

Commonwealth of Kentucky
Court of Appeals

NO. 2009-CA-002114-MR

L.C. CHARTERS, INC.

APPELLANT

v. APPEAL FROM HARLAN CIRCUIT COURT
HONORABLE RUSSELL D. ALRED, JUDGE
ACTION NO. 08-CI-00335

MEL'S MULTI-SERVICE

APPELLEE

OPINION
AFFIRMING

** ** * ** * **

BEFORE: ACREE AND STUMBO, JUDGES; LAMBERT,¹ CHIEF SENIOR
JUDGE.

STUMBO, JUDGE: L.C. Charters is appealing from an order of the Harlan Circuit
Court dismissing a cross-claim against Mel's Multi-Service because it was not pled
within the statute of limitations. L.C. Charters argues that the original complaint,

¹ Chief Senior Judge Joseph E. Lambert, sitting as Special Judge by assignment of the Chief
Justice pursuant to Section 110(5)(b) of the Kentucky Constitution and Kentucky Revised
Statutes (KRS) 21.580.

filed by Erie Insurance Company, tolled the running of the statute of limitations.

We find no error and affirm.

On February 28, 2006, a bus owned and operated by L.C. Charters caught fire while transporting passengers from an event. On July 24, 2007, Erie Insurance Company, which insured one of the passengers, William Noble, filed suit in Harlan District Court against L.C. Charters and Mel's Multi-Service to recover for damage done to Mr. Noble's personal property. Mel's was named in the suit because it had done repairs to the bus the day before the fire and it was thought faulty repairs might have caused the fire.

The action was originally filed in the district court, but when L.C. Charters filed its answer, it asserted a cross-claim against Mel's for the damage to the bus. This caused the amount in controversy to exceed the jurisdictional limit of the district court, necessitating a transfer to circuit court. At that point, Mel sought to dismiss the cross-claim on statute of limitations grounds. The statute of limitation for damage to personal property is two years from the date the damage occurred. KRS 413.125. The bus fire occurred in February, 2006, and the cross-claim was not asserted until April, 2008.

On June 10, 2008, the circuit court dismissed the cross-claim and transferred the case back to the district court. The underlying claim of Erie

Insurance was resolved in district court, though the record does not contain the outcome. This appeal followed.

L.C. Charters' first argument is that the claim was asserted within the applicable limitations period. L.C. Charters claims that its cross-claim was a claim for indemnity, which has a five-year limitation period. *Degener v. Hall Contracting Corp.*, 27 S.W.3d 775 (Ky. 2000). We disagree. While L.C. Charters may have an indemnity claim against Mel's, its cross-claim alleged negligent damage to the bus and sought over \$90,000 in damages. Erie Insurance only sought approximately \$1,000. L.C. Charters was not only looking for restitution for damages it might be required to pay to Erie Insurance, but sought to be made whole by collecting for damages to its bus. The cross-claim was a claim for property damages, not indemnity.²

L.C. Charters' next argument is that claims asserted by defendants by way of cross-claim are exempt from limitation periods, citing to the case of *Armstrong v. Logsdon*, 469 S.W.2d 342 (Ky. 1971). In *Armstrong*, the plaintiffs filed suit against the defendants for personal injury and property damage arising out of an automobile accident. The defendants filed answers and counterclaims seeking similar damages. The plaintiffs sought to dismiss the counterclaims on the basis that they were barred by the statute of limitations. The trial court agreed and dismissed the counterclaims.

² We note that L.C. Charters did assert an indemnity claim in its answer to the complaint, but we are unaware if it was argued when the case returned to the district court. As stated above, the ultimate outcome of this case is unknown.

On appeal, the *Armstrong* defendants argued that “the plea of limitation should not prevail against their right to assert counterclaims which were connected with or grew out of the events or transactions that were the basis of the suit.” *Id.* The Court agreed with the defendants and held that

if a claim of a defendant arising out of the same occurrence which is the basis of the plaintiff’s claim is not barred by limitation when the suit is brought, it may be asserted by a pleading timely served in such suit even though the limitation period has elapsed between the time of the commencement of the suit and the serving of the counterclaim.

Id.

Armstrong concerned counterclaims. L.C. Charters would have us apply the same logic to cross-claims. L.C. Charters argues that since their cross-claim arose out of the same occurrence as the claim brought by Erie Insurance, the statute of limitations effectively stopped running once the complaint was filed. Simply put, both Erie Insurance’s claim and L.C. Charters’ cross-claim arose out of the bus fire.

We do not believe the holding of *Armstrong* should apply to cross-claims for affirmative relief. A counterclaim is a claim brought by a defendant against a plaintiff. A cross-claim is brought by a defendant against a second defendant. In fact, a cross-claim is more akin to an original action. While there is no Kentucky law on point, other jurisdictions have considered this issue. *See Ehlert v. Western Reserve Port Authority*, 2003 WL 22293196 (Ohio App. 11 Dist. 2003); *Hurst v. U.S. Department of Education*, 901 F.2d 836 (10th Cir. 1990); *State*

ex rel. Egeland v. City Council of Cut Bank, Mont., 803 P.2d 609 (Mont. 1990); *Appelbaum v. Ceres Land Co.*, 546 F.Supp. 17 (D. Minn. 1981); *Chauffeurs, Teamsters, Warehousemen and Helpers, Local Union No. 135 v. Jefferson Trucking Co., Inc.*, 628 F.2d 1023 (7th Cir. 1980); *Biddle v. Biddle*, 395 A.2d 218 (N.J. Super. L. 1978); *Ash v. United States*, 363 F.Supp. 345 (D. Neb. 1973).

These cases all state that cross-claims putting forth affirmative claims must satisfy the applicable statute of limitations. L.C. Charters' affirmative claim seeking damages for the harm to its bus is an affirmative cross-claim and should have been brought within the two-year limitation period. It was not and, therefore, the trial court correctly dismissed the claim.

Based on the above, we affirm.

ALL CONCUR.

BRIEF FOR APPELLANT:

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BRIEF FOR APPELLEE:

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