

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

NO. 94-10480
Summary Calendar

ALFONSO DELUNA, a/k/a Frank Deluna, Plaintiff-Appellant,

versus

ARVLE CHAMBLES, Individually d/b/a
Chambles Properties d/b/a Employee's
Defined Contribution Plan and Trust
of Chambles Oil Company and Whichita-
Olney Distribution Company d/b/a Chambles
Oil Co.,

Defendant-Appellee.

Appeal from the United States District Court for the
Northern District of Texas
(7:93 CV 023 K)

November 11, 1994

Before SMITH, EMILIO M. GARZA, and PARKER, Circuit Judges.

PER CURIAM¹:

Plaintiff-Appellant Alfonso Deluna ("Deluna") appeals the district court's summary judgment order in favor of Defendant-Appellee Arvle Chambles ("Chambles") on the ground that Deluna's statutes of limitations have lapsed. We affirm.

FACTS AND PROCEDURAL HISTORY

On July 14, 1986, Deluna was discharged from employment with

¹ Local Rule 47.5 provides: "The publication of opinions that have no precedential value and merely decide particular cases on the basis of well-settled principles of law imposes needless expense on the public and burdens on the legal profession." Pursuant to that Rule, the Court has determined that this opinion should not be published.

Chambles and his companies. He had begun working for Chambles in 1981. At the time of his discharge, Deluna's profit-sharing pension benefits were 100% vested under the terms of the Employees' Defined Contribution Plan and Trust of Chambles Oil Company and Wichita-Olney Oil Company (hereafter "Plan" or "Trust"). On July 22, 1986, he made a written request to the Plan Administrator² for a lump-sum disbursement of his vested profit-sharing pension benefits. A Plan representative replied that the Trust did not have the money to pay him at that time, but that as soon as the money became available he would be paid according to the Plan's terms. Attached to the reply was a copy of § 6.3 of the Plan, describing the commencement of benefits.

On August 3, 1986, Deluna again sent a letter to the Plan Administrator requesting a \$447.50 advance of his benefits, or a loan to be deducted from his accrued benefits, which soon after was sent to Deluna. Then in March 1987, a Plan representative wrote to inform Deluna that the Plan and Trust remained unfunded because of the bankruptcy of the profit-sharing stores, but that he would be contacted and his claims would be settled as soon as the money was available. Deluna received a second letter regarding the Plan's lack of funding on September 2, 1987.

Deluna filed suit against Chambles in state court on February 26, 1988, seeking payment of his profit-sharing pension benefits, a full accounting of the Trust's activities and other equitable

² Chambles is both the Plan Administrator and the Plan Trustee.

relief. Chambles filed a general denial on May 25, 1988. On February 5, 1991, Deluna made a written request for descriptions, summaries, annual reports and an account of all Trust assets and/or financial activity for the time relevant to the state suit. He did not receive a reply.

On November 11, 1991, Deluna's state suit was dismissed for want of prosecution. Deluna sent another letter to the Plan Administrator on June 24, 1992, demanding payment of his benefits under the Plan. His letter stated that the Plan's failure to respond within ninety days would be considered a denial of his benefits.

When he did not receive a reply, Deluna filed suit in federal court on February 11, 1993. On February 28, 1994, Chambles filed a motion for summary judgment, arguing that Deluna's claims were barred by the applicable statutes of limitations. The district court granted the motion on May 12, 1994.

STANDARD OF REVIEW

Review of a motion for summary judgment is plenary. *Lodge Hall Music, Inc. v. Waco Wrangler Club, Inc.*, 831 F.2d 77, 79 (5th Cir. 1987). Although review is *de novo*, we apply the same standards governing the district court's determination. *Jackson v. Federal Deposit Ins. Corp.*, 981 F.2d 730, 732 (5th Cir. 1992). Summary judgment must be granted if the court determines that "there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." FED. R. CIV. P. 56(c).

