VIRGINIA:

IN THE CIRCUIT COURT FOR FAIRFAX COUNTY

THOMAS BAILES, Executor, *et. al.*, *Plaintiffs,* v. SANDRA GROVE, Executor, *et. al.*, *Defendants.*	Case No. CL-2026-2017

MEMORANDUM OPINION AND ORDER DENYING DEFENDANT MILES' PLEA IN BAR ON THE GROUND OF LIMITATIONS

This matter came before the Court on the plea in bar of Defendant Kathy Miles raising limitations as an absolute bar to Plaintiff's claim against her for unjust enrichment under an Amended Complaint filed April 29, 2026.

BACKGROUND

Plaintiff, who is executor for the estate of William J. Bailes, Jr. ("Bailes"), Trustee of various Bailes-related Trusts, and former conservator and guardian for Bailes, contends that Mona Irvin ("Irvin") engaged in a course of conduct to enrich herself and her daughter Kathy Miles ("Miles") while Irvin was serving as agent for Bailes and as trustee of two trusts in which Bailes had beneficial interests.

Plaintiff filed a Complaint against Irvin's estate and Miles on February 4, 2026. An Amended Complaint was filed April 29, 2026. While both pleadings largely focus on Irvin's alleged malfeasance, Count VIII of each pleading alleges Miles was unjustly enriched to the proverbial tune of $663,000 as the result of transactions spanning a timeframe from 2017 to October 2022. Specifically, the pleadings cite the following transactions as the basis for Count

VIII against Miles:

1. Miles' receipt of real property and bank statements/funds in or about April 2017 (the "April 2017 Transactions")

2. Miles' receipt of bank transfers and/or bank accounts from July 2018 to September 2021 (the "2017-2021 Transactions")

3. Miles' receipt of monies from bank accounts on or about October 22, 2022 (the "2022 Bank Transactions")

The Amended Complaint alleges that Bailes began suffering from cognitive impairments and that by 2017 his dementia and other neurocognitive issues prevented him from managing his own financial affairs. It further alleges that from 2017 to 2020 Bailes' mental faculties continued to decompensate and Miles was well aware of the situation. In 2022, Plaintiff filed a petition for appointment of a guardian and conservator for Bailes and the latter was adjudicated incapacitated on July 1, 2022. Accordingly, at that time Plaintiff qualified as his guardian and conservator and had the statutory power to assert claims on Bailes' behalf against third parties. *See* Va. Code § 64.2-2024.

On September 3, 2022, Plaintiff filed an action for accounting against Irvin, but Irvin passed away on October 14, 2022. On September 24, 2023, upon motion by Plaintiff, a personal representative was appointed for Irvin. On September 19, 2024, Plaintiff filed suit against Irvin's estate, but not Miles, subsequently taking a nonsuit on August 5, 2025.

Bailes died September 16, 2025, and Plaintiff became his personal representative on December 16, 2025.

DISCUSSION

A plea in bar asserts a single issue which, if proven, creates a bar to the plaintiff's recovery. *Massenburg v. City of Petersburg*, 298 Va. 212, 217 (2019). The party asserting the plea in bar carries the burden of proof. *Id.* Where no evidence is taken in support of a plea in bar, the analysis is functionally like the review of a demurrer. That is to say, the trial court considers solely the pleadings in resolving the issue presented, the facts stated in the plaintiff's complaint are deemed true, and the plaintiff receives the benefit of all "reasonable factual inferences that can be drawn" from such a view of the facts. *Montalla, LLC v. Commonwealth*, 303 Va. 150, 164 (2024); *Massenburg*, 298 Va. at 217.

There is no dispute that the statute of limitations for unjust enrichment is three years. Thus, under normal circumstances the last date to sue Miles for the three clusters of transactions identified in the Amended Complaint would have been April 2020, September 2024, and October 22, 2025, respectively. However, Miles acknowledges Bailes was under a disability at least as of July 1, 2022, when this Court found him to be incapacitated. As discussed below, Virginia law generally tolls the running of any limitations periods during the pendency of an individual's disability. *See* Va. Code §§ 8.01-229(A)(1-2). Thus, Miles argues that October 22, 2025, was the last date by which suit could have been brought on any of the claims in Count VIII. Because the original Complaint was not filed until February 4, 2026, Miles argues that limitations completely bar the claims against her.

The Court disagrees with the scope of Miles' argument. The Amended Complaint clearly alleges that Bailes suffered from dementia and other neurocognitive conditions and by 2017 he was incapacitated. Given the posture of the case, the Court accepts these allegations as true and views them in the light most favorable to Plaintiff, the non-moving party. Thus, Miles' protestation that Bailes was not formally declared incapacitated until July 1, 2022, evaporates in light of Plaintiff's allegation that Bailes' incapacity existed in 2017. If Miles wished to challenge the date of incapacity, it was incumbent upon her to request an evidentiary hearing. Because she did not, the Court must presume Bailes was disabled since at least 2017.

Because Bailes was under a disability when the causes of action for unjust enrichment allegedly accrued, the statute of limitations was tolled automatically until such time, if ever, when the disability was "removed." Va. Code § 8.01-229(A)(1). To the Court's knowledge, no Virginia statute expressly discusses whether the appointment of a conservator, guardian or committee with the power to sue should be considered an event that actually or constructively "removes" a disability from a person otherwise entitled to sue upon a cause of action post-dating his or her disability. However, other statutes moot the need to answer this question.

Where, as here, a conservator is appointed for a person under a disability, the latter's "estate" is surrendered to the fiduciary for the duration of the disability. Under Va. Code § 64.2-2024:

> Subject to any conditions or limitations set forth in the order appointing him, the fiduciary shall take possession of the incapacitated person's estate and may sue and be sued in respect to all claims or demands of every nature in favor of or against the incapacitated person and the incapacitated person's estate.

