IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

DOROTHY HOAGLAND, Plaintiff vs. CRYSTAL BERNSTEIN, Defendant	: NO. 20 - 0618 : : : CIVIL ACTION : : : Defendant's Motion for : Judgment on the Pleadings

OPINION AND ORDER

Before the Court is Defendant Bernstein's Motion for Judgment on the Pleadings. By Order of Court dated July 20, 2020, this matter was assigned to this Court.

In her Complaint, Plaintiff alleges Breach of a Fiduciary Duty, Count I; Conversion, Count II; Undue Influence, Count III; Fraud, Count IV; Unjust Enrichment, Count V; and Breach of Contract, Count VI (erroneously titled Count V, hereafter Count VI). In Defendant's Motion for Judgment on the Pleadings, she claims that all counts are barred by the statute of limitations. Defendant further claims that Count II fails to state a cause of action.

Both parties agree that any party may move for judgment on the pleadings after the relevant pleadings have closed. Pa. R.C.P. 1034 (a). Both parties further agree that a motion for judgment on the pleadings is properly brought to challenge the sufficiency of the Complaint and is generally appropriate when there exists no genuine issue of fact and the moving party is entitled to judgment as a matter of law. *Lower Mount Bethel Township v. Gacki*, 150 A.3d 5 75, 580 (Pa. Commw. 2016); *Consolidation Coal Co. v. White,* 875 A.2d 318, 325 (Pa. Super. 2005). The question that the motion for judgment on the pleadings raises is whether on the facts averred the law says with certainty that the other party cannot recover. *Clauser v. Shamokin*

Packing Co., 361 A.2d 836 (Pa. Super. 1976); *see also, Metcalf v. Pesock*, 885 A.2d 539, 540 (Pa. Super. 2005).

By Complaint filed on June 16, 2020, Plaintiff avers that she resides at 476 Kepner Hill Road, Muncy, PA (residence). On April 28, 2009, Plaintiff conveyed her residence to Defendant, her daughter, for one dollar ($1.00). Plaintiff alleges that in reliance upon certain promises of Defendant, the deed was executed and the residence was transferred.

More specifically, by written agreement dated May 5, 2009 between the parties, the parties agreed for the "caretaking" of Plaintiff by Defendant, that Plaintiff would pay $400.00 in monthly rent to Defendant, that Plaintiff would pay half of the utilities, that Defendant would provide transportation to and from the Plaintiff's doctor, that Defendant would purchase all groceries for Plaintiff, that Defendant would provide cleaning services for Plaintiff, that Defendant would run errands for Plaintiff, that Defendant would provide a home for Plaintiff at 476 Kepner Hill Road, Muncy, PA, that Defendant would provide caregiver and assistance services to Plaintiff, and that Defendant would do such other things as Plaintiff from time to time may need.

Plaintiff asserts that once she deeded the property to Defendant, Defendant reneged on all her agreements. (Complaint, paragraph 9; Brief in Support of Denial). The court agrees with Defendant that Counts I through IV are governed by a two-year statues of limitations pursuant to 42 Pa. C.S. § 5524 and must be dismissed at this time. The two-year statute of limitations began to run when Plaintiff was injured "once the property was deeded" and Defendant "reneged on all of her agreements." Clearly, more than two years ran since those injuries and prior to Plaintiff filing her Complaint on October 1, 2020.

As for Counts V and VI, both parties agree that there is a four-year statute of limitations. 42 Pa. C.S. § 5525. The parties, however, disagree as to the nature of the contract and when the statute of limitations would begin to run, if at all.

At this stage of the proceedings, the court agrees with Plaintiff that the contract is a continuing one. If services are rendered under an agreement that does not fix any certain time for payment or the termination of the services, the contract will be treated as continuous. *Thorpe v. Schoenbrun,* 195 A.2d 870, 872 (Pa. Super. 1963).

At this stage, the court cannot state with certainty that the contract is not continuous. Indeed, a reasonable interpretation of the contract is that it involved an ongoing relationship of services to another for an indefinite duration. A reasonable interpretation is that it is inherent in the contract that there was an extended period of continuing services, which were interdependent and related. Pursuant to the agreement, Defendant is to provide services to Plaintiff and Plaintiff was to provide certain payments to Defendant. These services included providing transportation to the doctor, buying all groceries, providing cleaning services, running errands of every kind, providing a home, being a caregiver and doing other things as Plaintiff "may need from time to time." The agreement did not fix any certain time for the termination of services; instead, the parties could withdraw from the agreement by providing 30-days written notice to the other. There is nothing in the pleadings to indicate that either party gave 30-days written notice to the other.

Plaintiff argues that statute of limitations has not begun to run. Plaintiff contends that "if services are rendered under an agreement which does not fix any certain time for payment or for the termination of services, the contract will be treated as continuous, and

the statute of limitations does not begin to run until the termination of the contractual relationship between the parties." (Plaintiff's Amended Brief, citing *Thorpe,* at 872).

Defendant, however, argues that a cause of action for breach of contract begins to run from "the time the breach occurs or the contract is terminated." (Defendant's Reply Brief; also citing *Thorpe* at 872). Accordingly, Defendant argues that the four-year statute of limitations began to run in 2009 and that all claims brought after approximately May of 2013 should be barred. *Cluett, Peabody & Co., Inc. v. Campbell, Ria, Hayes & Large,* 492 F. Supp. 67, 76-77 (M.D. Pa. 1980).

In reviewing all of the relevant cases, a breach of contract action on a continuing contract accrues either when the breach occurs or when the contract is terminated in some way. *Crispo v. Crispo,* 909 A.2d 308, 315 (Pa. Super. 2006); *Cole v. Lawrence,* 701 A.2d 987, 989 (Pa. Super. 1997); *Thorpe,* at 872. Indeed, in the case of continuing contacts, where the duties of the parties are ongoing, the statute of limitations generally does not run. *Crispo, id*.

The court cannot say with certainty that Defendant is entitled to judgment as a matter of law. While Plaintiff admitted that the breach occurred immediately, the relationship between the parties has not terminated and the contract is continuous. Indeed, in its simplest terms, Defendant's argument if accepted at this stage would cause the court to conclude that there is no difference between the accrual of a cause of action on a continuing contract versus a standard contract. Under Defendant's theory, the statute of limitations would begin to run at the time of the breach. Such a conclusion makes little sense under the alleged facts in this case.

Such a conclusion as applied to the facts of this case would mean that once the property was transferred and Defendant perhaps did not buy groceries the day after, Plaintiff would have only four years to bring a cause of action against Defendant despite Defendant being obligated to perform all of the other duties set forth in the contract.

ORDER

AND NOW, this ____ day of November 2020 following a hearing and argument, Defendant's Motion for Judgment on the Pleadings with respect to Counts I through IV is **GRANTED**. Defendant's Motion for Judgment on the Pleadings with respect to Count V and Count VI (erroneously marked as an additional V) are **DENIED**.

BY THE COURT,

Marc F. Lovecchio, Judge

cc: Mary Kilgus, Esq.
Brandon Griest, Esq.
Work File
Gary Weber, Esquire