

VA Mgt., LP v Estate of Sanjay Valvani
2020 NY Slip Op 31535(U)
May 20, 2020
Supreme Court, New York County
Docket Number: 654490/2019
Judge: Joel M. Cohen
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: COMMERCIAL DIVISION PART IAS MOTION 3EFM

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VA MANAGEMENT, LP	INDEX NO. <u>654490/2019</u>
Plaintiff,	MOTION DATE <u>9/23/2019</u>
- v -	MOTION SEQ. NO. <u>001</u>
ESTATE OF SANJAY VALVANI,	DECISION + ORDER ON MOTION
Defendant.	
-----X	

HON. JOEL M. COHEN:

The following e-filed documents, listed by NYSCEF document number (Motion 001) 3, 4, 5, 6, 7, 8, 9, 11, 14, 15, 16, 17, 18, 19, 20, 21

were read on this motion for DISMISSAL.

In this dispute, Plaintiff VA Management, LP (“VA”) is suing the estate of Sanjay Valvani (“Defendant”), a former portfolio manager of VA’s hedge fund. Defendant moves to dismiss VA’s Complaint pursuant to CPLR §§ 3211(a)(3), (5), and (7).

For the reasons set forth below, Defendant’s motion to dismiss is granted.

BACKGROUND

According to the factual allegations of the Complaint, which are accepted as true for purposes of this motion, VA hired Valvani in 2007 to manage a portfolio of pharmaceutical company securities. Between 2007 and 2011, Valvani allegedly participated in an insider trading scheme. Specifically, Valvani obtained confidential drug application status information from the Food and Drug Administration and used that information to buy and sell pharmaceutical company shares for a substantial gain. VA was unaware of Valvani’s insider trading. Throughout his time with VA, Valvani allegedly received over \$100 million in compensation.

In June 2016, Valvani was arrested on federal criminal insider trading charges. The Securities and Exchange Commission (“SEC”) simultaneously brought a civil enforcement action against him. Valvani committed suicide shortly after his arrest, and the U.S. Attorney’s Office and SEC dropped their actions against him. VA settled related claims with the SEC in May 2018.

On June 14, 2019, VA and the Defendant executed a Tolling Agreement that tolled the statute of limitations for any claims between the parties until July 31, 2019. (NYSCEF 17 [Tolling Agreement Effective June 14, 2019]). The agreement was amended on July 30, 2019. (NYSCEF 18 [Tolling Agreement Effective July 30, 2019] [tolling all time limitations for any claims between the parties until August 7, 2019]).

On August 7, 2019, VA filed this suit against Defendant, asserting claims for breach of fiduciary duty and unjust enrichment. VA seeks “[d]isgorgement of all compensation paid to Valvani from when his breach of fiduciary duty began, in an amount to be proven at trial; [and] [r]eimbursement for, *inter alia*, the investigative and legal fees and all other losses resulting from Valvani’s breach of fiduciary duty, in an amount to be proven at trial.” (See NYSCEF 1, [Complaint, “Prayer for Relief”]).

Defendant now moves to dismiss VA’s Complaint, arguing that VA’s claims are untimely and should be dismissed under the doctrine of *in pari delicto* because, according to Defendant, Valvani’s misconduct is attributable to VA. Defendant also argues that VA’s unjust enrichment claim is duplicative.

DISCUSSION

On a motion to dismiss pursuant to CPLR § 3211 (a)(7), the Court must “accept the facts as alleged in the complaint as true, accord [plaintiff] the benefit of every favorable inference, and

determine only whether the facts as alleged fit within any cognizable legal theory.” (*Leon v. Martinez*, 84 NY2d 83, 87-88 [1994]). However, “factual allegations that consist of bare legal conclusions, or that are inherently incredible . . . , are not entitled to such consideration.” (*Mamoon v. Dot Net Inc.*, 135 AD3d 656, 658 [1st Dept 2016] [internal quotation marks and citation omitted]).

On a motion to dismiss pursuant to CPLR § 3211 (a)(5), Defendant bears “the initial burden of establishing, *prima facie*, that the time in which to sue has expired.” (*Benn v. Benn*, 82 AD3d 548, 548 [1st Dept 2011] [internal quotation marks and citation omitted]). “To meet its burden, the defendant must establish, *inter alia*, when the plaintiff’s cause of action accrued.” (*Lebedev v. Blavatnik*, 144 AD3d 24, 28 [1st Dept 2016] [internal quotation marks and citation omitted]). If Defendant meets that burden, “then the burden shifts to the plaintiff to aver evidentiary facts establishing that the cause of action was timely or to raise a question of fact as to whether the cause of action was timely.” (*Lake v. New York Hosp. Med. Ctr. Of Queens*, 119 AD3d 843, 844 [2d Dept 2014] [internal quotation marks and citation omitted]).

