

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

GARY C. TYLER : CIVIL ACTION  
v. :  
GEORGE M. O'NEILL, MICHELENIA :  
O'NEILL, and WM. M. HENDRICKSON, :  
INC. : NO. 97-3353

**MEMORANDUM OF DECISION**

THOMAS J. RUETER  
United States Magistrate Judge

December 15, 1998

Presently before the court is the motion of defendants, George O'Neill and Michelenia O'Neill, for judgment as a matter of law and to vacate, alter or amend judgment. (Document No. 92.) Defendants move for judgment as a matter of law pursuant to Fed. R. Civ. P. 50(b), and to alter or amend the judgment or for a new trial pursuant to Fed. R. Civ. P. 52(b) and/or 59.

**I. PROCEDURAL AND FACTUAL BACKGROUND**

Plaintiff commenced this action against George O'Neill and Michelenia O'Neill on May 12, 1997, alleging claims of breach of fiduciary duty, fraud, violation of the Racketeer Influenced and Corrupt Organizations Act ("RICO"), 18 U.S.C. §§1961, et seq., and conspiracy to violate RICO arising out of his ten (10%) percent shareholder interest in William M. Hendrickson, Inc. ("Hendrickson" or the "company"). Plaintiff asserted his claims individually and derivatively on behalf of Hendrickson. A jury trial was held before the undersigned commencing on May 27, 1998. Defendants moved for judgment as a matter of law on all causes of action pursuant to Fed. R. Civ. P. 50 once plaintiff rested. Defendants' motion was based on

insufficient evidence to substantiate any cause of action in favor of plaintiff and against defendants, and the statute of limitations. The court denied defendants' motion for judgment as a matter of law. Defendants renewed their motion for judgment as a matter of law at the close of their case asserting the same basis, including the statute of limitations. The court denied the renewed motion.

The jury rendered a verdict on June 4, 1998 by answering interrogatories. The jury determined that defendants were liable for breach of fiduciary duty and fraud to plaintiff individually, but not liable on plaintiff's other individual claims or on the derivative claims. (Jury Interrogatories Question Nos. 1-4, 6, 7; Document No. 8.) The jury awarded compensatory damages to plaintiff in the amount of \$225,000 against George O'Neill and zero dollars against Michelenia O'Neill. (Jury Interrogatories Question No. 9.) The court entered Civil Judgments in accordance with the jury's findings. (Document Nos. 87, 89.)

The court denied defendants' request for a jury instruction on the statute of limitations. Instead, the court submitted an interrogatory to the jury relevant to the statute of limitations issue. Amended Jury Interrogatory No. 5 and the jury's response were as follows:

If you answered "YES" to any part of Questions 1-4,

- a. when did plaintiff, Gary Tyler, discover he was harmed by the conduct of the O'Neills which forms the basis of this action?

Mo./Yr.        Nov. 1996

- b. when should have plaintiff, Gary Tyler, discovered he was harmed by the conduct of the O'Neills which forms the basis of this action?

Mo./Yr.        Mar. 1991

(Amended Jury Interrogatory No. 5) (emphasis in original.)

The parties do not dispute that the statute of limitations for fraud and breach of fiduciary duty is two years. 42 Pa. Cons. Stat. Ann. §5524. In their post-trial motion, defendants contend that the jury's decision that plaintiff should have discovered the harm due to the conduct of the O'Neills, which formed the basis for this action, in March, 1991, establishes that the causes of action on which plaintiff prevailed are time barred by the two year statute of limitations. Defendants maintain that the judgment in favor of plaintiff and against defendants should be vacated and a new judgment in favor of defendants and against plaintiff should be entered or, in the alternative, the judgment should be altered or amended to reflect that the statute of limitations bars recovery.

Defendants also seek that judgment be entered as a matter of law on the fraud and breach of fiduciary duty causes of action on the grounds that the evidence was insufficient to substantiate these claims. Finally, defendants argue that the evidence was insufficient to substantiate the damages award. They seek to reduce the amount of compensatory damages awarded in favor of plaintiff and against George O'Neill to an amount not to exceed \$5,000 or, in the alternative, request a new trial concerning damages.

