

1  
2  
3  
4 UNITED STATES DISTRICT COURT  
5 WESTERN DISTRICT OF WASHINGTON  
6 AT TACOMA

7 JEANNINE VEHRENCAMP,

8 Plaintiff,

9 v.

10 KONE, INC.,

11 Defendant.

CASE NO. C16-5819BHS

ORDER DENYING  
DEFENDANT'S MOTIONS TO  
DISMISS

12  
13 This matter comes before the Court on KONE, Inc.'s ("Kone") motion to dismiss  
14 (Dkt. 8) and motion to dismiss amended complaint (Dkt. 17). The Court has considered  
15 the pleadings filed in support of and in opposition to the motions and the remainder of the  
16 file and hereby denies the motions for the reasons stated herein.

17 **I. PROCEDURAL HISTORY**

18 On August 31, 2016, Plaintiff Jeannine Vehrencamp ("Vehrencamp") filed a  
19 complaint against KONE in Clark County Superior Court for the State of Washington.  
20 Dkt. 1, Ex. 1. Vehrencamp asserts one cause of negligence against KONE based on a  
21 trip and fall in an elevator. *Id.*

22 On September 23, 2016, KONE removed the matter to this Court. Dkt. 1.

1 On September 30, 2016, KONE filed a motion to dismiss. Dkt. 8. On October 20,  
2 2016, Vehrencamp filed an amended complaint. Dkt. 11. On October 24, 2016,  
3 Vehrencamp responded. Dkt. 12. On October 28, 2016, KONE replied. Dkt. 14. On  
4 November 14, 2016, KONE filed a motion to dismiss Vehrencamp's amended complaint.  
5 Dkt. 17. On December 5, 2016, Vehrencamp responded. Dkt. 19. On December 9,  
6 2016, KONE replied. Dkt. 20

## 7 **II. FACTUAL BACKGROUND**

8 The current motions attack the parties' tolling agreement instead of the allegations  
9 relating to Vehrencamp's injury. The parties do not dispute that the date of  
10 Vehrencamp's alleged injury is February 25, 2013, that the applicable statute of  
11 limitations is three years from the date of the injury, or that Vehrencamp filed her  
12 complaint months after the limitations period expired. KONE, however, contends that  
13 Vehrencamp did not give it seven days written notice before filing the complaint as  
14 required by the parties tolling agreement. Dkt. 17 at 2.

## 15 **III. DISCUSSION**

16 The main problem with KONE's motion to dismiss for failure to state a claim is  
17 that it is not a motion to dismiss for failure to state a claim. As shown in a recent order  
18 from this Court, interpretation and breach of a tolling agreement raises questions of fact  
19 that are not even amenable to a motion for summary judgment. *United States v. Sw.*  
20 *Airlines Co.*, C14-1693-JCC, 2015 WL 12559900 (W.D. Wash. Jan. 6, 2015). Although  
21 KONE cites some authorities for the proposition that a statute of limitations issue may be  
22 decided on a motion to dismiss, those authorities addressed the issue of "when the

1 plaintiff knows the facts constituting fraud . . . .” See, e.g., *Jablon v. Dean Witter & Co.*,  
2 614 F.2d 677, 682 (9th Cir. 1980). Imputation of facts to a party is entirely different than  
3 the creation and performance of a contract. Therefore, the Court concludes that KONE  
4 has failed to meet its burden to show that Vehrencamp’s claims are precluded because of  
5 a breach of the parties’ tolling agreement.

6 **IV. ORDER**

7 Therefore, it is hereby **ORDERED** that KONE’s motion to dismiss (Dkt. 8) and  
8 motion to dismiss amended complaint for failure to state a claim (Dkt. 17) are **DENIED**.

9 Dated this 26th day of January, 2017.

10  
11 

12 

---

BENJAMIN H. SETTLE  
United States District Judge