

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

|                   |   |              |
|-------------------|---|--------------|
| DEANNA R. DEAN,   | : |              |
| Plaintiff,        | : |              |
|                   | : | CIVIL ACTION |
| v.                | : |              |
|                   | : | No. 99-4043  |
| THOMAS WONSIL and | : |              |
| FIRST USA BANK,   | : |              |
| Defendants.       | : |              |

**MEMORANDUM**

**GREEN, S.J.**

**December , 2000**

Presently before the court is Defendants’ Motion for Summary Judgment and Plaintiff’s Response thereto. For the following reasons, Defendants’ motion will be denied.

**I. FACTUAL BACKGROUND**

On or about April of 1996, Plaintiff, Deanna Dean, applied for a credit card with Defendant First USA Bank (“Defendant Bank”). Plaintiff alleges that her application contained personal information including her social security number and other credit card account numbers. Plaintiff also allegedly requested that her son’s name, Jason Dean, be put on the account. Defendant Bank rejected Plaintiff’s application. (Pl.’s Ex. 1 at 27.)

On or about May or June of 1996, Plaintiff avers that Defendant Thomas Wonsil (“Defendant Wonsil”) opened a First USA Bank account in his own name but used Plaintiff’s social security number without her authorization. In addition, the name of Plaintiff’s son, Jason Dean, was allegedly put on Defendant Wonsil’s account. Defendant Wonsil is apparently not affiliated with either Plaintiff or Defendant Bank.<sup>1</sup> (Wonsil’s Aff. in Def.’s Mem. Supp. Summ.

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<sup>1</sup>Defendant Wonsil asserts that he his employed as an electrician. (Wonsil’s Aff. in Def’s Mem. Supp. Summ. J. at 42a.) He claims that he has “no knowledge regarding the allegation that

J. at 42a.)

Soon after Defendant Bank rejected Plaintiff's application, Plaintiff received a letter from J.C. Penny National Bank dated June 25, 1996 concerning her credit card account. (Pl.'s Ex. 1 at 8.) The letter stated that a \$3000 payment had been issued to Plaintiff's J.C. Penny account by First USA Bank and a stop payment was later placed on the check. (Pl.'s Ex. 1 at 8.) Plaintiff also received a statement from Citibank Visa informing her that the same activity occurred on her Citibank Visa credit card account. (Pl.'s Ex. 1 at 5.) Plaintiff alleges that the checks issued to J.C. Penny and Citibank were made on behalf of Defendant Wonsil. Plaintiff further alleges that Defendant Wonsil subsequently reported her credit cards stolen resulting in their cancellation.

Plaintiff allegedly contacted J.C. Penny and Citibank to investigate the matter, but neither company provided Plaintiff with any information. Plaintiff then contacted Defendant Bank and discovered that an account had been created in the names of Defendant Wonsil and Plaintiff's son, Jason Dean, under Plaintiff's social security number. (Dean's Dep. at 40-42.) Between June and December of 1996, Plaintiff complained to various organizations and agencies, including Defendant Bank, about the matter. (Dean's Dep. at 11.) Patricia Bright ("Bright"), an employee for Defendant Bank, investigated the matter. (Bright's Aff. in Def.'s Mem. Supp. Summ. J. at 41a.) Bright concluded that the application information of Plaintiff and Defendant Wonsil were merged into one document by an independent telemarketing vendor named Matrix and then forwarded to Defendant Bank. (Bright's Aff. in Def.'s Mem. Supp. Summ. J. at 41a.;

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an account at First USA Bank was opened in [his] name with Plaintiff's social security number." (Wonsil's Aff. in Def's Mem. Supp. Summ. J. at 42a.) Furthermore, he claims that "at no time did [he] request any such account to be opened." (Wonsil's Aff. in Def's Mem. Supp. Summ. J. at 42a.)

Def.'s Mem. Supp. Summ. J. at 6.)

On August 11, 1999, Plaintiff brought the instant suit pursuant to 28 U.S.C.A. § 1332(a), alleging negligence against Defendant Bank and fraud, conversion, and fraudulent representation against Defendant Wonsil. Defendants denied all allegations contained in the Complaint. Defendants filed a motion for summary judgment claiming that the statute of limitations bars Plaintiff from bringing the present suit.

## II. DISCUSSION

Summary judgment shall be awarded “if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law.” Fed. R. Civ. P. 56(c). A dispute regarding a material fact is genuine “if the evidence is such that a reasonable jury could return a verdict for the nonmoving party.” Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248 (1986). The evidence presented must be viewed in the light most favorable to the non-moving party. Lang v. New York Life Ins. Co., 721 F.2d 118, 119 (3d Cir. 1983).

