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Collection Bureau, Inc. v. Dorsey Respondent's Brief Dckt. 36734

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IN THE SUPREME COURT OF THE STATE OF IDAHO

COLLECTION BUREAU, INC.,)
An Idaho corporation,)
)
Plaintiffs-Appellants.)
)
vs.)
)
JOHN M. DORSEY,)
)
Defendant-Respondent.)
_____)

SUPREME COURT NO. 36734

BRIEF OF RESPONDENT

APPEAL FROM THE DISTRICT COURT OF THE FIRST JUDICIAL
DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE
COUNTY OF KOOTENAI

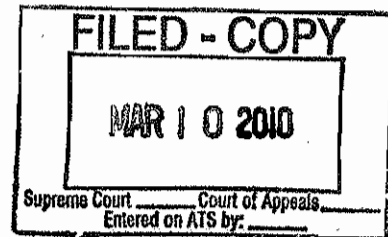
HONORABLE LANCING HAYNES
District Judge

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STATEMENT OF THE CASE

The above defendant was sentenced on the 19th day of March 2001 by the Honorable Judge Kosonen in Shoshone case number CR00-32907. He received a period of incarceration in the Idaho State Penitentiary, as well as a \$25,000.00 fine, and was out on parole at the time he was served the lawsuit by the defendants herein. The lawsuit herein was filed by plaintiff on January 28, 2009 (Plaintiffs complaint of record). Within Plaintiff's complaint, it is undisputed that the basis for the claim for monies owed is the Shoshone County "judgment" mentioned above.

Respondent would concur with any additional facts within Appellants statement of the case other than obvious legal argument contained therein.

ISSUE ON APPEAL

1. IS PLAINTIFF BARRED BY LAW FROM ATTEMPTING TO COLLECT THE DEBT IN QUESTION BASED ON THE AGE OF THE JUDGMENT CREATING THE UNDERLYING INDEBTEDNESS?
2. DID THE TRIAL COURT COMMIT ERROR BY FINDING THAT THE AGREEMENT EXECUTED ON AUGUST 8, 2005 BETWEEN THE RESPONDENT AND THE PAROLE COMMISSION DID NOT TOLL THE FIVE YEAR STATUTE OF LIMITATIONS FOR ENFORCEMENT OF A WRITTEN CONTRACT PURSUANT TO IDAHO CODE 5-238?

ADDITIONAL ISSUE ON APPEAL

1. IS THE APPELLANT ENTITLED TO AN AWARD OF ATTORNEY'S FEES AND COSTS FOR THIS APPEAL?

DISCUSSION

Both IC 11-101 and 11-105 clearly state that enforcement of a money judgment may only commence within the first five years after the entry of the judgment. When looking at this from a criminal procedure standpoint, IC19-2518 provides that "a judgment that a defendant pay a fine . . . constitutes a lien in

like manner as a judgment for money in a civil action." Further, IC19-2702 states that "if the judgment includes the payment of a fine . . . execution may be issued thereon for such sums as on a judgment in a civil action."

IC 19-4708 specifically provides for the clerk of the court to approve outside parties to collect debts owed on its behalf. 'Debts owed to the court' is defined as "any assessment of fines . . . which a court judgment has ordered to be paid to the court in criminal cases." IC19-4708(2)(c).

In this case before the court, it is clear that plaintiff is attempting to collect a debt that is premised upon a prior judgment. The prior judgment was entered against the defendant beyond five years prior to when the plaintiff initiated their action to collect. As such, the debt plaintiff seeks to collect is no longer collectible.

When looking at Appellants issues on appeal, it appears they argue that the enforcement issue is somehow based upon a written contract. They also discuss as an issue whether or not the August 8, 2005 agreement tolled the five year statute of limitations on a written contract. Counsel for Respondent would disagree with both these assertions.

Respondents basis for winning on the summary judgment was exactly as stated in the first part of this brief; the judgment against the respondent had expired for purposes of collection. There never was a written contract between the parties for Respondent to pay, only the original criminal judgment. Also, when looking at Appellants argument, they attempt to use IC 5-216 to get around the expiration of the judgment by stating Shoshone County would be covered under that statute and no limitation of action applies to an action upon a written contract.

First off, as previously alleged above, there is no written contract, only a judgment that was sued upon. Second, IC 5-215 clearly sets out the limitation of actions on a judgment, which is six years. This code section clearly places a six year limitation on suing on a judgment with no exception for the State. Since we

clearly have a judgment that was the basis for the suit and not a contract, Appellants argument fails.

Appellant further makes the argument that if all else fails, they were a third party beneficiary of the Defendants Parole Agreement. This is simply not true.

In Appellants own brief they state "The Hulet Court stated that a third party seeking to enforce a contract must establish 'the contract was made primarily for his benefit' noting that a 'mere incidental beneficiary' would lack standing to enforce a contract'" Appellant's brief, page 12, citing Idaho Power Co. v. Hulet, 140 Idaho 110 (2004). The Parole Agreement in question is a two page, small print document that lays out multiple rules and obligations the Defendant has when he is granted Parole. A reasonable view of this document cannot be that **the sentencing court** (emphasis added) was the primary beneficiary of the agreement.

One of the last arguments made by Appellant is that the Parole Agreement somehow renewed the Respondents obligation to pay the fines to Shoshone County. The section under which the Respondent was to pay fines was "Special Conditions". The Respondents obligation was directly attached to his Parole. Furthermore, the judgment had already been entered against the defendant in the criminal case. Even if the Parole agreement was construed as somehow reaffirming a debt, what debt was reaffirmed? The judgment was already entered and had expired at the time Appellant made attempts to collect on it.

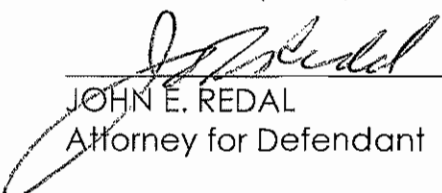
**APPELLANT SHOULD NOT BE ENTITLED TO AN AWARD
OF ATTORNEYS FEES OR COSTS ON APPEAL**

Regarding Appellants claim they should be awarded attorneys fees or costs on appeal, they should not. Respondents legal position regarding this situation is clearly not frivolous, as evidence by Respondent prevailing on summary judgment.

CONCLUSION

Appellant goes to great lengths to discuss why they believe Respondent should be responsible for paying the fines from his criminal case. Although it is obvious Respondent was ordered at one time to pay his fines, law still clearly states how and during what time frame these fines are to be collected and those specific time frames were not complied with.

DATED this 9 day of March, 2010



JOHN E. REDAL
Attorney for Defendant

CERTIFICATE OF DELIVERY

I certify that a true and correct copy of the foregoing document was

Mailed:

Faxed:

Hand delivered: _____

Interoffice: _____

On this 9 day of March, 2010, to:

Terry Michaelson
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