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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA24-476

Filed 5 February 2025

Mecklenburg County, No. 23 CVS 15937

MELANIE ANDERSON, Plaintiff,

v.

WMCI CHARLOTTE II, LLC d/b/a BEXLEY CREEKSIDE, WEINSTEIN FAMILY, LLC, WEINBERG FAMILY, LLC, JOHN T. LANCASTER LLC a/k/a JOHN T. LANCASTER, L.C. & WEINSTEIN MANAGEMENT CO., INC., Defendants.

Appeal by Plaintiff from Order entered 19 March 2024 by Judge J. Thomas Davis in Mecklenburg County Superior Court. Heard in the Court of Appeals 23 October 2024.

Hedrick Gardner Kincheloe & Garofalo LLP, by Joshua D. Neighbors; Andrew L. Gordon, The Law Office of Andrew L. Gordon, PLLC, for plaintiff-appellant.

Hall Booth Smith, P.C., by Katherine W. Dandy and Frances L. McBryde, for defendants-appellees.

HAMPSON, Judge.

Factual and Procedural Background

Melanie Anderson (Plaintiff) appeals from the trial court's Order entered pursuant to North Carolina Rule of Civil Procedure 12(b)(6) dismissing her

Complaint against WMCI Charlotte II, LLC, Weinberg Family, LLC, John T. Lancaster LLC, and Weinstein Management Co., Inc. (collectively, Defendants) as barred by the statute of limitations. The Record before us tends to reflect the following:

On 28 October 2021, Plaintiff issued summonses and applied for a twenty-day extension of time to file a complaint against Defendants. On 17 November 2021, Plaintiff timely filed a Complaint, alleging claims for Breach of Contract, Breach of Warranty of Habitability, Imminently Dangerous Conditions, violations of the North Carolina Residential Rental Agreements Act, and Unfair and Deceptive Trade Practices. On 8 September 2022, Plaintiff voluntarily dismissed the action without prejudice pursuant to Rule 41 of the North Carolina Rules of Civil Procedure.

One year later, on 8 September 2023, Plaintiff re-filed a Complaint in the present action. In her newly filed Complaint, Plaintiff alleged an additional claim for Negligence. The new Complaint alleges Plaintiff commenced a lease with Defendants for an apartment beginning 28 October 2017 and lasting for one year through 28 October 2018.

Plaintiff alleges the apartment had significant maintenance issues present from the start of her lease. She complained to Defendants on “multiple occasions” about leaks, malfunctioning appliances and fixtures, and potential mold issues. Plaintiff alleges she had made written requests and complaints about these issues beginning 7 November 2017 and through the remainder of her lease.

The Complaint further alleges on 9 August 2018, an inspector from the City of Charlotte Code Enforcement Division inspected the apartment and found multiple Housing Code violations, including a “water leakage and/or mold problem.” Plaintiff also had two separate mold tests performed: one on 13 August 2018 and one on 2 October 2018. Both tests revealed the “elevated presence of certain toxic and potentially toxic molds in the premises.” Plaintiff alleges she suffered and continues to suffer from “severe and painful injuries” stemming from mold-related illness she contracted as a result of the conditions in the apartment, as well as increased financial obligations for the payment of medical treatment, and loss of income.

On 12 October 2023, Defendants filed an Answer and Motion to Dismiss pursuant to Rule 12(b)(6), contending the statute of limitations had run as to all of Plaintiff’s claims. On 19 March 2024, the trial court entered an Order granting Defendants’ Motion to Dismiss and dismissing the matter with prejudice. Plaintiff timely filed written Notice of Appeal on 16 April 2024.

Issue

The dispositive issue on appeal is whether the trial court erred by dismissing Plaintiff’s Complaint on the basis it was filed outside the statute of limitations where the Complaint alleged claims for: (I) Breach of Contract, Breach of Warranty of Habitability, Imminently Dangerous Conditions, and violations of the North Carolina Residential Rental Agreements Act; (II) Unfair and Deceptive Trade Practices; and (III) Negligence.

