
A trustee holds legal title to property for the benefit of another, and consequently has the power to bring actions at law against third parties who harm the trust property.1 These legal actions are restricted by the statute of limitations applicable to tort or contract matters.2 The trustee is also personally liable in equity to the beneficiary for any internal breaches of fiduciary duty, such as a breach of the duty of loyalty.3 Equitable actions by beneficiaries against trustees have typically been subject to the doctrine of laches, which requires the beneficiary to bring suit within a reasonable time after gaining actual knowledge of the trustee’s breach.4 In O’Connor v. Redstone,5 the Supreme Judicial Court of Massachusetts considered whether a successor trustee’s knowledge of a predecessor trustee’s breach of fiduciary duty is sufficient to begin running the statute of limitations against beneficiaries who have no actual knowledge of such breaches.6 In a departure from common-law principles pertaining to the separation of legal and equitable claims, the court held that the statute of limitations runs against the beneficiary when the successor trustee knows of the predecessor’s breach.7

In 1959, Michael Redstone (Mickey) formed National Amusements, Inc.

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2. See 4 AUSTIN WAKEMAN SCOTT ET AL., SCOTT AND ASCHER ON TRUSTS § 24.24.2 (5th ed. 2008) [hereinafter 4 SCOTT] (describing various statutes of limitations in context of trusts). The statute of limitations is a partial codification of the doctrine of laches that sets forth a specific time frame within which a plaintiff must bring suit. Id. Many states have enacted specific statutes of limitations governing the trustee/beneficiary relationship. See, e.g., UNIF. TRUST CODE § 1005 (2000) (barring claim for breach of trust after one year when beneficiary receives adequate notification); FLA. STAT. ANN. § 736.1008 (West 2009) (requiring commencement of action for breach of trust within six months after full disclosure); Ga. Code Ann. § 9-3-27 (West 2008) (mandating action within ten years after accrual of right). Massachusetts has not enacted a specific statute of limitations relating to actions by a trustee against a beneficiary; therefore, the general statute of limitations for torts will apply. See MASS. GEN. LAWS ch. 260, § 2A (2009).

3. See ROUNDS & ROUNDS, supra note 1, at § 7.2 (detailing liability of trustee for internal breaches of trust).

4. See 4 SCOTT, supra note 2, at §§ 24.24.1, 24.24.2 (describing laches in trust context). The doctrine of laches bars a plaintiff from seeking damages if the plaintiff waits for so long to bring suit that it would be inequitable to allow him or her to continue. Id. The plaintiff must have actual knowledge of the harm because “[l]aches will not be imputed to one who has been justifiably ignorant of the facts creating his right or cause of action, and who, therefore, has failed to assert it.” Alexander v. Phillips Petroleum Co., 130 F.2d 593, 606 (10th Cir. 1942).


6. Id. at 607-08.

7. See id. at 608.
(NAI) and issued three hundred shares of stock: one hundred registered in his own name and one hundred registered in the names of each of his two sons, Sumner Redstone and Edward Redstone. In 1971, a dispute arose among Edward, Sumner, and Mickey over the operation and direction of NAI, resulting in Edward terminating his relationship with the company. Upon his separation from NAI, Edward demanded but did not receive the 100 shares registered in his name and hired attorney James DeGiacomo to assist him in settling the dispute.

DeGiacomo negotiated a settlement between Edward and NAI (the 1972 Agreement) wherein Edward agreed to place one-third of the stock registered in his name in trust for the benefit of his children (the Michael Trust and the Ruth Ann trust) and to sell the remaining two-thirds of the shares back to NAI. Ten years later, Sumner, acting as trustee of the Ruth Ann and Michael Trusts, appointed DeGiacomo as independent counsel to determine whether redeeming the NAI shares held by the trusts was in the best interest of the beneficiaries and to determine the fair market value of said shares. After extensive research by DeGiacomo and fierce negotiations between Sumner and DeGiacomo, Sumner agreed to NAI’s redemption of the shares for $15 million (the 1984 redemption). Immediately following the 1984 redemption, Sumner resigned as trustee of the Ruth Ann Trust and appointed DeGiacomo as successor trustee of the Ruth Ann trust and co-trustee of the Michael trust.