Plaintiff argues that the doctrine of fraudulent concealment tolled the statute of limitations and his claims, therefore, are timely. Plaintiff also contends that the causes of action in this matter are a continuing tort to which the statute of limitations does not apply. In the alternative, plaintiff argues that if the statute of limitations bars damages, it bars only a portion of the damages awarded by the jury. Finally, plaintiff maintains that sufficient evidence supports the jury's determinations.

This court need not reach defendants' arguments regarding the sufficiency of the evidence because it finds that the applicable two year statute of limitations bars plaintiff's recovery on his fraud and breach of fiduciary duty claims. For the reasons stated below, this court will vacate the judgment in favor of plaintiff and against defendants George O'Neill and Michelenia O'Neill, and enter judgment in favor of defendants and against plaintiff as plaintiff's action is time barred.

## **II. DISCUSSION**

The parties agree that the applicable statute of limitations for plaintiff's fraud and breach of fiduciary duty claims is two years. 42 Pa. Cons. Stat. Ann. §5524. The statute of limitations begins to run as soon as the underlying cause of action accrues. Bohus v. Belloff, 950 F.2d 919, 924 (3d Cir. 1991); Pocono Int'l Raceway, Inc. v. Pocono Produce, Inc., 503 Pa. 80, 84, 468 A.2d 468, 471 (1983). "It is the duty of the party asserting a cause of action to use all reasonable diligence to properly inform himself of the facts and circumstances upon which the right of recovery is based and to institute suit within the prescribed period." Hayward v. Medical Center of Beaver County, 530 Pa. 320, 324, 608 A.2d 1040, 1042 (1992) (citation omitted). For purposes of statutes of limitation, "a claimant need only be put on inquiry notice by 'storm warnings' of possible fraud." Ciccarelli v. Gichner Systems Group, Inc., 862 F. Supp. 1293, 1301 (M.D. Pa. 1994). Inquiry notice is sufficient information to "awaken inquiry and direct diligence in the channel in which it would be successful." Bohus, 950 F.2d at 925.

Once the statutory period has expired, the injured party will be barred from bringing his cause of action unless the statute of limitations has been tolled. Bohus, 950 F.2d 924. The discovery rule tolls the statute of limitations when a plaintiff, despite the exercise of

due diligence, is unable to know of the existence of the injury and its cause. Id. (citing Pocono, 503 Pa. at 85, 468 A.2d at 468.) “The polestar of the Pennsylvania discovery rule is not a plaintiff’s actual acquisition of knowledge but whether the information, through the exercise of due diligence, was knowable to the plaintiff. Failure to make inquiry when information is available is failure to exercise reasonable diligence as a matter of law.” Ingenito v. AC&S, Inc., 430 Pa. Super. 129, 133-35, 633 A.2d 1172, 1174-75 (1993) (en banc), appeal denied, 542 Pa. 671, 668 A.2d 1133 (1995) (table).

The doctrine of fraudulent concealment tolls the statute of limitations where “through fraud of concealment the defendant causes the plaintiff to relax his vigilance or deviate from the right of inquiry.” Bohus, 950 F.2d at 925. There must be an affirmative and independent act of concealment, albeit intentional or unintentional, that would divert or mislead the plaintiff from discovering the injury. Id. Like the discovery rule, when fraudulent concealment is established, the statute of limitations is tolled until the plaintiff knew, or using reasonable diligence, should have known of the injury and its cause. Id. at 925-26. As the Third Circuit stated,

“[T]he Supreme Court [of Pennsylvania] views tolling the statute of limitations in terms of the ‘knew or should have known’ standard whether the statute is tolled because of the discovery rule or because of fraudulent concealment.” Thus, the inquiry under the fraudulent concealment doctrine is the same as that under the discovery rule.

Id. at 926 (citations omitted) (footnote omitted). In Pennsylvania, fraudulent concealment will not toll the running of the statute of limitations period when a plaintiff has not exercised reasonable diligence. Urland v. Merrell-Dow Pharmaceuticals, 822 F.2d 1268, 1273-74 (3d Cir. 1987). See also Klehr v. A.O. Smith, Corp., 117 S.Ct. 1984, 1993 (1997) (applying same rule to

civil RICO). Stated another way, even if a defendant commits fraud or concealment, a plaintiff must show that his ignorance of his injury and its cause was not due to his own lack of reasonable diligence. See, e.g., DeMartino v. Albert Einstein Medical Center, 313 Pa. Super, 492, 506, 460 A.2d 295, 302 (1983) (finding no fraudulent concealment because plaintiffs' reliance upon a misleading statement of defendant was unreasonable.) See also Davis v. Grusemeyer, 996 F.2d 617, 624 n.13 (3d Cir. 1993) (discussing in civil RICO case the requirement that plaintiff exercise reasonable diligence before limitations period will be tolled because of defendant's fraudulent concealment.)

