

**PROBATE COURT  
CITY AND COUNTY OF DENVER, COLORADO**

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**In the Matter of the Estate of**

CAROL K. GOSSARD

Deceased.

**2007PR776**

**Case Number: 07PR776**

**ORDER GRANTING MOTION FOR SUMMARY JUDGMENT REGARDING  
STATUTE OF LIMITATIONS AND EQUITABLE DEFENSES**

THIS MATTER comes before the Court on the Co-Personal Representatives' Motion for Summary Judgment Regarding Claimant's Petition for Allowance of Claim pursuant to C.R.C.P. 56(b). The "co-personal representatives" are UMB Bank Colorado, N.A. and Dennis E. Baldwin. The "claimant" is Rebecca Love Kourlis. The "decedent" is Carol K. Gossard.

In this litigation, claimant asserts that decedent transferred all of the assets out of a trust to herself, thus improperly terminating claimant's interest in the trust. For the reasons set out herein, the Court FINDS that the claim is barred by the applicable statute of limitations, as well as the doctrines of laches, waiver and estoppel.

The Court finds the following material facts undisputed and dispositive.

On June 11, 1997, Bill Gossard executed a will in which he created a Marital Trust (hereinafter referred to as "the trust" or the "Marital Trust"). The first sentence of Article 6.02 of Bill Gossard's will states "[m]y trustee shall distribute to my wife such amounts of the principal of the Marital Trust as she shall request from time to time, during her lifetime." Under Section 7.01 and 7.02 of the Will, ten (10) percent of "any unappointed remainder of any Marital Trust established under [the] will" was distributable to claimant.

Bill Gossard died on November 14, 1997. His will was filed with this court and the administration of his estate was subsequently conducted and concluded here as case #1997PR2019. On December 17, 1997, a copy of Bill Gossard's will was mailed to claimant.

In early March of 1998, decedent, the surviving wife of Bill Gossard, sent claimant a draft copy of the Carol K. Gossard Trust. The introductory paragraph of the draft Carol K. Gossard Trust provides for the exercise of decedent's power of withdrawal under Article 6.02 of her husband's will:

I, Carol K. Gossard . . . hereby exercise the power to request that distribution of principal be made to me as provided under Section 6.02 of the will of my late husband, Bill Gossard . . . Pursuant to such power, I direct that the entire principal of the Marital Trust created under the will be transferred to me . . . to be designated the CAROL K. GOSSARD TRUST.

On March 17, 1998, in a responsive letter to decedent (the "St. Patty's Day letter"), claimant indicated that she had "read through the draft of the [Carol K. Gossard] Trust document." She then provided certain recommendations for revisions and concluded her letter by promising to "do my utmost to be true to what I know to be your wishes and convictions."

On March 23, 1998, decedent executed the Carol K. Gossard Trust. That trust document was identical to the draft trust document that was previously reviewed by claimant, except that it incorporated specifically the changes recommended by claimant. Upon the execution of the Carol K. Gossard Trust in 1998, all assets of the Marital Trust were transferred to the Carol K. Gossard Trust and claimant's interest in the Marital Trust ended.

Claimant's case here alleges that the withdrawal of all of the assets of the Marital Trust was unauthorized, improper and represented a breach of the fiduciary duties of the trustees thereof and of the decedent. The copersonal representatives of the estate of Carol K. Gossard argue that the claims are barred by the applicable statute of limitations and the doctrines of laches, waiver and estoppel. The Court agrees.

Applicable Law: All actions for breach of trust or breach of fiduciary duty must be brought within three years after the cause of action accrues. C.R.S. §13-80-101(1)(f). A cause of action for breach of . . . trust shall be considered to accrue on the date the breach is discovered or should have been discovered by the exercise of reasonable diligence. C.R.S. §13-80-108(6). ["An action on any trust accrues at such time as the claimant attains, or reasonably could have attained, notice of the trustee's use of the trust property in a manner which is inconsistent with the claimant's interest." Lucas v. Abbott, 601 P.2d 1376, 1378 (Colo. 1979).]

The Court here finds that claimant had actual knowledge of decedent's intention to withdraw all of the assets from the Marital Trust in March 1998 and was on inquiry notice that, following receipt of the St. Patty's Day letter, decedent had implemented the proposed estate plan, thus extinguishing claimant's remainder interest in the Marital Trust.

Citing the complexities of tax and trust law, claimant asserts that the statute of limitations should not bar her claim because the theory of recovery underlying her claim was not understood by her until recently. "[I]gnorance of the law does not expand the statute of limitations for filing suit." Olson v. State Farm Mut. Auto Ins. Co., 174 P.3d 849, 854 (Colo. App. 2007). "[Claimant] need only know or have reason to know the facts that underlie or are essential to the cause of action, but need not know the precise legal theory upon which the action may be brought." Colburn v.

Kopit, 59 P.3d 295, 297 (Colo. App. 2002). “The critical inquiry of when an action accrues is knowledge of the facts essential to the cause of action, not knowledge of the legal theory upon which the action may be brought.” Morris v. Geer, 720 P.2d 994 (Colo. App. 1986).

Because more than three years elapsed between March 1998, when claimant had knowledge of the essential facts underlying her claim, and September 2007, when her claim was first asserted, the statute of limitations bars the action.

The equitable defense of laches arises from “delay in asserting one’s rights which works to the defendant’s prejudice or injury in relation to the subject matter of the litigation” and estoppel arises “where one, relying upon another’s conduct, detrimentally alters his position.” City of Thornton v. Bijou Irr. Co., 926 P.2d 1, 73 (Colo. 1996); Baumgartner v. Tweedy, 354 P.2d 586, 588 (Colo. 1960). “Waiver is the intentional relinquishment of a known right,” Vanderbeek v. Vernon Corp., 25 P.3d 1242, 1248 (Colo. App. 2000), and “may be implied, as when a party engages in conduct which manifests an intent to relinquish the right or acts inconsistently with its assertion.” In re Marriage of Robbins, 8 P.3d 625, 630 (Colo.App.2000).

These three equitable defenses bar claimant here from recovery. The St. Patty’s Day letter indicates approval of the actions taken by decedent, recommends limited amendments to the trust agreement Carol K. Gossard was then contemplating, and expresses claimant’s intention to “do my utmost to be true to what I know to be your wishes and convictions.” Six days following her receipt of claimant’s unequivocal representations of support and encouragement to proceed with the withdrawal of all assets from the Marital Trust, Carol K. Gossard executed and implemented her estate plan.

Summary judgment is a drastic remedy appropriate only when the pleadings and supporting documents show that no genuine issue as to any material fact exists, and the moving party is entitled to summary judgment as a matter of law. Brodeur v. American Home Assur. Co., 169 P.3d 139, 146 (Colo.2007), *citing* In re Tonko v. Mallow, 154 P.3d 397, 402 (Colo. 2007). Where, as here, the moving party does not have the burden of persuasion at trial, it is sufficient for the moving party to show an absence of evidence in the record to support [claimant's] claims. Rosenthal v. Dean Witter Reynolds, 908 P.2d 1095, 1107 (Colo. 1995). Co-personal representative's motion for summary judgment is GRANTED.

The disallowance of the claim is well-founded and will not be overturned here. In light of this ruling, the other pending motions in regard to this claim are MOOT.

May 2, 2008

  
C. Jean Stewart  
Judge, Probate Court

Movant shall serve copies of the Order on all parties not otherwise served by LexisNexis File & Serve pursuant to C.R.C.P. 5 and file a certificate of service with the Court within 10 days.