[J-58-2023]
IN THE SUPREME COURT OF PENNSYLVANIA
MIDDLE DISTRICT

TODD, C.J., DONOHUE, DOUGHERTY, WECHT, MUNDY, BROBSON, JJ.

KEM RESOURCES, LP v. DEER PARK LUMBER, INC., RYVAMAT, INC., RYAN A. ANDREWS; MATTHEW R. ANDREWS; VANESSA K. DIMEOLO; RONALD A. ANDREWS; CITRUS ENERGY CORPORATION APPEAL OF: RYVAMAT, INC.	:	No. 10 MAP 2023 Appeal from the Superior Court Order dated July 13, 2022 at Nos. 619 MDA 2021 and 645 MDA 2021 Affirming in part/Vacating in part the Wyoming County Court of Common Pleas, Civil Division, Judgment entered April 29, 2021 at No. 2014-CV-857 and Remanding. ARGUED: October 18, 2023

OPINION

JUSTICE MUNDY **DECIDED: February 21, 2024**

KEM Resources, LP and Ryvamat, Inc. each own an undivided fifty percent interest in the oil, gas, and mineral rights of a property located in Wyoming County. Ryvamat entered a paid-up gas lease[1] with Unit Petroleum covering the entirety of the property's oil and gas rights, including the fifty percent owned by KEM, receiving $12,644,512.00 as payment. KEM's predecessors in interest filed an action against Ryvamat, which included a claim for an accounting requesting Ryvamat account for the portion of the lease payment it received attributable to KEM's fifty percent interest.

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[1] A paid-up oil and gas lease is "[a] mineral lease that does not provide for delay-rental payments and does not subject the lessor to any covenant to drill. In effect, the lessor makes all delay-rental payments, and perhaps a bonus, when the lease is signed." *Paid-up Lease*, BLACK'S LAW DICTIONARY (11th ed. 2019).

Ryvamat argues KEM's action is barred by the statute of limitations. The Superior Court disagreed and found that the applicable statute of limitations for KEM's accounting claim is six years, and the original complaint was timely filed. For the reasons that follow, we agree with the Superior Court and, thus, affirm its holding.

I. Background

Morris S. Kemmerer owned property in Wyoming County totaling 4,619 acres (the "Kemmerer properties"), which he sold in the 1950's pursuant to deeds that reserved a one-half interest in the oil, gas, and mineral rights underlying the land. Deer Park Lumber, Inc. ("Deer Park") acquired the Kemmerer properties in 1987. In 2007, Deer Park filed a quiet title action with respect to the Kemmerer properties and obtained a default judgment that it was the sole owner of the oil, gas, and minerals located on the Kemmerer properties. Ryvamat, an entity owned by the same family that owns Deer Park, purchased the Kemmerer properties from Deer Park in March 2008, including the aforementioned oil, gas, and mineral rights. Shortly thereafter, in July 2008, Ryvamat entered into a paid-up oil and gas lease (the "Lease") with Unit Petroleum Company ("Unit Petroleum"), under which Ryvamat received a $12,644,512.00 payment on July 21, 2008 for lease of the oil and gas rights on the Kemmerer properties.

In August 2008, Endless Mountains Hunting Club, Limited ("Endless Mountains") filed a petition to strike Deer Park's quiet title judgment, claiming it was the rightful owner of the one-half interest in the oil, gas, and mineral rights that Morris Kemmerer had reserved with respect to the Kemmerer properties. Then in January 2009, the estates of Morris Kemmerer and his son Morris Kemmerer, Jr. (collectively the "Kemmerer estates") filed their own petition to strike the quiet title judgment claiming that they, not Endless Mountains, were the rightful owners of the same one-half interest in the oil, gas, and mineral rights that Morris Kemmerer had reserved. In September 2014, the trial court

granted the motions to strike the quiet title default judgment. Tr. Ct. Op., 7/19/21, at 3. The trial court then granted summary judgment against Deer Park in the quiet title action and dismissed Deer Park's quiet title complaint with prejudice. *Id.*

On July 18, 2014, Endless Mountains and the Kemmerer estates filed a complaint in the instant action against Ryvamat and numerous other defendants. The complaint included, *inter alia*, an action for accounting, asserting that Endless Mountains and the Kemmerer estates were tenants-in-common with Ryvamat with respect to the oil and gas rights of the Kemmerer properties. Complaint, 7/18/14, at ¶ 37. Endless Mountains and the Kemmerer estates asserted that:

> [u]nder the law of the Commonwealth of Pennsylvania, it is the duty of a tenant-in-common of oil and gas rights to account to his co-tenant(s) for benefits received in the leasing or exploitation of the oil and gas rights owned as tenants-in-common for that portion of the benefits received by the tenant-in-common attributable to the interest of the other co-tenant(s), even where the leasing or other exploitation of the oil and gas rights occurs without the consent of the other co-tenants.

