STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

PROVIDENCE, SC. **SUPERIOR COURT**

(Filed: August 2, 2012)

WENDA BRANSON	:	
	:	
v.	:	**C.A. No. PC-2009-5006**
	:	
MARION P. LOUTTIT, INDIVIDUALLY, AND IN HER CAPACITIES AS TRUSTEE OF THE AUGUSTA P. HATHAWAY LIVING TRUST, AND AS CUSTODIAN FOR JONATHAN H. LOUTTIT, II AND CAROLINE HATHAWAY LOUTTIT MINOR CHILDREN	:	
	:	
v.	:	
	:	
JOAN PROUT-OSCARSSON f/k/a JOAN PROUT and KRISTAL OSBORN f/k/a KRISTAL A. FAHEY	:	

DECISION

GIBNEY, P.J. Defendant Marion P. Louttit ("Louttit") moves for Summary Judgment against Plaintiff Wenda Branson ("Branson"). Louttit contends that Branson's claims are untimely under the laches doctrine and/or the applicable statute of limitations. Branson objects. Jurisdiction is pursuant to Super. R. Civ. P. 56. For the reasons stated herein, Louttit's Motion for Summary Judgment is granted in part and denied in part.

I

Facts and Travel

This controversy arises from changes to the estate plan of Augusta P. Hathaway ("Hathaway"). On October 19, 1992, Hathaway established a revocable living trust ("Trust"), naming herself beneficiary for life and Rhode Island Hospital Trust National

Bank as trustee. On November 21, 1997, she amended the Trust to designate her three daughters, Louttit, Branson, and Third Party Defendant Joan Prout-Oscarsson ("Prout-Oscarsson") as remainder beneficiaries. The daughters would share whatever remained of the Trust's corpus upon Hathaway's passing. On December 19, 2000, Hathaway again amended the trust and named Loutitt as trustee and Branson as contingent trustee.[1]

In addition to the Trust, Hathaway's estate plan focused on her home at 49 Mathewson Road in Barrington, Rhode Island. Hathaway resided at 49 Mathewson Road for most of her adult life, raised her daughters there, and wanted the home to remain in her family. Accordingly, on November 21, 1997, Hathaway established the Augusta P. Hathaway Family Limited Partnership ("the FLP") as a mechanism to transfer 49 Mathewson Road within her family with minimal tax consequences. Shortly thereafter, she conveyed 49 Mathewson Road to the FLP. The home was the FLP's only asset.

The FLP Agreement ("Agreement") designated Hathaway as the FLP's sole general partner and granted her majority ownership of the FLP's limited partnership interest. The Agreement also named four additional limited partners: Louttit; Louttit's minor son, Defendant Jonathan H. Louttit, II; Branson; and Branson's minor daughter, Third Party Defendant Kristal Osborn ("Osborn"). On December 19, 1997, the FLP added Louttit's newborn daughter, Defendant Caroline Hathaway Louttit, as a limited partner.

Over the course of the 1990s and 2000s, Hathaway's health gradually declined and ultimately required her to end her residence at 49 Mathewson Road. She relocated to an assisted living facility in November 2000 and then a skilled-care facility in October

[1] Branson does not challenge the November 21, 1997 or December 19, 2000 amendments to the Trust.

2004.

Following Hathaway's move to an assisted living facility, several amendments to the Trust and gifts of FLP ownership interest occurred. Amendments to the Trust from February and August 2001 ("Trust Amendments") and FLP gifts from December 2000 and January 2001 ("FLP Gifts") are at the root of this litigation.[2] Through the Trust Amendments, Hathaway retained Louttit as trustee, but substituted Louttit's husband for Branson as contingent trustee. Hathaway also designated Louttit as recipient of the entirety of the remaining Trust corpus, minus payments of $ 2000 each to Branson, Prout-Oscarsson, and Osborn. With respect to the FLP Gifts, Hathaway completely divested herself of her general and limited partnership interests. Louttit became sole general partner in Hathaway's stead and also acquired the vast majority of the FLP's limited partnership interest.

