18-2222

Joanna M. Eiermann
523 W 3rd St
Washington, MO 63090

Appendix A

United States Court of Appeals
For the First Circuit

No. 18-2222

JOANNA M. EIERMANN,

Plaintiff - Appellant,

v.

LAWRENCE R. BOWERS, Attorney/Executor; LAHEY CLINIC FOUNDATION, INC., a/k/a Lahey Hospital and Medical Center,

Defendants - Appellees.

Before

Howard, Chief Judge,
Torruella and Kayatta, Circuit Judges.

JUDGMENT

Entered: May 1, 2019

Appellant Joanna Eiermann appeals the district court's dismissal of her complaint pursuant to Fed. R. Civ. P. 12(b)(6). Appellee Lahey Clinic Foundation, Inc. ("Lahey"), has moved for summary disposition. Upon review of the parties' submissions and relevant portions of the record, we GRANT Lahey's motion for summary disposition, and we affirm as to all defendant-appellees, essentially for the reasons outlined by the district court in its decision. See Local Rule 27.0(c) (court may dispose of appeal at any time if no "substantial question" presented); Mass. Gen. Laws ch. 260, §2A (2018) (statute of limitations); Abdallah v. Bain Capital LLC, 752 F.3d 114, 120 (1st Cir. 2014) (Massachusetts equitable tolling and discovery rule principles); see also Labonte v. Giordano, 687 N.E.2d 1253, 1255 (Mass. 1997) (elements of tortious interference with an expectancy claim).

We dispose of the several motions left pending as follows. Eiermann's February 25, 2019, motion to file an appendix under seal is DENIED. In accordance with Local Rule 11.0(c)(2), the clerk will return to Eiermann the materials tendered under seal on February 12, February 19, and February 20, 2019. We note that consideration of those materials would not have altered the outcome of this appeal. Eiermann's February 28, 2019, "request for a motion to amend the appeal brief . . . " is DENIED. Once again, allowance of the request and consideration of the amended brief would not have altered the outcome. Eiermann's March 19, 2019, "request for administrative

law judge review" is DENIED. Finally, Lahey's March 7, 2019, "motion for procedural order" is DENIED as moot.

Affirmed.

By the Court:

Maria R. Hamilton, Clerk

cc:
Joanna M. Eiermann
Lawrence R. Bowers
Lindsay M. Burke

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

Joanna M. Eiermann

Plaintiff

v.

Civil Action No. 1:18-11762-RGS

Bowers et al

Defendants

ORDER OF DISMISSAL

November 7, 2018

STEARNS, D.J.

In accordance with the Court's Electronic Order dated November 7, 2018 [dkt #16], granting defendant's Motion to Dismiss, it is ORDERED that the above-entitled action be and hereby is dismissed with prejudice.

By the Court,

/s/ Arnold Pacho
Deputy Clerk

Appendix B

Orders on Motions

1:18-cv-11762-RGS Eiermann v. Bowers et al

United States District Court

District of Massachusetts

Notice of Electronic Filing

The following transaction was entered on 11/7/2018 at 10:27 AM EST and filed on 11/7/2018

Case Name: Eiermann v. Bowers et al

Case Number: 1:18-cv-11762-RGS

Filer:

Document Number: 16(No document attached)

Docket Text:

Judge Richard G. Stearns: ELECTRONIC ORDER entered granting [8] Motion to Dismiss.

This case involves the estate of Dr. Urban Eversole, an anesthesiologist who worked within the Lahey Health system for forty years until his retirement in 1973, and his wife and survivor, Madge Eversole. Dr. Eversole died in August of 1985; Madge Eversole died on January 30, 1987. Plaintiff Joanna Eiermann, Dr. and Madge Eversole's great-grandniece, brought this lawsuit on August 17, 2018. According to Eiermann's Complaint, the bulk of Madge Eversole's estate, probated in 1990, was donated to defendant Lahey Clinic Foundation, Inc. While Eiermann states that she is "not contesting the wills and not suing the estate," she makes unsubstantiated and bizarre assertions that her great-aunt and great-uncle intended to leave their estates for the benefit of her and her family's use, and that the Eversoles' trust and estate lawyer, defendant Lawrence R. Bowers, and the late Dr. Robert Wise interfered with her inheritance exerting undue influence on the Eversoles "because [Bowers and Wise] were in close contact with both Madge and Urban prior to and after their deaths, [and] [b]oth wills were created very close to each one's death." Dkt #12 at 1, 6.