In 2006, the current trustees of the Michael and Ruth Ann trusts brought suit against Sumner, Edward, and NAI, alleging that Edward had wrongfully converted shares of NAI being held in trust for Ruth Ann and Michael, and that Sumner had breached his fiduciary duty of loyalty by orchestrating the 1984 redemption for his own benefit. The trial court granted summary judgment in

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8. See id. at 599-600.


10. See O’Connor v. Redstone, No. 06-4606 BLS 1 at *1 (Mass. Super. July 27, 2007) (documenting dispute over NAI shares), aff’d, 896 N.E.2d 595 (Mass. 2008). Edward and NAI disagreed over the number of shares being held in Edward’s name. See 896 N.E.2d at 600. The disagreement stemmed from Mickey and Sumner’s claim that when Mickey issued stock to his sons he had also created oral trusts for the benefit of his grandchildren, whereby each son held fifty of their one hundred shares in trust for the benefit of their respective children. Id.

11. See 896 N.E.2d at 600-01 (detailing 1972 Agreement). As part of the 1972 Agreement, Sumner was named trustee of the Michael and Ruth Ann trusts. Id. at 601. After the parties finalized the 1972 Agreement, DeGiacomo met with Ruth Ann and explained that there was a “dispute over the ownership of the shares” in her trust; however, he did not speak to Michael, Shari, or Brent regarding the transaction. See O’Connor v. Redstone, No. 06-4606 BLS 1 at *2 (Mass. Super. July 27, 2007), aff’d, 896 N.E.2d 595 (Mass. 2008).

12. See 896 N.E.2d at 602.

13. See id. at 603-04. Following the 1984 redemption, Sumner was the majority shareholder of NAI. Id. at 600-04.


15. See id. at 598.
favor of the defendants, concluding that the statute of limitations barred the plaintiffs’ claims. The court determined that the statute of limitations began to run when DeGiacomo gained sufficient knowledge about Edward and Sumner’s actions to bring a claim against them for breach of their fiduciary duties. On appeal by the trustees of the Ruth Ann and Michael trusts, the Supreme Judicial Court of Massachusetts concluded that the limitations period commenced when DeGiacomo began his successor trusteeship.

Modern common law identifies the trust as a “fiduciary relationship with respect to property.” While holding legal title to the trust property, the trustee is bound by equitable fiduciary duties to act for the sole benefit of the beneficiary and is personally liable to the beneficiary for injury to the trust estate caused by the trustee’s intentional breaches of these fiduciary duties. One such duty is the duty to bring claims against any third party who causes harm to the trust property. In the event a trustee fails to bring a claim against a third party, the beneficiary can bring suit against the third party on behalf of the trust and can also hold the trustee personally liable for his or her breach of fiduciary duty.

A trustee may resign in accordance with the terms of the trust. Upon the trustee’s resignation, all express and implied powers vested in the original

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16. Id. at 599.
18. See 896 N.E.2d at 610-11.
20. See Rounds & Rounds, supra note 1, at § 6.1 (describing duties of trustee). A fiduciary relationship consists of many specific duties: the duty to act prudently; the duty to carry out the terms of the trust; the duty to be loyal to the trust; the duty not to delegate; and the duty to account to the beneficiaries. Id; see also MASS. GEN. LAWS ch. 203, § 14A (2006) (defining when trustee is personally liable). Under common law and Massachusetts statutory law, a trustee “shall be personally liable for obligations arising from ownership or control of property of the trust estate.” Ch. 203, § 14A. Liability to the beneficiary for breaches arising out of injury caused to the trust property is known as internal liability. See Rounds & Rounds, supra note 1 at, § 7.2.
21. See Rounds & Rounds, supra note 1, at § 6.2.1.3 (describing trustee’s ability to bring suit against third party). This power is based upon the trustee’s duty to protect and preserve the trust property. Id.
22. See, e.g., RESTATEMENT (SECOND) OF TRUSTS § 282 (1959) (stating when beneficiary may bring claim against third party); Rounds & Rounds, supra note 1, at § 5.4.1.8 (discussing instances wherein beneficiary may bring suit against third party); 5 AUSTIN WAKEMAN SCOTT ET AL., SCOTT AND ASCHER ON TRUSTS § 28.2 (5th ed. 2008) [hereinafter 5 SCOTT] (enumerating situations in which beneficiary has right to sue). The Restatement of Trusts explains that ordinarily the trustee protects the interests of the beneficiary against third persons acting adversely to the trustee. RESTATEMENT (SECOND) OF TRUSTS § 282 cmt. a (1959).
23. See Rounds & Rounds, supra note 1 at, § 3.4.3 (addressing methods of trust termination). A trustee must obtain either the consent of the settlor, permission from the court, or consent from all of the beneficiaries of the trust to resign. Id.
trustee will pass to the successor trustee; however, the original trustee is still liable for acts or omissions committed during his trusteeship, and continues to hold residual equitable fiduciary obligations to the beneficiary.24 Once the successor trustee accepts the trusteeship, he or she has a duty to the beneficiaries to bring suit to remedy any breach of trust committed during the predecessor trustee’s tenure.25 While the successor trustee is not liable for the acts of his or her predecessor, the beneficiaries have a cause of action against the successor trustee for breaching his or her own fiduciary duties.26 Jurisdictions vary in their treatment of former trustees; some courts identify a former trustee as a third party with no residual duties to the beneficiaries, while other courts indicate that a former trustee will always have some fiduciary duties to the beneficiaries for the duration of the trust and therefore cannot be a third party.27

