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**STATE OF MINNESOTA
IN COURT OF APPEALS
A14-0506**

Daniel J. Koob,
Appellant,

vs.

Elizabeth L. Koob and Mary Jane Koob, individually,
and as Trustees of the H.J. Koob Revocable Living Trust
dated September 24, 1996,
Respondents.

**Filed November 24, 2014
Affirmed
Peterson, Judge**

Cottonwood County District Court
File No. 17-CV-13-245

Peter J. Hemberger, Gislason & Hunter, LLP, New Ulm, Minnesota (for appellant)

William J. Wetering, Worthington, Minnesota (for respondents)

Considered and decided by Peterson, Presiding Judge; Rodenberg, Judge; and
Reilly, Judge.

UNPUBLISHED OPINION

PETERSON, Judge

In this action brought against a trust and individual trustees, appellant argues that
the district court erred by concluding that appellant's action was barred by the statute of

limitations and by granting summary judgment before discovery was complete. We affirm.

FACTS

Appellant Daniel J. Koob and respondents Elizabeth L. Koob and Mary Jane Koob are the children of H.J. Koob and Betina Walton Koob. In 1986, appellant and his wife entered into a contract to purchase from H.J. Koob a one-third interest in a parcel of land in Cottonwood County known as Clear Lake Farm (farm). H.J. Koob, who owned a separate one-third interest in the farm, repurchased appellant's interest in February 1987 and received a quitclaim deed from appellant and his wife. H.J. Koob then sold a one-third interest in the farm to Albert Zender. Douglas Anderson owned the other one-third interest.

Appellant claims that when he sold his interest in the farm to his father, his father assured him that appellant retained an interest in the farm despite the quitclaim deed and promised to "make him whole." Other than appellant's claim, there is no evidence of this promise. There is evidence that the three owners of the farm, including H.J. Koob, told appellant in 1997 that he was not welcome to hunt or trespass on the farm.

In 1996, H.J. Koob established the H.J. Koob Revocable Living Trust, and, at some point, he transferred his one-third interest in the farm to the trust. H.J. Koob died on August 25, 2000. Since his death, respondents have acted as trustees for the trust. After his death, the trust purchased the interests of the other two owners of the farm, and the entire farm became a trust asset. In August 2002, appellant demanded that the trust give him a one-third interest in the farm, based on H.J. Koob's alleged oral promise. On

October 4, 2002, respondents, in their role as trustees, told appellant that his claim was without merit and that the trust was disallowing his claim.

In 2003, respondents decided to sell the farm and authorized appellant as attorney-in-fact to market the farm. The farm was sold to the State of Minnesota in 2006, and appellant was paid a commission on the sale. The sale was concluded on October 9, 2006; shortly before this, appellant once again demanded that the trust pay him one-third of the value of the farm, based on the alleged oral promise. The trustees once again denied his claim, but they delayed the distribution of the sale proceeds to permit appellant to litigate his claim. Appellant did not begin a legal action, and the farm sale proceeds were distributed to the trust beneficiaries, including appellant, in March 2007.

During the probate of the parties' mother's estate in 2009, appellant again made a claim for his alleged interest in the farm, which was formally disallowed. Appellant filed a petition for permission to make a written claim against the trust in May 2012, again asserting that he had an interest in the farm; respondents disallowed this claim.

On May 30 and June 1, 2013, appellant served respondents with a complaint alleging breach of fiduciary duty, conversion, and unjust enrichment based on his claimed interest in the farm. Before the complaint was issued, appellant's attorneys were given access to the trust files and were permitted to review all documents pertaining to the farm.

On September 12, 2013, respondents told appellant that they intended to bring a motion to dismiss his complaint. On October 16, 2013, appellant served discovery materials. On October 18, 2013, respondents served a motion for summary judgment.

After a hearing on November 19, 2013, the district court concluded that appellant's claims were barred by the statute of limitations and granted summary judgment to respondents. This appeal followed.

DECISION

I.

We review the district court's summary judgment to determine whether there are any genuine issues of material fact that would preclude a grant of judgment and whether the district court erred in its application of law. *Curtis v. Altria Grp., Inc.*, 813 N.W.2d 891, 898 (Minn. 2012). We review the district court's statutory interpretation de novo, as a question of law. *Id.*

This matter involves interpretation of Minn. Stat. § 541.05, subd. 1 (2012), which provides that actions for breach of fiduciary duty, conversion, and unjust enrichment must be commenced within six years. *Id.* at (1), (4), (5), (6); *see In re Trust of Hill*, 499 N.W.2d 475, 489 (Minn. App. 1993) (stating limitations period for breach of fiduciary duty based on fraud is six years), *review denied* (Minn. Jul. 15, 1993); *Cleys v. Cleys*, 363 N.W.2d 65, 72 (Minn. App. 1985) (stating limitations period for conversion is six years); *Block v. Litchy*, 428 N.W.2d 850, 854 (Minn. App. 1988) (stating limitations period for unjust enrichment is six years).

