

Nos. A10-1762, A10-2113, and A10-2221

State of Minnesota
In Supreme Court

Weavewood, Inc.,

Respondent,

vs.

S & P Home Investments, LLC,

Appellant,

and

Palladium Holdings, LLC, et al.,

Defendants,

and

M. Jacqueline Stevenson,

Respondent.

APPELLANT'S REPLY BRIEF

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INTRODUCTION

S&P Home Investments, LLC respectfully submits its Reply Brief. It is difficult to discern whether respondent provided an unequivocal answer to the question posed by the Court. For at one point the answer provided by the respondent was statute of limitations do not apply to declaratory judgment actions, but in the next breath respondent states there are some situations to which the statute of limitations would apply. But as will be shown, unbeknownst to respondent the answer it provides to the Court's question demonstrates if its position were adopted by the Court it would lead to the elimination of the statute of limitations for claims brought pursuant to the Act which do not seek monetary relief.

Instead, it is respectfully suggested the Court adopt the approaches of the court of appeals and other states' interpretation of their version of the Act and hold the statute of limitations for the substantive body of law governing a claim brought pursuant to the Act determines if the claim is viable. For if the limitations period has run, then a claimant cannot obtain relief merely because the claim is couched as one merely seeking declaratory relief.

STATEMENT OF FACT

It is at times difficult to ascertain the source of Weavewood's factual assertions due to its failure to comply with Rule 128.03 of the Rules of Civil Appellate Procedure. That being said, the facts necessary to decide this matter, with citation to the record, demonstrate respondent's claims are barred by the statute of limitations.

In discussing the court of appeals' decision respondent believes its challenges to the mortgage are based on theories other than fraud or unjust enrichment, without identifying these additional theories. Resp. Br. at p. 5 n.4. Lest there be any confusion "Weavewood also challenged the validity of the S&P mortgage and asked the district court to set aside the mortgage and foreclosure sale under counts one (fraud), four (unjust enrichment), six (Minn. Stat. §580.28), and seven (Minn. Stat. §582.25)." ADD. 57. However, neither Section 580.28 nor Section 582.25 provide a private cause of action. ADD. 60. Leaving only the fraud and unjust enrichment causes of action as the basis to challenge the mortgage.

Throughout its brief respondent claims facts which are either hearsay or not supported by the record. Merely by way of example, respondent cites to purported testimony in 1998. Resp. Br. at p. 11. The transcript of this testimony is not part of the record. Rather, the claimed testimony is found in an affidavit of respondent's counsel, not the actual transcript. WAPP. 199-200, 210.

Respondent does reference a fact which is dispositive for this appeal. "On November 8, 2001 Weavewood *commenced* litigation against Stevenson and the estate and *sought* invalidation of the mortgage as well as damages for fraud." Resp. Br. at p. 12 (emphasis supplied). Respondent in the 2001 litigation asserted a claim. It sought affirmative relief. Respondent's claims, which it concedes it brought over ten years ago, are now time-barred.

ARGUMENT

Respondent's brief appears to raise two issues.¹ The first deals with the question posed by the Court: do statute of limitations apply to declaratory judgment actions. The second is whether respondent's Complaint constitutes a claim or a pure defense. Each will be addressed in turn.

I. STATUTES OF LIMITATIONS APPLY TO DECLARATORY JUDGMENT ACTIONS.

It is unclear as to respondent's answer to the question posed by the Court. It apparently answers the question stating "no." Resp. Br. at p. 30. However, in the very next sentence states a trial court can dismiss a claim brought pursuant to the Act on statutes of limitations grounds so long as the claim is one seeking damages. *Id.* Yet, statutes of limitations are not dependent on the relief sought, but rather on the legal theory supporting the claims. *See e.g.* Minn. Stat. §541.05(6)(fraud claim must be commenced within six years of the discovery of the fraud).

Respondent refers to both federal and Minnesota law claiming neither address whether a statute of limitations applies to them. Resp. Br. at p. 31. As to federal law, federal district courts are provided jurisdiction to resolve disputes similar to the Act. 28 U.S.C. §2201(a); Minn. Stat. §555.01. To claim declaratory judgments in federal court are not governed by statutes of limitations is a misstatement of law.

