

IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA14-908

Filed: 19 May 2015

Wake County, No. 13 CVS 14682

MARTIN MARIETTA MATERIALS, INC., Plaintiff,

v.

BONDHU, LLC, Defendant.

Appeal by defendant from order entered 22 May 2014 by Judge Donald W. Stephens in Wake County Superior Court. Heard in the Court of Appeals 3 December 2014.

*Smith, Anderson, Blount, Dorsett, Mitchell & Jernigan, L.L.P., by Michael W. Mitchell and Lauren H. Bradley, for plaintiff-appellee.*

*Erwin, Bishop, Capitano & Moss, PA, by Fenton T. Erwin, Jr. and Matthew M. Holtgrewe, for defendant-appellant.*

DAVIS, Judge.

Bondhu, LLC (“Defendant”) appeals from the trial court’s order granting summary judgment in favor of Martin Marietta Materials, Inc. (“Plaintiff”) on its action seeking the recovery of \$71,947.00 in property taxes paid by Plaintiff on Defendant’s behalf and denying Defendant’s motion for partial summary judgment. On appeal, Defendant contends that the trial court improperly granted summary judgment in Plaintiff’s favor because its claims for reimbursement were barred, in part, by the statute of limitations. After careful review, we affirm.

### **Factual Background**

This case arises from the parties' joint ownership of a 90-acre tract of real property ("the Property") located in Chesterfield County, Virginia. Property owners in Chesterfield County receive bills for the *ad valorem* property taxes they owe from the Chesterfield County Treasurer's Office twice a year. When Plaintiff first acquired its one-half interest in the Property, its then co-tenant, Tamojira, Inc. ("Tamojira"), had already failed to pay its share of the property taxes for the years 2002, 2003, and the first half of 2004. After Plaintiff acquired its interest in the Property, Tamojira failed to pay the taxes for the second half of 2004 and the first half of 2005. Plaintiff brought suit and subsequently obtained a default judgment against Tamojira for the unpaid taxes. Tamojira's interest in the Property was then transferred to Defendant by deed recorded 24 May 2005. Defendant has not paid *ad valorem* property taxes on the Property since acquiring its interest in 2005.

On 31 October 2013, Plaintiff filed a verified complaint in Wake County Superior Court alleging that (1) Defendant has failed to pay any property taxes since Defendant acquired its one-half interest in the Property on 24 May 2005; and (2) "[a]s the other one-half owner of the Property, [Plaintiff] has had to satisfy the tax debts owed by Defendant in the amount of \$67,831.60, plus any amounts in taxes, fees, and interest [Plaintiff] must pay for the property taxes for the second half of 2013." In its

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complaint, Plaintiff sought reimbursement from Defendant for the property taxes it had paid on Defendant's behalf.

On 26 February 2014, Defendant filed an answer asserting the statute of limitations as an affirmative defense and seeking the appointment of a receiver pursuant to N.C. Gen. Stat. § 1-502. Plaintiff filed a motion for summary judgment pursuant to Rule 56 of the North Carolina Rules of Civil Procedure on 4 February 2014 and an amended motion for summary judgment on 19 February 2014. On 15 May 2014, Defendant filed a motion for partial summary judgment, alleging that the applicable statute of limitations barred Plaintiff's recovery of any property taxes that were paid before the three-year period immediately preceding its 31 October 2013 complaint.

The parties' cross-motions for summary judgment came on for hearing before the Honorable Donald W. Stephens on 20 May 2014. On 22 May 2014, the trial court entered an order granting summary judgment in Plaintiff's favor, denying Defendant's motion for partial summary judgment, and awarding Plaintiff \$71,947.00<sup>1</sup> plus costs and interest. Defendant gave timely notice of appeal to this Court.

**Analysis**

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<sup>1</sup> The amount awarded to Plaintiff in the trial court's judgment included the additional \$4,115.40 in property taxes Plaintiff paid on Defendant's behalf for the second half of 2013, bringing the total amount from \$67,831.60 to \$71,947.00.

