IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

THE ESTATE OF ELLEN C. TRIBBETT, by and through its Administrator, Lon Keiffer, agent for Genesis Health Care, Inc., t/a Seaford Center,	)	
Plaintiff/Petitioner,	)	
v.	)	C.M. No. 4363-S
ALVIN TRIBBETT, heir to and reputed Executor of THE ESTATE OF ELLEN C. TRIBBETT, ALVIN TRIBBETT, individually, and DELMAR HOMES, INC., a Delaware Corporation, and THE TOWN OF BRIDGEVILLE, a political subdivision of the State of Delaware, for notice purposes only, and Edward Q. Wilgus, for notice purposes only,	)	
Defendants/Respondents.	)	

MASTER'S FINAL REPORT

Date Submitted: September 12, 2008
Bench Draft Report Issued: September 12, 2008
Final Report: June 5, 2009

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GLASSCOCK, Master

This matter is before me on the cross-motions of the Estate of Ellen C. Tribbett (the "Estate") and Delmar Homes, Inc. ("Delmar") for summary judgment. Ellen C. Tribbett ("Decedent") died on January 3, 1998. For the last eleven months of her life she had been a resident of a nursing home, the Seaford Center[1], in Seaford, Delaware. At the time of her death, Decedent owed the Seaford Center over $38,000, mostly for room and board. The Decedent owned at her death real property in Bridgeville, Delaware (the "property"). The Decedent died intestate[2] on January 8, 1998, and the property therefore passed upon her death to her next of kin, Alvin Tribbett ("Tribbett").

No estate was opened for the Decedent. Eight months after the Decedent's death, the Seaford Center filed a claim with the Sussex County Register of Wills for the charges incurred by the Decedent before her death. The Seaford Center, however, did not seek to become the administrator of the Decedent's estate, as it was entitled to do as a creditor of the estate. *See* 12 Del.C. §1505. The Seaford Center took no further action to collect the debt from the Decedent's estate for over eight years.

On February 28, 2006, Tribbett sold the property to Delmar for $10,000. The deed purported to be between the "estate of Ellen C. Tribbett, Alvin Tribbett, executor," and Delmar. According to the deed, Tribbett executed the deed in his capacity as "executor." Of course, there was no will to "execute" and neither Tribbett nor anyone else had been

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[1] The Seaford Center is a trade name for Genesis Health Care, Inc.

[2] At least, no will has been admitted to probate.

granted letters to administer Decedent's estate. On March 15, 2006, by letter, the administrator of the Seaford Center informed Delmar that the property was subject to its claim as Decendent's creditor. Delmar recorded the deed on March 27, 2006. On March 8, 2006, Delmar borrowed $75,000 from Edward Wilgus ("Wilgus"), secured in part with a mortgage on the property. Delmar assigned any rents and leases from the property to Wilgus.[3]

On December 18, 2006, the Seaford Center, through its administrator, Lon Keiffer, received letters of administration from the Register of Wills. It seeks an order allowing it to sell the property, as the sole asset of Decedent's estate, and use the proceeds to satisfy the Seaford Center's claim against the estate. The Seaford Center seeks a summary judgment on its petition to sell the property. Delmar seeks to have this petition dismissed, on the ground that the sole claim against the estate, that of the Seaford Center, is barred by the statute of limitations, or laches.

Tribbett was a respondent to the petition, but has not entered an appearance or defense.

I. Standard

A party is entitled to summary judgment where the record demonstrates that no issue of material fact exists, and that the party is entitled, on that record, to judgment as a

[3]Wilgus was served here as a respondent, but has not answered.

matter of law. *E.g.,* Stevanov v. O'Connor, Del. Ch., No. 3820, Parsons, V.C. (April 21, 2009)(Mem. Op.) at 4. "When considering a motion for summary judgment, the Court must view the evidence and the inferences drawn from the evidence in the light most favorable to the non-moving party." Stevanov (Mem.Op.), at 4.

