

State of Minnesota
Hennepin County

District Court
Fourth Judicial District

Court File Number: **27-CV-09-21969**

Case Type: Personal Injury

Mailing Label

BRIAN A WOOD
150 S FIFTH ST STE 1700
MINNEAPOLIS MN 55402-4217

Jerry Abbott vs Target Corporation

Please find enclosed, documents from Hennepin County Court Administration.

If you have any questions, please call 612-348-8607

Dated: **1/11/2010**

Mark S. Thompson
Court Administrator
Hennepin County District Court
300 South Sixth Street, C-3
Minneapolis MN 55487-0332

cc: Jerry Abbott

FILED

STATE OF MINNESOTA	2010 JAN 12 PM 5:14	DISTRICT COURT
COUNTY OF HENNEPIN	BY _____ HENN CO. DISTRICT COURT ADMINISTRATOR	DEPUTY FOURTH JUDICIAL DISTRICT

Jerry Abbott,

Plaintiff,

ORDER

v.

Ct. File No. 27-CV-09-21969

Target Corporation,

Defendant.

The above-entitled matter came before the Honorable Denise D. Reilly, Judge of District Court on January 11, 2010 for hearing on Defendant Target Corporation's Motion for Summary Judgment. Attorney Peter Gregory appeared on behalf of Defendant Target Corporation. No one appeared on behalf of Plaintiff Jerry Abbott. The Court having heard and read the arguments of counsel, and based upon the files, records, and proceedings herein, makes the following:

FINDINGS OF FACT

1. The present action arises out of an incident that occurred in Murrieta, California on or about September 6, 2005. (*See* Gregory Aff. Ex. 1.)
2. Plaintiff Jerry Abbott ("Plaintiff") is a resident of the City of Murrieta, Orange County, California. (Compl. ¶ 1.)
3. Defendant Target Corporation ("Defendant") is a Minnesota corporation licensed to do business in Minnesota. (Compl. ¶ 2.)
4. Plaintiff alleges he was injured while shopping at a Target Store in Murrieta, California due to the defective maintenance of the store's shopping carts. (*See* Compl. ¶¶ 3-4.)

5. Plaintiff commenced an action in the Superior Court of California against Defendant on September 7, 2007, alleging negligence. (*See* Gregory Aff. Ex. 1.) On August 12, 2008, Plaintiff sent a letter to Defendant acknowledging that the action in California “was filed on a date beyond the statute of limitations.” (*See id.* Ex. 2.) Plaintiff discharged his attorney and indicated that he was proceeding as a pro se litigant. (*Id.*) On October 27, 2008, Defendant filed a notice of demurrer and demurrer to Plaintiff’s Complaint seeking dismissal on the grounds that Plaintiff had failed to file the action within the applicable two-year statute of limitations. (*Id.* Ex. 3.) The Superior Court of California sustained Defendant’s demurrer and dismissed Plaintiff’s action on the same date. (*Id.* Ex. 4.)
6. Plaintiff filed a Summons and Complaint with the Hennepin County District Court Administrator on August 31, 2009, claiming damages in excess of \$50,000 for personal injuries he allegedly sustained as a result of the fall. (Compl. ¶¶ 5-10.)
7. Plaintiff’s present action arises out of the same set of operative facts asserted in the California action.
8. Defendant filed an Answer on October 12, 2009, generally denying Plaintiff’s allegations and stating as an affirmative defense that Plaintiff’s Complaint is barred by the applicable statute of limitations.
9. On December 14, 2009, Defendant filed a notice of motion and motion for summary judgment.
10. Plaintiff has not responded to Defendant’s motion for summary judgment.
11. Plaintiff did not appear at the hearing in opposition to Defendant’s motion.
12. Defendant’s motion for summary judgment is uncontested.