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The entry of summary judgment is proper “if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that any party is entitled to a judgment as a matter of law.” *Premier, Inc. v. Peterson*, \_\_\_ N.C. App. \_\_\_, \_\_\_, 755 S.E.2d 56, 59 (2014) (citation and quotation marks omitted). An order granting summary judgment is reviewed *de novo* on appeal. *In re Will of Jones*, 362 N.C. 569, 573, 669 S.E.2d 572, 576 (2008).

In this case, no material factual dispute exists as Defendant does not contest (1) its status as a co-owner of the Property during the relevant time period; (2) its nonpayment of property taxes; or (3) the amount of the property tax debt. Rather, the sole issues presented on appeal are (1) which statute of limitations applies to Plaintiff's claims; and (2) whether the applicable statute of limitations serves to render Plaintiff's claims partially time-barred. Defendant contends that the trial court erred in granting Plaintiff's motion for summary judgment because Plaintiff's claims for reimbursement are barred, in part, by the three-year limitations period contained in N.C. Gen. Stat. § 1-52(1). Plaintiff, conversely, asserts that the “catch-all” ten-year limitations period contained in N.C. Gen. Stat. § 1-56 is applicable to its action.

Although this case was filed in Wake County, North Carolina, the claims asserted by Plaintiff involve obligations arising from the parties' relationship as co-

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tenants of the Property in Chesterfield County, Virginia. The Chesterfield County Treasurer’s Office — the entity that assessed taxes on the Property — is located in Virginia, and the tax debt on the Property resulting from Defendant’s nonpayment of its share of the taxes accrued there as well.

“Under North Carolina choice of law rules, we apply the substantive law of the state where the cause of action accrued and the procedural rules of North Carolina.” *Stokes v. Wilson and Redding Law Firm*, 72 N.C. App. 107, 112-13, 323 S.E.2d 470, 475 (1984), *disc. review denied*, 313 N.C. 612, 332 S.E.2d 83 (1985); *see also Stetser v. TAP Pharm. Prods., Inc.*, 165 N.C. App. 1, 16, 598 S.E.2d 570, 581 (2004) (explaining that “according to North Carolina’s choice of law rules, as traditionally applied, the law of North Carolina . . . control[s] the procedural matters in this . . . lawsuit, such as determining the statute of limitations” and “the substantive law of the state where the injury occurred” is applied to plaintiffs’ claims and utilized for purposes of determining available remedies and damages). Thus, Virginia’s substantive law governs Plaintiff’s claims for relief.

Because, however, “statutes of limitation are clearly procedural, affecting only the remedy directly and not the right to recover,” *Boudreau v. Baughman*, 322 N.C. 331, 340, 368 S.E.2d 849, 857 (1988), we must apply the appropriate statute of limitations under North Carolina law to Plaintiff’s substantive claims — that is, the limitations period that would apply to such causes of action in this State, *see id.* at

341, 368 S.E.2d at 857 (explaining that statutes of limitations are procedural “in the context of choice of law”). “When determining the applicable statute of limitations, we are guided by the principle that the statute of limitations is not determined by the remedy sought, but by the substantive right asserted by plaintiffs.” *Toomer v. Branch Banking & Trust Co.*, 171 N.C. App. 58, 66, 614 S.E.2d 328, 335 (citation and quotation marks omitted), *disc. review denied*, 360 N.C. 78, 623 S.E.2d 263 (2005). Accordingly, in order to determine the appropriate statute of limitations to apply, we must first identify the nature of the substantive claims asserted by Plaintiff as they exist under Virginia law.

In its complaint, Plaintiff asserted two claims for relief. Without specifically identifying or labeling the first cause of action, Plaintiff made the following allegations in support of this claim:

20. Defendant, as a co-owner of the Property, is liable for its fair share of the property taxes owed on the Property.

21. By virtue of Defendant’s failure to pay the taxes owed, and failure to reimburse [Plaintiff] for such amounts, [Plaintiff] is entitled to have and recover of Defendant the principal amount of \$67,831.60 plus any amount in taxes, fees, and interest [Plaintiff] must pay for the property taxes for the second half of 2013, plus interest. [Plaintiff] is also entitled to have and recover of Defendant the costs of this action.

