

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

HUMBERTO MALDONADO, SR., AN
INDIVIDUAL,
Appellant,
vs.
HUMBERTO MALDONADO, JR., AN
INDIVIDUAL,
Respondent.

No. 84302-COA

FILED

JAN 27 2024

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY *E.A. Brown*
DEPUTY CLERK

HUMBERTO MALDONADO, SR., AN
INDIVIDUAL,
Appellant,
vs.
HUMBERTO MALDONADO, JR., AN
INDIVIDUAL,
Respondent.

No. 86054-COA

*ORDER VACATING PRIOR ORDER AND ORDER OF REVERSAL AND
REMAND¹*

Humberto Maldonado, Sr., appeals from district court orders granting a motion to dismiss and awarding attorney fees to respondent Humberto Maldonado, Jr. in a civil action. We elect to consolidate these appeals for disposition. *See* NRAP 3(b)(2). Eighth Judicial District Court,

¹This court previously entered an order of reversal and remand on January 10, 2024. *Maldonado, Sr. v. Maldonado, Jr.*, Docket Nos. 84302-COA & 86054-COA (Order of Reversal and Remand, January 10, 2024). We hereby vacate the prior order and issue this order in its place.

Clark County; James M. Bixler, Sr. Judge; Joseph T. Bonaventure, Sr. Judge; Monica Trujillo, Judge; Joanna Kishner, Judge.²

On June 14, 2021, Maldonado, Sr. filed a complaint in which he raised several causes of action stemming from the transfer of his property to his son, Maldonado, Jr. In his complaint, Maldonado, Sr. alleged that in December of 2013, Maldonado, Jr. fraudulently caused him to sign a quit claim deed transferring the property to Maldonado, Jr. without any exchange of consideration. Maldonado, Sr. acknowledged that he signed contractual documents related to the transfer but alleged that he was unable to understand those documents due to a language barrier, and that Maldonado, Jr. inaccurately informed him the agreement would protect him from liability concerning an otherwise unrelated business failure. Based on those allegations, Maldonado, Sr. further contended that Maldonado, Jr. wrongfully took title to the property.

Maldonado, Sr. therefore filed an action to quiet title to the property. Maldonado, Sr. also raised the following causes of action related to the transfer of the title to the property: (1) slander of title; (2) breach of contract; (3) breach of the implied covenant of good faith and fair dealing; (4) civil conspiracy; (5) unjust enrichment; and (6) fraudulent misrepresentation. In addition, Maldonado, Sr. sought declaratory and

²Hon. James M. Bixler orally granted Maldonado Jr.'s motion to dismiss at a district court hearing on February 8, 2022. Hon. Joseph T. Bonaventure signed the order granting Maldonado Jr.'s motion to dismiss that was filed on March 1, 2022. Hon. Monica Trujillo orally granted Maldonado Jr.'s motion for attorney fees at a district court hearing on October 11, 2022. Hon. Joanna Kishner signed the order awarding attorney fees to Maldonado Jr. that was filed on December 30, 2022.

injunctive relief based upon his contention that Maldonado, Jr. failed to abide by the terms of their agreement concerning the property.

Maldonado, Jr. subsequently filed a motion to dismiss the complaint. Maldonado, Jr. attached to his motion a purchase agreement executed by the two parties and a grant, bargain, and sale deed that transferred title of the property from Maldonado, Sr. to Maldonado, Jr. Maldonado, Jr. noted that the purchase agreement provided that Maldonado, Jr. agreed to pay \$170,000 to Maldonado, Sr. in exchange for the property. The grant, bargain, and sale deed stated that the property was exchanged for “10.00 and other valuable consideration, the receipt of which is hereby acknowledged” and the deed was recorded with the Clark County Recorder’s Office on January 22, 2014. Maldonado, Jr. argued in his motion that dismissal was appropriate based on the various statutes of limitations because all of Maldonado, Sr.’s causes of actions accrued at the latest when the deed was recorded on January 22, 2014, and Maldonado, Sr. filed his complaint more than seven years after that date.

Also of note, Maldonado, Jr. also served upon Maldonado, Sr. a motion seeking sanctions pursuant to NRCP 11(c) based upon the frivolous nature of Maldonado, Sr.’s allegations.

