

Question MEE 4 – July 2023 – Selected Answer 1

Did Tech Properly Raise the Statute of Limitations Defense?

At issue is whether Tech raised its Statute of Limitations Defense in a timely manner so as to avoid waiving it. A statute of limitations defense is an affirmative defense that if proven by the party raising it will bar the claim against it. However, certain affirmative defenses, such as a statute of limitations defense, must be raised in the defendant's original answer, otherwise they will waive this defense altogether. Additionally, affirmative defenses must be raised in the defendant's answer and a motion to dismiss, or in a pre-answer motion to dismiss, depending on the defense used.

Here, Tech filed their original answer with only specific admissions and denials of the allegations against them in the complaint, and failed altogether to raise any of the affirmative defenses available to them here. In failing to raise this defense, Tech has consented to raising the issue despite the statute of limitations having run and has waived such a defense and can no longer raise it. Furthermore, Tech raised this affirmative defense in a motion for summary judgment rather than raising it in their answer with a motion to dismiss or in a pre-answer motion as a motion to dismiss for failure to state a claim upon which relief can be granted. Tech has not timely made this defense, nor have they used the correct vehicle to make this defense.

How should the court resolve the summary judgment motions on the breach of contract issue?

Summary judgment motions can be raised after the Defendant's answer and before 30 days after the close of discovery. A motion for summary judgment will be granted if, in viewing the motion in the light most favorable to the non-moving party, the court finds that there is no genuine issue of material fact, and the moving party is entitled to a judgment as a matter of law. A judgment as a matter of law is granted if, in viewing the case in the light most favorable to the non-moving party, a reasonable jury could not have a legally sufficient basis to find for the non-moving party.

Here, both parties have moved for summary judgment on the breach of contract issue, and Tech on an affirmative defense of an expired statute of limitations. Firstly, because the statute of limitations is brought in the incorrect vehicle, it should be denied. Next, is the issue of the breach of contract by both parties. First, both parties must demonstrate that there is no genuine issue of material fact. Both parties disagree about whether the contract they entered into was for a software ordering system that could recognize all menu items on Diner's menu, or if it was simply to be designed for

"combination meals" and their identifying number. Tech has submitted an affidavit from their president in support, while Diner has submitted 8 affidavits from people present at the meeting in support of theirs. Despite the weight of the evidence favoring Diner here, a judge is not to weigh the evidence on a motion for summary judgment in this fashion, but instead is to determine whether a genuine issue of material fact exists, which in this case it does. The fact issue in dispute is one that would change the nature of the contract and whether or not there is a breach, making it material and rendering both motions for summary judgment improper. Furthermore, neither party is entitled to a judgment as a matter of law for the second prong of the analysis, because while the amount of evidence favoring Diner is larger than for Tech, a reasonable jury could still have a legally sufficient basis to find for either of the parties if viewing the case in the light most favorable to the non-moving party in each motion. Therefore, both motions for summary judgment should be denied.

Is there any significant action that the court should take on its own initiative unrelated to the merits of the summary judgment motions?

The primary action that the court should take outside of the summary judgment motions is to dismiss the action altogether for lack of subject matter jurisdiction. For every case before a federal court, the court must have subject matter jurisdiction in the form of federal question jurisdiction or diversity jurisdiction. Federal question jurisdiction is only available if there is a question of federal law on the face of the complaint, and diversity jurisdiction is available if the citizenship of all the parties on either side of the litigation is completely diverse and the amount in controversy in the case exceeds \$75,000. For corporations, they "reside" in both their principal place of business and their state of incorporation. Lack of subject matter jurisdiction can be raised at any time by any party, including the court, even on appeal.

Here, the court is lacking subject matter jurisdiction over the case. First, since this is a breach of contract case brought under the laws of state A, there is not a federal question on the face of the complaint. Furthermore, the basis that the plaintiff has asserted jurisdiction on is diversity jurisdiction. However, while the states of incorporation for the two companies are different, they both have their principal place of business in state A. This means that they both "reside" in state A for the purposes of diversity jurisdiction, which destroys complete diversity on this issue. Despite the amount in controversy being appropriate, the lack of diversity between the parties ruins diversity jurisdiction. Therefore, the court should raise the issue of subject matter jurisdiction sua sponte and dismiss the action for lack of subject matter jurisdiction.

