

IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

JONAH M. MEER, AS THE TRUSTEE OF THE)
ACTRADE LIQUIDATION TRUST, as)
successor to ACTRADE FINANCIAL)
TECHNOLOGIES, LTD, Not in his individual)
capacity, and ACTRADE COMMERCE LTD.,) Civil Action No. 5141-CC
)
Plaintiffs,)
)
v.)
)
AMOS AHARONI,)
)
Defendant.

MEMORANDUM OPINION

Date Submitted: May 10, 2010

Date Decided: June 28, 2010

Daniel A. Dreisbach, Geoffrey G. Grivner, and Nicole C. Bright, of RICHARDS, LAYTON & FINGER, P.A., Wilmington, Delaware; OF COUNSEL: Joel C. Haims, Hilary M. Williams, and Shiri B. Wolf, of MORRISON & FOERSTER, New York, New York, Attorneys for Plaintiffs.

Seth A. Niederman, of FOX ROTHSCHILD LLP, Wilmington, Delaware; OF COUNSEL: Sigmund S. Wissner-Gross, of BROWN RUDNICK LLP, New York, New York, Attorneys for Defendant.

CHANDLER, Chancellor

Pending before the Court is defendant’s motion to dismiss. Because I find the Amended Stipulation effectively tolled the statute of limitations for plaintiffs’ claim, defendant’s motion to dismiss is denied. Following is the analysis underlying my ruling.

I. BACKGROUND

Actrade, Inc. (“Actrade” or “the Company”) was a Delaware corporation which, through its wholly owned subsidiaries, conducted an “International Merchandise Trade” business (the “IMT Business”).¹ The IMT Business assisted buyers and sellers of goods involved in non-U.S. trade transactions by purchasing and selling “bills of exchange.” Defendant Amos Aharoni was the Chairman of the Board of Directors of Actrade and served as director or officer of all of its subsidiaries. He also held sole responsibility for approval and oversight of the IMT Business, for which he was compensated based on the net income of the business—as reported by Aharoni—in the form of options to purchase common stock of Actrade.

Allegedly, from 1998 through July 2002 Aharoni reported fictitious transactions in an effort to falsely enhance Actrade’s IMT Business revenues so as to increase the number of options he received. This resulted in the gross

¹ Plaintiff Actrade Commerce was a former subsidiary of Actrade and is now owned by the Trust. Because the trustee is the sole director and officer of Actrade Commerce, the Court refers to plaintiffs collectively as “the Trust.”

overstatement of Actrade's actual profits and the artificial inflation of the stock price. By exercising his options and selling the stock at the inflated price, Aharoni gained a profit in excess of \$47 million. However, in February of 2002 an article appeared in *Barron's* that questioned the nature of some of Actrade's lending transactions. The stock price fell and numerous securities fraud actions were filed against Actrade and certain of its officers and directors, including Aharoni.

In June of 2002, Actrade began an investigation into the transactions and Aharoni to determine whether the transactions were in fact fictitious. Aharoni chose not to participate in the investigation and days later transferred approximately \$10 million from a bank account of one of Actrade's subsidiaries to International Clearing Corp. ("ICC"), which was then later transferred to Commercial Financial Institution ("CFI"). In July of the same year, Aharoni transferred an additional \$21.6 million from Actrade accounts to the account of Fort Corporation ("Fort"). Aharoni claimed that both of these transfers were made for loan agreements between Actrade and five separate corporations (the "Purported Loan Agreements"). None of the \$31.6 million that was supposedly loaned was ever recovered.

With securities fraud actions pending and the Company essentially drained of funds, Actrade filed for bankruptcy under Chapter 11 in December of 2002. In February of 2003 Actrade filed a complaint against Aharoni in this Court (the

“Delaware Action”) claiming breach of fiduciary duty, misappropriation and conversion, fraud, and waste of corporate assets.

