COURT OF APPEALS
DECISION
DATED AND FILED

July 31, 2015

Diane M. Fremgen
Clerk of Court of Appeals

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. *See* WIS. STAT. § 808.10 and RULE 809.62.

Appeal No. 2014AP1472 **Cir. Ct. No. 2012CV149**

STATE OF WISCONSIN **IN COURT OF APPEALS**
DISTRICT III

VOYAGER VILLAGE PROPERTY OWNERS ASSOCIATION, INC.,

PLAINTIFF,

V.

BROOKS DENNIS LETOURNEAU,

DEFENDANT-THIRD-PARTY PLAINTIFF-APPELLANT,

V.

MARK E. CROWL, DAVID M. ANDERSON, BRIAN C. LANGDON, STEPHAN J. GNOZA AND NORTHWOODS PROPERTIES OF WISCONSIN, LLC,

THIRD-PARTY DEFENDANTS-RESPONDENTS.

APPEAL from judgments of the circuit court for Burnett County: KENNETH L. KUTZ, Judge. *Affirmed; motions granted and cause remanded with directions*.

Before Hoover, P.J., Stark and Hruz, JJ.

¶1 PER CURIAM. Brooks Letourneau appeals judgments that awarded Mark Crowl, David Anderson, Brian Langdon, Stephan Gnoza, and Northwoods Properties of Wisconsin, LLC ("Northwoods") (collectively the "Northwoods Group") monetary sanctions against Letourneau for maintaining a frivolous action. On appeal, Letourneau advances various arguments that only tangentially, if at all, consider the case in its correct procedural context.

¶2 With the issues properly framed, we conclude the circuit court appropriately dismissed all of Letourneau's claims against the Northwoods Group based on insufficient service of process and, hence, a lack of personal jurisdiction, and that the Northwoods Group did not waive that defense. We further conclude the circuit court appropriately sanctioned Letourneau for maintaining a frivolous action, as it is clear the statutes of limitations had run on all of Letourneau's claims at the time he filed his third-party complaint, and he has not provided any discernable legal argument that the discovery rule tolled the running of the statutes on any of his claims. Accordingly, we affirm.

BACKGROUND

¶3 This appeal is Letourneau's third time before this court on issues arising from the same real estate transaction. Letourneau purchased a vacant lot in the Voyager Village development in 1999, which lot was subject to a recorded Declaration of Covenants that required Letourneau to pay annual assessments to the Voyager Village Property Owners Association, Inc. (the "Association") for each lot he owned. ***Voyager Village P.O.A., Inc. v. Letourneau***, No. 2011AP1097, unpublished slip op. ¶2 (May 1, 2012) (hereafter ***Voyager Village I***). However, when a home is constructed on contiguous lots in the

development, the covenants provided that the owner could apply to have those lots treated as a single unit for assessment purposes. ***Id.***

¶4 Letourneau received two solicitations in 2005 promoting a special offer allowing Association members to purchase adjacent lots at a discount. ***Id.***, ¶3. Both advertisements came from Northwoods, which was the broker and the marketing agent for the development, and one advertisement had Langdon's name on it. ***Id.*** Letourneau met with Anderson, one of Northwoods' agents, and the two prepared an offer to purchase three additional lots, which sale was ultimately closed. ***Id.***, ¶¶4-6. The offer included a restriction on the alienability of the lots separately and a reversion provision in the event that restriction was violated. ***Id.***, ¶5. Letourneau has argued that he was not told about the restriction on the alienability of the lots, and that he was assured his four lots would be subject to one assessment, regardless of whether a home was constructed on them. ***Id.***, ¶¶4-5.

¶5 The Association assessed the four parcels separately and demanded payment accordingly, which Letourneau refused to remit. ***Id.***, ¶1. The Association sued Letourneau in 2008 to recover the unpaid assessments, and Letourneau filed a counterclaim asserting various claims. ***Id.*** The Association prevailed on all matters following a bench trial. ***Id.***, ¶7. We affirmed on appeal, concluding the economic loss doctrine barred Letourneau's tort claims, his statutory claims relied on an undeveloped agency theory, and his contract claims impermissibly relied on the contents of the promotional mailings and Anderson's oral statements in violation of the parol evidence rule. ***Id.***, ¶1. We observed that Letourneau may have had valid claims against Anderson for the alleged tort and statutory violations, but that Anderson had not been joined as a party. ***Id.***, ¶13 n.6.