Branson and Prout-Oscarsson objected to the Trust Amendments and the FLP Gifts. They retained counsel and engaged in correspondence with Counsel for Hathaway and Louttit regarding the shifts in Hathaway's estate plan.[3] Branson and Prout-Oscarsson threatened to invoke the FLP's dispute resolution procedures on July 27, 2001, but did not act on this threat. The last communication between Counsel for Louttit and Hathaway and Counsel for Branson and Prout-Oscarsson occurred on November 25, 2003. The controversy then apparently fell silent for roughly five years. Hathaway passed away on November 5, 2008.

On August 31, 2009, Branson filed the instant action. She challenges the validity

[2] A slew of changes to the Trust and the FLP's ownership occurred between 1997 and 2001. The needs of this Court's analysis, however, do not demand a precise narrative of the individual Trust Amendments and FLP Gifts.

[3] Hathaway and Louttit had the same counsel.

of the Trust Amendments and the FLP Gifts and asks this Court to void both the Trust Amendments and the FLP Gifts pursuant to its equitable authority. Branson argues that such a remedy is appropriate because Hathaway (1) lacked capacity to amend the Trust and make the FLP Gifts and/or (2) only took those actions as a result of Louttit's undue influence. Branson also alleges that Louttit breached her fiduciary duty as trustee and seeks an accounting of the Trust's assets. Finally, Branson asks this Court to award her compensatory damages, punitive damages, and attorney's fees.

On April 15, 2011, Louttit filed the instant Motion for Summary Judgment on all of Branson's claims. Louttit contends that Branson's claims are untimely and barred by the doctrine of laches and/or the applicable statute of limitations. Louttit also challenges Branson's request for damages.

II

Standard of Review

When a hearing justice is ruling on a Motion for Summary Judgment, the preliminary question before the court is whether there is a genuine issue as to any material fact which must be resolved. Haffenreffer v. Haffenreffer, 994 A.2d 1226, 1231 (R.I. 2010). The party seeking Summary Judgment has the initial burden to show the absence of a material fact. Santiago ex rel. Martinez v. First Student, Inc., 839 A.2d 550, 552 (R.I. 2004). If an examination of the pleadings, affidavits, admissions, answers to interrogatories, and other similar materials, viewed in the light most favorable to the opposing party, reveals no such issue, then the suit is ripe for Summary Judgment. Capital Props., Inc. v. State, 749 A.2d 1069, 1080 (R.I. 1999).

In the face of a Motion for Summary Judgment, the opposing party "carries the burden of proving by competent evidence the existence of a disputed material issue of fact and cannot rest on allegations or denials in the pleadings or on conclusions or legal opinions." Accent Store Design, Inc. v. Marathon House, Inc., 674 A.2d 1223, 1225 (R.I. 1996); see McAdam v. Grzelczyk, 911 A.2d 255, 259 (R.I. 2006). It is not sufficient "simply [to] show that there is some metaphysical doubt as to the material facts." Matsushita Elec. Indus. Co. v. Zenith Radio Corp., 475 U.S. 574, 586 (1986). Rather, Rule 56 "requires the nonmoving party to go beyond the pleadings" and present some type of evidentiary material in support of its position. Celotex Corp. v. Catrett, 477 U.S. 317, 324 (1986). Although inferences may be drawn from underlying facts contained in material before the trial court, neither vague allegations and conclusory statements nor assertions of inferences not based on underlying facts will suffice. First Nat'l Bank of Boston v. Slade, 399 N.E.2d 1047, 1050 (Mass. 1979).