Id. at ¶ 38. As such, the Complaint asserted that Ryvamat was required to account to Endless Mountains and the Kemmerer estates for the amount of money Ryvamat received under the Lease attributable to Endless Mountains and the Kemmerer estates' interest in the Kemmerer properties' oil, gas, and mineral rights. *Id.* at ¶¶ 40-42.

In January 2015, Endless Mountains and the Kemmerer estates settled their dispute, conveyed to KEM Resources, LP ("KEM") their rights to the one-half interest in the oil, gas, and mineral rights that Morris Kemmerer had reserved with respect to the Kemmerer properties, and assigned their claims in this action to KEM. KEM was substituted as the plaintiff in this action in February 2015, and filed two amended complaints. In its Second Amended Complaint, KEM brought an "action in equity for an order requiring [Ryvamat] to account . . . for the cash bonus/rents received by Ryvamat

under the Lease in excess of its proportionate share[.]" Second Amended Complaint, 9/28/15, Count I. As part of its accounting claim, KEM made the following averments:

> 44. Under the Pennsylvania law, it is the duty of a tenant-in-common of real estate to account to his co-tenant(s) for rent or other lease benefits received from a third party in excess of the just or proportionate share that is due him according to his interest in the real estate. It is also the law in Pennsylvania that a tenant-in-common of oil, gas or mineral rights has the right to explore for and produce or authorize another to explore for and produce the oil, gas or minerals owned as tenants-in-common, without the consent of the other co-tenant(s), but he must account to the other co-tenant(s) for any and all rents, profits or other benefits received from third parties in excess of his just or proportionate share.
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> 45. Ryvamat received the sum of $12,644,512 cash bonus/rents under the Lease from Unit Petroleum for the right to explore for and produce oil and gas from the premises owned as tenants-in-common by Ryvamant and [KEM] (then owned by [KEM's] predecessors in title, Endless Mountains and/or [the Kemmerer estates])…[.] [T[he amount of cash bonus/rents received by Ryvamat in excess of its proportionate share [one-half (1/2)] being $6,322,256.
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> 46. The Lease covered the entirety of those oil and gas rights owned in common by [KEM] and Ryvamat, and the cash bonus/rent of $12,644,512 was paid to Ryvamat in consideration for the right to explore for and recover the whole of the oil and gas produced from the common property, including the one-half (1/2) owned by [KEM].
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> 47. Ryvamat has the duty under Pennsylvania [ ] law to account to [KEM] for the sum of $6,322,256 received from Unit Petroleum attributable to [KEM's] share of the oil and gas rights owned in common by Ryvamat and [KEM].

Id. at ¶¶ 44-47.

On December 3, 2018, KEM filed a motion for partial summary judgment against Ryvamat and other defendants, seeking, *inter alia*, judgment against Ryvamat in the amount of $6,322,256.00 plus interest on its accounting and other claims and seeking dismissal of Ryvamat's affirmative defenses. On January 28, 2019, Ryvamat and other

defendants filed a motion for summary judgment asserting that all of KEM's claims were barred by the statute of limitations. On October 24, 2019, the trial court ruled on the summary judgment motions, rejecting Ryvamat's argument that the statute of limitations barred KEM's accounting claim against it and granted KEM's motion for partial summary judgment with respect to its right to an accounting from Ryvamat and Ryvamat's affirmative defenses to liability, but concluded that there were disputed issues of fact with respect to the amount that Ryvamat owed. Tr. Ct. Order, 10/24/19. As to Ryvamat's statute of limitations argument, the trial court found that KEM's predecessors in interest filed their original complaint raising an action for accounting within six years from Ryvamat receiving the funds for the lease. Tr. Ct. Opinion, 10/24/19, at 6. Relying on, *inter alia*, *Ebbert v. Plymouth Oil Co.,* 34 A.2d 493 (Pa. 1943), and *Sheridan v. Coughlin*, 42 A.2d 618 (Pa. 1945), the trial court determined that "an action exists for an accounting between co-tenants, and that the applicable statute of limitations is six (6) years." *Id.* at 9. The trial court also granted summary judgment in favor of Ryvamat's co-defendants, dismissing KEM's complaint as to them.