¶6 In 2012, the Association commenced this second lawsuit against Letourneau to collect past due lot assessments dating back to 2009. ***Voyager Village Prop. Owners Ass'n. v. Letourneau***, No. 2013AP2470, unpublished slip op. ¶3 (September 23, 2014) (hereafter ***Voyager Village II***). The circuit court granted the Association's summary judgment motion after Letourneau failed to properly respond to it. ***Id.***, ¶¶3, 5. Notably, Letourneau's only response to the Association's motion was his pro se filing on November 14, 2012 of the third-party summons and complaint at issue in this appeal, in which Letourneau asserted various tort, statutory and contract claims against all members of the Northwoods Group. ***Id.***, ¶5 n.3. The circuit court in ***Voyager Village II*** subsequently denied Letourneau's WIS. STAT. § 806.07[1] motion for relief from the judgment. ***Voyager Village II***, unpublished slip op. ¶¶3, 5.

¶7 Letourneau appealed the circuit court's grant of summary judgment to the Association, and we affirmed in all respects in ***Voyager Village II***. Summary judgment was warranted because the "pleadings clearly established a claim for relief, and we established in [***Voyager Village I***] that Letourneau's additional adjacent lot purchases resulted in additional, per lot, annual dues." ***Voyager Village II***, unpublished slip op. ¶6. Letourneau failed to timely submit any opposing affidavits in advance of the summary judgment hearing, and therefore had failed to demonstrate the existence of a genuine issue of material fact. ***Id.***, ¶7. We also rejected Letourneau's argument that he was entitled to relief based on newly discovered evidence that "there was a 'continuing fraud, deception and scheme' between Voyager Village and its exclusive listing broker to entice

[1] All references to the Wisconsin Statutes are to the 2013-14 version unless otherwise noted.

Letourneau to buy adjacent lots without disclosing that he would be charged separate annual assessments for each of the four lots [he] owned." ***Id.***, ¶8.

¶8 Meanwhile, the litigation continued before the circuit court on Letourneau's third-party claims against the Northwoods Group. The third-party complaint contained thirteen numbered paragraphs in which Letourneau made a wide-ranging and disjointed combination of factual allegations and legal assertions, most of which pertained to Letourneau's 2005 purchase of the three additional lots.[2] Based on these allegations, Letourneau advanced six claims against the Northwoods Group, each of which he described in summary fashion. The claims generally consisted of the same legal theories he had earlier asserted against the Association in ***Voyager Village I***, among them various tort theories (including misrepresentation and fraudulent concealment), breach of contract, and violations of WIS. STAT. §§ 452.134, 452.135, and 452.139.

¶9 The members of the Northwoods Group filed separate answers, all of which raised improper service as an affirmative defense. They then filed separate motions seeking dismissal based on insufficient service of process or, in the

[2] The thirteen numbered paragraphs, some of which are quite lengthy, present a complicated and incoherent picture of the precise bases for the claims later asserted in the third-party complaint. Letourneau's legal theories appear to center on the following allegations, which are a mixture of factual assertions and legal conclusions: (1) Crowl and Anderson had "obvious" and undisclosed conflicts of interest because they were employed by both the Voyager Village development and Northwoods at the time Letourneau purchased his additional parcels in 2005; (2) the Northwoods Group was required to inform Letourneau both orally and in writing that there were restrictions regarding the combined lot assessment and the alienability of the additional lots once purchased; (3) Crowl, Anderson, Langdon and Gnoza successfully promoted the sale of the lots by failing to disclose the assessment and alienability restrictions; (4) Crowl and Anderson testified falsely in the prior lawsuit and, along with Gnoza, had a personal financial incentive to conceal material information; and (6) the restrictions on alienation were neither authorized nor approved by any provision in the documents governing the Voyager Village development.

alternative, summary judgment based on the running of the applicable statutes of limitations. They also moved for sanctions against Letourneau for maintaining a frivolous lawsuit, requesting a hearing on this motion following the expiration of twenty-one days to allow Letourneau time to withdraw his third-party complaint. *See* WIS. STAT. § 895.044(2)(a).