Maldonado, Sr. opposed the motion to dismiss and Maldonado, Jr. filed a reply. The district court reviewed the motion and ultimately entered a written order dismissing the complaint. The court found that Maldonado, Sr.’s complaint referred to and relied upon the purchase agreement and the deed, those documents were central to his claims, and that neither party questioned the authenticity of those documents. Therefore, the court utilized those documents when deciding whether to grant the motion to dismiss. The court agreed that all of Maldonado, Sr.’s

causes of action accrued when the grant, bargain, and sale deed was recorded on January 22, 2014. The court therefore concluded that Maldonado, Sr.'s action was barred by the applicable statutes of limitations and it granted Maldonado, Jr.'s motion to dismiss.

Maldonado, Jr. subsequently moved for costs and attorney fees. Maldonado, Jr. argued that he was entitled to attorney fees pursuant to the purchase agreement and based upon NRS 18.010(2)(b) and NRCP 11(c) because Maldonado, Sr.'s claims were brought or maintained without reasonable grounds and were frivolous. Maldonado, Sr. opposed the motion for attorney fees but the district court ultimately granted Maldonado, Jr.'s motion for costs and attorney fees. The court found that Maldonado, Jr. was entitled to costs pursuant to NRS 18.020 and awarded him costs in the amount of \$876. The court also noted that Maldonado, Jr. was entitled to attorney fees pursuant to the purchase agreement and found that Maldonado, Sr.'s claims were brought or maintained without reasonable grounds and that they were not warranted by existing law or by nonfrivolous argument. The court addressed the appropriate factors under *Brunzell v. Golden Gate National Bank*, 85 Nev. 345, 349, 455 P.2d 31, 33 (1969), and accordingly awarded Maldonado, Jr. attorney fees in the amount of \$29,695. Further, the court also decided to impose a sanction upon Maldonado, Sr.'s attorney pursuant to NRCP 11(c) and NRS 7.085(1), and required him and his firm to pay Maldonado, Jr.'s attorney fees and entered a judgment directing Maldonado, Sr., his attorney, and his attorney's firm to be jointly and severally liable for the fees. These appeals followed.

Maldonado, Sr. argues that the district court erred by granting the motion to dismiss. Maldonado, Sr. contends he was defrauded and did

not discover the deed transferring title to Maldonado, Jr. until 2021. For those reasons, Maldonado, Sr. asserts that his causes of action should not have accrued until the 2021 date of discovery.

An order granting an NRCP 12(b)(5) motion to dismiss is reviewed de novo. *Buzz Stew, LLC v. City of N. Las Vegas*, 124 Nev. 224, 227-28, 181 P.3d 670, 672 (2008). A decision to dismiss a complaint under NRCP 12(b)(5) is rigorously reviewed on appeal, with all alleged facts in the complaint and the attached documents presumed true and all inferences drawn in favor of the plaintiff. *Id.* A district court may consider both the complaint and “unattached evidence on which the complaint necessarily relies if: (1) the complaint refers to the document; (2) the document is central to the plaintiff’s claim; and (3) no party questions the authenticity of the document.” *Baxter v. Dignity Health*, 131 Nev. 759, 764, 357 P.3d 927, 930 (2015). Dismissing a complaint is appropriate “only if it appears beyond a doubt that [the plaintiff] could prove no set of facts, which, if true, would entitle [the plaintiff] to relief.” *Buzz Stew, LLC*, 124 Nev. at 228, 181 P.3d at 672.

A court can dismiss a complaint for failure to state a claim upon which relief can be granted if the action is barred by the statute of limitations. NRCP 12(b)(5); *Shupe & Yost, Inc. v. Fallon Nat’l Bank*, 109 Nev. 99, 100, 847 P.2d 720, 720 (1993). “In determining whether a statute of limitations has run against an action, the time must be computed from the day the cause of action accrued. A cause of action ‘accrues’ when a suit may be maintained thereon.” *Clark v. Robison*, 113 Nev. 949, 951, 944 P.2d 788, 789 (1997) (internal citation omitted). “In a discovery based cause of action, a plaintiff must use due diligence in determining the existence of a cause of action.” *Bemis v. Estate of Bemis*, 114 Nev. 1021, 1025, 967 P.2d

437, 440 (1998). “Dismissal on statute of limitations grounds is only appropriate when uncontroverted evidence irrefutably demonstrates plaintiff discovered or should have discovered the facts giving rise to the cause of action.” *Id.* (internal quotation marks omitted); *see also Siragusa v. Brown*, 114 Nev. 1384, 1391, 971 P.2d 801, 806 (1998) (explaining that “the time of discovery may be decided as a matter of law only where uncontroverted evidence proves that the plaintiff discovered or should have discovered the fraudulent conduct”). However, “when the plaintiff knew or in the exercise of proper diligence should have known of the facts constituting the elements of his cause of action is a question of fact for the trier of fact.” *Siragusa*, 114 Nev. at 1391, 971 P.2d at 806 (internal quotation marks and brackets omitted).