Plaintiff’s second claim for relief — pled in the alternative — sought recovery in *quantum meruit* on the theory that Defendant was unjustly enriched by Plaintiff’s

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full payment of property taxes owed on the Property for which Defendant was jointly responsible. It is clear that the statute of limitations for unjust enrichment is three years. *See Stratton v. Royal Bank of Canada*, 211 N.C. App. 78, 85, 712 S.E.2d 221, 228 (2011) (“A claim for unjust enrichment must be brought within three years of accrual under subsection 1 of section 1-52.”). However, because the unjust enrichment claim was pled merely as an alternative means of recovery, we must determine the appropriate limitations period that applies to Plaintiff’s first cause of action.

The parties differ in their respective positions on this issue. Defendant contends that Plaintiff’s right to receive reimbursement as pled in its first claim for relief stems from an implied contract between the parties. Defendant argues that this cause of action is therefore grounded in principles of contract law and more properly denominated as a claim for contribution arising out of a joint debt. Quoting *Tuttle v. Webb*, Defendant asserts that “[w]hen two or more persons are jointly liable to pay a debt, the law *implies a contract* between the co-obligors to contribute ratably toward the discharge of the obligation.” 284 Va. 319, 327, 731 S.E.2d 909, 913 (2012) (citation, quotation marks, and brackets omitted and emphasis added); *see Ohio Cas. Ins. Co. v. State Farm Fire and Cas. Co.*, 262 Va. 238, 241-42, 546 S.E.2d 421, 423 (2001) (explaining that right to contribution is based on implied contract “between the parties to contribute ratably toward the discharge of a common obligation”).

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Consequently, Defendant argues, North Carolina’s three-year statute of limitations applicable to an “obligation or liability arising out of a contract, express or implied” applies. N.C. Gen. Stat. § 1-52(1) (2013).

Plaintiff, conversely, contends that its claim against Defendant should be treated as a cause of action for an “accounting in equity” between two tenants in common under Virginia law. As such, Plaintiff argues, its first claim for relief falls under Va. Code Ann. § 8.01-31, which provides that “[a]n accounting in equity may be had against any fiduciary or by one joint tenant, tenant in common, or coparcener for receiving more than comes to his just share or proportion, or against the personal representative of any such party.” While North Carolina does not have a statute of limitations expressly addressing claims seeking an equitable accounting, Plaintiff contends that its claim is governed by the ten-year limitations period provided in N.C. Gen. Stat. § 1-56 for “action[s] for relief not otherwise limited by this subchapter.” N.C. Gen. Stat. § 1-56 (2013).

In so arguing, Plaintiff notes that North Carolina courts have previously applied N.C. Gen. Stat. § 1-56 to claims seeking an accounting between the parties. *See Hamlet HMA, Inc. v. Richmond Cty.*, 138 N.C. App. 415, 422, 531 S.E.2d 494, 498 (explaining that “N.C. Gen. Stat. §1-56 has been applied mainly in cases related to trusts, *accountings*, tax liens and fiduciary duty” (emphasis added)), *appeal dismissed and disc. review denied*, 352 N.C. 673, 545 S.E.2d 423 (2000); *see also Jarrett v. Green*,

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230 N.C. 104, 107, 52 S.E.2d 223, 225 (1949) (determining that ten-year statute of limitations was applicable to plaintiff's claims to establish resulting trust, to recover property, and for accounting).

