

TEXAS COURT OF APPEALS, THIRD DISTRICT, AT AUSTIN

NO. 03-23-00307-CV

**In re Rancho del Lago, Inc.,
Craig Hopper as Guardian of the Estate of Lee R. Roper, and Joe Tays**

ORIGINAL PROCEEDING FROM COMAL COUNTY

MEMORANDUM OPINION

Relators, who are defendants below, have filed a petition for writ of mandamus complaining of the trial court's order denying them leave to designate the plaintiffs' engineers, real-estate attorneys, and building contractors as responsible third parties in the underlying suit arising from a sale of real property. Because we conclude that the motion to designate was timely filed and because trial courts have no discretion to deny a timely filed motion to designate absent a pleading defect and an opportunity to cure, we conditionally grant the writ.

Relators (collectively, Rancho del Lago) sold unimproved property under a commercial contract to real party in interest Ranch on Potranco, LLC (Potranco), who intended to build apartments on the property. Prior to the sale, the parties executed a letter of intent that provided, inter alia, that "[u]tility credits assigned to this property will be a part of the sale of the subject tract, valued by the Seller as \$949,175 and delivered at closing." The utility credits at issue are water and wastewater impact-fee credits previously awarded to Rancho del Lago pursuant to

utility service agreements entered into with Bexar Metropolitan Water District and, as relevant here, the San Antonio Water System (SAWS).¹ Potranco also hired engineers, real-estate attorneys, and a contractor to provide advice and professional services regarding the purchase and project.

After closing, Potranco allegedly discovered that SAWS did not issue the credits as expected. Approximately three years after closing, after allegedly making an unanswered demand for payment, Potranco sued Rancho del Lago for statutory and common-law fraud, breach of contract, and promissory estoppel, alleging that Rancho del Lago made materially false representations to Potranco that it owned and had the right to transfer the credits to induce Potranco to enter into the commercial real-estate contract, and that Potranco relied on these representations to its detriment, incurring approximately \$900,000 in damages.

Allegedly prompted by factual allegations set forth in a subsequent demand letter, Rancho del Lago subpoenaed documents from Potranco's engineers, attorneys, and contractor and, on the strength of evidence allegedly contained in the documents, filed a motion for leave to designate those persons as responsible third parties on the theory that they had breached their duty of care by failing to conduct due diligence regarding the availability and value of the credits. In response, Potranco argued the motion was untimely by reason of having been filed after the expiration of limitations on its cause of action. (Although the record provided does not include a docket-control order or any other scheduling order, Potranco did not dispute Rancho del Lago's

¹ An "impact fee" is "a charge or assessment imposed by a political subdivision against a new development in order to generate revenue for funding or recouping the costs of capital improvements or facility expansions necessitated by and attributable to the new development." Tex. Loc. Gov't Code § 395.001. With exceptions not relevant here, the costs incurred or funds advanced by the owner of a new development are credited against the impact fees otherwise due from the new development, or else reimbursed to the owner from impact fees paid from other new developments that use such capital improvements or facility expansions. *Id.* § 395.019(2).

contention that, when the motion for leave was filed, no trial date had been set.) In an order that did not state its reasoning, the trial court denied the motion to designate without granting leave to replead, and this original proceeding followed.

In general, a defendant may designate a person as a responsible third party by filing a motion for leave to do so “on or before the 60th day before the trial date,” in which case the trial court “shall grant leave to designate . . . a responsible third party” unless another party objects within fifteen days after service. Tex. Civ. Prac. & Rem. Code § 33.004(a), (f). In the event of a timely objection, the court must allow the designation unless the objecting party establishes (1) the defendant did not plead sufficient facts concerning the person’s alleged responsibility and (2) the pleading defect persists after an opportunity to replead. *Id.* § 33.004(g).

