STATE OF MINNESOTA
IN COURT OF APPEALS
A21-1233

James L. Lang,
Appellant,

vs.

Craig Bjorklund, et al.,
Respondents.

Filed June 20, 2022
Affirmed
Larkin, Judge

Hennepin County District Court
File No. 27-CV-21-272

Michael C. Mahoney, Mahoney Lefky, LLC, Wayzata, Minnesota (for appellant)

Donald R. McNeil, Jeffrey A. Scott, Brian W. Varland, Heley, Duncan & Melander, PLLP, Minneapolis, Minnesota (for respondents)

Considered and decided by Connolly, Presiding Judge; Larkin, Judge; and Smith, Tracy M., Judge.

NONPRECEDENTIAL OPINION

LARKIN, Judge

Appellant challenges the district court's dismissal of his action against respondents for failure to state a claim on which relief may be granted. He argues that the district court erred by considering and relying on allegations in his complaint in a companion case as a basis for dismissal. We affirm.

FACTS

This appeal stems from the foreclosure on several parcels of appellant James Lang's real property by Landmark Community Bank, N.A., now doing business as Flagship Bank Minnesota (the bank) in 2010, following Lang's default on a line of credit. Since then, Lang has brought various actions against the bank and other defendants. The action underlying this appeal is against respondents Craig Bjorklund and Bjorklund Companies, LLC (collectively Bjorklund). Craig Bjorklund was a director of the bank from 2008 to 2015, and he owned and controlled Bjorklund Companies.

In December 2018, Lang sued the bank and other defendants, alleging in part that the bank unlawfully sold his personal property in 2012 in connection with the foreclosures (the 2018 action). Bjorklund was not a defendant in that case. In December 2020, Lang served his initial complaint on Bjorklund (the 2020 action). The allegations against Bjorklund were similar to the allegations against the defendants in the 2018 action. In January 2021, Lang served an amended complaint on Bjorklund.

Because Lang's 2018 action against the bank and the 2020 action against Bjorklund have "overlapping facts," the parties in both actions stipulated and recommended that the district court treat the two actions as companion cases. The district court granted that request, noting that "[t]he assignment of these actions to a single judge will . . . prevent inconsistent rulings."

According to the amended complaint in the 2020 action against Bjorklund, Lang had personal property valued at more than $1.7 million on the real property that was the subject of the bank's foreclosures, and Bjorklund conspired with other officers of the bank

to "defraud Lang and take his personal property." Specifically, Lang alleged that Bjorklund told him that his personal property would be kept safe or be sold at a public sale, and that bank officers told him that he would be notified of any change. Lang alleged that Bjorklund nonetheless sold some of the personal property at an auction in June 2012 without notifying him. Lang alleged that, despite his diligent efforts to monitor his personal property, he could not have learned about the sale of his personal property until 2019 because no public records described the sale and because Bjorklund and the bank "took active steps to conceal" the sale. Lang's claims against Bjorklund included negligent misrepresentation, breach of bailment, third-party beneficiary, civil conspiracy, aiding and abetting, civil theft, unjust enrichment, and fraudulent concealment.

Bjorklund moved to dismiss Lang's 2020 action for failure to state a claim on which relief may be granted. Alternatively, Bjorklund moved for summary judgment. Bjorklund's motions were based on the statute of limitations. The district court granted Bjorklund's motion to dismiss for failure to state a claim, concluding that all of Lang's claims were barred under the applicable statute of limitations. In doing so, the district court reasoned that it could consider the allegations in Lang's complaint in the 2018 companion action without converting the motion to dismiss to one for summary judgment.

Lang appeals.

DECISION

I.

A claim may be dismissed for "failure to state a claim upon which relief can be granted." Minn. R. Civ. P. 12.02(e). Appellate courts "review de novo whether a

complaint sets forth a legally sufficient claim for relief." *Walsh v. U.S. Bank, N.A.*, 851 N.W.2d 598, 606 (Minn. 2014). They "accept the facts alleged in the complaint as true and construe all reasonable inferences in favor of the nonmoving party." *Id.* "A claim is sufficient against a motion to dismiss for failure to state a claim if it is possible on any evidence which might be produced, consistent with the pleader's theory, to grant the relief demanded." *Id.* at 603.

