

Title

How a trustee's unwarranted and open repudiation of the trust could result in the time barring of a breach-of-trust action brought later against the trustee

Text

In the case of a breach of trust, it is a principle of equity that the laches period, or the applicable statute of limitations period, as the case may be, does not commence to run against the beneficiary until the trustee “openly” makes the beneficiary aware that the trustee is “repudiating” his fiduciary duty not to be in breach of trust. Thus, when one hears that the trustee has “repudiated” his trust, it is likely that he is openly in breach of one or more of his trustee duties, not that he has denied the very existence of, or abandoned altogether, the trust. See 5 Scott, Trusts [3d ed.], §409, p. 3226 (“A fiduciary is not entitled to rely upon the laches of his beneficiary as a defense, unless he repudiates the ... [trust]... relation to the knowledge of the beneficiary.”). By way of example, an unequivocal failure to render a proper accounting in a timely fashion to the beneficiary upon request may well constitute an act of “repudiation” sufficient to trigger an applicable statute of limitations running against the beneficiary. So, too, might the rendering of an accounting to the beneficiary, say, via the beneficiary’s counsel, that reveals on its face a breach of trust. If, on the other hand, the trustee in bad faith or otherwise is stringing the beneficiary along when it comes to furnishing information to which the beneficiary is entitled, then the trustee has yet to openly repudiate the trust.

Though a beneficiary may be foreclosed by laches or an applicable statute of limitations from extracting damages from the trustee personally for a particular breach of trust, see Restatement (Third) of Trusts §98 cmt. a(1), the beneficiary generally would not otherwise be foreclosed from seeking the trust’s enforcement in the courts. *Id.* If, however, the alleged trustee has repudiated the very existence of the trust, and the “beneficiary” with knowledge or reason to know of the wholesale repudiation fails to bring suit within a reasonable time or a time prescribed by statute, the “beneficiary” may well be barred from seeking the trust’s enforcement. *Id.*

Cross reference: See my July 1, 2022 JDSUPRA posting: “Statutes of limitations applicable to breach-of-trust actions tweak traditional laches doctrine, not the other way around.”
<https://www.jdsupra.com/legalnews/statutes-of-limitations-applicable-to-br-73698/>.