

NOT FOR PUBLICATION

In the
United States Court of Appeals
For the Eleventh Circuit

No. 25-11698

COLLEEN MCGUIGAN,

Plaintiff-Appellant,

versus

THOMAS MURRAY,
TDM PROPERTY INVESTMENTS LLC,
TDM HOLDINGS LLC,

Defendants-Appellees.

Appeal from the United States District Court
for the Southern District of Florida
D.C. Docket No. 9:24-cv-81599-AMC

Before JORDAN, ROSENBAUM, and LAGOA, Circuit Judges.

PER CURIAM:

Appellant Colleen McGuigan (“Colleen”) and Appellee Thomas Murray (“Thomas”) are siblings.¹ The facts of this case span decades, and the parties’ first litigation was before the Delaware Court of Chancery. Like that earlier lawsuit, this appeal stems from a family dispute over control of the Naples Building Corporation (“NBC”). Colleen appeals from an order dismissing with prejudice her complaint filed in the Southern District of Florida. Colleen argues that the district court improperly found that *res judicata* bars her claims, that collateral estoppel does not provide an alternative basis for us to affirm, and that the district court misapplied the relevant accrual and tolling rules. After careful review of the record, and with the benefit of oral argument, we affirm the district court’s order of dismissal with prejudice.

I. FACTUAL AND PROCEDURAL HISTORY²

Operating in Naples, Florida, NBC owned shopping centers through various subsidiaries, including Retail Development, Inc. (“RDI”). The parties’ father, Norbert Murray (“Norbert”), formed NBC in Delaware in February 1988. NBC had seven shareholders:

¹ For clarity, we refer to the parties by their first names.

² Because this case involves a Federal Rule of Civil Procedure 12(b)(6) motion, we accept the allegations of plaintiff’s complaint as true and construe them in the light most favorable to the plaintiff. *See Newbauer v. Carnival Corp.*, 26 F.4th 931, 933 n.1 (11th Cir. 2022). The facts set forth in this opinion therefore are taken from the complaint and construed in the light most favorable to the plaintiff.

25-11698

Opinion of the Court

3

Norbert; his wife, Marjorie; and their five children—Thomas, Shannon, Kimberly, Michael, and Colleen. Thomas served as president of both NBC and RDI, and Norbert “operated as a partner.”

In 1992, Norbert was convicted of various financial crimes and owed \$600,000 to the Federal Deposit Insurance Corporation (“FDIC”). To avoid paying this amount, Norbert allegedly conspired with Thomas to shift Norbert’s assets to NBC. Thomas and Norbert then purportedly forged a document titled “Minutes of Special Meeting of the Board of Directors Naples Building Corporation”³ (the “Minutes”). These Minutes featured the following purchase provision:

Resolved that Thomas D. Murray has the authority to purchase the shares of Naples Building Corporation Stock that has [sic] been issued to the stockholders of said corporation. The purchase price has been determined to be Two Hundred and Fifty Dollars (\$250.00) per Stockholder. It has further been resolved that there be no prior authorization required from said Stockholders to purchase said shares of stock, and that Thomas D. Murray shall have the rights and privileges that have been attached thereto.

(the “Purchase Option”). Colleen maintains that she never attended such a meeting and was “unaware” of the Purchase Option

³ Although this document was dated February 15, 1988, Colleen alleges that it was made around 1996.

“at the time[]” it was created. The document included the seven shareholders’ signatures, which Colleen asserts are forgeries.

In 2006, Thomas provided the six other NBC shareholders with a copy of the Minutes and the Purchase Option. Seeking to convert NBC to an S-corporation, Thomas expressed his intention to invoke the Purchase Option, and he asked the others to sign an “Option Exercise and Release Agreement” (the “2006 Agreement”). Among its terms, the 2006 Agreement recognized Thomas’s “full right, power and authority to execute and deliver” the agreement and “to perform his obligations” under the agreement. The 2006 Agreement also specified that its “execution or delivery” or “the consummation of the transactions contemplated in [it]” would not “contravene, conflict with, or result in a violation or breach of . . . any law, judgment, rule, order, ordinance or regulation[.]” In addition, the 2006 Agreement “incorporated” the Purchase Option and provided:

Pursuant to the [Purchase Option], Thomas D. Murray is not required to obtain prior authorization from Undersigned to exercise the Option. Nevertheless, for purposes of ratifying and further evidencing the parties’ intent, conduct and obligations with respect to the sale of the Ownership interests to Thomas D. Murray, as well as for the additional consideration of a mutual release and indemnification as set forth below, Undersigned and Thomas D. Murray desire to enter into this Agreement.

Though she did not remember signing the Purchase Option, Colleen recognized her signature on the copy Thomas provided her in 2006. Based on her review of the 2006 Agreement and Purchase Option, Colleen believed that Thomas “had the right to purchase her shares for \$250,” and she therefore signed the 2006 Agreement, as did Norbert, Marjorie, Shannon, and Kimberly.⁴

Thomas then “unilaterally converted or attempted to convert” NBC to an S-corporation and acted as its sole owner. As Colleen alleges, Thomas exploited this change in both the corporation’s and his own status. That is, for years, Thomas took advantage of tax benefits, steered millions of dollars in distributions to himself, and leveraged NBC and its subsidiaries’ reputations to procure real estate deals for his personal entities. From Colleen’s perspective, this conduct caught up to Thomas in 2017, when he hired a new accountant for NBC who identified approximately \$900,000 in unreconciled cash. Shannon, then serving as NBC’s secretary and a director, informed her siblings of this discrepancy. Shannon also mentioned that Thomas had directed NBC’s staff to destroy relevant records and intended to merge NBC with two newly created entities of his, TDM Property Investments LLC and TDM Holdings LLC.⁵

⁴ Due to his concerns about the “tax implications and the validity” of the Purchase Option, Michael refused to sign the 2006 Agreement.