¹ Oddly, respondent questions whether there is a justiciable controversy. Resp. Br. at p. 18. Oddly, because respondent is the party invoking the trial court's jurisdiction pursuant to the Act, and absent a justiciable controversy respondent cannot obtain the relief it seeks. *St. Paul Area Chamber of Commerce v. Marzitelli*, 258 N.W.2d 585, 587 (Minn. 1977).

First, Section 2201 specifically references certain limitations with respect to drug patents. 28 U.S.C. §2201(b). Each of the statutes contains a limitation section dealing with timing as to when an action can be brought. 21 U.S.C. §505(j)(5)(c)(i); 42 U.S.C. §262(1)(9).

Second, federal courts have applied statutes of limitations to claims seeking declaratory relief. In *Erickson v. Winnebago Industries, Inc.* 342 F. Supp. 1190 (D. Minn. 1972) one of plaintiff's causes of action sought declaratory relief as well as damages. *Id.* at 1192-1193. The defendants sought dismissal of the claim because it was barred by the statutes of limitations. *Id.* at 1194. The court determined the claim for declaratory relief was "barred by application of the various statutes of limitations" *Id.* at 395.

The Eighth Circuit concurs. A claim seeking declaratory relief is barred if the applicable statute of limitations has expired. *Victor Foods, Inc., v. Crossroads Economic Dev. of St. Charles County, Inc.*, 977 F.2d 1224, 1226-1227 (8th Cir. 1992). Thus, the federal courts apply statute of limitations to declaratory judgment actions. The statute of limitations to apply is that applicable to the nature of the legal theory to which the claimant seeks declaratory relief. *Erickson*, 342 F. Supp. at 1194 (applying fraud statute of limitations); *Victor Foods, Inc.*, 977 F.2d at 1226 (applying federal statute of limitations found in 28 U.S.C. §2401). The same is true, and should be the decision of the Court, for cases brought in Minnesota courts.

Respondent's answer of "no" to the question before the Court is inconsistent with its own argument. On the one hand it claims "Minnesota case law has consistently held

that statute of limitations . . . don't apply to Chapter 555." Resp. Br. at p. 31. Yet, it also "does not dispute the fact a court may possibly dismiss a declaratory relief action if the relief sought is barred by an independent statute of limitations and *if* affirmative relief is sought." *Id.* at 20 (emphasis in original). These two statements are mutually exclusive. Respondent is apparently avoiding providing the Court a clear answer as to whether statutes of limitations apply to declaratory judgment actions.²

Appellant provided a synopsis of how other states have answered the question before the Court. App. Br. at pp. 21-24. Respondent's argument in response is two-fold. It states "[t]he arguments are meritless" which constitutes the entirety of its analysis. Resp. Br. at p. 29. Then, it quotes *for over five single spaced pages* a case which was cited in a quotation from the Tennessee Supreme Court. Resp. Br. at 22-27; *Dehoff v. Attorney General*, 564 S.W.2d 361, 363 (Tenn. 1978). It is unclear if respondent disagrees with the proposition "it is necessary to ascertain the nature of the substantive claims sought to be asserted in a declaratory judgment action in order to determine the appropriate statute of limitations." *Dehoff*, 564 N.W.2d at 363.

The extensive quote provided by respondent can be summarized in a single sentence: "Limitation periods are applicable not to the form of relief but to the claim on

² Respondent cites *Fryberger v. Township of Fredenberg*, 428 N.W.2d 601 (Minn. Ct. App. 1988) for the proposition declaratory judgments are not subject to statutes of limitations. Resp. Br. at p. 31. *Fryberger* actually supports appellant's position. A portion of the *Fryberger* opinion dealt with the Municipal Planning Act. *Fryberger*, 428 N.W.2d at 605. This Act was the body of substantive law upon which declaratory relief was sought. Because that body of law does not contain a "time limit" on the aggrieved party's right to seek review there was no issue with the statute of limitations. *Id.* This is exactly the point made by appellant – it is not the Act itself which provides the statute of limitations but the law attendant to the theory upon which relief is sought.

which relief is based.” *Luckenbach Co. v. United States*, 312 F.2d 545, 548 (2nd Cir. 1963). This proposition is not novel, and other courts which have cited to *Luckenbach* have held the statute of limitations governing the substantive body of law for which declaratory relief applies determines whether the claim is viable. *Hoagy Wrecker Services, Inc. v. City of Fort Wayne*, 772 F. Supp. 1350, 1359 (N.D. Ind. 1991); *Taxpayers Allied For Constitutional Taxation v. Wayne Co.*, 40 Mich. 19, 128, 537 N.W.2d 596, 601 (1995).