The plaintiff bears the burden of proving that the statute of limitations has been tolled. Van Buskirk v. Carey Canadian Mines, Ltd., 760 F.2d 481, 487 (3d Cir. 1985). "The plaintiff has the burden of proving fraudulent concealment by 'clear, precise and convincing' evidence." Bohus, 950 F.2d at 925 (citing Molineaux v. Reed, 516 Pa. 398, 403, 532 A.2d 792, 794 (1987)). See also Nesbitt v. Erie Coach Co., 416 Pa. 89, 92-93, 204 A.2d 473, 475 (1964) (same). The question of whether a claimant has exercised due diligence in discovering a cause of action is usually one for the jury. Bohus, 950 F.2d at 925; Ciccarelli, 862 F. Supp. at 1301. The Pennsylvania Supreme Court explained the jury's role as follows:

Whether the statute has run on a claim is usually a question of law for the trial judge, but where the issue involves a factual determination, the determination is for the jury. Specifically, the point at which the complaining party should reasonably be aware that he has suffered an injury is generally an issue of fact to be determined by the jury; only where the facts are so clear that reasonable minds cannot differ may the commencement of the limitations period be determined as a matter of law.

Hayward, 530 Pa. at 325, 608 A.2d at 1043 (citations omitted).

Where the question goes to the jury, this court's role is limited to determining whether sufficient evidence supported the jury's conclusion. See Van Buskirk, 760 F.2d at 487 (“Whether or when a plaintiff knows or has reason to know of the existence and cause of his or her injury will often turn on inferences drawn from disputed facts. Where the question goes to the jury, . . . , our review is limited to ascertaining whether sufficient evidence existed to support the jury's conclusion.”) Here, this court finds sufficient evidence existed in the record to support the jury's conclusion that plaintiff should have discovered he was harmed by the conduct of the O'Neills which forms the basis of this action in March, 1991. The evidence on which the jury may have based its determination included the following testimony by plaintiff.

**Q [Defense Counsel]:** At some point in time you developed the opinion that you had not received your fair share of the profits in terms of dividend payments from Hendrickson, is that right?

**A [Gary C. Tyler]:** Yes.

**Q:** You first developed the opinion that you had not been adequately compensated from Hendrickson in terms of dividends by April, 1995?

**A:** It was in -- Yes, '90 -- '91.

**Q:** 1991?

**A:** Uh-huh.

**Q:** Is that right?

**A:** Yes.

**Q:** And what did you do about it?

**A:** Nothing.

**Q:** Did you ever ask Mr. O'Neill for any Bankruptcy Court materials?

**A:** No.

**Q:** Mr. O'Neill sent you financial information concerning Hendrickson from time-to-time?

**A:** Yes.

**Q:** Did you request financial information concerning Hendrickson from time-to-time?

**A:** Yes.

**Q:** You wanted the financial information so that you could maintain an understanding about how the company was doing?

**A:** Yes.

**Q:** On the financial statement reflected or [sic] financial information, reflected income and profits to the company?

**A:** Yes.

**Q:** Was there ever an occasion when you brought to Mr. O'Neill's attention that you believed that you had not received ten percent of those profits as reflected on the financial information?

**A:** No.

(N.T. 5/29/98 (Document No. 82) at 20-21.)

