

STATE OF MICHIGAN
IN THE 17th CIRCUIT COURT FOR KENT COUNTY

J. ROBERT LANGAN; RUNNY RUN
L.C.; and G & L GOLF, L.L.C.,

Plaintiffs,

vs.

TODD GERHART; and KATHLEEN
LOUISE GORTON,

Defendants.

Case No. 14-03299-CBB

HON. CHRISTOPHER P. YATES

OPINION AND ORDER GRANTING DEFENDANTS' MOTION
FOR SUMMARY DISPOSITION PURSUANT TO MCR 2.116(C)(7)

The game of golf has been described as a good walk spoiled, but this dispute involves a good friendship spoiled over a golf course. Plaintiff J. Robert Langan and Defendants Todd Gerhart and Kathleen Gorton formed a threesome to operate the Deer Run Golf Course. The parties successfully ran the golf course during the 2002 season, and then Langan and Gerhart formed a limited liability company – Plaintiff G & L Golf, L.L.C. (“G&L”) – to purchase the golf course. Beginning in 2003, Gerhart and Gorton managed the golf course, but Langan ultimately found sizable tax liens on the golf course resulting from the alleged misdeeds of Gerhart and Gorton. Langan’s concerns prompted Gerhart’s withdrawal from G&L on November 8, 2007, and the defendants’ disengagement from the golf course by February of 2008.

For years, the relationship between Plaintiff Langan and the defendants lay dormant, but on September 27, 2013, Langan and his companies filed suit against Defendants Gerhart and Gorton. See Langan v Gerhart, 17th Cir Ct No 13-09208-CBB. That case ended abruptly on January 3, 2014,

when the clerk dismissed the case for non-service under MCR 2.102(E). The plaintiffs spent months unsuccessfully attempting to have that dismissal set aside, and eventually they filed the instant case on April 14, 2014. Both defendants responded by filing motions to dismiss under MCR 2.116(C)(7) based upon the governing statutes of limitations. Now the Court must resolve those motions.

A motion seeking summary disposition is “properly granted under MCR 2.116(C)(7) when a statute of limitations bars a claim.” See Kuznar v Raksha Corp, 481 Mich 169, 175 (2008). When presenting a request for summary disposition based upon a statute-of-limitations theory, a party may support the motion with “affidavits, depositions, admissions or other documentary evidence[,]” see Maiden v Rozwood, 461 Mich 109, 119 (1999), but “[t]he contents of the complaint are accepted as true unless contradicted by documentation submitted by the movant.” Id. Thus, the Court must limn the facts by referring to the complaint in the first instance and then considering the documents submitted by the defendants in support of their motion. See Kuznar, 481 Mich at 175-176.

The record leaves no doubt that Defendant Gerhart withdrew from Plaintiff G&L in 2007, see Gerhart Motion to Dismiss, Exhibit A (consent resolution of G&L members), and that both of the defendants severed ties with the golf course by February 2008. See Defendants’ Brief in Support of Motion for Summary Disposition, Exhibit A (Affidavit of Todd A. Gerhart, ¶¶ 6-7). The plaintiffs filed their complaint in the instant case on April 14, 2014, which was well beyond the longest statute of limitations applicable to any of the plaintiffs’ claims, *i.e.*, six years for breach of contract.¹ See MCL600.5807(8). The plaintiffs nonetheless insist that equitable estoppel precludes the Court from granting summary disposition under MCR 2.116(C)(7) in favor of the defendants on their statute-of-

¹ The plaintiffs’ complaint includes nine separate claims for, *inter alia*, misrepresentation, breach of fiduciary duties, civil conspiracy, breach of contract, and unjust enrichment. Neither side disputes that the longest available statute of limitations for any of those claims is six years.

limitations theory because the defendants fled the State of Michigan and hid documents in an effort to avoid being held responsible for their financial misdeeds. The Court disagrees.

As our Supreme Court has explained, “equitable estoppel is a judicially created exception to the general rule that statutes of limitations run without interruption.” Cincinnati Ins Co v Citizens Ins Co, 454 Mich 263, 270 (1997). “It is essentially a doctrine of waiver that extends the applicable period for filing a lawsuit by precluding the defendant from raising the statute of limitations as a bar” to a civil action. Id. Because equitable estoppel operates in derogation of statutes of limitations that our Legislature has enacted, its widespread application threatens the very separation of powers that entrusts to our Legislature the authority to make laws.² See Trentadue v Buckler Automatic Lawn Sprinkler Co, 479 Mich 378, 405-407 (2007). Thus, the Court must exercise extraordinary caution in considering any application of equitable estoppel to override a statute of limitations.

The Court’s review of the standards for invoking equitable estoppel leads ineluctably to the conclusion that the plaintiffs cannot avail themselves of that equitable doctrine. Indeed, a party “who seeks to invoke the doctrine generally must establish that there has been (1) a false representation or concealment of a material fact, (2) an expectation that the other party will rely on the misconduct, and (3) knowledge of the actual facts on the part of the representing or concealing party.” Cincinnati Ins, 454 Mich at 270. Here, viewing the evidence in the light most favorable to the plaintiffs, all the Court can conclude is that the defendants decamped after they knew that Plaintiff Langan had found

² Because our Legislature has enacted a statutory tolling provision that rests upon the theory of fraudulent concealment, see MCL 600.5855, courts in Michigan may lack the authority to invoke equitable estoppel as a basis for excusing compliance with a statute of limitations. See Trentadue v Buckler Automatic Lawn Sprinkler Co, 479 Mich 378, 391 (2007) (noting that “MCL 600.5855 is a good indication that the Legislature intended the scheme to be comprehensive and exclusive”). Nevertheless, in an abundance of caution, the Court shall presume that equitable estoppel may still be invoked to forgive noncompliance with a statute of limitations in extreme cases.

out about their misdeeds. Indeed, Defendant Gerhart relinquished his interest in Plaintiff G&L long before he left Michigan, and Langan signed the document that accomplished that result. See Gerhart Motion to Dismiss, Exhibit A (consent resolution of G&L members). For years, Langan had control of G&L all to himself and exclusive access to the information supporting the claims in the complaint, yet he failed to file the instant case within the applicable statutes of limitations.

The simple truth is that the plaintiffs fully understood the factual basis for their claims well within the six-year statute of limitations, and they even filed a timely lawsuit, but they had to engage in a salvage effort once that first lawsuit was dismissed for non-service. Those facts cannot support application of the doctrine of equitable estoppel to defeat the defendants' assertion of an otherwise-valid statute of limitations defense. Consequently, the Court must grant the defendants' motion for summary disposition pursuant to MCR 2.116(C)(7) because no factual dispute prevents the Court from concluding that the applicable statutes of limitations bar all of the plaintiffs' claims. See RDM Holdings, Ltd v Continental Plastics Co, 281 Mich App 678, 687 (2008).

IT IS SO ORDERED.

This is a final order that resolves the last pending claim and closes the case.

Dated: March 19, 2015



HON. CHRISTOPHER P. YATES (P41017)
Kent County Circuit Court Judge