IN THE
SUPREME COURT
OF THE
COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS

NEW SHINTANI CORPORATION,
Plaintiff-Appellee,

v.

DAVID R. QUITUGUA,
Defendant-Appellant.

SUPREME COURT NO. CV-07-0008-GA
SUPERIOR COURT NO. 03-0158

Cite as: 2011 MP 9

Decided July 20, 2011

F. Randall Cunliffe, Hagåtña, Guam, for Defendant-Appellee
Michael A. White, Saipan, Commonwealth of the Northern Mariana Islands, for Plaintiff-Appellee
BEFORE: MIGUEL S. DEMAPAN, Chief Justice; ALEXANDRO C. CASTRO, Associate Justice; JOHN A. MANGLONA, Associate Justice.

MANGLONA, J.:

¶ 1 David R. Quitugua appeals a trial court order finding that he owed New Shintani Corporation $14,575.75 plus interest for items purchased between April 7, 1994 and September 20, 1995. The trial court reached this decision after concluding that New Shintani was not required to assert facts in its complaint establishing that the statute of limitations was tolled. We hold that that the trial court erred because a party is required to plead facts establishing an exception to the statute of limitations when the face of the complaint shows that the cause of action is time-barred. However, we decline to find New Shintani's procedural deficiency dispositive in this case of first impression, and given that Quitugua does not contest the trial court's factual findings, we AFFIRM the trial court's decision.

I

¶ 2 This case arises from an alleged unpaid debt that Defendant David R. Quitugua ("Quitugua") owed Plaintiff New Shintani Corporation ("Shintani"). Shintani filed its complaint on April 7, 2003, alleging that Quitugua owed it $14,575.75[1] for merchandise that Shintani sold and delivered to Quitugua through September 20, 1995. In his Answer, Quitugua raised the affirmative defense that Shintani's claim was barred by the statute of limitations.[2] Shintani subsequently served interrogatories on Quitugua, and in responding to these interrogatories Quitugua stated that he had lived on Guam since 1999 and had been registered to vote in Guam since 2000. Excerpts of Record ("ER") at 11.[3]

¶ 3 At the bench trial, a Shintani employee testified that Quitugua maintained an open account with Shintani and billing invoices admitted into evidence confirmed the alleged debts. After Shintani rested its case, Quitugua moved for judgment as a matter of law,[4] arguing that Shintani's claim was barred by the six-year statute of limitations under 7 CMC § 2505, and that Shintani had failed to prove during its case-in-chief that any exception to this statute applied. The trial court denied Quitugua's motion, holding that Shintani was not required to prove during its case-in-chief that one of the statute of limitations exceptions applied.

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[1] Shintani also pled that it was entitled to pre-judgment interest; however, the trial court rejected this argument and it is not at issue on appeal.

[2] Quitugua raised two additional affirmative defenses in his Answer: the doctrines of estoppel and laches. However, no evidence was presented supporting either defense, they were both rejected by the trial court, and they are not contested on appeal.

[3] While both parties filed excerpts of record, for reference purposes we will cite to the excerpts of record Shintani submitted.

[4] While Quitugua moved for a directed verdict, the trial court properly observed that what used to be termed a "directed verdict" is now referred to as "judgment as a matter of law," and is governed by Rule 52(c) of the Commonwealth Rules of Civil Procedure.

¶ 4 Quitugua then rested on the pleadings and moved for judgment as a matter of law again. He asserted that Shintani failed to affirmatively plead an exception to the statute of limitations and failed to submit evidence during its case-in-chief establishing an exception to the statute of limitations. Shintani responded by motioning to "re-open" the case to admit rebuttal evidence on the statute of limitations issue. While Quitugua's motion was pending, the trial court permitted Shintani to introduce evidence relating to the tolling of the statute of limitations. Shintani introduced Quitugua's interrogatory responses, establishing that the statute of limitations was tolled when Quitugua left the Commonwealth in 1999.

