

FRED L. HAMILTON, II,	:	IN THE COURT OF COMMON PLEAS OF
Plaintiff	:	LYCOMING COUNTY, PENNSYLVANIA
	:	
vs.	:	NO. 02-01,329
	:	
WILLIAMSPORT NATIONAL BANK,	:	
and LAURA BURIES, individually and	:	
as agent for WILLIAMSPORT NATIONAL	:	
BANK, and KATHLEEN M. STAHL,	:	
Individually and as agent for	:	
WILLIAMSPORT NATIONAL BANK,	:	
Defendant	:	JUDGMENT ON THE PLEADINGS

***Date: April 8, 2004***

**OPINION and ORDER**

Before the Court for determination is the Motion for Judgment on the Pleadings of Defendants Williamsport National Bank, *et al*, filed December 3, 2003. The Motion seeks dismissal of all of Plaintiff's claims. The Court shall grant the Motion.

Fred Hamilton, II (Hamilton) instituted this suit by filing a Writ of Summons on April 5, 2002. On September 17, 2002, Hamilton filed a Complaint. Defendants filed an Answer and New Matter on October 8, 2002.

The case *sub judice* involves two loans made by Williamsport National Bank (WNB) to Hamilton. On September 8, 1997, Hamilton and WNB entered into a loan for \$130,000. The loan was secured by a mortgage on property owned by Hamilton and his father, Fred Hamilton. At the time, Hamilton was constructing a residence on the property that was the subject of the 1997 mortgage. The 1997 mortgage was a construction mortgage loan whereby the proceeds would be paid to the contractor when various stages of work were completed. Hamilton and WNB entered into a second loan for \$140,000 on February 25, 1999.

That loan was secured by a mortgage on the same property that provided security for the 1997 loan. Hamilton defaulted on this loan and WNB foreclosed

Hamilton has asserted what is essentially a negligence claim against the Defendants. He has averred that the contractor building his residence was required to submit an application to WNB before the loan proceeds would be released in payment of the contractor's bills. Hamilton has alleged that Defendants owed him a duty to obtain his signature on the contractor's application and to inspect the work performed by the contractor to ensure that it was done in a workmanlike manner before disbursing loan funds to the contractor. Hamilton has alleged that on October 28,29, 1997 and November 13, 1997 Laura Buries, an employee of the WNB, breached this duty by releasing loan funds to the contractor without obtaining Hamilton's signature or inspecting the work. Hamilton has asserted that this unauthorized disbursement of funds produced a domino effect, which resulted in Hamilton having an insufficient amount of money to complete the construction, which in turn required him to seek additional sources of financing. Hamilton then fell behind on his financial obligations, including defaulting on the 1997 loan, and allegedly this resulted in his credit being destroyed, his business closed, and a declaration of bankruptcy.

Defendants assert three arguments in support of their Motion for Judgment on the Pleadings. First, the 1999 loan is an accord and satisfaction of the 1997 loan and bars any claims arising out of the 1997 loan against Defendants. Second, the causes of action alleged in the Complaint are barred by the two-year statute of limitations set forth in 42 Pa.C.S.A. §5524. Third, the verdict and orders issued in the foreclosure action on the 1999 loan operate as a bar to the individual claims against Stahl and Buries under the doctrine of *res judicata*.

Once the relevant pleadings are closed, any party may move for judgment on the pleadings. Pa.R.C.P. 1034. In deciding a motion for judgment on the pleadings, a Court may only consider the pleadings and documents that are properly attached to the pleadings. *Casner v. American Federation of State, County, and Municipal Employees*, 658 A.2d 865, 869 (Pa. Cmwlth. 1995). A motion for judgment on the pleadings is in the nature of a demurrer in that the well-pleaded allegations of the non-moving party are viewed as true, but only those facts that he has admitted may be used against the non-moving party. *Felli v. Commonwealth, Dep't of Transp.*, 666 A.2d 775, 776 (Pa. Cmwlth. 1995). A motion for judgment on the pleadings may be granted only when there are no material facts at issue and the movant is entitled to judgment as a matter of law. *Ibid; Casner*, 658 A.2d at 869.

