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STATE OF MINNESOTA
IN COURT OF APPEALS
A17-1608

Jill Hansen, et al.,
Appellants,

vs.

U. S. Bank National Association,
as Special Administrator and Personal Representative
of the Estate of Robert J. Hansen,
Respondent.

Filed July 2, 2018
Affirmed
Schellhas, Judge

Hennepin County District Court
File No. 27-CV-17-3332

Richard W. Huffman, James T. Smith, Huffman, Usem, Crawford & Greenberg, P.A., Minneapolis, Minnesota (for appellants)

Martin S. Fallon, Leora M. Maccabee, Maslon LLP, Minneapolis, Minnesota (for respondent)

Considered and decided by Schellhas, Presiding Judge; Reyes, Judge; and Randall, Judge.*

* Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to Minn. Const. art. VI, § 10.

U N P U B L I S H E D   O P I N I O N

SCHELLHAS, Judge

Appellants challenge the dismissal of their breach-of-fiduciary-duty and unjust-enrichment claims against respondent, arguing that the district court erred in concluding that their claims are barred by the applicable six-year statute of limitations. We affirm.

FACTS

In August 2009, Robert Hansen (Robert) and his brother, Bryan Hansen, agreed to sell certain real property (the property) located in the City of Vadnais Heights to Community Facilities Partnership of Vadnais Heights, LLC (CFP) for approximately $4.6 million. CFP intended to develop and construct a sports complex on the property and to finance its acquisition and construction of the sports complex project through the city's issuance of tax-exempt revenue bonds. The city would then be the "master lessee" of the sports complex.

Under the terms of the purchase agreement, CFP agreed to pay the sellers $2.5 million cash at closing and the balance of $2 million under a tax-exempt subordinate note or notes, (the note) issued by the city. The parties contemplated that CFP or its designated payor would make the note payments to the sellers, using the sports-center lease revenue. Although the purchase agreement stated that the city's lease payments would be "sufficient to pay the amounts due on the Bonds and the Note," the agreement also stated that "payments on the Note are to be subordinate . . . to operating expenses of the Project and debt service on the Bonds." The purchase agreement required CFP to provide the sellers with

> a five-year compiled financial forecast prepared by an independent firm of certified public accountants or other independent financial consultant which shows that projected net

> operating income of the Project is more than the amount necessary to pay the debt service on the Buyer's financing for such improvements and the debt service on the Bonds and the Note.

Robert died on November 22, 2009, leaving as beneficiaries of his estate his daughter and grandson, appellants Jill Hansen and Leif Layman. To supervise the closing of the sale of the property, the probate court appointed respondent U.S. Bank (the bank) and Barbara Pagel as co-special administrators of Robert's estate.[1] In April 2010, the purchase agreement was amended, changing, among other things, the amount of cash due at closing, and requiring that:

> [p]rior to closing, an independent certified public accounting firm or financial professional selected by Seller shall forecast more than enough net operating income is expected to pay the debt service on all improvements and on all Tax-Exempt and Taxable Bonds and Taxable Notes applicable to this Project, its operation, and the property retained by the Buyer herein.

But the bank and Pagel did not select an independent certified public accounting firm or financial professional to conduct the required forecast. The sale of the property nevertheless closed on April 27, 2010, and the probate court entered an "Order Allowing Account and Discharging Special Administrator," finding that the "Special Administrator has otherwise complied with all the orders of the court, with the provisions of applicable law, and fully discharged the duties of the Special Administrator." On April 30, 2010, the probate court appointed the bank and Pagel as co-personal representatives of Robert's estate.

[1] Barbara Pagel is Robert's former wife, the mother of Jill Hansen, and the grandmother of Leif Layman.

The sports complex experienced revenue shortfalls, and in August 2012, the city by resolution ceased its support of the sports complex. Robert's estate consequently stopped receiving payments under the note. In January 2017, appellants commenced this action in district court against the bank, alleging breach of fiduciary duty and unjust enrichment. Appellants claimed that the bank breached its fiduciary duties as co-special administrator of Robert's estate by (1) failing to require CFP to provide the sellers with financial forecasts of the sports complex as required by the purchase agreement; (2) failing to select an independent certified public accounting firm to forecast CFP's ability to service the debt on the sports complex as required by the amended purchase agreement; and (3) failing to require CFP to demonstrate that the lease with the city was sufficient to pay the sports complex's operating expenses and note payments as required by the amended purchase agreement. Appellants also claimed that the bank breached its fiduciary duty as personal representative of Robert's estate by failing to "hold itself liable for the damages caused by the breaches identified." Appellants further alleged that the bank was unjustly enriched "for all payments it received from [Robert's] Estate in association with and arising out of its breach of its fiduciary duties to the Estate and the closing of the sale of the property in April 2010."