On January 19, 2019, the trial court ordered Ryvamat to file an accounting with respect to the Lease payments it received attributable to the Kemmerer properties. Ryvamat complied and filed an accounting with certain deductions claimed against KEM's portion of the Lease payment. KEM filed objections to the accounting contending Ryvamat was not entitled to most of its asserted deductions. On June 22 and 23, 2020, the trial court held a non-jury trial on Ryvamat's deductions from KEM's one-half share of the Lease payment. The trial court issued its decision on the amount that Ryvamat owed KEM, granting some of Ryvamat's deductions, denying others, and granting KEM prejudgment interest on the amount owed from July 21, 2008. Both parties filed post-trial motions, which the trial court denied. On April 22, 2021 the trial court entered judgment

in favor of KEM against Ryvamat "in the sum of $4,513,484.00, together with simple interest thereon at the rate of six (6) percent per annum from July 21, 2008 to the date of entry of this judgment ($3,455,968.10), for a total judgment of $7,969,452.10." Trial Court Judgment. Ryvamat timely appealed from this judgment and KEM timely filed a cross-appeal.

In a unanimous memorandum opinion, the Superior Court affirmed the trial court's judgment in part and vacated it in part, remanding the case for recalculation of the prejudgment interest Ryvamat owes KEM. In front of the Superior Court, the parties raised several issues. However, the only issue relevant to the Court's current consideration was Ryvamat's assertion that it was entitled to judgment in its favor on the grounds that KEM's claims against it were barred by the statute of limitations. In addressing Ryvamat's statute of limitations argument, the Superior Court began by observing that KEM's assignors commenced the current action on July 18, 2014, more than four years after Ryvamat received the payment under the Lease on July 21, 2008. *KEM Res., LP v. Deer Park Lumber, Inc.*, 619 MDA 2021, 2022 WL 2717774, at *3 (Pa. Super. Filed July 13, 2022) (non-precedential). The court acknowledged, however, that the action was filed within six years of the date Ryvamat received payment under the Lease and therefore was timely filed if KEM's accounting action is subject to a six-year limitation. *Id.*

The lower court went on to explain that Pennsylvania's four-year statute of limitations applies to "actions based on oral and written contracts, other actions based upon writings, and actions based 'upon a contract implied in law.'" *Id.* (quoting 42 PA.C.S. § 5525(a)). While, according to the court, Pennsylvania's six-year statute of limitations applies to "any civil action or proceeding which is neither subject to another statute of

limitations specified in this subchapter nor excluded from the application of a period of limitation." *Id.* (quoting 42 Pa.C.S. § 5527(b)).

As to the nature of KEM's accounting claim, the lower court rejected Ryvamat's contention that the only cause of action that KEM could have brought was either a claim for fraud or breach of fiduciary duty, subject to a two-year limitation period pursuant to 42 Pa.C.S. § 5524(7), or a claim for unjust enrichment, which is subject to the four-year statute of limitation. *Id*. Instead, the court found KEM's accounting claim is a "statutory cause of action to enforce its rights as a co-tenant-in-common of real property." *Id.* (citing 68 P.S. § 101 ("Section 101")). According to the court, Section 101 provides for any "tenants in common, not in possession, to sue for and recover from such tenants in possession his or their proportionate part of the rental value of said real estate." *Id.* (quoting 68 P.S. § 101). The court relied on this Court's holding in *Sheridan*, *supra*, for the proposition that a co-tenant of real property who is not in possession has a cause of action under Section 101 to obtain an accounting of its share of the income received by the other tenant-in-common from the jointly owned property. *Id.* (citing *Sheridan*, 42 A.2d at 620).

The court rejected Ryvamat's argument that *Sheridan* is no longer good law because the statute it was based on has been repealed. In so doing, the court acknowledged that the statute of limitations applied in *Sheridan* has been repealed but determined that Section 101, on which *Sheridan* based the cause of action for an accounting between co-tenants, has not been repealed and remains in effect. *Id.* at *4. To the extent the statute of limitations in *Sheridan* has been repealed, the court explicitly held that "it is our current statutes of limitations that govern whether KEM's action is time-barred." *Id.* In regard to the current statute of limitations, the court recognized that the four-year statute of limitations, 42 Pa.C.S. § 5525, does not refer to actions seeking