“In the event the party relied upon in a fiduciary situation fails to fulfill his obligations, and if it also fails to tell the other party of this failure, there is said to be fraudulent concealment and constructive fraud, so the statute of limitations may be tolled.” *Allen v. Webb*, 87 Nev. 261, 269, 485 P.2d 677, 681 (1971). In such a situation, “the mere fact of the record notice does not provide sufficient basis for holding [a party] to have had notice unless they had reason to check the real estate records.” *Id.* at 270, 485 P.2d at 682.

Taking Maldonado, Sr.’s allegations as true, as we must, we cannot state that the time of discovery may be decided as a matter of law. As alleged, Maldonado, Sr. and Maldonado, Jr. had a business and familial relationship, such that a fiduciary or confidential relationship may have existed. *See Clark v. Lubritz*, 113 Nev. 1089, 1095, 944 P.2d 861, 865 (1997) (“The fiduciary duty among partners is generally one of full and frank disclosure of all relevant information for just, equitable and open dealings

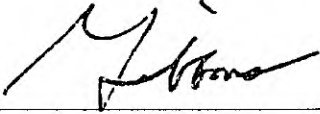
at full value and consideration.” (quoting 59(A) Am. Jur. 2d Partnership § 425 (1987)); *Perry v. Jordan*, 111 Nev. 943, 947, 900 P.2d 335, 338 (1995) (noting a confidential relationship is “particularly likely to exist when there is a family relationship or one of friendship” and when such a relationship exists “the person in whom the special trust is placed owes a duty to the other party similar to the duty of a fiduciary, requiring the person to act in good faith and with due regard to the interests of the other party” (internal citation and quotation marks omitted)). And, given Maldonado Sr.’s allegations that he was improperly induced to sign documents relating to the transfer of his property and did not comprehend the nature of those documents due to a language barrier, his allegations of fraud may toll the statute of limitations. *See Allen*, 87 Nev. at 269, 485 P.2d at 681; 17A Am. Jur. 2d Contracts § 210 (2023) (“A party is under an obligation to read a document before signing it, and generally a cause of action for fraud in the factum only arises if the signor is illiterate, blind, or not a speaker of the language in which the document is written.”).

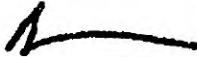
Maldonado, Sr. also alleged that he had no reason to check the real estate records concerning the property until he was threatened with eviction in 2021, and if true, he would not have had cause to discover the transaction until that date. *See Allen*, 87 Nev. at 270, 485 P.2d at 682 (stating “[o]rdinarily the constructive knowledge of recording statutes is held to prospective purchasers of realty” but that “[i]t does not necessarily follow” that persons who are not prospective purchasers, such as persons that already have an ownership interest in a property, are covered by such statutes). Based on Maldonado Sr.’s allegations, this is not a situation where uncontroverted evidence proves that he discovered or should have discovered the fraudulent conduct at an earlier date. Accordingly, we

cannot conclude beyond a doubt that Maldonado, Sr. could prove no set of facts, which would entitle him to relief, *see Buzz Stew, LLC*, 124 Nev. at 228, 181 P.3d at 672, and, as a result, the district court erred by granting Maldonado Jr.'s motion to dismiss.

In light of our decision to reverse the district court's grant of Maldonado Jr.'s motion to dismiss, we also reverse its order regarding the award of attorney fees. Accordingly, we

ORDER the judgments of the district court REVERSED AND REMAND this matter to the district court for proceedings consistent with this order.


_____, C.J.
Gibbons


_____, J.
Bulla


_____, J.
Westbrook

cc: Chief Judge, Eighth Judicial District Court
Hon. James M. Bixler, Senior Judge
Hon. Joseph T. Bonaventure, Senior Judge
Hon. Monica Trujillo, District Judge
Hon. Joanna Kishner, District Judge
TCM Law
The Dean Legal Group, Ltd.
Eighth District Court Clerk