

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

MICHAEL J. GANNON, : CIVIL ACTION
Plaintiff, :
 :
v. :
 :
 :
NATIONAL RAILROAD PASSENGER :
CORPORATION, t/a AMTRAK, :
Defendant. : No. 03-4501

MEMORANDUM AND ORDER

J. M. KELLY, J.

JUNE , 2004

Presently before the Court is a Motion to Dismiss Defendant's Counterclaims filed by Plaintiff Michael J. Gannon ("Gannon" or "Plaintiff") seeking dismissal pursuant to Federal Rule of Civil Procedure 12(b)(6) of the counterclaims for conversion and unjust enrichment filed by Defendant National Railroad Passenger Corporation, t/a Amtrak ("Defendant" or "Amtrak").

Plaintiff initiated suit in this Court alleging that he was unlawfully terminated from employment following his return from active military service. Defendant answered Plaintiff's Complaint and asserted counterclaims for conversion and unjust enrichment contending that Plaintiff improperly received and retained Amtrak wages during periods of military service in 1999, and that Plaintiff's failure to repay those wages violated Amtrak's policy prohibiting employees from "double-dipping" by simultaneously receiving Amtrak and military wages.

For the following reasons, Plaintiff's Motion to Dismiss

Counterclaims is **DENIED**.

I. BACKGROUND

Plaintiff was employed by Defendant as a Special Agent in its Office of Inspector General from 1989 through August 31, 2001. Plaintiff was also a Reservist in the United States Air Force Reserve and, in 1999, volunteered for military duty in connection with operations in Kosovo.

As a result of Plaintiff's alleged failure to submit a written leave request along with copies of military orders to Amtrak in May 1999, Plaintiff received and retained both his Amtrak salary and his reserve military pay during the period of May 2, 1999 through December 17, 1999. Upon Plaintiff's return to work at Amtrak in December 1999, he was advised of his violations of Amtrak's leave policies and his obligation to repay the wages he had improperly received during the period of military service. In the months following his return to work, Plaintiff repeatedly acknowledged his obligation to repay the wages he had received from Amtrak during his military service. To date, Plaintiff has not repaid the improperly received wages.

II. STANDARD OF REVIEW

In deciding a motion to dismiss a counterclaim under Federal

Rule of Civil Procedure 12(b)(6), the Court must accept all well-pleaded facts, and any reasonable inferences derived therefrom, as true, and view them in the light most favorable to the non-moving party. In re Sunrise Sec. Litig., 793 F. Supp. 1306, 1310 (E.D. Pa. 1992). A claim should not be dismissed for failure to state a claim unless it appears beyond a doubt that the non-moving party can prove no set of facts in support of its allegations which would entitle it to relief. Conley v. Gibson, 355 U.S. 41, 45-46 (1957).

III. DISCUSSION

Plaintiff contends that Defendant's counterclaim for conversion is barred by the two-year statute of limitations, and should be dismissed in its entirety. Plaintiff also contends that Defendant's counterclaim for unjust enrichment, to the extent that it seeks damages beyond the four-year statute of limitations, should be dismissed. Each of Plaintiff's arguments is addressed below.

A. Conversion

An action for conversion must be commenced within two years of the taking or injury. 42 Pa. Cons. Stat. § 5524(3) (specifying two-year statute of limitation for "actions for taking, detaining or injuring personal property, including

actions for specific recovery thereof."); Kingston Coal Co. v. Felton Min. Co., Inc., 690 A.2d 284, 288 (Pa. Super. Ct. 1997). Here, Defendant admits that the period of time during which Plaintiff improperly received Amtrak salary at the same time that he received his military pay was from May 2, 1999 through December 17, 1999. It is also clear from the docket entries that Defendant asserted its counterclaim for conversion on October 15, 2003, more than two years after the complained-of time period.

While Defendant's counterclaim for conversion was filed beyond Pennsylvania's two-year statute of limitations, our analysis does not stop here. Pennsylvania law recognizes that the acknowledgment doctrine may serve to toll a statute of limitations where there is an unequivocal acknowledgment of a debt as an existing obligation: "A clear, distinct and unequivocal acknowledgment of a debt as an existing obligation, such as is consistent with a promise to pay, is sufficient to toll the statute [of limitations]." Huntingdon Finance Corp. v. Newtown Artesian Water Co., 659 A.2d 1052, 1054 (Pa. Super. Ct. 1995).

