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OF THE COMMITTEE ON OPINIONS

IN RE: THE ESTATE OF
PHILOMENA TUZZOLO

SUPERIOR COURT OF NEW JERSEY
CHANCERY DIVISION, PROBATE PART:
BERGEN COUNTY
DOCKET No. P-104-19

OPINION

Argued: May 24, 2019

Decided: June 5, 2019

Appearances: Joseph Nackson, (Law Offices of Joseph Lewis Nackson, Esq., attorneys) for
Plaintiff

Maxine Neuhauser, (Epstein Becker & Green, P.C., attorneys) for Defendant

HON. EDWARD A. JEREJIAN, P.J.Ch.

This matter comes before the court by Joseph Nackson, Esq., attorney for Plaintiff Susan Beshaw, seeking relief by way of summary action seeking to compel an accounting and vacate a certain release and refunding bond, filed on March 18, 2019. On May 6, 2019, Maxine Neuhauser, Esq., attorney for Defendant Francine Cenicola, filed a motion to dismiss the complaint in lieu of an answer. On May 16, 2019, Plaintiff submitted a reply brief, both in furtherance of its own order to show cause and in opposition to Defendant's motion to dismiss. The court heard oral argument on May 24, 2019.

BACKGROUND

Philomena Tuzzolo (hereinafter, “Decedent”) died on December 28, 2008. Susan Beshaw (hereinafter, “Plaintiff”) and Francine Ceincola (hereinafter, “Defendant”) are the daughters of Decedent. Defendant was the executrix of the Decedent’s estate, and is Plaintiff’s older sister.

By way of letter dated April 20, 2011, the attorney for the executrix of the Estate, Mr. Giuseppe Randazzo, Esq., forwarded a copy of an informal accounting and a Refunding Bond and Release (hereinafter, “release”). See Complaint, Exs. C and D. Plaintiff signed the release one day after receiving it, purportedly out of a concern about receiving the funds. See id. at ¶ 13. As will be discussed, Plaintiff’s understanding of the significance of said documents is disputed amongst the parties, but Plaintiff asserts by way of her verified complaint that she was never advised of her right to seek a formal accounting, nor was she conscious of the “finality” of these documents. See id. at ¶ 14. Subsequently, in June of 2011, Defendant advised Plaintiff of her intent to shred the paperwork pertaining to the Estate because of the fact that the estate had been settled.

Plaintiff first sought legal counsel following the above referenced interaction in or around June of 2011, but ultimately did not retain an attorney. See id. at ¶ 19. Subsequently, in or around 2015, Plaintiff retained an attorney who exchanged correspondence with counsel for the executrix of the estate in February of 2016, in which Plaintiff’s counsel threatened to commence litigation. See id. at ¶¶ 25-27. Said litigation, however, was never commenced.

Plaintiff finally commenced the instant matter by way of verified complaint and order to show cause on March 18, 2019, over ten years since the date of Decedent’s death and eight years since the settling of Decedent’s estate, despite Plaintiff’s complaint indicating a knowledge of purportedly suspicious behavior that in fact predates Decedent’s death. Now, Plaintiff seeks the vacating of the release and re-opening of the estate administration, a formal accounting, and

injunctive relief in regards to the destruction and preservation of any estate documents and financial records.

LEGAL STANDARD

Pursuant to R. 4:6-2(e), a party may, in lieu of an answer, file a motion to dismiss for failure to state a claim upon which relief may be granted. Dismissal is warranted where no cause of action is identified or suggested by the facts of the complaint. Printing Mart, supra, 116 N.J. at 746.

When reviewing the complaint under such a motion, courts will accept well-pleaded facts as true and provide the non-moving party favorable factual inferences that are reasonable. Ibid. Moreover, a court must search the complaint in depth and with liberality to determine if a cause of action can be gleaned even from an obscure statement, particularly if further discovery is taken. Ibid. Accordingly, if the complaint states no basis for relief and discovery would not provide one, dismissal of the complaint is appropriate. See Banco Popular N. Am. v. Gandi, 184 N.J. 161, 166 (2005). However, if a generous reading of the allegations “merely suggests a cause of action,” the complaint will survive the motion. F.G. v. MacDonell, 150 N.J. 550, 556 (1997).

At this stage of the litigation, the Court should not be concerned with the plaintiff’s ability to prove the allegations contained in the complaint, but rather should ascertain whether the facts alleged suggest a cause of action. Somers Const. Co. v. Bd. of Educ., 198 F. Supp. 732, 734 (D.N.J. 1961).