By January of 2004, the Company was unable to reorganize and was instead to be liquidated. The Actrade Liquidation Trust (the “Trust”) was established with Peretz Bronstein as trustee and Actrade’s interests—including the Delaware Action against Aharoni—were transferred to the Trust. Aharoni relayed to Bronstein that the Purported Loan Agreements were legitimate loans and Aharoni offered to assist in their collection. On March 31, 2004, Bronstein and Aharoni reached a stipulation of settlement (the “Original Stipulation”) in which the Trust agreed to dismiss the Delaware Action, but without prejudice, in exchange for Aharoni’s assistance in collecting the monies still owed to Actrade and defending against the claims asserted against Actrade for securities fraud. The Original Stipulation also expressly tolled the statute of limitations and allowed the Trust to re-file the Delaware Action for one year from the time the Delaware Action was dismissed.

Meanwhile, settlement efforts were proceeding with respect to the securities litigation and the parties contemplated a global settlement (the “Proposed Settlement”) that would resolve all issues among the settling parties. Due to the Proposed Settlement, Bronstein and Aharoni decided to update the Original Stipulation. An amended stipulation of settlement (the “Amended Stipulation”) was executed in which Aharoni agreed to cooperate with the Trust as previously

agreed upon. In exchange, the Trust agreed to both execute an agreement that, upon approval of the Proposed Settlement, would release Aharoni from all claims that the Trust could have asserted against him (the “Release”) and to apply to the bankruptcy court for approval of the Proposed Settlement. The Trust’s ability to re-file the Delaware Action was conditioned on the Proposed Settlement being approved by both the bankruptcy and district courts. Specifically, paragraph 9 of the Amended Stipulation states:

In the event the [Proposed Settlement] is not approved by the District Court and the Bankruptcy Court and does not become final and effective or is otherwise terminated, this [Amended Stipulation] will be deemed null and void *ab initio* and the Trust and Aharoni will be restored to their original positions under the [Original Stipulation], except that paragraph 6 of the [Original Stipulation] shall be amended to provide:

For purposes of [the Original Stipulation], as long as the re-filed Delaware Action is re-filed within one year of the date the [Amended Stipulation] becomes null and void, the re-filed Delaware Action shall be treated for statute of limitations purposes as if filed on the date that the Verified Complaint in the Delaware Action originally was filed with the Court of Chancery.²

The Release was similarly subject to the approval of the Proposed Settlement by both the district and bankruptcy courts. Therefore, if the Proposed Settlement was not approved, the Release would be ineffective and the parties would return to the

² Am. Stipulation ¶ 9.

agreement under the Original Stipulation with the exception that the above tolling provision would be included.

Sadly, the goodwill between the Trust and Aharoni did not last long. Bronstein resigned as trustee in September of 2005 and Jonah Meer was appointed as his successor. Pursuant to the Amended Stipulation, Meer sought the cooperation of Aharoni in recovering the \$31.6 million Actrade was owed but was allegedly provided false and misleading information from Aharoni concerning the IMT Business, the transfer of the \$31.6 million, and the Purported Loan Agreements. Meer attempted to investigate Aharoni's assertions for several years but was prevented by his lack of adequate information. He was unable to obtain the information necessary to learn of the alleged fraud due to Aharoni's failure to produce the files of the IMT Business, the fact the purported buyers and sellers were created in tax havens where corporate information is not publically available, and his lack of access to the bank account records of ICC and Fort.

The conflict came to a head in 2008, when Meer purportedly learned that the ICC, CFI, and Fort corporations and accounts were controlled by Aharoni, none of the \$31.6 million supposedly lent by Actrade under the Purported Loan Agreements were legitimate loans, and that the flow of funds in and out of relevant Actrade accounts bore no relation to the bill-of-exchange transactions reported by Aharoni. Despite documentary evidence Meer obtained to the contrary, Aharoni

denied he controlled the accounts. Aharoni further continued to maintain that Actrade's \$31.6 million was transferred pursuant to the Purported Loan Agreements.