Appellate courts review the construction and application of a statute of limitations de novo. *Park Nicollet Clinic v. Hamann*, 808 N.W.2d 828, 831 (Minn. 2011). The first step is to "determine which statute of limitations applies to the claims asserted." *Id.* at 832. It is undisputed that all of Lang's claims are subject to a six-year statute of limitations. *See* Minn. Stat. § 541.05, subd. 1 (2020) (establishing six-year limitation for claims for contract, taking personal property, and fraud). The next step is to determine "when the statute began to run." *Park Nicollet Clinic*, 808 N.W.2d at 832. "The statute of limitations begins to run on a claim when 'the cause of action accrues.'" *Id.* (quoting Minn. Stat. § 541.01 (2010)). "A cause of action accrues when all of the elements of the action have occurred, such that the cause of action could be brought and would survive a motion to dismiss for failure to state a claim." *Id.*

When a motion to dismiss under rule 12 is based on the statute of limitations, courts apply the general rule of looking only at the facts alleged in the complaint, accepting those facts as true, and construing inferences from those facts in favor of the plaintiff. *Hansen v. U.S. Bank Nat'l Ass'n*, 934 N.W.2d 319, 325 (Minn. 2019). Dismissal is proper "only when it is clear from the stated allegations in the complaint that the statute of limitations

has run." *Id.* at 326. Courts should not "make inferential leaps in favor of the defendant to conclude that a lawsuit is time-barred." *Id.*

In dismissing Lang's 2020 action against Bjorklund, the district court relied on Lang's complaint in his 2018 companion action against the bank. Because the 2018 complaint alleged that Lang learned in March 2012 that the bank had claimed ownership of his personal property, the district court reasoned that his claims against Bjorklund accrued in 2012 and that his 2020 suit against Bjorklund was not commenced within the six-year statute of limitations.

Although the expiration of the limitations period is usually an absolute bar to a plaintiff's claim, the equitable doctrine of fraudulent concealment is an exception that can toll the limitations period. *Minn. Laborers Health & Welfare Fund v. Granite Re, Inc.*, 844 N.W.2d 509, 514 (Minn. 2014). A statute of limitations "does not run during the time that the defendant fraudulently conceals from the plaintiff the facts constituting the cause of action." *Id.* (quotation omitted). "Fraudulent concealment tolls the statute of limitations until the party discovers, or has a reasonable opportunity to discover, the concealed defect." *Id.* (quotation omitted). To make a valid claim of fraudulent concealment sufficient to toll the statute of limitations, the plaintiff must show that (1) the defendant made a statement or statements that concealed the potential cause of action, (2) "the statement or statements were intentionally false," and (3) "the concealment could not have been discovered by reasonable diligence." *Williamson v. Prasciunas*, 661 N.W.2d 645, 650 (Minn. App. 2003).

As to Lang's claim of fraudulent concealment, the district court reasoned that Lang's obligation to investigate any potential claims regarding his personal property arose in 2012, when he learned that the bank had taken his property. Accordingly, the district court concluded that based on Lang's "admitted knowledge of facts placing him on notice of his personal property claims in 2012, and his failure to undertake a timely investigation of those claims," Lang's allegations of fraud did not prevent application of the statute of limitations.

We discern no error in the district court's reasoning and ruling on the merits of the statute-of-limitations issue and Lang's fraudulent-concealment claim. Indeed, the real issue in this case is whether the district court procedurally erred by relying on assertions in Lang's complaint in the 2018 companion action as a basis for its ruling. We therefore turn to that issue.

II.

Lang contends that the district court erred in dismissing his complaint against Bjorklund for failure to state a claim because it relied on facts outside his amended complaint against Bjorklund in doing so. According to Lang's complaint against Bjorklund, Lang first learned that his personal property had been sold at an auction in 2019 and until that time, he believed that the bank was holding his property for safekeeping. The complaint also alleges that Lang did not learn that Bjorklund took his property until 2020. Lang argues that the district court was required to accept those assertions as true and that they were adequate to show that he filed his complaint within the statute of limitations.

In district court, Lang argued that the court could not consider his complaint in the 2018 companion action when ruling on Bjorklund's motion to dismiss. The district court rejected that argument as follows:

> [I]t is appropriate to analyze the Bjorklund Defendants' dispositive motion in the 2020 Action under the Rule 12.02(e) standard. The Bjorklund Defendants' reliance on Lang's operative complaint filed in the companion[] case, the 2018 Action, which the parties agree rests upon the same underlying factual circumstances, does not convert this motion into one for summary judgment. . . . The Court has companioned these two cases, and it is entitled to review the history of both actions in deciding the present motion.

When considering a motion to dismiss for failure to state a claim for relief under rule 12.02(e), courts generally must look only to the facts alleged in the complaint. If "matters outside the pleading are presented to and not excluded by the court," then the motion to dismiss must be treated as a motion for summary judgment. Minn. R. Civ. P. 12.02. But a court may consider documents referenced in the complaint without converting the motion to dismiss to a motion for summary judgment. *N. States Power Co. v. Minn. Metro. Council*, 684 N.W.2d 485, 490 (Minn. 2004). Strict application of that rule does not justify the district court's reliance on the complaint in the 2018 action because Lang's complaint in the 2020 action does not reference the 2018 complaint.

