

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

JODI LYNN FOSTER WALKER,)
)
Plaintiff,)
)
v.) Civil Action No. 03-795-KAJ
)
THE NORTHERN TRUST COMPANY,)
)
TRUSTEE, PHYLLIS FOSTER,)
)
LAWRENCE T. FOSTER, HENRY T.)
MATHER, JR., MEMBERS OF ADVISORY)
COMMITTEE OF JAMES R. FOSTER)
TRUST FOR JODI LYNN FOSTER)
CREATED DECEMBER 26, 1978 AND)
JAMES R. FOSTER, Individually,)
)
Defendants.)

MEMORANDUM ORDER

Presently before me is a Motion to Dismiss filed by defendant The Northern Trust Company (“Northern Trust”). (Docket Item [“D.I.”] 14.) Also before me is a Motion to Dismiss filed by defendants Phyllis Foster, Lawrence T. Foster, Henry T. Mather and James R. Foster (collectively, “the Individual Defendants”). (D.I. 31.) For the reasons that follow, both Motions to Dismiss will be granted.

Plaintiff filed this civil action on August 8, 2003, asserting claims for breach of fiduciary duty against all of the defendants. (See D.I. 1.) On the same day that Plaintiff filed this action, she also filed another action asserting claims for breach of fiduciary duty against the same Individual Defendants and, in lieu of Northern Trust, West Michigan National Bank & Trust. Chief Judge Sue L. Robinson granted the defendants’ Motion to Dismiss in that case on July 1, 2004. See *Walker v. West Michigan Nat. Bank & Trust*, 2004 WL 1551470 (D. Del. July 1, 2004) (hereinafter referred to as “the West

Michigan case”). On July 8, 2004, I received a letter from counsel for the Individual Defendants in this case, advising me of Chief Judge Robinson’s opinion, and stating that she had “dismissed a complaint in an action involving the same plaintiff and similar factual and legal issues to this Action”. (D.I. 57.)

Chief Judge Robinson’s opinion and the parties’ briefing in both cases make clear that the two cases are nearly factually and legally identical.¹ Northern Trust and the Individual Defendants move to dismiss the Plaintiff’s complaint for lack of personal jurisdiction and failure to state a claim upon which relief may be granted. (See D.I. 15 at 10, 30; D.I. 32 at 7, 19.) They also argue that Plaintiff’s claims are time-barred by the applicable statute of limitations and by the doctrine of laches. (See D.I. 15 at 26-27; D.I. 32 at 14-17.) Plaintiff defends against Northern Trust’s and the Individual Defendant’s Motion to Dismiss on the same grounds as she did in the West Michigan case. (See *generally* D.I. 37.)

Given that the facts and legal arguments in both cases are almost indistinguishable, the arguments that were successfully advanced by the defendants in the West Michigan case, see *Walker*, 2004 WL 1551470 at *3 -*5, are also successful

¹One difference is that Plaintiff makes no allegations in this case that support exercising personal jurisdiction over defendant James R. Foster (see D.I. 1, D.I. 57 at 2), while in the West Michigan case she did, see *Walker*, 2004 WL 1551470 at *3 (finding personal jurisdiction over defendant Foster). Another difference is that, in this case, Plaintiff alleges that defendant James R. Foster violated his fiduciary duties by placing her under “economic duress” (D.I. 1, ¶ 18), an allegation which she did not make in the West Michigan case. Even if this were a viable claim, the statute of limitations on it has long since run, and Plaintiff has not set forth any persuasive argument for it to be tolled. (See D.I. 37 at 20-21.) These distinctions, however, do not obviate the applicability to this case of Chief Judge Robinson’s conclusions in the West Michigan case.

for the defendants in this case. For all of the reasons set forth in Chief Judge Robinson's opinion, it is hereby ORDERED that Northern Trust's Motion to Dismiss (D.I. 14) is GRANTED and the Individual Defendants' Motion to Dismiss (D.I. 31) is GRANTED.

Kent A. Jordan
UNITED STATES DISTRICT JUDGE

Wilmington, Delaware
July 14, 2004