

**IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT**

United States Court of Appeals
Fifth Circuit

FILED

August 19, 2020

Lyle W. Cayce
Clerk

No. 19-10934
Summary Calendar

KHUE NGUYEN,

Plaintiff - Appellant

v.

ESTATE OF THIN THI TA, Hai Phu Nguyen as Heir and Administrator;
THAO XUAN TA,

Defendants - Appellees

Appeal from the United States District Court
for the Northern District of Texas
USDC No. 4:18-CV-801

ON PETITION FOR REHEARING AND REHEARING EN BANC

Before CLEMENT, ELROD, and OLDHAM, Circuit Judges.

PER CURIAM:*

No member of this panel nor judge in active service having requested that the court be polled on rehearing en banc, the petition for rehearing en

* Pursuant to 5TH CIR. R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR. R. 47.5.4.

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banc is DENIED. The petition for panel rehearing is GRANTED. The previous opinion is withdrawn and the following is substituted.

Khue Nguyen sued various defendants for the breach of a Vietnamese partnership agreement and the wrongful seizure of the business's assets. The district court granted summary judgment to defendants. We affirm.

I.

In 1982, Nguyen's mother, Ha Thi Thu Thuy, entered into a partnership with Ta Van Viet to establish a business in Vietnam named "Snow White." Viet died in 1989, and Thuy purchased his business interests from his heirs, the defendants. One of those heirs, Ngo Thi Ngoan, purported to evict Thuy from Snow White's manufacturing facility in November 2012. Ngoan held onto the business's assets. Despite Thuy's requests, none of the heirs have agreed to return the property.

Also in November 2012, Thuy entered a dispute-resolution process operated by the local Vietnamese government. That process was unsuccessful. Thuy later assigned her interest in Snow White (including its assets, and any claims against defendants) to Nguyen. And, in September 2018, Nguyen brought this lawsuit in federal district court.

The district court granted summary judgment to defendants. Among other things, the district court found Nguyen's claims untimely. The district court held that Texas's statute of limitations applies to Nguyen's Vietnamese-law causes of action—a holding the parties do not dispute on appeal. Under Texas law, the district court found that the claims accrued no later than 2012. And, because the most generous applicable limitations period was four years, the claims were time-barred. Nguyen timely appealed. Reviewing the grant of summary judgment *de novo*, see *Morrow v. Meachum*, 917 F.3d 870, 874 (5th Cir. 2019), we agree with the district court.

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II.

The longest statute of limitations applicable to Nguyen’s claims is the four-year period for contract actions. *See* TEX. CIV. PRAC. & REM. CODE 16.004(a). In Texas, “[i]t is well-settled law that a breach of contract claim accrues when the contract is breached.” *Stine v. Stewart*, 80 S.W.3d 586, 592 (Tex. 2002). As Nguyen concedes, the breach of the partnership agreement—Thuy’s eviction from Snow White’s facility by Ngoan—took place in November 2012. That is when the contract claims accrued. Those claims therefore became time-barred in November 2016, nearly two years before Nguyen filed this lawsuit.

Nguyen offers various reasons why the limitations period was tolled and his claims are still timely. None has merit.

He first notes that equitable tolling is available when “a claimant actively pursue[s] his judicial remedies but filed a defective pleading during the statutory period, or where a complainant was induced or tricked by his adversary’s misconduct into allowing filing deadlines to pass.” *Bailey v. Gardner*, 154 S.W.3d 917, 920 (Tex. App.—Dallas 2005, no pet.). But he does not claim that he filed a defective pleading during the four-year period, or that he was tricked into filing late.

Nguyen also insists that the partnership contract governing Snow White required the parties to submit their dispute to the local Vietnamese government’s dispute-resolution procedure. In Nguyen’s view, this either delayed accrual until after the Vietnamese procedure was finished or tolled the limitation period during that procedure. But the contract provides only that the parties must “[f]ollow strictly all current laws and rulings of the State and of the local government.” Even assuming that this clause, as a matter of Vietnamese law, required submission to the local government’s dispute-resolution procedure, there is no contractual provision that tolls the limitation

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period while the proceedings were ongoing. And although Texas law provides for the tolling of a limitation period when the plaintiff files a *lawsuit*, see *Sun v. Al's Formal Wear of Houston, Inc.*, 14-96-01516-CV, 1998 WL 726479, at *6 (Tex. App.—Houston [14th Dist.] Oct. 15, 1998, no pet.), Nguyen cites no Texas-law authority for tolling during non-judicial dispute resolution.

Finally, Nguyen asserts that the cause of action against the defendants other than Ngoan accrued in 2017 (rather than 2012) when they refused to hand over the property in contravention of a Vietnamese court order. But Nguyen alleged in the district court that “all Defendants” had refused to return Snow White and its assets during the pendency of the Vietnamese proceedings “[f]rom 2013 until 2018.” Therefore, even assuming that the refusal to hand over property created a cause of action separate from the 2012 breach-of-contract claim, that separate cause of action accrued when it first occurred in 2013. Nguyen offers no basis in law—Vietnamese or Texan—for the court to conclude that the 2017 refusal restarted or tolled the limitation period. This putative separate cause of action therefore became time-barred in 2017, four years after it accrued and one year before Nguyen filed his lawsuit.

AFFIRMED.