A. VA’s Breach of Fiduciary Duty and Unjust Enrichment Claims are Subject to a Three-Year Statute of Limitations

Although New York law does not provide for a single statute of limitations for breach of fiduciary duty or unjust enrichment claims, courts typically determine the applicable limitations period – three years under CPLR § 214 (4) or six years under CPLR § 213 (1) - by analyzing the substantive remedy that the plaintiff seeks. (*IDT Corp. v. Morgan Stanley Dean Witter & Co.*, 12 NY3d 132, 139 [2009]; *see also Ingrami v. Rovner*, 45 AD3d 806, 808 [2d Dept 2007] [applying three-year statute of limitations to unjust enrichment claim because plaintiff sought monetary, as opposed to equitable, relief]). “Where the remedy sought is purely monetary in

nature, courts construe the suit as alleging 'injury to property' within the meaning of CPLR § 214." (*IDT Corp.*, 12 NY3d at 139).

Here, the remedies sought by VA, including disgorgement of all compensation paid to Valvani from when his breach of fiduciary duty began, are purely monetary and subject to the statute of limitations set out in CPLR § 214 (4). "The calculated use of the term 'disgorgement' instead of other equally applicable terms such as repayment, recoupment, refund, or reimbursement, should not be permitted to distort the nature of the claim so as to expand the applicable limitations period from three years to six." (*Access Point Med., LLC v. Mandell*, 106 AD3d 40, 44 [1st Dept 2013]). For example, in *IDT Corp.*, the Court of Appeals applied a three-year limitations period to a breach of fiduciary duty claim, where plaintiff primarily sought damages, and the equitable relief, "including the disgorgement of profits, [was] incidental to that relief." (*IDT Corp.* 12 NY3d at 139-40). As a practical matter, the "disgorgement" of Valvani's compensation is a claim for monetary damages, not a request for equitable relief. Therefore, the three-year limitations period in CPLR § 214 (4) applies to VA's breach of fiduciary duty and unjust enrichment claims.

B. VA's Claims are Time Barred

By the time of the parties' Tolling Agreements, and before VA filed this suit, the three-year limitations period enumerated in CPLR § 214 (4) had already run. A claim for breach of fiduciary duty accrues as soon as "the claim becomes enforceable – when all elements of the tort can be truthfully alleged in a complaint." (*IDT Corp.*, 12 NY3d at 140). "Given that damage stemming from the misconduct is an essential element of a breach of fiduciary duty claim, the claim is not enforceable, and thus does not accrue until damages are sustained." (*Grika v. McGraw*, 55 Misc3d 1207(a) [NY Sup 2016] *aff'd sub nom. L.A. Grika on behalf of McGraw*,

161 AD3d 450 [1st Dept 2018]; *see also IDT Corp.*, 12 NY3d at 140 [“date of damages is measured from when the plaintiff first suffered loss”]). The statute of limitations runs similarly for an unjust enrichment claim: “a claim for unjust enrichment accrues upon the occurrence of the alleged wrongful act giving rise to restitution.” (*Kaufman v. Cohen*, 307 AD2d 113, 127 [1st Dept 2003]).

VA’s assertion that its claim did not accrue until the end of its relationship with Valvani upon his arrest and death in 2016 is incorrect. Although VA alleges that Valvani’s “period of disloyalty” lasted until 2016, the conduct on which its claim is based – Valvani’s insider trading – took place in 2011. Although VA alleges that Valvani continued to receive compensation through 2016, it does not allege that compensation after 2011 related to Valvani’s insider trading.¹ Thus, accepting the truth of the factual allegations of the Complaint, VA’s claims accrued no later than 2011. Accordingly, the statute of limitations expired in 2014, five years before this case was filed.

