STATE OF MICHIGAN

COURT OF APPEALS

YVONNE GREENE,

Plaintiff-Appellee,

v

LAKE REGION CONFERENCE ASSOCIATION OF SEVENTH-DAY ADVENTISTS, et al.,

Defendants-Appellants.

UNPUBLISHED
April 14, 1998

No. 195610
Kent Circuit Court
LC No. 95-005345-CZ

Before: White, P. J., and Cavanagh and Reilly, JJ

PER CURIAM.

Defendants appeal by leave granted from the circuit court's order denying their motion for summary disposition. We reverse and remand.

On November 30, 1995, plaintiff filed a member's derivative action in Kent Circuit Court alleging that certain officers and directors of the Lake Region Conference Association of Seventh Day Adventists (LRCA), an Illinois non-profit corporation authorized to conduct affairs in Michigan, breached their fiduciary duties and failed to exercise due care when they risked LRCA funds for the development of a commercial for-profit shopping plaza in the City of Chicago, Illinois. The directors of the LRCA approved the development project by resolution on December 30, 1985. As part of the project, the LRCA participated in the establishment of Continental Commercial Partners (Continental), a for-profit limited partnership. Continental acquired property and built a shopping center using funds from industrial revenue bonds. To enable Continental to obtain financing for construction, the LRCA executed reimbursement agreements securing letters of credit from two banks. Ultimately, Continental was unable to make its payments on the industrial revenue bonds and legal proceedings were instituted against the LRCA in 1992 based on one of the reimbursement agreements. In 1993, the LRCA borrowed $2.8 million from the National Conference of Seventh Day Adventists (National Conference) and used the funds to obtain releases from the lenders' claims. In so doing, the LRCA lost its equity interest in the shopping center. Payment on the loan from the National Conference began in January of 1994. Plaintiff now seeks an accounting from the LRCA and reimbursement from the individual directors named. According to her complaint, "the first notice of any meaningful information to LRCA

members on the shopping center project and the losses resulting from the project occurred in May of 1993 at a special constituency meeting."

Defendants moved for summary disposition pursuant to MCR 2.116(C)(6), (7), & (8), arguing that plaintiff's claim was barred by the two-year period of limitation set forth in § 541 of Michigan's nonprofit corporation act (MNCA), MCL 450.2101 *et seq.*; MSA 21.197(101) *et seq.*[1] In her brief in response to defendant's motion for summary disposition, plaintiff maintained that Illinois law governed the substantive legal issues and that the Michigan statute of limitations applied. She further argued that the period of limitation expressed in the MNCA was not applicable to her claim because it only applied to claims specifically brought under § 541 of the MNCA. Instead, plaintiff argued that the three-year catch-all period of limitation for tort claims, MCL 600.5805(8); MSA 27A.5805(8), applied to her common law fiduciary duty claim, and that the six-year catch-all period of limitation for "other personal actions," MCL 600.5813; MSA 27A.5813, applied to her common law duty of care claim, as well as to her allegation that defendants violated Illinois statutory law.[2] In denying defendant's motion, the circuit court adopted by reference the reasoning contained in plaintiff's response brief.

On appeal, defendants argue that they were entitled to summary disposition based on the two-year period of limitation expressed in the MNCA. We agree. This Court reviews decisions on motions for summary disposition de novo to determine if the moving party was entitled to judgment as a matter of law. *Guerra v Garratt*, 222 Mich App 285, 288; 564 NW2d 121 (1997).

Statutes of limitation are procedural in nature and governed by the law of the forum state. *Schumacher v Tidswell*, 138 Mich App 708, 718; 360 NW2d 915 (1984). Pursuant to MCL 600.5861; MSA 27A.5861, when a cause of action accrues outside of Michigan in favor of a Michigan resident, the Michigan statute of limitations applies. In this case, it is undisputed that plaintiff is a Michigan resident and that the cause of action accrued in Illinois. Accordingly, the Michigan statute of limitations applies, even if Michigan law does not govern the substantive legal issues of plaintiff's claim. The more pertinent question on appeal is which of Michigan's various periods of limitation applies.

Under Michigan law, an action brought against the officers or directors of a nonprofit corporation for failure to properly discharge their duties must be brought within three years after the cause of action has accrued, or within two years after the cause of action is discovered (or reasonably should have been discovered), whichever occurs first. Section 541 of the MNCA provides in pertinent part:

> (1) A director or an officer shall discharge the duties of that position in good faith and with that degree of diligence, care, and skill which an ordinarily prudent person would exercise under similar circumstances in a like position. . . .
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> (5) An action against a director or officer for failure to perform the duties imposed by this section shall be commenced within 3 years after the cause of action has accrued, or within 2 years after the time when the cause of action is discovered, or

should reasonably have been discovered by the complainant, whichever occurs first. [MCL 450.2541; MSA 21.197(541).]