CONCLUSIONS OF LAW

1. Minnesota Rule of Civil Procedure 56 allows a court to dispose of an action on the merits if there is no genuine dispute regarding the material facts, and a party is entitled to judgment under the law applicable to such facts. *DLH, Inc. v. Russ*, 566 N.W.2d 60, 69 (Minn. 1997). Accordingly, summary judgment is appropriate 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 either party is entitled to a judgment as a matter of law. Minn. R. Civ. P. 56.03. The burden is on the moving party to show the absence of any genuine issue of material fact. Minn. R. Civ. P. 56.03; *Bixler v. J.C. Penney Co.*, 376 N.W.2d 209, 215 (Minn. 1985). Once the moving party has made a prima facie case that entitles it to summary judgment, the burden shifts to the nonmoving party to produce specific facts that raise a genuine issue for trial. *Bebo v. Delander*, 632 N.W.2d 732, 737 (Minn. Ct. App. 2001). The party resisting summary judgment must do more than rest on mere averments or unsupported allegations, but must come forward with specific facts to satisfy its burden of production. *Id.*
2. Under the Minnesota Uniform Conflict of Laws-Limitations Act (the “Act”), “[i]f a claim is substantively based upon the law of one other state, the limitation period of that state applies.” Minn. Stat. § 541.31. subd. 1(a)(1).
3. The Act applies to claims arising from incidents occurring on or after August 1, 2004. *See* Minn. Stat. § 541.34. Plaintiff’s cause of action arose on September 6, 2005, and section 541.31 applies to the facts of the case. *Cf. Fleeger v. Wyeth*, 771 N.W.2d 524 (Minn. 2004) (applying common law rule that Minnesota statute of limitations are

considered procedural in case where events giving rise to claims occurred before the August 1, 2004 effective date of the Act).

4. Minnesota courts apply the five-factor “significant contacts” test for choice-of-law questions. *See Burks v. Abbott Laboratories*, 639 F.Supp.2d 1006, 1013 (D. Minn. 2009). The five factors are: (1) predictability of result, (2) maintenance of interstate and international order, (3) simplification of the judicial task, (4) advancement of the forum's governmental interest, and (5) application of the better rule of law. *See Milkovich v. Saari*, 203 N.W.2d 408 (Minn. 1973).
5. Minnesota courts have held that “the first and third factors have little value in tort cases,” and the fifth factor “does not appear to carry much weight in a choice-of-law analysis.” *Burks*, 639 F.Supp.2d at 1013.
6. With respect to the second factor, the Court considers whether “the application of Minnesota law would manifest disrespect” for the law of another state. *Burks*, 639 F.Supp.2d at 1013. In *Hughes v. Wal-Mart Stores, Inc.*, the Eighth Circuit held that where a state “has little or no contact with a case and nearly all of the significant contacts are with a sister state, the factor suggests that a state should not apply its own law to the dispute.” 250 F.3d 618, 620-21 (8th Cir. 2001). Here, the incident occurred in California and Plaintiff is a resident of California. Plaintiff was not treated in Minnesota and his medical records are not in Minnesota. Plaintiff has not identified any evidence or witnesses in Minnesota. Minnesota has “little or no contact” with this case and “nearly all of the significant contacts” are with California. *See id.* The second factor weighs in favor of applying California law.

7. With respect to the fourth factor, the Court considers “which choice of law most advances a significant interest of the forum.” *Burks*, 639 F.Supp.2d at 1013. “When one of two states related to a case has a legitimate interest in the application of its law and policy and the other has none, ... clearly the law of the interested state should be applied.” *Id.* (citing *Nodak Mut. Ins. Co. v. Am. Family Mut. Ins. Co.*, 590 N.W.2d 670, 674 (Minn. Ct. App. 1999)). California has a strong interest in adjudicating the rights of its citizens “when injuries occur in or tort actions arise from events within [the state’s] borders.” *Burks*, 639 F.Supp.2d at 1013. Minnesota has little interest in adjudicating Plaintiff’s rights under these facts. The fourth factor weighs in favor of applying California law.
8. The balance of relevant factors favors the application of California’s substantive law.
9. California law is the governing substantive law in Plaintiff’s negligence action and the Court applies California’s statute of limitations. *See* Minn. Stat. § 541.31. subd. 1(a)(1).
10. California law mandates that “[a]n action for assault, battery, or injury to, or for the death of, an individual caused by the wrongful act or neglect of another” must be brought within two years. Cal. Civ. Proc. Code § 335.1.
11. Plaintiff’s cause of action accrued on September 6, 2005, the date of his injury. *See Rodibaugh v. Caterpillar Tractor Co.*, 225 Cal.App.2d 570, 573 (Cal. Ct. App. 1964). Plaintiff sought redress for damages arising from an incident that occurred more than two years before Plaintiff filed his Complaint with the Superior Court of California on September 7, 2007.
12. On October 27, 2008, the Superior Court of California dismissed Plaintiff’s complaint on the grounds that he had failed to properly file his action within the applicable limitations period. (*See* Gregory Aff. Ex. 4.)

