IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, LAW DIVISION

Christina Martinez,	)	
	)	
Plaintiff,	)	
	)	
v.	)	No. 20 L 13153
	)	
Hispanic Housing Development Corporation and Palmer Square Preservation LP,	)	
	)	
Defendants.	)	

MEMORANDUM OPINION AND ORDER

Construction negligence claims are subject to a 10-year statute of repose while negligent repair claims are subject to a two-year statute of limitations. The plaintiff's complaint presents one claim of negligent construction based on activity in 2004, but other claims for negligent repair and maintenance supplement those presented in a previous complaint. The result is the defendants' motion to dismiss various allegations and claims must be granted, in part, and denied, in part.

Facts

On December 14, 2004, the Hispanic Housing Development Corporation (HHDC) purchased a residential building at 3206 West Dickens Avenue in Chicago. The building's prior owner had replaced a rear stairway before HHDC purchased the building. After the purchase, HHDC hired Palmer Square Preservation LP to manage the property.

On November 10, 2015, Christina Martinez walked down a rear stairway at 3206 West Dickens Avenue when the stairs collapsed beneath her, causing her to fall and sustain injuries. On

November 9, 2017, Martinez filed a four-count complaint—17 L 11465—against the defendants, bringing one count of negligence and premises liability against each defendant. The causes of action against the defendants included claims that they had failed to repair and maintain the stairway. On January 10, 2020, Martinez voluntarily dismissed her case.

On December 10, 2020, Martinez refiled a new complaint under the current case number. The current complaint, once again, brings four counts—causes of action for negligence and premises liability—against each defendant. The current complaint includes, however, allegations not made in the 2017 case. Specifically, paragraphs five through 11 in each count allege that a 2005 building inspection found the rear stairway was not structurally safe and stable. The paragraphs also allege a 2007 building inspection resulted in a citation for, among other things, the rear stairs having overcut stringers and missing bolts on the stringer column. The current complaint also alleges that in 2006, the defendants had drawings prepared for the stairway's replacement, but the defendants failed to construct a new stairway or repair the existing one. Martinez further alleges the defendants' failure to make the necessary repairs continued up to and including November 10, 2015.

The current complaint also includes claims in paragraph 15 of each count that Martinez did not make in the 2017 case. These include the defendants' alleged failures to: (c) repair the stairs despite knowing of structural defects; (d) construct the stairs properly; (e) repair the stairs pursuant to code requirements; (f) repair the stairs after being notified in 2005 of structural problems; (g) repair the stairs after being notified in 2007 of structural problems; and the defendants (p) painting the stairs to cover up the structural problems; (q) negligently painting the stairs to cover screws, nails, and deteriorating wood; and (r) creating a condition through the use of paint that caused or contributed to Martinez's fall.

On March 31, 2021, the defendants filed a motion to strike paragraphs five through 11 in each count as well as the claims in subparagraphs 15(c-g) and (p-r). As to the facts, the defendants argue, without citation, that they repaired the stairway in 2006. They also argue the 2007 citation concerned a different stairway than the one that collapsed in 2015. As to the law, the defendants argue the 10-year statute of limitations for construction negligence bars Martinez's new construction allegations and claims. They also argue the two-year statute of limitations for negligence causes of action bars Martinez's new claims based on alleged failures to repair and maintain the stairway. In response, Martinez argues the statute does not bar her new allegations and claims because they go to issues of repair, not construction. The defendants filed a reply brief.

Analysis

The defendants style their motion as one to strike. That is a mistake. Motions to strike are considered under the same standards as motions to dismiss under Code of Civil Procedure section 2-615. *See Doe v. Coe*, 2019 IL 123521, ¶ 20; 735 ILCS 5/2-615(a). A section 2-615 motion attacks a complaint's legal sufficiency, *see DeHart v. DeHart*, 2013 IL 114137, ¶ 18, and a court considering a section 2-615 motion is to consider only the allegations presented in the pleadings. *See Illinois Graphics v. Nickum*, 159 Ill. 2d 469, 485 (1994). The defendants' error is that they attach multiple exhibits—mostly documents gleaned in discovery in the 2017 lawsuit—that makes their motion one under section 2-619 of the Code. See 735 ILCS 5/2-619(a)(9). Such pleading error is not fatal however, because a court may consider a mislabeled motion as if it had been brought under the correct authorizing provision as long as the improper labeling does not prejudice the plaintiff. *See Safford-Smith, Inc. v. Intercontinental East, LLC*, 378 Ill. App. 3d 236, 240 (1st Dist. 2007) (citing *Gouge v. Central Ill. Pub. Serv., Co.*, 144 Ill. 2d 535, 541-42 (1991)).