Due to Meer's belief that Aharoni had failed to cooperate as promised and the evidence that there was no economic substance behind the Purported Loan Agreements or IMT Business, Meer thought he could not in good conscience support the Proposed Settlement. He believed that given Aharoni's failure to cooperate, the Trust would be releasing all of its claims against Aharoni for no consideration. Meer therefore informed the bankruptcy court that he no longer believed the settlement was in the best interests of the Trust and its stakeholders. Due to Meer's lack of support, on January 7, 2009 the bankruptcy court denied approval of the Proposed Settlement.

Following the bankruptcy court's denial of approval of the Proposed Settlement, the Trust re-filed the Delaware Action against Aharoni—relying on the Amended Stipulation to toll the filing period. The Delaware Action was then amended to include two new causes of action, one for unjust enrichment and the second for negligent misrepresentation. Both of these new claims were based on Aharoni's misappropriation of \$31.6 million and his fraudulent inflation of Actrade's IMT Business revenues to profit from the options he received. As the complaint currently stands, the Trust asserts claims for breach of fiduciary duty,

waste of corporate assets, unjust enrichment, an accounting, misappropriation and conversion, and fraudulent and negligent misrepresentation.

Aharoni argues that the statute of limitations period has run and cannot be extended by the Amended Stipulation because Meer breached the Amended Stipulation by failing to support the Proposed Settlement. Aharoni further contends that the doctrine of laches prohibits the Trust from bringing the claims, that the two new causes of action are barred by the statute of limitations, and that the case is premature as the order of the bankruptcy court denying approval of the Proposed Settlement is on appeal.

I reject Aharoni's contentions and find that the re-filed Delaware Action was timely brought.

II. ANALYSIS

In ruling on a motion to dismiss for failure to state a claim pursuant to Rule 12(b)(6), this Court must accept all well-pled allegations in the complaint as true and draw all reasonable factual inferences in favor of the plaintiff.³ Dismissal is only appropriate if it appears with reasonable certainty that the plaintiff could not

³ *Gantler v. Stephens*, 965 A.2d 695, 703 (Del. 2009); *Feldman v. Cutaita*, 951 A.2d 727, 731 (Del. 2008).

prevail on any set of facts that can be inferred from the complaint.⁴ In evaluating defendant's motion to dismiss, the Court may also consider the unambiguous terms of the Original and Amended Stipulations, the Proposed Settlement, and the Release, which are integral to the complaint and the resolution of this motion.⁵

Aharoni's contentions center around whether the claims against him should be dismissed because they were not timely filed and are thus barred by the statute of limitations. Aharoni's alleged misconduct ended by 2002 when he resigned from the corporation. The Trust's original complaint was voluntarily dismissed in 2003 and the present complaint was not filed until December 14, 2009. All claims brought by the Trust are subject to a three year statute of limitations.⁶ Therefore, if the Amended Stipulation cannot be relied upon to toll the statute of limitations, the re-filed action was not timely filed absent another applicable tolling doctrine.

⁴ See *Wal-Mart Stores, Inc., v. AIG Life Ins. Co.*, 901 A.2d 106, 112 (Del. 2006); *VLIW Tech., LLC v. Hewlett-Packard Co.*, 840 A.2d 606, 610-11 (Del. 2003); *Malpiede v. Townson*, 780 A.2d 1075, 1082-83 (Del. 2001).

⁵ *In re Lukens Inc. S'holders Litig.*, 757 A.2d 720, 727 (Del. Ch. 1999) (“[T]he court may consider, for certain purposes, the content of documents that are integral to or are incorporated by reference into the complaint . . .”).

