IN THE SUPERIOR COURT OF THE VIRGIN ISLANDS
DIVISION OF ST. THOMAS AND ST. JOHN

IN THE MATTER OF THE ESTATE OF	)	PROBATE NO. ST-04-PB-80
	)	
OLGA VANDERPOOL,	)	
Deceased.	)	
	)	

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SMITH, ALAN D., Magistrate

MEMORANDUM OPINION
(Filed: December 30, 2010)

Summary

Claims on open accounts accrue on the date of the last item proved in the account on either side. Independent Living Center and Castor filed a claim against the Vanderpool Estate seeking payment for services last provided on August 3, 2001. The question is whether the applicable six-year statute of limitations on contract actions bars this claim. Services were last provided by Independent Living Center and Castor within six years of date they filed their claim. Therefore, the claim is not barred by the statute of limitations.

Facts

Independent Living Center for Senior Citizens, Inc. and Melanie Castor ("Claimants") provided in-home care for Olga Vanderpool from sometime in the 1990s to August 3, 2001. Leslie Reovan, as agent for Vanderpool, made payments to Claimants for these services until his check, dated March 4, 2001, was returned for insufficient funds. On May 21, 2001, Castor filed a small claims action for $4,544.92 against Vanderpool and Reovan for services provided from February 2001 through April 29, 2001. The small claims action was heard on August 7, 2001. Although Vanderpool did not appear in that action, Reovan appeared and acknowledged the debt. Judgment was entered against him for the total amount of the debt on August 9, 2001. The action against Vanderpool was dismissed. Reovan has not paid the judgment.

Vanderpool died on March 7, 2004. A petition to probate her estate was commenced on September 30, 2004. On July 27, 2007, Claimants filed a verified creditor's claim against the estate for $17,778.94 seeking compensation for services provided between February and August 2001, which was served on the attorney for the estate. Claimants amended the claim on July 30, 2007 to $18,252.80 but then reduced it to $17,006.95 through a second amended creditor's claim filed on February 7, 2008. On February 15, 2008, a supplement to the second amended claim was filed which included documents showing that Reovan had made payments to the Claimants since October 2000. The original creditor's claim and both of the amended creditor's claims included the $4,544.92 awarded in the small claims judgment against Reovan. The Estate filed an opposition to the claim on October 1, 2009.

Claimants appeared at the October 4, 2010 hearing on the final account and objected because their claim had not been paid and was not formally rejected. Based on the Claimant's objection and under the authority granted to the Court in 15 V.I.C. § 395, testimony was taken to determine whether the claim should rejected or allowed.

The Claim

The undisputed facts confirm that the agreement between the parties was an "open account". That is, an agreement "[w]here there has been a series of [transactions] between the parties, constituting a running account, payable as bills may be rendered."[1] An open account has also been defined as

> an account with a balance which has not been ascertained and is kept open in anticipation of future transactions. An open account results where the parties intend that the individual transactions in the account be considered as a connected series, rather than as independent of each other, subject to a shifting balance as additional debits and credits are made, until one of the parties wishes to settle and close the account, and where there is but one single and indivisible liability arising from such series of related and reciprocal debits and credits.[2]

Here, Claimants provided services and then billed Vanderpool for those services. Copies of the Claimants' "Request for Payment Form" dated May 19, 2001, June 9, 2001 and August 5, 2001 were filed with their July 27, 2007 claim. Reovan made payments up until March 4, 2001. Copies of Reovan's checks were submitted with Claimants' supplement to the second amended creditor's claim. Reovan does not dispute that the services were provided or that he received requests for payment. Given the nature of the services, it is reasonable to conclude that Vanderpool and Claimants intended the individual transactions to be a connected series rather than be independent of each other. Therefore, based on the evidence and the reasonable inference from the evidence that the in-home health care services provided by Claimants were

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[1] *Johnson v. Columbia Properties Anchorage, LP*, 437 F.3d 894, 902 (9th Cir. 2006) (*quoting* 9 Arthur L. Corbin, *Corbin on Contracts* § 953 (Interim ed. 2002)).
[2] 1 Am Jur. 2d2d Accounts and Accounting § 4.

intended as a series of connected transactions, the agreement between Claimants and Vanderpool is an open account.

