FIRST DISTRICT COURT OF APPEAL
STATE OF FLORIDA

No. 1D20-1598

RIVERSIDE AVENUE PROPERTY, LLC,

Appellant,

v.

1661 RIVERSIDE CONDOMINIUM ASSOCIATION, INC., a Florida not-for-profit corporation,

Appellee.

CORRECTED PAGE: 8
ATTORNEY INFORMATION CORRECTED.
MAILED: August 3, 2021
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On appeal from the Circuit Court for Duval County.
Kevin Blazs, Judge.

August 2, 2021

BILBREY, J.

Riverside Avenue Property, LLC (RAP) appeals the trial court's denial of its claim for a declaration of its rights and obligations under the condominium community covenants for a mixed-use condominium known as 1661 Riverside. The trial court found that RAP's cause of action for declaratory relief under chapter 86, Florida Statutes, accrued when RAP bought its commercial ownership interest in the condominium. As a result, the trial court found that the suit was time-barred by the five-year limitation period set by section 95.11(2)(b), Florida Statutes. On appeal, RAP asserts that the last element of its cause of action did

not occur until the parties developed their adverse and antagonistic interests in the subject matter to support a present need for the declarations. *See* § 95.031(1), Fla. Stat. ("A cause of action accrues when the last element constituting the cause of action occurs."). We agree with RAP that its cause of action did not accrue until there was a dispute between the parties. As a result, the final judgment finding RAP's request for declaratory relief time-barred is reversed, and the matter remanded for further proceedings.

We review de novo the trial court's application of legal issues concerning a statute of limitations. *Fox v. Madsen*, 12 So. 3d 1261, 1262 (Fla. 4th DCA 2009). In May 2008, RAP acquired its commercial ownership in 1661 Riverside and became subject to the Declaration of Community Covenants, Easements, and Restrictions (Community Contract) recorded in 2007.[1] The Community Contract defined the commercial owner and residential owner. It also set forth their respective management duties, including which party was responsible for certain tasks and areas of the property. The residential owner consists of Appellee 1661 Riverside Condominium Association, Inc. (the Association) and the individual unit owners, with the Association authorized by the Community Contract to act on behalf of the unit owners.

From 2008 to 2010, the developer of the property controlled the Association and performed the management functions of the residential owner. During this time, RAP and the Association had no dispute about their respective management, maintenance, and financial duties under the Community Contract. In August 2010, the developer turned over control of the Association to the condominium unit owners, as provided by section 718.301, Florida Statutes.

After turnover, the Association allegedly changed certain practices. Disagreements arose about the parties' respective duties and obligations for common areas and financial matters under the Community Contract. By letter dated February 16, 2011, RAP notified the Association of several disputes involving

[1] The Community Contract was amended twice afterwards, but that is immaterial to this appeal.

"shared facilities" such as the trash collection area, parking deck, fire control system, and budget processes. Other disagreements about the parties' duties under the Community Contract developed between RAP and the Association after 2011.

RAP's initial complaint, which included a count for declaratory judgment, was filed on April 23, 2014. The date of filing was more than five years after RAP's purchase of its commercial ownership in 1661 Riverside but less than five years after the adverse interests between RAP and the Association began. In the complaint, RAP sought declarations on the parties' respective responsibilities for the shared facilities including the trash collection area, contract for trash removal services, and other matters as provided for in the Community Contract. The Association counterclaimed for similar declaratory relief and raised the statute of limitations as an affirmative defense. The parties proceeded to trial on RAP's third amended complaint[2] and the Association's second amended counterclaim.[3]

The trial court held, and the parties did not dispute: 1) that RAP's declaratory judgment action was subject to the five-year limitation period; 2) that the limitation period began to run "from the time the cause of action accrues;" and 3) that the "cause of action accrues when the last element constituting the cause of action occurs." *See* §§ 95.11(2)(b), 95.031–.031(1), Fla. Stat. At issue here is whether the trial court erred by finding that the last element of RAP's action for declaratory relief occurred on the date RAP bought its commercial ownership interest in 2008.

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[2] The association does not challenge the relation back of the third amended complaint to the date of filing the initial complaint. *See* Fla. R. Civ. P. 1.190(c); *Palm Beach Cnty. Sch. Bd. v. Doe*, 210 So. 3d 41 (Fla. 2017).

