

Order

Michigan Supreme Court
Lansing, Michigan

April 19, 2024

Elizabeth T. Clement,
Chief Justice

166439

Brian K. Zahra
David F. Viviano
Richard H. Bernstein
Megan K. Cavanagh
Elizabeth M. Welch
Kyra H. Bolden,
Justices

GERALD G. KESTI,
Plaintiff-Appellant,

v

SC: 166439
COA: 362408
Houghton CC: 21-017637-CH

DUANE T. WILLIAMS, DEBORAH S.
WILLIAMS, PATRICK H. SCHAEFER, and
CAROL J. SCHAEFER,
Defendants-Appellees.

On order of the Court, the application for leave to appeal the October 26, 2023 judgment of the Court of Appeals is considered. Pursuant to MCR 7.305(H)(1), in lieu of granting leave to appeal, we REVERSE the judgment of the Court of Appeals to the extent it held that all of the plaintiff's claims were barred by the applicable statute of limitations and VACATE the July 19, 2022 order of the Houghton Circuit Court. We REMAND this case to the circuit court with instructions to reconsider, consistently with this order, the defendants' requests for summary disposition under MCR 2.116(C)(7) while individually determining the accrual date for each of the plaintiff's five pleaded claims for purposes of its statutory period of limitations.

Under MCL 600.5827, the period of limitations runs from the time a claim accrues, and "the claim accrues at the time the wrong upon which the claim is based was done regardless of the time when damage results." A claim accrues " 'when all of the elements of the cause of action have occurred and can be alleged in a proper complaint.' " *Sunrise Resort Ass'n, Inc v Cheboygan Co Rd Comm*, 511 Mich 325, 336 (2023), quoting *Connelly v Paul Ruddy's Equip Repair & Serv Co*, 388 Mich 146, 150 (1972). See also *Frank v Linkner*, 500 Mich 133, 152 (2017), quoting *Connelly*, 388 Mich at 150. "We . . . look to plaintiff's complaint to determine when the wrong upon which the claim is based was done." *Fraser Twp v Haney*, 509 Mich 18, 24 (2022).

The lower courts erred by analyzing the "gravamen" of the plaintiff's complaint rather than each individual claim when determining when the claims accrued. While it is appropriate to determine the gravamen of a legal claim when that cause of action has been filed with a different label to avoid an applicable period of limitations, this analysis should

not be used to prevent a plaintiff from bringing multiple different legal claims that are each supported by a viable legal theory and are legally plausible given the facts that have been alleged. See *Joliet v Pitoniak*, 475 Mich 30, 37, 42-45 (2006) (analyzing individually the plaintiff’s claims of alleged violations of Michigan’s Civil Rights Act, breach of contract, and misrepresentation to determine whether each was time-barred); *Adkins v Annapolis Hosp*, 116 Mich App 558, 563 (1982) (“The applicable period of limitations depends upon the theory actually pled when the same set of facts can support either of two distinct causes of action. The gravamen of an action is determined by reading the claim as a whole.”) (citation omitted), aff’d 420 Mich 87 (1984); *Campos v Gen Motors Corp*, 71 Mich App 23, 25-26 (1976) (“The same conduct, falsely accusing another of crime, may give rise to two causes of action [one being slander and the other intentional infliction of mental distress] depending on the interest which was injured.”); see also, *PCA Minerals, LLC v Merit Energy Co, LLC*, 725 F Appx 342, 348 (CA 6, 2018) (“Michigan courts do, indeed, conduct a gravamen analysis when a plaintiff attempts to avoid the applicable statute of limitations by ignoring the true nature of the wrong alleged and recasting it as a claim subject to a longer statute.”).

With the possible exception of the plaintiff’s claim for declaratory relief, it appears undisputed that the plaintiff’s claims are subject to a statutory three-year period of limitations under MCL 600.5805(2). The plaintiff’s claims, however, each have distinct legal elements and, if analyzed independently, could result in different accrual dates if the elements of each claim were alleged to have been satisfied at different times.

Therefore, the Court of Appeals and circuit court erred by analyzing the gravamen of the plaintiff’s claims collectively. This case is remanded to the circuit court for reconsideration of the defendants’ motions for summary disposition under MCR 2.116(C)(7). For purposes of determining the appropriate accrual dates, the circuit court is directed to individually analyze each pleaded legal claim in relation to the operative facts and determine the earliest date on which all the required legal elements occurred and could have been pleaded in a complaint. See *Haney*, 509 Mich at 24; *Sunrise*, 511 Mich at 336. As to the period of limitations and accrual date for Count I specifically, the circuit court should also determine whether the claim can fairly be read as seeking a declaration of the parties’ rights and obligations under the easement regarding the repair and maintenance of the bridge or whether the claim is actually an independent tort action in disguise.

We do not retain jurisdiction.



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I, Larry S. Royster, Clerk of the Michigan Supreme Court, certify that the foregoing is a true and complete copy of the order entered at the direction of the Court.

April 19, 2024

Clerk