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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA23-54

Filed 05 September 2023

Durham County, No. 22 CVS 2251

LORETTA D. ROBERTS and WILLIE M. ROBERTS JR., Plaintiffs,

v.

LILLIAN C. ROBERTS, Defendant.

Appeal by plaintiffs from order entered 28 June 2022 by Judge Brian C. Wilks in Durham County Superior Court. Heard in the Court of Appeals 6 June 2023.

Richberg Law, PLLC, by Shayla C. Richberg, for plaintiffs-appellants.

Stam Law Firm, PLLC, by R. Daniel Gibson and Nathaniel C. Parker, for defendant-appellee.

ZACHARY, Judge.

Plaintiffs Loretta D. Roberts and Willie M. Roberts, Jr., appeal from an order granting Defendant Lillian C. Roberts's motion to dismiss pursuant to Rule 12(b)(6) of the North Carolina Rules of Civil Procedure. After careful review, we allow the motion to dismiss in part, and affirm in part.

I. Background

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In May 1999, Willie M. Roberts, Sr., (“Decedent”) died intestate. He was survived by his wife and two children, Defendant and Plaintiffs, respectively. Defendant qualified as administratrix of Decedent’s estate. At the time of his death, Decedent owned several parcels of land in Durham (“the Property”), which Defendant and Plaintiffs held jointly by operation of law upon Decedent’s death. According to Defendant, Plaintiffs refused to contribute to payment of taxes on the Property. Instead, on 19 September 2003, Plaintiffs executed a general warranty deed (“the 2003 Deed”) conveying their interests in the Property to Defendant in fee simple.

Nineteen years later, in 2022, Defendant entered into contracts to sell the Property to a third party. However, the third-party purchaser notified Defendant that the 2003 Deed contained errors that required correction in order to enable Defendant to transfer good title. Consequently, Defendant’s counsel served Plaintiffs with a corrected deed, which Plaintiffs refused to execute. According to Plaintiffs, Defendant threatened to bring an action to quiet title.

On 25 April 2022, Plaintiffs filed a complaint (“the First Case”) in Durham County Superior Court. Plaintiffs sought a declaratory judgment, asking the court to “[q]uiet any claim of full ownership by Defendant herein and strik[e] the [2003 D]eed executed by Plaintiff[s] to Defendant, as void or voidable[.]” In addition, Plaintiffs asserted an unjust enrichment claim and sought the creation of a constructive trust “for a fair and equitable distribution of proceeds” of any sale of the Property. That same day, Plaintiffs filed a notice of lis pendens on the Property.

On 16 May 2022, Defendant filed a motion to dismiss Plaintiffs' complaint pursuant to N.C. Gen. Stat. § 1A-1, Rule 12(b)(6) (2021), arguing that "Plaintiffs' claims are excluded by the expiration of the statutes of limitations provided by the North Carolina General Statutes and fail to state a claim upon which relief can be granted." Defendant's motion came on for hearing on 1 June 2022, and by order entered on 28 June 2022, the trial court granted Defendant's motion and dismissed Plaintiffs' complaint. On 20 July 2022, Plaintiffs timely filed notice of appeal.

Soon thereafter, on 15 August 2022, Defendant filed a verified complaint against Plaintiffs in Durham County Superior Court ("the Second Case"), seeking to quiet title to the Property in her favor, and alleging slander of title by Plaintiffs. On 1 November 2022, Plaintiffs responded by filing a motion for summary judgment.

On 28 November 2022, Plaintiffs' motion for summary judgment in the Second Case came on for hearing in Durham County Superior Court. By order entered on 13 December 2022, the trial court denied Plaintiffs' motion and instead granted partial summary judgment quieting title to the Property in favor of Defendant. The trial court declared that Defendant was the Property's "sole owner of title in fee simple" and canceled the lis pendens filed by Plaintiffs in the First Case. The trial court also granted partial summary judgment to Defendant on Defendant's slander-of-title claim, but reserved the question of damages for trial.

II. Motion to Dismiss Appeal

In light of the existence of the Second Case, which was filed during the

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pendency of the present appeal from the trial court's order dismissing the First Case, and which remains an active controversy by all accounts, Defendant has filed a motion to dismiss this appeal as moot, or in the alternative, to stay this appeal pending final resolution of the Second Case. Defendant asserts that "the First and the Second Case both address the same question: who owns the [P]roperty[?]" We agree, in part, as to Plaintiffs' quiet-title action.

