

Rel: March 29, 2024

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ALABAMA COURT OF CIVIL APPEALS

OCTOBER TERM, 2023-2024

CL-2023-0234

Andrew Archie

v.

SoFi Lending Corp.

**Appeal from Walker Circuit Court
(CV-20-900331)**

MOORE, Presiding Judge.

Andrew Archie appeals from a summary judgment entered by the Walker Circuit Court ("the circuit court") in favor of SoFi Lending Corp. ("SoFi"). We affirm the judgment.

Background

On November 17, 2020, SoFi filed in the circuit court a complaint against Archie, alleging that Archie had defaulted on a loan agreement with SoFi and that Archie owed SoFi \$20,796.99. On February 2, 2021, Archie filed an answer denying the material allegations in the complaint and asserting, among other affirmative defenses, that SoFi's breach-of-contract claim was barred by the applicable statute of limitations. On July 12, 2021, SoFi filed a motion for a summary judgment. Archie responded to the motion by arguing, among other things, that California law applied to the case and that SoFi's claim was barred by the four-year statute of limitations set forth in Cal. Civ. Proc. Code §§ 335 and 337(a) ("the California statute of limitations") (providing, in part, that "[a]n action upon any contract, obligation or liability founded upon an instrument in writing" must be commenced "[w]ithin four years").

At some point in September 2022, the circuit court conducted a hearing on the motion for a summary judgment; following the hearing, both parties submitted supplemental briefs on the question whether the California statute of limitations or Ala. Code 1975, § 6-2-34 ("the Alabama statute of limitations"), applied to the case. The Alabama

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statute of limitations provides that an action for recovery on a loan or a simple contract "must be commenced within six years." The circuit court scheduled a second hearing on the motion for a summary judgment for November 29, 2022; neither Archie nor his counsel appeared at the hearing. On December 1, 2022, the circuit court entered a judgment noting Archie's absence and granting the motion for a summary judgment "[b]ased on the supplemental briefs filed by both parties." The judgment, after impliedly finding that the Alabama statute of limitations applied, awarded SoFi \$20,796.99 plus costs.

On December 2, 2022, Archie filed a postjudgment motion requesting that the circuit court vacate the summary judgment due to the excusable neglect of his counsel in failing to appear for the hearing, which, he said, had occurred as the result of a calendaring error. On January 2, 2023, Archie filed a supplemental postjudgment motion asserting that the circuit court had erred in failing to apply the California statute of limitations to bar SoFi's claim.¹ The circuit court allowed the

¹The supplemental motion was timely filed under Rule 6(a), Ala. R. Civ. P., because the 30-day deadline for filing a postjudgment motion expired on December 31, 2022, which was a Saturday.

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postjudgment motions to be denied by operation of law. See Rule 59.1, Ala. R. Civ. P. Archie timely appealed on April 13, 2023.²

Issues

Archie initially argues that the summary judgment should be set aside based on his counsel's excusable neglect in failing to appear for the summary-judgment hearing. However, Archie argues only caselaw holding that a calendaring error by a party's attorney may justify a court's setting aside an involuntary dismissal under Rule 41(b), Ala. R. Civ. P. See McGinnis v. Steeleman, 199 So. 3d 69, 73 (Ala. Civ. App. 2015). In the judgment, the circuit court noted the failure of Archie and his counsel to appear, which may be a ground for a Rule 41(b) dismissal, see id., but the circuit court did not enter a summary judgment for SoFi on that basis. The circuit court entered a summary judgment for SoFi based on the briefs submitted by the parties, solely under Rule 56, Ala. R. Civ. P. Cf. Smith v. East Side Motors, Inc., 406 So. 2d 414, 415 (Ala. Civ. App. 1981) (holding that a judgment entered following evidentiary

²This court referred the parties to appellate mediation. After approximately seven months, the parties did not settle the dispute in mediation, and the case was reinstated to the court's active docket.

