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**IN THE COURT OF COMMON PLEAS
CUYAHOGA COUNTY, OHIO**

FILED

2022 JAN 18 A 10:11

WILLIAM J. GALLAGHER
Plaintiff

Case No: CV-18-908626

Judge: CASSANDRA COLLIER-WILLIAMS

CLERK OF COURTS
CUYAHOGA COUNTY

EDWARD W. COCHRAN, ET AL
Defendant

JOURNAL ENTRY

DEFENDANTS' CLEVELAND PLATING LLC AND EDWARD W. COCHRAN'S MOTION TO STRIKE JURY DEMAND,
FILED 09/15/2021, IS GRANTED. ORDER ATTACHED AND ORDERED RECORDED. OSJ.

Judge Signature

Date

Plaintiff can seek is to be employed by the Defendants and/or equity in the Defendants' company up to the value of \$511,850. The confusion is based in the interpretation of the Court of Appeals' decision.

On July 12, 2019, the Defendants filed their Motion for Summary Judgment. The basis for their summary judgment motion, among other reasons, was the Statute of Frauds. R.C. 1335.05 contains Ohio's Statute of Frauds and states in relevant part as follows:

No action shall be brought whereby to charge the defendant, upon a special promise, to answer for the debt, default, or miscarriage of another person *** or upon an agreement that is not to be performed within one year from the making thereof; unless the agreement upon which such action is brought, or some memorandum or note thereof, is in writing and signed by the party to be charged therewith or some other person thereunto by him or her lawfully authorized.

The Court of Appeals found that the Statute of Frauds does not bar any part of the Plaintiff's Complaint. The Court based that conclusion on their determination that Plaintiff's claims "allege not that Cochran agreed to pay him directly, but that Gallagher was promised an equity stake in the company or employment to reimburse him for his debts. As a result, the Statute of Frauds debt provision is not implicated." *Gallagher v. Cochran*, 8th Dist. Cuyahoga No. 109081, 2020-Ohio-4917, ¶ 36. Furthermore, the Court held that it "is possible for an equity sharehold to be given to a person or to reach the required value in less than a year", as well as a "period of employment can be completed within a year." *Id.* at ¶ 39. Therefore, the "Statute of Frauds does not bar any part of the complaint." *Id.* at ¶ 40.

The Plaintiff has latched onto the ruling of the Court of Appeals ("the Statute of Frauds does not bar any part of the complaint"), and now believes that he can go forth and seek monetary damages in the amount of \$511,850. To do so would ignore the reasoning put forth by the Court of Appeals. Simply put, the Court of Appeals held that the Statute of Frauds did not apply because

Plaintiff did not allege that Defendants agreed to pay Plaintiff directly the debt owed by the third party, but that the Plaintiff was promised an equity stake in the company or employment to reimburse him for his debts. To now allow the Plaintiff to seek monetary damages from the Defendants for the debt owed by a third party would be to ignore the Statute of Frauds, and the holding of the Court of Appeals. This Court is not inclined to do so.

Consequently, in the trial of this matter, the only damages that the Plaintiff can argue for is specific performance of either employment from the Defendants, or an equity stake in the Defendants' company.

The right to a jury trial does not exist if the relief sought is equitable. *Reed v. Triton Services, Inc.*, 12th Dist. Clermont No. CA2018-07-049, 2019-Ohio-1587, ¶ 40 *First Natl. Bank v. Miami Univ.*, 121 Ohio App.3d 170, 180 (12th Dist. 1997). A claim for specific performance seeks only an equitable remedy. Here, Plaintiff has asserted a cause of action for breach of contract with specific performance as the sole remedy. "Couching the request for specific performance as a breach of contract claim does not change the underlying character of the action so as to afford [a party] the right to a jury trial." *Sabatine BK Development, LLC v. Fitzpatrick Enterprises, Inc.*, 5th Dist. Stark No. 2016CA00116, 2017-Ohio-805, ¶18. This action sounds in equity. Consequently, Defendants' Motion to Strike Jury Demand is hereby GRANTED.

IT IS SO ORDERED.



JUDGE CASSANDRA COLLIER-WILLIAMS