Question MEE 4 – July 2023 – Selected Answer 2

1. The issue is when the affirmative defense of statute of limitations needs to be pleaded.

To plead the defense that the statute of limitations has run, a defendant must bring it in their first responsive pleading. This can either be a motion to dismiss or the answer. If a defendant does not bring their claim within either of these documents, the defense has been waived and the party can no longer assert it later on in the litigation.

Here, Tech responded with an answer, and then a month later in a summary judgment motion, Tech argued that the claim was barred by the statute of limitations. Because Tech did not argue this in their first responsive pleading, they did not properly raise the defense, and therefore, it is waived.

2. The issue is whether there is a genuine dispute of material fact prohibiting the court from granting a motion for summary judgment.

To grant a motion for summary judgment, there must be no genuine dispute of material fact such that the moving party is entitled to judgment as a matter of law. The court can look at the pleadings, affidavits, and depositions in making this determination. If, taking this evidence in the light most favorable to the nonmoving party, there is no genuine dispute of material fact, then the moving party is entitled to summary judgment. A party can move for summary judgment up to 30 days after the end of discovery.

Both parties timely filed their motions for summary judgment, so the issue is whether, based on the evidence, there is a genuine dispute of material fact as to the breach of contract claim.

Tech presented an affidavit from its president, who asserted that she and Diner's president had agreed that the software would only cover combination meals identified by number. In response to this evidence, Diner filed its own summary judgment motion in which it asserted that Tech's admission of allegation 5 in the complaint established breach, as well as deposition testimony from eight witnesses who allegedly heard the presidents agree that the voice recognition system would cover all menu items.

With respect to the admission of paragraph 5 in the complaint, this is not enough for the court to grant summary judgment for Diner. In that paragraph, Tech admits that the software it delivered only permitted recognition of combination meals ordered by

number. Tech does not dispute this because they agree that this is what it delivered, the disagreement goes to what the agreement actually stipulated that Tech was supposed to provide.

The remaining statements by Tech and Diner are on the same issue. The president says the agreement covered one thing, and Diner's witnesses say the agreement covered another thing.

With respect to Diner's motion, if all of the evidence is taken in the light most favorable to Tech, there is still a genuine dispute of material fact as to what was supposed to be provided under the contract. As for Tech's motion, if the evidence is taken in the light most favorable to Diner, there is still a genuine dispute of material fact as to what was to be provided.

Because there is a genuine dispute of material fact as to what the voice recognition system was supposed to cover, the court should deny both motions for summary judgment and let the issue be decided by a jury.

3. The issue is whether the court has subject matter jurisdiction to hear the case.

Subject matter jurisdiction refers to the court's power to hear the case. There are two types of subject matter jurisdiction: federal question jurisdiction and diversity jurisdiction. Federal question jurisdiction gives federal courts the ability to hear cases that involve a question of federal law, including the Constitution and federal statutes. Federal question jurisdiction is not at issue here because the claim is based on breach of contract, which is a state law issue, so diversity jurisdiction will be addressed in detail.

Diversity jurisdiction arises when there is complete diversity of citizenship between the parties and the amount in controversy is above 75,000. Complete diversity means that each plaintiff must be completely diverse from each defendant. To determine where a party is a citizen, you look to where they are domiciled, meaning where they are at home. A corporation is domiciled in the state in which it was incorporated and the state in which its principal place of business is located.

Here, the amount in controversy requirement is met. In the complaint, Diner alleges that the amount in controversy exceeds 75k. Further on in the complaint, it is stated that the software at issue in the contract cost 125k. Clearly Diner came up with the amount in controversy number in good faith, so this requirement is satisfied.

However, the complete diversity of citizenship requirement is not satisfied. Diner was incorporated in State C and has its principal place of business in State A. Tech was incorporated in State D and has its principal place of business in State A. Because a corporation is deemed to be a citizen of both places, there is not complete diversity because both Diner and Tech are citizens of State A.

A court can dismiss for lack of subject matter jurisdiction at any time during the proceedings, and they should do so because the court does not have subject matter jurisdiction over the case.

Question MEE 4 – July 2023 – Selected Answer 3

1. Tech improperly raised the statute of limitations defense.

At issue is whether the statute of limitations defense was timely. Tech included the statute of limitations defense in a summary judgment motion, one month after filing its answer.

