



defendants to raise a statute of limitations defense in a motion to dismiss under Rule 12(b)(6) if the time-bar is apparent on the face of the complaint. Robinson v. Johnson, 313 F.3d 128, 135 (3d Cir. 2002).

The plaintiff's eighty-seven page complaint contains many allegations regarding numerous persons and entities. The plaintiff's sole allegation against Mellon Bank/Commonwealth National Bank, however, is that it wrongfully repossessed the plaintiff's airplane in July 1987.<sup>2</sup> According to the complaint, the Bank loaned the plaintiff \$97,000 towards the purchase of an airplane in June 1987. The following month, before any payments were due, the Bank allegedly repossessed the plane, with all of the plaintiff's personal and business files on board. The plaintiff claims that the Bank sought to harm the plaintiff's business to reduce its competition in the mortgage banking and financial services businesses, in violation of the "lender liability laws." (Compl. 25, 31, 34, 37, 83, 3.)

The plaintiff has not explicitly asserted any causes of action against the Bank. Construing the allegations in the

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<sup>2</sup> The plaintiff named "Commonwealth National Bank (i.e. Mellon Bank)" as the defendant, but apparently attempted to effect service by sending a copy of the complaint to "Legal Counsel, Mellon Bank, N.A." (Doc. No. 8). According to Mellon Bank, Mellon formerly owned Commonwealth National. For the purposes of its current motion, Mellon accepted the plaintiff's attribution of Commonwealth National's actions to Mellon. (Mellon's Mot. to Dismiss Mem. at 1 n.1.)

The Court assumes that the plaintiff intended to name Mellon Bank as a defendant for the actions of Commonwealth National Bank, and will consider and grant Mellon Bank's motion to dismiss as described. If the plaintiff intended to sue only Commonwealth National Bank, however, the complaint would be dismissed as to Commonwealth National Bank for failure to effect service.

complaint in the light most favorable to the plaintiff, however, the plaintiff has arguably asserted claims against the Bank for conversion, replevin, trespass, fraud, breach of fiduciary duty, and/or breach of contract arising out of the alleged repossession.<sup>3</sup>

Plaintiffs bringing any of these claims must do so within two or four years. See 42 Pa. C.S. § 5524(3) and (7) (imposing two year statute of limitations on any "action for taking, detaining or injuring personal property, including actions for specific recovery thereof," and "[a]ny other action or proceeding to recover damages for injury to person or property which is founded on negligent, intentional, or otherwise tortious conduct or any other action or proceeding sounding in trespass, including deceit or fraud"); Glaziers & Glassworkers Union Local No. 252 Annuity Fund v. Newbridge Sec., 93 F.3d 1171, 1186 (3d Cir. 1996) (a breach of fiduciary duty is tortious conduct, subject to a two year statute of limitations); 42 Pa.C.S. § 5525(a) (imposing four year statute of limitations on actions based on written, express, or implied contracts). The plaintiff initiated this lawsuit in May 2005, over seventeen years after the alleged repossession. It is clear from the face of the complaint that the plaintiff's claims against the Bank are time-barred.

With respect to the Manheim Township Police Department, the plaintiff has alleged that: (1) when the plaintiff asked for help regarding the repossession of his airplane in July 1987, the

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<sup>3</sup> When considering a motion to dismiss under Fed. R. Civ. P. 12(b)(6), a court accepts all facts and allegations listed in the complaint as true and construes them in the light most favorable to the plaintiff. H.J. Inc. v. Nw. Bell Tel. Co., 492 U.S. 229, 249 (1989); Rocks v. City of Philadelphia, 868 F.2d 644, 645 (3d Cir. 1989).

Department's response was to ask "what bank branch repossessed your aircraft"; (2) on or around September 3, 1987, Detective Larry Sigler falsely charged the plaintiff with making terroristic threats; (3) on the same day, after the plaintiff was arrested for taking his own files from his own office, Detective Larry Mathias refused to take his statement or inform him of the charges against him, and unnamed officers used excessive force against him; and (4) in January 1991, a Lt. Madenspacher called the plaintiff regarding his letter to the Department of Defense about alleged blackmail occurring in 1987, but failed to attend a scheduled meeting. (Compl. at 5-6, 33, 39-40, 59.)