"A case is moot when a determination is sought on a matter which, when rendered, cannot have any practical effect on the existing controversy." *Roberts v. Madison Cty. Realtors Ass'n*, 344 N.C. 394, 398–99, 474 S.E.2d 783, 787 (1996) (citation and internal quotation marks omitted). Our Supreme Court has thus concluded that a case should be dismissed when "during the course of litigation it develops that the relief sought has been granted or that the questions originally in controversy between the parties are no longer at issue, . . . for courts will not entertain or proceed with a cause merely to determine abstract propositions of law." *In re Peoples*, 296 N.C. 109, 147, 250 S.E.2d 890, 912 (1978), *cert. denied*, 442 U.S. 929, 61 L. Ed. 2d 297 (1979). And this Court has recognized that an intervening proceeding that "is determinative of the rights of all parties" in one case relating to title and possession of certain property can moot another proceeding concerning the same rights to the same property. *McRorie v. Query*, 23 N.C. App. 601, 602, 209 S.E.2d 819, 819 (1974).

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As Defendant notes in her motion to dismiss: “The Second Case determined title. Its partial summary judgment order is an intervening event that made the underlying controversy cease to exist here.” In the partial summary judgment order entered in the Second Case, the trial court declared that Defendant is “*sole owner* of title in fee simple” of the Property. (Emphasis added). As a result, Defendant correctly recognizes that the trial court “cannot grant Plaintiffs any effectual relief” in the First Case.

The relief that Plaintiffs seek in their quiet-title action in the First Case—that the “court enter a decree establishing that Plaintiffs have an equal one-third share in the legal title of the” Property and “[q]uiet any claim of full ownership by Defendant herein and strik[e] the [2003 D]eed executed by Plaintiff[s] to Defendant, as void or voidable”—is entirely obviated by the partial summary judgment order in the Second Case, which “is determinative of the rights of all parties” regarding the Property. *Id.* Accordingly, the quiet-title determination sought by Plaintiffs “cannot have any practical effect on the existing controversy[.]” *Roberts*, 344 N.C. at 398–99, 474 S.E.2d at 787, and the quiet-title claim should be dismissed as moot.

We therefore allow Defendant’s motion to dismiss, in part, as to Plaintiffs’ quiet-title claim. Plaintiffs’ unjust-enrichment claim, however, is not rendered moot by the partial summary judgment order entered in the Second Case, and the trial court’s dismissal of that claim remains ripe for appellate review.

III. Statute of Limitations

Plaintiffs argue that the trial court erred in granting Defendant's motion to dismiss, in that their complaint properly stated a claim for unjust enrichment. However, for the reasons that follow, we conclude that Plaintiffs' unjust enrichment claim is time-barred by the applicable statute of limitations.

A. Standard of Review

"Appellate courts review de novo an order granting a Rule 12(b)(6) motion to dismiss." *Taylor v. Bank of Am., N.A.*, 382 N.C. 677, 679, 878 S.E.2d 798, 800 (2022). "Under a de novo review, the court considers the matter anew and freely substitutes its own judgment for that of the lower tribunal." *Craig v. New Hanover Cty. Bd. of Educ.*, 363 N.C. 334, 337, 678 S.E.2d 351, 354 (2009) (citation and internal quotation marks omitted). "[T]his Court also views the allegations in the complaint in the light most favorable to the non-moving party." *Lackey v. City of Burlington*, 287 N.C. App. 151, 156, 882 S.E.2d 582, 587 (2022). Therefore, when considering a Rule 12(b)(6) motion to dismiss, "the question for the court is whether, as a matter of law, the allegations of the complaint, treated as true, are sufficient to state a claim upon which relief may be granted under some legal theory, whether properly labeled or not." *Leary v. N.C. Forest Prods., Inc.*, 157 N.C. App. 396, 400, 580 S.E.2d 1, 4 (citation omitted), *aff'd per curiam*, 357 N.C. 567, 597 S.E.2d 673 (2003).

"The statute of limitations may provide the basis for dismissal on a motion pursuant to N.C. Gen. Stat. § 1A-1, Rule 12(b)(6) if the face of the complaint establishes that the plaintiff's claim is barred." *Woody v. AccuQuest Hearing Ctr.*,

LLC, 284 N.C. App. 540, 543, 877 S.E.2d 1, 4 (citation and brackets omitted), *appeal withdrawn*, ___ N.C. ___, 878 S.E.2d 147 (2022). “Once a defendant raises a statute of limitations defense, the burden of showing that the action was instituted within the prescribed period is on the plaintiff. A plaintiff sustains this burden by showing that the relevant statute of limitations has not expired.” *Honeycutt v. Weaver*, 257 N.C. App. 599, 604, 812 S.E.2d 859, 863 (2018) (citation omitted).

B. Analysis

Plaintiffs contend that the trial court “erred in granting [Defendant]’s motion to dismiss as the complaint states a claim for unjust enrichment.”