Nevertheless, under the unique circumstances of this case and for the reasons that follow, we conclude that the district court did not err by considering the allegations in the 2018 companion action. First, the parties stipulated that Lang's 2018 action against the bank and his 2020 action against Bjorklund "made claims arising out of overlapping facts" and therefore asked the district court to treat the two actions as companion cases. Second,

the district court granted that request, reasoning that "assignment of these actions to a single judge will further interests of the parties and the judiciary by providing a uniform and coordinated system of litigation management to prevent inconsistent rulings and conserve the resources of the parties, their counsel, and the judiciary."

Third, consistent with the parties' stipulation and the district court's agreement to treat the 2018 and 2020 actions as companion cases, the hearing on Bjorklund's motion to dismiss was not limited to issues regarding his 2020 action against Bjorklund. Instead, the district court heard and determined motions related to both actions, including the bank's motion for summary judgment.

In the context of those circumstances, the district court explained:

> Lang asserts that the Second Amended Complaint in the 2018 action is inadmissible hearsay and should not be considered on the Bjorklund Defendants' motion to dismiss the 2020 Action. Lang provides the Court with no legal basis for claiming that his own operative Complaint in a companioned matter should be considered inadmissible hearsay. Each of Lang's operative Complaints is a formal legal pleading, filed with the Court, setting forth Lang's factual allegations, in conformance with the requirements of Rule 11. *See* Minn. R. Civ. P. 11(c) (allegations and other factual contentions in a pleading are presented as having "evidentiary support"). Allegations in a pleading of the party's own knowledge are equivalent to admissions by a party. Party admissions, when offered by an opposing party, do not fall within the definition of hearsay. *See* Minn. R. Evid. 801(d)(2) (statements by party-opponents are not hearsay). Moreover, by stipulation filed February 3, 2021, all parties agreed that the 2020 Action should be companioned with the 2018 Action. The Court companioned the cases by Order dated February 5, 2021. All parties in both the 2020 Action and the 2018 Action agreed that the Court should hear and decide all of the currently pending motions in both cases simultaneously. *It would defy logic for the Court to ignore Lang's pleadings in the 2018 Action, and*

> *allow him to take inconsistent factual positions in the companioned 2020 Action, on the same underlying facts and circumstances.*

(Emphasis added.)

The district court's reasoning is sound. Consistency in companion actions that are based on overlapping facts is a strong reason to allow consideration of the complaint in the 2018 action. In the 2020 action, Lang's theory was that he believed the bank and Bjorklund were keeping his personal property safe as a bailment and that he had no reason to think otherwise until he learned in 2019 that the bank had sold his property without notifying him. Lang emphasizes that his complaint in the 2020 action does not allege that the bank claimed ownership of his personal property. But that theory is inconsistent with the allegations in Lang's complaint in the 2018 action, in which he admitted that he learned in 2012 that the bank had claimed the right to keep his personal property. We will not indulge Lang's presentation of contradictory facts, which could lead to inconsistent rulings, when he himself requested that the district court consider his 2018 and 2020 actions in tandem, and the district court granted that request in an effort to "prevent inconsistent rulings."[1]

In sum, the district court did not err by considering the allegations in Lang's complaint in the 2018 companion action against the bank when dismissing Lang's 2020 action against Bjorklund for failure to state a claim on which relief can be granted.

[1] Indeed, in the 2018 action, the district court dismissed some of Lang's claims against the non-bank defendants based on the statute of limitations because Lang admitted that he learned in 2012 that the bank had taken his personal property. Permitting Lang to bring similar claims at a later date against Bjorklund based on those same facts would be inconsistent with that ruling.

III.

Even if the district court had erred in relying on the complaint in Lang's 2018 action when dismissing his 2020 action, we would not reverse because a premature dismissal under rule 12 is harmless error if it is clear that a claim would properly have been disposed of by summary judgment. *Kellar v. VonHoltum*, 568 N.W.2d 186, 190 (Minn. App. 1997), *rev. denied* (Minn. Oct. 31, 1997); *see* Minn. R. Civ. P. 61 (stating that harmless error is ignored).

Bjorklund moved the district court for dismissal under rule 12 for failure to state a claim upon which relief can be granted and for summary judgment under Minnesota Rule of Civil Procedure 56. Bjorklund submitted a memorandum in support of dismissal, which set forth the standards for dismissal under rules 12 and 56. In response, Lang submitted an affidavit that listed 112 disputed facts in opposition to summary judgment. Lang also submitted a memorandum arguing against summary judgment as follows: "Defendants ask the Court to consider and refer to documents beyond the Amended Complaint and present arguments based on facts beyond the Amended Complaint" and "[i]n doing so the Defendant[s] are seeking summary judgment."

