had given ATD the courtesy of notifying it of the forthcoming Michigan action. It is similarly irrelevant that Quinlan did not receive service for another four days.

The Oakland Circuit Court also properly determined that the Michigan action was "between the same parties involving the same claim" as the Ohio action. Granting a motion for summary disposition under MCR 2.116(C)(6) does not require that all the parties and all the issues be identical. Rather, the two suits must be "between the same parties involving the same claim." *Fast Air, Inc*, 235 Mich App at 549, quoting *JD Candler Roofing Co, Inc v Dickson*, 149 Mich App 593, 598; 386 NW2d 605 (1986). Thus, "complete identity of the parties is not necessary." *Kruger v White Lake Twp*, unpublished per curiam opinion of the Court of Appeals, issued April 2, 2002 (Docket No. 499446), p 2, 6, quoting *JD Candler Roofing*, 149 Mich App at 598. The two suits "must be based on the same or substantially the same cause of action." *Id.* at 6. In the two suits at issue, the parties are identical. Here, both actions involve exactly the same facts and "the same or substantially the same cause of action": what the oral contract between the parties provided and whether ATD owes Quinlan additional commissions after his termination.

Quinlan's Michigan action relied on the statutory duty to pay commissions to sales representatives under MCL 600.2961, but also raised claims of breach of contract, unjust enrichment, and declaratory judgment. ATD's Ohio complaint relied on a complementary Ohio statute and sought a declaration that it did not owe Quinlan commissions for parts sold to Autoliv and Joyson. Where Quinlan requested commissions on all parts sold to Autoliv and Joyson, "through the life of the part; and as established through pattern and practice of the parties over 23 years" in the Michigan complaint, ATD sought declaratory relief that it does not owe "post termination commissions extending indefinitely into the future" in its Ohio complaint. It is not fatal that the complaints were filed under two different statutory schemes and sought slightly different relief; both complaints sought a resolution of whether ATD owed Quinlan commissions based on the oral contract. The actions are substantially similar and it is irrelevant that the Ohio complaint did not initially address Quinlan's claims of common-law breach of contract or unjust enrichment, or that the actions are governed by different statutory frameworks.

Furthermore, Quinlan's counterclaim in the Ohio action reasserts the same four claims filed in the Michigan action: (1) violation of MCL 600.2961, (2) breach of contract, (3) unjust enrichment, and (4) a claim for declaratory judgment. Quinlan's counterclaim reinforces that the parties and dispute in both actions remain identical; the only difference is that the parties' rights are being vindicated in Ohio and not Michigan.

Because the Ohio court denied Quinlan's motion to dismiss the action and retained jurisdiction, and because Quinlan submitted to the jurisdiction of the Ohio court by filing an answer and counterclaim, we have no ground to consider the parties' jurisdictional arguments raised on appeal.

We affirm.

/s/ Mark T. Boonstra
/s/ Elizabeth L. Gleicher
/s/ Anica Letica