⁶ See 10 *Del. C.* § 8106; *Medtronic Vascular, Inc. v. Advanced Cardiovascular Sys., Inc.*, No. Civ. 98-80-SLR, 2005 WL 46553, at *4 (D. Del. Jan. 5, 2005) (unjust enrichment and fraud claims barred by three year statute of limitations); *In re Coca-Cola Enter., Inc. S'holders Litig.*, C.A. No. 1927-CC, 2007 WL 3122370, at *4 (Del. Ch. Oct. 17, 2007) (breach of fiduciary duty claim barred by three year statute of limitations); *Krahmer v. Christie's, Inc.*, 903 A.2d 773, 778 (Del. Ch. 2006) (negligent misrepresentation claim barred by three year statute of limitations); *Spano v. Morse*, No. Civ.A. 20121, 2003 WL 22389542, at *1 (Del. Ch. Oct. 8, 2003) (conversion action barred by three year statute of limitations); *East v. Tansey*, Civ. A. No. 1592, 1993 WL 487807, at *2 (Del. Ch. Oct. 22, 1993) (claim for constructive trust arising out of misappropriation of money barred by three year statute of limitations).

Although Aharoni agreed in the Amended Stipulation that the Trust may refile the Delaware Action in the event the Proposed Settlement was not approved by the bankruptcy and district courts, he now contends that the Delaware Action or specific claims in the Delaware Action are time barred for four reasons. First, Aharoni asserts that the bankruptcy court's rejection of the Proposed Settlement is on appeal and therefore the failure to obtain approval is not final. Second, Aharoni contends that Meer breached the Amended Stipulation by not supporting the Proposed Settlement and therefore the Trust cannot rely on the Amended Stipulation to toll the statute of limitations. Third, Aharoni asserts that the doctrine of laches prohibits the claims from being tolled. Finally, Aharoni argues that even if the Amended Stipulation does toll the claims in the original complaint, the Trust cannot rely on the Amended Stipulation to bring the two claims that were not contained in the original complaint—namely the claims for unjust enrichment and negligent misrepresentation. The Court finds none of these arguments persuasive, and concludes that the Trust can rely on the Amended Stipulation to toll the statute of limitations.

A. Appeal of the Bankruptcy Court's Denial of Approval

Aharoni contends that because the bankruptcy court's decision to not approve the Proposed Settlement is on appeal to the Second Circuit, the filing of this action is premature. Should the Second Circuit reverse the bankruptcy court,

Aharoni insists that this would make the Trust's action moot because the Proposed Settlement was ultimately approved.

This argument, however, ignores the language of the Amended Stipulation and how similar language has been interpreted in the Second Circuit. The Amended Stipulation states that in the event the Proposed Settlement “is not approved by the District Court *and* the Bankruptcy Court and does not become final and effective or is otherwise terminated,” then the Amended Stipulation will become “null and void *ab initio*.”⁷ The Second Circuit recently found in *In re Bennett Funding Group, Inc.*⁸ that similar language requiring the approval of the bankruptcy and district courts was “distinct” and each approval was itself deemed to be a final order.⁹

In re Bennett involved a bankruptcy trustee who reached a settlement agreement with certain insurers for payment of \$27.5 million in exchange for full releases from liability. The agreement was conditioned upon the approval of the bankruptcy court and the approval of the district court in the parallel class action. Following these approvals, an objector argued he should be allowed to file an appeal of the bankruptcy court's order even though the deadline to file the appeal had run. The objector argued that the order of the bankruptcy court was not final

⁷ Am. Stipulation ¶ 9 (emphasis added).

⁸ 439 F.3d 155 (2d Cir. 2006).

⁹ *Id.* at 162.

until the district court approved the settlement. The Second Circuit rejected this argument and found that the approval of the bankruptcy court was separate from the approval of the district court and that each approval was a final order. The court reasoned that “where various courts must all approve a settlement before it becomes effective, having finality of one court’s order turn on the actions of a different court . . . is a recipe for confusion.”¹⁰ The court additionally found that great inefficiencies would be caused by not allowing a party to seek review of a final bankruptcy court order regarding a settlement until another court ruled, weeks, months, or even years later. Because the approval of both courts were distinct and final orders, the period for filing an objection began after the bankruptcy court’s approval and not the approval of the district court, and therefore the objector’s motion was untimely.