accounting or actions concerning the rights of co-owners of real property. *Id.* Further, the court observed that no other provisions of our current statutes of limitations provides a limitation on such actions. *Id.* As such, the court determined that the statute of limitations applicable to a cause of action between co-tenants-in-common under Section 101 is the six-year limitation of 42 Pa.C.S. § 5527(b). *Id.* (citing *Bednar v. Bednar*, 688 A.2d 1200, 1204 (Pa. Super. 1997); *Quarello v. Clinger*, 544 WDA 2020, at 10 (Pa. Super. March 10, 2021) (unpublished memorandum)). Therefore, the court concluded that the trial court correctly determined that this action, commenced less than six years after the Lease payment was received by Ryvamat, was not barred by the statute of limitations.

We accepted allocatur in this matter to address the following issue:

> Did the lower court err as a matter of law in holding that KEM's accounting claim is subject to a six year statute of limitations, which is a matter of first impression, and based its opinion, in part, on a statutory cause of action not pled or argued by KEM?

KEM Res., LP v. Deer Park Lumber, Inc., 292 A.3d 547 (Pa. 2023) (per curiam).

II. Parties' Arguments

A. Ryvamat's Argument

Ryvamat contends that both the trial court and Superior Court erred in finding that KEM's accounting claim was subject to a six-year statute of limitations. According to Ryvamat, this case is, at its core, one for breach of a fiduciary duty and/or unjust enrichment related to its receipt of the Lease funds. Therefore, Ryvamat asserts KEM's claim should be subject to either the two-year statute of limitations applicable to a breach of a fiduciary duty or the four-year limitations period applicable to a claim for unjust enrichment. Appellant's Brief at 16-17 (citing, *inter alia*, 42 Pa.C.S. § 5524; *Koken v. Colonial Assur. Co.*, 885 A.2d 1078, 1093 (Pa. Cmwlth. 2006) for breach of fiduciary duty

and 42 Pa.C.S. § 5525; *Cole v. Lawrence*, 701 A.2d 987, 989 (Pa. Super. 1997) for unjust enrichment).

Ryvamat contends KEM attempted to proceed on a count styled an "Action for Accounting." Ryvamat insists there are only two types of accounting available - an accounting at law and an equitable accounting – and neither is available as a cause of action or remedy in this case. *Id.* at 18. According to Ryvamat, a legal accounting is permitted by operation of Pa.R.Civ.P. 1021(a) and "is merely an incident to a proper assumpsit claim." *Id.* (quoting *McWreath v. Range Res-Appalachia, LLC*, 81 F. Supp. 3d 448, 467-68 (W.D. Pa. 2019) (internal citations omitted by Appellant)). While Ryvamat contends KEM's claim sounds in assumpsit, it asserts KEM failed to raise an assumpsit claim and is, therefore, not entitled to a legal accounting. *Id.* at 17. In Ryvamat's view, an equitable accounting, on the other hand, is not available when, *inter alia*, a plaintiff possesses an adequate remedy at law. *Id.* (citing *McWreath*, 81 F. Supp. 3d at 468 (citations omitted)). It is Ryvamat's position that KEM had numerous available remedies at law but simply chose not to pursue them, and, thus, forfeited its right to an equitable remedy. *Id.* at 19 (citing *Bordoni v. Chase Home Fin. LLC*, 374 F. Supp. 3d 378, 387 (E.D. Pa. 2019)).

Ryvamat next criticizes the Superior Court's reliance on *Sheridan* to reclassify KEM's claim as a statutory cause of action pursuant to Section 101. Ryvamat recounts that in *Sheridan* plaintiffs sought an accounting from their co-tenants and the Court, in considering the applicable limitations period for such a claim, turned to 12 P.S. § 31, which included a six-year limitations period. *Id.* at 19-20 (citing *Sheridan*, 42 A.2d at 62). In applying *Sheridan*, Ryvamat asserts the Superior Court erred because Section 31 has been repealed, and the court failed to apply current statute of limitations law, which does not contain a provision similar to Section 31. *Id.* at 22. As such, Ryvamat argues the

Superior Court based its decision on a now-repealed statute which amounts to an error of law compelling reversal. *Id.*

Ryvamat also criticizes the trial court's reliance on *Ebberts*, *supra*. According to Ryvamat, core to the Court's decision in that case was the fact that an action for an accounting was on par with an action for assumpsit, which carried a six-year statute of limitations at that time. *Id.* at 20. However, Ryvamat asserts that is no longer the case because assumpsit actions now carry a four-year statute of limitations. *Id.* (citing *Monaghan v. Provident Nat'l Bank*, 499 A.2d 362, 364 (Pa. Super. 1985) (relying on 42 Pa.C.S. § 5525)).

