

Appeal Dismissed  
No. 2008-441  
May 29, 2009 (unpub mem)

STATE OF VERMONT  
RUTLAND COUNTY

HAROLD J. COUGHLIN )  
Plaintiff )  
v. )  
JAMES B. REYNOLDS, )  
O'BRIEN, SHORTLE, REYNOLDS )  
AND SABOTKA, P.C. and )  
CHARLES COUGHLIN, )  
Defendants )  
)  
)  
)

Rutland Superior Court  
Docket No. 562-8-07 Rdev

ORIGINAL PAPER  
RUTLAND SUPERIOR COURT

JUL 18 2008

*Corrected*  
**DECISION**  
**Defendants' Motion for Summary Judgment, filed November 30, 2007**

*This corrected decision is issued to correct an incorrect docket number in the caption. There are no other changes.*

Plaintiff Harold J. Coughlin alleges that Defendants are responsible for business losses suffered by Plaintiff relating to his sale of his stock in Chas and Hal, Inc. to his brother, Defendant Charles Coughlin. The matter before the court is Defendants' Motion for Summary Judgment, filed November 30, 2007, by John J., Kennelly, Esq. Plaintiff is pro se and filed an Objection to Defendants' motion on January 24, 2008.

Plaintiff Harold Coughlin and Defendant Charles Coughlin, who are brothers, formed Chas and Hal, Inc. in January 1991. Fifty shares of stock were issued by the company to each brother. In November 1996, the brothers agreed that the company would buy back all but one tenth of one share of the stock of Charles Coughlin. Plaintiff alleges that Defendant James Reynolds, an accountant generally retained by Charles Coughlin, advised him regarding this buyback, and that Mr. Reynolds made misrepresentations concerning the fair market value of the company in 1995 that induced Plaintiff to agree to the buyback deal.

At the time of the November 1996 stock buy-back, Plaintiff did not retain any accountant to perform a valuation of Chas and Hal, Inc. on behalf of the corporation or himself. After the buy-back, Plaintiff operated the business for five years. In 2001, Plaintiff engaged Kim Wichert to complete a valuation of the company.

The record is unclear on exactly when such valuation occurred. In his filings with the court, Plaintiff alleges that such valuation occurred in September 2001, but in a letter from Ms. Wichert, submitted by Plaintiff as Exhibit B of his Objection, she indicates that she met with

Plaintiff several times between July and September 2001 in an effort to establish an appropriate value for Chas and Hal, Inc, but does not specify the effective date of the valuation. Plaintiff contends that the valuation was complete in September 2001 and it was only at this point that Plaintiff became aware of facts that form the basis for this suit against Defendants.

Shortly after receiving the valuation, in July 2002, Plaintiff sold all his stock in the company to Charles, and filed this lawsuit on August 21, 2007, almost eleven years after the buy-back transaction with Charles upon which this suit is based. Plaintiff claims breach of fiduciary duty and negligence against Defendant Reynolds and his accounting firm, Defendant O'Brien, Shortle, Reynolds and Sabotka, P.C., as well as unjust enrichment against Defendant Charles Coughlin.

In their Motion for Summary Judgment, Defendants assert that the claims are barred by the statute of limitations.<sup>1</sup> Both parties acknowledge that the relevant limitations period is six years. 12 V.S.A. § 511. Thus, the issue is when the statute began to run.

Defendants argue that the statute began to run in 1996 when Chas and Hal, Inc. purchased 49.9 shares of corporate stock from Defendant Charles Coughlin. That would have been the date of any injury resulting from misrepresentations about the value of the business that was used as the basis for the buy-back. Defendants argue that Plaintiff has failed to present any evidence to support his claim that despite being joint owner of the corporation in 1996, he was unaware of facts sufficient to put him on notice which, if pursued, would have led to the discovery of his alleged injury. Defendants argue that when, as here, a claim is filed over ten years after the transaction in question, Plaintiff had a burden to present facts showing why he did not discover his alleged injury until a date more than six years after 1996. Defendants claim that Plaintiff has failed to produce such evidence, and Defendants are entitled to judgment as a matter of law.

