



2000

## Recent Developments: *Imbesi v. Carpenter Realty Corp.*: Maryland's Non-Claim Statute Does Not Permit a Creditor Setoff Once All Creditor Claims Are Barred by Statute

Brian Kelly

Follow this and additional works at: <http://scholarworks.law.ubalt.edu/lf>



Part of the [Law Commons](#)

### Recommended Citation

Kelly, Brian (2000) "Recent Developments: *Imbesi v. Carpenter Realty Corp.*: Maryland's Non-Claim Statute Does Not Permit a Creditor Setoff Once All Creditor Claims Are Barred by Statute," *University of Baltimore Law Forum*: Vol. 30 : No. 2 , Article 10.  
Available at: <http://scholarworks.law.ubalt.edu/lf/vol30/iss2/10>

This Article is brought to you for free and open access by ScholarWorks@University of Baltimore School of Law. It has been accepted for inclusion in University of Baltimore Law Forum by an authorized editor of ScholarWorks@University of Baltimore School of Law. For more information, please contact [snolan@ubalt.edu](mailto:snolan@ubalt.edu).

***Imbesi v. Carpenter Realty Corp.***  
**Maryland's Non-Claim Statute Does Not Permit a Creditor Setoff once All  
Creditor Claims Are Barred by Statute**

---

By Brian Kelly

The Court of Appeals of Maryland held that section 8-103 of the Wills and Trusts Article of the Annotated Code of Maryland, which limits the time a creditor has to present a claim, does not permit a setoff based upon a creditor's claim against the Estate once presentment of creditor's claims are barred by statutory limitations. *Imbesi v. Carpenter Realty Corp.*, 357 Md. 375, 744 A.2d 549 (2000). The court found that permitting a creditor to setoff a claim, which was not presented in the allotted six month time period pursuant to section 8-103(c), from monies owed to the Estate, would directly conflict with the purpose of the statute. The court refused to view the defensive use of setoff as an exception from the Maryland nonclaim statute of section 8-103, thereby prohibiting any assertion of creditor's claim on an estate after the applicable six-month period expired.

On June 1, 1982, Mr. Imbesi entered into a stock redemption agreement between 7-UP of Baltimore, 7-UP of Philadelphia, and the Carpenter Realty Corporation ("CRC"), whereby he would sell all the stock he owned in the companies to the issuing corporations for \$500,000 payable in 120 monthly installments. In 1979, Mr. Imbesi issued an \$80,000 promissory note

to 7-UP of Philadelphia, due October 23, 1989. The promissory note was never repaid. Upon the death of Mr. Imbesi in 1992, the personal representative of the Estate, filed Letters of Administration with the Baltimore County Register of Wills. In addition to these Letters, notice, pursuant to section 8-103(a)(1), was sent to creditors informing them of Mr. Imbesi's death.

Following the notice to creditors, the Estate sued CRC and 7-UP of Baltimore in the Circuit Court for Baltimore County for the respective overdue balances of the stock redemption agreement owed to Mr. Imbesi. CRC counterclaimed, contending that the claims on the stock redemption agreement may be offset by the amount on the \$80,000.00 note originally possessed by 7-UP of Philadelphia, but negotiated for value to CRC. The circuit court disagreed, and found in favor of the Estate for \$57,447.67. The Court of Special Appeals of Maryland, questioning the authenticity of the 1979 note, reversed and remanded the case. On remand, the circuit court found that the 1979 note could be used by CRC as a setoff against the Estate's claims, and held that a defensive use of setoff does not violate the legislative intent of section 8-103. The court of special appeals affirmed the trial court's interpretation of section 8-103(a), which denied the

creditors from presenting the note, but permitted CRC to offset the value of the note from the debts owed to the Estate. Following the ruling, the court of appeals granted certiorari.