III

Analysis

Branson challenges the validity of the Trust Amendments and the FLP Gifts and also argues that Louttit breached her fiduciary duties as trustee. Louttit contends that all of Branson's claims are improper for lack of timeliness and argues that Branson's request for damages is improper. The laches doctrine governs inquiries into the timeliness of equitable claims like Branson's efforts to void the Trust Amendments and the FLP Gifts. Conversely, the statute of limitations set forth in G.L. 1956 § 9-1-13 (2012) controls the timeliness analysis relative to Branson's breach of fiduciary duty claim. This Court will

discuss allegations implicating laches before turning to claims covered by the statute of limitations. It shall then address matters of damages. [4]

A

Laches

Laches is an equitable defense that "precludes a lawsuit by a plaintiff who has negligently sat on his or her rights to the detriment of a defendant." O'Reilly v. Town of Glocester, 621 A.2d 697, 702 (R.I. 1993) (citing Fitzgerald v. O'Connell, 120 R.I. 240, 245, 386 A.2d 1384, 1387 (1978)). It is, in other words, the practical application of the maxim that "those who sleep on their rights must awaken to the consequence that they have disappeared." Kern v. Kern, 892 A.2d 1, 9 (Pa. Super. Ct. 2005).

Unlike the operation of a statute of limitations, the application of the doctrine of laches does not depend on a mechanical passage of time. Id. Rather, when considering the laches doctrine's applicability in a particular case, a court must determine (1) whether

[4] Louttit also argues that the equitable defense of waiver entitles her to Summary Judgment on Branson's claims. Waiver is "the voluntary intentional relinquishment of a known right. It results from action or nonaction." Imperial Cas. & Indem. Co. v. Bellini, 888 A.2d 957, 963 (R.I. 2005). As a general rule, "whether a party has voluntarily relinquished a known right is one of fact . . . ." Id. Thus, questions of waiver are best saved for trial, unless circumstances are such that the party is guilty of waiver as a matter of law. See Haxton's of Riverside, Inc. v. Windmill Realty, Inc., 488 A.2d 723, 725-26 (R.I. 1985).

Louttit asserts: "Here, the evidence attached hereto establishes that Branson waived any rights she had to bring this suit through her years of inaction." Louttit fails, however, to elaborate on this assertion. She does not explain how the evidence establishes waiver, nor does she specifically identify which evidence is relevant to the waiver inquiry. Louttit's failure to offer meaningful discussion of the waiver issue inhibits this Court's ability to resolve whether Branson waived her rights as a matter of law. This Court cannot construct Louttit's argument for her. Accordingly, to the extent that Louttit's Motion rests on the doctrine of waiver, the Motion is denied. Cf. Wilkinson v. State Crime Lab. Comm'n, 788 A.2d 1129, 1131 n.1 (R.I. 2002) ("Simply stating an issue for appellate review, without a meaningful discussion thereof . . . constitutes a waiver of that issue.").

there was negligence on the part of the plaintiff that led to an unreasonable delay in the prosecution of the case and, if so, (2) whether the delay prejudiced the defendant. O'Reilly, 621 A.2d at 702. The party claiming laches must demonstrate both elements. Rodriques v. Santos, 466 A.2d 306, 311 (R.I. 1983).

Laches, then, "is not mere delay, but delay that works a disadvantage to another." Chase v. Chase, 20 R.I. 202, 203-04, 37 A. 804, 805 (1897). As our Supreme Court has repeatedly stated:

> "So long as parties are in the same condition, it matters little whether one presses a right promptly or slowly, within limits allowed by law; but when, knowing his rights, he takes no step to enforce them until the condition of the other party has, in good faith, become so changed that he cannot be restored to his former state, if the right be then enforced, delay becomes inequitable, and operates as an estoppel against the assertion of the right. The disadvantage may come from loss of evidence, change of title, intervention of equities, and other causes; but when a court sees negligence on one side and injury therefrom on the other it is a ground for denial of relief." Hazard v. East Hills, Inc., 45 A.3d 1262, 1270 (R.I. 2012) (quoting Chase, 20 R.I. at 204, 37 A. at 805).

Equity vests this Court with the discretion to determine if laches applies. Andrukiewicz v. Andrukiewicz, 860 A.2d 235, 241 (R.I. 2004).