The equitable doctrine of laches and the statute of limitations are both the result of public policy favoring timely actions to remediate wrongs.28 Under common law, the statute of limitations will not bar the beneficiary from

24. See UNIF. TRUST CODE § 705 (2000) (addressing resignation of trustee); RESTATEMENT (THIRD) OF TRUSTS § 36 (2003) (determining when trustee may properly resign); RESTATEMENT (THIRD) OF TRUSTS § 36 cmt. d (discussing liability and duties of resigning trustee); ROUNDS & ROUNDS, supra note 1, at § 3.4.4.3 (demonstrating transfer of powers between original trustee and successor trustee); GEORGE GLEASON BOGERT ET AL., BOGERT’S TRUSTS AND TRUSTEES § 513 (2d ed. 1977) [hereinafter BOGERT] (discussing liability of trustee after resignation). Common law provides that “resignation does not involve a release of liability for past acts of the trustee, but merely excuses the resigning trustee from the duty to act further.” BOGERT, supra, at § 513.

25. See BOGERT, supra note 24, at § 583 (illuminating duty of successor trustee to inquire into acts of predecessor); see also ROUNDS & ROUNDS, supra note 1, at § 7.2.4 (describing duty to request accounting and duty to bring suit to remedy breaches of trust).

26. See RESTATEMENT (SECOND) OF TRUSTS § 223 (2003) (examining liability of successor trustee for failure to bring suit against predecessor); ROUNDS & ROUNDS, supra note 1, at § 7.2.4 (setting forth successor’s breach of duty for failure to hold predecessor liable); 4 SCOTT, supra note 2, at § 24.28, (articulating liability of successor trustee); 5 SCOTT, supra note 2, at § 28.2 (describing right of beneficiary to sue breaching trustee).

27. Compare Axelrod v. Giambalvo, 472 N.E.2d 840, 845 (Ill. App. Ct. 1984) (concluding former trustees third persons in relation to trust), and Slaughter v. Swicegood, 591 S.E.2d 577, 583 (N.C. Ct. App. 2004) (stating former trustees constitute third parties to trust), and Godfrey v. Kamin, No. 99 C 3230 2000 WL 1847768, at *3 (N.D.Ill. Dec. 14. 2000) (reasoning former trustees are third persons in relation to trust due to lack of title), with RESTATEMENT (THIRD) OF TRUSTS § 2 reporters notes cmt. i (2003) (comparing trustee’s obligation to trust asset). “[A] trustee’s obligation to a trust constitutes an asset of the trust estate, whether that trustee continues administering the trust or is replaced by a successor trustee.” RESTATEMENT (THIRD) OF TRUSTS § 2 reporters notes cmt. i (2003); ROUNDS & ROUNDS, supra note 1, at § 6.1.5.2 (setting forth trustee’s duty to keep and render accounts, even upon change of trustee); ROUNDS & ROUNDS, supra note 1, at § 6.2.3 (discussing fiduciary duty of confidentiality). A useful example of the concept that a trustee still holds fiduciary duties even after resignation is to analogize to the agency principles underlying an attorney-client relationship. Cf. ROUNDS & ROUNDS, supra note 1, at § 2.3, (comparing residual fiduciary obligations to an asset of trust). Upon termination of the relationship, an attorney still has the duty to his former client to remain confidential and to provide information requested by the client. See generally RESTATEMENT (THIRD) OF AGENCY § 8.01 cmt. c (2006) (providing agent may be subjected to post termination duties).