To make out a claim for unjust enrichment, the claimant must allege that property or benefits were conferred on a defendant under circumstances which give rise to a legal or equitable obligation on the part of the defendant to account for the benefits received, but that the defendant has failed to make restitution for the property or benefits.

Duffy v. Camp, 287 N.C. App. 46, 69, 882 S.E.2d 675, 695 (2022) (citation and internal quotation marks omitted).

“Under our General Statutes, the statute of limitations for bringing a cause of action for . . . unjust enrichment is three years.” *Housecalls Home Health Care, Inc. v. N.C. Dep’t of Health & Hum. Servs.*, 200 N.C. App. 66, 70, 682 S.E.2d 741, 744 (2009), *disc. review denied*, 363 N.C. 802, 690 S.E.2d 697 (2010).

Viewed in the light most favorable to Plaintiffs and taking their allegations as true, *Lackey*, 287 N.C. App. at 156, 882 S.E.2d at 587, Plaintiffs’ complaint

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established that Defendant “execut[ed] a General Warranty Deed with the intent to deprive Plaintiffs of their legal interest in their family’s inheritance by not providing them with an equal share of sale proceeds received by her in the purported sale of said properties.” Moreover, Plaintiffs allege that “as the administrator of the estate[,] Defendant was required to act in good faith and in the best interest of all heirs of the estate”; that “failing to disclose her interest in the later financial gain . . . was an omission of a material fact that could have affected the party’s intent at the time of the transaction”; and that “when Defendant asked Plaintiffs to transfer their legal interest in their family land, she did not inform them that she would be selling said land at a later date for valuable consideration.”

Although Plaintiffs contend that they “were not represented by counsel, [and] thus were not operating with a full understanding to form the necessary meeting of the minds for legal intent[,]” the 2003 Deed, which both Plaintiffs signed, clearly states that Plaintiffs “convey unto [Defendant] in fee simple” all of their interests in the Property and adds: “TO HAVE AND TO HOLD the aforesaid lot or parcel of land and all privileges and appurtenances thereto belonging to the [Defendant] in fee simple[.]” It was upon this 2003 conveyance that any claim that Plaintiffs might have asserted against Defendant accrued.

Plaintiffs allege that Defendant “abused her fiduciary duty” by “executing a General Warranty Deed with the intent to deprive [P]laintiffs of their legal interest[s] in their family’s inheritance by not providing them with an equal share of sale

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proceeds received by her in the purported sale of said properties.” However, reasonable due diligence would have revealed the possibility that deeding the Property in fee simple to Defendant could result in her unilateral sale of the Property, without any compensation to Plaintiffs, at an unspecified time in the future, the same way that Plaintiffs conveyed their own interests in 2003. Nineteen years have passed since Plaintiffs voluntarily conveyed their own interest to Defendant; therefore, the statute of limitations bars Plaintiffs’ claims.

Once Defendant raised the statute of limitations defense in her motion to dismiss, Plaintiffs bore the burden of “showing that the relevant statute of limitations has not expired.” *Honeycutt*, 257 N.C. App. at 604, 812 S.E.2d at 863 (citation omitted). Plaintiffs only address this statute-of-limitations issue in their reply brief on appeal, in which they assert that they “were not made aware of the mistake [in the 2003 Deed] until, on or around 29 March 2022, when [Defendant] approached them about the errors in the [2003 D]eed that w[ere] preventing her from selling the tracts.” Yet, Plaintiffs cannot use the date of discovery of the alleged mistake in the 2003 Deed as the date of accrual for their claim based on Defendant’s alleged abuse of her fiduciary duty. Plaintiffs’ claim is not grounded in the alleged mistake, and their discovery of the alleged mistake cannot serve to revive their time-barred claims.

No matter which of the previously discussed claims Plaintiffs may have pleaded in their complaint, each accrued in 2003. Plaintiffs have not shown “that the relevant statute of limitations has not expired” as to any of these claims, *id.* (citation

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omitted), and it is apparent from the face of the complaint that Plaintiffs' claims are time-barred. Thus, the relevant "statute of limitations . . . provide[s] the basis for dismissal[.]" *Woody*, 284 N.C. App. at 543, 877 S.E.2d at 4 (citation omitted).

IV. Conclusion

For the foregoing reasons, the trial court did not err in granting Defendant's motion pursuant to Rule 12(b)(6) of the North Carolina Rules of Civil Procedure. The trial court's order is affirmed.

DISMISSED IN PART; AFFIRMED IN PART.

Judges ARROWOOD and GRIFFIN concur.

Report per Rule 30(e).