This language is substantially similar to the language of § 541a of the Business Corporation Act (BCA), MCL 450.1101 *et seq.*; MSA 21.200(101) *et seq.* Compare MCL 450.2541; MSA 21.197(541) with MCL 450.1541a; MSA 21.200(541a). Section 541a of the BCA does not create a statutory cause of action. Instead, it merely sets the standard of fiduciary duty and period of limitations to be applied in common-law actions brought against corporate officers or directors. See *Baks v Moroun*, ___ Mich App ___; ___ NW2d ___ (1/23/98 slip op, pp 3-5), citing *Detroit Foundaries, Inc v Martin*, 362 Mich 205; 106 NW2d 793 (1961); see also *Goodspeed v Goodspeed*, 273 Mich 87, 90; 262 NW 742 (1935) (observing that "[t]he [predecessor to § 541a of the BCA] merely puts in concrete form the doctrine of laches"). Accordingly, the *Baks* Court held that *any* action for breach of fiduciary duty brought against a corporate officer or director of a for-profit corporation is subject to the period of limitation set forth in § 541a of the BCA. See *Baks*, *supra* at slip op p 5. Because of the substantial similarity between the two statutes, we are of the opinion that the same reasoning applies in the context of nonprofit corporations with respect to § 541 of the MNCA.

In ruling on a statute of limitations defense, a court will look beyond the technical label attached to a cause of action to the substance of the claim asserted. *Local 1064, RWDSU AFL-CIO v Ernst & Young*, 449 Mich 322, 327 n 10; 535 NW2d 187 (1995). Plaintiff contends on appeal that the two-year statute of limitations set forth in § 541 of the MNCA does not apply to her claim because she is not suing to enforce any "duties imposed by" § 541 of the MNCA. The substance of plaintiff's complaint, which does not allege any specific violations of either the MNCA or its Illinois counterpart, is that defendants failed to properly discharge their duties as officers and directors of the LRCA, and that this failure worked to the detriment of the LRCA. Therefore, plaintiff is suing to enforce "duties imposed by" § 541 of the MNCA in the sense that § 541 addresses the fiduciary duties owed by officers and directors of nonprofit corporations and plaintiff's suit alleges a breach of such duties. Because § 541 of the MNCA does not create an independent cause of action, but merely sets the period of limitations for any such actions, plaintiff's suit could not have been "brought under" § 541 of the MNCA. Cf. *Baks*, *supra* at slip op p 5. Finally, we note that the MNCA is generally applicable to all foreign corporations authorized to conduct affairs in Michigan. See MCL 450.2121(b); MSA 21.197(121)(b). Accordingly, we hold that the circuit court erred in its conclusion that the period of limitations set forth in § 541 of the MNCA was not applicable to plaintiff's claim.

We now turn to the matter of the accrual and discovery of plaintiff's cause of action against defendants. In Michigan, a claim accrues when all the necessary elements have occurred and can be alleged in a proper complaint. *Mascarenas v Union Carbide Corp*, 196 Mich App 240, 244; 492 NW2d 512 (1992); see also *Connelly v Paul Ruddy's Equipment Repair & Service Co*, 388 Mich 146, 150-151; 200 NW2d 70 (1972), interpreting Michigan's accrual statute, MCL 600.5827; MSA 27A.5827. In this case, plaintiff argued that her cause of action did not accrue until January of 1994, when the LRCA first suffered actual damages in the form of its payment of the loan from the National Conference. In ruling in plaintiff's favor below, the circuit court implicitly accepted this argument. However, the record indicates that defendants' alleged actions caused plaintiff to suffer damages before

January of 1994, when Continental failed to make its payments on the industrial revenue bonds and legal proceedings were instituted against LRCA based on one of the reimbursement agreements. Although the precise dates of these events are not clear from the record, plaintiff stated in her complaint that she discovered defendants' actions and the resultant losses in May of 1993. Accordingly, plaintiff at the very least failed to comply with the two-year discovery portion of the limitations period set forth in § 541(5) of the MNCA.

Reversed and remanded to the circuit court with directions that an order of summary disposition be entered in favor of defendants. We do not retain jurisdiction.

/s/ Helene N. White
/s/ Mark J. Cavanagh
/s/ Maureen Pulte Reilly

[1] Defendants also asserted that the action was barred by res judicata because a prior member's derivative action had been brought against the corporation for the same matters complained of in the instant case. This portion of defendants' motion was subsequently withdrawn at the motion hearing.

[2] Although plaintiff's complaint indicates that her action is "a member's derivative action authorized by Illinois statute for non-profit corporations," plaintiff does not allege any specific violations of the relevant version of the Illinois general not for profit corporation act, Ill Rev Stat, ch 32, ¶ 163a *et seq.*, superseded by 805 Ill Comp Stat 105/101.01 *et seq*.