VA’s reliance on the “continuous wrong doctrine” to toll the applicable statute of limitations is misplaced. That doctrine, which is an exception to the general rule that the statute of limitations begins to run from the time of breach even though damage occurs later, “may only be predicated on continuing unlawful *acts* and not on the continuing *effects* of unlawful conduct. The distinction is between a single wrong that has continuing effects and a series of independent, distinct wrongs.” (*Henry v. Bank of Am.*, 147 AD3d 599, 600 [1st Dept 2017] [emphasis added] [internal citations omitted]). “Where there is one tortious act complained of, the cause of action

¹ Moreover, even if some portion of Valvani’s salary in future years related to his improper conduct in 2011, the claim for breach of fiduciary duty would still have accrued in 2011. As discussed below, the payment of salary in future years would be a continuing effect of his earlier unlawful conduct, not an independent breach, which is not sufficient to restart the statute of limitations.

accrues at the time that the wrongful act first injured the plaintiff; the ‘continuous wrong’ doctrine tolls the running of the statute of limitations where there is a series of independent, distinct wrongs rather than a single wrong that has continuing effects. ([*Ganzi v Ganzi*, 2020 NY Slip Op 02740, 1 [1st Dept May 7, 2020] [holding that, under continuous wrong doctrine, new contracts executed during limitations period gave rise to timely fiduciary duty claims based on same terms as an earlier contract executed prior to limitations period]).

Here, VA’s alleged damages flow from Valvani’s insider trading in 2011. Valvani’s failure to disclose his actions to VA in the ensuing years does not constitute a separate wrongful act extending the accrual date for VA’s claim. (See, e.g., *Murphy v. Morlitz*, 751 F App’x 28, 30 [2d Cir 2018]; *New York Yacht Club v. Lehodey*, 171 AD3d 487, 487 [1st Dept 2019]). The fact that VA may have suffered further damages from Valvani’s insider trading in later years, in the form of continued compensation and costs of governmental and internal investigations, are the “continuing effects of earlier conduct alleged to have been wrongful.” (*Carey v. Trustees of Columbia University*, 113 NYS3d 32, 34 [1st Dept 2019]; see also *B. Brages Assoc. v. West 21st LLC*, 2014 WL 2116093, at *6 [Sup Ct NY County 2014] [“[T]he statute of limitations begins to run at the first sign of damage, even when the damage gets progressively worse”]).

Finally, VA fails to allege facts sufficient to demonstrate that the applicable statute of limitations was tolled. Equitable tolling might be available with respect to claims for accounting or equitable relief, not for the monetary relief sought in this case. (See *Cusimano v. Schnurr*, 137 AD3d 527, 530-31 [1st Dept 2016]).

C. VA’s Unjust Enrichment Claim is Duplicative

VA’s unjust enrichment claim is dismissed on the independent ground that it is duplicative of VA’s claim for breach of fiduciary duty. (See, e.g., *Tozzi v. Mack*, 169 AD3d 547,

548 [1st Dept 2019] [unjust enrichment and breach of fiduciary duty claims were “correctly dismissed as duplicative of the first cause of action for invalid commission since both claims arise from the same facts and seek the identical damages.”]; *Ullmann-Schneider v. Lacher & LovellTaylor, P.C.*, 121 AD3d 415, 416 [1st Dept 2014] [holding that claims for unjust enrichment and breach of fiduciary duty, based on the same allegations and seeking the same relief as breach of contract and legal malpractice claims, should have been dismissed as duplicative.]). The claims are based on the same conduct and seek the same relief. VA’s argument that its claims seek different remedies is not persuasive. The relief VA seeks for both claims stems from Valvani’s alleged breach of fiduciary duty.

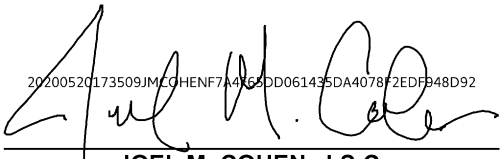
Accordingly, Defendant’s motion to dismiss VA’s breach of fiduciary duty and unjust enrichment claims is granted. In view of the findings above, it is not necessary to address whether VA’s claims can be dismissed on the independent ground of *in pari delicto*.

CONCLUSION

In accordance with the foregoing, it is

ORDERED that Defendant’s motion to dismiss is **granted** and Plaintiff’s Complaint is dismissed.

This constitutes the Decision and Order of the Court.

<p><u>5/20/2020</u> DATE</p>	 <small>20200520173509JMCCHENF7A4162DD061435DA4078F2EDFB48D92</small> JOEL M. COHEN, J.S.C.	
CHECK ONE:	<input checked="" type="checkbox"/> CASE DISPOSED <input checked="" type="checkbox"/> GRANTED	<input type="checkbox"/> DENIED
APPLICATION:	<input type="checkbox"/> SETTLE ORDER <input type="checkbox"/> INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/> NON-FINAL DISPOSITION <input type="checkbox"/> GRANTED IN PART <input type="checkbox"/> SUBMIT ORDER <input type="checkbox"/> FIDUCIARY APPOINTMENT
CHECK IF APPROPRIATE:		<input type="checkbox"/> OTHER <input type="checkbox"/> REFERENCE