Analysis

A Rule 12(b)(6) motion to dismiss tests the legal sufficiency of a complaint. *Sutton v. Duke*, 277 N.C. 94, 98, 176 S.E.2d 161, 163 (1970) (citation omitted). “[A] motion to dismiss is properly granted when it appears that the law does not recognize the plaintiff’s cause of action or provide a remedy for the alleged [cause of action].” *Brown v. Friday Services, Inc.*, 119 N.C. App. 753, 755, 460 S.E.2d 356, 358 (1995). “When considering a 12(b)(6) motion to dismiss, the trial court need only look to *the face of the complaint* to determine whether it reveals an insurmountable bar to plaintiff’s recovery.” *Locus v. Fayetteville State Univ.*, 102 N.C. App. 522, 527, 402 S.E.2d 862, 866 (1991) (emphasis in original). A Rule 12(b)(6) dismissal is proper where “the complaint discloses some fact that necessarily defeats the plaintiff’s claim.” *Wood v. Guilford Cty.*, 355 N.C. 161, 166, 558 S.E.2d 490, 494 (2002) (citation omitted).

On appeal of a Rule 12(b)(6) motion to dismiss, this Court conducts “a *de novo* review of the pleadings to determine their legal sufficiency and to determine whether the trial court’s ruling on the motion to dismiss was correct.” *Leary v. N.C. Forest Prods., Inc.*, 157 N.C. App. 396, 400, 580 S.E.2d 1, 4 (2003), *aff’d per curiam*, 357 N.C. 567, 597 S.E.2d 673 (2003). As such, this Court also views the allegations in the complaint in the light most favorable to the non-moving party. *Donovan v. Fiumara*, 114 N.C. App. 524, 526, 442 S.E.2d 572, 574 (1994) (citation omitted). Further, this Court considers “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[.]” *Harris v. NCNB*, 85 N.C. App. 669, 670, 355 S.E.2d 838, 840 (1987) (citation omitted).

“The statute of limitations may be raised as a defense by a Rule 12(b)(6) motion to dismiss if it appears on the face of the complaint that such a statute bars the plaintiff’s action.” *Laster v. Francis*, 199 N.C. App. 572, 576, 681 S.E.2d 858, 861 (2009) (citation omitted). “[O]nce a defendant raises the affirmative defense of the statute of limitations, the burden shifts to the plaintiffs to show their action was filed within the prescribed period.” *Id.* (citing *Horton v. Carolina Medicorp, Inc.*, 344 N.C. 133, 136, 472 S.E.2d 778, 780 (1996)).

The sole basis for the grant of Defendants’ Motion to Dismiss was the alleged expiration of the statute of limitations. Defendants contended in their Motion to Dismiss below, and again contend in this Court, the statute of limitations bars the entirety of Plaintiff’s Complaint, and as such, Plaintiff’s Complaint fails to state a claim upon which relief can be granted. Plaintiff contends the face of her Complaint does not reveal her claims are barred by the statute of limitations, which is an affirmative defense under Rule 9. The parties do not contest that any of the claims accruing between 28 October 2018, the date Plaintiff’s lease ended, and 28 October 2021, the date Plaintiff commenced her first action, are timely. *See also Williams v. Lynch*, 225 N.C. App. 522, 526, 741 S.E.2d 373, 375 (2013) (quoting *Losing v. Food Lion, L.L.C.*, 185 N.C. App. 278, 283, 648 S.E.2d 261, 264-65 (2007)) (“[U]nder North

Carolina law, plaintiff may refile within one year a lawsuit that was previously voluntarily dismissed, and the refiled case will relate back to the original filing for purposes of tolling the statute of limitations.”).

I. Breach of Contract, Breach of Warranty of Habitability, Imminently Dangerous Conditions, and Violations of the North Carolina Residential Rental Agreements Act

Plaintiff’s claims for Breach of Contract, Breach of Warranty of Habitability, Imminently Dangerous Conditions, and violations of the North Carolina Residential Rental Agreements Act are governed by a three-year statute of limitations. N.C. Gen. Stat. § 1-52(1) (contract, obligation or liability arising out of a contract) and § 1-52(2) (liability created by statute) (2023).

