

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss

SUPERIOR COURT
C.A. #

***** ***,

plaintiff

v.

*** ***, as Executrix
of the Estate of ***** ***,

defendant

DEFENDANT’S MOTION FOR SUMMARY JUDGMENT

Introduction

The plaintiff has sued the estate of the decedent, contending that the decedent borrowed money from the plaintiff, promised to repay it, but failed to do so. Defendant denied each averment.

Discovery

The defendant served a Request for the Production of Documents on the plaintiff.

The defendant sought all documents on which plaintiff based her assertions that:

1. “[i]n or about the years 1990 and 1991, the Plaintiff did loan the decedent *****
***** the sum of Fifty Three Thousand Dollars, Four Hundred, Fifty-One Dollars
(\$53,451.00)”;

2. that the decedent ***** ***** “did agree to pay Plaintiff said \$53,451.00, with
interest”; and

3. that the decedent ***** ***** “has breached his contractual agreement with
Plaintiff by failing to repay the \$53,451.00 in principal which was lent to him, together with
accrued interest”.

Exhibits

The plaintiff’s Response to Defendant’s Request for the Production of Documents is appended
hereto in its entirety, as Exhibit 1.

Summary of Defendant's Argument

The plaintiff will not be able to produce evidence in support of essential elements of Count I (Breach of Contract), namely that a.) there was a loan from plaintiff to defendant, and b.) that the defendant's decedent failed to repay same.

Further, Count II of the Complaint simply recasts Count I as a claim for quantum meruit, without an allegation of services rendered by the plaintiff to the defendant's decedent.

Finally, both counts are barred by the Statute of Limitations.

Defendant submits that it is entitled as a matter of law to a judgment in its favor on both counts.

Applicable Law

Summary judgment: summary judgment shall be granted where there are no genuine issues as to any material fact and where the moving party is entitled to judgment as a matter of law. [Cassesso v. Commissioner of Correction, 390 Mass. 419, 422 \(1983\)](#); [Community National Bank v. Dawes, 369 Mass. 550, 553 \(1976\)](#); [Mass.R.Civ.P. 56\(c\)](#). The moving party bears the burden of affirmatively demonstrating the absence of a triable issue, "and [further] that the moving party is entitled to judgment as a matter of law." [Pederson v. Time, Inc., 404 Mass. 14, 16-17 \(1989\)](#).

A party moving for summary judgment who does not have the burden of proof at trial may demonstrate the absence of a triable issue either by submitting affirmative evidence that negates an essential element of the opponent's case or "by demonstrating that proof of that element is unlikely to be forthcoming at trial." [Flesner v. Technical Communications Corp., 410 Mass. 805, 809 \(1991\)](#); [accord, Kourouvacilis v. General Motors Corp., 410 Mass. 706, 716 \(1991\)](#).

"If the moving party establishes the absence of triable issue, the party opposing the motion must respond and allege specific facts which would establish the existence of a genuine issue of material fact in order to defeat [the] motion." [Pederson, supra, 404 Mass. at 17](#). "[T]he opposing party cannot rest on his or her pleadings and mere assertions of disputed facts to the motion for summary judgment." [LaLonde v. Eissner, 405 Mass. 207, 209 \(1980\)](#).

Contract: the terms of the agreement are those terms to which the parties mutually assented with reasonable certainty. [Kravetz v. Merchants Distrib., Inc., 387 Mass. 457, 460 \(1982\)](#); [Rosenfield v. United States Trust Co., 290 Mass. 210 \(1935\)](#).

Quantum Meruit: if the plaintiff has not proven a contract, the plaintiff may still be able to recover for the reasonable value of his or her services to the defendant under quantum meruit. This doctrine allows recovery under an implied contract to compensate for the reasonable value of services rendered. It is based on the concept that no one who benefits by the labor and materials of another should be unjustly enriched. Under those circumstances, the law implies a

promise to pay a reasonable amount for the services and materials furnished, even absent a specific contract. Salamon v. Terra, 394 Mass. 857 (1985); Boston Athletic Ass'n v. Int'l Marathons, Inc., 392 Mass. 356 (1984); Home Carpet Cleaning Co. v. Baker, 1 Mass. App. Ct. 879 (1974).

Statute of Limitations: M.G.L.c. 260, s. 2 provides: "Actions of contract, other than those to recover for personal injuries, founded upon contracts or liabilities, express or implied, except actions limited by section one or actions upon judgments or decrees of courts of record of the United States or of this or of any other state of the United States, shall, except as otherwise provided, be commenced only within six years next after the cause of action accrues."

Argument

The plaintiff had produced an assortment of documents which fail to establish that the parties ever entered a contract.

The first document produced by the plaintiff appears to be a ledger showing "Estimated Expenses" for the year 1996. How this document establishes a loan made in 1990 or 1991 as alleged in the Complaint is unclear.

The second document produced by the plaintiff is a letter, with attachments, from someone named ***** to someone named ***** , dated June 27, 20** , which is several weeks after the decedent's death. See paragraph 4 of the Complaint, admitted by Defendant.

The attachments, labeled 1-4, 2-4, 3-4 and 4-4 appear to be a cash flow statement from 1991 (1-4), two pages of a debit and credit statement (2-4 & 3-4) and a cryptic "last year balance" ledger entry for 1992.

Finally, plaintiff produced what appears to a listing of bank wires from the decedent to someone named ***** during the year 2001.

The foregoing jumble of documents of uncertain authorship and significance utterly fail to establish that the plaintiff made a loan to the defendant's decedent and that the latter failed to pay same.

No writing, signed by the defendant's decedent has been produced. Essential contract terms, such as consideration, time of performance and rate of interest, are not established.

The above-reference letter dated June 27, 20** asserts: "So beginning 1990, 1991, 1992 to 1993 year by year the total money he owe to my sister be come to Euro 1,389,739 and the Exchange rate is 1:26. So the actually number is US\$53,451 not US\$60,000."

Taking this statement at face value for the sake of argument, and teasing out every possible inference in favor of the plaintiff, it is clear that the amount allegedly owed by the defendant's decedent has been due and owing since 1993. As the instant action was filed on May 27, 20** , it is barred by the six year statute of limitations applicable to contract actions. Further, such a bald assertion suggests that the repayment contract was not to be performed within one year, hence must be evidence by a writing signed by the defendant's decedent in order not to run afoul of the Statute of Frauds.

Quantum meruit, as advanced in Count II, is inapplicable to the core contentions of the plaintiff. This doctrine applies where one person has provided services or materials to another and ought, in justice, to be compensated, even where an explicit contract has not been established. Since the plaintiff has not even alleged the provision of services or materials to the defendant's decedent, there is a complete failure of proof and judgment should enter for the defendant.

Conclusion:

The plaintiff cannot show, in the first instance, that she had a contract with the defendant's decedent. Were there such a contract, it would be unenforceable since compliance with the Statute of Frauds cannot be shown. To the extent that the plaintiff ever had a cause of action against the defendant's decedent for breach of contract, it is now barred by the applicable six-year statute of limitations. Quantum meruit is inapplicable as the plaintiff has not even contended that she provided services or materials to the defendant's decedent and thus should be compensated for same even in the absence of an explicit contract.

WHEREFORE, the defendant moves that judgment in her favor enter on both counts of the plaintiff's Complaint.

Respectfully submitted,
the defendant,
by her attorney:

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