Upon the incapacitated person's restoration to capacity, the conservator must surrender back the estate, including any causes of action. Va. Code § 64.2-2026(A). If the disabled person dies before restoration, the conservator must surrender real estate to the decedent's heirs or devisees and personal estate to the decedent's personal representative. Va. Code § 64.2-2026(B). In each of these situations, the incapacitated person's agency is transferred to an individual who is able to act.

While it can be argued the disability is effectively "removed" when a conservator is appointed, it is not literally true. What really happens is that the disability remains a fact, but the disabled person is divested of his or her legal, but not beneficial, interest in any claims contained within the estate. Once divestment occurs, the claims must be brought by the disabled person's fiduciary within the limitations period or they *may* be forever barred under familiar principles.[1] If they become barred, and the person subject to a disability recovers, the only claims which may be surrendered back are those for which the statute of limitations has run.

In this case, Bailes surrendered the legal interest in his estate to his conservator, Plaintiff, on July 1, 2022. This fiducial transfer included any claims Bailes had against Miles. The conservator had three years from his appointment (*i.e.,* until July 1, 2025) to sue Miles on a cause of action for unjust enrichment arising from pre-appointment conduct. Similarly, the conservator (or his successor, Bailes' personal representative) had three years in which to bring suit from the date subsequent causes of action arose.

The present lawsuit was filed outside these timeframes. Specifically, the statute of limitations would have run no later than July 1, 2025, for the April 2017 Transactions and the 2017-2021 Transactions. With respect to the 2022 Bank Transaction, limitations would have run no later than October 22, 2025.[2] However, suit was not brought against Miles until February 4, 2026.

Notwithstanding the foregoing, Plaintiff contends various grounds for tolling exist that render his lawsuit against Miles timely. For example, Plaintiff contends that he had to delay his action against Miles because Irvin was a necessary party to any such suit and no personal

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[1] Limitations is not an automatic defense. It must be raised.

[2] As discussed, any claims legally owned by Bailes' conservator would be transferred by operation of law upon Bailes' death to Bailes' personal representative. The transfers would have been attended by the ticking clock of limitations unaffected by the tolling normally accorded to a personal representative under Va. Code § 8.01-229(B)(1). When Bailes died, his estate had already been transferred to Plaintiff for purposes of litigation and thus he did not die while "entitled to bring" a cause of action within the meaning of the foregoing statute.

representative was appointed for Irvin until September 19, 2023.[3] Even if true, there is no reason Plaintiff could not have sued Miles within the limitations period and sought a stay of the case generally until the appointment of a personal representative for Irvin had occurred. Similarly, Plaintiff could have simply moved the Court to appoint a representative for Irvin sooner than he actually did. The Court finds Plaintiff's other attempts to resort to tolling based on Irvin to be unavailing as to Miles.

However, none of the foregoing ends the analysis. Va. Code § 64.2-796(D) states as follows:

> Whenever fraud has been perpetrated in connection with any proceeding or in any statement filed under this chapter, or if fraud is used to avoid or circumvent the provisions or purposes of this chapter, any person injured thereby may obtain appropriate relief against the perpetrator of the fraud or restitution from any person benefiting from the fraud, whether innocent or not, except for a bona fide purchaser. Any proceeding shall be commenced within two years after the fraud is discovered, but no proceeding may be brought against one not a perpetrator of the fraud later than five years after the time the fraud is committed.

Plaintiff's Amended Complaint alleges that the transactions addressed herein "gave rise to a presumption of fraud and undue influence" and that:

> Miles was full[y] aware of the transactions and Bailes' cognitive impairments, which were sufficient[ly] suspicious to prompt her to inquire before participating in and benefitting from the transactions, which would have revealed that the transactions were improper and fraudulent . . . . Miles . . . sought to conceal or inhibit the Plaintiff's proper efforts to obtain information and records concerning Bailes and any transactions affecting his financial interest.

In addition, in paragraph 152 of the Amended Complaint Plaintiff specifically alleges that "Miles concealed . . . information" related to the challenged transactions. As discussed at the outset of this Memorandum Opinion, because this matter was submitted for decision without a

[3] No action could be brought against Irvin once she became deceased. It could only be brought against her estate.

hearing or evidence, the Court is required to view the non-conclusory allegations (*e.g.*, "sought to conceal" and "concealed") as true and to view them in the light most favorable to Plaintiff. The result is that only Plaintiff's *trust-related* claims are potentially saved by application of the provisions of Va. Code § 64.2-796(D) because Va. Code § 64.2-796 only saves claims arising under "Chapter 7" of Title 64.2, *i.e.*, the Virginia Uniform Trust Code.

Unfortunately, what claims are "trust-related" is not terribly transparent to the Court. Put another way, while Plaintiff seeks $663,567 from Miles, it is not clear to the Court how much of the requested recovery stems from acts allegedly "perpetrated in connection with any proceeding or in any statement filed under" the Virginia Uniform Trust Code. While at first blush that seems like an issue for Plaintiff given the failure of the Amended Complaint to clearly itemize the source of Plaintiff's alleged losses, the burden of proof on the plea in bar belongs to Miles. Thus, because the Court does not know what damages in Count VIII are subject to limitations, the evidence deficit means that Miles has not carried her burden.

For the foregoing reasons, the plea in bar is hereby DENIED and this matter is CONTINUED. The signatures of counsel for the parties are hereby dispensed with under Rule 1:13.

[redacted]

June 30, 2026
Fairfax, Virginia

Timothy J. McEvoy
Judge, Circuit Court for Fairfax County