The Accrual Date

Before deciding whether the claim is barred by the six-year statute of limitations for contracts[3], the date on which the claim accrued must be determined. For, it is from that date that statute of limitations began to run.

Both the Estate and Claimants agree that the six-year statute of limitations for contracts applies. The Estate argues that most or all of the services provided to Vanderpool occurred before accrual; the Estate does not, however, propose a specific date of accrual. Claimants contend that under the six-year statute of limitations the accrual date was no earlier than August 5, 2001, the date they submitted their last request for payment. They argue that the claim did not accrue until sometime thereafter when they were on notice that neither Vanderpool nor Reovan ever planned to make payment on the debt. The Court is not persuaded by this argument. Alternatively, Claimants argue that there was never an express or implied contract between Claimants and Vanderpool and that the claim is therefore not subject to the six-year statute of limitations in 5 V.I.C. § 31(3)(A) for contract actions but is instead subject to the residuary ten-year statute of limitations for claims not otherwise specifically addressed.[4] This argument also fails because the arrangement between Claimants and Vanderpool was a contract.

The accrual date for this claim is determined by 5 V.I.C. § 33, which states:

> In an action to recover a balance due upon a mutual, open, and current account, where there have been reciprocal demands between the parties, the cause of action shall be deemed to have accrued from the date of the last item proved in the account on either side; but whenever a period of more than one year shall elapse between any of a series of items or demands, they are not to be deemed such an account.[5]

The last date on which services were provided for Vanderpool by Claimants was August 3, 2001. Not more than one year elapsed between any of the services provided or demands for payment. Therefore, the claim accrued on August 3, 2001.

Statute of Limitations

Claimants provided services through August 3, 2001 and properly billed for those services. Because August 3, 2001 was the date of the last item proved in the account on either side, the claim accrued on that date. The six-year statute of limitations began to run on that date and

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[3] V.I. CODE ANN. tit. 5 § 31(3) (A) (1997).
[4] § 31(2) (A).
[5] § 33. The Virgin Islands open accounts statute was derived from the one in Alaska, and they read identically. *See* ALASKA STAT. § 09.10.110. Therefore, this section should be interpreted in light of Alaska law. *See Benjamin v. Eastern Airlines, Inc.*, 18 V.I. 516 (1981).

expired on August 3, 2007. Claimants filed their verified creditor's claim on July 27, 2007. Because the claim was filed within six years of accrual, it was timely. Therefore, the claim is not barred by the six-year statute of limitations.

Affirmative Defenses

The Estate asserts the affirmative defenses of *res judicata* and the statute of frauds. None of these defenses operates to the bar the claim.

Under the doctrine of *res judicata*, a "final judgment, rendered upon the merits" acts as a bar to a subsequent action between the parties on the same claim.[6] "The doctrine consists of two preclusion concepts: claim preclusion and issue preclusion [or collateral estoppel].[7] Claim preclusion arises after a judgment on the merits in a prior suit and bars a subsequent suit involving the same parties based on the same cause of action.[8] Issue preclusion, or collateral estoppel, involves a subsequent suit upon a different cause of action and precludes relitigation of "issues actually litigated and necessary to the outcome of the first suit."[9]

The Estate's position is that the small claims action, filed against Vanderpool and Reovan on May 21, 2001, and the judgment against Reovan prevent this Court from considering this claim. This argument is not valid because, for purposes of judgment, an agent and principal are treated separately.[10] Specifically, a judgment against an agent or a principal does not extinguish the liability of the other until the judgment is satisfied.[11] Here, Claimants only obtained a judgment against Reovan, as agent. That judgment remains unsatisfied. Claimants, however, never obtained a judgment against Vanderpool, as principal. Therefore, Claimants were free to bring a creditor's claim and ask the Court to find that the cause of action survived Vanderpool and that the Estate is liable for this debt. Consequently, this Court should only consider the judgment of the small claims court as to Reovan and not Vanderpool.