Additionally, plaintiff testified that he received a copy of a 1991 business plan for the company which reflected income for the years 1985 through 1991 and which showed that the dividends he had received were less than 10% of the company's income. (N.T. 5/29/98 (Document No. 120) at 72; Exh. P-208; Pl.'s Mem. Opp. Mot. for Jmt. as a Matter of Law at 14.) Plaintiff testified that Mr. O'Neill told him the numbers were incorrect and no monies would be paid out from the company for the years 1987 to 1989 because the company needed to purchase a new facility. (N.T. 5/29/98 (Document No. 120) at 63-64; Pl.'s Mem. Opp. Mot. for Jmt. as a Matter of Law at 14.) Plaintiff also testified that in 1993 he traveled to the Hendrickson facility at the request of Mr. O'Neill to assist Mr. O'Neill in updating the company's 1991 business plan. (N.T. 5/29/98 (Document No. 82) at 30.) Mr. Tyler testified that in 1993 he again did not question why the amount of dividends he received was less than 10% of the company's income, because Mr. O'Neill told him that the figures on the chart did not "correlate, and these figures aren't quite right." Mr. Tyler further testified that Mr. O'Neill had put an "X" across the chart and said he would take care of those figures later. (N.T. 5/29/98 (Document No. 82) at 31; Exh. P-208.) From this evidence, i.e., Mr. Tyler's testimony that he suspected he was not getting the correct amount in dividends starting in 1991 coupled with his testimony that he saw the 1991 business plan which revealed that he had not received dividends representing 10% of the

company's income, the jury could reasonably conclude that plaintiff knew or had reason to know more than two years prior to the commencement of this lawsuit that he had suffered an injury and its cause.

Plaintiff argues that the statute of limitations was tolled because defendants fraudulently concealed information causing plaintiff to relax his vigilance. As stated above, it is plaintiff's burden to prove fraudulent concealment by providing "clear, precise and convincing evidence." Plaintiff has not met this burden. Plaintiff claims that six acts of deception satisfy the requirements to toll the statute of limitations under the doctrine of fraudulent concealment: (1) Mr. O'Neill told Mr. Tyler in May, 1991 that the figures in the 1991 business plan were incorrect and that he had not taken any money out of the company; (2) Mr. O'Neill concealed plaintiff's interest in the company's bankruptcy filing in 1994 in order to avoid service of papers on plaintiff; (3) defendants filed false tax returns from 1987 through 1996 concealing plaintiff's interest in the company which permitted them to conceal the tax returns from plaintiff; (4) defendants submitted false financial statements to the company's lender from 1989 through 1997 which concealed plaintiff's interest in the company, and caused the lender not to seek information from plaintiff which then would have enabled plaintiff to discover certain matters defendants allegedly were attempting to conceal from him; (5) defendants concealed that the company's new facility was titled in their names, not the company's; and (6) Mr. O'Neill concealed the company's true financial statements from plaintiff from 1982 through 1996 in order to conceal the overall fraud. (Pl.'s Mem. Opp. Mot. for Jmt. as Matter of Law at 17-20.)

The jury, however, was presented with all of this evidence. The "concealment" alleged by plaintiff is that defendants did not list plaintiff's 10% interest in the company in the

company's financial statements, tax returns, lending documents, or bankruptcy papers. Plaintiff also contends that defendants concealed their ownership of the company's new facility and that company monies allegedly were being used to bribe a customer. Defendants presented counter arguments to each argument raised by plaintiff. Mr. O'Neill testified that plaintiff asked him not to reveal his interest in the company and that he merely honored this request. (N.T. 5/28/98 at 52-56.) Plaintiff denies making this request. (N.T. 5/29/98 (Document No. 120) at 55.)

Regardless, plaintiff admits that Mr. O'Neill provided him with financial information regarding the company throughout the years (N.T. 5/29/98 (Document No. 120) at 65-66), sent him all the information he requested (N.T. 5/29/98 (Document No. 82) at 27), spoke with him frequently about the business (N.T. 5/29/98 (Document No. 82) at 32), and discussed with him the bankruptcy proceeding (N.T. 5/29/98 (Document No. 120) at 75-76.) Moreover, plaintiff testified that he received financial information from Mr. O'Neill which showed that consulting fees had been paid, but denied knowing that they were paid to Mr. O'Neill. (N.T. 5/29/98 (Document No. 120) at 68; Exhs. P-20, P-205.) Plaintiff apparently did not ask Mr. O'Neill to whom the consulting fees were paid. Defendants presented testimony that the alleged "bribes" were actually loans by Mr. O'Neill of his personal funds to a customer who was also a life long friend, which were repaid. (N.T. 5/28/98 at 165-70; 5/29/98 (Document No. 132) at 51-55.) Mr. O'Neill also testified that he told plaintiff that the new facility would be titled in defendants' names, not the company's name. (N.T. 5/28/98 at 130.) The jury heard Mr. O'Neill's testimony that he did not inform plaintiff that he had received consulting fees from the company. (N.T. 5/28/98 at 65, 80-81, 86, 88, 91, 110-11, 115, 116.) Mr. O'Neill also testified that he assumed plaintiff knew that he would receive monies from the company because the company was a