While legitimate inferences are to be drawn in favor of the non-moving party, a court need not credit a complaint’s bald assertions or legal conclusions. Printing Mart, supra, 116 N.J. at 768. A motion to dismiss for failure to state a claim may be addressed to specific counts of the complaint, and the court, on a motion to dismiss the entire complaint, has the discretion to dismiss only some of the counts. See Jenkins v. Region Nine Housing, 306 N.J. Super. 258 (App. Div. 1997), certif.

den. 153 N.J. 405 (1998) (dismissing contract and fraud claims, but sustaining intentional interference and promissory estoppel theories).

Laches is a concept that arises from “the neglect for an unreasonable and unexplained length of time . . . to do what in law should have been done.” Lavin v. Hackensack Bd. of Educ., 90 N.J. 145, 151, 447 A.2d 516 (1982) (internal citations omitted). It can be applied by a court of equity where a statute of limitation does not apply. Fox v. Millman, 210 N.J. 401, 420, 45 A.3d 332 (2012). The doctrine bars relief when the delaying party had ample opportunity to bring a claim, and the party invoking the doctrine was acting in good faith in believing that the delaying party had given up on its claim. Knorr v. Smeal, 178 N.J. 169, 181, 836 A.2d 794 (2003). “inequity, more often than not, will turn on whether a party has been misled to his harm by the delay.” Lavin, supra, 90 N.J. at 153 (internal citations omitted).

When determining whether the doctrine of laches should be invoked, the court considers: (1) the length of the delay; (2) the reasons for the delay; and (3) how the circumstances of the parties have changed over the course of the delay. Knorr, supra, 178 N.J. at 181.

The core equitable concern in applying laches is whether [the opposing] party has been [unfairly] harmed by the delay. Id.

ANALYSIS

PLAINTIFF’S CLAIM FOR RELIEF IS BARRED BY THE TERMS OF THE REFUNDING BOND AND RELEASE

From the outset, it should be noted that the release signed by both parties during the initial probate effectively bars the entirety of the relief sought in Plaintiff’s complaint.

Where “all interested parties agree to an informal accounting and sign a release and refunding bond, none of them can later compel a formal accounting absent a showing of fraud, misrepresentation, mismanagement, undue influence by the fiduciary or substantial

misunderstanding by the legatee.” Bartel v. Ethel Carnathan Clarenbach, 114 N.J.Super. 79 (Ch. Div. 1971). Thus, although it has been argued that discovery in this case would be futile due to the purported destruction of the documents of interest, it is clear that Plaintiff nevertheless fails to meet this standard.

By its express terms, the Release of interest “forever” discharged the Executrix and the Estate “from all claims and demands whatsoever, in law or in equity, on account of or in respect to the estate of [Decedent].” See Complaint, at Ex. D. Further, the facts plead in the Complaint effectively demonstrate that Plaintiff not only received her share of the estate and was knowledgeable about Decedent’s finances, but also demonstrate that the suspicion which purportedly motivated Plaintiff to finally file the instant matter - eight years later - existed back then.

Specifically, Plaintiff’s complaint acknowledges that while Decedent was still alive, Plaintiff: (1) knew that Decedent’s caregiver was paid in cash; (2) knew a home equity loan had been taken out to pay for Decedent’s care; (3) reviewed receipts for Decedent’s expenses, some of which she disagreed with; (4) knew substantial expenses had been incurred for the maintenance of Decedent’s Garfield property; (5) knew that workers had been hired to perform remedial work on the Garfield property; (6) knew Decedent lived in a rental home; and (7) knew that her and her sister needed to contribute personal funds to pay property taxes on the Garfield property. See generally Complaint at ¶¶ 6-7.

Thus, it is clear that Plaintiff’s complaint establishes that she had full opportunity to ask for whatever additional information she sought prior to signing the release. Especially due to Plaintiff’s admission that Mr. Randazzo’s letter invited Plaintiff to ask whatever questions she might have had about the documents, contained no firm deadline to sign the release, and that she ultimately voluntarily signed the release immediately after she had received it. See id. At ¶ 13.

In addition to Plaintiff's prior experience dealing with the estate lawyer and consulting with other attorneys on her own over the past eight years, it should be noted that Plaintiff is college educated and previously worked full-time as a New Jersey certified schoolteacher. See Neuhauser cert., at Ex. B. In essence, Plaintiff had the education and experience necessary to evaluate to effectively evaluate and understand the release. See Pears v. Spang, 718 F. Supp. 441, 446 (W.D. Pa. 1989) (finding that plaintiff's high school diploma and attendance at a one-year secretarial school constituted sufficient education and experience to execute a release). Therefore, the court does not find Plaintiff's assertion that she failed to appreciate the circumstances and finality of executing said release to be meritorious whatsoever.