28. See Doe v. Harbor Schs., Inc., 843 N.E.2d 1058, 1066 (Mass. 2006) (recognizing public policy behind statutes of limitations). “[Statutes of limitations] represent society’s considered, although often far from perfect, compromise between a plaintiff’s need to remedeate wrongs and society’s need for closure and forward movement.” Id.
bringing claims against the trustee until the beneficiary has actual knowledge of the harm he or she sustained.\(^{29}\) The actual knowledge requirement, as recognized in many jurisdictions, including Massachusetts in *Lattuca v. Robsham*,\(^{30}\) protects the beneficiary’s expectation that the trustee acts in his or her best interest by tolling the statute of limitations for equitable claims until the beneficiary has knowledge of the harm in question.\(^{31}\) Section 237 of *The Restatement of Trusts* indicates that the statute of limitations also applies to legal claims between the trustee and third parties which can prevent the beneficiary from bringing suit against the third party.\(^{32}\) In *McPherson v. McPherson*,\(^{33}\) the Arkansas Supreme Court refused to preclude claims against former trustees under section 327, indicating that a fair reading of the section only precluded legal claims by beneficiaries against third parties.\(^{34}\) In situations involving legal claims against third parties, the statute of limitations runs when the trustee has actual knowledge of the harm.\(^{35}\)

In *O’Connor v. Redstone*, the Supreme Judicial Court of Massachusetts considered whether a successor trustee’s knowledge of breaches of fiduciary

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29. See *Restatement (Second) of Trusts* § 219 cmt. c (1959) (reviewing elements of laches of beneficiary). Courts may consider other factors in barring claims such as the length of time elapsed between breach of trust and bringing suit; whether the plaintiff was under an incapacity such as minority or mental status; reasons for delay; and hardship to parties involved. *Id.*; cf. *McPherson v. McPherson* 523 S.W.2d 623, 628 (Ark. 1975) (articulating repudiation of trust doctrine). The repudiation of trust doctrine establishes the general rule that the statute of limitations will not run between a trustee and beneficiary until the trustee repudiates the trust and the beneficiary has knowledge of the repudiation. See *McPherson v. McPherson* 523 S.W.2d 623, 628 (Ark. 1975).


31. See *id.* at 884 (asserting cause of action does not accrue until beneficiary has actual knowledge of fiduciary’s breach); see also *Doe v. Harbor Schs., Inc.* 843 N.E.2d 1058, 1065 (Mass. 2006) (noting court tolls statute of limitations “until a plaintiff has actual knowledge”); *Demoulas v. Demoulas Super Mkts., Inc.* 677 N.E.2d 159, 174-75 (Mass. 1997) (stressing actual knowledge standard applies when plaintiff claims breach of fiduciary duty constitutes fraudulent concealment); cf. *Rounds & Rounds*, supra note 1, at § 6.1.5 (indicating statute of limitations tolled until beneficiary has knowledge). The actual knowledge doctrine is based upon the premise that a beneficiary is dependent upon the trustee to pursue claims against those who harm the trust and therefore cannot be punished for failing to bring suit within the appropriate time period. See *Knapp v. Knapp*, 100 P.2d 759, 759 (Cal. 1940) (observing beneficiary has right to rely on trustee’s representations); *Doe v. Harbor Schs., Inc.* 843 N.E.2d 1058, 1066 (Mass. 2006) (stating actual knowledge standard protects beneficiary’s legitimate expectation of protection). The Tenth Circuit has also weighed in on the similar matter of laches, noting that, “Laches will not be imputed to one who has been justifiably ignorant of the facts creating his right or cause of action, and who, therefore, has failed to assert it.” *Alexander v. Phillips Petroleum Co.*, 130 F.2d 593, 606 (10th Cir. 1940).

