

**IN THE COURT OF COMMON PLEAS OF CARBON COUNTY, PENNSYLVANIA
CIVIL ACTION - LAW**

PETER J. HUKKA,	:	
	:	
Plaintiff	:	
	:	
vs.	:	No. 12-0775
	:	
SHELLY JAYE WEYHENMEYER,	:	
	:	
Defendant	:	
Cynthia S. Ray, Esquire		Counsel for Plaintiff
Nicholas J. Masington, III, Esquire		Counsel for Defendant

MEMORANDUM OPINION

Matika, J. - November 26, 2012

Before the Court is Defendant's Motion for Partial Summary Judgment to Counts I and II of Plaintiff's Complaint seeking to set aside a deed and an agreement on the basis that the applicable statute of limitations had run before the Complaint was filed. For the reasons stated herein, the Motion is **GRANTED.**

I. FACTUAL AND PROCEDURAL BACKGROUND

Plaintiff, Peter Hukka (hereinafter "Plaintiff") and Defendant, Shelly Weyhenmeyer (hereinafter "Defendant") were involved in a romantic relationship beginning in 1996.¹ In 2003

¹ The year 1996 is the date Defendant states in her New matter as the date her relationship with Plaintiff began; however, Plaintiff's Answer to New Matter identifies 1995 as the year the parties began their relationship.

the parties obtained ownership of a parcel of real estate located at 105 Center Street, Jim Thorpe, Pennsylvania. On June 11, 2008, at a time when the parties were experiencing difficulties in their relationship, they executed an "Agreement re: Division of Property" and a deed conveying ownership of the subject real estate from Plaintiff and Defendant to Defendant alone. Plaintiff claims that these documents were executed by him based upon a promise by Defendant that they will have a "formal marriage ceremony" performed to solidify and formalize what Plaintiff perceived to be a common law marriage. Despite Plaintiff executing the agreement and signing the deed, the "formal marriage ceremony" never took place.

On November 10, 2009, Plaintiff filed a Complaint in Divorce. Notwithstanding, on June 24, 2011, the Honorable Roger Nanovic found that Plaintiff failed to establish the existence of a common law marriage and dismissed the Complaint in Divorce.² Plaintiff then filed an appeal to the Pennsylvania Superior Court which affirmed the Trial Court's decision.³

On April 12, 2012, Plaintiff filed this instant action claiming, *inter alia*, that Defendant fraudulently induced him into signing the agreement and deed with the promise of a

² *Hukka v. Weyhenmeyer*, No. 09-3409 (Pa.Com.Pl. Aug. 17, 2011).

³ *Hukka v. Weyhenmeyer*, 46 A.3d 819 (Pa. Super. 2012)

"formal wedding ceremony," and the non-occurrence of which prompted the filing of the Complaint and specifically Counts I and II. The Court is now asked to determine whether Counts I and II of the Complaint are barred by the statute of limitations.

II. DISCUSSION

A moving party is entitled to summary judgment when it is proven that there are no genuine issues of material fact and as such the moving party is entitled to judgment as a matter of law. *Atlantic States Ins. Co. v. Northeast Networking Systems Inc.*, 893 A.2d 741, 745 (Pa. Super. 2006) (citation omitted). The Court must view the record in the light most favorable to the non-moving party and resolve all doubts as to the existence of a genuine issue of material fact against the moving party. *Id.* Only where there is no genuine issue as to any material fact and it is clear that the moving party is entitled to judgment as a matter of law will summary judgment be entered. *Daley v. A.W. Chesterton, Inc.*, 37 A.3d 1175, 1179 (Pa. 2012).

In this case, in order for the Defendant to succeed on her partial summary judgment motion, she must establish by sufficient evidence that Plaintiff's "discovery" of the alleged fraud occurred within a requisite time period in relationship to

the filing of the Complaint, and based upon the time of the discovery of the alleged fraud, Counts I and II of the Complaint are barred by the statute of limitations. The two questions the Court needs to address are as follows: 1) what is the statute of limitations applicable to the cause of action in question; and 2) when did Plaintiff reasonably discover the fraud allegedly committed by the Defendant that caused Plaintiff to be fraudulently induced into signing the agreement and deed.

In determining the applicable statute of limitations, the nature of the cause of action will govern such determination and the length of time a party has to file a complaint. In this case, the Plaintiff argues that a twenty (20) year statute of limitations applies on the basis that the underlying cause of action is an "action upon an instrument in writing under seal."⁴ Alternatively, Plaintiff claims that a four (4) year statute of limitations applies because this matter involves a contract.⁵

While Plaintiff's recitation of these statutes are correct, such statutes are not applicable to the case at bar. First, Plaintiff claims that the agreement and deed should be voided based upon the fraudulent actions of the Defendant in inducing him into signing such documents. The Courts have never adopted

⁴ See, 42 Pa.C.S.A. §5529(b) (1) .

⁵ See, 42 Pa.C.S.A. §5525(a) .

a comprehensive definition of "what constitutes a cause of action." See, *Kuisis v. Baldwin-Lima-Hamilton Corp.*, 319 A.2d 914, n.7 (Pa. 1974). Consequently, it is important to identify the "type" of action Plaintiff is claiming the Court should address.