¶ 5 The trial court subsequently denied Quitugua's motion for judgment as a matter of law and ruled that it would consider the tolling evidence. In reaching this conclusion, the court ruled that Shintani's claim was sufficiently pled because a plaintiff "is not required to affirmatively plead an exception to the statute of limitations" even when a claim is time-barred on its face. ER at 20. The court further reasoned that "the decision to allow further evidence to cure a defect in proof is within the sound discretion of the trial court." ER at 25. On the same day Quitugua's motion was denied, the court issued its findings of fact and conclusions of law, ruling that Quitugua was indebted to Shintani for the principal sum of $14,575.75 plus post-judgment interest at a rate of nine-percent per-annum.

¶ 6 After the judgment was issued, Quitugua motioned for a new trial on the basis that he was "unable to put on any defense to the reopening of the case." ER at 35. The trial court denied the motion, ruling that after Shintani introduced the tolling evidence "the Court permitted Defendant the opportunity to present its own case" and that Quitugua was aware of this opportunity. ER at 36.[5]

¶ 7 We now consider this matter following Quitugua's timely appeal. We have jurisdiction pursuant to 1 CMC § 3102(a).

II

¶ 8 The central issue in this appeal is whether a plaintiff is required to plead facts establishing an exception to the statute of limitations when the face of the complaint shows that the cause of action is time-barred. A trial court's application of the statute of limitations is reviewed de novo. *In Re Estate of De Leon Guerrero v. Quitugua*, 2000 MP 1 ¶ 4.

¶ 9 Under 7 CMC § 2505, "[a]ll actions other than those covered in 7 CMC §§ 2502, 2503, and 2504 shall be commenced within six years after the cause of action accrues . . . ." It appears undisputed that this provision governs the debt at issue in this case, and thus the applicable statute of limitations is six years. Since the alleged debts were incurred between April 7, 1994 and September 20, 1995, and the Complaint

[5] The court stated in its order that to "cure any possible prejudice" Quitugua could file a motion to amend the judgment under Rule 59 of the Commonwealth Rules of Civil Procedure, and the court could then take additional testimony and if necessary issue new findings of fact and conclusions of law. It does not appear from the record that Quitugua filed such a motion.

was filed on April 7, 2003, it also appears undisputed that the action was brought after the statute of limitations period. Shintani argues that the statute of limitations was tolled when Quitugua left the Commonwealth in 1999.[6] However, this critical fact – that Quitugua left the Commonwealth in 1999, thus tolling 7 CMC § 2505 – was not alleged in Shintani's Complaint and no evidence was presented concerning this issue during Shintani's case-in-chief. Accordingly, the question arises of whether Shintani was required to affirmatively plead facts establishing an exception to the statute of limitations when the complaint on its face showed that the statute of limitations had run.

¶ 10 In asserting that there is no requirement that a party affirmatively plead facts to avail themselves of an exception to the statute of limitations, both the trial court and Shintani relied heavily on prior Commonwealth precedent. This reliance is misplaced, however, because we have never addressed the specific question presently before the Court. The trial court cited *Rogolofoi v. Guerrero*, 2 NMI 468 (1992) and *Lucky Development Co., Ltd., v. Tokai, USA, Inc.*, 3 NMI 345 (1992), in support of its conclusion. Yet both cases are readily distinguishable. *Rogolofoi* involved a plaintiff who brought suit to quiet title on grounds of fraud and ejectment, and the defendant subsequently pleaded the affirmative defenses of waiver and estoppel by deed. While the opinion does discuss pleading standards, *Rogolofoi* is not instructive because the case does not involve the statute of limitations affirmative defense, let alone an instance where the face of the complaint establishes that a cause of action is time-barred. Reliance on *Lucky* is similarly misplaced. In *Lucky*, the trial judge imposed attorney sanctions for the filing of a frivolous lawsuit, stating that the "entire suit has no basis in the law" because the attorney filing it had failed to consider the implications of the statute of frauds. *Id.* at 359. In reviewing the imposition of sanctions, the Supreme Court stated, "[t]he statute of frauds is an affirmative defense. The complaint need not show that facts exist to ward off the defense of the statute of frauds." *Id.* at 360. Accordingly, *Lucky* is readily distinguishable because it does not involve the statute of limitations affirmative defense.