Under N.C. Gen. Stat. § 1-52(16) (Discovery Statute), a cause of action for personal injury “shall not accrue until bodily harm to the claimant . . . becomes apparent or ought reasonably to have become apparent to the claimant, whichever event first occurs” and within no more than ten years “from the last act or omission of the defendant giving rise to the cause of action.” Under the Discovery Statute, a plaintiff has three years from the diagnosis of a condition to file suit. *See Wilder v. Amatex Corp.*, 314 N.C. 550, 562, 336 S.E.2d 66, 73 (1985) (plaintiff’s claim accrued on the date he was diagnosed with disease); N.C. Gen. Stat. § 1-52(16)(2023). The parties disagree only as to whether the Complaint demonstrates Plaintiff’s injuries were or reasonably should have been apparent to her prior to 28 October 2018.

According to her Complaint, Plaintiff made verbal and written complaints to Defendants about “potential mold issues” beginning on 7 November 2017 and through her lease term. Additionally, on or about 9 August 2018, “the City of Charlotte Housing Code Enforcement performed an inspection of the Premises and found multiple violations of the Charlotte Housing Code indicating a water leakage and/or mold problem.” Defendants argue these events show “any alleged harms suffered by Plaintiff not only ought to have become apparent to her before the last day of her lease, but did become apparent to her long before October 28, 2018.” Plaintiff contends the Complaint does not identify when she was informed of the results of the mold tests or when her mold-related illness manifested, and thus the allegations of her Complaint do not show her claims are time-barred. We agree.

In *Russell v. Adams*, this Court reversed the Rule 12(b)(6) dismissal of the plaintiff’s emotional distress claims. 125 N.C. App. 637, 482 S.E.2d 30 (1997). In doing so, we observed “dismissal of an action on the pleadings based on a plea in bar of the statute of limitations is proper only when all the facts necessary to establish the plea in bar . . . are either alleged or admitted in the plaintiff’s pleadings, construing plaintiff’s pleadings liberally in [the plaintiff’s] favor.” *Id.* at 641, 482 S.E.2d at 33 (alteration in original) (quotation marks omitted) (quoting *Reidsville v. Burton*, 269 N.C. 206, 210, 152 S.E.2d 147, 150 (1967)). Because the complaint was “silent as to when [the] plaintiff’s alleged severe emotional distress manifested itself[,]” Rule 12(b)(6) dismissal was improper. *Id.*

Here, the Complaint indicates it was apparent or reasonably should have been apparent to Plaintiff mold was present in her apartment: there were “leaks resulting in soaked carpets” and “potential mold issues” for which she “sent work orders and emails” starting on 7 November 2017 and had two separate mold tests conducted on 9 August 2018 and 13 August 2018. However, the face of the Complaint does not indicate it was apparent or reasonably should have been apparent to Plaintiff she had allegedly been inflicted with bodily harm or mold-related illness as a result of the purported mold exposure. The Complaint is silent as to when Plaintiff’s illness or symptoms manifested or when she had first received a diagnosis or treatment. Plaintiff’s illness may have manifested, and so her claims may have accrued, after 28 October 2018. *See id.* In that event, Plaintiff’s litigation against Defendants was timely commenced on 28 October 2021. *See id.*; N.C. Gen. Stat. § 1-52(16)(2023). Thus, the facts necessary to support dismissal based upon the statute of limitations are simply not contained in the Complaint. *Cf. Wood*, 355 N.C. at 166, 558 S.E.2d at 494 (citation omitted) (explaining Rule 12(b)(6) dismissal is proper where “the complaint discloses some fact that necessarily defeats the plaintiff’s claim”). As such, we cannot say it “appears to a certainty that plaintiff is entitled to no relief under any state of facts which could be proved in support of the claim.” *Sutton*, 277 N.C. at 103, 176 S.E.2d at 166 (citation omitted). The trial court, therefore, erred by dismissing

Plaintiff's claims under Rule 12 (b)(6) based upon the statute of limitations.¹ *See Russell*, 125 N.C. App. at 641, 482 S.E.2d at 33 ("The facts necessary to support [the defendant's] statute of limitation plea are therefore not contained in the complaint and dismissal of the action on this basis cannot be sustained.").