Plaintiff's position is that, under the discovery rule, the statute did not begin to run until September 2001. He claims that it was at this point that Plaintiff learned for the first time that Charles Coughlin had been overpaid in the 1996 stock buy back transaction. Plaintiff argues that he did not learn that the company overpaid for Charles' stock until he began investigating the possibility of selling the corporation and learned that despite five profitable years since the buy back transaction, the company was worth less in 2001 than Defendants Reynolds and Coughlin allegedly represented to him in 1996. Plaintiff argues, therefore, that when the suit was filed on August 21, 2007, it was within the limitations period which he believes began in September 2001.

It is well settled in Vermont that a cause of action "accrues upon the 'discovery of facts constituting the basis of the cause of action or the existence of facts sufficient to put a person of ordinary intelligence and prudence on inquiry which, if pursued, would lead to the discovery.'" *Agency of Natural Resources v. Towns*, 168 Vt. 449, 452 (1998) (emphasis in original) (quoting *Union Sch. Dist. v. Lench*, 134 Vt. 424, 427 (1976)). Accordingly, the statute of limitations necessarily begins to run "when the plaintiff has notice of information that would put a

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<sup>1</sup> Defendants also allege that Plaintiff does not have standing to sue on these causes of action. As discussed below, the court does not reach these claims as the summary judgment motion is resolved on the statute of limitations issue.

reasonable person on inquiry, and the plaintiff is ultimately 'chargeable with notice of all the facts that could have been obtained by the exercise of reasonable diligence in prosecuting [the] injury.' *Id.* at 452-53 (quoting *Lamoille County Sav. Bank & Trust Co. v. Belden*, 90 Vt. 535, 541 (1916)); see also *Rodriguez v. Valco Enterprises, Inc.*, 169 Vt. 539, 541 (1999) (mem.) ("The courts must determine at what point a plaintiff had information, or should have obtained information, sufficient to put a reasonable person on notice that a particular defendant may have been liable for the plaintiff's injuries. That is the point from which a plaintiff may use the limitations period to investigate or pursue a cause of action.").

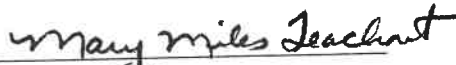
At the time of the sale of stock to Charles in 1996, Plaintiff was an owner of Chas and Hal, Inc. stock. He had access to information and reason to inquire as to whether the price that Charles wished to be paid by the company for his shares was reasonable. Indeed, Plaintiff, as owner, had access to corporate records and could have investigated whether the price paid to Charles was reasonable, or if necessary, engaged an independent financial professional to complete a valuation. Plaintiff's reliance on the obviously biased opinions of Charles' accountant, Defendant Reynolds, cannot be complained of almost eleven years after the fact without evidence that Plaintiff was deprived of access to pertinent facts that would have been material to a reasonable valuation of the business until some time later than 1996, or other evidence suggesting that the statute of limitations was somehow tolled. A reasonable person in his shoes would have been put on inquiry by the facts existing at the time of the 1996 transaction to inquire into the value of the stock, and whether the amount the corporation was asked to pay Charles represented a reasonable fair market value for the stock.

Plaintiff waited almost eleven years to file his claim. In August 2007, he filed this suit claiming that the limitations period did not commence until he hired a financial professional to complete a valuation of the company in 2001. The cause of action in this case ostensibly accrued at the time of the 1996 transaction. Plaintiff's subsequent hiring of Ms. Wichert in 2001 does not affect or extend the commencement of the limitations period, since Plaintiff had, in 1996, both access and reason to inquire concerning facts pertinent to valuation. Defendants are therefore entitled to judgment on the motion for summary judgment on statute of limitation grounds. It is therefore not necessary to reach Defendants' argument that Plaintiff lacked standing to bring the instant action.

#### Order

For the foregoing reasons, Defendants' Motion for Summary Judgment is *granted*.

Dated at Rutland, Vermont this 17<sup>th</sup> day of July, 2008.

  
Hon. Mary Miles Teachout  
Presiding Judge