Again construing the allegations in the complaint in the light most favorable to the plaintiff, he has arguably asserted: (1) assault, battery, false imprisonment, false arrest, malicious prosecution and/or malicious abuse of process claims arising out of the charges and arrest in September 1987; and (2) civil rights claims under 42 U.S.C. § 1983, arising out of the Department's actions or inactions in July and September 1987, and January 1991.

The plaintiff's claims against the Manheim Township Police Department are also time-barred. Plaintiffs must bring any claims for intentional torts such as assault, battery, false imprisonment, false arrest, malicious prosecution and/or malicious abuse of process within two years. 42 Pa. C.S. § 5524(1). Plaintiffs must also bring any § 1983 civil rights claims within two years. Garvin v. City of Philadelphia, 354 F.3d 215, 220 (3d Cir. 2003) (§ 1983 claims are subject to Pennsylvania's two statute of limitations governing personal injury actions). The plaintiff

initiated this lawsuit more than fourteen years after his last alleged interaction with the Manheim Township Police Department.<sup>4</sup>

Finally, the plaintiff has alleged that Fulton Bank: (1) was involved in some sort of collusion in 1987; (2) embezzled \$5,000 from his checking account in 1990, did not credit the account for more than 60 days, and never credited the lost interest income; and (3) refused to allow the plaintiff's brother, Thomas Caterbone, to deposit a check in 1996, on the grounds that no funds were available, and was therefore responsible for his suicide/wrongful death later that year. The plaintiff has also alleged that, in February 2005: (a) he had difficulty accessing certain account statements and was told that he had to pay for copies of those statements; and (b) a bank customer representative informed him that when a customer wants to deposit a check for which no funds are available, the bank must give the customer a choice between depositing the check or waiting until there are funds. Finally, the plaintiff has included in his complaint what appears to be a May 6, 2005 article from the Intelligencer Journal that names Fulton Bank as a limited partner in Penn Square Partners, an alleged stakeholder in a proposed Lancaster County Convention Center. (Compl. at 6(a), 55-56, 80-81, 86.)

The plaintiff has arguably asserted claims against Fulton Bank for: (1) breach of fiduciary duty, fraud, and/or unjust enrichment, for its actions toward the plaintiff in 1990; and (2)

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<sup>4</sup> The complaint states that the plaintiff "rescinded efforts for due process immediately after loosing [sic] his home and business," but it also states that the plaintiff "began to review his case" again in October 1990. (Compl. at 56.)

fraud or wrongful death, for its actions toward the plaintiff's brother in 1996. These claims are time barred as well. As explained above, there is a two-year statute of limitations on actions for breach of fiduciary duty or fraud. 42 Pa. C.S. § 5524(3) and (7). There is a four-year statute of limitations on unjust enrichment, which is a quasi-contractual claim. 42 Pa. C.S. § 5525(4). Finally, there is a two-year statute of limitations on actions for wrongful death. 42 Pa. C.S. § 5524(2).

The plaintiff's reference to "collusion in 1987" on the part of Fulton Bank is too vague to state a claim for anything, even under the liberal notice pleading standards. Likewise, the plaintiff's allegations regarding his ability to access certain account statements in February 2005 does not state any recognizable claim. The plaintiff does not allege that it was illegal for Fulton Bank to charge to copies of account statements, or fraudulent for Fulton Bank to say that it charged. The plaintiff states only that he found the charge "disheartening," in light of the non-profit status of the account holder. (Compl. at 81.) Similarly, the plaintiff's allegations regarding Fulton Bank's policy on depositing checks with insufficient funds, and its status as a limited partner in Penn Square Partners, do not state any claim of wrongdoing against Fulton Bank.

## II. Failure to Serve the Complaint

The Court will also dismiss the complaint as to the non-moving defendants because the plaintiff has failed to properly

serve the complaint and summons, and has therefore failed to comply with the Court's January 5, 2006 Order. The plaintiff bears the burden of showing that service was valid. Grand Entertainment Group, Ltd. v. Star Media Sales, Inc., 988 F.2d 476, 488 (3d Cir. 1993).

The plaintiff has not submitted any evidence that he attempted to serve the Southern Regional Police Department.

For each of the other defendants, the plaintiff filed a "Certificate of Service," certifying that the plaintiff mailed "the foregoing pleading" to certain a named or unnamed individual(s) associated with the defendant, via certified mail. The plaintiff's attempts at service were improper as to the Lancaster County (Pennsylvania) Prison and Sheriff's Department, and the Stone Harbor and Avalon (New Jersey) Police Departments.<sup>5</sup> Each of these defendants is an arm of a governmental organization.

