

IN THE COURT OF COMMON PLEAS IN THE STATE OF DELAWARE
IN AND FOR KENT COUNTY

SHAWN RUSSUM,)
) C.A. No. CPU5-10-002706
 Plaintiff,)
)
 v.)
)
 CARLA RUSSUM,)
)
 Defendant.)

June 6, 2012

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DECISION AFTER TRIAL

This case involves a civil debt action. Plaintiff Shawn Russum is seeking recovery from Defendant Carla Russum for the wrongful taking of money from a certificate of deposit that was in his name. The defendant contends that the plaintiff's claim is barred by the applicable statute of limitations. A trial was held for this matter and the Court reserved decision. After considering the evidence introduced at trial and the written summations of the parties, the Court finds for the plaintiff and awards him \$16,039.39 in damages plus pre and post judgment interest at the legal rate from August 22, 2006, and court costs.

FACTS

Plaintiff Shawn Russum is the son of Defendant Carla Russum. On or about April 22, 1986, while the plaintiff was a minor, the defendant obtained a certificate of deposit in the plaintiff's name. The defendant, being the plaintiff's mother, was listed as the custodian for the plaintiff on the certificate of deposit. The plaintiff paid all income taxes for the interest accrued on the certificate of deposit through tax year 2004. The defendant then paid all income taxes due on the interest accrued on the certificate of deposit for tax years 2005 and 2006. On or about August 22, 2006, the certificate of deposit matured. Without the plaintiff's consent or knowledge, the defendant liquidated the certificate of deposit and kept the proceeds from it in the amount of \$16,039.39. At the time, the plaintiff was an adult.

In early 2007, while he was gathering information to prepare his 2006 income taxes, the plaintiff asked the defendant for the information necessary to claim the accrued interest for the certificate of deposit on his income taxes for the 2006 tax year.¹ The defendant indicated that she had taken care of it and had claimed the interest on her taxes. In January of 2008, while he was gathering information to prepare his 2007 income taxes, the plaintiff once again asked the defendant for the information that he needed in order to declare the accrued interest on the certificate of deposit on his 2007 income taxes. At that time, he was told that there was not any information to provide. He then went to the financial institution that issued the certificate of deposit to determine the certificate of deposit's status. He discovered that the certificate of deposit had been cashed in by the defendant on the date that it had matured. The plaintiff requested the proceeds from the certificate of deposit from the defendant and she refused to give them to him. She advised him that it was her money.

The plaintiff filed the current debt action on November 30, 2010, for recovery of all funds the defendant received from the certificate of deposit on August 22, 2006, plus pre and post judgment interest. In a decision for this case dated March 25, 2011, the Court found that the plaintiff was the actual owner of the certificate of deposit and that he

¹ Although the certificate of deposit was in the plaintiff's name, the 1099 Form showing the interest accrued on the certificate of deposit for each tax year was sent to his mother, the defendant.

was entitled to its proceeds. The only issue now before the Court is whether the plaintiff's claim is barred by the applicable statute of limitations.

DISCUSSION

I. Statute of Limitations

Under 10 *Del. C.* § 8106, debt actions “brought after the expiration of 3 years are barred by the statute of limitations.” In the instant case, the plaintiff has brought suit after the expiration of 3 years since the defendant's wrongful act of taking his money from the certificate of deposit. However, the doctrines of Fraudulent Concealment and Equitable Tolling can toll the statute of limitations and allow a plaintiff to bring a claim barred as untimely. As an initial matter, it is important to note that the party seeking to toll the statute of limitations, under either of these doctrines, bears the burden of establishing the necessary facts. *Smith v. McGee*, 2006 WL 3000363, at *3 (Del. Ch. 2006).

II. The Doctrine of Fraudulent Concealment

The doctrine of Fraudulent Concealment “requires an affirmative act of concealment by a defendant—an ‘actual artifice’ that prevents a plaintiff from gaining knowledge of the facts or some misrepresentation that is intended to put a plaintiff off the trail of inquiry.” *Id.* (quoting *In re Dean Witter P'ship Litig.*, 1998 WL 442456, at *20-21 (Del. Ch. 1998)). However the statute of limitations is only tolled until “such time as the plaintiff is put on inquiry notice.” *Envo, Inc. v. Walters*, 2009 WL 5173807, at *10 (Del. Ch. 2009) (quoting *Winner Acceptance Corp. v. Return on Capital Corp.*, 2008 WL 5352063, at *13 (Del. Ch. 2008)). It is not enough that a party attempted to conceal some fact or information. That act of concealment must have been sufficiently misleading to throw the plaintiff off the scent or keep his suspicions from being aroused. See *Smith v. McGee*, 2006 WL 3000363, at *3 (Del. Ch. 2006) (plaintiff was aware of, and had participated in defendant's other related fraudulent activities and therefore could not claim she was not on inquiry notice of the fraud).