One of the enumerated grounds for a section 2-619 motion to dismiss is that "affirmative matter" avoids the legal effect of or

defeats the claim. 735 ILCS 5/2-619(a)(9). Affirmative matter is something in the nature of a defense negating the cause of action completely or refuting crucial conclusions of law or conclusions of material fact contained in or inferred from the complaint. *See Illinois Graphics*, 159 Ill. 2d at 485-86. The defendants' exhibits are, therefore, proper affirmative matter this court may consider.

A court considering a section 2-619 motion must construe the pleadings and supporting documents in a light most favorable to the nonmoving party. *See Czarobski v. Lata*, 227 Ill. 2d 364, 369 (2008). All well-pleaded facts contained in the complaint and all inferences reasonably drawn from them are to be considered true. *See Calloway v. Kinkelaar*, 168 Ill. 2d 312, 324 (1995). A court is not to accept as true those conclusions unsupported by facts. *See Patrick Eng., Inc. v. City of Naperville*, 2012 IL 113148, ¶ 31. As has been stated: "The purpose of a section 2-619 motion is to dispose of issues of law and easily proved issues of fact early in the litigation." *Czarobski*, 227 Ill. 2d at 369.

The defendants' central argument is that the 10-year statute of repose for construction negligence causes of action bars the new allegations and claims in Martinez's current complaint. That statute provides:

> (b) No action . . . may be brought against any person for an act or omission . . . in the design, planning, supervision, observation or management of construction, or construction of an improvement to real property after 10 years have elapsed from the time of such act or omission. . . .

735 ILCS 5/13-214(b). The defendants' argument rests on the fact that the prior building owner replaced the stairway in 2004. A claim for negligent construction would, therefore, have been stale after 2014.

The defendants' secondary argument is that the two-year statute of limitations for negligence causes of action

bars each of Martinez's new failure to repair and maintain claims. That statute provides: "Actions for damages for an injury to the person . . . shall be commenced within 2 years next after the cause of action accrued. . . ." 735 ILCS 5/13-202. This argument is founded on the fact that Martinez did not present claims based on failures to repair and maintain in her 2017 complaint and, therefore, the claims have been stale since November 10, 2017.

It is plain that Martinez's current complaint presents a claim that the defendants are negligent for failing to construct the stairway properly. Counts 1-4, ¶ 15(d). Apart from the fact that the defendants did not construct the stairway in 2004, even if they had, the 10-year statute of repose for construction negligence would bar Martinez's new claim.

In contrast, the defendants' statute-of-repose and statute-of-limitations arguments fail as to Martinez's remaining claims for various reasons. First, subparagraphs 15(c) and 15(e-g) each uses the verb "repair," not "construct." To read these claims as the defendants suggest would run directly contrary to their plain language. Second, Martinez included a claim for negligent repair in her 2017 complaint. Her new claims do not, therefore, violate either the statute of repose for construction negligence causes of action or the statute of limitations for negligent repair and maintenance causes of action because the claims are reasonable corollaries explaining the various possible ways the defendants were negligent in repairing the stairway. Were the 2017 case still viable and had Martinez sought to amend her complaint to add these repair claims, such a motion would, doubtless, have been granted. Third, even if the defendants repaired the stairs in 2006 to correct the defects noted in the 2005 citation, it does not follow that the defendants completed those repairs properly or that the defendants properly maintained the repaired stairway for the next nine years. Fourth, even if the defendants are correct that the 2007 building citation concerned a different stairway, this, again, does not mean they properly repaired the other stairway in 2006 or maintained it up until 2015. Fifth, subparagraphs 15(p-r) are

plainly claims for negligent maintenance, not construction, as they relate to the defendants' alleged painting over the stairway's structural defects. Once again, Martinez presented failure-to-maintain claims in her 2017 complaint, so these new subparagraphs merely flesh out the defendants' alleged maintenance failures and do not violate either the statute of repose or the statute of limitations.

Given the viability of nearly all of Martinez's new claims, it follows that her new factual allegations contained in paragraphs five through 11 are also viable. These allegations are not included to support a non-viable construction claim, but are necessary factual predicates to support Martinez's failure-to-repair claims. In other words, Martinez included the allegations for the purpose of showing that the defendants knew of the stairway's structural problems as early as 2005, and then failed to repair the stairway up to and including November 10, 2015, the day the stairway collapsed under Martinez. Further, if the defendants are correct that the 2007 building citation concerned a different stairway, Martinez can stipulate and strike the extraneous allegations or the defendants may bring a summary judgment motion to dismiss particular allegations based on a complete factual record.

Conclusion

For the reasons presented above, it is ordered that:

1. The defendants' motion to dismiss is granted, in part, and denied, in part;
2. The defendants' motion to strike subparagraph 15(d) in counts one through four is granted and subparagraph 15(d) is dismissed with prejudice;
3. The defendants' motion to strike subparagraphs 15(c), 15(e-g), and 15(p-r) is denied; and
4. The defendants shall answer the complaint by July 29, 2021.

Judge John H. Ehrlich

JUL 01 2021

Circuit Court 2075

John H. Ehrlich, Circuit Court Judge