IN THE CIRCUIT COURT OF COOK COUNTY, ILLINIOIS
COUNTY DIVISION, LAW DIVISION

Vigilant Insurance Company a/s/o William F. Lynch and Elizabeth Harrington	)	
Plaintiff,	)	
v.	)	No. 21 L 6117
Goodfried Magruder Structure, LLC and Centaur Interiors, LLC	)	
Defendants.	)	

MEMORANDUM OPINION AND ORDER

The common law discovery rule tolls the statute of limitations until a plaintiff should have reasonably known of a wrongful cause of an injury. Here, the insurer's subrogor knew of the property damage cause of action in question on the day it occurred. Since a late-prepared engineering report cannot overcome the facts pleaded in the complaint, the discovery rule does not toll the statute of limitations; therefore, the defendant's motion to dismiss must be granted.

Facts

In 2016, William F. Lynch and Elizabeth Harrington lived in Chicago in a third-floor condominium unit at 1520 North State Parkway. In June 2016, the second floor of the building underwent construction to convert two separate units into one condominium. On approximately June 22, 2016, Harrington heard loud popping noises and noticed cracks in plaster finishes and floor settlement on the west side of the third-floor unit.

During the time in question, Centaur Interiors, LLC ("Centaur") was providing general contracting services and overseeing the construction work in the second-floor unit below Lynch and Harrington. They had contracted with Goodfried Magruder Structure, LLC ("GMS") to provide structural engineering services, including reviewing and providing architectural drawings for the second-floor construction project. The drawings showed planned modifications to load-bearing walls and new wooden posts. The damage observed by Harrington in June 2016 allegedly corresponds to the work carried out on the second floor.

On June 14, 2021, Vigilant Insurance Company filed suit against Centaur and GMS as Lynch and Harrington's subrogee, alleging one count of negligence against each defendant. Count one against GMS alleges, among other things, negligently designing a steel channel, negligently failing to include details about the installation of a new beam in the second-floor unit, and negligently failing to perform work according to applicable codes and standards.

Centaur filed a motion to dismiss on July 28, 2021, arguing that the four-year statute of limitations for construction negligence barred Vigilant's claim. That statute states in part:

> Actions based upon tort . . . against any person for an act or omission of such person in the design, planning, supervision, observation or management of construction, or construction of an improvement to real property shall be commenced within 4 years from the time the person bringing an action, or his or her privity, knew or should reasonably have known of such act or omission.

735 ILCS 5/13-214(a). On November 9, 2021, this court granted Centaur's motion and dismissed Centaur with prejudice. On December 12, 2021, GMS filed a motion to dismiss on the same statute of limitations grounds. In response to GMS's motion, Vigilant, once again, argues the common law discovery rule supports a finding that Vigilant timely filed its complaint.

In its motion to dismiss, based on the same statute of limitations grounds as Centaur's previous motion, GMS attaches this court's November 9, 2021 memorandum opinion and order. GMS points to this court's finding that Harrington knew no later than January 12, 2017, that the damage to the third-floor condominium unit was connected to the construction on the second floor. January 12 is the date Harrington sent an e-mail to an owner of the second-floor unit. This court's previous order quoted the e-mail, which stated, in part:

> August 2, [2016] I happened to be working at home in our rear blue guest bedroom when I heard very heavy pounding directly below me. A picture fell off the wall and broke. I also heard a loud "pop" like a gun shot. I looked in our rear white guest bedroom and major cracks had opened up in the interior and exterior walls. . . . I went down to the 2cd [*sic*] floor and asked your contractor Glen what work was being done. He showed me a new beam that was being installed running west to east under our interior walls. It is good to add the beam to provide better

> structural support, but the installation combined with the earlier demolition has resulted in major damage to the interior walls which run from the west of the building to the center of our unit. . . . It has also caused major damage on the exterior walls . . . . The damage has gotten worse over time. . . . The plaster is now in danger of collapsing and falling off the interior walls, and causing serious structural problems where in [*sic*] joins exterior walls.