¶ 11 Given the lack of on-point authority in this jurisdiction, we must look elsewhere to resolve this matter. Courts in other jurisdictions are divided concerning whether a plaintiff must plead facts establishing an exception to the statute of limitations when the complaint on its face shows that the action is time-barred. *Compare Forbes v. Ballaro*, 624 A.2d 389, 392 n.9 (Conn. Ct. App. 1993) ("The plaintiffs correctly note that they are not required to plead facts in anticipation of the defense of the statute of

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[6] Title 7 CMC § 2508 states:

> If at the time a cause of action accrues against any person, that person is out of the Commonwealth, the action may be commenced within the time limits in this chapter after the person comes into the Commonwealth. If, after a cause of action accrues against a person, that person departs from and resides out of the Commonwealth, the time of absence shall be excluded in determining the time limit for commencement of the action.

limitations.") *and Cutsinger v. Cullinan*, 391 N.E.2d 177, 181 (Ill. Ct. App. 1979) ("A plaintiff is not required to guard against the statute of limitations in stating his cause of action. Even though it appears from the face of the complaint that his action is barred, a plaintiff is not required to allege or plead facts which demonstrate the action was brought within the prescribed time."); *with Gering – Fort Laramie Irrigation Dist. v. Baker*, 606 N.W.2d 826 (Neb. Ct. App. 2000) ("Where a petition on its face shows that the cause of action stated therein is barred by the statute of limitations, the plaintiff must allege facts to avoid the bar of the statute and, at trial, has the burden to prove those facts.").

¶ 12 The Guam Supreme Court faced a similar legal issue in *Amsden v. Godofredo*, 1999 Guam 14. Therein, the underlying claim arose from a car accident on December 14, 1993, but suit was filed on December 19, 1995 – five days after the applicable two year statute of limitations period passed. The trial court granted summary judgment in Godofredo's favor. Amsden argued that the statute of limitations was tolled when the defendant left Guam, but did not allege this in his complaint. On appeal, the Supreme Court held that Amsden was required to affirmatively plead facts establishing the tolling exception. In reaching this conclusion, the Guam panel relied heavily on California precedent. Specifically, it cited *Ponderosa Homes, Inc. v. City of San Ramon*, 29 Cal. Rptr. 2d 26, 29 (1994), wherein the court stated that "[w]hen a complaint shows on its face or on the basis of judicially noticeable facts that the cause of action is barred by the applicable statute of limitations, the plaintiff must plead facts which show an excuse, tolling, or some other basis for avoiding the statutory bar." The Guam court also stressed that "as early as 1896, the California Supreme Court held that a plaintiff must affirmatively plead that his claim is not barred by the statute of limitations when the pleading on its face appears to be time barred." 1999 Guam 14 ¶ 15 (citations omitted). Notably, the tolling statute at issue in *Amsden* is substantively identical to 7 CMC § 2508, the tolling statute involved in this case.

¶ 13 We find *Amsden* and the long-standing California precedent it relies on to be persuasive in this case. While we acknowledge the division in authority on this issue, the position adopted in *Amsden* is supported in numerous federal and state jurisdictions. *See, e.g.*, *Kincheloe v. Farmer*, 214 F.2d 604, 605 (7th Cir. 1954) ("Plaintiff by the allegations of his complaint erected the limitation bar and it was his duty in order to extricate himself therefrom to plead any exceptions upon which he relied."); *Nuspl v. Missouri Med. Ins. Co.*, 842 S.W.2d 920, 924 (Mo. Ct. App. 1992) ("It is well settled that if the petition shows on its face that it is barred by the statute of limitations and if the bar may be obviated by some exception in the statute the facts stated in the petition should show such exception. In short, the exception relieving plaintiff from the bar of the statute should be pleaded by him."). Requiring attorneys to affirmatively plead facts establishing an exception to the statute of limitations makes practical sense. This rule prevents waste of precious judicial resources by ensuring that attorneys check to ensure a claim is timely before commencing litigation. Accordingly, we hold that the trial court erred in holding that Shintani was not

required to plead facts establishing an exception to the statute of limitations when the face of its complaint established that Shintani's claim was time-barred.[7]

