

1 UNITED STATES DISTRICT COURT
2 DISTRICT OF PUERTO RICO
3
4

RUBÉN VIVAS RUIZ,

Plaintiff,

v.

JOSHUA M. AMBUSH, et al.,

Defendants.

Civil No. 12-2046 (JAF)

5
6 **OPINION AND ORDER**

7 We must decide whether a claim is time-barred under relevant provisions of
8 Commonwealth law.

9 **I.**

10 **Background**

11 This case has its origin in the 1972 terrorist attack at Lod Airport in Tel Aviv,
12 Israel, where several Puerto Ricans were killed. Plaintiff Rubén Vivas-Ruiz sustained
13 life threatening injuries in that attack.

14 The American Center for Civil Justice, which sponsors litigation by victims of
15 terrorism, recruited potential plaintiffs to sign a “Claimant and Center Agreement,” under
16 which the Center would cover all costs of investigating and litigating the potential
17 plaintiffs’ cases in return for twenty percent of any proceeds from litigation related to the
18 Lod Airport attack. The potential plaintiffs also signed a power of attorney in favor of
19 Michael Engelberg, the director of the Center. The Claimant and Center Agreement was
20
21

1 not a retainer agreement, but it did obligate the Center to secure counsel to commence
2 litigation.

3 In furthering its duties under the agreements, the Center asked Joshua Ambush to
4 draft and file a complaint, which he did in April 2006. Without assistance from other
5 attorneys, Ambush began to litigate the case, known as Franqui v. Syrian Arab Republic,
6 No. 1:06-cv-00734-RBW (D.D.C., filed Apr. 21, 2006), in which Rubén Vivas-Ruiz
7 was a named plaintiff.

8 In August 2008, as the Franqui litigation progressed, the United States and Libya
9 signed a settlement agreement that foreclosed terrorism-related suits against Libya. In
10 exchange, Libya would compensate victims of terrorist acts it sponsored, by contributing
11 to a settlement fund to be administered by the United States Department of State. The
12 fund would pay \$10 Million to the estate of each person killed in an act of Libyan-
13 sponsored terrorism.

14 In December 2008, Ambush traveled to Puerto Rico and presented plaintiffs,
15 including Vivas-Ruiz, with a retainer agreement that revoked Engelberg's power of
16 attorney, retroactively retained Ambush as the heirs' counsel for the Franqui litigation
17 and for the administration of their claims in the Libyan settlement, and awarded Ambush
18 ten percent of any recovery.

19 Ambush then worked to obtain settlement funds for the Franqui plaintiffs. He
20 dismissed the Franqui litigation as the settlement agreement required, and he gathered the
21 documents that the State Department requested. By April 2009, the State Department
22 paid \$10 Million to Ambush's trust account for each of the two estates. Of this \$10
23 Million, Ambush sent \$2 Million to the Center pursuant to the Claimant and Center

1 Agreements, kept \$1 Million pursuant to the retainer agreements, and sent \$7 Million to
2 the heirs.

3 The heirs alleged that the retainer agreements were void because Ambush secured
4 their consent by deceit, known in Spanish as *dolo*. Puerto Rico law provides that “dolo”
5 is one reason to set aside a contract. See 31 L.P.R.A. § 3404. According to the heirs’
6 complaint, Ambush failed to disclose at their meeting that the Center had paid him for his
7 work, falsely told them that the Center had done nothing on the estates’ behalf, and
8 misrepresented that the estates’ compensation was contingent on the heirs’ signature of
9 the retainer agreements. The First Circuit ultimately agreed. See Estate of Berganzo-
10 Colón v. Ambush, 704 F.3d 22 (1st Cir. 2013).