Although Tech is correct that, under the applicable statute of limitations which limit breach of contract actions to be brought within four years of breach occurring, and the complaint was filed on January 4, 2023, over four years after the breach of November 30, 2018, its raising of the statute of limitations defense was untimely and therefore waived. Under the Federal Rules of Procedure several defenses must be raised in your first response, whether it be an answer or pre-answer motion or they are waived, including improper service, improper service of process, improper venue, and lack of personal jurisdiction. Further, affirmative defenses, like statute of limitations, must be raised in a defendant's answer. Because Tech failed to assert this affirmative defense in its answer, and did not amend its answer to include it, the defense was improperly raised.

2. Assuming that the court reaches the issue of contract breach, it should deny the summary-judgment motions on the issue.

At issue is whether there is a genuine issue of material fact in the dispute between the parties so as to preclude summary judgment. A movant is entitled to summary judgment if there is no genuine dispute of material fact and the facts show movant is entitled to judgment as a matter of law. A movant is entitled to a judgment as a matter of law if no reasonable jury, with the evidence presented, could find for the opposing party. Summary judgment motions are decided by the judge on the basis of the evidence on the record which is viewed in the light most favorable to the nonmoving party. This determination is not based on the credibility of evidence, as that is a jury determination. To determine if there is a genuine dispute of material fact, the court must determine what issues are actually disputed and dispositive to the case. Facts

admitted in an answer are not disputed. The fact issue to determine if Tech was in breach is based on the terms of the contract--whether it bound Tech to create software that identified only combination meals or all menu items.

Here, both party's moved for summary judgment on the issue of contract breach.

Tech asserts in its motion that the contract requires it to produce voice-recognition software capable of recognizing only "combination meal" orders which it fully performed. In its answer, Tech admitted paragraph 5 of the complaint that the "software did not enable Diner's computers to recognize orders for all the items on a typical Diner menu" and only recognized "combination meal" orders identified by number. Diner asserts that the terms of the contract cover all menu items, but that Tech's admission of the allegations of paragraph 5 of the complaint - that the software did not cover all menu items itself is undisputed and legally establishes breach of contract. Diner is incorrect because this admission is not relevant to the material fact question: what the parties agreed to in the contract.

Instead, the court must look to the evidence on the record, an affidavit of Tech's president, asserting that she and Diner's president agreed that the voice-recognition software would only cover combination meals identified by number, and Diner's proffered deposition testimony of eight witnesses to the agreement, including Tech employees, who testified they were there at the time of contract formation and heard the presidents of Tech and Diner agree that the system would cover all menu items. Although Diner has presented more evidence, Tech's evidence creates a genuine dispute of material fact. The question of contract breach depends on the resolution of this fact question. There exists a genuine dispute of material fact--what the parties agreed to-- and therefore neither movant is entitled to judgment as a matter of law and both summary judgment motions should be denied.

3. The court should, on its own initiative, dismiss the case for lack of subject matter jurisdiction.

At issue is whether the federal district court has jurisdiction to hear the case. Federal courts are courts of limited jurisdiction. Subject matter jurisdiction is granted to federal courts by statute. If at any time it comes to the attention of the court there is no subject matter jurisdiction, the court must dismiss the case.

There are two bases: federal question jurisdiction and diversity jurisdiction. Federal question jurisdiction exists when the cause of action arises out of a federal law, including the federal Constitution. Breach of contract claims arise out of state law, so there is no federal question jurisdiction here. Diversity jurisdiction requires complete diversity of citizenship between all plaintiffs from all defendants and an amount in controversy exceeding \$75,000. The amount in controversy is determined by plaintiff's good faith allegations in the complaint, and is not affected by how much is actually awarded at trial. Here, it exceeds \$75,000 per the Complaint paragraph 2. Citizenship for this purpose is determined by domicile. Corporations are domiciled in

every state they are incorporated as well as their principal place of business. Complete diversity in the context of two US corporations means that plaintiff and defendant are from different US states. Here, Diner is domiciled in State C, its state of incorporation, and State A, its principal place of business. Tech is domiciled in State D, its place of incorporation, and State A, its principal place of business. Because Diner and Tech are both citizens of State A, there is no complete diversity and no diversity jurisdiction. There cannot be supplemental jurisdiction without another claim with original jurisdiction. Because there is no subject matter jurisdiction over the claims, the court must, sua sponte, dismiss the action.