

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TENNESSEE  
EASTERN DIVISION

GARY JONES and CUSTOM  
INTERIORS & SUPPLY COMPANY,  
INC.,

Plaintiffs,

v.

No. 06-1094

WAYNE REYNOLDS,

Defendant.

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ORDER GRANTING DEFENDANT'S MOTION FOR SUMMARY JUDGMENT  
AND DENYING MOTION FOR SUMMARY JUDGMENT OF PLAINTIFFS

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This matter was originally filed in the Circuit Court for Henry County, Tennessee on March 20, 2006 and was removed to this Court on May 1, 2006. Before the Court are the cross-motions of the Plaintiffs, Gary Jones and Custom Interiors & Supply Company, Inc. ("Custom Interiors"), and the Defendant, Wayne Reynolds, for summary judgment pursuant to Rule 56 of the Federal Rules of Civil Procedure.

STANDARD OF REVIEW

Rule 56 states in pertinent part that a

. . . judgment . . . shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show 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); see Celotex Corp. v. Catrett, 477 U.S. 317, 322, 106 S. Ct. 2548, 2552, 91 L. Ed. 2d 265 (1986); Canderm Pharmacal, Ltd. v. Elder Pharm., Inc., 862 F.2d 597, 601 (6th Cir. 1988). In reviewing a motion for summary judgment, the evidence must be viewed in the light most

favorable to the nonmoving party. Matsushita Elec. Indus. Co., Ltd. v. Zenith Radio Corp., 475 U.S. 574, 587, 106 S. Ct. 1348, 1356, 89 L. Ed. 2d 538 (1986). When the motion is supported by documentary proof such as depositions and affidavits, the nonmoving party may not rest on his pleadings but, rather, must present some "specific facts showing that there is a genuine issue for trial." Celotex, 477 U.S. at 324, 106 S. Ct. at 2553. It is not sufficient "simply [to] show that there is some metaphysical doubt as to the material facts." Matsushita Elec. Indus. Co., 475 U.S. at 586, 106 S. Ct. at 1356. These facts must be more than a scintilla of evidence and must meet the standard of whether a reasonable juror could find by a preponderance of the evidence that the nonmoving party is entitled to a verdict. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 252, 106 S. Ct. 2505, 2512, 91 L. Ed. 2d 202 (1986). The "judge may not make credibility determinations or weigh the evidence." Adams v. Metiva, 31 F.3d 375, 379 (6th Cir. 1994).

#### FACTS

Plaintiff Jones is the manager of Custom Interiors, a Tennessee corporation engaged in the manufacture, distribution and sale of interior furnishings. (Compl. at ¶¶ 1-2.) Since 1965, Defendant Reynolds had been employed in the textile industry, working for several entities throughout the Southeast that sold textiles and furnishings. (Aff. of Wayne C. Reynolds ("Reynolds Aff.") at ¶ 4.) In 1995, he began working exclusively with Naishadh Patel, who was also involved in the textile business. (Reynolds Aff. at ¶ 5.) Over the course of the next year, Patel's business was formalized as Qualitex Ltd. (Reynolds Aff. at ¶ 6.) In practicing his profession, Reynolds had become aware of Jones and had spoken with him occasionally on the phone, although the two had never met. In 1997, Reynolds was advised by a management recruiter that Jones and Custom Interiors were looking for a manufacturer representative. The Defendant contacted Jones, and was

subsequently hired. (Reynolds Aff. at ¶ 7.)

Several months later, Jones expressed interest in making an investment in Qualitex in exchange for company shares. (Resp. of Pls. to Def.'s First Set of Interrogs. at ¶ 12.) In February 2008, Reynolds forwarded to Jones some limited documentation regarding Qualitex's business and potential future. (Reynolds Aff. at ¶ 8.) Shortly thereafter, Jones, Patel and Qualitex reached an agreement under which Jones invested \$150,000 in Qualitex, for which he received a forty percent interest in the company. (Reynolds Aff. at ¶¶ 9, 12; Resp. of Pls. to Def.'s First Set of Interrogs. at ¶ 12.)