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hearing conducted in absence of party who failed to appear was not a Rule 41(b), Ala. R. Civ. P., dismissal, but a judgment on the merits). Thus, we cannot reverse the circuit court's judgment based on this argument, and we will not consider it further.

Archie also argues that the circuit court erred in entering the summary judgment in favor of SoFi. Archie maintains that the circuit court committed an error of law in failing to apply the California statute of limitations to the case. Archie contends that the language of the loan agreement unambiguously provides that California law applies. According to Archie, when applying California law, SoFi's breach-of-contract claim would have been extinguished before SoFi commenced its action in the circuit court.

Standard of Review

Rule 56(c)(3), Ala. R. Civ. P., provides that a summary judgment may be entered when "there is no genuine issue as to any material fact and ... the moving party is entitled to a judgment as a matter of law." "Our standard of review in cases involving summary judgments is de novo" Lee v. Burdette, 715 So. 2d 804, 806 (Ala. Civ. App. 1998). "When the facts are undisputed, no presumption attaches to the trial

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court's judgment and the reviewing court must determine whether the trial court correctly applied the law to the facts." Young v. Strong, 694 So. 2d 27, 28 (Ala. Civ. App. 1997).

Analysis

The salient facts are undisputed. Archie entered into a loan agreement with SoFi on June 15, 2016, pursuant to which he was required to make monthly payments of \$342.21. The loan agreement provides, in pertinent part:

"I [Archie] understand that you [SoFi] are located in California and that my Application will be entered into in the same state. CONSEQUENTLY, UNLESS PROHIBITED BY APPLICABLE LAW, OR UNLESS I RESIDE IN INDIANA, SOUTH DAKOTA, OR PENNSYLVANIA, THE PROVISIONS OF MY LOAN, INCLUDING THIS AGREEMENT, WILL BE GOVERNED [BY] CALIFORNIA LAW, WITHOUT REGARD TO CONFLICT OF LAW RULES."

(Capitalization in original.) It is undisputed that Archie defaulted on the loan at some point in July 2016, although he did remit one payment on the loan in October 2016 after he had defaulted. On November 17, 2020, SoFi commenced the underlying action to recover the balance owed on the loan.

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Alabama follows the traditional conflicts-of-law doctrine of lex loci contractus in determining which state's substantive law applies in a contract dispute. Cherokee Ins. Co. v. Sanches, 975 So. 2d 287, 292 (Ala. 2007).

"In a contractual dispute, Alabama law would have us first look to the contract to determine whether the parties have specified a particular sovereign's law to govern. Cherry, Bekaert & Holland v. Brown, 582 So. 2d 502, 506 (Ala. 1991). Lacking such a contractual specification, we follow the principle of lex loci contractus, applying the law of the state where the contract was formed. Brown, 582 So. 2d at 506. That state's law then governs unless it is contrary to the forum state's fundamental public policy. Id. at 506-07."

Stovall v. Universal Constr. Co., 893 So. 2d 1090, 1102 (Ala. 2004).

Alabama also follows the traditional conflicts-of-law doctrine of lex fori -- the law of the forum -- by which the procedural law of this state governs contract disputes even when the substantive law of a foreign state applies. See generally Precision Gear Co. v. Continental Motors, Inc., 135 So. 3d 953, 956 (Ala. 2013). In most instances, statutes of limitations are procedural; thus, the Alabama statute of limitations applies to a breach-of-contract action that is commenced in this state even if the contract is otherwise governed by the substantive laws of another state. See Jones v. Jones, 18 Ala. 248, 251 (1850). Alabama

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courts will apply another state's statute of limitations "only when it is demonstrated that 'the limitation is so inextricably bound up in the statute creating the right that it is deemed a portion of the substantive right itself.'" Etheredge v. Genie Indus., Inc., 632 So. 2d 1324, 1327 (Ala. 1994) (quoting State Dep't of Revenue v. Lindsey, 343 So. 2d 535, 537 (Ala. Civ. App. 1977)) (emphasis added). The California statute of limitations is not substantive in nature but, like the Alabama statute of limitations, is only procedural in nature. See Ashland Chem. Co. v. Provence, 129 Cal. App. 3d 790, 793, 181 Cal. Rptr. 340, 341 (1982). Thus, under the doctrine of lex fori, the Alabama statute of limitations applies.

