

District Court, Boulder County, State of Colorado 1777 Sixth Street, Boulder, Colorado 80302 (303) 441-1776	EFILED Document CO Boulder County District Court 20th JD Filing Date: May 26 2009 8:15AM MDT Filing ID: 25335486 Review Clerk: N/A  <p style="text-align: center;">▲ COURT USE ONLY ▲</p>
Plaintiff: [REDACTED]  v.  Defendant: [REDACTED] [REDACTED]	Case Number: 08-CV [REDACTED]  Division: 5 Courtroom: L
<b>RULING AND ORDER REGARDING MOTION FOR JUDGMENT ON THE          PLEADINGS PURSUANT TO C.R.C.P. 12(b)(5)</b>	

This case comes before the Court on Defendants' Motion for Judgment on the Pleadings Pursuant to C.R.C.P. 12(b)(5) (hereinafter "Motion"). The Motion is ripe for review. Having considered the briefs and applicable law, the Court enters the following Ruling and Order:

### I. BACKGROUND

The Amended Complaint alleges as follows: On June 30, 2006, [REDACTED] (hereinafter "Decedent") borrowed \$175,000.00 from Plaintiff [REDACTED] (hereinafter "ABC"), which was secured by a deed of trust on property owned by Decedent and located at [REDACTED] Louisville, Colorado 80027 and described as [REDACTED] [REDACTED] County of Boulder, State of Colorado (hereinafter "the Property"). A deed of trust was recorded on July 7, 2006 in the records of Boulder County.

In May 2007, Decedent died and on August 16, 2007, probate estate number 07PR376 was filed naming Decedent's daughter, Defendant [REDACTED] as personal representative. [REDACTED] and her sister, Defendant [REDACTED] were entitled to the proceeds of the estate according to the terms of Decedent's will.

On October 19, 2007, ABC erroneously executed a release of the deed of trust; the release was recorded on October 29, 2007. On June 30, 2008, [REDACTED] as personal representative, conveyed the Property to [REDACTED] for \$229,250.00 and the entire proceeds of the sale were distributed to Defendants. When ABC discovered that it had erroneously released the deed of trust, it filed the original complaint in this action, entitled Complaint to Quiet Title and Reinstate Deed of Trust, against Decedent, believing the Decedent to be living. This action was filed on August 22, 2008. ABC subsequently learned that Decedent was dead. It presented a claim against Decedent's estate on October 21, 2008. That claim was denied as

untimely by [REDACTED] as personal representative of the estate on October 23, 2008. Plaintiff has not filed an action in the estate or challenged the disallowance of the claim. Instead, Plaintiff amended its complaint in this action to be a complaint for unjust enrichment against the distributees of Decedent's estate on November 10, 2008.

Defendants filed the subject Motion on March 19, 2009. Therein, they argued that Plaintiff had failed to state a claim for unjust enrichment because it had not alleged any wrongdoing on the part of either Defendant. The Motion further argued that Plaintiff's claim is barred because the only proper avenue for bringing its claim was through the procedure described in the Probate Code, C.R.S. 15-12-101 *et. seq.* Specifically, Defendants assert that this claim is governed by 15-12-803.

Plaintiff filed its Response on April 1, 2009. Therein, they argued that Defendants' motion could not properly be considered under C.R.C.P. 12(c) because the case has not been at issue for 120 days and it can thus still amend its pleading with leave of the court.<sup>1</sup> Plaintiff did not and has not moved to amend its pleading. Plaintiff next argued that consideration of the Motion as a motion for summary judgment pursuant to C.R.C.P. 56 was procedurally appropriate, but that the Motion should not be granted under C.R.C.P. 56 because Defendants had not established sufficient facts to show the absence of a genuine issue of material fact and because Plaintiff needed to conduct discovery pursuant to C.R.C.P. 56(f). Plaintiff asserts, "Discovery is necessary to determine what the Defendants knew about the claim of ABC, when they knew it, and whether they undertook to frustrate ABC's claim, and take money properly belonging to ABC." Response p. 3. Third, Plaintiff argues that summary judgment on an unjust enrichment claim is only appropriate where there are no issues of fact.

