

<b>Turecamo v Turecamo</b>
2007 NY Slip Op 31956(U)
June 29, 2007
Supreme Court, New York County
Docket Number: 0603749/2006
Judge: Shirley W. Kornreich
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**HON. SHIRLEY WERNER KORNREICH**  
SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY

Index Number : 603749/2006
<b>TURECAMO, BIRON L.</b>
vs.
<b>TURECAMO, B. DAVID</b>
SEQUENCE NUMBER : 001
DISMISS ACTION

PART 54

INDEX NO. 603749/06  
MOTION DATE 5/3/07  
MOTION SEQ. NO. 001  
MOTION CAL. NO. \_\_\_\_\_

The following papers, numbered 1 to \_\_\_\_\_ were read on this motion to/for \_\_\_\_\_

Notice of Motion/ Order to Show Cause — Affidavits — Exhibits ...  
Answering Affidavits — Exhibits \_\_\_\_\_  
Replying Affidavits \_\_\_\_\_

PAPERS NUMBERED
<u>1, 2</u>
<u>3</u>
<u>4</u>

Cross-Motion:  Yes  No

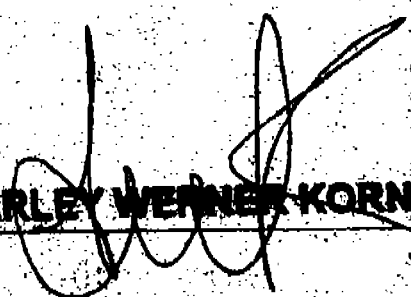
Upon the foregoing papers, It is ordered that this motion

**FILED**  
JUL 05 2007  
NEW YORK COUNTY CLERK

**MOTION IS DECIDED IN ACCORDANCE WITH ACCOMPANYING MEMORANDUM DECISION AND ORDER.**

FOR THE FOLLOWING REASONS:

Dated: 6/29/07

**HON. SHIRLEY WERNER KORNREICH**  
  
J.S.C.

Check one:  FINAL DISPOSITION  NON-FINAL DISPOSITION  
Check if appropriate:  DO NOT POST  REFERENCE

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK: PART 54

----- X  
BIRON V. L. TURECAMO and  
W. ROBERT TURECAMO,

Plaintiffs,

- against-

B. DAVID TURECAMO

Defendant.

----- X  
KORNREICH, SHIRLEY WERNER, J.:

Index No.: 603749/06  
**FILED**  
DECISION  
and ORDER  
JUL 05 2007  
NEW YORK  
COUNTY CLERK'S OFFICE

This tortious interference with contract and conversion action arises from a transfer of corporate stock ownership in the family business from plaintiffs' father to defendant, a son from a second marriage. Defendant now moves to dismiss the complaint. Plaintiffs oppose.

I. *Statement of Facts*

Pro-se plaintiffs Biron and Robert Turecamo and defendant B. David Turecamo are half-brothers born of the same father Vincent Turecamo ("Vincent"). In 1969, Vincent entered into a separation agreement ("the agreement") with plaintiffs mother Linn Biron. The agreement gave plaintiffs a joint 50% interest in Vincent's estate when he died. The agreement did not call for Vincent to maintain any assets in the estate prior to his death.

Bonnie Heights Realty Corporation ("BHRC") was jointly held by members of the Turecamo family. Vincent held a 41% ownership interest in BHRC. This interest equaled 41 shares of BHRC's corporate stock. On May 1, 1986, Vincent transferred and assigned all of his right, title, and interest in his shares of BHRC to defendant. This transfer was ultimately memorialized in a Subchapter S corporate trust ("the trust") in 1993. Pursuant to the terms of the trust, the shares were transferred to defendant, but Vincent continued to receive all principal

payments and income from the shares. As proof of ownership, defendant has attached copies of the trust, notarized transfer letter, and his BHRC stock certificate. Plaintiffs allege defendant took advantage of Vincent's mental and physical vulnerabilities, incompetency, and lack of supervision in his financial affairs to ensure, at their expense, complete possession of Vincent's ownership interest in BHRC.

Prior to his death, Vincent filed suit in 1997 against defendant, his sister Francis Dwyer, BHRC, and Turecamo Maritime Company seeking recession of the trust, restoration of Vincent's ownership of his shares in BHRC, and damages from defendant's alleged mismanagement of BHRC and its assets. The suit was pursued by his executrix following Vincent's death. Summary judgement, based upon default, was granted to all defendant's on July 8, 2002. BHRC was sold in 2005 for \$10,000,000.