32. See *Restatement (Second) of Trusts* § 327 (1959) (stating beneficiary also barred if trustee barred by statute of limitations). This section only applies to legal claims against a third person with respect to trust property. *Id.*; see also *Rounds & Rounds*, supra note 1, at § 3.6 (noting successor trustee barred by statute of limitations when trustee fails to sue third party).

33. 523 S.W.2d 623 (Ark. 1975).

34. See *McPherson v. McPherson*, 523 S.W.2d 623, 629 (Ark. 1975) (rejecting argument claiming section 327 applies to equitable claim against former trustee).

35. See *Bogert*, supra note 24, at § 954 (stating statute of limitations typically tolled in third party claims until knowledge by trustee). In the event the trustee cannot or will not bring the cause of action for the benefit of the beneficiary, the court may permit the beneficiary to bring an action against the third party and the trustee. See *id.* at § 869.
duty by a predecessor trustee is sufficient to commence running the statute of limitations. The court initially recognized the actual knowledge doctrine in the context of a beneficiary directly pursuing an equitable claim against a trustee. After carefully distinguishing the fiduciary relationships between trustees, beneficiaries, and successor trustees, the court implicitly classified the former trustees in this case as a third party to the trust. The court concluded the beneficiary must rely upon the successor trustee to bring any claim against the former trustees due to their classification as third parties. The court reasoned the statute of limitations on the successor trustee’s claim against the predecessor begins to run when the successor trustee has sufficient knowledge to bring suit due to the successor’s duty to enforce such claims. In the event the trustee fails to bring suit against the predecessor within the time frame of the statute of limitations, the court held the beneficiaries will be barred as well.

Considering the facts and circumstances of the 1972 redemption, the court concluded the statute of limitations would not run against Ruth Ann and Michael based upon DeGiacomo’s knowledge of Edward’s actions due to the attorney-client relationship between Edward and DeGiacomo. Applying the rationale found in shareholder derivative suits, the court implied DeGiacomo could not be expected to implicate himself or his client in any breach of trust; therefore, the statute of limitations would not run based upon his knowledge of the circumstances surrounding the 1972 redemption. Moving on to the claims

36. See 896 N.E.2d 595 passim.
37. See id. at 607 (presenting foundational standard of inquiry). The court recognized this rule in Lattuca and Demoulas, holding the statute of limitations will not commence until the beneficiary has actual knowledge. Id.; Lattuca v. Robsham, 812 N.E.2d 877, 884 (Mass. 2004); Demoulas v. Demoulas Super Mkts., Inc., 677 N.E.2d 159, 173 (Mass. 1997); see also supra note 31 (describing actual knowledge doctrine).
38. See 896 N.E.2d at 608.
39. See id. at 607 (recognizing dependent status between beneficiary and trustee). The court reasoned that there is not a dependent relationship between the predecessor and successor trustee; therefore, there is no impediment stopping the successor from bringing suit against the predecessor. Id. The court based its conclusion that the beneficiary must rely on the successor trustee to bring suit against the trustee as third party on the Restatement view that "[w]here the trustee could maintain an action at law or suit in equity . . . against a third person . . ., the beneficiary cannot maintain an action at law against the third person." RESTATEMENT (SECOND) OF TRUSTS § 281(1) (1959).
40. 896 N.E.2d at 608.
41. See id. at 614; see also RESTATEMENT (SECOND) OF TRUSTS § 327 (1959) (recognizing beneficiary precluded from suing third party if trustee is barred by statute of limitations).
42. 896 N.E.2d at 611. The court reasoned that the underlying agency and fiduciary principles inherent in an attorney-client relationship required DeGiacomo to act on the behalf of his client Edward. See id.; see also RESTATEMENT (THIRD) OF AGENCY § 1.01 (2006) (stating agent acts on principal’s behalf and subject to principal’s control); RESTATEMENT (THIRD) OF LAW GOVERNING LAWYERS §§ 26 (2000) (suggesting lawyer’s act equivalent to client’s act in dealings with third persons).
43. 896 N.E.2d at 611; Demoulas v. Demoulas Super Mkts., Inc., 677 N.E.2d 159, 176 (Mass. 1997) (focusing on impracticality of corporate wrongdoers bringing suit against themselves). The Demoulas court reasoned that a corporation “is unable to act on its own behalf because it is under the control of the alleged wrongdoers.” Demoulas v. Demoulas Super Mkts., Inc., 677 N.E.2d 159, 176 (Mass. 1997). The court concluded the statute of limitations is tolled until “those who have the power and responsibility to act on the
against Sumner, the court found no reason to toll the statute of limitations because there was no disqualifying agency relationship between Sumner and DeGiacomo during the 1984 redemption. The court reasoned that DeGiacomo had ample access to information indicating Sumner’s breach of fiduciary duties as soon as he succeeded Sumner; therefore, DeGiacomo had a fiduciary duty to bring suit against him. Basing its reasoning on the assumption that former trustees are third parties to the trust, the court concluded a successor trustee’s knowledge of breaches of trust by a predecessor trustee is sufficient to commence the statute of limitations.