In 2007, the plaintiff asked his mother for tax information for his certificate of deposit. Rather than tell the plaintiff that she had liquidated the certificate of deposit and taken the money, the defendant responded to this inquiry by stating that the taxes had been “taken care of.” The statement “taken care of” was a deliberate attempt to throw the plaintiff off the scent. The defendant committed an act of actual artifice as she did not tell the plaintiff the “whole” truth, that she had actually liquidated the certificate of deposit. Plaintiff did not have “inquiry notice” until early 2008 when the defendant informed him that there was no information to provide to him for the certificate of deposit. Therefore, the Court finds that the 3 year statute of limitations that is applicable for this case was tolled until January of 2008 pursuant to the doctrine of Fraudulent Concealment and the plaintiff’s debt action was not time barred when he filed it on November 30, 2010.

III. The Doctrine of Equitable Tolling

The doctrine of Equitable Tolling is applicable “where a plaintiff reasonably relies on the competence and good faith of a fiduciary.” *Smith*, 2006 WL 3000363, at *3 (quoting *In re Dean Witter P’ship Litig.*, 1998 WL 442456, at *21-22 (Del. Ch. 1998)). The underlying idea for Equitable Tolling is that a party is not negligent for his good faith reliance on a fiduciary; important examples of which include attorneys, partners in business, and others with whom there exists a special duty. *Id.* Fiduciary duties also impute to parents who act as custodians on certificates of deposit for their children. *Staley v. Peirson*, 2001 WL 1117508, at *1 (Del. Ch. 2001).

The doctrine of Equitable Tolling requires the plaintiff to establish three elements: (1) wrongful self dealing, (2) by a fiduciary, and (3) good faith reliance by the plaintiff on that fiduciary. *Weiss v. Swanson*, 948 A.2d 433, 451 (Del. Ch. 2008). The basic principle underlying this doctrine is that “even an attentive and diligent investor may rely, in complete propriety, upon the good faith of the fiduciaries.” *Id.* However, any applicable statute of limitations begins to run when “a plaintiff discovers, or by exercising reasonable diligence should have discovered, his injury.” *Id.*

As a threshold matter, the Court has held that the plaintiff was the actual owner of the certificate of deposit. Further, as the plaintiff was the rightful owner of the certificate

of deposit, the defendant's liquidation of it and taking of the money was a wrongful act for the purposes of commencing the 3 year statute of limitations for debt actions. Absent the application of Equitable Tolling or Fraudulent Concealment, the statute of limitations would have begun to run in August of 2006, when the certificate of deposit was liquidated, and expired in August of 2009. Because the plaintiff did not file his action until November 30, 2010, the claim would have been barred as untimely.

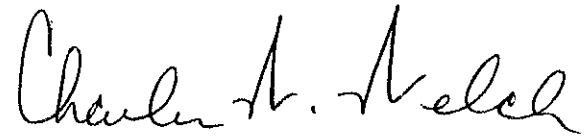
When the plaintiff attempted to pay year 2006 taxes on his certificate of deposit in early 2007, the defendant told him that she had paid the necessary taxes. In truth, the defendant had already liquidated the certificate of deposit and taken the proceeds. The defendant's liquidation and taking of the proceeds of the certificate of deposit that belonged to the plaintiff was a wrongful act of self dealing. She took money that rightfully belonged to the plaintiff. Further, because the defendant was the plaintiff's mother, the plaintiff could, in good faith, rely on her assertions as his fiduciary for the certificate of deposit. Her statement which induced the plaintiff's reliance that everything was fine was sufficient to invoke Equitable Tolling to toll the commencement of the running of the statute of limitations until January 2008, when the plaintiff discovered that the certificate of deposit had been liquidated. Therefore, the plaintiff had until January of 2011, to file the present action against the defendant. The plaintiff filed this action in November of 2010, well within the applicable 3 year statute of limitations

CONCLUSION

The Court has found that the plaintiff was the rightful owner of the certificate of deposit that the defendant, his mother, purchased and placed in his name on or about April 22, 1986, and liquidated on or about August 22, 2006. The Court has also found that the plaintiff was entitled to the proceeds from the certificate of deposit, which his mother refused to give to him after his demand for them. The only issue left before the Court is whether the plaintiff commenced the present action seeking recovery of the proceeds from the certificate of deposit in a timely manner or whether the action is barred by the applicable 3 year statute of limitations. The Court finds that the plaintiff's action is not barred by the applicable 3 year statute of limitations. Due to the doctrines of Fraudulent Concealment and Equitable Tolling, the applicable 3 year statute of

limitations did not commence to run until January of 2008. The plaintiff filed the present action in November of 2010, well within the applicable statute of limitations. Therefore, the plaintiff prevails on his claim against the defendant. The Court enters judgment for the plaintiff and against the defendant in the amount of \$16,039.39 plus pre and post judgment interest at the legal rate from August 22, 2006, and court costs.

IT IS SO ORDERED this 6th day of June, 2012.

A handwritten signature in cursive script that reads "Charles W. Welch". The signature is written in black ink and is positioned above a horizontal line.

CHARLES W. WELCH
JUDGE