In this case, both Defendant and Plaintiff alike have pleaded sufficient facts for Defendant to assert this doctrine to toll the statute of limitations for its counterclaim for conversion. Specifically, Defendant averred that for months following Plaintiff's returned from military service, Plaintiff

repeatedly acknowledged his obligation to repay the wages and that he promised to honor that obligation. (Ans. ¶ 79.) Further, Plaintiff's own Complaint acknowledges that he attempted in good faith to reach a repayment arrangement with Defendant. (Compl. ¶ 28.) Since the parties agree, to at least some extent, that Plaintiff acknowledged his debt, there exists, at a minimum, a factual question as to whether the acknowledgment doctrine applies here. Accordingly, at this procedural juncture, we deny Plaintiff's Motion to Dismiss Defendant's counterclaim for conversion.¹

B. Unjust Enrichment

Defendant also counterclaims for unjust enrichment, which is a quasi-contractual claim based on an a contract implied in law. See Salvino Steel & Iron Works, Inc. v. Fletcher & Sons, Inc., 580 A.2d 853, 856 (Pa. Super. Ct. 1990) ("A quasi-contract, also referred to as a contract implied in law, imposes a duty, not as

¹ Defendant also argues the applicability of the doctrine of equitable estoppel, wherein a plaintiff is estopped from asserting the statute of limitations as a defense where he makes an affirmative statement that causes the claimant to "relax his vigilance or deviate from his right of inquiry." Hoeflich v. William S. Merrell Co., 288 F. Supp. 659, 661 (E.D. Pa. 1968); see also, Bechtel v. Robinson, 886 F.2d 644, 650-51 (3d Cir. 1989). Because we have determined that Defendant may proceed with its counterclaim for conversion, we do not decide the applicability of the doctrine of equitable estoppel to the facts here. The parties remain free to argue this issue on summary judgment, if necessary.

a result of any agreement, whether express or implied, but in spite of the absence of an agreement when one party receives an unjust enrichment at the expense of another."). A four-year statute of limitations applies to claims under the quasi-contractual theory of unjust enrichment. 42 Pa. Cons. Stat. § 5525(4); Cole v. Lawrence, 701 A.2d 987, 989 (Pa. Super. Ct. 1997). The statute of limitations begins to run on a claim from the time the cause of action accrues. Cole, 701 A.2d at 989 (citing Packer Society Hill Travel Agency, Inc. v. Presbyterian University of Pennsylvania Medical Center, 635 A.2d 649, 652 (Pa. Super. Ct. 1993)). In general, an action based on contract accrues at the time of breach. Id. Where the contract is a continuing one, the statute of limitations runs from the time when the breach occurs or when the contract is in some way terminated. Id. (citing Thorpe v. Schoenbrun, 195 A.2d 870, 872 (Pa. Super. Ct. 1963)).

Since the contract implied in law here was a continuing one, based on the employment relationship between Plaintiff and Defendant, Defendant states a cognizable claim for unjust enrichment accruing from the date on which the employment relationship between the parties was terminated. It is undisputed that the employment relationship ended on August 31, 2001, and it is on this date that the four-year limitations period began to run. Defendant filed its counterclaim for unjust

enrichment on October 15, 2003, well within the four-year limitations period permitted by statute for that claim. Accordingly, we also deny Plaintiff's Motion to Dismiss Defendant's counterclaim for unjust enrichment.²

IV. CONCLUSION

For these foregoing reasons, Plaintiff's Motion to Dismiss Counterclaims is **DENIED**.

² Defendant argues in the alternative that if its counterclaims are time-barred, then a counterclaim characterized as a "recoupment," rather than as a "set-off," has traditionally been permitted by the Pennsylvania courts even after the limitations period has run. See Harmer v. Hulsey, 467 A.2d 867, 869 (Pa. Super. Ct. 1983) (making distinction between a "recoupment" that involves only claim averred by plaintiff and raises no possibility of affirmative relief for defendant, and a "set-off," which will permit an affirmative judgment for defendant). Since we hold, on other grounds, that Defendant's counterclaims may proceed, we need not decide this issue.

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O R D E R

AND NOW, this day of June, 2004, in consideration of the Motion to Dismiss Defendant's Counterclaim (Doc. No. 7) filed by Plaintiff Michael J. Gannon ("Plaintiff") and the Memorandum in Opposition to Plaintiff's Motion to Dismiss Counterclaim (Doc. No. 9) filed by Defendant National Railroad Passenger Corporation, t/a Amtrak ("Defendant"), **IT IS ORDERED** that Plaintiff's Motion to Dismiss Defendant's Counterclaim is **DENIED**.

BY THE COURT:

JAMES MCGIRR KELLY, J.