

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2019-015684

06/09/2020

HONORABLE JAMES D. SMITH

CLERK OF THE COURT
D. Tapia
Deputy

EDET EFFIONG ASUQUO

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1701 W TUCKEY LN # 201
PHOENIX AZ 85015

v.

LA FUENTE CONDOMINIUM ASSOCIATION

LYDIA P LINSMEIER

JUDGE J. SMITH

MINUTE ENTRY

The Court considered Defendant's Renewed Motion to Dismiss (filed 05/19/2020), the Response, and the Reply.

“When adjudicating a Rule 12(b)(6) motion to dismiss, Arizona courts look only to the pleading itself and consider the well-pled factual allegations contained therein.” *Cullen v. Auto-Owners Ins. Co.*, 218 Ariz. 417, 419, ¶ 7, 189 P.3d 344, 346 (2008). “[M]ere conclusory statements are insufficient to state a claim upon which relief can be granted. . . . [A] complaint that states only legal conclusions, without any supporting factual allegations, does not satisfy Arizona's notice pleading standard under Rule 8.” *Id.* The Court cannot speculate about hypothetical facts that might support Plaintiff's position. *Id.* at 420 ¶ 14, 189 P.3d at 347.

Plaintiff's operative pleading is titled, “Motion for a More Definite Statement – an amended complaint” (filed 05/14/2020). The Court will refer to it as the “Amended Complaint.” Defendant's Motion attacked the timeliness of Plaintiff's claims, so the relevant date is when Plaintiff filed the original complaint—December 30, 2019.

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Defendant argued that the residual four-year limitations period of A.R.S. § 12-550 applied. It cited an abrogated Court of Appeals opinion for that argument. But that opinion only assumed that the shorter four-year limitations period applied; that plaintiff's claims were timely if that shorter limitations period governed. The Court did *not* hold that A.R.S. § 12-550, rather than § 12-548, governed. *Vales v. King Hills Condo. Ass'n*, 211 Ariz. 561, 566-67 ¶ 17, 125 P.3d 381, 386-87 (App. 2005), *abrogated on other grounds*, [Powell v. Washburn](#), 211 Ariz. 553, 125 P.3d 373 (2006).

In truth, our courts interpret the "debt" aspect of § 12-548 to include damages arising from a written contract. For example, the six-year period governed implied warranty of workmanlike performance and habitability claims. *Woodward v. Chirco Constr. Co.*, 141 Ariz. 520, 525, 687 P.2d 1275, 1280 (App. 1984), *approved as modified*, 141 Ariz. 514, 687 P.2d 1269 (1984). "The defense of the statute of limitations is not favored by the courts, and where two constructions are possible, the longer period of limitations is preferred." 141 Ariz. at 525, 687 P.2d at 1280. "We hold that the term 'debt' in A.R.S. § 12-548 includes an action for 'damages' for breach of contract." *Id.*; *see also, e.g., Ins. Co. of N. Am. v. Super. Ct.*, 166 Ariz. 82, 86, 800 P.2d 585, 589 (App. 1990) ("the six-year statute of limitations applies to an insured's breach of contract action against an insurer for allegedly failing to make the mandatory offering of additional uninsured motorist coverage"). Plaintiff alleged that Defendant owed him contract damages under a written agreement. The six-year limitations period governs.

"[T]he core question of when a claim accrued is not when the plaintiff was conclusively aware she had a cause of action against a particular party, but instead when a reasonable person would have been on notice to investigate." *Cruz v. City of Tucson*, 243 Ariz. 69, 72, ¶ 8, 401 P.3d 1018, 1021 (App. 2017) (quotations omitted). Under the discovery rule, "a claim accrues when the plaintiff has reason to connect her injury with a 'causative agent' such that a reasonable person would be on notice to investigate whether the injury might result from fault." *Kopacz v. Banner Health*, 245 Ariz. 97, 100 ¶ 9, 425 P.3d 586, 589 (App. 2018) (some quotations omitted). Claim accrual typically is a question for the finder of fact. But it sometimes is an issue of law, such as when the undisputed evidence shows that a plaintiff knew or should have known of the possible claim. *Id.* ¶¶ 10-11.

It is difficult to follow Plaintiff's Amended Complaint. He alleged a variety of disagreements with Defendant (his HOA) over many years. Often, Plaintiff argued that the effects of Defendant's alleged misconduct are ongoing. But that does not extend the limitations period. Continuing or different harms from the same wrongdoing do not restart the limitations period.

Plaintiff also made passing reference to tolling the limitations period. But tolling applies in limited situations, such as when a plaintiff is excusably ignorant of the facts, a defendant lulled the plaintiff into inaction, or excusable ignorance of the limitations period. *See, e.g., Stulce v. Salt*

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River Project Agric. Improvement & Power Dist., 197 Ariz. 87, 95, ¶¶ 31-33, 3 P.3d 1007, 1015 (App. 1999) (affirming dismissal and rejecting equitable tolling argument). Plaintiff did not allege facts justifying equitable tolling here. Plaintiff alleged that his former lawyer mentioned communication and possible settlement with Defendant's prior counsel. Those facts do not warrant tolling, and Plaintiff did not cite authority supporting his argument.

Plaintiff alleged facts that, if believed, support one possible claim that is timely. Plaintiff contended that Defendant improperly leveled the roof beneath Plaintiff's HVAC system "possibly around 9/15." The Court views the allegations in the light most favorable to Plaintiff. Plaintiff argued that Defendant did not meet its contractual obligation in September 2015. Plaintiff's December 30, 2019, Complaint is timely as to this claim, but only this claim.

IT IS ORDERED granting the Motion in part. The Court dismisses all of Plaintiff's claims other than the alleged failure to properly level the roof under Plaintiff's HVAC unit around September 2015.

IT IS FURTHER ORDERED that Defendant must answer that portion of Plaintiff's Amended Complaint within 10 days of the Clerk filing this order.