Archie argues that the explicit wording of the choice-of-law provision in the loan agreement negates the doctrine of lex fori in this case. Alabama enforces choice-of-law provisions, and the courts of this state ordinarily will apply the substantive law of a foreign state in accordance with the agreement of the parties unless such enforcement would violate Alabama's public policy. See Cherry, Bekaert & Holland v. Brown, 582 So. 2d 502, 506 (Ala. 1991). However, the appellate courts of this state have not addressed the specific question whether a standard

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choice-of-law provision requires the courts of this state to apply the procedural law of the selected foreign state, including its statute of limitations. That issue has, however, been decided by numerous other jurisdictions.

The prevailing view among courts that have considered this issue holds that a choice-of-law provision stating that a contract shall be "governed" by the laws of a foreign state refers only to the substantive law of that state and not to its statute of limitations, which is a procedural law. See Smither v. Asset Acceptance, LLC, 919 N.E.2d 1153, 1158 (Ind. Ct. App. 2010); Belleville Toyota, Inc. v. Toyota Motor Sales, U.S.A., Inc., 199 Ill. 2d 325, 351, 770 N.E.2d 177, 194, 264 Ill. Dec. 283, 300 (2002); Western Video Collectors, L.P. v. Mercantile Bank of Kansas, 23 Kan. App. 2d 703, 705, 935 P.2d 237, 239 (1997); Financial Bancorp, Inc. v. Pingree & Dahle, Inc., 880 P.2d 14, 16 n.2 (Utah Ct. App. 1994); Nez v. Forney, 109 N.M. 161, 163, 783 P.2d 471, 473 (1989); United States Leasing Corp. v. Biba Info. Processing Servs., Inc., 436 N.W.2d 823, 826 (Minn. Ct. App. 1989); Phelps v. McClellan, 30 F.3d 658, 662 (6th Cir. 1994); Berger v. AXA Network, LLC, 459 F.3d 804, 813 n.15 (7th Cir. 2006); In re Sterba, 852 F.3d 1175, 1178 (9th Cir. 2017). Those cases

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stand for the principle that, unless the choice-of-law provision explicitly and unambiguously provides that the statute of limitations of the foreign state shall apply, the statute of limitations of the forum state controls.

In Reclaimant Corp. v. Deutsch, 332 Conn. 590, 596, 211 A.3d 976, 981 (2019), a case involving a choice-of-law provision almost identical to the one at issue in this case, the Connecticut Supreme Court concluded that the statute of limitations of Delaware would not apply to an action that had been commenced in Connecticut. The choice-of-law provision at issue in Deutsch stated: "'This [a]greement and all rights and liabilities of the parties hereto shall be governed by and construed in accordance with the laws of the [s]tate of Delaware, without regard to its conflicts of law principles.'" 332 Conn. at 596, 211 A.3d at 981. The defendant argued that that provision was worded broadly enough to incorporate Delaware's statute of limitations. The Connecticut Supreme Court disagreed, stating:

"'Choice of law provisions in contracts are generally understood to incorporate only substantive law, not procedural law such as statutes of limitation[s].' Federal Deposit Ins. Corp. v. Petersen, 770 F.2d 141, 142 (10th Cir. 1985). Thus, '[a]bsent an express statement that the parties intended another state's limitations statute to apply, the procedural law of the forum governs time restrictions' Cole

v. Mileti, 133 F.3d 433, 437 (6th Cir.), cert. denied, 525 U.S. 810, 119 S. Ct. 42, 142 L. Ed. 2d 32 (1998); see also Gluck v. Unisys Corp., 960 F.2d 1168, 1179 (3d Cir. 1992) ('[c]hoice of law provisions in contracts do not apply to statutes of limitations, unless the reference is express'); Des Brisay v. Goldfield Corp., 637 F.2d 680, 682 (9th Cir. 1981) (Choice of law 'clauses generally do not contemplate application to statutes of limitation. [Limitation] periods are usually considered to be related to judicial administration and thus governed by the rules of local law, even if the substantive law of another jurisdiction applies.');

