

Cite as 2023 Ark. App. 414
ARKANSAS COURT OF APPEALS

DIVISION II
No. CV-22-509

LISA SHELLITO

APPELLANT

V.

TIMOTHY HURLEY

APPELLEE

Opinion Delivered September 27, 2023

APPEAL FROM THE GARLAND
COUNTY CIRCUIT COURT
[NO. 26CV-21-319]

HONORABLE MARCIA R.
HEARNSBERGER, JUDGE

REVERSED AND REMANDED

WENDY SCHOLTENS WOOD, Judge

Appellant Lisa Shellito appeals the Garland County Circuit Court’s order granting appellee Timothy Hurley’s motions to dismiss her breach-of-contract cause of action on the basis of the statute of limitations. Shellito argues that the circuit court erred in determining the date of the breach was February 2018 and, consequently, in finding that the statute of limitations had run before she filed her complaint. We reverse and remand.

Shellito alleged in her complaint that the parties had been in a romantic relationship since 2010 and had a daughter in August 2011. When the events leading to this lawsuit began, they were living in Oregon in Hurley’s home; Shellito also owned a home in Oregon that she rented to others. According to Shellito’s complaint, in October 2017, the parties purchased a home in Hot Springs Village with the intention to relocate to Arkansas. The

home was purchased with a 10 percent cash down payment and a note and mortgage in the amount of \$148,500. The property, note, and mortgage were placed solely in Hurley's name. Shellito alleged that the parties agreed to own the Arkansas home "together in their joint names" and that Hurley told her the property had been placed in his name only "as a convenience." She claimed that they orally agreed to sell both of their Oregon homes and, after they closed on the sales, to use the proceeds to pay off the mortgage on the Arkansas home.

In January 2018, Hurley sold his Oregon home, securing proceeds of approximately \$112,000, and the parties moved with their daughter to the Arkansas home. Shellito alleged that in February 2018, she sold her Oregon home securing proceeds of approximately \$70,000 and that she gave Hurley \$61,000 of the proceeds of that sale. Shellito further alleged that Hurley used part of the \$61,000 to pay off his credit-card debt that had been incurred when making improvements to both parties' Oregon homes in preparation of selling the properties and that he used the remaining funds—in combination with the proceeds from the sale of his Oregon home—to pay off the mortgage of the Arkansas home.

Shellito's complaint asserted that in December 2018, the parties' relationship deteriorated, and Hurley asked Shellito to leave the Arkansas home and relocate with their child. According to the complaint, the parties agreed at that time that Hurley would either sell the home and pay Shellito her contribution toward its purchase or he would obtain a home-equity loan and pay Shellito her contribution. After Shellito left, Hurley failed to do

either, and he refused to cooperate or honor the parties' initial agreement to own the Arkansas home "together in their joint name."

Shellito filed a complaint against Hurley on April 8, 2021, and an amended complaint incorporating the initial complaint and adding claims on July 15. In these complaints, she alleged causes of action for partition, the existence of a partnership, breach of oral contract/unjust enrichment, constructive trust/unjust enrichment, fraud/misrepresentation, and breach of fiduciary duty. Hurley moved to dismiss both complaints, alleging the claims were barred by the three-year statute of limitations set forth in Arkansas Code Annotated section 16-56-105 (Repl. 2005), the statute of frauds, the failure to plead fraud with particularity, and the failure to state a claim for which relief can be granted under Arkansas Rule of Civil Procedure 12(b)(6). The circuit court entered an order dismissing Shellito's claims for breach of contract, constructive trust, and fraud as barred by the three-year statute of limitations; dismissing the partition action because Shellito had not alleged an interest in the property; dismissing the fraud claim for failure to plead fraud with particularity; and dismissing the fiduciary-duty and "partnership" claims under Rule 12(b)(6). On appeal, Shellito challenges only the dismissal of her breach-of-contract claim.

We review a circuit court's order granting a motion to dismiss for abuse of discretion. *Brown v. Towell*, 2021 Ark. 60, at 6, 619 S.W.3d 17, 20. An abuse of discretion occurs when the court acts arbitrarily or groundlessly. *Russell v. Kelley*, 2019 Ark. 278, at 2, 585 S.W.3d 658, 659. "When reviewing a circuit court's order granting [or denying] a motion to dismiss, we treat the facts alleged in the complaint as true and view them in the light most favorable

to the plaintiff. In testing the sufficiency of a complaint on a motion to dismiss, all reasonable inferences must be resolved in favor of the complaint, and all pleadings are to be liberally construed.” *Thurston v. League of Women Voters of Ark.*, 2022 Ark. 32, at 4–5, 639 S.W.3d 319, 321. “In order to prevail on a motion to dismiss a complaint on the basis of a statute-of-limitations defense, it must be barred on its face.” *Hutcherson v. Rutledge*, 2017 Ark. 359, at 2, 533 S.W.3d 77, 79. “If there is any reasonable doubt as to the application of the statute of limitations,” we must resolve the question in favor of the complaint standing and against the challenge. *Marcum v. Hodge*, 2023 Ark. 103, at 7–8, 668 S.W.3d 500, 506 (quoting *Quality Optical of Jonesboro, Inc. v. Trusty Optical, LLC*, 365 Ark. 106, 108, 225 S.W.3d 369, 371 (2006)).