Lahey moves to dismiss Eiermann's claims asserting that she does not plead facts supporting the elements of a tortious interference claim against it and, that aside, the applicable three-year statute of limitation closed decades ago. In Massachusetts, to plead a viable cause of action for tortious interference with the expectancy of receiving a gift, a plaintiff must show that (1) the defendant intentionally interfered with her expectancy in an unlawful way; (2) that she had a legally protected interest in the gift; and (3) that the defendant's wrongful interference acted continuously on the donor until the moment the expectancy would have been realized. *See Labonte v. Giordano,* 426 Mass. 319, 320-321 (1997). Eiermann's Complaint (and the documents and exhibits filed in Opposition to Laheys dispositive motion) lack "facial plausibility" failing to satisfy even one of these elements. *Ashcroft v. Iqbal,* 556 U.S. 662, 678 (2009). There are no allegations, taken in the light most favorable to Eiermann, explaining how Lahey fraudulently interfered with her legally protected interest (even assuming that she had one) in the Eversoles' estates and that Lahey exerted undue influence continuously on her distant relatives until their deaths. *Id.*

Even if the tortious interference claim had legs, Eiermann's reliance on the "discovery rule" as a device to avoid the statute of limitations (because of her "discovery [in 2017] of Dr. Eversole's education fund at Lahey") is wildly misplaced. Equitable tolling (whether through the discovery rule or the doctrine of fraudulent concealment) applies only where "a plaintiff exercising reasonable diligence could not have discovered information essential to the suit." *Abdallah v. Bain Capital LLC,* 752 F.3d 114, 120 (1st Cir. 2014), quoting *Bernier v. Upjohn Co.,* 144 F.3d 178, 180 (1st Cir. 1998). "A plaintiff is considered to be on 'inquiry notice' when the first event occurs that would prompt a reasonable person to inquire into a possible injury at the hands of the defendant." *Epstein v. C.R. Bard, Inc.,* 460 F.3d 183, 187 (1st Cir. 2006). Eiermann admits in her filings that as early as 1991, she knew that the bulk of the Eversoles' assets had been gifted to Lahey and that Lahey was in possession of their personal effects ("[W]e discovered the whereabouts of 'some' of their memorabilia"). Dkt #13 at 3. She also relates a visit she made to the education center at Lahey dedicated to Dr. Eversole at Dr. Wise's invitation (he died in 2012) and "observed" Dr. Eversole's Napoleonic Memorabilia on display. *Id.*. Additionally "in 2014... Lahey Clinic sent to Eiermann and her father] what was remaining of Dr. Urban Eversole's Napoleonic Memorabilia (122 items, museum quality)". Compl. at 6. Where an affirmative defense based on the statute of limitations is "clear on the face of plaintiff's pleadings," a brevis dismissal is "appropriate." *Santana-Castro v. Toledo-Davila,* 579 F.3d 109, 113-114 (1st Cir. 2009). Such is the case here. Eiermann's claim against Lahey is DISMISSED.