II. Discussion

This is a matter in which neither the Seaford Center nor Delmar moved appropriately to protect its rights in the property. Seaford Center slept on its rights for eight and one-half years, until roused by the sale of the property, before seeking the administration of the estate in order to vindicate its claim against the Decedent. Delmar, assuming that it was ignorant of the claim against the estate at the time it purchased the property, nevertheless purchased it from a fictitious "executor" representing an estate that had never been opened. I assume, as I must for the purpose of evaluating the estate's motion for summary judgment, that Tribbett received $10,000 in value for sale of a property, as "executor," that he owned in his individual capacity,[4] and that Delmar was a good-faith purchaser for a value. Despite any irregularities in the deed, therefore, Tribbett passed whatever title he had in the property to Delmar. The real question before me is, what interest did Tribbett have, which transferred to Delmar as of February 28, 2006? The Decedent's fee interest in the property passed to Tribbett upon her death. That

[4]Despite the designation of the seller as Decedent's estate, the deed provides that Tribbett himself owned the property as the heir of Decedent.

fee interest was subject to defeasance to pay debts of the estate, absent sufficient funds or personalty for that purpose. *See* Salaam v. Unknown Claimants, Del. Ch., No. 15348, Kiger, M. (February 13, 1998)(Master's Report)(stating that real property of intestate decedent passes to heirs subject to defeasement to pay claims against the estate); Hoffecker v. D'Alonzo, Del. Ch, 159 A. 372 , 373 (1932)(title to real property passes to decedent's heirs subject to liens of decedent's creditors). If the Seaford Center's claim remained viable as of February 28, 2006, as the Seaford Center argues, the interest which Tribbett passed to Delmar was the fee interest, defeasible upon a valid petition to sell the property to pay the debts of Decedent's estate. "Whether the land of the deceased is held by his heirs or devisees *or by their grantees*, it is equally subject to sale in such proceedings." Hoffecker, 159 A. at 73 (emphasis added). If, on the other hand, Delmar is correct that the Seaford Center's claim was unenforceable, due to the operation of the statute of limitations, then Tribbett owned the property in fee simple absolute, and that interest was transferred to Delmar. Finally, even if Delmar possesses only a defeasible fee, it maintains that the Seaford Center's petition to defease its interest and sell the property to pay debts of the estate should be denied based upon the equitable doctrine of laches.

1) The viability of the claim of the Seaford Center against Decedent's Estate

The Decedent died owing the Seaford Center a substantial sum for nursing home care prior to her death. 12 Del.C. § 2102 (a) provides that "all claims against a decedent's estate which arose before the death of the decedent…if not barred earlier by other statute of limitations, are barred against the estate,…unless presented as provided in § 2104 of this title within eight months of the decedent's death…."[5] 12 Del.C. § 2104 provides three methods for presentation of claims against an estate. The claimant may deliver a written statement of claim to the personal representative, if any; may file a statement of the claim, in the form prescribed by the Rules of this Court, with the Register of Wills; or may commence a proceeding against the personal representative in any court where the personal representative is subject to jurisdiction. Here, the Seaford Center filed a claim with the Sussex County Register of Wills. The claim was filed eight months from the date of death. Because no other statute of limitations barred the Seaford Center's claim, and because it was filed within eight months of the date of death in a manner prescribed for the presentation of claims, I find that the Seaford Center's claim was presented timely and that the limitation of § 2102 does not apply to bar the claim.[6]

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[5] Delmar argues that the claim of the Seaford Center arose *after* the death of the Decedent, and is therefore barred unless brought within six months of the date of death. 12 Del.C. § 2102(b). The Seaford Center's claim, however, is for services provided to the Decedent during her lifetime. It is clearly a claim which arose before Decedent's death.

[6] Delmar argues that, because the claim was brought in the name of the Seaford Center rather than the actual corporate entity controlling the Seaford Center, Genesis Health Care, Inc., and because that entity is a foreign corporation, the presentation of the claim was ineffective.