Vincent died on September 15, 1999. His will was probated in 1999 and his estate had no assets, only liabilities. By operation of the trust, the principal income then transferred to defendant. Plaintiffs were aware of the original execution of the trust, the shift of title and ownership of the shares, as well as the transfer of its principal income from Vincent to defendant. Carol Turecamo ("Carol") (Vincent's companion of 20 years whom he never married) was executrix of Vincent's estate. Plaintiff Robert Turecamo challenged the probate of the estate, claiming an interest in defendant's shares. Further, on September 21, 1999, Robert wrote a letter to defendant stating that he considered defendant's 41% ownership of BHRC to actually be a part of Vincent's estate. On October 11, 1999, Robert wrote another letter, this time to Kenneth Rasich, counsel for BHRC, requesting that BHRC escrow any and all income derived from defendant's 41% ownership interest in BHRC. Mr. Rasich responded by letter on October 18, 1999, denying this request and stating that plaintiff's letter provided "an insufficient basis for the corporation to take such action." The challenge to Vincent's estate was dismissed

by the surrogate court, and the estate was closed. The instant action was commenced on October 26, 2006. Defendant moves to dismiss the action for untimeliness.

## II. *Conclusions of Law*

### A. *Tortious Interference with Contract*

Tortious interference with contract has a three year statute of limitations period. *Kronos, Inc. v. AVX Corp.*, 81 N.Y.2d 90, 92 (1993); *Kenneth D. Laub & Co. v. Bear Stearns Cos., Inc.*, 262 A.D.2d 36, 37 (1<sup>st</sup> Dept. 1999); CPLR 214(4). The statute of limitations does not begin to run until damages are sustained. *Kronos*, 81 N.Y.2d at 94.

Here, plaintiffs sustained damages to their claimed interest in the 41% ownership of BHRC, by way of the 1969 separation agreement, either when the trust was created in 1993 or when Vincent died in 1999. Both acts transferred possession of an interest in the disputed BHRC shares to defendant and deprived plaintiffs of ownership. Plaintiffs, however, did not commence the instant suit until about seven years after Vincent's death well past the three year statute of limitations period. Therefore, defendant's motion to dismiss this claim is granted.

### B. *Conversion*

Conversion is the "unauthorized assumption and exercise of the right of ownership over goods belonging to another to the exclusion of the owner's rights." *Vigilant Ins. Co. of Am. v. Hous. Auth.*, 87 N.Y.2d 36, 44 (1995) quoting *Employer's Fire Ins. Co. v. Cotten*, 245 N.Y.2d 102, 105 (1927). To support this claim, plaintiffs must have exercised ownership, control or possession of the property in the first place. *Soviéro v. Carroll Group International Inc.*, 27 A.D.3d 276, 277 (1<sup>st</sup> Dept. 2006). In addition, conversion has a three year statute of limitations period. *Vigilant*, 87 N.Y.2d at 44; CPLR 214(3). Accrual runs from the date the conversion takes place, not from discovery or the exercise of any diligence to discover. *Id.*

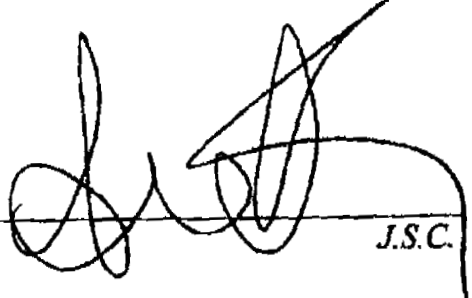
Here, there is a dispute as to whether plaintiffs even had an ownership interest in the disputed property. Certainly, they never exercised any control of it. More important, the action was brought after the statute of limitations had run. The alleged conversion took place when the ownership interest in the 41 shares of BHRC were transferred to defendant. Again, this either took place when the trust was created in 1993 or when Vincent died in 1999. Robert's letters from September and October 1999 make it clear that he was aware of defendant's possession of the shares in 1999. Nonetheless, this action was not commenced until October 2006.

Accordingly, it is

ORDERED that defendant B. David Turecamo's motion to dismiss the complaint is granted, and the causes of action against him are dismissed.

ENTER

DATE: June 29, 2007  
New York, NY

  
\_\_\_\_\_  
J.S.C.

**FILED**  
JUL 05 2007  
NEW YORK  
COUNTY CLERKS OFFICE