¶ 14 We turn lastly to determining the proper remedy in this case. Shintani argues that even if it was required to plead an exception to the statute of limitations, it must be allowed to amend its pleadings and the case should then be decided on the merits. While numerous cases are cited to support this proposition, they all involve pre-trial motions to dismiss or motions for summary judgment. *See, e.g.*, *Olding v. Casey*, 680 F.Supp. 1081 (S.D. Ohio 1987) (motion to dismiss under Rule 12(b)(6)); *Dahl v. Gardner*, 583 F.Supp. 1262 (D. Utah 1984) (motion to dismiss granted with leave to amend complaint). *Rochambeau v. Brent Exploration, Inc.*, 79 F.R.D. 381 (D. Colo. 1978) (motion to dismiss treated as motion for summary judgment). None involve a motion for judgment as a matter of law made after the case had proceeded through trial. Similarly, in *Dilutaoch v. C&S Concrete Block Prods.*, 1 NMI 478 (1991), suit was filed five days after the two-years statute of limitations expired. The defendant's motion for judgment on the pleadings – made before trial – was granted and plaintiff was granted leave to amend its complaint. In contrast, the present case is atypical because Quitugua waited until Shintani had rested its case-in-chief to assert that Quitugua's pleadings were defective.

¶ 15 Shintani asserted during oral argument that the tolling of the statute of limitations became apparent when Quitugua stated in his response to interrogatories that he resided in Guam beginning in 1999. ER at 11. At this point Shintani could have moved to amend its complaint. *See* NMI R. Civ. P. 15(a). It is evident, however, that both Shintani and the trial court erroneously believed Shintani did not have to plead facts establishing the tolling exception. The parties' arguments – regarding both pleading standards and timing of the presentation of tolling evidence – stem from this pleading deficiency.[8] Yet given that the pleading question before us is one of first impression, Shintani could not have reasonably been expected to know that it needed to amend its pleadings to incorporate the tolling exception. Given these unique circumstances, we find it would offend notions of justice to foreclose any recovery on the basis of a previously unarticulated procedural requirement. Instead, we find the circumstances favor resolution of disputes on the merits. Accordingly, we hold that the procedural deficiency in this case is not dispositive, and, given that Quitugua does not contest the trial court's factual findings, we affirm the trial court's decision.

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[7] We limit our holding to the narrow group of cases in which the face of a complaint establishes that the pled cause of action is time-barred. This opinion therefore does not disturb the long-standing holdings in *Rogolofoi* and *Lucky*, *supra*.

[8] Shintani argued that the trial court permissibly allowed "rebuttal" evidence on the tolling issue. This argument is tied to Shintani's (mistaken) belief that because it did not have to plead tolling, it did not have to present evidence establishing tolling until Quitugua asserted the statute of limitations affirmative defense at trial.

III

¶ 16 For the foregoing reasons, we hold that the trial court erred because a party is required to plead facts establishing an exception to the statute of limitations when the face of the complaint shows that the cause of action is time-barred. However, we decline to find Shintani's procedural deficiency dispositive under these unique circumstances, and, given that Quitugua does not contest the trial court's factual findings, we AFFIRM the trial court's decision.

SO ORDERED this 20th day of July 2011.

/s/
MIGUEL S. DEMAPAN
Chief Justice

/s/
ALEXANDRO C. CASTRO
Associate Justice

/s/
JOHN A. MANGLONA
Associate Justice