Similar to *In re Bennett*, the Amended Stipulation and Proposed Settlement both make clear that the Proposed Settlement was conditioned on the approval of both the district and bankruptcy courts. The bankruptcy court denied approval of the Proposed Settlement. Because in the Second Circuit the bankruptcy court’s order is considered distinct and final, the Trust was free to re-file the Delaware Action following the issuance of this order.

¹⁰ *Id.* at 164.

The Release additionally contains provisions reflecting that approval of the two courts were independent of one another and which allow the Trust to re-file the Delaware Action without awaiting any pending appeal. The Release states:

If the Effective Date does not occur, *or* if the [Proposed Settlement] is disapproved by either the [District Court] or the [Bankruptcy Court], *or* if the [Proposed Settlement] is approved by the [District Court] or the [Bankruptcy Court] and is subsequently disapproved on appeal or terminated, *or* cancelled pursuant to its terms, then, subject to the provisions of the [Proposed Settlement]: (a) each of the Parties to this Agreement will be restored to his or its respective position in the Action immediately prior to the execution of the [Proposed Settlement]; (b) the Parties hereto are to proceed in all respects as if this [Release] and the [Proposed Settlement] had not been executed and any related order of [sic] judgments had not been entered; and (c) all releases given herein will be null and void.¹¹

By allowing the disapproval of either the district court or bankruptcy court to restore the parties to their original positions, the Release clearly considers the approval of these courts to be separate and distinct. The Release further reflects that appeals from either of those courts do not prevent the Trust from re-filing the Delaware Action, but rather allow the Trust “to proceed in all respects as if the [Release] and the [Proposed Settlement] had not been executed.” Thus, the terms of the Release confirm that the bankruptcy court’s denial of approval was a final order and, therefore, under Second Circuit law the Trust was not required to await pending appeals before proceeding with its action.

¹¹ Release ¶ 9 (emphasis added).

In sum, the approval of both the district court and bankruptcy court were final orders. The bankruptcy court denied approval of the Proposed Settlement and therefore under Second Circuit precedent and the terms of the Amended Stipulation and Release, the Trust was allowed to re-file its action.

B. Whether the Trustee Breached the Amended Stipulation

The Amended Stipulation clearly tolls the statute of limitations and allows the Trust to re-file the Delaware Action in the event the bankruptcy or district court denied approval of the Proposed Settlement. Nevertheless, Aharoni argues Meer breached the Amended Stipulation and as a result the Trust cannot rely on it to toll the statute of limitations. Aharoni also contends Meer acted in bad faith and breached his covenant of good faith and fair dealing implied in the Amended Stipulation by not supporting the Proposed Settlement.

Under New York law, the covenant of good faith and fair dealing is implied in all contracts and “embraces a pledge that ‘neither party shall do anything which will have the effect of destroying or injuring the right of the other party to receive the fruits of the contract.’”¹² Further, if “a party to a contract has breached the

¹² *511 W. 232nd Owners Corp. v. Jennifer Realty Co.*, 98 N.Y.2d 144, 153 (N.Y. 2002) (quoting *Dalton v. Educ. Testing Serv.*, 87 N.Y.2d 384, 389 (N.Y. 1995)).

agreement . . . either by acting in bad faith or by violating an express covenant within the agreement, it may not later rely on that breach to its advantage.”¹³

While the Amended Stipulation did include a covenant of good faith and fair dealing, this court must take into account the other duties of the trustee. As trustee of the estate, Meer also has a fiduciary duty to all the creditors of the estate.¹⁴ This duty requires him to act in the best interest of the estate and maximize its value.¹⁵ Meer therefore has a duty “to both the debtor and the creditor to realize from the estate all that is possible for distribution among the creditors.”¹⁶ In doing so, he is required to “investigate the conduct of prior management to uncover and assert causes of action against the debtor’s officers and directors.”¹⁷

Here, the contractual duties of the trustee conflicted with his fiduciary duties. The implied covenant of good faith and fair dealing in the Amended Stipulation requires him to support the Proposed Settlement after filing it for

