

LEXSEE 1999 US APP LEXIS 32080

**MARVIN JOHNSON, Plaintiff-Appellant, v. UNITED AUTOMOBILE, AEROSPACE
AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, LOCAL 174; LEAR
SEATING, a Michigan corporation, Defendants-Appellees.**

No. 97-2008

UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

1999 U.S. App. LEXIS 32080

November 30, 1999, Filed

NOTICE: [*1] NOT RECOMMENDED FOR FULL-TEXT PUBLICATION. SIXTH CIRCUIT RULE 28(g) LIMITS CITATION TO SPECIFIC SITUATIONS. PLEASE SEE RULE 28(g) BEFORE CITING IN A PROCEEDING IN A COURT IN THE SIXTH CIRCUIT. IF CITED, A COPY MUST BE SERVED ON OTHER PARTIES AND THE COURT. THIS NOTICE IS TO BE PROMINENTLY DISPLAYED IF THIS DECISION IS REPRODUCED.

SUBSEQUENT HISTORY: Reported in Table Case Format at: *1999 U.S. App. LEXIS 36746*.

PRIOR HISTORY: ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF MICHIGAN. 96-72010. Woods. 8-18-97.

DISPOSITION: AFFIRMED.

CASE SUMMARY:

PROCEDURAL POSTURE: Plaintiff appealed order of the United States District Court for Eastern District of Michigan, which granted summary judgment to defendant employer and defendant union on the ground that plaintiff's hybrid action for breach of labor agreement and duty to represent, pursuant to 29 U.S.C.S. § 141, was not timely filed.

OVERVIEW: Plaintiff brought an action, pursuant to 29 U.S.C.S. § 141, alleging a hybrid claim of breach of a labor agreement by defendant employer and breach of the duty of fair representation by defendant union. The court held that plaintiff's cause of action accrued on the date plaintiff was advised by telephone that defendant union deemed his grievance for wrongful discharge was unwinnable and had been withdrawn, rather than the subsequent date of formal notification by certified mail. Thus,

plaintiff failed to commence the action before the applicable period of limitations set out in § 10(b) of the National Labor Relations Act, 29 U.S.C. § 160(b).

OUTCOME: Order was affirmed because plaintiff's cause of action accrued on the date plaintiff was advised by telephone that defendant union had withdrawn plaintiff's grievance for wrongful discharge, rather than the subsequent date of notification by certified mail, and thus the action was not timely filed.

LexisNexis(R) Headnotes

Civil Procedure > Summary Judgment > Summary Judgment Standard

[HN1] Summary judgment is appropriate when the case presents no issues of material fact in dispute and the moving party is entitled to judgment as a matter of law. *Fed. R. Civ. P. 56(c)*.

Civil Procedure > Summary Judgment > Summary Judgment Standard

[HN2] In deciding a motion for summary judgment, the court must view the evidence and draw all reasonable inferences in favor of the non-moving party.

Civil Procedure > Pleading & Practice > Defenses, Objections & Demurrers > Affirmative Defenses

[HN3] Section 10(b) of the National Labor Relations Act, 29 U.S.C.S. § 160(b) sets the applicable six-month statute of limitations for a hybrid breach of contract and duty of representation claim based on § 301 of the Labor Management Relations Act, 29 U.S.C.S. § 141.

Labor & Employment Law > Collective Bargaining & Labor Relations > Fair Representation

Civil Procedure > Pleading & Practice > Defenses, Objections & Demurrers > Affirmative Defenses

[HN4] A statute of limitations begins to run when the plaintiff knows or should have known of the union's alleged breach of its duty of representation.

COUNSEL: For MARVIN JOHNSON, Plaintiff – Appellant: Keith Godfrey, Law Offices of Keith Godfrey, Detroit, MI.

For UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, LOCAL 174, Defendant – Appellee: Connye Y. Harper, Associate General Counsel, International Union, UAW, Detroit, MI.

For LEAR SEATING, Defendant – Appellee: John C. Cashen, Bodman, Longley & Dahling, Troy, MI.

JUDGES: Before: RYAN and COLE, Circuit Judges and WILHOIT, District Judge. *

* The Honorable Henry R. Wilhoit, Jr., Chief Judge of the United States District Court for the Eastern District of Kentucky, sitting by designation.