Lastly, Ryvamat argues that the statute of limitations for a statutory accounting pursuant to Section 101 is irrelevant to the case at bar because KEM did not plead a statutory cause of action. *Id.* at 24. Citing KEM's Second Amended Complaint, Ryvamat observes KEM asserted it was bringing an action in equity for an accounting. *Id.* (citing Second Amended Complaint, 9/28/15, Count I). According to Ryvamat, KEM at different times also asserted its accounting claim was based in common law and an alleged fiduciary duty owed it by Ryvamat. *Id.* Ryvamat argues "it is not the role of the judiciary to resurrect KEM's legal claim by breathing new life into it with an *ex post facto* rationale, not advocated by KEM, merely to reach a decision on the merits." *Id.* at 25. In Ryvamat's view, the cannons of statutory construction should apply to the courts' construction of pleadings in litigation as an important check on the power of the judiciary and to preserve its traditional role as neutral arbiter rather than advocate. *Id.* (citing 1 Pa.C.S. § 1921(b)). As such, Ryvamat asserts rulings should be based on what is in the pleadings and not what should or could have been there with a little more specificity and precision. While granting Ryvamat judgment as a matter of law because of the expiration of the statute of

limitations may be a harsh remedy, Ryvamat asserts that is the only decision compelled by the law of the Commonwealth.

B. KEM's Argument

Initially, KEM argues that the Superior Court correctly found that its claim for an accounting is not a common law unjust enrichment claim but, rather, a statutory cause of action to enforce its rights as a co-tenant-in-common of real property under Section 101. KEM asserts that this Court has previously relied on Section 101 to uphold claims by co-tenants for an accounting of the profits and income that the other co-tenants received from the jointly owned land. Appellee's Brief at 24 (citing *Sheridan*, *supra*; *Sciotto v. Sciotto*, 288 A.2d 822 (Pa. 1972); and *Lancaster v. Flowers*, 57 A. 526 (Pa. 1904)). KEM acknowledges it did not explicitly plead a claim under Section 101 but argues it was not required to do so to invoke the statute. According to KEM, it is settled law that "where the facts relied upon bring the case within the statute, it is not necessary to plead it." *Id.* at 25 (quoting *Goldberg v. Friedrich*, 124 A. 186, 187 (Pa. 1924) (emphasis provided by KEM removed)). KEM further asserts that this Court has emphasized that "courts will take judicial notice of its public statutes. Such laws need not be pleaded or proved; it is not necessary to allege a violation of the statute, but, of course, the statement must set forth sufficient facts to bring the case within the statute." *Id.* at 26 (quoting *Goldberg*, 124 A. at 186 (emphasis provided by KEM removed)).

In KEM's view, its Second Amended Complaint pled sufficient facts to bring the case within Section 101's purview. Specifically, KEM asserts it averred that KEM and Ryvamat are tenants-in-common as to the oil and gas rights underlying the Kemmerer properties and that Ryvamat was in possession of the common property when it entered into the Lease with Unit Petroleum. KEM further asserts that its Second Amended Complaint averred that under Pennsylvania law, rather than specifically Section 101, a

co-tenant has the right to seek an accounting, and that the "facts alleged in the Complaint are clearly more than sufficient to 'bring the case within the statute' and support the Superior Court's finding that 'KEM's claim is a statutory cause of action to enforce its rights as a co-tenant-in-common of real property.'" *Id.* at 31 (quoting *KEM Res., LP*, 2022 WL 717774, at *3 (internal citations and footnotes omitted)).

After the Superior Court properly concluded that the facts alleged in the Second amended Complaint brought KEM's accounting claim within the ambit of Section 101, KEM asserts the lower court correctly concluded such a claim falls within the six-year limitations period of 42 Pa.C.S. § 5527(b). According to KEM, the Superior Court accurately observed that the four-year statute of limitations does not refer to actions seeking an accounting or actions between co-tenants and neither does any other statute of limitations provision. *Id.* at 33 (citing *KEM Res., LP*, 2022 WL 717774, at *3). As such, KEM agrees with the Superior Court that such an action is covered by the six-year catch-all limitations period in 42 Pa.C.S. § 5527(b).