¶10 Letourneau did not withdraw the third-party complaint, and the Northwoods Group's motions were heard on February 3, 2014. In the interim, Letourneau had retained counsel, who conceded at the hearing that members of the Northwoods Group had been improperly served with unauthenticated photocopies of the authenticated third-party complaint, resulting in a lack of personal jurisdiction. Letourneau's counsel argued, however, that dismissal was not appropriate because the Northwoods Group's motions also sought a resolution on the merits of the action. The circuit court rejected this argument and declined to reach the merits of Letourneau's claims. Observing that each member of the Northwoods Group had properly objected to jurisdiction based on insufficiency of process, and that Letourneau never disputed the insufficiency, the court concluded it had no choice but to dismiss the third-party complaint for lack of personal jurisdiction.

¶11 The circuit court then addressed the various motions for sanctions, which were based on the Northwoods Group's contention that the applicable statutes of limitations had run as to all of Letourneau's claims, and that he knew, or should have known, that this occurred before he filed the third-party complaint. Letourneau's counsel argued the statutes of limitations applicable to his tort and statutory claims were tolled by the discovery rule because Letourneau did not know who caused his injuries. Letourneau's counsel argued Letourneau first discovered "who these people were employed by" and the various alleged fraud

and conflicts of interest approximately one week before he filed the third-party summons and complaint. Prior to that filing, Letourneau was apparently "doing background searches and trying to figure it out" because he "had no idea what was going on here." Letourneau's counsel asserted he was "almost sure what was going on here wasn't something that should have gone on and we should at least get a chance to discover what was going on here."

¶12 The circuit court concluded that even though it lacked personal jurisdiction over the Northwoods Group, it possessed jurisdiction to rule on the motions for sanctions. The primary issue, as framed by the circuit court, was "whether or not there was a legitimate basis for Brooks Letourneau to pursue his third-party complaints [sic] against the defendants." The principal basis for the sanctions motions appeared to have been Letourneau's actual or constructive knowledge of the expiration of the statutes of limitations, which the court concluded began to run for all claims on December 22, 2005, when Letourneau received a letter from the Association stating the lots would be assessed individually.

¶13 The circuit court specifically rejected Letourneau's assertions that his claims were timely filed. Letourneau argued his breach of contract claim was viable because the breach did not occur until he was sued by the Association. The court concluded that the "clock began running" on Letourneau's contract claim as soon as he received notice of the four separate assessments from the Association. Letourneau also argued that, with respect to his statutory and tort claims, the discovery rule tolled the applicable statutes of limitations. The court observed that seven years had elapsed between the Association's assessment notice and the filing of the third-party complaint, there had been extensive litigation and discovery in the previous case, and the third-party complaint had not proposed a

"concrete theory of liability." Given these factors, the circuit court determined that Letourneau did discover, or should have discovered with reasonable diligence, the identities of the parties that were allegedly involved long before the third-party complaint was filed.

¶14 With respect to the adequacy of Letourneau's third-party complaint, the court specifically noted that, like many other arguments Letourneau had made in the action, the complaint "struck the Court as being more in the nature of a fishing expedition:"

> You have to be able to allege certain specific facts in the context of a pleading to allow the Court to conclude in some way, shape, or form that a party is liable to the party bringing the claim. And in reviewing all of the pleadings in this case and in considering the arguments that were raised previously at the time of the motion to vacate the judgment, it appears to the Court that this has all been extremely, well, it's been basically guess work on behalf of Mr. Letourneau.