Based upon the facts plead and the allegations claimed in Counts I and II, it is evident that the underlying "cause of action" is grounded in fraud. More specifically, the crux of Plaintiff's allegation is that Defendant "fraudulently induced" him to enter into a contract, not, as Plaintiff argues, a breach of that contract itself, which could otherwise conceivably invoke either the four or twenty year statutes of limitations. It is that fraud that provides the foundation upon which this suit was filed not an action on the contract itself. As a result of the Court finding that Counts I and II are causes of action grounded in fraud, such counts are governed by 42 Pa.C.S. §5524 with respect to the applicable statute of limitations.

Section 5524 states in relevant part, an "action or proceeding sounding in trespass, including deceit or fraud" must be commenced within two years. 42 Pa.C.S. §5524(7). Therefore, because Plaintiff's cause of action is one based in fraud the applicable statute of limitations is two years.

Even though the Court has determined Plaintiff had two years to commence this action in regards to Counts I and II, the question now becomes when did the two-year time period for Plaintiff to file this action begin.

Under Pennsylvania law, the statute of limitations begins to run at the time "the right to institute and maintain the suit arises." *Pocono International Raceway, Inc. v. Pocono Produce, Inc.*, 468 A.2d 468 (Pa. 1983). In the case at bar, Plaintiff alleges that Defendant's fraudulent conduct occurred when the Plaintiff was "induced" into signing the agreement and deed on June 11, 2009. Consequently, the right to institute and maintain the causes of action outlined in Counts I and II arises as of that date. The initiation of the instant action occurred with the filing of the Complaint on April 12, 2012, and as such it is clearly outside of the two year statute of limitations.

However, the Court's inquiry does not end there. It is well established that Pennsylvania law recognizes an exception to the statute of limitations which tolls the running of the statute until such time as the Plaintiff actually knows, or, through the exercise of reasonable diligence, should have known of the injury and its cause. *Toy v. Metropolitan Life Ins. Co.*, 863 A.2d 1 (Pa. Super. 2004), *aff'd*, 928 A.2d 186 (Pa. 2007). The "Discovery Rule" provides that where the existence of the

injury is not known to the complaining party, the statute of limitation period does not begin to run until such discovery of the injury becomes reasonably possible. The salient point giving rise to the Rule's applicability is the inability of the injured to know he is injured and by what cause. *Yates v. Commercial Index Bureau, Inc.*, 861 F.Supp. 2d 546 (E.D.Pa. 2012). Once the injured party is said to have reasonably and diligently "discovered" the injury, the statute of limitations period begins to run.

In this particular case, Plaintiff alleges that Defendant fraudulently induced him into signing documents on June 11, 2009. Unless Defendant expressly stated at that time that, notwithstanding Plaintiff's execution of these documents, that she was not going to participate in a "formal wedding ceremony," the Court cannot find that Plaintiff was aware of his "injury" on June 11, 2009, and therefore the two-year statute of limitation time period could not be said to begin running on that date. However, between that date and the date of November 10, 2009, something occurred in the relationship between Plaintiff and Defendant; something to suggest to Plaintiff that the "formal wedding ceremony" was not going to occur and that his execution of the agreement and deed was fraudulently induced by Defendant.

The date of November 10, 2009, is of the utmost significance as this is the date Plaintiff filed a Complaint in Divorce claiming that the common law marriage between the parties was irretrievably broken.⁶ Ostensibly, by Plaintiff's actions in filing the divorce action, he reasonably discovered that without a doubt, no "formal wedding ceremony" was going to take place and that the events on June 11, 2009 were based on fraud.

In determining the date Plaintiff knew or should have known that no formal wedding ceremony was going to occur as being November 10, 2009, it follows that Plaintiff, as of that date had discovered the claimed fraud allegedly perpetrated upon him by Defendant in inducing him into signing the deed and agreement. Therefore, Plaintiff had until November 10, 2011 to file this instant action in order for Counts I and II not to be barred by the statute of limitations. Since the Complaint was not filed until April 12, 2012, Counts I and II of the Complaint are barred by the statute of limitations and thus dismissed accordingly.

⁶ While there may have been events between June 11, 2009, and November 10, 2009, that may lend themselves to the opportunity of Plaintiff to "discover" the alleged fraud on the part of the Defendant, the Court finds that undoubtedly Plaintiff was aware, or should have been aware that no "formal wedding ceremony" was going to take place once he filed the divorce action. The Court does not agree with Plaintiff's argument that the date of discovery of the alleged fraud was August 17, 2011, when Judge Nanovic found that no marriage existed in the first place as Plaintiff sincerely and truly believed that there was one.

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ORDER OF COURT

AND NOW, this day of November, 2012, upon consideration of Defendant's, Shelly Jaye Weyhenmeyer, Motion for Partial Summary Judgment, the brief lodged in support thereof, Plaintiff's response thereto, and after oral argument thereon, it is hereby

ORDERED and DECREED that the Motion for Partial Summary Judgment is **GRANTED** and Counts I and II of the Amended Complaint filed on April 12, 2012 are **DISMISSED**.

BY THE COURT:

Joseph J. Matika, Judge