The bank moved to dismiss the complaint under Minn. R. Civ. P. 12.02(e) or, alternatively, for summary judgment under Minn. R. Civ. P. 56.02. The bank argued that appellants' claims are barred by the applicable statute of limitations and the doctrines of res judicata and collateral estoppel. The district court concluded that appellants' breach-of-fiduciary-duty claims against the bank, both as both special administrator and personal representative, are "based solely on the actions, or inactions, of [the bank] which occurred prior to the sale of the property in April 2010." The court also concluded that appellants "suffered 'some' damage when [the bank] closed on the sale of the property without, allegedly, performing the required due diligence." Because appellants suffered "some" damage at the time the sale closed in April 2010, but did not commence their action until January 2017, the court concluded that more than six years had passed, and that appellants' breach-of-fiduciary-duty claim therefore is barred by the six-year statute of limitations.

The district court also concluded that appellants' unjust-enrichment claim is barred by the six-year statute of limitations because appellants "have not filed anything, and there is nothing in the record," to contradict the conclusion in the 2012 scheduling order that the bank's special-administrator fees were addressed in the probate court's April 30, 2010 discharging order. The court therefore granted the bank's motion to dismiss under rule 12.02(e), concluding that appellants' claims are barred by the statute of limitations. In reaching its conclusion, the court did not address the bank's arguments based on collateral estoppel and res judicata.

This appeal follows.

D E C I S I O N

Appellants challenge the district court's rule 12.02(e) dismissal of their breach-of-fiduciary-duty and unjust-enrichment claims. "When a case is dismissed pursuant to Minn. R. Civ. P. 12.02(e) for failure to state a claim for which relief can be granted, [appellate courts] review the legal sufficiency of the claim de novo to determine whether the complaint sets forth a legally sufficient claim for relief." *Graphic Commc'ns Local 1B Health & Welfare Fund "A" v. CVS Caremark Corp.*, 850 N.W.2d 682, 692 (Minn. 2014).

In so doing, appellate courts "accept the facts alleged in the complaint as true and construe all reasonable inferences in favor of the nonmoving party." *Frederick v. Wallerich*, 907 N.W.2d 167, 172 (Minn. 2018) (quotation omitted). "[Appellate courts] therefore rely principally on the allegations of the complaint for the factual record." *Id.* at 170. We also consider statements or documents incorporated in or attached to a complaint as exhibits. Minn. R. Civ. P. 10.03 ("A copy of any written instrument which is an exhibit to a pleading is part of the statement of claim or defense set forth in the pleading."). "A district court may only dismiss a complaint under Rule 12.02(e) if it appears to a certainty that no facts, which could be introduced consistent with the pleading, exist which would support granting the relief demanded." *Finn v. Alliance Bank*, 860 N.W.2d 638, 653 (Minn. 2015) (quotation omitted). But "[appellate courts] are not bound by legal conclusions stated in a complaint when determining whether the complaint survives a motion to dismiss for failure to state a claim." *Id.* at 653–54 (quotation omitted).

The parties agree that appellants' claims are subject to the six-year statute of limitations period set forth in Minn. Stat. § 541.05, subd. 1 (2016). "The statute of limitations begins to run on a claim when 'the cause of action accrues.'" *Park Nicollet Clinic v. Hamann*, 808 N.W.2d 828, 832 (Minn. 2011) (quoting Minn. Stat. § 541.01 (2010)). "Accrual is the point at which a plaintiff can allege sufficient facts to survive a motion to dismiss for failure to state a claim on which relief can be granted." *Frederick*, 907 N.W.2d at 173 (quotation omitted). This court reviews "de novo the construction and application of a statute of limitations, including the law governing the accrual of a cause of action." *Sipe v. STS Mfg., Inc.*, 834 N.W.2d 683, 686 (Minn. 2013) (quotation omitted).

Minnesota follows the damage-accrual rule. *Antone v. Mirviss*, 720 N.W.2d 331, 336 (Minn. 2006). Under this rule, the statute of limitations begins to run once any compensable damages occur. *Id.* Also known as the "some damage rule," the damage-accrual rule is broadly defined "to include *any damage*, regardless of whether that damage was alleged in the complaint." *Frederick*, 907 N.W.2d at 178 (emphasis added) (quotation omitted). And the "ability to ascertain the exact amount of damages is not dispositive with respect to the running of the statute of limitations." *Antone*, 720 N.W.2d at 338.