Mandamus relief is appropriate where the trial court has clearly abused its discretion and the relator has no adequate remedy by appeal. *In re Prudential Ins. Co. of Am.*, 148 S.W.3d 124, 135-36 (Tex. 2004) (orig. proceeding). The issue of whether mandamus is appropriate to correct the wrongful denial of a motion to designate was reached and decided in the affirmative by the Texas Supreme Court in a case presenting facts similar to those at issue here. In *In re Coppola*, the purchaser in a real-estate transaction brought a tort action against the vendors alleging fraud and deceptive trade practices in connection with the sale, and the vendors filed a motion to designate the purchaser’s transactional attorneys as responsible third parties. 535 S.W.3d 506, 509 (Tex. 2017) (orig. proceeding) (per curiam). Among the issues decided in that case were that attorneys may be so designated, *id.* at 508, and, as noted above, that wrongful denial of a motion to designate is reviewable by mandamus, *id.* at 509. Therefore, a finding that the trial court clearly erred in denying the motion in this case requires that we conditionally grant the requested writ.

Here, the trial court erroneously denied Rancho del Lago’s motion because it was timely filed and the trial court did not afford an opportunity to replead to cure any pleading deficiency. Addressing Potranco’s argument that limitations had run before Rancho del Lago filed its motion for leave, Rancho del Lago points to recent Texas Supreme Court precedent confirming that the operative limitations period is the period that would apply to the plaintiff’s cause of action against the third party. *See In re YRC Inc.*, 646 S.W.3d 805, 808 (Tex. 2022) (orig. proceeding) (per curiam). Under Rancho del Lago’s theory, the parties to be designated committed professional negligence against Potranco by failing to conduct due diligence regarding the assignability of the utility credits, such that any cause of action Potranco might have against them would be governed by the two-year limitations period set forth in Section 16.003(a), Texas Civil Practice and Remedies Code, and not—as Potranco urges—the four-year period applicable to claims for fraud, fraudulent inducement, and promissory estoppel.

Generally, a cause of action accrues when a wrongful act causes some legal injury, even if the fact of injury is not discovered until later, and even if all resulting damages have not yet occurred.” *S.V. v. R.V.*, 933 S.W.2d 1, 4 (Tex. 1996) (citing *Trinity River Auth. v. URS Consultants, Inc.*, 889 S.W.2d 259, 262 (Tex. 1994)). Here, Rancho del Lago argues that any legal injury occurred on October 27, 2017—the date the real-estate transaction closed—such that limitations on professional-negligence claims against the engineers, attorneys, and contractor expired two years later on October 27, 2019. We agree. Assuming Potranco’s contracted professionals had a professional responsibility to provide advice concerning the valuation of the credits, Potranco’s contractual obligation to purchase (and, allegedly, to overpay) for those credits did not exist prior to closing, and its legal injury can therefore be traced to that date. Because Potranco did not file suit until June 30, 2020, after the expiration of limitations, any subsequent

designation of responsible third parties cannot be untimely. *See, e.g., In re Mobile Mini, Inc.*, 596 S.W.3d 781, 785 (Tex. 2020) (orig. proceeding) (per curiam) (designation not untimely where plaintiff waited almost two years to sue defendant such that deadline for disclosure responses fell outside of limitations period) (citing *In re Bustamante*, 510 S.W.3d 732, 736-37 (Tex. App.—San Antonio 2016, orig. proceeding) (reversing denial of motion to designate where suit was filed one day before the statute of limitations expired)).

Potranco has not advanced any argument alleging pleading deficiencies, but, even if a deficiency existed, the trial court would nevertheless lack discretion to deny the motion without first affording Rancho del Lago an opportunity to replead. *See* Tex. Civ. Prac. & Rem. Code § 33.004(g); *see also In re Smith*, 366 S.W.3d 282, 288 (Tex. App.—Dallas 2012, orig. proceeding) (“[T]he trial judge was statutorily required to give relators an opportunity to replead before denying their motion, regardless of whether they made a specific request for time to replead.”).

For the foregoing reasons, we conditionally grant the petition for writ of mandamus and direct the trial court to vacate its order denying relators’ motion to designate responsible third parties. The writ will issue only if it fails to do so.

Thomas J. Baker, Justice

Before Justices Baker, Triana, and Smith

Filed: February 23, 2024