¹³ *Castle Creek Tech. Partners, LLC v. CellPoint Inc.*, No. 02 Civ. 6662(GEL), 2002 WL 31958696, at *7 (S.D.N.Y. Dec. 9, 2002); *Kirke La Shelle Co. v. The Paul Armstrong Co.*, 263 N.Y. 79, 188 N.E. 163, 167-68 (N.Y.1933) (holding the party that breached one provision within a contract could not rely on that breach to avoid its obligations under a different provision); *cf. Indovision Enterprises, Inc. v. Cardinal Export Corp.*, 44 A.D.2d 228, 354 N.Y.S.2d 113, 115 (1st Dep’t 1974) (stating that a “provision that allows either party by his own breach to excuse his own performance is a commercial absurdity”).

¹⁴ *Commodity Futures Trading Comm’n v. Weintraub*, 471 U.S. 343, 354-55 (1985).

¹⁵ 11 U.S.C. § 704(a)(1); *Weintraub*, 471 U.S. at 354-55.

¹⁶ *Martin v. Myers (In re Martin)*, 91 F.3d 389, 394 (3d Cir. 1996) (quoting 4 Collier on Bankruptcy ¶ 704.01 (15th ed. 1993)). *See also In re Luongo*, 259 F.3d 323, 340 n.3 (5th Cir. 2003) (quoting 6 Collier on Bankruptcy ¶ 704.02[3] (15th ed. 2000)).

¹⁷ *Weintraub*, 471 U.S. at 354-55.

approval. However, his fiduciary duties required him to act in the best interests of the estate, and while his predecessor may have considered the Proposed Settlement to be in the best interests of the estate, Meer did not due to the purported discovery of Aharoni's wrongdoing. The question then is which duty is superior?

In 1996, this very question was answered by the Third Circuit in *Martin v. Myers*.¹⁸ The Martins contracted to sell their home to the Myers but the Myers refused to complete the purchase. The Martins initiated an action against the Myers but filed for bankruptcy before the action went to trial. The trustee assumed there was an open-ended trial in the state courts and—believing this delay would be detrimental to the estate—entered into a stipulation of settlement with the Myers. The trustee later discovered that the case had been expedited and before the stipulation of settlement was approved by the bankruptcy court, the Martins won a \$150,500 verdict against the Myers for breach of contract. Given the changed circumstances, the trustee no longer felt the stipulation of settlement was in the best interests of the estate. Although the trustee did not withdraw his motion for approval of the stipulation, he revealed the changed circumstances to the bankruptcy court and did not support its approval. The Myers argued that by doing so, the trustee breached his covenant of good faith and fair dealing. The district court agreed with the Myers that the implied covenant was breached.

¹⁸ 91 F.3d 389 (3d Cir. 1996).

The Third Circuit reversed the decision of the district court and held that a trustee does not breach an underlying stipulation of settlement by failing to support the approval of the proposed settlement. The court stated it could not require a trustee to choose between conflicting legal obligations; this responsibility had been delegated by the legislature to the bankruptcy court. The Third Circuit then laid out steps the trustee should follow in these circumstances to enable the bankruptcy court to determine what is in the best interests of the estate:

[T]he trustee should inform the court and the parties of any changed circumstances since the entry into the stipulation of settlement. The trustee may even opt not to argue in favor of the stipulation, as was done here, if she no longer believes the settlement to be in the best interest of the estate. The trustee does not breach any term of the stipulation by doing so, for the bankruptcy court may nonetheless approve the settlement.

Hence, we reject the proposition that a trustee is required to champion a motion to approve a stipulation that is no longer in the best interest of the estate. This trustee did not flout or breach any term of the stipulation. Nor did she withdraw the motion to approve the stipulation. Rather, at the hearing, the trustee simply elected not to argue in favor of her motion.¹⁹

The court further reasoned that if the trustee was prohibited from informing the court of the changed circumstances, or from advocating against the settlement for the creditors in light of the changed circumstances, then the bankruptcy court would proceed without full information and could harm the creditor body.