On June 14, 1998, without discussing the matter with Jones, Patel or any representative of Qualitex beforehand, Reynolds prepared a document entitled "Personal Guarantee" at his home in Georgia, executed it and forwarded it to Jones, who resided in Paris, Tennessee. (Reynolds Aff. at ¶ 12.) The document stated as follows:

I personally guarantee repayment of funds provided to Qualitex, Ltd., a South Carolina company located at 5830 Shakespeare Rd., Columbia, SC, 29223, by Gary Jones as follows:

1. \$50,000.00 to back various letters of credit to Qualitex Suppliers issued by First State Bank, Union City, TN for Qualitex ["Item 1"].
2. \$50,000.00 provided as operating funds for Qualitex, Ltd., deposited into a Qualitex account at First State Bank, Union City, TN ["Item 2"].
3. \$50,00.00 paid to Qualitex by Gary Jones to purchase 40% of the stock of Qualitex. This guarantee (item #3) applies only if the company, Qualitex, Ltd., does not succeed and ceases to operate ["Item 3"].

(Mem. of Law & Fact in Supp. of Def.'s Mot. for Summ. J. & Other Misc. Relief, Ex. F.)

Also in 1998, Reynolds began working with Jones at United Service Resource Corporation ("USRC"), a company previously formed by Jones and of which he was majority shareholder.

(Reynolds Aff. at ¶ 15.) It was the Defendant's understanding that he was a partner in USRC. The following year, Patel and Qualitex filed for bankruptcy. On July 26, 1999, Reynolds sent a letter to Jones in which he expressed satisfaction that his partnership in USRC would be formalized and stated that "[w]hen USRC sells, and if at that time, Nash Patel owes you any money, I will pay you this balance out of my share of the proceeds. This will be paid at your sole discretion, either all at once, or over a period of time." (Mem. of Law & Fact in Supp. of Def.'s Mot. for Summ. J. & Other Misc. Relief, Ex. H.)

It is undisputed that by the end of 1999 Qualitex had failed as a business and ceased to operate. Neither is it in dispute that by that time Qualitex and Patel had spent all of the monies contained in the operating account and no longer had access to their lines of credit opened by Jones. The Plaintiffs made their first demand for payment from Reynolds under the Personal Guarantee in a letter dated October 15, 2005. (Resp. of Pls. to Def.'s First Set of Interrogs. at ¶ 14.) At the time of briefing, no payment had been made. The complaint was filed on March 20, 2006.

#### ANALYSIS OF THE PARTIES' CLAIMS

The parties seek summary judgment on numerous grounds. The Court will first consider the Defendant's contention that the complaint is untimely. In diversity cases such as that at bar, the district court must apply the choice of law rules of the forum state. The Andersons, Inc. v. Consol. Inc., 348 F.3d 496, 501 (6th Cir. 2003). Tennessee "adheres to the rule of *lex loci contractus* - a contract is presumed to be governed by the law of the jurisdiction in which it was executed absent a contrary intent."<sup>1</sup> Se. Tex. Inns, Inc. v. Prime Hospitality Corp., 462 F.3d 666, 672 n.8 (6th Cir. 2006), reh'g denied (Sept. 27, 2006) (citing Ohio Cas. Ins. Co. v. Travelers Indem. Co., 493 S.W.2d

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<sup>1</sup>The Personal Guarantee contains no choice-of-law provision.

465, 467 (Tenn. 1973)) (internal quotation marks omitted). The Defendant submits that, as it is undisputed the Personal Guarantee was executed in Georgia, Georgia law should apply. Conversely, it is the position of the Plaintiffs that Tennessee law should govern. In doing so, the Plaintiffs point to the language of Ohio Casualty, the Tennessee Supreme Court's last pronouncement on the choice of law in a contract case, in which the court stated that

[i]t is a familiar rule in Tennessee that the construction and validity of a contract are governed by the law of the place where the contract is *made*.

The Tennessee rule was well stated by the United States Court of Appeals, Sixth Circuit, in First American National Bank of Nashville v. Automobile Insurance Company, 252 F.2d 62 (1958), as follows:

The Tennessee conflict of laws rule provides that rights and obligations under a contract are governed by the law of that state with the view to which it is made and that the intentions of the parties in this respect to be gathered from the terms of the instruments and all of the attending circumstances control. Bowman v. Price, 143 Tenn. 366, 226 S.W. 210; Deaton v. Vise, 186 Tenn. 364, 210 S.W.2d 665, 668. The Supreme Court of Tennessee, in the latter case, said:

". . . a contract is presumed to be made with reference to the law of the place where it was entered into unless it appears it was entered into in good faith with reference to the law of some other state."