The parties later hired consulting engineers to determine the source of the property damage. Vigilant argues the statute of limitations could not begin to run until at least November 20, 2017, when Lynch and Harrington's consulting engineers released their report.

Analysis

GMS brings its motion to dismiss based on a statute of limitations defense pursuant to section 2-619 of the Code of Civil Procedure. A section 2-619 motion to dismiss authorizes the involuntary dismissal of a claim based on defects or defenses outside the pleadings. *See Illinois Graphics Co. v. Nickum*, 159 Ill. 2d 469, 485 (1994). The motion must be directed against an entire claim or demand. *See id.* If the basis for the motion does not appear on the face of the complaint, the motion must be supported by an affidavit. 735 ILCS 5/2-619(a).

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 purpose of statutes of limitations is to "encourage diligence in the bringing of actions." *Sundance Homes v. County of Du Page*, 195 Ill. 2d 257, 265-66 (2001) (citing *Tom Olesker's Exciting World of Fashion, Inc. v. Dun & Bradstreet, Inc.*, 61 Ill. 2d 129, 137 (1975)). If the facts are undisputed and only one conclusion is evident, "[a] court may determine the date of the commencement of the statute of limitations as a matter of law." *Goran v. Glieberman*, 276 Ill. App. 3d 590, 596 (1st Dist. 1995) (citing *Hermitage Corp. v. Contractors Adjustment Co.*, 166 Ill. 2d 72, 85

(1995)). In its response to GMS's motion, Vigilant argues that, in this case, the discovery rule delays the start of the limitations period.

The harshness imposed by statutes of limitations is balanced by the common law discovery rule that tolls the start of a limitations period. *See Golla v. General Motors Corp.*, 167 Ill. 2d 353, 360 (1995); *Witherell v. Weimer*, 85 Ill. 2d 146, 156 (1981); *Dancor Int'l, Ltd. v. Friedman, Goldberg & Mintz*, 288 Ill. App. 3d 666, 672 (1st Dist. 1997). The discovery rule rests on two facts: (1) a plaintiff's actual knowledge of an injury; and (2) whether a person in the plaintiff's position should have reasonably known the injury was wrongfully caused. *See SK Partners I, LP v. Metro Consultants, Inc.*, 408 Ill. App. 3d 127, 130 (1st Dist. 2011). When a plaintiff learns of both facts may, itself, be a disputed question of fact. *Witherell*, 85 Ill. 2d at 156. If, however, "it is apparent from the undisputed facts . . . that only one conclusion can be drawn, the question becomes one for the court" and may be resolved as a matter of law. *Id.*; *see Steinmetz v. Wolgamot*, 2013 IL App (1st) 121375, ¶ 39. As has been explained:

> The application of the discovery rule to determine when a party knows or reasonably should have known the injury occurred and it was wrongfully caused such that the statute of limitation begins to run is a question of fact, unless the facts are undisputed and only one conclusion may be drawn from them *(Nolan v. Johns-Manville Asbestos*, 85 Ill. 2d 161, 171 (1981)), in which case summary judgment will be an appropriate disposition. It is pointed out in *Nolan* that it is unnecessary for the complaining party to know of a particular defendant's negligent conduct in order for the statute of limitations to begin running. Instead, plaintiff should be on notice sufficient to warrant investigating into the cause of the wrongfully inflicted injury. *See also Witherell v. Weimer*, 85 Ill. 2d 146, 156 (1981).

Betts v. Manville Personal Injury Settlement Trust, 225 Ill. App. 3d 882, 896 (4th Dist. 1992).