It follows that Plaintiff waived all claims arising from Decedent's estate when she signed the release, and as a result, Plaintiff's complaint fails to state a claim upon which relief can be granted.

THE RELIEF SOUGHT BY PLAINTIFF IS BARRED BY THE DOCTRINE OF LACHES

Moreover, although laches is an affirmative defense, and Defendant procedurally elected to file a motion to dismiss the complaint in lieu of an answer, the doctrine of laches is clearly applicable to the factual history of this case, as Defendant argues in support of its motion.

Plaintiff filed her Complaint on March 18, 2019, which is approximately eight (8) years after she had signed a Release and Decedent's estate had been settled.

By Plaintiff's own admission, she had considered hiring an attorney as early as June of 2011, upon learning that Defendant had intended to shred the probate file upon completion of her duties as executrix. See Complaint at ¶ 19. However, Plaintiff voluntarily chose not to do so. See id.

Subsequently, in 2015, Plaintiff had engaged her current counsel, who in turn contacted Mr. Randazzo - the Estate attorney - going to far as to raise the possibility of commencing litigation. Despite this, Mr. Randazzo had informed both Plaintiff and her counsel that the documents in

question no longer existed, and that any action filed would be considered frivolous. Thereafter, again, Plaintiff voluntarily chose not to file an action.

In 2017, Plaintiff's counsel prepared a complaint, for which Plaintiff signed a verification on September 11, 2017. See Neuhauser Cert. at Ex. A. Yet, *again*, that action was never filed.

It was not until March 18, 2019 that Plaintiff formally commenced the instant action seeking to overturn the signed release, reopen the estate, and demand preservation of documents purportedly no longer in existence.

It is undisputed that Plaintiff waited approximately eight years to file suit after providing her release and refunding bond that acknowledged her receipt of the estate share. The court finds that such a lengthy delay would undoubtedly prejudice Defendant, who has since indicated that the estate's documents have been discarded upon the belief that all of its affairs were concluded. Despite waiting nearly eight years to file, Plaintiff fails to assert any legitimate reason for her failure to act earlier. Moreover, Plaintiff concedes that she has long been aware of her right to assert claims because she had been in discussion with various attorneys, by her own admission in her complaint, as early as 2011.

Therefore, for the reasons set forth above, in addition to failing to state a claim upon which relief can be granted, the relief sought in Plaintiff's complaint is clearly precluded by the doctrine of laches.

EVENTUAL FRAUD AND CONVERSION CLAIMS WITH RESPECT TO THE ESTATE ARE TIME-BARRED

Lastly, the Court recognizes that even in the event that Plaintiff's complaint did survive a R. 4:6-2 motion to dismiss, and despite the obvious existence of laches and a valid, effective release, Plaintiff's complaint does not plead any causes of action with requisite specificity. It would appear, however, based on the facts alleged by Plaintiff in its application to simply re-open the estate for

accounting purposes, that Plaintiff intends to pursue implied allegations of fraud that occurred during Decedent's lifetime and the administration of the estate. Yet, it is clear that the claims that Plaintiff would undoubtedly pursue - fraud with respect to the estate and conversion - would be barred by their respective statute of limitations.

A claim accrues "when . . . the party seeking to bring the action [has] an enforceable right." Metromedia v. Hartz Mountain Assoc., 139 N.J. 532, 535 (1995). In other words, a claim accrues on "the date on which 'the right to institute and maintain a suit' first arose." County of Morris v. Fauver, 153 N.J. 80, 107 (1997) (internal citations omitted).

Despite insufficiently pleading it, Plaintiff's Complaint appears to insinuate the need to reopen the estate administration and obtain a formal accounting in order to determine the degree of some unspecified fraud that she suspects occurred during Decedent's lifetime that in turn diminished the value of the estate via conversion of Decedent's assets.

However, it is clear that both claims against Defendant, were they even specifically asserted, would in fact be time barred. First, N.J.S.A. 3B:1-9 establishes a two-year statute of limitations for fraud in connection with the administration of an estate, stating, "any proceeding must be commenced within 2 years after the discovery of the fraud." Id. Further, the statute of limitations for conversion in New Jersey is six years. N.J.S.A. 2A:14-1. Thus, in addition to the existence of a valid and enforceable Release

CONCLUSION

Based on the allegations made in the complaint, and providing Plaintiff every favorable inference in conjunction with the standards governing a R. 4:6-2(e) motion, it is clear that Plaintiff's complaint fails to state a claim upon which relief can be granted. In addition, it appears to the Court

that Plaintiff's complaint is also precluded by the doctrine of laches, based upon the timeline that Plaintiff herself provided.

Therefore, for the foregoing reasons, Defendant's motion to dismiss is hereby granted. An order accompanies this decision.