Whether there has been unreasonable delay and prejudice to the defendant, however, are both questions of fact; their resolutions dependent on the circumstances of the particular case. Raso v. Wall, 884 A.2d 391, 396 (R.I. 2005) (citing Lombardi v. Lombardi, 90 R.I. 205, 209, 156 A.2d 911, 913 (1959)). Laches, therefore, is normally not an appropriate matter for Summary Judgment. Haffenreffer, 994 A.2d at 1231 (holding Summary Judgment inappropriate where there is a genuine issue of material fact). Nonetheless, our Supreme Court has expressly declined to "exclude the possibility

of summary judgment being granted on the ground of laches in a particular case." Raso, 884 A.2d at 396 n.13. The Court, in fact, recently affirmed a grant of Summary Judgment on laches grounds. See Hazard, 45 A.3d at 1270-1271. Accordingly, this Court shall proceed with the laches analysis after a brief recapitulation of the underlying controversy.

1

The Disputed Trust Amendments and FLP Gifts

Branson disputes the validity of the Trust Amendments from February and August 2001 and the FLP Gifts from December 2000 and January 2001. The Trust Amendments substituted Louttit's husband for Branson as contingent trustee and designated Louttit as recipient of the entirety of the remaining Trust corpus upon Hathaway's death, minus payments of $ 2000 each to Branson, Prout-Oscarsson and Osborn. The FLP Gifts divested Hathaway of her entire interest in the FLP and made Louttit the FLP's sole general partner, as well as the owner of the bulk of the FLP's limited partnership interest. Branson objected to the shifts in Hathaway's estate plan in 2001. She filed the instant action in 2009. Branson argues that this Court must void the Trust Amendments and the FLP Gifts because Hathaway either lacked the capacity to make them or only did so as a consequence of Louttit's undue influence.

Louttit contends that Branson's claims must fail under the laches doctrine. As noted above, the party "asserting the affirmative defense of laches bears the burden of proof with respect to that defense" and must establish both unreasonable delay and prejudice. Raso, 884 A.2d at 396 n.12; see Fitzgerald, 120 R.I. at 246, 386 A.2d at 1387. Louttit bears that burden here.

2

Unreasonable Delay

To sustain a defense of laches, the defendant must show that the plaintiff unreasonably delayed her claim. Adam v. Adam, 624 A.2d 1093, 1096 (R.I. 1993). What constitutes "unreasonable delay," however, is a question of fact; its resolution dependent on the circumstances of the particular case. Raso, 884 A.2d at 396. As a general proposition therefore, whether delay is unreasonable is a question best reserved for trial.

Notwithstanding, the Rhode Island Supreme Court recently implied in Hazard that circumstances do exist where a party's delay is so great as to be unreasonable as a matter of law. See 45 A.3d at 1271. In Hazard, the Court affirmed a grant of Summary Judgment on laches grounds where generations of the plaintiff's family delayed asserting their rights for over a hundred years prior to the plaintiff's lawsuit. In doing so, the Court reasoned: "We are hard-pressed to conceive of a clearer example of the proper application of laches than in the case before us, in which a party delays bringing a claim for more than a century." Id. The Court declined to draw a bright line, however, as to when delay might become unreasonable as a matter of law. See id. at 1270-1271 ("We need not address the issue of per se negligence as it relates to the doctrine of laches because we are satisfied that defendant otherwise is entitled to the benefits of this equitable defense." (emphasis in original)).

Despite the absence of an explicit "unreasonable delay rule" in Hazard, this Court nonetheless considers Hazard instructive. The thrust of the Hazard Court's analysis suggests that an extreme lapse of time (e.g., one hundred years) may constitute an

unreasonable delay as a matter of law. See id. Louttit contends that Branson's delay of approximately eight years in bringing the instant action to undo the Trust Amendments and the FLP Gifts is unreasonable. By comparison, the Hazard plaintiff did not assert her rights until over a century had passed. Id. Although trial may prove Branson's eight year delay unreasonable, this Court does not consider her delay so egregious that it is unreasonable as a matter of law. See id. The reasonableness of her delay, therefore, remains a question of fact. See Raso, 884 A.2d at 396. Accordingly, this Court denies Louttit's Motion for Summary Judgment.[5]

3

Prejudice

Even assuming that Branson unreasonably delayed her challenge to the Trust Amendments and the FLP Gifts, this Court would still deny Louttit's Motion because there is a genuine issue of material fact with regard to matters of prejudice. Whether a plaintiff's delay prejudiced the defendant—like questions pertaining to the reasonableness of the delay itself—is normally an issue for the fact-finder. Id. Hazard, however, suggests that prejudice may also exist as a matter of law in certain circumstances. See 45 A.3d at 1271. As such, this Court shall examine whether Branson's delay prejudiced Louttit as a matter of law.