A limitations period begins to run when a cause of action accrues. *Noske v. Friedberg*, 670 N.W.2d 740, 742 (Minn. 2003). A cause of action accrues when the plaintiff can allege facts sufficient to survive a motion to dismiss for failure to state a claim upon which relief could be granted. *Id.* In *Weston v. Jones*, 160 Minn. 32, 199

N.W. 431 (1924), a cause of action based on the disbursement of trust proceeds accrued when a trustee who mistakenly believed that one of the trust beneficiaries was dead paid the beneficiary's share of the trust fund to the beneficiary's heirs. *Id.* at 36, 199 N.W. at 433. When the supposedly deceased beneficiary resurfaced 12 years after the trust proceeds were disbursed, the supreme court concluded that his petition to vacate the trust decree was time-barred by the six-year statute of limitations. *Id.* at 38, 199 N.W. at 433. In *Cleys*, this court concluded that the statute of limitations for a conversion claim began to run when one party began to "treat the property as his own." 363 N.W.2d at 72. In *Block*, the plaintiff had a cause of action for unjust enrichment when she began making overpayments on a contract. 428 N.W.2d at 854.

In his complaint, appellant alleged that respondents "refused to acknowledge [his] claim of an interest in and to all or a portion of the farm and improperly distributed the proceeds from the sale of the farm to the beneficiaries of the Trust." He asserts that this was (1) a breach of their fiduciary duties, because they failed to perform their duties as trustees and engaged in self-dealing; (2) conversion, because they converted the trust assets for their own purposes; and (3) unjust enrichment, because they were aware of his claim yet distributed the proceeds from the sale of the farm without regard to his claim.

Appellant was indisputably aware of the sale of the farm; he marketed the property and found a buyer. The sale was completed in 2006, and appellant demanded that the trust pay him for his alleged interest in the farm. Respondents delayed distribution of the sale proceeds to permit appellant to litigate his claims. When appellant did not begin

formal litigation, the farm sale proceeds were distributed to appellant and others in March 2007.

Because all of appellant's claims were based on respondents' alleged improper distribution of the farm sale proceeds, appellant could have alleged facts sufficient to survive a motion to dismiss for failure to state a claim upon which relief could be granted no later than March 2007, when the sale proceeds were distributed. Consequently, the statute of limitations began to run no later than March 2007. Appellant's complaint was not served until May and June 2013, more than six years later.

Citing *Toombs v. Daniels*, 361 N.W.2d 801 (Minn. 1985), appellant argues that a trust is a continuing relationship and, because his "claims for breach of fiduciary duties are based upon actions that have been occurring and continue to occur into the present," the district court improperly held that his claims are entirely barred by the statute of limitations. But appellant does not explain how "actions that have been occurring and continue to occur into the present" can be a breach of fiduciary duties with respect to the distribution of the farm sale proceeds that occurred in March 2007.

The district court did not err by granting summary judgment to respondents because appellant's claims were barred by the statute of limitations.

II.

Appellant argues that the district court abused its discretion by refusing to grant a continuance so that he could pursue further discovery. We review the district court's decision to deny a continuance sought for purposes of permitting further discovery for an abuse of discretion. *Lewis v. St. Cloud State Univ.*, 693 N.W.2d 466, 473 (Minn. App.

2005), *review denied* (Minn. June 14, 2005). In general, the district court should “liberally grant[]” a requested continuance, “especially when the continuance is sought because of a claim of insufficient time to conduct discovery.” *Id.*

A reviewing court concentrates on two questions: (1) whether the party seeking a continuance was diligent in pursuing discovery; and (2) whether the party seeking further discovery was acting “in the good faith belief that material facts [would] be uncovered” or “merely engaging in a fishing expedition.” *Rice v. Perl*, 320 N.W.2d 407, 412 (Minn. 1982) (quotation omitted). “The [district] court should be quite strict in refusing continuances where the party merely expresses a hope or a desire to engage in a fishing expedition either by discovery or at the time of trial.” *Id.* (quotation omitted).

A party who delays discovery, particularly on claims that are not complicated, is not acting diligently. *Cargill Inc. v. Jorgenson Farms*, 719 N.W.2d 226, 231 (Minn. App. 2006); *see also Dunham v. Roer*, 708 N.W.2d 552, 572-73 (Minn. App. 2006) (same), *review denied* (Minn. Mar. 28, 2006). A party who makes only a general claim regarding discoverable information may be engaging in a “fishing expedition.” *Cherne Contracting Corp. v. Wausau Ins. Cos.*, 572 N.W.2d 339, 346 (Minn. App. 1997), *review denied* (Minn. Feb. 19, 1998).

Although appellant’s discovery requests were served four months after the complaint was issued, the timing suggests that appellant acted only after being told that respondents intended to move for dismissal of his complaint, which indicates that appellant was not diligent in pursuing discovery. Also, appellant’s claims all involve the farm, and appellant was given full access to the trust files, including documents related to

the farm. In an affidavit submitted in support of a continuance for discovery, appellant's attorney alleged that he had a good-faith belief that he would likely discover "documentation regarding an agreement between [appellant] and H.J. Koob; when the Trust was terminated; actions taken by Trustees in the collection, maintenance and distribution of Trust asset[s]; Trustees' management of the Trust and its assets; and further evidence of the various breaches of fiduciary duty by Trustees." This general claim regarding discoverable information merely expresses a hope or desire to engage in a "fishing expedition."

Furthermore, "if the discovery would not assist the district court or change the result of the summary judgment motion, the district court does not abuse its discretion by granting the summary judgment motion without granting the continuance [for further discovery]." *QBE Ins. Corp. v. Twin Homes of French Ridge Homeowners Ass'n*, 778 N.W.2d 393, 400 (Minn. App. 2010). The district court concluded that all of appellant's allegations were time-barred, "even if the Court were to grant [appellant's] request and allow additional time for discovery." The district court did not abuse its discretion by denying appellant's motion for a continuance.

Affirmed.