With regard to Eiermann's claims of fraud and tortious interference against Attorney Bowers, the statute of limitations has long expired. In one of her Opposition filings, she states that two days after Madge Eversole's funeral (February 8, 1987), "was the beginning of our true suspicion of the integrity of Mr. Bowers, which subsequently we retained an attorney and contested the inventory of Madge's estate." Dkt #12 at 7 (issues resolved by the Norfolk County Probate Court by the probate of Urban Eversole (85P2615E2) and Madge Eversoles (87P0131E1) wills). In his Answer, Attorney Bowers states that Eiermann telephoned him on June 7, 1990, asserting that an oral agreement between Urban Eversole and his brothers promised that $400,000 would be distributed to them on the death of Madge Eversole. Dkt #10 7(d). Eiermann also asked for a specimen of Urban Eversole's writing for expert comparison (claiming Madge may have signed his name). Attorney Bowers provided one to Eiermann. *Id.* Even in the light most favorable to Eiermann (and putting aside issues of res judicata, the Statute of Frauds, and standing), Eiermann's words alone establish that she was on inquiry notice as of February 8, 1987, thus the discovery rule does not apply. *See Epstein,* 460 F.3d at 187. Where a complaint is incurable by amendment because of structural defects appearing on its face, the court may issue a sua sponte dismissal. *See Neitzke v. Williams,* 490 U.S. 319, 329 (1989); *Gonzalez-Gonzalez v. United States,*257 F.3d 31, 37 (1st Cir. 2001). For all the foregoing reasons, Joanna Eiermann's case is dismissed in its entirety with prejudice.
(mkz)

1:18-cv-11762-RGS Notice has been electronically mailed to:

Lindsay M. Burke LMBurke@KandSlegal.com, caperla@KandSlegal.com

Lawrence R. Bowers bowlaw@earthlink.net

1:18-cv-11762-RGS Notice will not be electronically mailed to:

Joanna M. Eiermann
523 W. 3rd Street
Washington, MO 63090

United States Court of Appeals
For the First Circuit

No. 18-2222

JOANNA M. EIERMANN

Plaintiff - Appellant

v.

LAWRENCE R. BOWERS, Attorney/Executor; LAHEY CLINIC FOUNDATION, INC., a/k/a Lahey Hospital and Medical Center

Defendants - Appellees

ORDER OF COURT

Entered: March 15, 2019
Pursuant to 1st Cir. R. 27.0(d)

Appellees Lawrence R. Bowers failed to file a brief and therefore will not be heard at oral argument except by permission of the court. See Fed. R. App. P. 31(c).

By the Court:

Maria R. Hamilton, Clerk

cc:
Lawrence R. Bowers
Lindsay M. Burke
Joanna M. Eiermann

No. _____

IN THE

SUPREME COURT OF THE UNITED STATES

Joanna M. Eiermann — PETITIONER
(Your Name)

VS.

Lahey Clinic Foundations, Inc.
a/k/a Lahey Clinic Hospital and Medical Center — RESPONDENT(S)

PROOF OF SERVICE

I, Joanna M. Eiermann, do swear or declare that on this date, July 23rd, 2019, as required by Supreme Court Rule 29 I have served the enclosed MOTION FOR LEAVE TO PROCEED *IN FORMA PAUPERIS* and PETITION FOR A WRIT OF CERTIORARI on each party to the above proceeding or that party's counsel, and on every other person required to be served, by depositing an envelope containing the above documents in the United States mail properly addressed to each of them and with first-class postage prepaid, or by delivery to a third-party commercial carrier for delivery within 3 calendar days.

The names and addresses of those served are as follows:

Lyndsay M. Burke c/o Kenny & Sam's P.C.
144 Turnpike Rd., Ste 350
Southborough, MA 01772

I declare under penalty of perjury that the foregoing is true and correct.

Executed on July 23rd, 2019

Joanna M Eiermann
(Signature)

No. _____

_____

IN THE

SUPREME COURT OF THE UNITED STATES

_____

Joanna M. Eiermann — PETITIONER
(Your Name)

VS.

Lawrence R. Bowers — RESPONDENT(S)

PROOF OF SERVICE

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The names and addresses of those served are as follows:

Lawrence R. Bowers
180 Beacon St.
Boston, MA 02116

I declare under penalty of perjury that the foregoing is true and correct.

Executed on July 23rd, 2019

Joanna M. Eiermann
(Signature)