[3] The trial court entered final judgment on the Association's second amended counterclaim for declaratory relief and addressed several sections of the Community Contract governing the parties' respective rights and responsibilities. The final judgment on the counterclaim is not before us for review.

Section 86.011, Florida Statutes, provides the trial courts with jurisdiction "to declare rights, status, and other equitable or legal relations whether or not further relief is or could be claimed." Among the various declarations which can be sought, a party to a contract may "obtain a declaration of rights, status, or other equitable or legal relations thereunder." § 86.021, Fla. Stat. The purpose in allowing for such declaratory relief under chapter 86, Florida Statutes, "is to settle and to afford relief from insecurity and uncertainty with respect to rights, status, and other equitable or legal relations and is to be liberally administered and construed." § 86.101, Fla. Stat.

Before a court may exercise its jurisdiction to grant declaratory relief "some justiciable controversy" must exist "between adverse parties that needs to be resolved." *Martinez v. Scanlan*, 582 So. 2d 1167, 1171 (Fla. 1991). The elements of a cause of action for declaratory relief are well established. To be entitled to relief, the plaintiff must show:

> [T]here is a bona fide, actual, present practical need for the declaration; that the declaration should deal with a present, ascertained or ascertainable state of facts or present controversy as to a state of facts; that some immunity, power, privilege or right of the complaining party is dependent upon the facts or the law applicable to the facts; that there is some person or persons who have, or reasonably may have an actual, present, adverse and antagonistic interest in the subject matter, either in fact or law; that the antagonistic and adverse interests are all before the court by proper process or class representation and that the relief sought is not merely the giving of legal advice by the courts or the answer to questions propounded from curiosity.

May v. Holley, 59 So. 2d 636, 639 (Fla.1952); *accord Ahearn v. Mayo Clinic*, 180 So. 3d 165, 174 (Fla. 1st DCA 2015).

The nature of the declaration sought by a plaintiff affects the date the cause of action accrues. For instance, in *Silver Shells Corp. v. St. Maarten at Silver Shells Condominium Ass'n*, *Inc.*, 169

So. 3d 197 (Fla. 1st DCA 2015), more than five years after an amendment was recorded and control of the association was turned over from the developer, the association sought declaratory relief. There, the association challenged the validity of the amendment removing a parcel of property from the list of common properties in the covenants. *Id*. at 199. We held that the association's cause of action was time-barred because validity could have been challenged as soon as the association was turned over to member control, more than five years before the lawsuit was filed. *Id*. at 201–02.

Here, the trial court relied on *Grove Isle Ass'n, Inc. v. Grove Isle Associates., LLLP*, 137 So. 3d 1081 (Fla. 3d DCA 2014), to support its holding that RAP's cause of action for declaratory judgment accrued on the date it bought its ownership interest. In the final judgment, the trial court stated:

> In cases such as the one at issue where covenants run with the land, the date of accrual for purposes of obtaining a declaratory judgment takes place on the purchase date, the date of an amendment which creates new rights, or a change in circumstances happening outside the statutory period, per *Grove Isles Association.*

The trial court settled on RAP's purchase date as the date its cause of action accrued because any ambiguities in the language of the Community Contract existed on the date RAP bought its interest. The trial court reasoned that under *Harris v. Aberdeen Property Owners Ass'n*, 135 So. 3d 365 (Fla. 4th DCA 2014), it is the language in the Community Contract "and whether it is inherently ambiguous that creates the cause of action." Under the trial court's reasoning, the actions of the post-turnover Association were irrelevant to the accrual of RAP's cause of action. The trial court held, "a 'dispute' is not required for there to be a practical need for a rights declaration."

Contrary to the trial court's reasoning, *Harris* and *Grove Isle* do not establish a rule that whenever a declaration is sought on the terms of a condominium declaration or restrictive covenant, the date the cause of action accrues is the plaintiff's purchase date. In *Grove Isle*, the court reversed the trial court's dismissal of the claim for declaratory relief as time barred. *Id*. at 1093–94. The

court noted that if the association's request for a declaration "to construe the unit owners' rights and obligations under the Declaration in light of changed circumstances" rested on a change which occurred "within the limitations period," the association's claim for declaratory relief "would not be barred by the statute of limitations." *Id.* at 1094. In *Harris*, the appellate court held that the plaintiff's cause of action for declaratory relief to resolve conflicting covenants accrued on the plaintiff's purchase date, when she became subject to those competing amendments. *Id.* at 368.