Fourth, and finally, Plaintiff argues the Probate Code does not prohibit unjust enrichment claims against beneficiaries. Plaintiff argues that secured creditors are not required to file claims against an estate because they may instead rely on their secured status. Plaintiff further argues that equitable claims are not barred by C.R.S. 15-12-803. Plaintiff also argues that a personal representative acts as a fiduciary for the estate and for creditors of the estate, and may be liable for wrongful distributions pursuant to C.R.S. 15-12-1005, and that a beneficiary may be liable pursuant to C.R.S. 15-12-1004.

Defendants filed their Reply on April 3, 2009. Therein, they argue that the Court should not treat the Motion as one for summary judgment. They argue that even if the Court does decide to treat the Motion as one for summary judgment, the Court should grant the Motion without granting additional time for discovery under C.R.C.P. 56(f) because such discovery would be a "fishing expedition:" an attempt by Plaintiff to uncover some facts to justify amendment of the Complaint to state a proper claim, an amendment Plaintiff cannot make at this time without committing a C.R.C.P. 11 violation. Defendants further argue that there are no facts Plaintiff could possibly uncover that would allow it to state a valid claim because Plaintiff's claim is barred by the probate non-claim statute.

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<sup>1</sup> C.R.C.P. 16(b)(8) permits parties to move to amend their pleadings within 120 days after the case is at issue. A case is at issue once all parties have been served and all pleadings permitted by C.R.C.P. 7 have been filed. C.R.C.P. 16(b)(1). Here, the case became at issue on March 18, 2009, when [REDACTED] filed her answer. Thus, Plaintiff may move to amend its complaint until July 16, 2009.

## II. LEGAL STANDARD

Defendants brought this Motion pursuant to C.R.C.P. 12(b)(5). There is no requirement that the pleadings be final in the sense that they can no longer be amended by leave of the court before a motion under C.R.C.P. 12(b)(5) can be filed. Even if the Court were to interpret the Motion as one under C.R.C.P. 12(c), Plaintiff has not provided, and the Court is not aware of, any Colorado cases supporting Plaintiff's argument that taken in conjunction, C.R.C.P. Rules 12(c), 15, and 16 (b)(8) mean that a party can never move for judgment on the pleadings for 120 days after a case becomes at issue. The case Plaintiff cites in support of its argument, *Chappell v. Bonds*, 677 P.2d 955 (Colo. App. 1983), does not address the issue of whether a court is precluded from ruling on the pleadings for 120 days after a case is at issue. Further, Plaintiff has not sought to amend the complaint.

C.R.C.P. 12(b)(5) allows dismissal of a complaint for failure to state a claim upon which relief can be granted. A complaint should not be dismissed unless it appears beyond doubt that the plaintiff can prove no set of facts that would entitle her to relief. *Dunlap v. Colo. Springs Cablevision*, 829 P.2d 1286, 1291 (Colo. 1992) (citing *Davidson v. Dill*, 503 P.2d 157, 162 (Colo. 1972)). If the pleader is entitled to some relief on any claim asserted, the complaint should not be dismissed for failure to state a claim. *Rosenthal v. Dean Witter Reynolds, Inc.*, 908 P.2d 1095, 1100 (Colo. 1995). The rules of notice pleading only require "a short and plain statement of the claim showing that the pleader is entitled to relief." C.R.C.P. 8(a)(2); *Shapiro & Meinhold v. Zartman*, 823 P.2d 120, 122 (Colo. 1992). A complaint may be dismissed if the substantive law does not support the claims alleged. *Denver Parents Ass'n v. Denver Bd. of Educ.*, 10 P.3d 662, 664 (Colo. App. 2000) (citing *Nelson v. Nelson*, 497 P.2d 1284, 1286 (Colo. App. 1972)).

When ruling on a motion to dismiss pursuant to C.R.C.P. 12(b)(5), the court must consider only those matters stated within the four corners of the complaint. *Dillinger v. N. Sterling Irrigation Dist.*, 308 P.2d 608, 609 (1957). All averments of material fact in the complaint must be accepted as true and viewed in the light most favorable to the plaintiff. *Dunlap*, 829 P.2d at 1291; *Shapiro*, 823 P.2d at 122.