The statute of limitations applies to declaratory judgment actions. To determine whether a claim is viable pursuant to the Act the substantive body of law upon which the requested relief is based must be examined. If the statute of limitations has run on the claim, the action should be dismissed. Respondent’s claims are barred by the statute of limitations.

II. WEAVEWOOD’S CLAIMS ARE BARRED BY THE STATUTE OF LIMITATIONS.

Respondent is of the belief it could bring its fraud claims, repeatedly, whenever it chooses to do so. It believes it had the option “to wait out the mortgage and defend against it later” if it so desired. Resp. Br. at p. 12. This belief is premised on the idea it “was under no legal obligation to bring the action until S&P commenced the foreclosure.” *Id.* at p. 28. By its own admissions and the law it is incorrect.

In November 2001 respondent commenced a lawsuit to invalidate the mortgage and sought damages for fraud. Resp. Br. at p. 12. In its Complaint it sought declaratory relief that the mortgage was null and void. APP. 195. A claim for relief is just that, a

claim. *See Wells Fargo & Co. v. United States*, 750 F. Supp.2d 1049, 1051 (D. Minn. 2010). As is typical of a claim a plaintiff has an extended period of time to investigate a claim prior to drafting its pleading. *Id.* Even though in 2001 Weavewood invoked the jurisdiction of the court in an attempt to obtain relief, yet it now contends, even though it filed a Complaint, it merely “timely answer[ed] and contest[ed] the validity . . . of the mortgage and foreclosure.” Resp. Br. at p. 20. Such reasoning is absurd.

Respondent claims its fraud count is “purely defensive” Resp. Br. at p. 21. Yet a pure defense is raised when defending against a suit brought by another. *In re Estate of Jotham*, 722 N.W.2d 447, 457 (Minn. 2006). Respondent has *on four separate occasions*, from April 2000 through 2009, brought claims for affirmative relief seeking to eliminate the mortgage. App. 42-43, 187-196, 135-138, 2-20. The theory for its claims has been consistent. It has raised independent causes of action all of which are subject to the statute of limitations. *See United States v. Old World Artisans, Inc.*, 702 F.Supp. 1561, 1569 (N.D. Ga. 1988); *Algrant v. Evergreen Valley Nurseries Limited Partnership*, 126 F.3d 178, 181 (3rd Cir. 1997)(“action for declaratory relief will be barred to the same extent the applicable statute of limitations bars the concurrent legal remedy”). Respondent has sought the same legal remedy since 2000. It is time-barred from doing so now.

Attempts to avoid the effects of foreclosure are not novel, and in fact have increased during the economic downturn. Yet, these attempts do not transform a claim of fraud into a pure defense. Indeed, the federal district court applying Minnesota law dismissed a mortgagor’s challenge to a foreclosure on statute of limitations grounds.

Hart v. Aurora Loan Services, Inc., 2007 WL 1813017, *4 (D. Minn. June 21, 2007).

Just like the claims in *Hart*, respondent is seeking to assert an affirmative claim for relief.

A claim barred by the statute of limitations.

CONCLUSION

Respondent has on numerous occasions spanning a ten-year time period sought affirmative relief with respect to the mortgage. Even though its Complaint has been couched in terms of an action for declaratory relief, the statute of limitations does, and must apply. For if it does not one merely needs to assert in a complaint seeking affirmative relief that its claims are “defensive” in nature to avoid the matter being dismissed on statute of limitations grounds. The statute of limitations apply to declaratory judgment actions.

Respectfully submitted,

Dated: March 6, 2012

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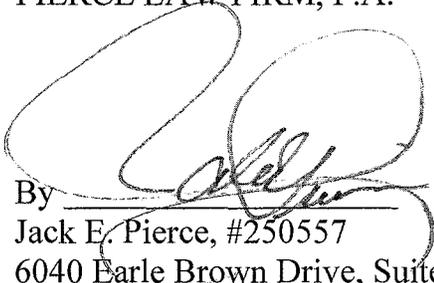
M. Jacquelin Stevenson,
Respondent

CERTIFICATE OF BRIEF LENGTH

I hereby certify that this brief conforms to the requirements of Minn. R. Civ. App. P. 132.01, subs.1 and 3, for a brief produced with a proportional font. The length of this brief is 2,140 words. This brief was prepared using Microsoft Word 2010.

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