¹⁹ *Id.* at 394.

Therefore a trustee must be allowed to fulfill his fiduciary duty by choosing not to support the settlement if he believes it is no longer in the best interest of the estate, and by doing so he does not breach any underlying stipulation.

Assuming the factual allegations of the complaint as true, here—as in *Martin*—the trustee was presented with changed circumstances which caused him to believe the Proposed Settlement was no longer in the best interests of the estate. Meer discovered in 2008 that there was no economic substance behind either the Purported Loan Agreements or the IMT Business. He further discovered that Aharoni was the true owner of the accounts the \$31.6 million was transferred to and that Aharoni had not been cooperating as promised. Given this new information, it is understandable that Meer believed it was not in the best interests of the estate to support the Proposed Settlement and to release Aharoni from any potential liability. Meer then proceeded according to the steps set forth in *Martin* and informed the bankruptcy court of the changed circumstances. He did not withdraw his motion seeking approval of the settlement, and therefore the bankruptcy court had the option to approve or deny the Proposed Settlement given the new information. Accordingly, Meer was not required to support the Proposed Settlement after filing it if he did not believe it was in the best interests of the estate. By not supporting the Proposed Settlement, he did not breach the Amended Stipulation because the bankruptcy court still had the option of approving the

Proposed Settlement. Because Meer did not breach the Amended Stipulation or the implied covenant of good faith and fair dealing, he may rely on the Amended Stipulation to toll the statute of limitations.

By ruling that Meer was not required to support the Proposed Settlement due to changed circumstances, the Court should make clear that it is not concluding that the changed circumstances actually existed—*i.e.*, that Aharoni actually controlled the accounts in question, the IMT Business and Purported Loan Agreements lacked economic substance, and that Aharoni absconded with the money. In determining a motion to dismiss, the Court is required to take plaintiff’s factual pleadings as true, and therefore the Court must assume these circumstances existed. All of the facts may be reviewed at a later date to determine whether the changed circumstances existed to warrant the Trustee’s belief that the Proposed Settlement was no longer in the best interests of the estate.

C. The Doctrine of Laches

Aharoni further argues that the Trust’s claim is time-barred by the doctrine of laches. Laches is an equitable defense arising from the maxim that “equity aids the vigilant, not those who slumber on their rights.”²⁰ Aharoni may seek to dismiss the claim under the doctrine of laches if the allegations in the complaint

²⁰ *Reid v. Spazio*, 970 A.2d 176, 182 (Del. 2009) (citing 2 Pomeroy’s Equity Jurisprudence §§ 418-19 (5th ed.1941)); *accord Adams v. Jankouskas*, 452 A.2d 148, 157 (Del. 1982).

show the action was filed too late.²¹ Although statutes of limitations do not bind courts of equity in adjudicating purely equitable claims, the Delaware Supreme Court has held that absent unusual circumstances, a court of equity should follow the analogous statutory period.²² Unusual circumstances justifying an adjustment to the statute of limitations are generally defined as unreasonable delays by the plaintiff in bringing suit after he learned of an infringement of his rights which result in material prejudice to the defendant.²³ As the Court has found the Amended Stipulation tolled the applicable statute of limitations period, the Court will presume the tolled filing period is correct unless the complaint reveals that unusual circumstances exist justifying the application of laches.

Here, facts showing such unusual circumstances justifying laches are not apparent from the complaint. There was no unreasonable delay because according to the complaint, Meer was unaware that there was no economic substance behind the Purported Loan Agreements or the IMT Business until 2008. Following this realization, Meer confronted Aharoni, explored his explanations regarding the circumstances surrounding the events, and informed the bankruptcy court he no

²¹ *In re Coca-Cola Enter., Inc. S'holders Litig.*, C.A. No. 1927-CC, 2007 WL 3122370, at *5 (Del. Ch. Oct. 17, 2007); *Kahn v. Seaboard*, 625 A.2d 269, 277 (Del. Ch. 1993).

