

**IN THE COURT OF APPEALS
FIRST APPELLATE DISTRICT OF OHIO
HAMILTON COUNTY, OHIO**

GILBERT PARKER,	:	APPEAL NO. C-170548
Plaintiff-Appellant,	:	TRIAL NO. A-1600773
vs.	:	<i>JUDGMENT ENTRY.</i>
NORTHSIDE MATTRESS,	:	
ALIOU ALIOU,	:	
and	:	
BAMOUNI BALELE,	:	
Defendant-Appellees.	:	

We consider this appeal on the accelerated calendar, and this judgment entry is not an opinion of the court. *See* Rep.Op.R. 3.1; App.R. 11.1(E); 1st Dist. Loc.R. 11.1.1.

Plaintiff-appellant Gilbert Parker appeals the judgment of the court of common pleas dismissing his complaint against defendant-appellees Aliou Aliou, Bamouni Balele and Northside Mattress.

Parker was involved in a physical altercation with the “owners/employees” of Northside Mattress, Aliou Aliou and Bamouni Balele. The police were called and they arrested Parker for public intoxication. Parker filed a citizen’s complaint against the police. Parker also filed a complaint against Aliou, Balele, and Northside Mattress.

Service of the complaint was made on Northside Mattress by serving its usual place of business. Service was not perfected on Aliou or Balele individually within a year of the complaint being filed. The trial court dismissed Parker's complaint as to those defendants. Northside Mattress was then dismissed because, with the individuals dismissed, it could no longer be held vicariously liable.

Parker's first assignment of error asserts that the trial court erred in granting the motion to dismiss defendant-appellees Aliou Aliou and Bamouni Balele. Civ.R. 3(A) states that "[a] civil action is commenced by filing a complaint with the court, if service is obtained within one year from such filing upon a named defendant." For an action to be commenced, the complaint must be filed and service of the complaint must be made within a year of the filing. *See Lewis v. Moore*, 2017-Ohio-4049, 91 N.E.3d 334, ¶ 9-11 (10th Dist.); *Seger v. For Women, Inc.*, 1st Dist. Hamilton No. C-040317, 2005-Ohio-528, ¶ 14.

Parker's complaint alleges that the incident occurred on December 23, 2015. The complaint was filed on February 8, 2016, and the certified copy of the docket indicates that service was not perfected on Aliou or Balele on or before February 8, 2017. Since the action was not commenced by serving Aliou or Balele within one year of filing the complaint, the claims against them were properly dismissed. The first assignment of error is overruled.

Parker's second assignment of error alleges that the trial court erred in granting the motion to dismiss the complaint against defendant-appellee Northside Mattress. Parker's complaint against Northside Mattress was based on his claim that Aliou and Balele owned or were employed by the business where the assault took place. Parker alleged a theory of vicarious liability against Northside Mattress. Once the claims against Aliou and Balele were dismissed because the action was not

commenced within one year; no viable claim remained against Northside Mattress. *Comer v. Risko*, 106 Ohio St.3d, 2005-Ohio-4559, 833 N.E.2d 712, ¶ 24-28. An injured party can sue the principle, the agent, or both, but a principle is vicariously liable only when an agent could be held directly liable. *Natl. Union Fire Ins. Co. of Pittsburgh v. Wuerth*, 122 Ohio St.3d 594, 2009-Ohio-3601, 913 N.E.2d 939, ¶ 22. *See Rush v. Univ. of Cincinnati Physicians, Inc.*, 2016-Ohio-947, 62 N.E.3d 583 ¶ 23 (1st Dist.); *Werden v. The Children's Hosp. Med. Ctr.*, 1st Dist. Hamilton No. C-040889, 2016-Ohio-4600, ¶ 41. Where the agent's potential liability has been extinguished by operation of law, a direct claim against a principle is contrary to basic agency law. *Comer* at ¶ 25; *Harris v. Mt Sinai Med. Ctr.*, 116 Ohio St.3d 139, 2007-Ohio-5587, 876 N.E.2d 1201, ¶ 44. Any liability of Northside Mattress was predicated on Parker's claims against Aliou and Balele. Once those claims were extinguished, the complaint against Northside Mattress was properly dismissed. The second assignment of error is overruled.

Therefore, the judgment of the trial court is affirmed.

Further, a certified copy of this judgment entry shall constitute the mandate, which shall be sent to the trial court under App.R. 27. Costs shall be taxed under App.R. 24.

MOCK, P.J., ZAYAS and DETERS, JJ.

To the clerk:

Enter upon the journal of the court on July 13, 2018

per order of the court _____
Presiding Judge