"While there is no hard and fast rule for determining what constitutes sufficient prejudice to invoke the doctrine of laches," our Supreme Court has established some

[5] This Court does not hold that a delay must be over a century to be unreasonable as a matter of law and nothing in this Decision should be construed as doing so. What constitutes an "unreasonable delay" depends on the circumstances of each individual case. Raso, 884 A.2d at 396. An "unreasonable" delay under one set of facts may not be "unreasonable" under a different set of facts. See id.

guidelines. See Fitzgerald, 120 R.I. at 248, 386 A.2d at 1389. Prejudice, the Court has held, may come from loss of evidence, change of title, intervention of equities, death of a key witness, and other causes. Hazard, 45 A.3d at 1270; Chase, 20 R.I. at 204, 37 A. at 805.

Louttit notes that Hathaway passed away while Branson waited to file suit and argues that the loss of Hathaway's testimony prejudices Louttit's interests to such an extent that laches operates. The mere fact of Hathaway's death during Branson's delay, however, does not automatically prejudice Louttit. As our Supreme Court observed in Ball v. Ball, 20 R.I. 520, 523-24, 40 A. 234, 235-36 (1898), the death of a witness not only deprives the defendant claiming laches of the witness' testimony, but "it equally deprives the [plaintiffs] of his testimony." Hathaway's death only prejudices Louttit if Hathaway would have provided testimony damaging to Branson's claims. See Poulin v. Poulin, 60 R.I. 264, 270-71, 197 A. 878, 881-82 (1938) (noting that laches did not apply where "there was no reason to believe that, if the husband had been still alive when the suit was brought, his testimony would have been damaging to the complainant").

Louttit testifies that Hathaway intended the Trust Amendments and the FLP Gifts and offers various documents allegedly evidencing Hathaway's intent. Dep. of Marion P. Louttit 17:15–27:1 (Dec. 3, 2010); Louttit's Mem. in Supp. of Mot. for Summ. J., Ex. 10, Feb. 14, 2001 Letter from Hathaway to Branson. Branson, however, disputes the accuracy of Louttit's testimony and the validity of these documents. Dep. of Wenda Branson 93:9–93:13, 110:1–112:22, 121:4–121:18, 131:4–131:12. A genuine issue of material fact thus exists as to whether Hathaway's death prejudiced Louttit.

This Court does not rule out the possibility that trial may prove that Hathaway's

death—or some other circumstance during Branson's delay—prejudiced Louttit, but it cannot resolve such questions on Summary Judgment.[6] Raso, 884 A.2d at 396 (stating that whether delay prejudiced defendant is a question of fact). The record simply does not permit a conclusion that Branson's delay prejudiced Louttit as a matter of law. Accordingly—even assuming that Branson unreasonably delayed filing suit—this Court must deny Louttit's Motion for Summary Judgment.[7]

B

Breach of Fiduciary Duty and the Statute of Limitations

Louttit moves for Summary Judgment on Branson's claim for breach of fiduciary duty on the ground that the statute of limitations bars the claim.[8] Whether "the statute of limitations has run against a plaintiff's claim is . . . a question of law." Hall v. Ins. Co. of

[6] Louttit cites Chase in her argument that Hathaway's death prejudiced Louttit. However, this Court considers Chase distinguishable. In Chase, our Supreme Court—upon examination of the trial record—held the plaintiffs guilty of laches. 20 R.I. at 207-09, 37 A. at 807. The Court reached this conclusion not only because key witnesses died during the plaintiffs' sixteen year delay in filing suit to void a contract, but also because the plaintiffs knew of the contract and allowed the defendants to spend sixteen years in performance of it. See id., 37 A. at 807.