Given these failures of Letourneau's pleadings, and the fact that the applicable statutes of limitations clearly had run as to all of Letourneau's claims by the time he filed his third-party complaint, the circuit court concluded sanctions under WIS. STAT. § 895.044 were appropriate. Separate orders were issued awarding actual costs and attorneys' fees to the members of the Northwoods Group. The awards were then reduced to money judgments, with Letourneau and his attorney jointly and severally liable for all amounts ordered to be paid.

DISCUSSION

¶15 Letourneau concedes he failed to serve authenticated copies of the third-party summons and complaint on any of the members of the Northwoods Group. Because Letourneau served unauthenticated copies, the process did not

comply with WIS. STAT. § 801.02(1). "Failure to comply with [§ 801.02(1)] constitutes a fundamental error which necessarily precludes personal jurisdiction regardless of the presence or absence of prejudice." ***American Family Mut. Ins. Co. v. Royal Ins. Co. of Am.***, 167 Wis. 2d 524, 534, 481 N.W.2d 629 (1992).

¶16 Despite this concession, Letourneau argues the circuit court could not dismiss the third-party complaint for lack of personal jurisdiction over the Northwoods Group. He contends that, because the Northwoods Group's motions also requested summary judgment, the Northwoods Group "waived their personal jurisdiction challenges." In other words, Letourneau asserts the mere fact that the Northwoods Group alternatively sought a resolution on the merits in the same motions precludes dismissal on personal jurisdiction grounds.

¶17 Letourneau cites two authorities for this proposition: WIS. STAT. § 801.08(1) and the ***American Family*** case. Neither of these authorities compels the conclusion he desires. Subsection 801.08(1) requires that all objections to personal jurisdiction "shall be heard by the court without a jury in advance of any issue going to the merits of the case." That procedure was followed here. And ***American Family***, in which the sole question was "whether service of an unauthenticated photocopy of an authenticated Summons and Complaint precludes a circuit court from obtaining personal jurisdiction," does not remotely support Letourneau's argument. *See* ***id.*** at 529.

¶18 Rather, WIS. STAT. § 802.06(8) controls when a party has waived a defense of lack of personal jurisdiction or insufficient service of process. Under § 802.06(8), waiver occurs, as relevant here, only when the defense "is neither made by motion under this section nor included in a responsive pleading." Subd. 802.06(8)(a)2. All members of the Northwoods Group raised the issue of

insufficient service of process, both by responsive pleading and by motion. Thus, there is no basis for concluding Northwoods Group waived any personal jurisdiction defense.

¶19 As Letourneau's waiver argument might suggest, Letourneau repeatedly confuses the issues in this appeal. He argues matters that the Northwoods Group raised before the circuit court—such as estoppel—but that the circuit court neither addressed nor resolved. Letourneau appears particularly aggravated that "the Circuit Court's decision granting summary judgment included no analysis or discussion as to what facts were or were not in dispute and no analysis of the law in Wisconsin that would permit granting summary judgment." However, this should not be a surprise, as the circuit court did not grant, or even address, any of the motions for summary judgment. Its analysis was confined to the motions to dismiss for insufficient service of process and the motions for sanctions, the latter of which we turn to now.

¶20 Because a circuit court has personal jurisdiction over the plaintiff, it possesses the authority to impose sanctions for maintaining a frivolous action even if personal jurisdiction over the defendant is lacking. ***Bulik v. Arrow Realty, Inc., of Racine***, 154 Wis. 2d 355, 359, 453 N.W.2d 173 (Ct. App. 1990). As relevant here, WIS. STAT. § 895.044 provides that a party or a party's attorney may be liable for costs and fees for commencing, using, or continuing an action or cross-complaint if the party or the party's attorney knew, or should have known, that the action or cross-complaint was "without any reasonable basis in law or equity." WIS. STAT. § 895.044(1)(b).