13. Plaintiff was aware that litigation in California was time-barred. (*See Gregory Aff. Ex. 2.*)

14. The law allows for two exceptions to the Minnesota Uniform Conflict of Laws-Limitations Act. Section 541.31, subdivision 2 provides that:

If a cause of action arises outside of this state and the action is barred under the applicable statute of limitations of the place where it arose, the action may be maintained in this state if the plaintiff is a resident of this state who has owned the cause of action since it accrued and the cause of action is not barred under the applicable statute of limitations of this state.

Minn. Stat. § 541.31, subs. 1(a) & 2. Plaintiff is not a resident of Minnesota and subdivision 2 does not apply.

15. Additionally, section 541.33 states that:

If the court determines that the limitation period of another state applicable under sections 541.31 and 541.32 is substantially different from the limitation period of this state and has not afforded a fair opportunity to sue upon, or imposes an unfair burden in defending against, the claim, the limitation period of this state applies.

Minn. Stat. § 541.33. This escape clause should be employed “rarely” and only in “extreme cases.” *Burks*, 639 F.Supp.2d at 1019 (citing Minnesota Uniform Conflict of Laws-Limitations Act, § 4, cmt.). Notably, “[i]t is not enough that the forum state’s limitation period is different from that of the state whose substantive law is governing; the difference must be ‘substantial,’ and the ‘fair opportunity’ provision constitutes a separate and additional requirement.” *Id.* The different limitation periods in Minnesota and California do not, standing alone, constitute a “substantial” difference entitling Plaintiff to relief under section 541.33. *See id.* Further, the Court finds that Plaintiff did not “encounter[] any kind of substantial barriers” to instituting suit in California within the requisite time period. *See id.* at 1019-20. The record reflects that Plaintiff was aware of his claim and retained counsel to represent him in California. (*See Gregory Aff. Exs.*

1-2.) Plaintiff had a “fair opportunity to litigate” his claims in California. *Burks*, 639 F.Supp.2d at 1020. Plaintiff’s failure to timely file his complaint in California within the time period provided does not entitle him to relief under section 541.33.

16. Plaintiff is acting as a pro se litigant. The Court is mindful of its duty to ensure fairness to a pro se litigant by allowing reasonable accommodation so long as there is no prejudice to the adverse party. *See Kasson State Bank v. Haugen*, 410 N.W.2d 392, 395 (Minn. Ct. App. 1987). However, this consideration is not absolute. *See id.* A district court should not feel compelled to bend all rules and requirements in order to accommodate pro se parties. *Id.* Further, the pro se status of a party is not a reasonable excuse for a failure to defend in an action before the court. *Black v. Rimmer*, 700 N.W.2d at 521. Plaintiff has not defended against Defendant’s motion for summary judgment.

17. Plaintiff has not demonstrated that there are specific facts in existence which create a genuine issue for trial and Defendant is entitled to summary judgment on Plaintiff’s claim as a matter of law. *See Bebo*, 632 N.W.2d at 737; *DLH, Inc.*, 566 N.W.2d at 71.

Based upon the above Findings of Fact and Conclusions of Law, the Court makes the following:

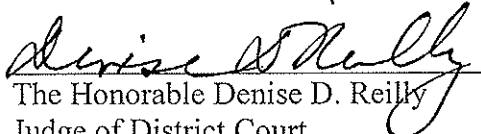
ORDER

1. Defendant Target Corporation’s Motion for Summary Judgment is **GRANTED**.
2. Plaintiff Jerry Abbott’s claims are **DISMISSED WITH PREJUDICE**.
3. Any other relief not specifically ordered herein is **DENIED**.

THERE BEING NO JUST REASON FOR DELAY, LET JUDGMENT BE ENTERED ACCORDINGLY AND FORTHWITH.

Dated this 12th day of January, 2010.

BY THE COURT:


The Honorable Denise D. Reilly
Judge of District Court