

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

CHARLES JOHNSON, Plaintiff	: NO. 11 – 02,052
	:
	: CIVIL ACTION - LAW
vs.	:
	:
CYNTHIA A. ROMIG, Defendant	: Motion for Summary Judgment

OPINION AND ORDER

Before the court is Defendant’s Motion for Summary Judgment, filed October 29, 2013. Argument on the motion was heard December 10, 2013.

In his Complaint, Plaintiff asserts that in February 1999 he purchased two properties from Defendant: 833 Nichols Place and 825-827 Nichols Place, both in Williamsport, Pennsylvania, in August 1999 he deeded the property at 825-827 Nichols Place to his sons,¹ in September 1999 he became incarcerated, and in March 2001 he deeded the property at 833 Nichols Place to Defendant and his sons deeded the property at 825-827 Nichols Place to Defendant. Plaintiff also asserts that the properties were transferred to Defendant in March 2001 based on an oral agreement that Defendant would make the mortgage payments while Defendant was incarcerated, would pay money to Plaintiff on a monthly basis and would deed the properties back to Plaintiff when he was released from incarceration. Plaintiff attaches as Exhibit “E” a document entitled “Affidavit” which he asserts is the memorialization of that oral agreement.² Plaintiff then asserts that in June 2001, Defendant sold the property at 825-827 Nichols Place to a third party, and that in September 2005, Defendant sold the property at 833 Nichols Place to a third party. Plaintiff complains that Defendant never made any monthly payments to him and failed to deed the properties back to him when he was released from

¹ Although Plaintiff contends he retained equitable title to this property and deeded only legal title, the deed, Exhibit “C” of the Complaint, shows no reservation.

² In that affidavit, Defendant agrees to “maintain and protect the interest of 833 Nichols Place property”, to “do whatever is in the best interest of the property for investment purposes”, and that “[w]hen Charles Johnson has satisfied his obligations to the State and is sent home, I agree to sign the property back to Charles Johnson, at which time Charles Johnson will assume the mortgage.” The Affidavit also contains an agreement to “send

incarceration in May 2010. He makes claims for Breach of Contract, Breach of Fiduciary Duty, Unjust Enrichment and Fraud. In the instant motion for summary judgment, Defendant contends all of the claims are barred by the Statute of Limitations, and that the various claims are not supported by the evidence for various reasons. Defendant also contends that Plaintiff cannot make a claim as to 825-827 Nichols Place as he did not own the property, and it was not the subject of the written Affidavit. As the court finds that the statute of limitations bars all claims, only that issue will be addressed.

The facts here are not in dispute. Defendant's arguments assume the truth of all of the material allegations in the Complaint. Therefore, if Defendant prevails in her legal argument, entry of summary judgment is appropriate.

The statute of limitations for breach of contract is four years,³ for breach of fiduciary duty, two years,⁴ unjust enrichment, four years,⁵ and fraud, two years.⁶ The statute begins to run from the time the cause of action accrues. Cole v. Lawrence, 701 A.2d 987 (Pa. Super. 1997). A cause of action for breach of contract generally accrues at the time of the breach, Id., for breach of fiduciary duty, at the time the duty is openly repudiated, Weis-Buy Services, Inc. v. Paglia, 411 F.3d 415 (3rd Cir. 2005), for unjust enrichment, at the time the relationship between the parties is terminated, Cole, supra, and for fraud, at the time when the fraud has been discovered by the exercise of due diligence. Rothman v. Fillette, 469 A.2d 543 (Pa. 1983). In the instant case, when Defendant sold the properties, she breached the contract, repudiated her fiduciary duty, terminated her relationship with Plaintiff, and gave notice to Plaintiff of conduct upon which he now bases his claim of fraud.⁷ Thus, the statute of limitations began running with respect to the property at 825-827 Nichols Place in June 2001, and with respect to 833 Nichols Place, in September 2005. This claim was brought on November 2, 2011, clearly beyond the running of the statute.

Charles money on a monthly basis for personal use", which will "come from 833 Nichols Place proceeds of the rent collected".

³ 42 Pa.C.S. Section 5525.

⁴ 42 Pa. C.S. Section 5524(7); see Weis-Buy Services, Inc. v. Paglia, 411 F.3d 415 (3rd Cir. 2005).

⁵ Cole v. Lawrence, 701 A.2d 987 (Pa. Super. 1997).

⁶ 42 Pa.C.S. Section 5524(7).

⁷ The court is assuming the truth of the averments of the Complaint in making these statements.

Plaintiff's argument, that the statute did not begin to run until he was released from prison as that is when Defendant was obligated to deed the properties back to him, is without merit. The law is well-settled that a self-imposed inability to perform a contract constitutes an anticipatory repudiation and breach of that contract. *See Corbin on Contract*, § 989 (1993); *see also McClelland v. New Amsterdam Casualty Company*, 185 A. 198 (Pa. 1936). Thus, once Defendant deeded the properties to third parties, she was no longer able to fulfill her obligation under the contract to deed them to Plaintiff. The breach occurred at that time.

It is also clear that Plaintiff had notice of the sale, and consequently of the accrual of the causes of action he has now brought, as of the time of recording of the deeds on the date of the sale. 16 P.S. Section 9853 provides "[t]he entry of recorded deeds and mortgages in said indexes, respectively, *shall be notice to all persons* of recording of the same." (Emphasis added.) *See First Citizen's National Bank v. Sherwood*, 879 A.2d 178 (Pa. 2005), and *Gulf Refining Company v. Camp Curtin Trust Company*, 187 A. 437 (Pa. 1936). The exhibits attached to Plaintiff's Complaint show that the deeds at issue were properly recorded and indexed.

Finally, it is of no moment that Plaintiff was incarcerated at the time of the sale. 42 Pa.C.S. Section 5533 declares that imprisonment does not extend the statute of limitations.

Accordingly, none of Plaintiff's claims having been brought within the applicable statute of limitations, Defendant is entitled to summary judgment on all of those claims.

ORDER

AND NOW, this 19th day of December 2013, for the foregoing reasons, Defendant's Motion for Summary Judgment is hereby GRANTED and the claims raised by Plaintiff in his Complaint are hereby DISMISSED.

BY THE COURT,

cc: David Raker, Esq.
Bret Southard, Esq.
Gary Weber, Esq.
Hon. Dudley Anderson

Dudley N. Anderson, Judge