

entered judgment against Mr. Welch for more than \$1 million, which represented the value of the wrongfully invested funds, plus interest. It appears Mr. Welch has not paid that judgment.

In this action, which was filed in October, 2011, the Trust asserted claims against Ansar for breach of contract, unjust enrichment, and reverse piercing of the corporate veil based on the improper investments made by Mr. Welch, the debentures,¹ and the Orphan's Court judgment. This court found that all such claims were time barred, under the applicable four and two year statutes of limitations, because the plaintiff knew about its claims against Ansar by August 14, 2007, at the latest, when the court in the first action found that Mr. Welch's investment of Trust funds in Ansar was wrongful.²

A copy of the court's opinion in support of its November 14th Order granting Ansar's Motion for Judgment on the Pleadings is attached hereto, and it is respectfully requested that the court's decision be affirmed on appeal.

Dated: April 17, 2013

BY THE COURT:


ALBERT JOHN SNITE, JR., J.

¹ Because the loans that gave rise to the debentures were found by the Orphan's Court to have been invalid, the Trust need not, and should not, have waited until the expiry of the 2009 repayment date set forth in the debentures to bring its claims for repayment of the Trust funds wrongfully diverted by Mr. Welch to Ansar.

²To the extent the reverse piercing claim is based on non-payment of the judgment entered in March, 2009, such a claim should have been filed by March, 2011, under the applicable two year statute of limitations.

**IN THE COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY
FIRST JUDICIAL DISTRICT OF PENNSYLVANIA
TRIAL DIVISION-CIVIL**

SUSQUEHANNA TRUST & INVESTMENT COMPANY, as TRUSTEE of the Rose Kogen Irrevocable Trust,	:	October Term 2011
	:	
	:	No. 3259
Plaintiff,	:	
	:	COMMERCE PROGRAM
v.	:	
	:	Control Number 12073110
ANSAR GROUP, INC.,	:	
Defendant.	:	

OPINION

This action was instituted by Plaintiff Graystone Wealth Management, as Trustee of the Rose Kogen Irrevocable Trust against Defendant Ansar Group, Inc. for breach of contract, unjust enrichment and reverse piercing of the corporate veil. Presently before the court is Defendant's Motion for Judgment on the Pleadings.

Plaintiff Graystone Wealth Management, as Trustee of the Rose Kogen Irrevocable Trust, was replaced by Susquehanna Trust & Investment Company, as Trustee of the Rose Kogen Irrevocable Trust, as the sole Plaintiff on August 9, 2012. Defendant Ansar Group, Inc. is a business which was invested in by a portion of assets from the Rose Kogen Irrevocable Trust ("Kogen Trust").

From approximately January 1, 1999 until approximately December 19, 2006, Robert Welch ("Welch") was the trustee of the Kogen Trust, as well as the president and managing director of Defendant. Defendant received approximately \$928,318.00 in trust assets in exchange for approximately thirty "convertible debenture" notes issued to the Kogen Trust.

On August 14, 2007, the Honorable John W. Herron of the Court of Common Pleas of Philadelphia County, Orphans' Court Division, entered an adjudication in a related case¹ which found that Welch breached his fiduciary duty as trustee through the exchange of Kogen Trust assets into Defendant's debenture notes.²

On October 25, 2011, Plaintiff filed a complaint alleging claims of breach of contract, unjust enrichment, and reverse piercing of the corporate veil. Defendant filed preliminary objections to the complaint, which resulted in Plaintiff filing a First Amended Complaint on December 2, 2011. Defendant filed preliminary objections to the First Amended Complaint, which were overruled on April 19, 2012. Defendant now moves for judgment on the pleadings based on statute of limitations.

DISCUSSION

Pennsylvania law recognizes that the statute of limitations for breach of contract actions requires Plaintiff to bring suit within four years of the date of the accrual of the cause of action.³ For breach of contract, "the statute of limitations begins to run as soon as the right to institute and maintain the suit arises."⁴ The convertible debentures issued by Defendant to the Kogen Trust are notes in writing and any claim for a breach of these contracts is subject to a four year statute of limitations.⁵

¹ Trust beneficiary, Jonathan Kogen filed for a citation to compel an account by current Trustee, Robert Welch, who was subsequently substituted by First National Bank of Chester County as Trustee. In Re: The Rose Kogen Irrevocable Trust, O.C. No. 1787 IV of 2004.