Here, by contrast, Louttit offers no additional bases for her prejudice argument other than Hathaway's death. See id., 37 A. at 807. Moreover, unlike the Chase Court, this Court does not have the benefit of a trial record in its consideration of the prejudice question. See id., 37 A. at 807. Accordingly, Chase does not require this Court to hold that Hathaway's death prejudiced Louttit as a matter of law.

[7] Louttit also argues that the laches doctrine entitles her to Summary Judgment on Branson's claim for an accounting. This Court denies this portion of Louttit's Motion for the same reasons that it denied her Motion relative to Branson's challenges to the Trust Amendments and the FLP Gifts. See supra at 9-12. Briefly, matters of unreasonable delay and prejudice are normally questions of fact best resolved at trial and Louttit has failed to demonstrate the presence of either element of laches as a matter of law. See Hazard, 45 A.3d at 1270-1271; Raso, 884 A.2d at 396. Thus, Louttit's Motion for Summary Judgment with regard to Branson's accounting claim fails.

[8] To the extent Louttit rests her Motion for Summary Judgment on Branson's breach of fiduciary duty claim on the doctrine of laches, this Court denies the Motion for the same reasons it denies the Motion with regard to Branson's challenges to the Trust Amendments and the FLP Gifts. Supra at 9-12.

N. Am., 727 A.2d 667, 669-70 (R.I. 1999). As such, this Court may properly resolve statute of limitations questions at the Summary Judgment stage. See id.

Section 9-1-13 sets forth the statute of limitations for actions for breach of fiduciary duty. See Mendes v. Factor, 41 A.3d 994, 1004 (R.I. 2012); Levin v. Kilborn, 756 A.2d 169, 173-74 (R.I. 2000). Section 9-1-13 states: "Except as otherwise specially provided, all civil actions shall be commenced within ten (10) years next after the cause of action shall accrue, and not after." Sec. 9-1-13 (emphasis added). This statute of limitations applies to common law claims for breach of fiduciary duty as well as to other contractual claims. See Church v. McBurney, 513 A.2d 22, 24-26 (R.I. 1986) (applying § 9-1-13 to legal malpractice claim because right existed by reason of contractual relationship). Accordingly, the statute of limitations only bars Branson's claim for breach of fiduciary duty if she brought her action more than ten years after her claim accrued. See Levin, 756 A.2d at 173-74.

Branson does not designate a specific period when Louttit's alleged breach of fiduciary duty occurred. For the sake of this Motion, therefore, this Court assumes that Branson's allegations cover the entirety of Louttit's service as trustee. Louttit became trustee on December 19, 2000. Branson filed her claim on August 31, 2009. As such, approximately eight and a half years elapsed between Louttit's assumption of the trusteeship and the date of Branson's suit. The entirety of Louttit's trusteeship, therefore, falls within the applicable ten-year limitations period. Accordingly, the statute of limitations does not bar Branson's breach of fiduciary duty claim against Louttit. Louttit's Motion for Summary Judgment on Branson's breach of fiduciary duty claim is

denied.[9]

C

Damages Claims

Louttit argues that this Court must grant her Motion for Summary Judgment on Branson's request for compensatory and punitive damages because Branson's claims are equitable and do not contemplate damages. This Court agrees that damages are not an appropriate remedy in actions proceeding under the equitable doctrines of lack of capacity or undue influence. See, e.g., Lavoie v. N. E. Knitting, Inc., 918 A.2d 225, 228 (R.I. 2007) ("[U]ndue influence is not a cause of action at law entitling [plaintiff] to damages."). Therefore, even if Branson prevails in her equitable action to void the Trust Amendments and the FLP Gifts, she cannot receive damages. See id. Accordingly, this Court grants Louttit's Motion for Summary Judgment to the extent Branson seeks money

[9] Louttit contends that McDonald v. Rhode Island General Council on Behalf of Public Service Employees Local Union No. 1033 of the Laborers International Union of North America, AFL-CIO, 505 A.2d 1176, 1180 (R.I. 1986), establishes a three year limitations period for breach of fiduciary duty claims. The McDonald Court held that a union's breach of its duty to fairly represent a member's interests constituted an injury to rights inherent in the member's person. See id. at 1179-1180. As such, the Court concluded that the three year limitations period for personal injury actions applied. See id. The McDonald rule, if applicable, would require dismissal of any breach of fiduciary duty claim against Louttit which accrued more than three years before Branson filed her claim.