Breach-of-fiduciary-duty claim

Appellants alleged that "[the bank] and Barbara Pagel as co-special administrators of the Estate failed to obtain the five-year compiled forecast from CFP prior to the closing as required by the August 2009 Purchase Agreement and Amended Purchase Agreement." Appellants further alleged that "[i]t has been later discovered that at the time of the Closing, two reports or forecasts had been prepared and provided to CFP and/or the City. Both reports forecasted that revenue projections were overstated and incorrectly or erroneously relied upon unsupported revenue commitments and sources."

"To prevail on a claim of breach of fiduciary duty, a plaintiff must prove four elements: duty, breach, causation, and damages." *TCI Bus. Capital, Inc. v. Five Star Am. Die Casting, LLC*, 890 N.W.2d 423, 434 (Minn. App. 2017).

Alleged breach as special administrator

Appellants argue that the district court erroneously concluded that they suffered "some damage" at the time of the April 2010 closing because the "facts pleaded in this case plainly allege that until 2012, the bonds [funding the note] had not defaulted nor caused

[Robert's] Estate any damage." Appellants argue that their claim therefore did not accrue, and the statute of limitations did not begin to run, until August 2012, when the estate stopped receiving payment on the note. We disagree.

In *Frederick*, our supreme court discussed when "some damage" occurred in the context of a legal malpractice claim. 907 N.W.2d at 178–79. In that case, the plaintiff brought a legal-malpractice action against his attorney who prepared an unenforceable antenuptial agreement. *Id.* at 171. The supreme court concluded that as a result of the failed execution of an antenuptial agreement, some damage occurred, and the statute of limitations began to run, when the parties married.[2] *Id.* at 179.

In reaching its conclusion, the supreme court relied upon *Antone*, which "specifically addressed the 'some damage' rule in the context of an antenuptial agreement." *Id.* at 178 (citing *Antone*, 720 N.W.2d at 335). In *Antone*, the supreme court established a rule that "some damage" occurred at the "point of no return" when the plaintiff was "expos[ed]" to "a claim upon a portion of any appreciation of his premarital property." 720 N.W.2d at 337. The supreme court concluded that this "point of no return" was the date of marriage because "some damage" occurred on that date when each member of the couple lost the right to protect his or her premarital assets. *Id.* at 337–38 (concluding that "exposure" to "a claim upon a portion of any appreciation in [the] premarital property" constituted "an injury that resulted in some damage").

[2] Although the supreme court in *Frederick* also considered whether "multiple acts of legal malpractice can give rise to independent causes of action, each having a separate accrual date under an applicable statute of limitations," that issue is not before us in this case. *Id.* at 174.

In this case, when the sale of the property closed without the required forecast that "more than enough net operating income [was] expected to pay debt service on all . . . Taxable Notes," appellants reached the "point of no return" because they lost the opportunity to demand the forecast, to renegotiate the terms of the purchase agreement, or to cancel the purchase agreement. Although the precise amount of appellants' damages may not have been readily ascertainable when the sale closed and was not alleged in their complaint, appellants incurred "some damage" when the closing occurred, and the statute of limitations began to run on that date. Appellants commenced their action against the bank in January 2017, more than six years after the closing on the sale of the property in April 2010. The district court therefore did not err by concluding that the statute of limitations barred appellants' breach-of-fiduciary-duty claim.

Alleged breach as personal representative

Appellants contend that the district court erroneously dismissed their breach-of-fiduciary-duty claim against the bank in its capacity as personal representative. Appellants argue that even if the statute of limitations began to run at the time of the closing, the bank's subsequent "silence constituted fraudulent misrepresentation that tolled the statute of limitations." Appellants do not claim that the bank made any affirmative, false statements to them.

"Under the common law, a party may be liable for fraud either by making an affirmative statement that is false or by concealing or not disclosing facts under certain circumstances." *Graphic Commc'ns*, 850 N.W.2d at 695. "[I]f a fiduciary duty existed the fiduciary could be liable for fraudulent misrepresentation by silence even though there was no evidence of fraudulent statements or intentional concealment." *Toombs v. Daniels*, 361 N.W.2d 801, 809 (Minn. 1985) (quotation omitted). "Fraudulent concealment tolls the statute of limitations until the party discovers, or has a reasonable opportunity to discover, the concealed defect." *Hydra-Mac, Inc. v. Onan Corp.*, 450 N.W.2d 913, 918 (Minn. 1990). "The 6-year period begins to run when the facts constituting fraud were discovered or, by reasonable diligence, should have been discovered." *Toombs*, 361 N.W.2d at 809.