KEM contends Ryvamat's criticism of the Superior Court's reliance on *Sheridan* is misplaced. According to KEM, the lower court relied on *Sheridan* for the premise that a co-tenant has a cause of action for an accounting pursuant to Section 101 but not for the determination that a six-year statute of limitations applies to such an action. KEM asserts the lower court correctly acknowledged that the statute of limitations applied in *Sheridan*, 12 P.S. § 31, is no longer applicable because it has been repealed. *Id.* at 34-35. KEM insists that the Superior Court made clear that it was applying the Commonwealth's current statutes of limitations. *Id.* at 35 (citing *KEM Res., LP*, 2022 WL 717774, at *3).

Next, KEM argues that even if the Court determines that its accounting claim is not a statutory claim under Section 101, and instead holds that its claim is a common law claim for an accounting, a six-year statute of limitations still applies. KEM relies on

Bednarwicz v. Americhol Mining, Inc., 826 WDA 2012, 2012 WL 11255831 (Pa. Super. July 30, 2012), an unpublished Superior Court opinion, for the premise that "because there is no specific limitations period that applies to the accounting of profits between co-tenants, the general catch all six-year limitation applies." Appellee's Brief at 38-39 (quoting *Benarwicz*, 2012 WL 11255831 at *5 (emphasis provided by KEM removed)). KEM criticizes Ryvamat's reliance on *McCreath* as that case does not address the statute of limitations for an accounting claim but rather would address the sufficiency of KEM's claim, which it asserts is beyond the scope of the issue the Court accepted for review. *Id.* at 40-41. KEM argues that Ryvamat is unable to point to any case that addresses the statute of limitations for an accounting claim, let alone a case that applies a four-year limitations period. *Id.* at 43.

Lastly, KEM argues the Superior Court correctly rejected Ryvamat's argument that KEM's accounting claim was actually an unjust enrichment claim because unjust enrichment requires that the plaintiff conferred benefits onto the defendant, which was not the case here.[2] *Id.* at 44-45. Instead, KEM argues its common law accounting claim is founded upon the 1705 English Statute of Anne, which KEM asserts created a duty of a tenant-in-common to account to a co-tenant for rents and profits received in excess of his or her proportionate share. *Id.* at 46. According to KEM, Pennsylvania courts continue to recognize a co-tenant has a right to such an accounting. *Id.* at 48 (collecting cases). As the Statute of Anne does not contain a statute of limitations, KEM asserts the catchall six-year statute applies. *Id.* at 52.

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[2] In its reply brief, Ryvamat argues KEM misstates the law of unjust enrichment. It asserts unjust enrichment "is an equitable doctrine … [that] occurs when a person has and retains money or benefits, which in justice and equity belongs to another." Reply Brief at 7 (quoting *Burley v. Pa. Dep't of Pub. Welfare*, 773 A.2d 230, 235 n.14 (Pa.Cmwlth. 2001) (ellipses and brackets provided by Ryvamat)). Ryvamat further asserts "the most significant element of the doctrine is whether the enrichment of the defendant is unjust." *Id.* (quoting *Styer v. Hugo*, 619 A.2d 347, 350 (Pa. Super. 1993) (emphasis removed)).

III. Discussion

The primary issue before this Court is whether KEM filed its accounting claim within the applicable statute of limitations. In order to answer that question, we must first determine the nature of KEM's accounting claim. After a careful review of KEM's Second Amended Complaint, we find that the Superior Court correctly held that KEM's accounting claim is properly considered a statutory claim for an accounting between co-tenants under Section 101.

KEM's Second Amended Complaint, the operative pleading at issue, does not explicitly invoke Section 101. *See* Second Amended Complaint. That fact alone, however, does not end our inquiry, as Pennsylvania courts have long held that a Plaintiff need not specifically plead a statute for a cause of action to have invoked the statute. As this Court stated a century ago "as a rule universally recognized, [ ] courts will take judicial notice of its public statutes. Such laws need not be pleaded or proved; it is not necessary to allege a violation of the statute, but, of course, the statement must set forth sufficient facts to bring the case within the statutes." *Goldberg v. Friedrich*, 124 A. 186, 186 (Pa. 1924). In *Goldberg* we further stated "[w]here the facts relied upon bring the case within the statute, it is not necessary to plead it." *Id.* at 187. *See also, e.g., Godina v. Oswald*, 211 A.2d 91, 92 (Pa. Super. 1965) ("Statutes need not be specifically pleaded but there must be set forth sufficient facts to bring the case within the statute in question" (citing *Goldberg*, 124 A. 186)); *Pa. State Troopers Ass'n v. Pa. State Police*, 667 A.2d 38, 41 n.6 (Pa. Cmwlth. 1995) ("In civil actions where the facts in a complaint constitute the cause of action, the plaintiff need not specify the statute that the plaintiff contends defendant violated. The plaintiff need only allege the material facts which form the basis of a cause of action that raise a violation of that provision." (citing *Henly v. Commonwealth*, 621 A.2d 1212 (Pa. Cmwlth. 1993)); and *City of New Castle v. Uzamere*, 829 A.2d 763, 772-73