II. Unfair and Deceptive Trade Practices

Defendants argue Plaintiff's claims for Breach of Contract, Breach of Warranty of Habitability, Imminently Dangerous Conditions, and violations of the North Carolina Residential Rental Agreements Act are time-barred, and so Plaintiff's claim for Unfair and Deceptive Trade Practices, being derivative of those claims, must also be dismissed as time-barred. Defendants cite *RLM Communications, Inc. v. Tuschen* in support of their position. 831 F.3d 190 (4th Cir. 2016). There, the United States Court of Appeals for the Fourth Circuit held because the plaintiff's claim for unfair and deceptive trade practices was based on meritless claims for misappropriation and tortious interference, his claim for unfair and deceptive trade practices also lacked merit. *Id.* at 204. Defendants also cite *Register v. North Sun Housing and Development, Inc.*, wherein the Court found the plaintiffs' claim for unfair and deceptive trade practices "meritless" because it was based "solely upon violations addressed in [the] plaintiffs' other claims, which the court has rejected on their merits

¹ Because we conclude a Rule 12(b)(6) dismissal was inappropriate on the face of the Complaint, we do not address the parties' arguments as to whether the Continuing Wrong Doctrine applies to Plaintiff's claims.

or on the basis of [the] statute of limitations[.]” No. 7:04-CV-68-FL, 2005 WL 8159532, at *10 (E.D.N.C. Sept. 2, 2005).

Here, by contrast, Plaintiff’s claims were dismissed solely for filing outside of the statute of limitations. Other cases cited by Defendants are distinguishable for similar reasons. Furthermore, as we have explained, Plaintiff’s claims for Breach of Contract, Breach of Warranty of Habitability, Imminently Dangerous Conditions, and violations of the North Carolina Residential Rental Agreements Act are not time-barred, and thus, Defendants’ argument fails.

Plaintiff’s claim for relief under the Unfair and Deceptive Trade Practices Act is subject to a four-year statute of limitations. N.C. Gen. Stat. § 75-16.2 (2023). In her Complaint, Plaintiff alleged “Defendants’ failure to keep and put the Premises in a fit and habitable condition in violation of N.C. Gen. Stat. § 42-37 while demanding and/or collecting rent constitutes Unfair and Deceptive acts or practices, in violation of N.C. Gen. Stat. § 75-1.1 *et seq.*” Nothing in Plaintiff’s Complaint indicates her claim for Unfair and Deceptive Trade Practices is barred by the statute of limitations, and thus dismissal on this basis is unsustainable. *See Russell*, 125 N.C. App. at 641, 482 S.E.2d at 33.

III. Negligence

Defendants argue Plaintiff’s claim for Negligence was not asserted in her 2021 Complaint, and thus the claim is barred in the present action. Plaintiff argues that she alleged the elements of Negligence in her 2021 Complaint and thus she may

reassert that claim in her 2023 Complaint. A pleading adequately sets forth a claim for relief if it contains:

- (1) A short and plain statement of the claim sufficiently particular to give the court and the parties notice of the transactions, occurrences, or series of transactions or occurrences, intended to be proved showing that the pleader is entitled to relief, and
- (2) a demand for judgment for the relief to which he deems himself entitled.

N.C. Gen. Stat. § 1A-1, Rule 8(a) (2023). “The general standard for civil pleadings in North Carolina is notice pleading. Pleadings should be construed liberally and are sufficient if they give notice of the events and transactions and allow the adverse party to understand the nature of the claim and to prepare for trial.” *Murdock v. Chatham Cty.*, 198 N.C. App. 309, 317, 679 S.E.2d 850, 855 (2009) (citations and quotation marks omitted), *disc. review denied*, 363 N.C. 806, 690 S.E.2d 705 (2010). “The essential elements of any negligence claim are the existence of a legal duty or standard of care owed to the plaintiff by the defendant, breach of that duty, and a causal relationship between the breach of duty and certain actual injury or loss sustained by the plaintiff.” *Peace River Electric Cooperative v. Ward Transformer Co.*, 116 N.C. App. 493, 511, 449 S.E.2d 202, 214 (1994) (citation omitted).

