

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

Chiaverini, Inc., et al.

Court of Appeals No. L-11-1215

Appellant

Trial Court No. CI0201007644

v.

William J. Bingle, Admin. of  
Estate of Vito W. Chiaverini

**DECISION AND JUDGMENT**

Appellee

Decided: May 25, 2012

\* \* \* \* \*

George C. Rogers, for appellant.

William T. Maloney, for appellee.

\* \* \* \* \*

**HANDWORK, J.**

{¶ 1} This case is before the court on appeal from the judgment of the Lucas County Court of Common Pleas which, on July 26, 2011, dismissed appellant's complaint pursuant to Civ.R. 12(B)(6). Appellant, Chiaverini, Inc., made a claim against the estate of Vito Chiaverini on or about January 21, 2005, which was rejected by

William J. Bingle, the administrator of the estate, and appellant brought suit. According to appellant, the original suit was dismissed on August 25, 2005,<sup>1</sup> because the parties reached a settlement agreement. Appellant's complaint also alleges that, on October 28, 2010, in another action, the probate court vacated the parties' "Judgment Entry and Settlement." On this basis, appellant attempts to reinstate its original claim against the estate in this case.

{¶ 2} Pursuant to 6th Dist.Loc.App.R. 12(A), we sua sponte transfer this matter to our accelerated docket and, hereby, render our decision.

{¶ 3} We find that appellant's complaint in this case was untimely filed. R.C. 2117.12 requires suit to be brought against the estate within two months of the rejection of a claim. Appellant initially brought suit in time, but that matter was dismissed nearly five years before appellant refiled this action, well beyond the one-year savings statute. *See* R.C. 2305.19(A). Further, we find no merit to appellant's argument that its time for filing suit pursuant to R.C. 2117.12 was revived or extended by the October 28, 2010, alleged vacation of the parties' settlement agreement, in another cause of action, by another court. Accordingly, we find that the trial court did not err in dismissing appellant's complaint pursuant to Civ.R. 12(B)(6).

{¶ 4} Appellant's sole assignment of error is therefore found not well-taken. On consideration whereof, the court finds substantial justice has been done the party

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<sup>1</sup> The trial court notes that the actual dismissal date was January 31, 2006.

complaining and the judgment of the Lucas County Court of Common Pleas is affirmed.

Appellant is ordered to pay the costs of this appeal pursuant to App.R. 24.

Judgment affirmed.

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

Peter M. Handwork, J.

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JUDGE

Mark L. Pietrykowski, J.

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JUDGE

Thomas J. Osowik, J.  
CONCUR.

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JUDGE

This decision is subject to further editing by the Supreme Court of Ohio's Reporter of Decisions. Parties interested in viewing the final reported version are advised to visit the Ohio Supreme Court's web site at:  
<http://www.sconet.state.oh.us/rod/newpdf/?source=6>.