\* \* \*

Both policies of insurance were made and delivered in Kentucky, and in view of the foregoing authorities we are of the opinion that the conflicts rule of *Lex loci contractus* applies with the result that the substantive law of Kentucky governs the interpretation and construction of the conflicting provisions of the insurance contracts. . . .

Ohio Cas. Ins. Co., 493 S.W.2d at 466-67 (citations and internal quotation marks omitted) (emphasis added). Plaintiffs argue that, since the Personal Guarantee was "made and delivered" in Tennessee, Tennessee law controls.

Ohio Casualty was an insurance contract case. Subsequent Tennessee cases involving

insurance contracts have, following Ohio Casualty, applied the substantive law of the state in which the policy was issued and delivered. See Onebeacon Am. Ins. Co. v. Jaco Airfield Constr., Inc., Nos. 04-2432 B, 03-2649 B, 2007 WL 1039355, at \*3 (W.D. Tenn. Apr. 2, 2007) ("In the absence of an enforceable choice of law clause in an insurance policy, Tennessee courts apply the substantive law of the state in which the policy was issued and delivered"); NGK Metals Corp. v. Nat'l Union Fire Ins. Co., No. 1:04-CV-56, 2005 WL 1115925, at \*4 (E.D. Tenn. Apr. 29, 2005) ("In insurance coverage disputes, Tennessee courts apply the substantive law of the state in which the insurance policy was issued and delivered if there is no choice of law clause in the policy"); Topmost Chem. & Paper Corp. v. Nationwide Ins. Co., No. 01-2588V, 2002 WL 1477880, at \*3 (W.D. Tenn. Apr. 23, 2002) (same); Gov't Employees Ins. Co. v. Bloodworth, No. M2003-02986-COA-R10-CV, 2007 WL 1966022, at \*27 (Tenn. Ct. App. June 29, 2007) (same); Standard Fire Ins. Co. v. Chester-O'Donley & Assoc., Inc., 972 S.W.2d 1, 4 (Tenn. Ct. App. 1998) ("In the absence of an enforceable choice of law clause, Tennessee courts apply the substantive law of the state in which the policy was issued and delivered"), app. denied (July 6, 1998).

Outside the insurance context, the *lex loci contractus* rule is generally articulated in terms of the state in which the contract was executed. See Curtis 1000, Inc. v. Martin, 197 F.App'x 412, 418 (6th Cir. 2006) (in employment agreement case, "Tennessee follows the rule of *lex loci contractus*. Under this rule, a court presumes that a contract is governed by the law of the jurisdiction in which the contract was *executed* absent a contrary intent"); Bridgestone/Firestone N. Am. Tire, LLC v. Harborside Capital Group, LLC, 161 F.App'x 456, 459 (6th Cir. 2005) (based on Tennessee's rule of *lex loci contractus* requiring that contracts are governed by law of the place they are made, leasing contract was "made" in North Carolina, where it was signed and where it was

intended to be performed); In re Estate of Davis, 184 S.W.3d 231, 234 (Tenn. Ct. App. 2004) ("the substantive law of the state in which the [antenuptial] contract was *executed* governs disputes arising from the contract"), cert. denied sub nom. Davis v. Davis, 546 U.S. 977, 126 S. Ct. 550, 163 L. Ed. 2d 460 (2005); Messer Griesheim Indus., Inc. v. Cryotech of Kingsport, Inc., 131 S.W.3d 457, 474-75 (Tenn. Ct. App. 2003) (in case involving a purchase agreement, court found that "Tennessee follows the rule of *lex loci contractus*. This rule provides that a contract is presumed to be governed by the law of the jurisdiction in which it was *executed* absent a contrary intent"); Vantage Tech., LLC v. Cross, 17 S.W.3d 637, 650 (Tenn. Ct. App. 1999) (same, in case interpreting covenant not to compete), app. denied (Apr. 17, 2000); Jasper v. Streck, No. 03A01-9711-CV-00521, 1998 WL 429648, at \*3 (Tenn. Ct. App. July 30, 1998) ("Tennessee follows the traditional rule of *lex loci contractus*; thus, absent any enforceable choice-of-law provisions, questions involving the construction of a contract are governed by the law of the state where the contract was made. In the instant case, Mrs. Jasper testified that the [truck leasing] contract was executed in Ohio. Therefore, our construction of the contract is controlled by Ohio law"), app. denied (Jan. 25, 1999).