Because no estate was opened and no letters of administration were granted, for a period greater than sixty days, the prudent course for the Seaford Center would have been to seek appointment (as a creditor) to administer the estate, shortly thereafter. *See* 12 Del.C. § 1505(d), (e). Instead, the Seaford Center was content to let the matter rest for a period of over eight years. Delmar points out that a contractual claim of the kind at issue here is subject to a three-year limitations period. 10 Del.C. § 8106 provides that "no action…based on a promise…shall be brought after the expiration of three years from the accruing of the cause of such action…." The three year statute of limitations is applicable here. The Decedent, however, died at the beginning of the three-year period. The question is how an action must be brought against a decedent's estate in order to satisfy the three-year statute of limitations. Upon the Decedent's death, an action could no longer be brought directly against her. The Seaford Center had, therefore, to bring the action against the estate. Such an action is brought by presentation of the claim against the estate, which must be done no later than eight months from the date of death or the running of any "other statute of limitations," whichever comes first. *See* 12 Del.C. § 2102 (a). As already described, such a presentation may be made by a preceding against the personal representative of the estate or by a written statement of claim delivered to the personal representative (neither method being available here, since no estate had been

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The claim as presented was sufficient to place the estate on notice of the claim so that the administration (if any had existed) could accept or reject the claim on behalf of the estate. I find that the claim as presented was sufficient to satisfy the limitations provision of §2102.

opened) or by filing a claim with the Register of Wills. Since Delmar presented its claim before the running of the three-year statute of limitations from the time of accrual of the action, and within the eight-month limitation period following the death of the Decedent, neither 10 Del.C. § 8106 or 12 Del.C. § 2102 bars the action here.

There is another limitation applicable specifically to claims against an estate where no letters of administration have been granted. "If no letters have been granted upon the estate of any person within ten years from the date of the person's death, all claims of creditors and persons otherwise beneficially interested in the estate…shall be thereafter barred." 12 Del.C. § 2109. Under this section, creditors of estates where no letters have been granted must themselves seek to administer the estate and thus vindicate their claims within ten years, otherwise all rights are lost. Here, the petition to sell real property to satisfy the debts of Decedent's estate was filed nine years after Decedent's death; therefore, § 2901 does not bar the claim of the Seaford Center against the estate.[7]

[7] Delmar argues that the petition to sell lands must *itself* be filed within three years of the accrual of the underlying debt claim, citing Hoffecker v. D'Alonzo, Del. Ch., 159 A. 2d 372 (1932). The Hoffecker court, in dicta, stated that a creditor must seek to have the administrator of an estate sell lands to pay debts within a reasonable time, presumptively within the statute of limitation within which he would have been able to proceed directly against his debtor (absent death) at law. Hoffecker refers to cases where an estate is open and represented by an administrator. To whatever extent the Hoffecker dicta may be followed in such a case, it cannot apply where, as here, no estate had been opened, because the legislature has provided a statute of limitation for vindication of presented claims, where no letters of administration have been granted: 12 Del.C. § 2109.

2) Laches

Laches is the equitable analog to a statute of limitations. A defendant advocating laches bears the burden to demonstrate that three elements exist: 1) a knowledge of the claim by claimant, followed by 2) unreasonable delay in bringing the claim, resulting in 3) prejudice to the defendant. Reid v. Spazio, Del. Supr., ___ A.2d ___, No. 199, 2008 (April 9, 2009). Application of laches depends "upon consideration of conscience, good-faith, and reasonable diligence." Reid, at 4. "[T]he laches inquiry is principally whether it is inequitable to permit a claim to be enforced, the touchstone of which is inexcusable delay leading to an adverse change in the condition or relations of the property or the parties." Reid, at 4. Generally, a suit will not be dismissed for laches if brought before the time fixed by a statute of limitations, absent extraordinary circumstances. Reid, at 4.