In determining whether the right to setoff a claim is a type of claim barred by section 8-103, the court of appeals began its analysis by comparing the impact setoff would have as compared to a counterclaim and recoupment. *Imbesi*, 357 Md. at 380, 744 A.2d at 552. Setoff, by definition, is "a diminution or a complete counterbalancing of the adversary's claim based upon circumstances arising out of a transaction other than that on which the adversary's claim is based." *Id.* at 380, 744 A.2d at 552 (citing *Billman v. State of Maryland Deposit Ins. Fund Corp.*, 88 Md. App. 79, 92-93, 593 A.2d 684 (1991)). In the instant case, CRC argued that the only feasible remedy available to creditors is the right to setoff. Due to the presentment of the claim after the statutory period of section 8-103(c), the creditor argued that since the transaction failed to occur in the same transaction or occurrence as the prior business dealing, all claims of recoupment would be barred. *Id.* CRC contended, and the court of special appeals agreed, that use of the note to setoff the amount owed to the

Estate is a purely defensive tactic, and should be permitted in order to offset the monies owed to the estate via the stock redemption agreement. *Id.* at 382, 744 A.2d at 552.

The court of appeals squarely rejected the court of special appeals's argument, as well as CRC's, that setoff does not affect the timely and efficient process that section 8-103 was drafted to protect. *Id.* at 382, 744 A.2d at 553. The general purpose of section 8-103, the court held, is to provide notice to all creditors of the Estate so they may file their claims in the applicable time period, thereby allowing probate to progress in an expedient manner. *Id.* Following this interpretation, the court found that a setoff defense would require consideration of the facts and circumstances of a separate transaction. *Id.*

The court further noted that the legislative history of the statute illustrated a policy of increasing the scope of protection by the non-claim statute. *Id.* at 383, 744 A.2d at 553. The authority given to the non-claim statute was reinforced by the judicial history of the statute, which illustrated the increase, not diminution, of power the judiciary has interpreted in the statute over the years. *Id.* at 382-86, 744 A.2d at 553-55. Furthermore, the intent of the language and history of the statute was to "forever bar" claims that were not brought within the applicable time period set forth in the statute. *Id.* at 386, 744 A.2d at 554.

The court, however, was careful to state that the non-claim statute does not bar all claims in all circumstances. In *Chandlee v. Stockley*, the court,

"held that the personal representative was estopped to assert the bar of the statute because of representations made on behalf of the estate that the injured plaintiff's claim would be paid." *Id.* at 385, 744 A.2d at 554 (quoting *Chandlee v. Stockley*, 219 Md. 493, 150 A.2d 438 (1959)). However, upon comparison to *Imbesi*, CRC was never informed of the possibility of payment on their claim, but instead was consistently refused recognition of a valid claim due to CRC's failure to present the note to the Estate within the statutory period. *Id.* at 386, 744 A.2d at 555.

Finally, the court of appeals analyzed the practices of other jurisdictions regarding the parameters of the non-claim statute. *Id.* at 389, 744 A.2d at 557. In *Berrigan v. Pearsall*, the Connecticut court found that the non-claim statute was no more than a statute of limitations which did not prohibit the defensive use of a claim of setoff. *Id.* at 389, 744 A.2d at 557 (citing *Berrigan v. Pearsall*, 46 Conn. 274 (1878)). The Court of Appeals of Maryland, however, opposed this view, stating, "we construe § 8-103(a) to bar a claim that has not been presented and that arises out of a transaction separate from the one which the estate claims." *Id.* at 391, 744 A.2d at 558.

Based on the foregoing legal analysis, the court concluded that the creditor in question could not assert a claim that was barred by limitations against a note owed to the Estate, due to section 8-103(c). *Id.* at 392, 744 A.2d at 558. The court found the non-claim statute not to be a statute of limitations, but instead "a condition

precedent to a legal recovery against a solvent estate." *Id.* at 391, 744 A.2d at 557.

The court's holding leaves open the question of asserting a right of recoupment in instances where the same transaction is in question. In this instance, however, the court decided to create a clear limitations period. This bright line rule not only broadens the scope of the non-claim statute, but also ensures that probate will move along as expediently as possible, thereby underscoring the overall purpose of section 8-103.