(Pa. Cmwlth. 2003) ("In civil actions where the facts pled constitute the cause of action, the plaintiff need not specify the statute the plaintiff contends the defendant violated. Rather, he must only allege the material facts which form the basis of the cause of action which raise a violation of the statute." (internal citations omitted)).

Section 101 is entitled "Co-tenants not in possession may recover share of rental; procedure in case of partition" and states:

> In all cases in which any real estate is now or shall be hereafter held by two or more persons as tenants in common, and one or more of said tenants shall have been or shall hereafter be in possession of said real estate, it shall be lawful for any one or more of said tenants in common, not in possession, to sue for and recover from such tenants in possession his or their proportionate part of the rental value of said real estate for the time such real estate shall have been in possession as aforesaid; and in case of partition of such real estate held in common as aforesaid, the parties in possession shall have deducted from their distributive shares of said real estate the rental value thereof to which their co-tenant or tenants are entitled.

68 P.S. § 101. In *Sheridan* we held that under Section 101 an action exists for an accounting by a co-tenant out of possession of jointly owned real property against a co-tenant in possession of the jointly owned property for rents received. *Sheridan*, 42 A.2d at 622. A claim under Section 101 has two requirements: "(1) the complaining party must show he is not in possession of the premises and (2) it must be shown that the remaining tenant[-]in[-]common occupies exclusive possession of the premises." *Sciotto v. Sciotto*, 288 A.2d 822, 823-24 (Pa. 1972). In order to bring a claim pursuant to Section 101, a plaintiff "must aver the existence of all the facts which the statute has by its terms made essential to the existence of the statutory right." *Hoog v. Diehl*, 3 A.2d 187, 189 (Pa. Super. 1938). KEM's averments in its Second Amended Complaint satisfy these requirements.

KEM's Second Amended Complaint included the following averments:

> 44. Under the Pennsylvania law, it is the duty of a tenant-in-common of real estate to account to his co-tenant(s) for rent or other lease benefits received from a third party in excess of the just or proportionate share that is due him according to his interest in the real estate. It is also the law in Pennsylvania that a tenant-in-common of oil, gas or mineral rights has the right to explore for and produce or authorize another to explore for and produce the oil, gas or minerals owned as tenants-in-common, without the consent of the other co-tenant(s), but he must account to the other co-tenant(s) for any and all rents, profits or other benefits received from third parties in excess of his just or proportionate share.
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> 45. Ryvamat received the sum of $12,644,512 cash bonus/rents under the Lease from Unit Petroleum for the right to explore for and produce oil and gas from the premises owed as tenant-in-common by Ryvamant and [KEM] (then owned by [KEM's] predecessors in title, Endless Mountains and/or [the Kemmerer estates]])…[.] [T[he amount of cash bonus/rents received by Ryvamat in excess of its proportionate share [one-half (1/2)] being $6,322,256.
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> 46. The Lease covered the entirety of those oil and gas rights owned in common by [KEM] and Ryvamat, and the cash bonus/rent of $12,644,512 was paid to Ryvamat in consideration for the right to explore for and recover the whole of the oil and gas produced from the common property, including the one-half (1/2) owned by [KEM].
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> 47. Ryvamat has the duty under Pennsylvania [ ] law to account to Plaintiff for the sum of $6,322,256 received from Unit Petroleum attributable to Plaintiff's share of the oil and gas rights owned in common by Ryvamat and [KEM].

Second Amended Complaint, 9/28/15, ¶¶ 44-47. In these averments, KEM asserts that it and its predecessors in title are tenants-in-common with Ryvamat, that Ryvamat received rents covering the entire property, and that Ryvamat has retained rents in excess of its proportionate share.

