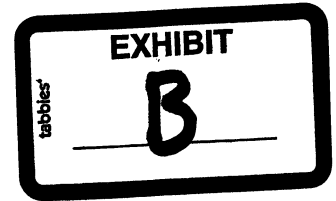


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FILED
CIRCUIT COURT
2019 JAN 29 PM 2:17
JUDGE STEVEN BLEAK
J.S. Wilson L.D.C.

Re: Pratihah S. Shah v. Mehul S. Shah

Case No.: CL15-3148

Dear Counsel,

This matter came before the court on Plaintiff's Motion for Leave to Amend the Complaint. This Motion for Leave to Amend the Complaint followed Defendant's Plea in Bar to Plaintiff's Complaint, and this Court's Letter Opinion, dated April 16, 2018, sustaining the Plea in Bar on the issue of the running of the Statute of Limitations, and directing Mr. Wilson to prepare an order consistent with the ruling in the Letter Opinion. However, the Court at no point received such order for entry. The parties requested and were granted opportunity to provide briefs on the matter specifically in reference to *Primov v. Serco, Inc.*, 296 Va. 59 (Va. 2018). After consideration of the arguments of counsel, transcript, and briefs, the Court finds that the Motion for Leave to Amend the Complaint should be denied.

I. Facts

The essential facts are unchanged from this Court's previous letter opinion and therefore will be recited the same herein. Plaintiff is the second wife of Shantilal Shah, and defendant is her stepson. Shantilal Shah executed a power of attorney naming defendant as his attorney-in-fact. Plaintiff alleges that while she "was traveling out of state in Texas" defendant used the power of attorney to deplete accounts of Shantilal Shah, remove plaintiff as a beneficiary and substitute himself,

and/or moved funds out of accounts jointly held by Shantilal Shah and the plaintiff. Compl. ¶ 10. During that same time, defendant cancelled a number of credit cards that plaintiff was authorized to use. Compl. ¶ 11. The Complaint, filed July 29, 2015, sets forth no dates for any of this conduct. However, by an agreed order entered March 20, 2018, the parties stipulated that plaintiff was in Texas from July 10, 2013 through July 17, 2013. Other than this stipulated time frame, the parties have presented no testimony or evidence relevant to the application of the statute of limitations. The parties further agreed that the applicable statute of limitations is two years. In the April 16 Letter Opinion, this Court opined the accrual rule expressed in § 8.01-230 applied to the instant claims, and thus the claims were time barred, over Plaintiff's contention that a discovery rule would toll the statute from the date of accrual.

II. Issues

- (1) Does this Court's prior ruling expressed in its letter opinion dismisses the action with prejudice and bars Plaintiff's attempt to amend its complaint?

III. Analysis

Plaintiff asserts that it should be permitted to amend its complaint. The nature of Plaintiff's amendment is encompassed in an additional paragraph to the original Complaint, which reads,

11. Specifically, over several weeks from approximately mid-July, 2013, through August 28, 2013, Mehul S. Shah and Pratibha S. Shah went back and forth over financial issues, opening and closing accounts, trying to change beneficiary information on accounts, and generally opposing each other over how Shantilal N. Shah's financial affairs should be handled.

Plaintiff's proposed Amended Complaint, ¶ 11. Defendant asserts that when the Court considered Defendant's Plea in Bar premised on the statute of limitations' expiration and granted that plea, the action was dismissed with prejudice, and thus Plaintiff cannot amend the Complaint.

"A plea in bar asserts a single issue, which, if proved, creates a bar to plaintiff's recovery." *Cole v. Norfolk Southern Railway Co.*, 294 Va. 92, 104 (Va. 2017), (quoting *Hawthorne v. VanMarter*, 279 Va. 566, 577 (Va. 2010)). "Dismissal of a suit 'with prejudice' is defined as an adjudication on the merits, and final disposition, barring the right to bring or maintain an action on the same claim or cause." *Reed v. Liverman*, 250 Va. 97, 99 (Va. 1995) (citations omitted). The policy behind such dismissals with prejudice is that

when a plaintiff's claim against a defendant has been resolved adversely to the plaintiff, whether on the merits or because of

another bar to recovery such as sovereign immunity or the **statute of limitations**, the plaintiff is not allowed to subject the defendant to repetitive litigation on the same, previously resolved claim. *Lambert v. Javed*, 273 Va. 307, 311 (Va. 2007).

Primov, 296 Va. at 70 (emphasis added). A plea of the **statute of limitations** or sovereign immunity cannot be remedied even if the case is refiled. *Id.*, 296 at 71 (emphasis added).

Therefore, it is clear that where a plea in bar based on the statute of limitations is sustained, the dismissal must be one with prejudice. Unlike the condition precedent at issue in *Primov*, there is no saving a complaint defective for being time barred. Despite the fact that Plaintiff now attempts to add facts to the Amended Complaint to make the filing date within the two-year statutory period, the Court has already adjudicated the Complaint dismissed with prejudice.

Plaintiff does correctly assert that a trial court may only speak through its orders. *Davis v. Mullins*, 251 Va. 141, 148 (Va. 1996) (citation omitted). It is true that the Order has not been entered; the Court does not know, and has not inquired as to, why counsel have failed to prepare and endorse the order dictated in the April 16 Letter Opinion. However, the Court notes that the plea was decided not simply on the motions, but on external facts; to wit, the stipulated dates Plaintiff was in Texas in 2013. As noted in footnote one of the April 16 Letter Opinion, the sworn answer in *Mehul S. Shah v. Shantilah N. Shah and Pratibha S. Shah*, CL13-4828, indicates Plaintiff was aware of much of the alleged transgressions no later than September 24, 2013 – a full year and a half before the Complaint in this case was filed. Further, when given a chance to present evidence at the hearing on the previous Plea in Bar in this case, Plaintiff adduced no evidence of its claims now ensconced in the proposed Amended Complaint.

Plaintiff has been given a fair and full opportunity to present her claims, failed to do so, and is now attempting to assert those claims beyond the statute of limitations. Statutes of limitations are generally to be strictly enforced. *Finnerty v. Thornton Hall, Inc.*, 42 Va.App. 628, 640 (Va. Ct. App. 2004). The previous determination by the Court that the action is time barred dismissed the action with prejudice. Accordingly, the Court denies Plaintiff's Motion for Leave to Amend the Complaint, as the Court has determined the action time barred.

IV. Conclusion

Plaintiff's Motion for Leave to Amend the Complaint is DENIED for being time barred by this Court's previous ruling on Defendant's Plea in Bar. A grant of a Plea in Bar on the grounds of the Statute of Limitations results in a dismissal with prejudice, and Plaintiff cannot overcome this termination of the action by filing an Amended Complaint following the Court's determination, but before the submission of the companion order by counsel. Mr. Wilson is to

prepare an Order noting the instant Motion for Leave to Amend the Complaint Denied, and also noting the grant of the Plea in Bar dismissing the action with prejudice.

Sincerely,



William R. O'Brien

WRO:ccs:dls