[Cite as *Barcosh, Ltd. v. Dumas*, 2010-Ohio-3066.]

IN THE COURT OF APPEALS OF OHIO
SIXTH APPELLATE DISTRICT
LUCAS COUNTY

Barcosh, Ltd.	Court of Appeals No. L-10-1001
Appellee	Trial Court No. CI0200601880
v.	
Walter C. Dumas, et al.	**DECISION AND JUDGMENT**
Appellants	Decided: June 30, 2010

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Eugene I. Selker and James D. Caruso, for appellee.

David W. Doerner, for appellants.

* * * * *

COSME, J.

{¶ 1} This is an appeal from a decision denying a motion by appellants, Walter C. Dumas, and his law firm, Dumas and Associates Law Corporation, (collectively, "Debtor"), to vacate a default judgment rendered against them and in favor of appellee, Barcosh, Ltd. Debtor argued that the default judgment was void for lack of subject

matter jurisdiction under R.C. 1319.12, because Barcosh was acting as a "collection agency" and failed to commence litigation in the county in which Debtor resides. The trial court denied Debtor's motion, finding that although Barcosh was a "collection agency," the judgment was not void because R.C. 1319.12 merely governs venue. We conclude that the trial court erred in its application of R.C. 1319.12, because the record lacks competent, credible evidence showing that Barcosh was a collection agency subject to the statute. Nonetheless, we affirm the judgment of the trial court because it did not err in denying Debtor's motion to vacate.

I. BACKGROUND

{¶ 2} Between 2003 and 2004, the Core Funding Group, L.P. made two loans totaling nearly $1.5 million to Debtor. In connection with the loans, Debtor signed promissory notes containing a forum selection clause consenting to venue and jurisdiction in Lucas County, Ohio.

{¶ 3} Debtor failed to repay the loans and Core assigned the notes to Barcosh. In February 2006, Barcosh filed a complaint against Debtor in the Lucas County Court of Common Pleas seeking judgment on the two promissory notes.

{¶ 4} Debtor failed to respond to the complaint, and Barcosh obtained a default judgment on August 3, 2006. Following extensive litigation, Barcosh successfully domesticated this judgment in Louisiana and is in the process of enforcing it.[1]

[1]See *Barcosh, Ltd. v. Dumas* (C.A.5, 2008), 270 Fed.Appx. 347.

{¶ 5} On August 27, 2009, Debtor filed a motion to vacate the default judgment in the Lucas County Court of Common Pleas. Debtor alleged that the trial court lacked subject matter jurisdiction under R.C. 1319.12(D), which requires a "collection agency" to bring an assigned collection action in the county in which the debtor resides. Debtor does not reside in Lucas County, Ohio, but in Louisiana.

{¶ 6} Barcosh countered that Debtor presented no evidence that Barcosh was acting as a "collection agency" subject to R.C. 1319.12 when it filed the complaint, and, in the alternative, that R.C. 1319.12(D) does not control subject matter jurisdiction, but rather, venue, to which Debtor waived any objection.

{¶ 7} The trial court denied Debtor's motion to vacate the default judgment on December 10, 2009. The court did not address whether Barcosh was a collection agency subject to R.C. 1319.12, but assuming as much, it concluded that it had subject matter jurisdiction to issue the judgment because R.C. 1319.12(D) is a venue provision.

{¶ 8} Debtor now appeals the trial court's December 10, 2009 judgment, raising two assignments of error.

II. COLLECTION AGENCIES AND R.C. 1319.12

{¶ 9} In its first and second assignments of error, Debtor contends that:

{¶ 10} "1. The trial court erred when it did not find R.C. 1319.12(D) is a subject-matter jurisdiction requirement for proper commencement of an assigned debt collection action filed by a R.C. 1319.121(A)(1) collection agency, which cannot be circumvented by application of a forum selection provision in a debt instrument.

{¶ 11} "2. The trial court erred when it failed to rule the absence of a subject matter requirement in a R.C. 1319.12 assigned debt collection action against appellants renders any judgment in the action void ab initio, and mandates vacation of the judgment."

{¶ 12} R.C. 1319.12 authorizes the assignment of certain creditor claims to collection agencies and sets forth requirements for commencing litigation for the collection of such claims. The statute regulates the actions of collection agencies only. Thus, initially we must determine whether the trial court properly considered Barcosh a collection agency subject to R.C. 1319.12.

{¶ 13} This issue presents a mixed question of law and fact. Application of the definition of "collection agency" under R.C. 1319.12(A)(1) is a matter of law that is dependent on the factual predicate in the record that, as a question of fact, must be sufficient to show that Barcosh was a collection agency.

{¶ 14} When the record presents a mixed issue of law and fact, a reviewing court should uphold the trial court's findings of fact where the record contains competent, credible evidence to support such findings. See *Borda v. Sandusky Ltd.*, 166 Ohio App.3d 318, 2006-Ohio-2112, ¶ 11; *Wiltberger v. Davis* (1996), 110 Ohio App.3d 46, 51-52. Any purely legal issues and the trial court's application of the law to the facts are subject to de novo review. See *Borda*, 2006-Ohio-2112 at ¶ 11; *Wiltberger*, 110 Ohio App.3d at 51-52.