As described above, the claim of the Seaford Center, properly and timely presented upon its filing with the Register of Wills, is preserved until acted on by the personal representative,[8] or if no personal representative is appointed, until the passage of ten years from the date of a decedent's death. There was no unreasonable delay in the presentation of this claim. The "action" to which Delmar argues laches applies is altogether different from the Seaford Center's claim against the estate, however. The action at issue here is, instead, the *estate's petition to sell lands*; it is that action which must be the subject of this laches analysis. Delmar points to the failure of the Seaford Center, for a period of over

[8] *See* note 7, infra.

eight years, to avail itself of its right as a creditor to seek to assume the administration of the estate, and from that position to satisfy its debt from the estate. *See* 12 Del.C. §§1505, 2707. The code provides an opportunity for a creditor to proceed thus within ten years of the date of death. Delmar argues, however, that laches applies nonetheless to check the Seaford Center's action. It points out that during the Seaford Center's delay in moving to vindicate its rights, the heir, Tribbett, sold the property to Delmar, for value. This change in circumstances—Delmar's purchase of the property during the time the Seaford Center rested on its rights—and the resulting loss to Delmar[9] if it is defeased of the property in favor of the estate, are sufficient to warrant application of the doctrine of laches, according to Delmar.

Of the three laches factors, the first two–knowledge of the claim and unreasonable delay–are present here. If the passage of time during which the Seaford Center rested on its rights had caused—for example—evidence necessary to the defense of the claim to be lost, laches might apply. The question is whether Delmar can demonstrate prejudice arising from the delay sufficient to cause equity to bar this action.

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[9] Delmar argues that its loss, as a result of the failure of the Seaford Center to pursue its claim with more alacrity, is the $10,000 it paid for the property together with $75,000 it received when it mortgaged the property to Wilgus. Delmar, however, has not lost $75,000 in connection with the mortgage; it *received* $75,000 as a loan for which the property was security. The repayment of that loan is a matter which will be dictated by the contract and mortgage between Delmar and Wilgus, which is not a matter before me. In any event, I note that Delmar mortgaged the property to Wilgus *after* it was on actual notice that the Seaford Center intended to pursue its claim.

If there is harm attributable to the delay here, it must be because Delmar reasonably relied on the eight and one-half year lapse of time from Decedent's death as proof that the title to the property held by Decedent's heir was absolute, rather than defeasable. But, given the ten-year statute of limitations embodied in 12 Del.C § 2109, this reliance was not reasonable.

The Tribbett-to-Delmar deed itself recites that Tribbett's title arose not by deed, but by operation of law as Decendent's heir. In that situation, a prudent buyer at minimum would ensure that an estate had been closed, or that, if no estate had been opened, that no claim against the estate had been presented, or that more than ten years had passed since decedent's death.[10] Given the ten-year statute of limitations embodied in 12 Del.C. § 2109, Delmar's reliance on the passage of eight and one-half years from the date of death as proof of clear title was not reasonable. Since the prejudice here was, in substantial part, self-inflicted, Delmar is not entitled to equitable relief under the doctrine of laches.[11]

III. Conclusion

Neither Delmar nor the Seaford Center acted prudently in this matter. The Seaford Center allowed eight and one-half years to elapse before pursuing its right as a creditor to

[10] Delmar forwent title insurance.

[11] Since they are derivative of Delmar's rights in the property, any rights of third parties such as Wilgus in the property are subject to defeasement as well.

administer the estate of Decedent and seek to sell Decedent's property to satisfy the debts of the estate. The Seaford Center did *present* its claim against the estate in a timely manner, however, and did proceed to administer the estate and vindicate its claim, if not promptly, at least within the applicable statutes of limitations. Although I assume that Delmar was a good-faith purchaser for value of Tribbett's interest, that interest was defeasible, and the terms of the deed itself recite that Tribbett acquired ownership of the property of the Decedent as her surviving heir, after her death on January 3, 1998. In buying the property without ensuring that the Decedent's estate had been closed, and within the limitation period of § 2109, Delmar should have known it was potentially purchasing a defeasible fee. It elected to proceed, nevertheless. Therefore, neither the doctrine of laches nor any statute of limitation provides Delmar relief from the petition of the estate to sell the property. The Estate is entitled to the judgment it seeks.

Of course, nothing in this report precludes Delmar from pursuing whatever rights it may have under the deed against Tribbett. In addition, since Tribbett is the sole heir of Decedent, Delmar may seek a lein against any surplus remaining in the estate once the property has been sold and the debts of the estate paid, up to $10,000 together with interest at the legal rate from February 28, 2006.

/s/ *Sam Glasscock, III*
Master in Chancery