11 Vivas-Ruiz filed this suit alleging that he was falsely induced to sign a retainer
12 agreement for attorney’s fees. (Docket No. 1.) On June 26, 2012, Ambush moved to
13 dismiss the suit under Rule 12(b)(5), asserting insufficient service of process. We denied
14 Ambush’s motion. (Docket No. 19.) Ambush filed a subsequent motion to dismiss under
15 Rule 12(b)(6). (Docket No. 20.) We grant the motion.

16 II.

17 Legal Standard

18 A plaintiff’s complaint will survive a motion to dismiss if it alleges sufficient facts
19 to establish a plausible claim for relief. See Fed.R.Civ.P. 12(b)(6); Ashcroft v. Iqbal, 556
20 U.S. 662, 678 (2009) (citing Bell Atl. Corp. v. Twombly, 550 U.S. 544, 570 (2007)). In
21 assessing a claim’s plausibility, the court must construe the complaint in the plaintiff’s
22 favor, accept all non-conclusory allegations as true, and draw any reasonable inferences
23 in favor of plaintiff. San Geronimo Caribe Project, Inc. v. Acevedo-Vila, 687 F.3d 465,
24 471 (1st Cir. 2012) (citation omitted).

1 acknowledgment of the debt by the debtor. Id.; see also Fireman’s Ins. Co. of Newark,
2 N.J. v. Gulf Puerto Rico Lines, 349 F.Supp. 952 (D.P.R. 1972).

3 Here, Vivas-Ruiz executed the retainer agreement with Ambush on December 15,
4 2008. Accordingly, an action to nullify the agreement should have been brought on or
5 before December 15, 2012. Vivas-Ruiz filed suit on December 26, 2012. It follows that
6 the action for nullification is time-barred.

7 Vivas-Ruiz, however, claims that the retainer agreement falls under the
8 Commonwealth Civil Code’s fifteen-year catch-all provision. Under the Civil Code,
9 contract claims that are covered by code provisions but are not designated for special
10 prescriptive treatment automatically fall within a fifteen-year prescriptive period.
11 Caribbean Mushroom Co., Inc. v. Government Development Bank for Puerto Rico, 102
12 F.3d 1307, (1st Cir. 1996); see also Kali Seafood, Inc. v. Howe Corp., 887 F.2d 7, 9 (1st
13 Cir.1989) (Civil Code’s fifteen-year term applies to “contracts and other personal claims
14 ‘for which no special term of prescription is fixed’”). But, the retainer agreement would
15 only fall within the ambit of the fifteen-year catch-all provision if no other term applied.
16 Here, another term does apply. See Arrieta Gimenez v. Arrieta Negron, 672 F.Supp 46,
17 49 (D.P.R. 1987).

18 Alternatively, Vivas-Ruiz claims that the four-year limitations period should begin
19 to run not on December 15, 2008, when appellant executed the retainer agreement, but on
20 December 9, 2009—when his wife received notice that the agreement she signed with
21 Ambush may have been fraudulent. But, the discovery rule—the principle that the
22 statute-of-limitations clock begins to run when the claimant knew or should have known
23 that the defendant violated his rights, see, e.g., Arturet-Velez v. R.J. Reynolds Tobacco
24 Co., 429 F.3d 10, 14 (1st Cir. 2005)—would only apply if we construed this action as one

1 sounding in tort. This, however, is a contractual dispute. See, e.g., King v. TL Dallas &
2 Co., Ltd., 270 F.Supp.2d 262, 269 (D.P.R. 2003) (contract cases involve a previously-
3 existing relationship between the parties, whereas in tort liability cases, a plaintiff's right
4 accrues at the time of the injury.).

5 **IV.**

6 **Conclusion**

7
8
9 For the foregoing reasons, we hereby **GRANT** the defendants' motion to dismiss.

10 (Docket No. 20.)

11 **IT IS SO ORDERED.**

12
13 San Juan, Puerto Rico, this 12th day of June, 2014.

14 S/José Antonio Fusté
15 JOSE ANTONIO FUSTE
16 U. S. DISTRICT JUDGE