Both parties cite *Jenkins v. Jenkins*, 211 Va. 797, 180 S.E.2d 516 (1971), in which two ex-spouses owned a parcel of real property as tenants in common following their divorce. The plaintiff paid the mortgage payments on the property after the divorce and until the property was sold on 4 October 1968. *Id.* at 798-99, 180 S.E.2d at 517. She then sought reimbursement from the defendant for his portion of the mortgage payments as well as an order requiring the defendant to pay half of the real estate taxes on the property that had accrued. *Id.* at 798, 180 S.E.2d at 517. The Virginia Supreme Court determined that the plaintiff was entitled to reimbursement because “unless something more can be shown than the mere fact that one co-tenant is in possession of the premises, each co-tenant should be ratably responsible for taxes and other liens against the property.” *Id.* at 800, 180 S.E.2d at 518. The *Jenkins* Court noted that “[a]n accounting in equity may be had . . . by one . . . tenant in common . . . against the other as bailiff, for receiving more than comes to his just share or proportion.” *Id.* at 800 n. 1, 180 S.E.2d at 518 n. 1.

While *Jenkins* supports the right of a co-tenant such as Plaintiff to obtain reimbursement from its co-tenant under these circumstances, it does not explain the precise nature and origin of this right under Virginia law. However, in *Grove v.*

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*Grove*, 100 Va. 556, 42 S.E. 312 (1902), the Virginia Supreme Court held that “[t]he right of a co-tenant, who discharges an incumbrance upon the common property, . . . to ratable contribution from his cotenants, is said to *arise out of the trust relationship which exists among joint owners of property*, rather than by way of subrogation.” *Id.* at 561, 42 S.E. at 314 (emphasis added).

Thus, Plaintiff’s first claim for relief can also be interpreted as asserting a substantive right stemming from the parties’ trust relationship as co-tenants rather than one arising from principles of contract law. Under this theory, Plaintiff’s first claim for relief would be governed not by the three-year statute of limitations under N.C. Gen. Stat. § 1-52(1) that is applicable to obligations arising from implied contracts but rather by the ten-year limitations period contained in N.C. Gen. Stat. § 1-56. *See Jarrett*, 230 N.C. at 107, 52 S.E.2d at 225 (stating that ten-year statute of limitations under N.C. Gen. Stat. § 1-56 was applicable to action for accounting and to establish resulting trust); *Teachey v. Gurley*, 214 N.C. 288, 293-94, 199 S.E. 83, 87-88 (1938) (explaining that ten-year limitations period applies to claims grounded in equitable principles which impose trust relationship between parties).

Consequently, we are unable to discern a clear answer to the question of which of the two respective limitations periods applies most directly to the substantive claim Plaintiff has pled in its first claim for relief. However, our Supreme Court has held that “where there is doubt as to which of two possible statutes of limitation applies,

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the rule is that the longer statute is to be selected.” *Fowler v. Valencourt*, 334 N.C. 345, 350, 435 S.E.2d 530, 533 (1993). Such doubt exists here because the first claim for relief in Plaintiff’s complaint can be construed as setting forth either of two distinct, legally cognizable claims under Virginia law: (1) a claim for contribution; or (2) a claim for an accounting in equity. While Plaintiff would be entitled under either legal theory to reimbursement from Defendant for its share of the property taxes, a contribution claim would be governed by the three-year statute of limitations contained in N.C. Gen. Stat. § 1-52(1) because the substantive right underlying such a claim is derived from an implied contract whereas a claim for equitable accounting — grounded in equity and arising from a trust relationship — would be subject to the ten-year limitations period set out in N.C. Gen. Stat. § 1-56.

Thus, because there are two statutes of limitations that are equally applicable to Plaintiff’s first claim for relief, we conclude — based on our Supreme Court’s decision in *Fowler* — that application of the longer ten-year limitations period is appropriate. *See id.* at 350, 435 S.E.2d at 533. As such, because all of the payments for which Plaintiff seeks reimbursement fall within the ten-year period immediately preceding the date Plaintiff filed suit, Plaintiff’s first claim for relief is not barred in any respect by the statute of limitations. Accordingly, the trial court did not err in granting Plaintiff’s motion for summary judgment and denying Defendant’s motion for partial summary judgment.

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**Conclusion**

For the reasons stated above, we affirm the trial court's order.

AFFIRMED.

Judges ELMORE and DIETZ concur.