Illinois law is plain that if the facts indicate a reasonable person should have known a defendant wrongfully caused an injury, the plaintiff had an obligation to inquire further. *See Dancor*, 288 Ill. App. 3d at 673. Put another way, a plaintiff is said to know or reasonably should know of a wrongfully caused injury when they receive sufficient information to put a reasonable person on notice to determine whether actionable conduct has occurred. *See Hoffman v. Orthopedic Systems, Inc.*, 327 Ill. App. 3d 1004, 1011 (1st Dist. 2002). The discovery rule is not concerned with a plaintiff's knowledge "of a *specific* defendant's negligent conduct or

knowledge of the existence of a cause of action." *Young v. McKiegue,* 303 Ill. App. 3d 380, 388 (1st Dist. 1999) (emphasis added) (citing cases). Rather, "the limitations period begins to run when the plaintiff becomes aware that the cause of his problem stems from another's negligence and not from natural causes." *Castello v. Kalis,* 352 Ill. App. 3d 736, 744-45 (1st Dist. 2004) (quoting *Saunders v. Klungboonkrong,* 150 Ill. App. 3d 56, 60 (5th Dist. 1986)). Thus, "wrongfully caused" does not mean a plaintiff must know of the defendant's negligent conduct before the statute is triggered. *See Knox College v. Celotex Corp.*, 88 Ill. 2d 407, 416-17 (1981).

The legal analysis that formed the basis for this court's dismissal of Centaur remains the same for GMS. The deciding factor is whether the common law discovery rule allows Vigilant's negligence cause of action against GMS to fall within the statute of limitations. Vigilant does not argue any relevant distinction between Centaur and GMS as defendants that would affect the statute of limitations analysis. Vigilant makes one new argument in support of its cause of action, alleging that GMS relies on "unsupported facts" to establish the date on which the statute of limitations began to run. These allegedly unsupported facts are what is contained in Harrington's January 2017 e-mail to the owners of the unit undergoing construction on the second floor. Setting aside the e-mail, a more fundamental flaw exists in Vigilant's argument: the complaint itself pleads facts establishing the commencement of the statute of limitations in June 2016.

Even if this court were to disregard the facts contained in the e-mail, Vigilant's complaint remains stale. The Illinois Supreme Court has repeatedly held that, "[if] the plaintiff's injury is caused by a 'sudden traumatic event,' . . . the cause of action accrues, and the statute of limitation begins to run, on the date the injury occurs." *Golla,* 167 Ill. 2d at 362. This rule has been applied to cases involving property damage, one of which, *M&S Indus. Co. v. Allahverdi,* 2018 IL App (1st) 172028, is particularly useful here. In *M&S,* high winds lifted the roof of the defendant's building and sent the roof into adjacent power lines, causing an electrical surge that damaged M&S's equipment. *Id.* ¶ 39. M&S's president went to the site shortly after the event and took photographs. *Id.* M&S contended it did not know the damage was wrongfully caused until six years later after it hired an engineer who discovered that the roof had been improperly attached to the building. *Id.* ¶ 40.

The court concluded that M&S should have reasonably suspected possible wrongful causation and, "at a minimum, should have been compelled to inquire further when its neighbor's roof uplifted in the wind and hit the power lines, causing damage to its property." *Id.* ¶ 42. "At the least, M&S was placed on notice

that further inquiry was necessary." *Id.* ¶ 45. That burden to investigate began the day of the incident. *Id.*

In paragraph eight of the complaint, Vigilant states that in June 2016, the second floor unit below Lynch and Harrington's residence was undergoing construction. Paragraph nine states that on June 22, 2016, Harrington heard loud popping noises and took note of damage to plaster finishes and floor settlement. These facts, from Vigilant's own complaint, demonstrate that on June 22, 2016, Lynch and Harrington knew they had to investigate further. Yet Vigilant filed its complaint on June 14, 2021, more than five years after its subrogors knew of the wrongful cause of their property damage. The complaint was, therefore, not timely filed, as the relevant construction statute of limitations period is four years. 735 ILCS 5/13-214(a).

Conclusion

For the reasons presented above, it is ordered that:

1. GMS's motion to dismiss is granted;
2. GMS, the only remaining defendant, is dismissed with prejudice.

John H. Ehrlich, Circuit Court Judge

Judge John H. Ehrlich

JUN 22 2022

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