The small claims judgment stated as follows: "IT IS FURTHER ORDERED THAT THE COMPLAINT AGAINST DEFENDANT, OLGA VANTERPOOL [sic], IS DISMISSED." Unless stated otherwise, an order to dismiss is without prejudice.[12] A dismissal without prejudice necessarily means that the merits of the claim were not adjudicated.[13] An issue must be adjudicated before *res judicata* and issue preclusion can bar a claim.[14] The small claims order dismissing the action against Vanderpool was not a judgment on the merits nor does it

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[6] *See* Bank *of Nova Scotia v. Bloch*, 19 V.I. 45, 51 (D.V.I. 1982), *aff'd*, 707 F.2d 1388 (3d Cir. 1988).
[7] *See Boyd-Richards v. Massac*, 35 V.I. 62, 65 (Terr. Ct. 1996)
[8] *Id.*
[9] *Id.*
[10] *See* Restatement (Third) Agency § 6.09.
[11] *Id.*
[12] Fed. R. Civ. P. 41(a) (2).
[13] 21A Karl Oakes, *Federal Procedure, Lawyers Edition* § 51:248 (2010).
[14] Restatement (Second) of Judgments § 27. "When an issue of fact or law is actually litigated and determined by a valid and final judgment, and the determination is essential to the judgment, the determination is conclusive in a subsequent action between the parties, whether on the same or a different claim." *Id.*

appear to be an involuntary dismissal under Fed. R. Civ. P 41(b). Therefore, the claim against the Estate is not barred under the doctrine of *res judicata.*

The Estate also argues that since there was no written agreement between Vanderpool and Claimants, the claim is barred by the statute of frauds. Five classes of contracts are subject to the statute of frauds.[15] Although the Estate does not explicitly state which class this care-giving agreement falls under, the only reasonable choice is that this is a contract where full performance, within one year of its making, is impossible.[16] The Estate provides no evidence that the agreement for the care-giving services was to last for a year or more. Rather, it appears that either party was free to terminate the arrangement at anytime. Therefore, this agreement is outside of the statute of frauds and the lack of a written agreement is of no consequence to Claimants' ability to recover from the Estate.

Claimants Right to Recover

The Court has already concluded that the statute of limitation does not bar this claim. A claim on an open account "is but one right of action for a balance due . . . ."[17] Because this claim on an open account was filed less than six years after the date services were last provided to Vanderpool, it is not barred by the six-year of statute of limitations. Nor, do the Estate's affirmative defenses of *res judicata* and statute of frauds defenses operate to deprive the Court of jurisdiction to hear the claim.

Claims against an estate filed within six months of the first publication of notice to creditors have priority.[18] However, "[u]ntil the administration has been completed, a claim against the estate not barred by the statute of limitations may be presented, allowed, and paid out of any assets then in the hands of the executor or administrator not otherwise appropriated or liable."[19] The Court notes that the first publication of notice to creditors was on May 10, 2006. Since Claimants failed to bring this claim on or before November 10, 2006, their claim is not barred but will not have priority.

Conclusion

The claim against the Estate is to recover payment for unpaid home-care services provided to Vanderpool between February 2001 and August 3, 2001. The agreement to provide these services created an open account. Here, "[w]here there has been a series of [transactions] between the parties, constituting a running account, payable as bills may be rendered, there is but one right of action for a balance due . . . ." A cause of action on an open account accrues on the date of last item proved on either side. The last date on which the Claimants provided service to Vanderpool was August 3, 2001. The claim filed on July 27, 2007 was timely because the statute

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[15] Restatement (Second) of Contracts § 110 (1979).
[16] *See* Restatement (Second) of Contracts § 130 (1979).
[17] *Johnson,* 437 F.3d at 902 (*quoting* 9 Arthur L. Corbin, *Corbin on Contracts* § 953).
[18] V.I. CODE ANN. tit. 15 § 392 (1996).
[19] *Id.*

of limitations did not expire until August 3, 2007 and is not barred. Therefore, Claimants are entitled to recover $17,006.95. An order allowing the claim in full will be entered.

DATED: December 30, 2010

ALAN D. SMITH
Magistrate of the Superior Court
of the Virgin Islands

ATTEST:
VENETIA H. VELAZQUEZ, ESQ.
Clerk of the Court

BY:
JEWEL SPRAUVE
Court Clerk Supervisor 12/29/10