² Judge Herron's Adjudication did not expressly unwind the conversion of the debentures issued to the Kogen Trust.

³ 42 Pa. C. S. A. §5525 (7).

⁴ Sevast v. Kakouras (Appeal of Sunday), 591 Pa. 44, 53, 915 A.2d 1147, 1153 (2007) (quoting Crouse v. Cyclops Industries, 560 Pa. 394, 403, 745 A.2d 606, 611 (Pa. 2000)).

⁵ 42 Pa. C. S. A. §5525 (7).

The time in which a matter must be commenced under the applicable statute of limitations shall be computed from the time the cause of action accrued.⁶ A cause of action accrues when the right to institute and maintain a suit arises.⁷ In the case *sub judice*, the alleged breach of contract rises from the convertible dentures issued by the Defendant to the Kogen Trust. According to the record before this court, the latest possible date by which Plaintiff knew or should have known of a claim against Defendant was the day that Judge Herron's Adjudication was issued, August 14, 2007. Consequently, August 14, 2007 began the running of the time in which to file any action. A timely action should have been filed by August 14, 2011. This action was commenced on October 25, 2011. Based on the forgoing, Plaintiff's cause of action for breach of contract is time barred.

The statute of limitations also bars Plaintiff's claim for unjust enrichment. "An action based on unjust enrichment is an action which sounds in quasi-contract or contract implied in law."⁸ Unjust enrichment claims have a four year statute of limitations.⁹ The applicable statute begins to run as soon as the right to institute and maintain a suit arises.¹⁰ In the case *sub judice*, the claim for unjust enrichment is made in the alternative for the breach of contract claim. As discussed supra, the latest possible date from which the time started to run was August 14, 2007. Since this action was filed on October 25, 2011, the claim for unjust enrichment is also time barred.

⁶ 42 Pa.C.S.A. § 5502.

⁷ Pocono International Raceway, Inc. v. Pocono Produce, Inc., 503 Pa. 80, 84, 468 A.2d 468, 471 (1983); Meehan v. Archdiocese. 870 A.2d 912, 919 (Pa. Super. 2005).

⁸ Sevast v. Kakouras (Appeal of Sunday), 591 Pa. 44, 53 n.7, 915 A.2d 1147, 1153 n.7 (Pa. 2007)(quoting Schott v. Westinghouse Electric Corp., 436 Pa. 279, 290, 259 A.2d 443, 448 (Pa. 1969).

⁹ Sevast, 591 Pa. at 53, 915 A.2d at 1153 (Citing 42 Pa.C.S. § 5525(a)(4))(case citations omitted).

¹⁰ *Id.*, 591 Pa at 53, 915 A.2d at 1153.

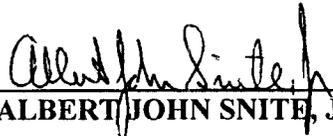
The statute of limitations also bars Plaintiff's claim for reverse piercing the corporate veil. Plaintiff brings this claim to recover from Defendant the ordered judgment against Welch in the related Orphans' Court case. Even assuming that reverse piercing of the corporate veil is a proper claim, the two year tort statute of limitations would apply.¹¹

In the case *sub judice*, the claim is based in the self-dealing and breach of fiduciary duty of Welch, who is and was the president and managing director of Defendant. As discussed *supra*, August 14, 2007 began the running of the time in which to file any action. A timely claim should have been filed by August 14, 2009 and this action was commenced on October 25, 2011. Based on the foregoing, Plaintiff's claim for reverse piercing the corporate veil is time barred.

CONCLUSION

Based on the foregoing, Defendant's Motion for Judgment on the Pleadings is granted and all of Plaintiff's claims are dismissed.¹²

BY THE COURT,


ALBERT JOHN SNITE, JR. J.

¹¹ 42 Pa.C.S. § 5524(7).

¹² It is unclear to this Court whether \$345,490.00 remained in the Kogen trust after Welch was no longer the trustee, but even if it did remain in the trust, any claims would have also been barred by statute of limitations. Further, this Court is not persuaded by Plaintiff's responses in opposition to this Motion.