OPINIONBY: R. GUY COLE, JR.

OPINION:

R. GUY COLE, JR., Circuit Judge. The plaintiff-appellant, Marvin [*2] L. Johnson ("Johnson"), appeals from the grant of summary judgment to the defendants-appellees, UAW Local 174 ("Local 174") and Lear Seating Corporation ("Lear"), in his hybrid claim under § 301 of the Labor Management Relations Act ("LMRA"), 29 U.S.C. § 141. Johnson claimed wrongful discharge in breach of the labor agreement by Lear and breach of the duty of fair representation by Local 174. For the following reasons, we **AFFIRM** the judgment of the district court.

Johnson was employed by Lear on July 3, 1993 and was represented by Local 174 which maintained a collective bargaining agreement throughout the course of his employment. On October 6, 1995, Lear alleged that Johnson violated Lear's shop procedures by falsifying his time card and dismissed Johnson. Johnson filed a grievance against Lear through Local 174 on October 6, 1995. After investigation, Local 174 deemed the grievance unwinnable and withdrew it October 27, 1995, telephoning Johnson and informing him of the withdrawal. On October 31, 1995, a Local 174 official sent Johnson a certified letter notifying him that the grievance was withdrawn.

At issue is the date when Johnson's cause of action

[*3] accrued, or the date Johnson obtained knowledge of the substance of his claim against the union. Johnson commenced his hybrid claim under § 301 of the LMRA on April 30, 1996, six months from the October 31 letter informing him that his grievance was withdrawn. Lear and Local 174 moved for summary judgment, arguing that the claim accrued on October 27, 1995 when the union informed him by phone that his grievance was withdrawn. The district court granted summary judgment for the defendants, finding that Johnson knew or should have known that his cause of action accrued on October 27, 1995. Thus, Johnson's claim was time barred after April 27, 1996. On appeal, Johnson contends that the district court erred in dismissing his suit as barred under the applicable statute of limitations.

[HN1] Summary judgment is appropriate when the case presents no issues of material fact in dispute and the moving party is entitled to judgment as a matter of law. See *Fed.R.Civ.P. 56(c)*. [HN2] In deciding a motion for summary judgment, the court must view the evidence and draw all reasonable inferences in favor of the non-moving party. See *Matsushita Elec. Indus. Co., Ltd. v. Zenith Radio Corp.*, 475 U.S. 574, 587, 89 L. Ed. 2d 538, 106 S. Ct. 1348 (1986). [*4]

[HN3] Section 10(b) of the National Labor Relations Act, 29 U.S.C. § 160(b) sets the applicable six-month statute of limitations for a hybrid § 301-based breach of contract and duty of representation claim. See *DelCostello v. International Bhd. of Teamsters*, 462 U.S. 151, 76 L. Ed. 2d 476, 103 S. Ct. 2281 (1983). In *DelCostello*, the Supreme Court held that [HN4] a statute of limitations begins to run when the plaintiff knows or should have known of the union's alleged breach of its duty of representation. See 462 U.S. at 170-72; see also *Schoonover v. Consolidated Freightways Corp.*, 49 F.3d 219, 221 (6th Cir. 1995), cert. denied, 525 U.S. 1140, 1999 U.S. LEXIS 1051, 119 S. Ct. 1029, 143 L. Ed. 2d 39 (1999).

Upon de novo review, see, e.g., *Smith v. Ameritech*, 129 F.3d 857, 863 (6th Cir. 1997), we affirm the judgment of the district court. Because we agree with the reasoning of the district court, the issuance of a detailed written opinion by the court would be duplicative and serve no useful purpose. Accordingly, we **AFFIRM** the district court's grant of summary judgment in favor of defendants for the reasons [*5] stated by the district court in its opinion and order filed August 15, 1997.

1075QR

***** Print Completed *****

Time of Request: February 15, 2005 11:11 AM EST

Print Number: 1862:31901747

Number of Lines: 111

Number of Pages: 2

Send To: MILLER, KRISTEN
BODMAN LLP
100 RENAISSANCE CTR FL 34
DETROIT, MI 48243-1001