¶21 Here, the circuit court primarily concluded Letourneau, with reasonable diligence, should have known that all his claims against the

Northwoods Group were barred by the applicable statutes of limitations, all of which had run on his claims before the filing of his third-party complaint on November 14, 2012. We review the circuit court's finding that Letourneau knew or should have known that the statute of limitations had run on each of his claims under the clearly erroneous standard. *See* ***Storms v. Action Wis., Inc.***, 2008 WI 56, ¶35, 309 Wis. 2d 704, 750 N.W.2d 739 (determination of what an individual or attorney knew or should have known is a question of fact that will be sustained unless clearly erroneous). Whether these facts support a conclusion that the lawsuit was continued frivolously, however, is a question of law, which we review independently of the circuit court. ***Id.*** The circuit court also concluded Letourneau's third-party complaint failed to set forth any comprehensible legal theory, supported by sufficient factual allegations, under which the Northwoods Group could be held liable. Whether the allegations of a complaint are sufficient to state a claim is a question of law. ***Meyers v. Bayer AG, Bayer Corp.***, 2007 WI 99, ¶21, 303 Wis. 2d 295, 735 N.W.2d 448.

¶22 Letourneau contends his claim for breach of contract was timely filed. The circuit court, however, concluded that, if there was a breach of contract, it would have occurred on or about December 22, 2005, when Letourneau received notice from Voyager Village that it was assessing his four lots separately. Letourneau argues his action for breach of contract—which contract he does not specify, but we assume he means the 2005 purchase agreement—accrued "as a result of the breach of the contract in 2010 and 2011 and 2012 for which Voyager sued him in this matter." This argument is untenable. A contract cause of action does not accrue when a party is sued on the contract; it "accrues at the moment the contract is breached, regardless of whether the injured party knew or should have

known that the breach occurred." ***CLL Assocs. Ltd. P'ship v. Arrowhead Pac. Corp.***, 174 Wis. 2d 604, 607, 497 N.W.2d 115 (1993).

¶23 As the circuit court properly recognized, if Voyager Village's separate assessments of the four lots violated the purchase agreement, the breach occurred on or about December 22, 2005, when Voyager Village notified Letourneau of the separate assessments. Contract actions are subject to a six-year limitations period, which in this case would have expired in 2011. *See* WIS. STAT. § 893.43. Accordingly, Letourneau should have known that his contract claim lacked any reasonable basis in law.

¶24 Letourneau also argues the circuit court erroneously concluded his tort and statutory claims were barred by the applicable statutes of limitations. Letourneau's argument on this point, however, completely misses the mark. His brief more or less mimics the disjointed and frenetic "factual" allegations in the third-party complaint. Letourneau appears to believe that by merely reciting the allegations in the third-party complaint, and stating in conclusory fashion that there are genuine issues of material fact, he can somehow demonstrate that his claims are timely and adequately pleaded.

¶25 We are unmoved by Letourneau's haphazard approach to briefing. Letourneau's attempt to portray his convoluted allegations as "facts" is ineffective to establish that his tort and statutory claims were timely filed. Indeed, it is entirely unclear what any of Letourneau's various assertions in this section of his brief have to do with the applicable statutes of limitations. Letourneau raised specific theories of liability in the third-party complaint, though even he appeared

to be unsure of what those claims were at the February 3, 2014 hearing.[3] He proposes that each of these claims was governed by a limitations period of six years or less, citing WIS. STAT. § 893.57 as to his claims for intentional torts, WIS. STAT. § 893.93(1)(a) as to his negligence and statutory claims, and WIS. STAT. § 893.93(1)(b) as to his fraud claims.

¶26 Letourneau has not come close to establishing that the circuit court erred by concluding that his tort and statutory claims were time-barred. His only real argument regarding the statutes of limitations applicable to his tort and statutory claims occupies a few scattered sentences which collectively suggest Letourneau's claims were "tolled until November 8, 2012, because [Letourneau] did not know the identity of the persons who wronged him." The discovery rule "tolls the statute of limitations until the plaintiff discovers or with reasonable diligence should have discovered that he or she has suffered actual damage due to wrongs committed by a particular, identified person." ***Pritzlaff v. Archdiocese of Milwaukee***, 194 Wis. 2d 302, 315, 533 N.W.2d 780 (1995).