"In all averments of fraud or mistake, the circumstances constituting fraud or mistake shall be stated with particularity." Minn. R. Civ. P. 9.02. "[Appellate courts] may independently review the sufficiency of the complaint under rule 12.02(5) and determine on its face whether it is barred by the statute of limitations." *Pederson v. Am. Lutheran Church*, 404 N.W.2d 887, 889 (Minn. App. 1987), *review denied* (Minn. June 30, 1987). "[D]ismissal [is] proper under rule 12.02(5) only if it clearly and unequivocally appears from the face of the complaint that the statute of limitations has run and only if the complaint contains no facts to toll that running." *Id.*

Here, the district court concluded that:

> The Record . . . is devoid of any allegation against [the bank] for fraud or concealment of any fact. Additionally, there is nothing in the Record stating that [appellants] were unaware of the sale of Property, the terms of this sale, or the requirements of the 2009 Purchase Agreement or the Amended Purchase [Agreement]. Given the Record submitted, there was nothing preventing [appellants], with due diligence, from discovering [the bank]'s failure to obtain required forecasts when the Property was sold. The statute of limitations is not tolled simply because [appellants] ignored the sale of the Property and its terms until a 'later' date.

Based on our de novo review of the record, we agree with the district court.

Appellants' complaint contains no particular date on which the alleged fraudulent concealment began. Presumably, the bank's alleged fraudulent concealment by silence began no later than the day on which the probate court appointed it to serve as a personal representative. As noted above, appellants' mother and grandmother, Barbara Pagel, served as co-special administrator with the bank for the purpose of effectuating the closing of the property. Appellants do not assert that they requested, and the bank denied, copies of the original or amended purchase agreements or any related closing documents. And appellants do not assert that their mother and grandmother could not or did not share the documents with them.

We agree with the district court that the record contains nothing to suggest that appellants, with reasonable diligence, could not have discovered the bank's alleged breach of fiduciary duty. "Ordinarily, a plaintiff's due diligence and the existence of a fiduciary relationship will be questions of fact for a jury, but where the evidence leaves no room for a reasonable difference of opinion, the court may properly resolve fact issues as a matter of law." *Hope v. Klabal*, 457 F.3d 784, 791 (8th Cir. 2006) (discussing *Toombs*) (quotation omitted). Under the circumstances here, without pleading any facts to suggest that the bank's alleged fraudulent concealment prevented appellants from discovering the bank's alleged breach of fiduciary duty, we conclude that appellants' complaint, on its face, "clearly and unequivocally" demonstrates that the statute of limitations was not tolled and therefore has run on appellants' breach-of-fiduciary-duty claims against the bank as special administrator and personal representative.

Unjust-enrichment claim

To establish an unjust-enrichment claim, the claimant must show that the defendant has knowingly received or obtained something of value for which the defendant "in equity and good conscience" should pay. *Klass v. Twin City Fed. Sav. & Loan Ass'n*, 291 Minn. 68, 71, 190 N.W.2d 493, 494–95 (1971). "[U]njust enrichment claims do not lie simply because one party benefits from the efforts or obligations of others, but instead it must be shown that a party was unjustly enriched in the sense that the term 'unjustly' could mean illegally or unlawfully." *ServiceMaster of St. Cloud v. GAB Bus. Servs., Inc.*, 544 N.W.2d 302, 306 (Minn. 1996) (quoting *First Nat'l Bank v. Ramier*, 311 N.W.2d 502, 504 (Minn. 1981)).

Appellants argue that like their breach-of-fiduciary-duty claim, their cause of action for unjust enrichment as special administrator would not have accrued against the bank until the August 2012 default on the note. We disagree. Any unjust-enrichment claim against the bank accrued when the bank, as co-special administrator, allowed the sale of the property to close in April 2010 without first selecting a certified public accounting firm or financial professional to forecast that enough net operating income was expected to pay the note. Appellants allegedly incurred some damage when the probate court addressed the bank's special-co-administrator fees in its April 30, 2010 order discharging the special co-administrators. Appellants' unjust-enrichment claim accrued in April 2010, more than six years before appellants commenced their action against the bank. The district court therefore did not err by concluding that the statute of limitations bars appellants' unjust-enrichment claim. Because the statute of limitations bars appellants' breach-of-fiduciary-duty claims and unjust-enrichment claims, we need not address the bank's alternative arguments in support of affirmance. *See Court Park Co. v. County of Hennepin*, 907 N.W.2d 641, 645 n.4 (Minn. 2018) (declining to address issue when deciding case on other grounds and addressing issue would not alter outcome of case).

Affirmed.