In O’Connor v. Redstone, the Supreme Judicial Court of Massachusetts drastically blurred the distinction between suits at law and suits in equity by concluding a former trustee is a third party to the trust in matters involving breaches of fiduciary duty. While it is well established that a beneficiary must rely on the trustee to maintain suits at law against third parties for tort actions or breach of contract claims, the beneficiary is not precluded from bringing an action in equity against a trustee for breach of fiduciary duty.

The court imprudently ignores the example the Supreme Court of Arkansas set in McPherson v. McPherson, which explicitly states that section 327 of The Restatement of Trusts “applies to a beneficiary’s action against a third person who benefited from the trust and does not apply to a beneficiary’s action against a wrong doing trustee.” Furthermore, the court’s reliance on case law defining a former trustee as a third party to the trust is misapplied. The cases cited in the court’s opinion involve the trustee’s dealings with third parties for legal claims such as breach of contract and fraud and, therefore, should not have been applied to the equitable claims in this case.

By comparing the corporations behalf” gain the requisite knowledge. The court in O’Connor analogized between the injured corporation in Demoulas and the beneficiaries of the Ruth Ann and Michael trusts. See 896 N.E.2d at 610. DeGiacomo, acting on behalf of Edward, assumed the role of the “interested” director in Demoulas; therefore, the court reasoned the statute of limitations will resultingly toll until a “disinterested” trustee takes over. See id.

44. See 896 N.E.2d at 613.
45. See id.
46. See id. at 614.
47. See 896 N.E.2d at 608-09.
48. See RESTATEMENT (SECOND) OF TRUSTS § 327 cmt. a (1959) (precluding beneficiary from bringing suit in law against third person). “If the trustee is barred by the Statute of Limitations from maintaining an action against a third person for a tort . . . or upon a contract . . . the beneficiary has no remedy against the third person.” Id; see also BOGERT, supra note 24, at § 954 (presenting trustee as proper plaintiff for legal claims). “[I]f a stranger to the trust appropriates trust funds . . . trespasses upon trust realty . . . negligently or intentionally damages trust property, or breaks a contract made with the trustee, a cause of action arises in favor of the trustee . . . .” BOGERT, supra note 24, at § 954.
49. 523 S.W.2d 623 (Ark. 1975).
50. See McPherson v. McPherson, 523 S.W.2d, 623, 629 (Ark. 1975). The McPherson court goes on to note the lack of cases “wherein the beneficiaries of a trust were barred by laches from suing a wrongdoing trustee because a co-trustee or successor trustee failed to sue within a reasonable time.” Id.
51. See 896 N.E.2d at 609 n.26 (listing cases identifying former trustees as third parties).
former trustee to a third party, the court failed to distinguish between the trustee’s internal equitable relationships with the beneficiaries and the trustee’s external legal relationships with third parties.53

The court incorrectly applied established trust law by ignoring the former trustee’s residual equitable fiduciary liabilities and obligations to the beneficiaries of the trust.54 One essential residual fiduciary obligation is the duty to account to the beneficiary, which cannot be extinguished by accounting to the successor trustee upon resignation.55 The duty to account to the beneficiary incorporates the duty of the trustee to report to the beneficiary about the trust property, and the duty to act honestly.56 By running the statute of limitations for the equitable claim based solely upon what the successor trustee knew, the court undermined the equitable duty of the former trustee to account to the beneficiary even after his resignation as fiduciary.57