Earlier in the Second Amended Complaint, and incorporated into its accounting claim, *see id.* at ¶ 43, KEM sets forth averments that satisfy Section 101's requirements that Ryvamat was in exclusive possession at the time it received the rents in question

and that KEM, and its predecessors in title, were out of possession. KEM averred that Deer Park, Ryvamat's predecessor in interest, obtained a default judgment in its quiet title action and obtained a court order that stated "all gas, oil and other minerals located upon [the Kemmerer properties] are owned by Plaintiff, Deer Park Lumber, Inc." *Id.* at ¶¶ 28-29 (internal citations omitted). KEM then asserted that shortly after obtaining default judgment in the quiet title action Deer Park transferred title to Ryvamat through which Ryvamat claimed it obtained title and ownership of all of the oil, gas, and mineral rights for the Kemmerer properties. *Id.* at ¶¶ 30, 32. The Second Amended Complaint goes on to assert that Ryvamat entered into the Lease with Unit Petroleum with the intent of leasing the entirety of the Kemmerer properties oil and gas rights, including the one-half interest belonging to KEM. *Id.* at ¶ 41. KEM's assertions that Ryvamat claimed it owned all the oil, gas, and mineral rights to the Kemmerer properties and then purported to lease all those rights to Unit Petroleum sufficiently alleges that Ryvamat was in sole possession of the Kemmerer properties and KEM was out of possession at the time Ryvamat received the rental payments from the Lease. *See Sciotto*, 289 A.2d at 823-824. Based on these averments, we find that KEM sufficiently pled facts necessary to bring its claim under the ambit of Section 101.

After finding KEM's accounting claim is properly considered a statutory claim under Section 101, we must determine the statute of limitations for such a claim. Statutes of limitations "bar[ ] claims after a specified period." *Statute of Limitations*, BLACK'S LAW DICTIONARY (11th ed. 2019). They exist, in large part, "so that the passage of time does not damage the defendant's ability to adequately defend against claims made." *Bisher v. Lehigh Valley Health Network, Inc.*, 265 A.3d 383, 409 (Pa. 2021) (quoting *Dalrymple v. Brown*, 701 A.2d 164, 167 (Pa. 1997)). Questions involving the interpretation of statutes of limitations are questions of law where our standard of review is *de novo* and our scope

of review is plenary. *Erie Ins. Exch. v. Bristol*, 174 A.3d 578, 686 n.13 (Pa. 2019) (citing *Commonwealth v. Corban Corp.*, 957 A.2d 274, 276 (Pa. 2008)).

Section 101 does not contain a specific statute of limitations. The *Sheridan* Court, relying on 12 P.S. § 31, determined that an action under Section 101 must be brought within six years from the time the cause of action arose. *Sheridan*, 42 A.2d at 621. Effective June 27, 1978, however, the General Assembly repealed 12 P.S. § 31 and enacted our current statute of limitations scheme. *See Al-Khazraji v. Saint Francis Coll.*, 523 F. Supp. 386, 388 (W.D. Pa. 1981 (citing 42 Pa.C.S. §§ 5521 *et. seq.*); *Depaolo v. Dep't of Pub. Welfare*, 865 A.2d 299, 205 n.6 (Pa. Cmwlth. 2005). We must therefore look to our current statutes of limitations to determine the limitations period for an action brought pursuant to Section 101.

A review of our current statutes of limitations for civil actions, set forth in Chapter 55 of the Judicial Code, 42 Pa.C.S. §§ 5521-5539, reveals that they do not address an action between co-tenants of real property for an accounting for rents received from the property. Nor is such an action excluded from the application of the limitation periods set forth in Chapter 55. *See* 42 Pa.C.S. § 5531. "Any civil action or proceeding which is neither subject to another limitations specified in this subchapter nor excluded from the application of a period of limitations specified in 5531 (relating to no limitations) must be commenced within six years." 42 Pa.C.S. § 5527. As no other statute of limitations period applies to an action under Section 101, the statute of limitations period applicable to an action between co-tenants for an accounting is the catch-all six-year statute of Section 5527. KEM's predecessors in interest filed the initial complaint in this matter on July 18, 2014, six years minus three days from the date Ryvamat received the Lease payment from Unit Petroleum. Thus, KEM filed its accounting claim within the statute of limitations for a claim under Section 101.

IV. Conclusion

We conclude KEM's accounting claim is properly construed as a statutory claim for an accounting between co-tenants under Section 101. We further find that the statute of limitations for such a claim is six years. The holding of the Superior Court is affirmed.

Chief Justice Todd and Justices Donohue, Dougherty, Wecht and Brobson join the opinion.