Bjorklund submitted a reply memorandum stating, "Whether under Rule 12 or Rule 56 . . . , Plaintiff's Complaint should be dismissed as it is barred by the statute of limitations because Plaintiff expressly admits in this case and in the Companion Case that he was aware of his personal property claims in 2012." Bjorklund's reply memorandum noted that its motion was for alternative relief under either rule 12 or 56. To the extent the district court was inclined to grant the motion under rule 56, Bjorklund cited the complaint in the

2018 action as a document supporting summary judgment and included a recital of undisputed facts, which focused on Lang's admissions that he knew, in 2012, that the bank had taken his property. Bjorklund also quoted a previous finding by the district court in the 2018 action that Lang's claims against another defendant in the action for conversion and theft "accrued well before the limitations cutoff date . . . because the personal property stored at [the foreclosed locations] was gone—and Lang knew it was gone—by mid-2012."[2]

In sum, the possibility of relief under rule 56, as opposed to rule 12, was squarely before the district court and argued by Lang and Bjorklund. Summary judgment is appropriate if the moving party shows that "there is no genuine issue as to any material fact" and that the moving party is "entitled to judgment as a matter of law." Minn. R. Civ. P. 56.01. "We review a grant of summary judgment de novo." *Henson v. Uptown Drink, LLC*, 922 N.W.2d 185, 190 (Minn. 2019). In conducting our review, we view the evidence in a light most favorable to the nonmoving party. *Id.* "Summary judgment is inappropriate when reasonable persons might draw different conclusions from the evidence presented." *Id.* (quotation omitted).

If a fact is admitted in the pleadings, that admission stands in the place of evidence. *Phelps v. Benson*, 90 N.W.2d 533, 548 (Minn. 1958); *JEM Acres, LLC v. Bruno*, 764 N.W.2d 77, 81 (Minn. App. 2009) (citing *Phelps* to conclude that a party's standing to sue was established despite the lack of documentary evidence because the other party's

[2] The district court made that finding when dismissing Lang's 2018 claims against other non-bank defendants under the statute of limitations.

pleading admitted the facts demonstrating standing). As to summary judgment, witness affidavits are deemed self-serving and insufficient to create a genuine issue of fact for trial if they contradict earlier sworn statements. *Ariola v. City of Stillwater*, 889 N.W.2d 340, 358 (Minn. App. 2017), *rev. denied* (Minn. Apr. 18, 2017). Here, the allegations in Lang's complaints in the 2018 and 2020 actions are conflicting. In his amended complaint in the 2020 action against Bjorklund, Lang admitted that he knew in 2012 that the bank had taken all his personal property, but he alleged that he believed that Bjorklund was safekeeping the personal property as a bailment.[3] According to Lang, Bjorklund's "co-conspirators" said that the bank would keep his personal property safe and notify him of any sale. Lang claimed that he did not learn that his personal property had been sold at auction until 2019.

However, Lang's complaint in the 2018 action alleges that in March 2012, a vice president of the bank told Lang that "the Bank had the right to keep Lang's personal property" and that "all of Lang's equipment and personal property had been taken and removed." Lang's complaint alleged that the vice president refused to provide him with a list of the property that the bank had taken. The complaint stated that Lang "did not learn the Bank had foreclosed on Lang's Little Pine and Big Sandy property until about July 2012 when Lang learned that the Bank had taken everything." It also stated that "Lang lost all his property to the Bank and the Bank had taken all of Lang's equipment so he could not work at building cabins."

[3] A bailment occurs when goods are delivered, and ownership is not transferred, under an agreement that the goods will be returned. *Duxbury v. Spex Feeds, Inc.*, 681 N.W.2d 380, 386 (Minn. App. 2004), *rev. denied* (Minn. Aug. 25, 2004).

Lang's inconsistent allegations in his 2018 and 2020 complaints are akin to contradictory sworn statements, which are generally inadequate to defeat a motion for summary judgment. Lang's allegation that the bank's vice president told him in March 2012 that the bank "had the right to keep [his] personal property" establishes that Lang knew in 2012 that the bank had claimed ownership of his personal property. Even if Lang did not learn about the bank's sale of his personal property until 2019, he was aware of the facts giving rise to his claims against Bjorklund once he learned of the bank's claim of ownership. Reasonable minds could not disagree that Lang knew, in 2012, that the bank had taken his personal property and did not intend to return it to him. Thus, there is no genuine issue of material fact that Lang's claim against Bjorklund accrued in 2012, and Bjorklund is entitled to judgment as a matter of law under the statute of limitations.

In sum, it is clear that Lang's action would properly have been disposed of by summary judgment on the record before the district court. Thus, even if the district court erred by relying on Bjorklund's complaint in the companion 2018 action when dismissing his 2020 action under rule 12, the error was harmless. *See Kellar*, 568 N.W.2d at 190 ("The district court's dismissal of the unfair competition claims on the pleadings constituted, at most, harmless error because it is clear from the record that these claims would have properly been dismissed on summary judgment.").

Affirmed.