STATUTE OF LIMITATIONS

An ERISA cause of action accrues when a request for payment of benefits is denied. *Paris v. Profit Sharing Plan for Employees of Howard B. Wolf, Inc.*, 637 F.2d 357, 361 (5th Cir.), cert. denied, 454 U.S. 836, 102 S.Ct. 140, 70 L.Ed.2d 117 (1981). A claim filed pursuant to 29 U.S.C. § 1332(a)(1)(B) to enforce plan rights is measured against the applicable state statute of limitations. *Hogan v. Kraft Foods*, 969 F.2d 142, 145 (5th Cir. 1992). In Texas, the statute of limitations for suits sounding in contract is four years. *Id.* Therefore, Deluna's claim must have been filed within four years after the Plan Administrator denied his request for payments of his profit-sharing pension benefits.

Deluna contends that the Plan Administrator did not formally deny his request for the payment of his benefits under the Plan until he failed to respond to Deluna's June 24, 1992 letter which stated that such a failure to respond would be considered a denial of Deluna's request for benefits. He argues that the district court erred in concluding that Chambles' general denial filed in state court on May 25, 1988 constituted a denial of Deluna's request for benefits because it did not adequately notify him that any further attempts to exhaust administrative remedies would be futile. See *Simmons v. Wilcox*, 911 F.2d 1077 (5th Cir. 1990).

We disagree with Deluna's characterization of Chambles' denial. Deluna states that he never received a denial from the Plan Administrator, yet he also argues that Chambles' failure to respond to his June 24, 1992 letter entitled him to proceed to

federal court because any further attempts to exhaust administrative remedies would be futile. The district court, however, determined that Deluna recognized that Chambles had denied his benefits claim on the date he filed suit in state court because his petition stated "Defendants refuse to pay over any portion of the Profit Sharing Trust monies owing to the Plaintiff." We agree with the district court's determination.

"The question when a reasonable person would have known that his legal rights had been invaded, so that the statute of limitations began to run, is a question of fact...." *Brock v. TIC International Corp.* 785 F.2d 168, 171 (7th Cir. 1986) (citing *Castorina v. Lykes Bros. S.S. Co.*, 758 F.2d 1025, 1034 (5th Cir.) cert. denied, 474 U.S. 846, 106 S.Ct. 137, 88 L.Ed.2d 113 (1985) and *Glass v. Petro-Tex Chemical Corp.*, 757 F.2d 1554, 1561-62 (5th cir. 1985)). Therefore, we can only reverse the district court's findings if clearly erroneous. *Id.*

We find that the district court findings were not clearly erroneous. Deluna was aware that his rights had been invaded by the time he filed his state suit against Chambles. Although he did not receive a formal denial of his request for a lump-sum payment of his profit-sharing pension benefits under the Plan, on several occasions Chambles refused to comply with his written requests. In addition, Deluna received a general denial on May 25, 1988 in response to his claims in the state suit. Deluna did not file this instant action in federal court until February 11, 1993, more than four years later. Therefore, we hold that the district court did

not err in finding that Deluna's claims under 29 U.S.C. § 1132(a)(1)(B) are barred by the Texas four year statute of limitations.

Deluna's remaining claims pursuant to 29 U.S.C. §§ 1024(b) and 1132(c) are governed by the statute of limitations provided in 29 U.S.C. § 1113.³ Having first asserted the claims in state court, Deluna had "actual knowledge" of Chambles' violation on February 26, 1988, thereby meeting the requirements of § 1113(2). Therefore, we find that the district court did not err in determining that Deluna's three year statute of limitations pursuant to 29 U.S.C. § 1113(2) expired prior to the filing of the instant action on February 11, 1993.

CONCLUSION

For the reasons stated above, the judgment of the district court is AFFIRMED.

³ Section § 113 provides in pertinent part:

No action may be commenced under this subchapter with respect to a fiduciary's breach of any responsibility, duty, or obligation under this part, or with respect to a violation of this part, after the earlier of--

(1) six years after (A) the date of the last action which constituted a part of the breach or violation, or (B) in the case of an omission, the latest date on which the fiduciary could have cured the breach or violation, or

(2) three years after the earliest date on which the plaintiff had actual knowledge of the breach or violation....