

STATE OF MAINE
LINCOLN, SS.

SUPERIOR COURT
CIVIL ACTION
Docket No. CV-2015-34

KATE McFALL,)
Plaintiff,)
)
)
v.)
)
)
MARGARET JEAN MATHER)
WESTBY, et al,)
Defendants.)

ORDER ON PENDING MOTIONS

The Westby Defendants' Motion to Dismiss Counts II, III, IV, and V of the First Amended Complaint is GRANTED for failure to state a claim upon which relief may be granted pursuant to Rule 12(b)(6) of the Maine Rules of Civil Procedure. In regards to Counts II and III, the facts alleged by the Plaintiff in the Complaint establish that she cannot allege that she was the Westby Defendants' creditor at the time of the alleged transfers. In regards to Count IV, the Plaintiff has not alleged that she conferred a benefit on the Westby Defendants when the alleged expenditures were made or that they had appreciation or knowledge of the benefit. In regards to Count V, the Plaintiff has failed to allege a sufficient ownership interest in the personal property at issue to maintain the claim or that she made any demand for return of the property. In addition, the statute of limitations applicable to Counts I-IV has expired long ago because the Plaintiff has failed to make claims against the estates involved in this matter under the terms of the applicable Probate Codes. The cases cited by the Plaintiff establish elements that may be included in a claim for equitable partition but do not involve circumstances under which such claims have been cut off by statutory deadlines to make claims against an estate.

Count I is also dismissed against the Westby Defendants. In regards to Defendant Edge of the Sea, Count I is limited to the period since January 6, 2015.

Defendant Ronald Westby's Motion to Dismiss Counts II and IV is GRANTED. The claims are barred by the statute of limitations and therefore fail to state a claim upon which relief may be granted pursuant to Rule 12(b)(6) of the Maine Rules of Civil Procedure.

The Plaintiff's Motion to Amend to bring a Count VI for contribution is DENIED. The claim for contribution as styled in the Plaintiff's proposed count is not one that is recognized by Maine law.

The Plaintiff's Third Amended Complaint and the related motion are made MOOT by this order and the Defendants are not required to answer the Third Amended

Complaint. However, it is ORDERED that the Plaintiff is granted 21 days from the date of this order to file a Fourth Amended Complaint that is consistent with this order.

The Westby Defendants' Motion to Specially Assign Trial to a Date Certain is DENIED. Criminal matters and jury trials must take priority in the court's docket. However, as time for trial approaches, the court will make an effort to set the trial for a date certain given the issues raised in the motion.

The Clerk is directed to incorporate this Order by reference into the docket for this case, pursuant to Rule 79(a), Maine Rules of Civil Procedure.

Dated: July 5, 2016



JUSTICE, MAINE SUPERIOR COURT
Daniel I. Billings