

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

CONNIE L. REESE,	:	DOCKET NO. 15-01766
Plaintiff	:	
	:	CIVIL ACTION
vs.	:	
	:	
PAMELA K. TYLER,	:	
Defendant	:	NON-JURY TRIAL

**OPINION and VERDICT**

AND NOW, this 14<sup>th</sup> day of **October, 2016** after a non-jury trial held on September 30, 2016, and the Court having left the record open for submissions of counsel, and the matter now ripe for review as of October 7, 2016, the Court enters verdict in favor of Pamela K. Tyler and against Connie L. Reese on the grounds that the statute of limitations expired prior to the initiation of the instant action.

**FINDINGS OF FACT**

1. The relationship between the parties is that Plaintiff is the mother and Defendant is the adult daughter.
2. On December 4, 2003, Plaintiff cosigned a promissory note for a \$20,000 student loan which covered the Defendant's living expenses while she obtained her Master's Degree from Marywood University.
3. Plaintiff cosigned the loan in part so that Defendant and her teenage daughter could have living expenses and not have to live with Plaintiff.
4. December 4, 2003, Defendant promised and intended to repay the student loan herself.
5. Plaintiff was aware and would contact Defendant about late payments made by Defendant.
6. Defendant failed to repay her student loan and made minimal payments, with her last payment being May 28, 2009.

7. As of November 24, 2009, Plaintiff was aware that Defendant was at least 165 days past due and that the entire balance and accrued interest would be due in full unless Plaintiff took action at that time.
8. After Defendant stopped paying on the student loan, Plaintiff did not contact Defendant about Plaintiff's payments on Defendant's loan except through an attorney.
9. In April 2010, Plaintiff obtained legal advice concerning the loan.
10. On April 29, 2010, Plaintiff's attorney wrote to Defendant threatening to commence litigation if Defendant failed to contact Counsel.
11. On October 8, 2011, Plaintiff obtained a secondary mortgage loan in the amount of \$34,000 and used \$21,369.13 amount to pay the student loan debt in full.
12. Defendant did not communicate with Plaintiff or her attorney about the debt once Defendant stopped paying on the student loan.
13. Defendant did not conceal her residence, employment or whereabouts from Plaintiff.
14. Indeed, Plaintiff was aware of Defendant's address, location of work, and knew of places to find Defendant, such as when she go out to dinner on regular weekly basis, and attend family functions.
15. Complaint filed in the instant suit on July 24, 2015, which is more than four years after the breach of contract.
16. The contract did not involve an ongoing relationship for services to be provided but instead involved a promise to pay money.

## CONCLUSIONS OF LAW

1. Plaintiff's claim is based upon a breach of an oral contract with Defendant that Plaintiff would co-sign the student loan and Defendant agreed to pay it herself.
2. Breach of contracts are governed by a four year statute of limitations under 42 Pa. C.S. 5525(a)(8).
3. The breach and right to maintain suit arose on May 28, 2009, the date of the last payment, and certainly started to run upon notice to Plaintiff on November 24, 2009 .
4. The instant suit was commenced more than four years after those dates.
5. The instant suit is barred by the four year statute of limitations.
6. Because the obligations in this matter are governed by contract, the unjust enrichment claim fails as a matter of law.
7. The contract did not constitute a continuing contract for purposes of tolling the statute of limitations, as no services were rendered pursuant to a relationship between the parties.
8. The doctrine of fraudulent concealment does not apply because Plaintiff was well aware of the nature of her injury at the time Defendant stopped paying on the student loan and indeed threatened to sue well within the statute of limitations.
9. Defendant did not acknowledge or reaffirm the debt so as to restart the limitations period.

## DISCUSSION

Breach of contracts are governed by a four year statute of limitations under 42 Pa. C.S. 5525(a)(8). The limitations period begins to run at the time of the breach and as soon as the right to maintain suit arises. Fine v. Checcio, 582 Pa. 253, 870 A.2d 850, 857 (Pa. 2005). The breach and right to maintain suit arose on May 28, 2009, the date of the last payment, and certainly

started to run upon notice to Plaintiff on November 24, 2009 . The instant suit was commenced more than four years after those dates. As a result, the claim is barred.

“On a continuing contract which is entire, the statute of limitations begins to run only from the time when the breach occurs or the contract is in some way terminated.” Thorpe v. Schoenbrun, 195 A.2d 870 (Pa. Super. Ct. 1963)

If services are rendered under an agreement which does not fix any certain time for payment or for the termination of the services, the contract will be treated as continuous, and the statute of limitations does not begin to run until the termination of the contractual relationship between the parties." Thorpe, supra, citing, 22 P.L.E., Limitation of Actions § 56.

In the present case, Defendant promised to repay her student loan. The terms of the loan repayments were fixed. Defendant breached that promise on May 28, 2009. There was no contract for ongoing services between the parties that had not been terminated. As such, the continuous contract doctrine did not apply to extend the limitations period in this case.

The doctrine of fraudulent concealment does not apply to extend the limitations period either. The doctrine of fraudulent concealment “provides that the defendant may not invoke the statute of limitations, if through fraud or concealment, he causes the plaintiff to relax his vigilance or deviate from his right of inquiry into the facts.” Fine, supra, 870 A.2d at 860. Plaintiff has presented no evidence of conduct by Defendant that would have caused plaintiff to relax vigilance or to impede Plaintiff’s ability, using reasonable diligence, to know of her injury and its cause.

Finally, Plaintiff cannot prevail on an unjust enrichment claim because this matter is governed by an express oral contract. “A cause of action for unjust enrichment arises only when a transaction is not subject to a written or express contract.” Northeast Fence & Iron Works, Inc.

v. Murphy Quigley Co., 2007 PA Super 287, 933 A.2d 664, 669 (Pa. Super. 2007)(citations omitted).

Accordingly, the Court enters the following Order and Verdict.

ORDER AND VERDICT

AND NOW this **14<sup>th</sup>** day of **October 2016**, following a non-jury trial in this matter, it is ORDERED and DIRECTED that verdict is entered in favor of Pamela K. Tyler and against Connie L. Reese.

BY THE COURT,

October 14, 2016  
Date

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Richard A. Gray, J.

cc: Mary C. Kilgus, Esq. (for Plaintiff)  
John P. Pietrovito, Esq. (for Defendant)