²² *U.S. Cellular Inv. Co. of Allentown v. Bell Atl. Mobile Sys., Inc.*, 677 A.2d 497, 502 (Del. 1996).

²³ *Id.*; *Concord Steel, Inc. v. Wilmington Steel Processing Co.*, C.A. No. 3369-VCP, 2009 WL 3161643, at *13 (Del. Ch. Sept. 30, 2009).

longer felt the Proposed Settlement was in the best interests of the Trust. The bankruptcy court denied approval of the Proposed Settlement on January 7, 2009 and this action was filed December 14, 2009, which was within the year time frame allowed by the Original and Amended Stipulations. Indeed, the Trust could not have re-filed this action sooner than January 7, 2009 as the Amended Stipulation prohibited him from re-filing unless the Proposed Settlement was not approved. Based on these facts, there was no unreasonable delay by Meer in bringing suit after he learned of the infringement of the Trust's rights.

The complaint further provides no evidence Aharoni is prejudiced by allowing the Trust to re-file the Delaware Action. Prejudice can be either procedural, such as when a party is unable to call a crucial witness due to the delay and the witness has since become unavailable, or substantive, such as when a party relies to his detriment on the plaintiff's failure to file a claim in a timely manner.²⁴ The complaint is void of any procedural prejudice Aharoni may have suffered and Aharoni offers no evidence that such prejudice occurred. Aharoni further cannot argue he was substantively prejudiced by relying on the Trust's failure to timely file a complaint. Aharoni agreed in the Amended Stipulation that the Trust could re-file the Delaware Action in the event the bankruptcy or district court failed to approve the Proposed Settlement. Aharoni was therefore aware that the complaint

²⁴ *Steele v. Ratledge*, No. Civ.A. 16455, 2002 WL 31260990, at *3 (Del. Ch. Sept. 20, 2002).

could be re-filed against him and any reliance on the dismissal of the Delaware Action would be unreasonable. Because there was no unreasonable delay by the Trust in filing the complaint after learning its rights had been infringed, and Aharoni suffered no procedural or substantive prejudice, the complaint is not barred by the doctrine of laches.

D. The Unjust Enrichment and Negligent Misrepresentation Claims

Aharoni's final argument is that the unjust enrichment and negligent misrepresentation claims are barred because the Amended Stipulation only allows for the re-filing of the Delaware Action and not the addition of new claims.

The tolling provision in the Amended Stipulation, however, provides that if the Proposed Settlement is not approved, as long as the Delaware Action is re-filed within one year it "shall be treated for statute of limitations purposes as if filed on the date that the Verified Complaint in the Delaware Action originally was filed."²⁵ The natural reading of this provision in no way restricts the Trust to its previous complaint. If the parties wished to restrict the Trust's ability to amend the re-filed complaint they should have done so by explicitly placing such a limitation in the Amended Stipulation. Absent such a provision, the general rule in Delaware governs, and the Trust is allowed to amend its complaint in accordance with Court of Chancery Rule 15(a).

²⁵ Am. Stipulation ¶ 9.

Although Aharoni further argues that the two new claims should not be allowed by amendment because they do not relate back, this argument is unfounded. Under Court of Chancery Rule 15(c), an amendment relates back if it is filed within the statute of limitations period. As previously stated, the statute of limitations was tolled by the Amended Stipulation and therefore the amendment was filed within the statute of limitations period. Additionally, the purpose of the relation back doctrine is to provide the defendant with adequate notice. It is difficult to see how Aharoni did not have adequate notice of the lesser claims of negligent misrepresentation and unjust enrichment when the Trust's prior complaint alleged fraud and breach of fiduciary duty for the same conduct. The amendments therefore relate back to the original complaint and the two additional counts of unjust enrichment and negligent misrepresentation are not barred.

For the foregoing reasons defendant's motion is DENIED.

IT IS SO ORDERED.