¶27 Here, even ignoring Letourneau's inadequate argument, the notion that he did not know, or could not have timely discovered, the identity of the parties who allegedly caused him harm is untenable. Any actionable conduct regarding any member of the Northwoods Group occurred prior to closing on the 2005 lot purchases, and shortly after that Letourneau received notice that the lots would be assessed separately. This underlying transaction was the subject of

[3] At the February 3, 2014 hearing, Letourneau took much the same approach as he does on appeal. That is, he simply recited the allegations of his third-party complaint and generically asserted he was entitled to discovery because "[s]omething serious is going on and it's affecting everybody at Voyager Village. I think we need to dig into this."

extensive litigation in the prior 2008 lawsuit, which included considerable discovery practice and culminated in a judgment following a bench trial in 2010. As Letourneau concedes in his reply brief, "the major issue in the previous 2010 trial was the relationship between Voyager and Northwoods."

¶28 Critically, nearly every third-party defendant in this case—most notably Northwoods, Langdon, and Anderson—was somehow involved in the prior lawsuit. *See* ***Voyager Village I***, unpublished slip op. ¶¶3-5. Although Crowl was not specifically identified in our ***Voyager Village I*** decision, it is evident Letourneau knew of his involvement in the transaction because Letourneau argues that Crowl gave false testimony during trial in the prior lawsuit. Gnoza was also not identified in our prior decision, but Letourneau's theory of liability against Gnoza has always been amorphous (it is not clear from the third-party complaint that Letourneau had ever met or communicated with Gnoza before purchasing the additional lots) and, in any event, Letourneau has provided absolutely no reason to believe he could not have discovered Gnoza's involvement with Northwoods through reasonably diligent efforts.

¶29 Letourneau's assertion that he had some sort of epiphany in November 2012 is neither explained nor sufficient by itself to establish that the circuit court clearly erred. Even assuming he is correct and first uncovered some sort of nefarious scheme on the part of the Northwoods Group at this time, he does not explain where this information came from, how he came about it, or why he could not have discovered it sooner through reasonably diligent efforts. Moreover, he does not clearly tie this supposed revelation to the causes of action alleged in the third-party complaint. This leaves us to speculate how his sudden insight accomplished tolling under the discovery rule on which he relies.

¶30 In sum, Letourneau's arguments regarding the circuit court's sanctions awards, and, relatedly, the applicable statutes of limitations to his tort and statutory claims, are, like his third-party complaint, a garbled morass of conclusory statements and factual assertions, which are unaccompanied by record citations in violation of WIS. STAT. RULE 809.19(1)(e). To grant any sort of relief, this court would be required to develop an argument on Letourneau's behalf, which we will not do. *See* ***Industrial Risk Insurers v. American Eng'g Testing, Inc.***, 2009 WI App 62, ¶25, 318 Wis. 2d 148, 769 N.W.2d 82 (We will not abandon our neutrality to develop arguments for the parties.). As it pertains to the sanctions awards, Letourneau's brief does not remotely resemble "developed themes reflecting any legal reasoning." *See* ***State v. Pettit***, 171 Wis. 2d 627, 646, 492 N.W.2d 633 (Ct. App. 1992). Accordingly, we deem the issue inadequately briefed and choose not to address it further.

¶31 Finally, Northwoods and Gnoza have filed a motion for sanctions in this court under WIS. STAT. § 895.044(4). The remaining members of the Northwoods Group, in their briefs, also request sanctions under § 895.044(4), which we construe to be a motion for sanctions under that subsection. Subsection 895.044(4) provides that, if an award under § 895.044 is affirmed on appeal, "the appellate court shall, upon completion of the appeal, remand the action to the trial court to award damages to compensate the successful party for the actual reasonable attorney fees the party incurred in the appeal." Since we affirm the award of sanctions under § 895.044(1)(b) and (2)(b), we conclude the members of the Northwoods Group are entitled to actual reasonable attorney fees they incurred in defending this appeal. We therefore grant the motions and remand to the circuit court for it to determine such attorney fees and amend the judgments accordingly.

By the Court.—Judgments affirmed; motions granted and cause remanded with directions.

This opinion will not be published. *See* WIS. STAT. RULE 809.23(1)(b)5.