Unlike *Silver Shells*, *Harris*, and *Grove Isle*, RAP's need for a declaration was not based on a challenge to the validity of the Community Contract. Had RAP sought a declaration about the Community Contract claiming that it was invalid as in *Silver Shells*, that it conflicted as in *Harris*, or that it was void as in *Grove Isle*, the statute of limitations would have begun to run when RAP assumed its commercial ownership and was subject to the Community Contract. But RAP did not seek any such declaration. Rather, only when a dispute arose between RAP and the Association, did RAP seek to resolve that dispute with a declaratory judgment.

We agree with RAP's assertion on appeal, as it asserted at trial, that its cause of action for declaratory relief did not accrue until a present practical need for the declaration occurred when the parties' interests became adverse and antagonistic.[4] Since the February 2011 dispute was the last element in RAP's cause of action for declaratory relief, the statute of limitations started to run only then.[5] *See* § 95.031(1). RAP's April 2014 suit was well

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[4] Any argument that RAP should have brought the dispute with the Association as a breach of contract action, which would have accrued at the time of any alleged breach, is misplaced. Section 86.111, Florida Statutes, reads in part, "The existence of another adequate remedy does not preclude a judgment for declaratory relief."

[5] The last element of the cause of action for declaratory relief in *Silver Shells*, *Harris*, and *Grove Isle* was acquisition of a

within the five-year limitation period set by section 95.11(2)(b), so the trial court erred in applying the statute of limitations.

"A prime purpose underlying statutes of limitation is to protect defendants from unfair surprise and stale claims." *Major League Baseball v. Morsani*, 790 So. 2d 1071, 1074–75 (Fla. 2001); *see also Raymond James Fin. Serv., Inc. v. Phillips*, 126 So. 3d 186, 192 (Fla. 2013); *HSBC Bank USA, Nat'l Ass'n v. Karzen*, 157 So. 3d 1089, 1091 (Fla. 1st DCA 2015). Thus, time limits on actions are meant to deprive "one who has willfully or carelessly slept on his legal rights [of] an opportunity to enforce an unfresh claim against a party who is left to shield himself from liability with nothing more than tattered or faded memories, misplaced or discarded records, and missing or deceased witnesses." *Morsani*, 790 So. 2d at 1075 (quoting *Nardone v. Reynolds*, 333 So. 2d 25, 36 (Fla. 1976)). It follows that before there was any dispute between RAP and the Association, and while the parties to the Community Contract carried out their respective duties in harmony, RAP was not sleeping on its legal rights to a declaration and the Association was not being lulled into a false sense of security by RAP's inaction. Only when conflicts and disagreements arose between the parties about their respective responsibilities under the Community Contract did RAP's need for a declaration arise.

Had RAP sued for declaratory judgment when it bought its commercial ownership interest, based on speculation about the Association's possible future performance under the Community Contract, the case would lack the requisite present, practical need for a declaration due to present facts establishing the parties' adverse interests. *See May*, 59 So. 2d at 639; *Martinez*, 582 So. 2d at 1171. The courts' jurisdiction to declare rights, status, and other legal relations does not extend to "what amounts to an advisory opinion at the instance of parties who show merely the *possibility* of legal injury on the basis of a hypothetical state of facts which have not arisen and are only contingent, uncertain, [and] rest in the future." *Apthorp v. Detzner*, 162 So. 3d 236, 240 (Fla. 1st DCA 2015) (citation omitted).

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property interest which made the party subject to the governing documents.

Since RAP's cause of action for declaratory judgment did not accrue per *May*, *Scanlan*, and numerous other cases until there was a need for declaration upon a present set of facts creating an adverse and antagonistic interest about the Community Contract, the statute of limitations did not begin running until then. The trial court's ruling that RAP's cause of action accrued on the date RAP bought its property interest and was thus time-barred, was error. As a result, the final judgment is reversed and remanded for further proceedings.

REVERSED and REMANDED.

B.L. THOMAS and NORDBY, JJ., concur.

Not final until disposition of any timely and authorized motion under Fla. R. App. P. 9.330 or 9.331.

Rebecca Bowen Creed of Creed & Gowdy, P.A., Jacksonville, for Appellant.

Michelle H. Martino, Jacksonville, for Appellee.