

Note: Decisions of a three-justice panel are not to be considered as precedent before any tribunal.

ENTRY ORDER

SUPREME COURT DOCKET NO. 2005-508

AUGUST TERM, 2006

Pamela K. Blesh

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APPEALED FROM:

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v.

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Lamoille Superior Court

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David E. Johnson

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DOCKET NO. 122-6-04 Lecv

Trial Judge: Howard E. VanBenthuyssen

In the above-entitled cause, the Clerk will enter:

Plaintiff wife appeals from a superior court judgment rejecting her fraudulent conveyance claim and request for a constructive trust on property owned by defendant, her former husband. We affirm.

The parties were divorced in 1985 in Pennsylvania. The Pennsylvania court awarded wife an equitable distribution of the estate, and thereafter issued several follow-up orders reviving the judgment, in an amount in excess of \$200,000. In January 1989, husband and his new wife purchased a property in Stowe, Vermont and

took title as tenants by the entirety. In June 2004, wife filed a complaint in the Lamoille Superior Court against husband and his current wife, alleging that they had purchased the property with the fraudulent intent to hinder wife=s collection of the judgment. She requested that the court domesticate the Pennsylvania judgment and impose a constructive trust on the property.

Defendants moved for summary judgment on the fraudulent conveyance claim. In February 2005, the court issued a written decision granting the motion on the ground that the claim was barred under the four-year statute of limitations of the Fraudulent Conveyance Act, 9 V.S.A. ' 2293, and also on the ground that defendants had not Atransferred@ any asset within the meaning of the Act. Id. ' 2285(11).^[1] Thereafter, in October 2005, the court entered a final judgment for wife in the amount of \$206,585.29, based on the Pennsylvania judgment. The court simultaneously denied a renewed motion for writ of attachment or constructive trust on the property premised on wife=s claim that defendants were in the process of selling the property. This appeal followed.

Wife contends the court erred in granting summary judgment on her fraudulent conveyance claim because material facts remained in dispute as to the amounts that defendants individually contributed to the purchase of the property, and because the court erred as a matter of law in determining that there was no Atransfer@ when defendants purchased the property. We need not reach these arguments as they relate to wife=s claim under the Fraudulent Conveyance Act because we conclude that the court properly dismissed the claim as time-barred. The Act provides that, as to claims that a transfer was made with intent to hinder, delay or defraud a creditor of the debtor, a cause of action Aunder this chapter is extinguished unless action is brought . . . within four years after the transfer was made or the obligation was incurred or, if later, within one year after the transfer or obligation was or could reasonably have been discovered.@ Id. ' 2293(1). Wife does not dispute the court=s findings that the property was purchased in 1989, that wife received an investigative report disclosing the purchase on September 16, 1996, and that she did not file the action until June 2004, more than seven years after the discovery, and well beyond the limitations period.

The court also correctly noted that, although husband filed for bankruptcy on September 25, 1997, and the petition was dismissed in September 2000, federal bankruptcy law did not alter the result. Federal law provides that, where a limitations period has begun to run but has not expired, prior to the filing of a bankruptcy petition, the claimant may file suit no later than 30 days after the termination of the bankruptcy stay. 11 U.S.C. ' 108(c). Here, the limitations period expired one year from the date of discovery, or September 16, 1997, prior to the filing of the bankruptcy petition. Furthermore, the claim was filed well beyond the thirty-day grace period. Accordingly, wife=s claim under the Act was untimely.

Wife correctly points out that she opposed the summary judgment motion on the ground, among others, that she also was asserting a common law fraud claim and seeking the equitable remedy of a constructive trust. Hence, she asserts that only the defense of laches—not the statutory four-year limitations period—can bar such a claim. See 9 V.S.A. ' 2294 (unless specifically displaced by the Fraudulent Conveyance Act, principles of law and equity, including estoppel, laches, and fraud supplement the provisions of this chapter@). The trial court did not address this argument. We do not, however, find it to be persuasive. Laches will bar recovery if a claimant does not assert a right for an unreasonable and unexplained period of time when the delay has been prejudicial to the adverse party, rendering it inequitable to enforce the right.@ Chittenden v. Waterbury Ctr. Cmty. Church, 168 Vt. 478, 494 (1998) (quotations omitted). In this case, because wife=s equitable remedy is based on common law fraud we are guided by the general six-year statute of limitations applicable to civil actions under 12 V.S.A. ' 511. See Bevins v. King, 143 Vt. 252, 255 (1983) (holding that fraud action was subject to six-year statute of limitations set forth in 12 V.S.A. ' 511); Tierney v. Tierney, 131 Vt. 48, 53 (1973) (same). Given that wife=s claim was filed more than seven years after she discovered husband=s purchase of the property, we conclude that laches bars her claim.

As a final note, we reiterate that although wife=s fraudulent conveyance claim is dismissed, wife has an existing valid judgment against husband and may execute upon husband=s property to satisfy this judgment. V.R.C.P. 69. We do not reach whether wife has valid grounds to execute upon the Stowe property at issue.

Affirmed.

BY THE COURT:

Paul L. Reiber, Chief Justice

John A. Dooley, Associate Justice

Denise R. Johnson, Associate Justice

[1]

This section provides: A>Transfer= means every mode, direct or indirect, absolute or conditional, voluntary or involuntary, of disposing of or parting with an asset or an interest in an asset, and includes payment of money, release, lease and creation of a lien or other encumbrance.@ 9 V.S.A. ' 2285(11).