{¶ 15} R.C. 1319.12(A)(1) defines "collection agency" as "any person who, for compensation, contingent or otherwise, or for other valuable consideration, offers services to collect an alleged debt asserted to be owed to another." The definition generally does not include the purchaser of a debt that pursues collection on its own behalf. *Calvary Investments, L.L.C. v. Vonderheide* (Nov. 9, 2001), 1st Dist. No. C-010359.

{¶ 16} In the present matter, the trial court treated Barcosh as a collection agency without comment. The judgment does not disclose what evidence, if any, the trial court relied on to reach its determination.[2] Our review of the record reveals two items that may suggest that Barcosh was a debt collection agency: (1) language in the complaint, and (2) an unsworn "deposition" attached to Barcosh's motion to vacate.

A. Language in the Complaint

{¶ 17} First, Barcosh twice states in its complaint that it was "an assignee of a [Promissory Note] which was executed and delivered to Core Funding Group, L.P."

{¶ 18} Language of assignment pervades R.C. 1319.12, and at least one court has considered similar language in a complaint in its determination of whether a plaintiff was a collection agency subject to the statute. *Haley v. DCO Internatl., Inc.*, 9th Dist. No. 24820, 2010-Ohio-1343, ¶ 18-19. The word "assignee," is defined as "[o]ne to whom property rights or powers are transferred by another." Black's Law Dictionary

[2]The record does not contain the actual loan documents or any written instruments recording their assignment.

(8 Ed.2004) 127. However, it is a "protean" term, whose use "is so widespread that it is difficult to ascribe positive meaning to it with any specificity." Id.

{¶ 19} We find that the limited use of the term "assignee" in the complaint reveals little as to the nature of the relationship between Barcosh, Core and Debtor. At most, it evidences that Core transferred all or part of the notes to Barcosh. It does not show that Barcosh offered services to collect the debt owed to Core for valuable consideration, as required by R.C. 1319.12.

B. Deposition

{¶ 20} Second, Debtor sought to prove Barcosh's status as a collection agency by producing an unsworn deposition from an unrelated collection matter involving Barcosh and a different debtor. In that deposition, Barcosh's managing partner stated that it performed what was essentially "collection agency" work for Core.

{¶ 21} We note that the deposition is unsworn, uncertified and from a different case. Barcosh did not raise these issues at the trial level and does not argue them here. Nonetheless, we find that the unsworn "deposition" is not competent evidence and has no probative value. While it purports to show that Barcosh performed "collection agency" work for Core in the past, it does not show that Barcosh acted as a collection agency for Core in this specific case, as required by R.C. 1319.12.

III. CONCLUSION

{¶ 22} In sum, the record simply does not contain competent, credible evidence showing that Barcosh was acting as a collection agency when it filed its complaint

against Debtor – i.e., that it offered its services to collect the specific debts that Debtor owed to Core for valuable consideration. Accordingly, the trial court erred when it treated Barcosh as a collection agency subject to R.C. 1319.12.

{¶ 23} Because Debtor has not shown that R.C. 1319.12 is applicable to this matter, we need not address whether R.C. 1319.12(D) controls subject matter jurisdiction or venue.[3] An appellate court will not reverse a correct judgment simply because an erroneous reason forms its basis. *Reynolds v. Budzik* (1999), 134 Ohio App.3d 844, 846, fn. 3, citing *Agricultural Ins. Co. v. Constantine* (1944), 144 Ohio St. 275, 284. Although the trial court denied Debtor's motion to vacate based on its analysis of R.C. 1319.12(D), it did not err in denying the motion. The two assignments of error are not well-taken.

{¶ 24} Accordingly, we affirm the October 24, 2008 judgment of the Lucas County Court of Common Pleas. Appellants are ordered to pay the costs of this appeal pursuant to App.R. 24.

JUDGMENT AFFIRMED.

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[3]We note that Debtor did not argue in the trial court, or on appeal, that the judgment was void for lack of personal jurisdiction. Accordingly, we cannot address that argument here. See *Kries v. Kries* (June 5, 1992), 6th Dist. No. L-91-368 (finding that "appellee waived the defense of lack of jurisdiction over his person when he filed his motion to vacate for lack of subject matter jurisdiction and did not include the former defense in that motion."). See, also, *Freedom Mtge. Corp. v. Mullins*, 10th Dist. Nos. 08AP-761, 09-AP-162, 2009-Ohio-4482, ¶ 22; *Grieger v. Weatherspoon* (Apr. 19, 2002), 6th Dist. No. E-01-046.

A certified copy of this entry shall constitute the mandate pursuant to App.R. 27. See, also, 6th Dist.Loc.App.R. 4.

Mark L. Pietrykowski, J. _____
JUDGE

Arlene Singer, J. _____
JUDGE

Keila D. Cosme, J.
CONCUR. _____
JUDGE