Portfolio Recovery Associates, LLC v. King, 14 N.Y.3d 410, 416, 927 N.E.2d 1059, 901 N.Y.S.2d 575 (2010) ('Choice of law provisions typically apply to only substantive issues ... and statutes of limitations are considered procedural because they are deemed as pertaining to the remedy rather than the right There being no express intention in the agreement that Delaware's statute of limitations was to apply to this dispute, the choice of law provision cannot be read to encompass that [limitation] period.' [Citations omitted; internal quotation marks omitted].)"

332 Conn. at 609-10, 211 A.3d at 988.

Against the weight of this authority, Archie cites only one case -- Hambrecht & Quist Venture Partners v. American Medical International, Inc., 38 Cal. App. 4th 1532, 46 Cal. Rptr. 2d 33 (1995) -- which holds to the contrary. In Hambrecht, the California Court of Appeals for the Seventh District held that a choice-of-law provision referring to the "laws" of a foreign state necessarily includes its statute of limitations. In deciding which statute of limitations applies, we are

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not bound by California law. See Precision Gear Co., *supra*. Furthermore, we find Hambrecht to be an outlier that does not comport with the traditional treatment of conflicts of law in this state providing that a foreign statute of limitations shall apply to a case commenced in this state "only" when the foreign statute of limitations is an inextricable part of the foreign jurisdiction's substantive law. See Etheredge, *supra*.

Applying the majority view on this conflicts-of-law question, we conclude that the Alabama statute of limitations applies to this case. A choice-of-law provision shall be construed like any other contractual provision. See Williams v. Skysite Commc'ns Corp., 781 So. 2d 241, 248 (Ala. Civ. App. 2000). "The intention of the parties controls in construing a written contract, and the intention of the parties is to be derived from the contract itself, where the language is plain and unambiguous." Loerch v. National Bank of Com. of Birmingham, 624 So. 2d 552, 553 (Ala. 1993). In this case, the operative language of the loan agreement states that the "provisions" of the loan agreement will be governed by California law regardless of conflicts of law. In context, the "provisions" of the loan agreement are the various clauses in the contract. See Black's Law Dictionary 1480 (11th ed. 2019) (defining "provision" as "1. A clause

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in a statute, contract, or other legal instrument. 2. A stipulation made beforehand."'). Thus, the parties agreed that the various clauses in the contract would be governed, i.e., controlled or regulated, by substantive California law. The parties did not agree that any dispute arising out of the contract would be governed by California procedural law or expressly provide that the California statute of limitations would apply to any civil action arising out of the loan agreement.

Contrary to Archie's argument, the choice-of-law provision adopted by the parties does not clearly and unambiguously provide that the California statute of limitations will apply to any action to enforce the loan agreement. By providing that California law governs the provisions of the loan agreement, the choice-of-law provision requires only that California law "govern as to the validity, interpretation, and construction of the contract," Jones v. Jones, 18 Ala. at 250, a tenet of the doctrine of lex loci contractus. See Blalock v. Sutphin, 275 So. 3d 519, 523 (Ala. 2018). The choice-of-law provision does not require that California law govern procedural matters, which are controlled by the law of the forum state under the doctrine of lex fori. Accordingly, we conclude that the

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circuit court correctly determined that the California statute of limitations did not apply to this case.

Conclusion

The circuit court properly applied the Alabama statute of limitations to SoFi's action. Because SoFi commenced its action within six years of the breach of contract committed by Archie, the underlying action was not barred by Alabama law. Archie has not made any other argument for reversal of the judgment; therefore, we affirm the judgment.

AFFIRMED.

Hanson, Fridy, and Lewis, JJ., concur.

Edwards, J., concurs in the result, without opinion.