In *Haynie*, this Court allowed a claim of negligent entrustment to proceed, despite the claim’s absence from the plaintiff’s first complaint. *See Haynie v. Cobb*, 207 N.C. App. 143, 148-50, 698 S.E.2d 194, 198-99 (2010). The first complaint contained an allegation that the defendant entrusted his vehicle to another person

whom the defendant should have known had a propensity to drive while impaired. *Id.* at 149, 698 S.E.2d at 199. This, we held, was sufficient to allege a claim for negligent entrustment, even though it was not labeled as such in the plaintiff's first complaint. *Id.* at 150. Since the plaintiff "alleged all the necessary elements for a claim of negligent entrustment" in his first complaint, he was entitled to reassert the claim in his second complaint. *Id.* (citations omitted).

In her 2021 Complaint, Plaintiff alleged Defendants owed her a duty under the Residential Rental Agreements Act. She alleged that Defendants breached this duty by delivering the premises in defective condition and by failing to make repairs. She further alleged that her prolonged exposure to mold as a failure of Defendants to make repairs was the "direct and proximate cause" of "severe and painful injuries to her person[.]" Her 2021 Complaint gives sufficient notice of the relevant events and transactions underlying her claim. *See Murdock*, 198 N.C. at 317, 679 S.E.2d at 855. Thus, Plaintiff did allege the necessary elements to put Defendants on notice of her claim for Negligence in her 2021 Complaint, even if she failed to label the claim as one for negligence. *See Haynie*, 207 N.C. App. at 149-50, 698 S.E.2d at 199 (citations omitted).

There is a three-year statute of limitations for tort claims such as negligence. N.C. Gen. Stat. § 1-52(5) (2023). "A cause of action based on negligence accrues when the wrong giving rise to the right to bring suit is committed, even though the damages at that time be nominal and the injuries cannot be discovered until a later date."

Birtha v. Stonemor, N.C., LLC, 220 N.C. App. 286, 292, 727 S.E.2d 1, 7 (2012) (quotation marks omitted) (quoting *Harrold v. Dowd*, 149 N.C. App. 777, 781, 561 S.E.2d 914, 918 (2002)). For the same reasons discussed regarding Plaintiff's claims for Breach of Contract, Breach of Warranty of Habitability, Imminently Dangerous Conditions, and violations of the North Carolina Residential Rental Agreements Act, a Rule 12(b)(6) dismissal of Plaintiff's Negligence claim is improper. The Complaint does not indicate when bodily harm became or ought reasonably to have become apparent to Plaintiff.

Thus, the facts necessary to support Defendants' statute of limitations defense are not contained in the Complaint. Therefore, dismissal of the action on this basis cannot be sustained. *Russell*, 125 N.C. App. at 641, 482 S.E.2d at 33. Consequently, the trial court erred by granting Defendants' Motion to Dismiss under Rule 12(b)(6) on the basis of the statutes of limitations. "In so ruling, we express no opinion on the ultimate merits, if any, of plaintiff[]s allegations and claims." *Locklear v. Lanuti*, 176 N.C. App. 380, 387, 626 S.E.2d 711, 716 (2006) (holding the allegations in the complaint were sufficient to survive a 12(b)(6) motion to dismiss). Indeed, further proceedings may demonstrate Plaintiff's claims are time-barred. Moreover, "[w]e do not address whether the complaint otherwise alleges the necessary elements of these torts[.]" *Russell*, 125 N.C. App. at 641, 482 S.E.2d at 33.

Conclusion

Accordingly, for the foregoing reasons, the trial court's 19 March 2024 Order

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Opinion of the Court

dismissing Plaintiff's Complaint is reversed and this case remanded to the trial court for further proceedings.

REVERSED AND REMANDED.

Chief Judge DILLON and Judge TYSON concur.

Report per Rule 30(e).