Rule 4(j)(2) of the Federal Rules of Civil Procedure provides:

Service upon a state, municipal corporation or other governmental organization subject to suit shall be effected by delivering a copy of the summons and of the complaint to its chief executive officer or by serving the summons and complaint in the manner prescribed by the law of that state for the service of summons or other like process upon any such defendant.

Fed. R. Civ. P. 4(j)(2)(emphasis added).

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<sup>5</sup> Mellon Bank, Manheim Township Police Department, and Fulton Bank also moved to dismiss for improper service. Because the Court is dismissing the complaint as against them for failure to state a claim, the Court need not decide the sufficiency of service as to these defendants.

Rule 422(b) of the Pennsylvania Rules of Civil Procedure provides:

Service of original process upon a political subdivision shall be made by handing a copy to

- (1) an agent duly authorized by the political subdivision to receive service of process, or
- (2) the person in charge at the office of the defendant,
- (3) the mayor, or the president, chairman, secretary or clerk of the tax levying body thereof . . . .

Pa. R. Civ. O. 422(b)(emphasis added).

Here, the plaintiff attempted to serve the Lancaster County Prison and Sheriff's Department by mailing a copy of the complaint to Howard L. Kelin at Kegel, Kelin, Almy & Grimm, LLP in Lancaster, Pennsylvania.<sup>6</sup> The plaintiff's attempt at service was improper under the federal and Pennsylvania rules of civil procedure because a copy of the complaint and summons were not personally served upon an appropriate person.

The New Jersey Court Rules also provide that the primary method of obtaining in personam jurisdiction over a "public body" defendant is to personally serve a copy of the summons and complaint on the public body's presiding officer, clerk or secretary, or on a person authorized by appointment or by law to receive service of process on the public body's behalf. N.J. Court R. 4:4-4(a)(1) and (8). New Jersey permits plaintiffs to make service by mail, but provides that service by mail is only effective if the defendant answers the complaint or otherwise

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<sup>6</sup> By letter dated February 2, 2006 (on which the plaintiff was cc'd), Mr. Kelin informed the Court that he had been appointed Interim Special Counsel to Lancaster County, but was not an agent duly authorized to receive service of process.



appears in response thereto. If defendant does not answer or appear within 60 days following mailed service, the plaintiff must make personal service. N.J. Court R. 4:4-4(c).

The plaintiff attempted to serve the Stone Harbor Police Department by mailing the complaint to Michael Donahue, an attorney at law in Stone Harbor, New Jersey, on January 17, 2006. The plaintiff also attempted to serve the Avalon Police Department by mailing the complaint to Stephen Basse, an attorney at law in Vineland, New Jersey, on that date. The plaintiff's attempts to make service by mail were ineffective under federal or New Jersey law because neither the Stone Harbor or Avalon Police Departments have answered or otherwise responded to the complaint in well over 60 days. Moreover, the plaintiff has not shown that Mr. Donahue or Mr. Basse are the appropriate persons to receive service for these public bodies.

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

STANLEY J. CATERBONE : CIVIL ACTION  
: :  
v. : :  
: :  
LANCASTER COUNTY PRISON, et al. : NO. 05-2288

ORDER

AND NOW, this 12th day of June, 2006, upon consideration of the motions to dismiss of Mellon Bank (named as "Commonwealth National Bank") (Doc. No. 20), Manheim Township Police Department (Doc. No. 12), and Fulton Bank (Doc. No. 17), IT IS HEREBY ORDERED that the motions are GRANTED for the reasons stated in a memorandum of today's date. IT IS FURTHER ORDERED that the plaintiff's complaint is also DISMISSED as to defendants Southern Regional Police Department, Stone Harbor Police Department, Avalon Police Department, Lancaster County Prison and Lancaster County Sheriff's Department for the reasons stated in the memorandum of today's date.

Whereas the Court is dismissing the case for the reasons described above, IT IS FURTHER ORDERED that the plaintiff's motion for an ex parte meeting with the Court (Doc. No. 26) is DENIED as moot.

BY THE COURT:

/s/ Mary A. McLaughlin

MARY A. McLAUGHLIN, J.