## III. ANALYSIS

Contrary to Defendants' argument, C.R.S. 15-12-803(1) does not apply to Plaintiff's claim. Rather, that section applies to "all claims against a decedent's estate that arose before the death of the decedent." C.R.S. 15-12-803(1)(a). Plaintiff's claim is for unjust enrichment against the beneficiaries of Decedent's estate, and thus could not have arisen before Decedent's death. Indeed, C.R.S. 15-12-803 does not apply to this action at all because Plaintiff's claim is not against Decedent's estate; it is against the distributees of his estate. Plaintiff is correct that the probate code envisions that distributees can be liable to claimants. C.R.S. 15-12-1004. However, such claims are subject to the non-claim statute for proceedings against distributees. *Id.* A claim against the distributees by a creditor of the decedent is barred one year after decedent's death. C.R.S. 15-12-1006.

Here, Plaintiffs allege Decedent died in May 2007. They did not commence this action against the distributees of Decedent's estate until the Amended Complaint was filed on November 10, 2008, more than one year after Decedent's death. Thus, the claim is barred by the

non-claim statute. C.R.S. 15-12-1006; *see also In Re Estate of Shuler*, 981 P.2d 1109 (Colo. App. 1999) (C.R.S. 15-12-1006 is a non-claim statute and not a statute of limitations).

Neither case Plaintiff cites to support its argument that equitable claims are not barred by the probate code's non-claim statute is applicable to the facts alleged. In *Matter of Haywood's Estate*, cited by Plaintiff as *Knies v. Gross*, the claimant had entered into a contract with decedent wherein she promised not to alter her will in exchange for personal services that claimant had provided. 599 P.2d 976 (Colo. App. 1979). The decedent did subsequently alter her will, and claimant requested specific performance of the contract. *Id.* The *Haywood* court found that because an equitable proceeding to redress a breach of contract through the remedy of specific performance would not reduce the size of the estate but instead disputed the ownership of decedent's property, it was not a claim against the estate and C.R.S. 15-12-803 did not apply. *Id.* at 979. This Court has already determined that this action is not against the estate of Decedent and that C.R.S. 15-12-803 does not apply; *Haywood* does not stand for the proposition that any equitable claim is outside the scope of any non-claim statute within the Probate Code.

*Matter of Estate of Scott* is equally unhelpful to Plaintiff's assertion that it may bring an equitable claim notwithstanding the applicable non-claim statute. 735 P.2d 924 (Colo. App. 1986). In that case, the court held that a claim against the estate was timely under C.R.S. 15-12-803(2)(b), which requires claims against an estate that arise at or after decedent's death to be brought within four months after they arise. *Id.* The court found that the claimant's claim had arisen when the personal representative refused to reform a deed, not when the deed had originally been issued, and that the claim was the timely. *Id.* Here, Plaintiff is not bringing a claim that falls under the non-claim statute of C.R.S. 15-12-803(2)(b), so the date the claim arose is irrelevant: the claim is barred based on the amount of time that has passed since Decedent's death. Thus, *Scott* is inapposite.

Plaintiff also asserts that C.R.S. 15-12-1005 is applicable. That section provides that claims against the personal representative of an estate for breach of fiduciary duty are barred unless commenced within six months after the filing of the closing statement. This section is inapplicable because although [REDACTED] is the personal representative of the estate, Plaintiff has not made a claim against her for breach of fiduciary duty in her capacity as personal representative; it has only made a claim against her for unjust enrichment in her capacity of distributee. Plaintiff does make a purely hypothetical argument in the Response that *if* [REDACTED] [REDACTED] knew that the mortgage existed, that it had not been paid, and that the deed of trust had been erroneously released; and *if* such knowledge made distribution wrongful, then she *may* be liable to ABC for breach of fiduciary duty. However, Plaintiff has not sought to amend its complaint to allege such knowledge, wrongful action, or breach of fiduciary duty. [REDACTED]

Because the Court is analyzing the Motion under C.R.C.P. 12(b)(5), Plaintiff's request to conduct further discovery pursuant to C.R.C.P. 56(f) is moot. C.R.C.P. 12 does not provide parties the right to request a continuance in order to conduct discovery where the four corners of a complaint fail to state a claim upon which relief can be granted.

#### IV. RULING AND ORDER

Accordingly, Defendant's Motion for Judgment on the Pleadings Pursuant to C.R.C.P. 12(b)(5) is **GRANTED**. This case is hereby **DISMISSED**.

Done and Dated on May 26, 2009.

A handwritten signature in black ink, consisting of a large circle followed by stylized initials, positioned above a horizontal line.

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**Roxanne Bailin**  
District Court Judge