The Court will not address the accord and satisfaction or the *res judicata* arguments advanced by the Defendants. The statute of limitations issue and its resolution sufficiently disposes of the matter before the Court. The Court concludes that the two-year statute of limitations bars Hamilton's negligence claims against the Defendants.

A statute of limitations requires an injured individual to bring his claim within a "certain time of the injury, so that the passage of time does not damage the defendant's ability to adequately defend against [the] claims made." *Dalrymple v. Brown*, 701 A.2d 164, 167 (Pa. 1997). "Statutes of limitations have as their purpose the 'stimulation of the prompt pursuit of legal rights and the avoidance of the inconvenience and prejudice resulting from deciding stale cases on stale evidence.'" *Ingenito v. AC & S, Inc.*, 633 A.2d 1172, 1175 (Pa. Super. 1993) (quoting *DeMartino v. Albert Einstein Med. Ctr., N.D.*, 460 A.2d 295, 299 (Pa. Super. 1983)). Once the statutorily prescribed period for instituting a cause of action has expired, the injured

party is bared from bringing the action. *Baumgart v. Keene Bldg. Prods., Corp.*, 666 A.2d 238, 240 (Pa. 1995).

“Whether a complaint is timely filed within the limitation period is a matter of law for the court to determine.” *Crouse v. Cyclops Industries*, 745 A.2d 606, 611 (Pa. 2000). “The general rule is that the statute of limitations begins to run when the negligent act has been done.” *Bigansky v. Thomas Jefferson Univ. Hosp.*, 658 A.2d 423, 426 (Pa. Super. 1995), *app. denied*, 668 A.2d 1119 (Pa. 1995). That is, “the statute of limitations for a negligence cause of action is triggered upon the occurrence of the alleged breach of duty.” *Ibid*; *Sch. Dist. of Borough of Aliquippa v. Maryland Cas. Co.*, 587 A.2d 765, 770 (Pa. Super. 1991). The statute that governs negligence actions is 42 Pa.C.S.A. §5524. The act provides that:

The following actions and proceedings must be commenced within two years:

(7) Any other action or proceeding to recover damages for injury to person or property which is founded on negligent, intentional, or otherwise tortious conduct or any other action or proceeding sounding in trespass, including deceit or fraud, except an action or proceeding subject to another limitation specified in this subchapter.

42 Pa.C.S.A. §5524(7).

Hamilton’s negligence cause of action against the Defendants is barred by the two-year statute of limitations. The alleged breach of duty occurred on October 28, 29, 1997 and November 13, 1997 when the alleged unauthorized disbursement of funds to the contractor took place. This case was instituted by the filing of a Writ of Summons on April 5, 2002. That is a span of approximately four and a half years. As such, the claim is beyond the two-year statutory period and is barred.

The conclusion that the statute of limitations bars Hamilton's negligence cause of action negates the need to address the accord and satisfaction and *res judicata* issues. The heart of the accord and satisfaction argument is that the negligence cause of action arising out of the 1997 loan is barred by the 1999 loan. The individual claims against Stahl and Buries, which the Defendants argue are barred by the doctrine of *res judicata*, are based on the alleged 1997 breach of duty. Since the negligence claims are at the center of both the accord and satisfaction and *res judicata* arguments, the disposal of it through the statute of limitations makes those arguments moot.

Accordingly, Defendants' Motion for Judgment on the Pleadings is granted.

**ORDER**

It is hereby ORDERED that the Motion for Judgment on the Pleadings of Defendants Williamsport National Bank, *et al*, filed December 3, 2003 is GRANTED.

Plaintiff's negligence claims against all Defendants are DISMISSED.

BY THE COURT,

William S. Kieser, Judge

cc: Frank McNaughton, Esquire  
Matthew F. Golden, Esquire  
Judges  
Christian J. Kalas, Esquire  
Gary L. Weber, Esquire (Lycoming Reporter)