This Court, however, does not consider the McDonald rule applicable to the present action. What statute of limitations applies in a given case depends on whether the plaintiff's rights inhere in their status as a person or accrue from a relationship that is contractual in nature. See Church, 513 A.2d at 24-25. A ten year statute of limitations applies to injuries to rights that are contractual in nature, § 9-1-13, while a three year statute of limitations applies to injuries to one's person. Sec. 9-1-14. Here, Branson's breach of fiduciary duty claim arises from her status as a beneficiary under a trust, rather than an injury to any right inherent to her as a person. See Church, 513 A.2d at 24. Absent the trust, Louttit would owe Branson no duty. Accordingly, this Court concludes that Branson's rights under the trust are analogous to contractual rights and holds the ten-year statute of limitations applicable. See id. at 24-26 (applying § 9-1-13 to legal malpractice claim because no duty could have been breached absent a contractual relationship). McDonald does not control.

damages as a remedy for her equitable claims.[10]

Breach of fiduciary duty claims, however, "sound in tort" and are compensable through damages.[11] See Zuba v. Pawtucket Credit Union, 941 A.2d 167, 173 (R.I. 2008) (observing that breach of fiduciary duty claims sound in tort); see also Restatement (Second) of Torts § 874 cmt. b ("A fiduciary who commits a breach of his duty as a fiduciary is guilty of tortious conduct to the person for whom he should act [and] the beneficiary is entitled to tort damages for harm caused by the breach . . . ."). Punitive damages are also available in breach of fiduciary duty claims. See Ross-Simons of Warwick, Inc. v. Baccarat, Inc., 182 F.R.D. 386, 403 (D.R.I. 1998). As such, this Court denies Louttit's Motion for Summary Judgment with regard to Branson's request for damages on Branson's breach of fiduciary duty claim.[12]

[10] Despite the fact that Branson's equitable claims do not qualify for money damages, this Court observes that equity does provide "an action for restitution . . . ." Lavoie, 918 A.2d at 229.

[11] Louttit cites In re American Bridge Products, Inc., 599 F.3d 1, 6 (1st Cir. 2010), for the proposition that claims "against a trustee for breach of fiduciary duty are typically equitable claims." Although "the remedy of a beneficiary against a [breaching] trustee is ordinarily in equity," the beneficiary is nonetheless entitled to "tort damages." Restatement (Second) of Torts § 874 cmt. b. The Rhode Island Supreme Court bolstered this proposition in Zuba v. Pawtucket Credit Union, 941 A.2d 167, 173 (R.I. 2008). There, the Court observed that claims for breach of fiduciary duty "sound in tort." This Court is bound by our Supreme Court's decisions. Zuba, therefore, not American Bridge Products, controls this Court's analysis.

[12] Louttit asks this Court to grant her Summary Judgment on Branson's request for attorney's fees because Branson "has not pled any allegation that would obviate the American Rule that each side is responsible for payment of their own attorney's fees." Louttit, however, does not develop this argument further, nor does she cite to any applicable precedent. This Court will not make Louttit's case for her. Accordingly, this Court declines to consider questions of attorney's fees at this time.

IV

Conclusion

For the foregoing reasons, this Court grants Defendant Marion P. Louttit's Motion for Summary Judgment against Plaintiff Wenda Branson in part and denies it in part. Branson cannot receive money damages on her equitable claims to void the Trust Amendments from February and August 2001 and the FLP Gifts from December 2000 and January 2001. Accordingly, this Court grants Louttit's Motion for Summary Judgment to the extent Branson seeks monetary damages on her equitable claims. Louttit's Motion is denied in all other respects. Counsel shall submit an appropriate Order for entry.