The parties do not dispute that the three-year statute of limitations set forth in Arkansas Code Annotated section 16-56-105 applies. The issue is when the statute began to run. The court found that the statute began to run “at the latest” in February 2018 when Shellito provided the funds to Hurley “to pay toward the [Arkansas home] mortgage and own the home in joint names.” Thus, the circuit court found that the statute had run when she filed her initial complaint on April 8, 2021, more than three years later. On appeal, Shellito contends that the statute did not begin to run until the date of the breach, which, according to her, was December 2018 (when Hurley ejected her from the property and expressed his repudiation of their agreement that they would jointly own the property); therefore, her April 2021 complaint was timely filed.

The period of limitations for contracts runs from the point at which the cause of action accrues. *Pennington v. BHP Billiton Petroleum (Fayetteville), LLC*, 2021 Ark. 179, at 3, 631 S.W.3d 555, 557. A cause of action accrues the moment the right to commence an action comes into existence and occurs when one party has, by words or conduct, indicated to the other that the agreement is being repudiated or breached. *Beckworth v. Diamante, a Priv. Membership Golf Club, LLC*, 2010 Ark. App. 814, at 10, 379 S.W.3d 752, 760. And when the parties have entered into an agreement that requires a series of mutual acts and have left the time of those acts open ended, as here, the cause of action does not accrue until one party has by word or conduct indicated to the other a repudiation of the agreement. *Rice v. McKinley*, 267 Ark. 659, 663, 590 S.W.2d 305, 308 (Ark. App. 1979).

We turn to the complaint. Shellito alleges that the parties agreed to sell both of their homes and, after they closed on the sales, to use the proceeds to pay off the mortgage on the Arkansas home. She alleged that part of the money she gave to Hurley would be used to pay off Hurley's credit-card debt and the remainder would be combined with Hurley's proceeds to pay off the mortgage of the Arkansas home. Shellito does not allege that Hurley was required under their agreement to add her name to a deed at any particular time. Rather, the complaint simply states that the home would be "joint property of them both" and that the "parties' agreement was to own the home together in their joint names."

The parties' actions are described in the complaint as follows. In January 2018, Hurley sold his Oregon home. In February 2018, Shellito sold hers and gave \$61,000 to Hurley. Although the complaint alleges that Hurley used the proceeds from the sales of both Oregon

homes to pay off the balance of the Arkansas mortgage, it does not allege precisely when that occurred. Moreover, the complaint does not allege that the parties' agreement required Hurley to execute a deed jointly conveying the property immediately upon receiving funds from Shellito or upon paying off the mortgage. In fact, the complaint does not state precisely when the parties agreed that this would occur.

Hurley argues that Shellito's cause of action for breach of contract arose "the very minute she transferred the money and Hurley did not place her name on the deed." In support of his argument, Hurley focuses on an allegation in the complaint that Hurley "insisted, after [Shellito] provided monies for the purchase of the property that the property be held in his name only." We do not read this allegation so narrowly, as it is not clear from the complaint that "after" means the minute, day, week, or month after Shellito gave Hurley her money. Indeed, viewing the facts alleged in the complaint in the light most favorable to Shellito, "after" may mean months after, or it may mean December 2018 when, according to Shellito's complaint, Hurley, "by words or conduct, indicated" to her that their agreement was "being repudiated or breached" when he ejected her from the property. *Beckworth*, 2010 Ark. App. 814, at 10, 379 S.W.3d at 760.

Liberally construing the complaint, treating the facts alleged in the complaint as true and viewing them in the light most favorable to Shellito, and resolving all reasonable inferences in favor of the complaint as we must, we do not interpret the complaint as alleging that the parties' oral agreement required Hurley to execute a joint deed to the property the moment Shellito gave her house proceeds to Hurley. Moreover, we are not called upon to

determine when the breach occurred. Our review is to determine whether, on the face of the complaint, the statute of limitations bars Shellito's claim. "If there is any reasonable doubt as to the application of the statute of limitations, this court will resolve the question in favor of the complaint standing and against the challenge." *Quality Optical of Jonesboro, Inc.*, 365 Ark. at 108, 225 S.W.3d at 371. Because the complaint does not allege a precise time that Hurley was required to add Shellito's name to the deed for the Arkansas home, we cannot make that determination. Accordingly, we hold that the circuit court abused its discretion in dismissing Shellito's complaint alleging breach of oral contract, and we reverse and remand.

Reversed and remanded.

BARRETT and THYER, JJ., agree.

Lion Legal Services, by: *Danielle Hasty* and *D. Renee Price*, for appellant.

Philip B. Montgomery and *Brenda S. Simpson*, for appellee.