A federal court exercising diversity jurisdiction must apply the state substantive law, which includes statutes of limitations. Ciccarelli v. Carey Canadian Mines, Ltd., 757 F.2d 548, 552 (3d Cir. 1991). The applicable statute of limitations for actions of fraud, conversion, fraudulent representation, and negligence is two (2) years. See 42 Pa.C.S.A. § 5524. The two (2) year period begins to run as soon as the party “possess[es] sufficient critical facts to put him on notice that a wrong has been committed and that he need investigate to determine whether he is entitled to redress. Haggart v. Cho, 703 A.2d 522, 526 (Pa. Super. 1997) (quoting Zeleznik v.

United States, 770 F.2d 20, 23 (3d Cir. 1985), appeal denied, 718 A.2d 785 (Pa. 1998). The claimant must use “all reasonable diligence to be properly informed of the facts and circumstances” upon which a potential claim may be based and is expected to bring the claim within the statutory period. Id.

The “discovery rule” is an exception to the statute of limitations. The “discovery rule” prevents the statute of limitations from running when the plaintiff could not have discovered an injury or its cause despite exercising reasonable diligence. See Haggart, 703 A.2d at 526 (quoting Pocono Int’l Raceway v. Pocono Produce, 468 A.2d 468, 471 (Pa. 1983)); Baily v. Lewis, 763 F. Supp. 802, 806 (E.D. Pa. 1991), aff’d, 950 F.2d 721 (3d Cir. 1991). “[T]he statute is tolled only if a reasonable person in the plaintiff’s position would have been unaware of the salient facts.” Baily, 763 F. Supp. at 806 (quoting Redenz v. Rosenberg, 520 A.2d 883, 886 (Pa. Super. 1987)). In such a case, the period of limitations commences when “the plaintiff knew or reasonably should have known (1) that he has been injured, and (2) that his injury has been caused by another party’s conduct.” Haggart, 703 A.2d at 525 (quoting Redenz, 520 A.2d at 885). The standard of reasonable diligence is an objective standard and is usually one for the jury’s consideration unless the facts are so clear that reasonable minds must agree that the time it took to discover an injury was unreasonable as a matter of law. See Haggart, 703 A.2d at 528. In such a case, a court may enter summary judgment.

In the present matter, Defendants contend that summary judgment is appropriate because Plaintiff’s claims are barred by the two (2) year statute of limitations. Defendants argue that Plaintiff filed her complaint three (3) years after she became aware that a wrongful act occurred. Specifically, Defendants state that Plaintiff knew that a wrongful act occurred in Summer of

1996 when she received statements from J.C. Penny and Citibank. Plaintiff did not file her complaint until August 11, 1999. In response, Plaintiff acknowledges that she was aware something “shifty” occurred in Summer of 1996, but she did not become aware of the nature of the harm until November 20, 1997. (Pl.’s Resp. at 5.) On that date, Plaintiff received a credit report from Equifax Credit Information Services (“Equifax”) which described the damage to her credit. (Pl.’s Ex. 4.) Therefore, Plaintiff contends that the statute of limitations began to run on November 20, 1997.

The parties agree that Plaintiff knew that a wrongful act occurred in the Summer of 1996. (Def.’s Mem. Supp. Summ. J. at 2; Pl.’s Resp. at 5.) Plaintiff, however, offered evidence that she was not informed of the damage to her credit until she received a report from Equifax on November 20, 1997. (Pl.’s Ex. 4.) Contrary to Defendants’ contention, knowledge of a wrongful act alone does not initiate the running of the statute of limitations. The statute of limitations begins to run once the plaintiff “possesses the salient facts concerning the occurrence of his injury and who or what caused it,” enabling him to “investigate and pursue his claim.” Vernau v. Vic’s Market, Inc., 896 F.2d 43, 46 (3d Cir. 1990) (quoting Berardi v. Johns-Manville Corp., 482 A.2d 1067, 1074 (Pa. Super. 1984)). On summary judgment, viewing the facts in a light most favorable to Plaintiff, a reasonable jury could conclude that Plaintiff did not become aware of her injury until November 20, 1997. Therefore, Plaintiff’s claims are not barred by the statute of limitations. Accordingly, Defendants’ Motion for Summary Judgment will be denied.

An appropriate Order follows.

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| FIRST USA BANK,   | : |              |
| Defendants.       | : |              |

**ORDER**

**AND NOW**, this        day of December 2000, upon consideration of Defendants' Motion for Summary Judgment and Plaintiff's Response thereto, **IT IS HEREBY ORDERED** that Defendants' motion is **DENIED**.

BY THE COURT:

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CLIFFORD SCOTT GREEN, S.J.