Subchapter-S corporation, and Mr. O'Neill would have to personally pay the company's taxes and would take money from the company to pay those taxes. (N.T. 5/28/98 at 101, 116.) The record demonstrates that plaintiff never paid his share of the corporate taxes. (N.T. 5/29/98 (Document No. 82) at 2-4.) Moreover, Mr. O'Neill also testified that he used money from the company to purchase machinery and equipment. (N.T. 5/28/98 at 110-11, 116.)

There is sufficient evidence in the record from which the jury could have concluded that plaintiff should have known of his injury and its cause in March, 1991. The record shows that the jury could have concluded that the defendants' evidence countered each act of concealment alleged by plaintiff, or that plaintiff failed to exercise reasonable diligence, so that the statute of limitations was not tolled and began to run in March, 1991.<sup>1</sup>

Plaintiff argues in the alternative that if the statute of limitations bars damages, it does not bar all damages, only damages related to "Bonus Payments." (Pl.'s Mem. Opp. Mot. for Jmt. as a Matter of Law at 21.) Specifically, plaintiff argues the following:

Defendants' sole argument is that Tyler knew that "he had not been adequately compensated from Hendrickson concerning dividends" in March, 1991. June 1 Transcript, p. 3-4. Defendants made no argument that Tyler should have or could have learned of any other acts of misconduct by the O'Neills. Thus any argument

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<sup>1</sup> Plaintiff's claim that the statute of limitations is not tolled because his claims are in the nature of continuing torts must be denied. A cause of action for a continuous injury accrues when the wrong terminates. See Stuebig v. Hammel, 446 F. Supp. 31, 35 (M.D. Pa. 1977). Generally, however, a "continuous injury" arises in occupational disease cases, see Fowkes v. Pennsylvania R.R. Co., 264 F.2d 397 (3d Cir. 1959); Plazak v. Allegheny Steel Co., 324 Pa. 422, 188 A. 130 (1936), in cases involving a contract for continuous service which is silent as to duration, see Wm. B. Tenny, Builder and Developer v. Dauphin Dep. Bank & Trust Co., 302 Pa. Super. 342, 448 A.2d 1073 (1982), or such other analogous factual situation, see Stuebig v. Hammel, 446 F. Supp. 31 (M.D. Pa. 1977) (a §1983 action arising out of the failure of defendants to properly terminate an involuntary commitment to a mental hospital.) Plaintiff presented no case, nor has this court uncovered one, in which the garden variety fraud and breach of fiduciary duty claims alleged here are treated as claims for "continuous injury".

that the statute of limitations bars Plaintiff's claim for damages other than those for the Bonus Payments has been waived.

Id. Plaintiff's argument reveals a misunderstanding of the discovery rule. As stated above, for purposes of statutes of limitation, a claimant need only be put on inquiry notice by 'storm warnings' of possible fraud. Inquiry notice is sufficient information to "awaken inquiry and direct diligence in the channel in which it would be successful." Bohus, 950 F.2d at 925. Knowledge that he had not been properly compensated raises sufficient "storm warnings" to satisfy the requirement of inquiry notice. At that point, plaintiff had a duty to exercise diligence in investigating and protecting his rights. See Bohus, 950 F.2d at 925 ("Every plaintiff has a duty to exercise 'reasonable diligence' in ascertaining the existence of the injury and its cause.") Instead, he testified that he did "nothing". (N.T. 5/29/98 (Document No. 82) at 20-21.) The statute of limitations is designed to prevent parties from sleeping on their rights and then attempting to enforce them years later.

The court will address one final argument raised by plaintiff, even though it appears that plaintiff, by placing his argument in a footnote in his memorandum of law in opposition to defendants' instant motion, is not pressing this argument. However, because of the importance of this matter, the court will consider it. Plaintiff objected at trial to the interrogatory asking when plaintiff knew or should have known of his injury and its cause, but did not propose alternative language. (N.T. 6/1/98 at (Document No. 90) at 34-35; 6/2/98 at 3; 6/3/98 (Document No. 103) at 2-4.) Plaintiff now argues that the interrogatory was faulty in three respects: (1) it did not accurately state the standard for the discovery rule; (2) no instructions were given explaining defendants' burden of proof with respect to an affirmative defense such as the statute

of limitations; and (3) no instructions were given concerning the doctrine of fraudulent concealment. (Pl.'s Mem. Opp. Mot. for Jmt. as Matter of Law at 13 n.3.)