Finally, the court’s conclusion wrongfully ignored its own precedent, set forth in Lattuca, of tolling the statute of limitations until the beneficiary has actual knowledge of the harm.58 The actual knowledge standard protects the vulnerable interests of the beneficiary while respecting the public policy of ensuring timely resolution of disputes.59 It is patently unfair for the court to allow the statute of limitations to run before the parties injured by the trustee’s actions reasonably knew or could have known that they were harmed.60

contract, technical violations of trust, failure to properly supervise employees); Turner v. Trust Co. of Georgia, 105 S.E.2d 22, 27 (Ga. 1958) (refusing to allow beneficiary to bring suit where trustee has discretion to abstain); Slaughter v. Swicegood, 591 S.E.2d 577, 580 (N.C. Ct. App. 2004) (claiming fraud, negligence, breach of contract). But see Godfrey v. Kamin, 2000 WL 1847768, at *4 (N.D. Ill. 2000) (finding trustees eligible to bring suit against former trustee). Godfrey is distinguishable from this case because the beneficiaries attempted to bring suit on behalf of the trust itself as opposed to bringing suit for themselves personally. Id.

53. See 896 N.E.2d at 608 (citing supporting sources relating to third parties); Rounds & Rounds, supra note 1, at §§ 7.2-7.3 (distinguishing trustee’s internal and external liabilities).

54. Restatement (Third) of Trusts § 36 cmt. d (2003) (discussing liability and duties of resigning trustee). “Resignation does not relieve the trustee from liability for breaches of trust committed prior to the time the resignation becomes effective.” Id. The residual fiduciary obligations include, but are not limited to the equitable duty of confidentiality, and most importantly, the equitable duty to account to the beneficiary. See Rounds & Rounds, supra note 1, at § 6.1.3.5 (explaining prohibition of successor trustee from exploiting information gained in course of trust administration); Rounds & Rounds, supra note 1, at § 6.1.5 (describing duty to account); cf. supra note 28 (comparing residual duties of attorneys to those of trustees).

55. See supra note 20 (describing trustee’s equitable duties).

56. See Rounds & Rounds, supra note 1, at § 6.1.5 (detailing broad meaning of the duty to account).

57. Rounds & Rounds, supra note 1, at § 7.2.10 (limitations of action by beneficiary against trustee).

“Where fiduciary self-dealing is involved [the statute of limitations is] unlikely to begin to run against the beneficiary until the beneficiary acquires a full subjective understanding of the applicable facts and law.” Id.

58. See Lattuca v. Robsham, 812 N.E.2d 877, 884 (Mass. 2004) (stating statute of limitations based on beneficiary’s knowledge). “We focus on what the plaintiff beneficiary actually knew, not what the trustee actually or constructively knew.” Id.; see also Doe v. Harbor Schs., Inc., 843 N.E.2d 1058, 1061 (Mass. 2006) (holding statute of limitations accrues when beneficiary has actual knowledge). The Harbor court concluded “[t]he actual knowledge standard should be applied to the claim for breach of fiduciary duty.” Id.

59. See supra note 32 and accompanying text (describing protection of beneficiary under actual knowledge doctrine); see also Doe v. Harbor Schs., Inc., 843 N.E.2d 1058, 1066 (Mass. 2006) (promoting statute of limitations as society’s attempt to compromise between plaintiff’s and society’s needs).

60. See Bowen v. Eli Lilly & Co., 557 N.E.2d 739, 740-41 (Mass. 2006) (recognizing unfairness of
court’s dismissal of its own precedent and well-established trust law will allow wrongdoing former trustees to escape liability and will deny harmed beneficiaries a proper remedy.61

In O’Connor v. Redstone, the Supreme Judicial Court of Massachusetts reversed its own precedent and years of traditional trust law by holding that the statute of limitations will commence when a successor trustee knows of breaches of fiduciary duty committed by a predecessor trustee. By failing to distinguish between claims at law and claims in equity, the court blurred the legal identities of third parties and former trustees. The O’Connor holding undermines the equitable rights of beneficiaries and leaves them with little remedy against those who are bound by a fiduciary duty of loyalty to act in their best interest.

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