An exception to the general rule "is often made when the contract is to be performed in another state and the parties envision performance in accordance with that state's laws. In re Estate of Davis, 184 S.W.3d at 234-35. In this case, the Plaintiffs argue that the contract was mailed to Jones in Paris, Tennessee and payment was to be made from there. However, there is no evidence to suggest the parties intended that performance was to occur in Tennessee or that such performance should be made in accordance with the law of Tennessee. Therefore, the Court finds that the law of Georgia, where the Personal Guarantee was executed, governs interpretation of the contract.

The statute of limitations period for actions involving contract disputes in Georgia is six

years. See Ga. Code Ann. § 9-3-24 ("All actions upon simple contracts in writing shall be brought within six years after the same become due and payable."). A suit based on Item 3 is clearly out of time. The provision contains specific language that Reynolds guaranteed payment of the "\$50,00.00 paid to Qualitex by Gary Jones to purchase 40% of the stock of Qualitex . . . only if . . . Qualitex . . . does not succeed and ceases to operate." See supra at 3. Indeed, the Plaintiffs concede in their response to Reynolds's dispositive motion that Qualitex was not successful and ceased to operate in 1999, more than six years prior to the date their complaint was filed. Accordingly, the Plaintiffs' claims arising from Item 3 of the Personal Guarantee are time-barred.

The Plaintiffs make no such concession as to Items 1 and 2, which do not contain the condition included in Item 3. They insist that these items were payable on demand and the statutory period did not begin to run until October 15, 2005, the date of the first demand letter. Reynolds maintains on the other hand that Items 1 and 2 do not comply with the Georgia statute of frauds, which provides that "[t]o make [a promise to answer for the debt, default, or miscarriage of another] binding on the promisor, the promise must be in writing and signed by the party to be charged therewith . . ." Ga. Code Ann. § 13-5-30(2).

In support of his argument, the Defendant cites to Caldwell v. Rogers, 230 S.E.2d 368 (Ga. Ct. App. 1976), in which the court stated that, under the statute, "the writing relied upon must either itself or in connection with other writings identify the debt which is the subject of the promise, without the aid of parol evidence." Caldwell, 230 S.E.2d at 369 (citation and internal quotation marks omitted). The court observed that "[i]n order to bind the promisor, the written promise of one who undertakes to pay the debt of another must contain a clear statement of the agreement, indicate knowledge of the amount promised to be paid, and show who is the promisee as well as the

promisor. Furthermore, the terms of a promise to assume the debt of another cannot be established by parol." Id. (internal citations omitted). With respect to the personal guarantee before it, the court found that "although the [agreement] indicate[d] knowledge of the amount and party to be paid, it [did] not set forth the time at which the debt [became] due. Accordingly, the writing [was] not complete within itself; it fail[ed] to satisfy the Statute of Frauds." Id. The Plaintiffs offer no response to Reynolds's Georgia statute of frauds argument other than to reiterate their position that Georgia law does not apply. Upon review of the caselaw, the Court finds that, based upon its failure to make provision for the time payment under Items 1 and 2 would become due, the Personal Guarantee did not satisfy the requirements of the Georgia statute of frauds as set forth in Georgia Code Annotated § 13-5-30(2).

#### CONCLUSION

In sum, summary judgment is GRANTED in favor of the Defendant as to Item 3 of the Personal Guarantee at issue herein on statute of limitations grounds and with respect to Items 1 and 2 for violation of the Georgia statute of frauds. Accordingly, the Court need not address the parties' remaining arguments. The Plaintiffs' motion for summary judgment is DENIED. The Clerk of Court is DIRECTED to enter judgment for the Defendant and to remove any and all Court proceedings and deadlines in this matter from the docket.

IT IS SO ORDERED this 11th day of June, 2008.

s/ J. DANIEL BREEN  
UNITED STATES DISTRICT JUDGE