As stated above, the question of whether a claimant has exercised due diligence in discovering a cause of action is usually one for the jury. See also Thompson v. Glenmede Trust Co., 1994 WL 675186, at \*4 (E.D. Pa. Nov. 23, 1994) (“The point at which a plaintiff reasonably should be aware that he has suffered an injury is generally an issue of fact to be determined by a jury.”); Kelley v. Tupitza, 1993 WL 441773, at \*3 (E.D. Pa. 1993) (same). In Van Buskirk, 760 F.2d at 486-87, the Court of Appeals concluded that the “relevant inquiry was whether each employee knew or had reason to know that he had an asbestos-related condition caused by asbestos fiber at the Philip Carey plant prior to November 28, 1976 (two years before suit was filed).” This court followed the proper procedure when it submitted Amended Jury Interrogatory No. 5, quoted above, to the jury. Moreover, the interrogatory properly stated the relevant inquiry under both the discovery rule and the doctrine of fraudulent concealment. See also Bohus, 950 F.2d at 926 (“[T]he inquiry under the fraudulent concealment doctrine is the same as that under the discovery rule.”)

Plaintiff never requested a jury instruction on fraudulent concealment or the burdens of proof with respect to the statute of limitations. With respect to burdens of proof, the jury was instructed that plaintiff's burden of proof was by a preponderance of the evidence. In this instruction, the court instructed the jury that “it is the responsibility of the plaintiff, Gary C. Tyler, to prove every essential part of his claims by a ‘preponderance of the evidence’.” (Document No. 81.) The court also instructed the jury that plaintiff had the burden of proving his claim for common law fraud by “clear and convincing evidence.” (Document No. 81.) Plaintiff

did not request any additional instructions on burdens of proof. Counsel and the court discussed jury interrogatories and instructions over a period of several days, June 1-3, 1998. At any time during those colloquies, plaintiff's counsel could have requested additional instructions or proposed alternative interrogatories regarding the statute of limitations issue, but did not. Consequently, under Fed. R. Civ. P. 51<sup>2</sup> plaintiff has waived any objection that this court did not include additional instructions. See Smith v. Borough of Wilkinsburg, 147 F.3d 272, 277 (3d Cir. 1998).

For all the foregoing reasons, this court grants defendants George M. O'Neill and Michelenia O'Neill's motion for judgment as a matter of law and to vacate, alter or amend judgment. Plaintiff's claims of fraud and breach of fiduciary duty are barred by the statute of limitations. This court will enter an order vacating its order of Civil Judgment against George M. O'Neill and Michelenia O'Neill entered in accordance with the jury's findings. (Document No. 87.) An appropriate order follows.

BY THE COURT:

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THOMAS J. RUETER  
United States Magistrate Judge

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<sup>2</sup> Fed. R. Civ. P. 51 states in pertinent part as follows:

No party may assign as error the giving or the failure to give an instruction unless that party objects thereto before the jury retires to consider its verdict, stating distinctly the matter objected to and the grounds of the objection.

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

GARY C. TYLER : CIVIL ACTION  
v. :  
GEORGE M. O'NEILL, MICHELENIA :  
O'NEILL, and WM. M. HENDRICKSON, :  
INC. : NO. 97-3353

**ORDER**

AND NOW, this 15th day of December, 1998, upon consideration of the motion of defendants, George O'Neill and Michelenia O'Neill, for judgment as a matter of law and to vacate, alter or amend judgment (Document No. 92), and for the reasons stated in the accompanying Memorandum of Decision, it is hereby

**ORDERED**

1. The motion is GRANTED;
2. The court's order of Civil Judgment (Document No. 87) against George M. O'Neill and Michelenia O'Neill is VACATED; and
3. Judgment is hereby entered in favor of defendants, George M. O'Neill and Michelenia O'Neill, and against plaintiff, Gary C. Tyler, on all claims.

BY THE COURT:

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THOMAS J. RUETER  
United States Magistrate Judge