⁵ Thomas had “complete dominion and control” over these entities’ “operations, finances, and business decisions.”

In December 2017, Michael, who had not signed the 2006 Agreement and still regarded himself as an NBC shareholder, sent Thomas a letter demanding preservation of NBC's records. Afterwards, Thomas fired Shannon and Norbert, and he merged NBC with the TDM entities, ensuring that NBC's records and assets remained in his control. The other family members did not receive any payments in connection with the merger.

In March 2018, Michael sued Thomas for breach of fiduciary duty and self-dealing in the Delaware Court of Chancery, and Thomas and TDM Property Investments LLC counter-sued Michael, Shannon, and Colleen. As part of the Delaware litigation, Thomas submitted the Purchase Option and 2006 Agreement to the Chancery Court. The documents garnered scrutiny during the discovery phase. In an October 2020 deposition, Michael's counsel drew attention to the signatures on the Purchase Option, emphasizing that they were identical to and appeared to have been cut and pasted from another document executed by the family members in 1988. Thomas represented to the court that he had not forged the document and had not "previously known" that the document may have been forged.

Colleen then filed counterclaims against Thomas and TDM for: (1) fraud; (2) equitable fraud; (3) breach of fiduciary duty; (4) aiding and abetting breach of fiduciary duty; and (5) unjust enrichment. The Delaware Court of Chancery bifurcated the case to determine whether Colleen's counterclaims were time-barred, and it conducted a trial limited to that issue in July 2022. Finding that

25-11698

Opinion of the Court

7

Colleen was on inquiry notice regarding the potential invalidity of the Purchase Option by September 27, 2018, the court determined that Colleen's counterclaims were barred by laches, applying Delaware's analogous three-year statute of limitations. Colleen appealed the Delaware Court of Chancery's opinion to the Delaware Supreme Court, which affirmed the Chancery Court's ruling and then denied a request for rehearing. The Delaware litigation concluded after Thomas, Shannon, and Colleen stipulated to the dismissal of the remaining claims and counterclaims.

As alleged by Colleen in these proceedings, a former RDI employee watched a live stream of the Delaware Court of Chancery proceedings and was prompted to remember details about the "cut-and-paste forgery" of the Purchase Option. That individual supposedly contacted Colleen and notified her that Norbert and Thomas had forged the Purchase Option. Colleen further alleges that other former RDI employees corroborated the initial employee's account and that this was the first time she was "aware of Thomas's involvement in creating" the forged Purchase Option.

On December 31, 2024, Colleen filed her complaint against Thomas and the TDM entities in the Southern District of Florida. Her complaint asserts counts for: (1) declaratory judgment, 28 U.S.C. § 2201(a); (2) violations of the Racketeer Influenced and Corrupt Organizations ("RICO") Act, 18 U.S.C. § 1962(b)–(d) and 18 U.S.C. § 1964(c); (3) violation of the Florida Civil Remedies for Criminal Practices Act, Fla. Stat. §§ 772.103(2)–(4) and 772.104(1); (4) conversion; and (5) civil theft, Fla. Stat. § 772.11(1).

Thomas and the TDM entities promptly moved to dismiss the complaint, arguing that Colleen’s lawsuit challenged “the same conduct”⁶ that was litigated in the Delaware litigation. More specifically, the defendants asserted that the only new facts presented in the complaint were Colleen’s allegations about unidentified former RDI employees and their alleged claims that Thomas and Norbert had forged the Purchase Option. Because the parties had tried the same claims and issues to conclusion in Delaware and a final judgment was entered, the defendants argued that Colleen’s claims were barred by *res judicata* and collateral estoppel. In the alternative, the defendants argued that Colleen’s claims were “untimely” and did not sufficiently state claims.

In response, Colleen argued that neither *res judicata* nor collateral estoppel applied because under Delaware’s preclusion principles a judgment based on laches or a similar time bar was not a decision on the merits. In addition, she distinguished the claims and issues before the Southern District of Florida from ones she had raised in Delaware. As Colleen reasoned, the Delaware litigation centered on Thomas’s reliance on the forged Purchase Option, while the Florida action concerned “whether Thomas himself directed the forgery” of that document. Further, Colleen contended that she had stated claims for each of her five causes of action, and that her claims could not be barred on statute of limitations grounds. In her view, the limitations period did not begin to run

⁶ The defendants attached assorted documents from the Delaware litigation as exhibits in support of their motion to dismiss.

25-11698

Opinion of the Court

9

until the conclusion of the Delaware litigation or, alternatively, should be equitably tolled.

The district court granted the defendants' motion to dismiss. The district court concluded that, aside from a narrow portion of her RICO count, Colleen's complaint was barred by *res judicata* because the Delaware Court of Chancery had already decided the issues between the same parties and had made a final determination that Colleen's claims were barred by the statute of limitations. And as to the remaining portion of the RICO claim, which concerned Thomas's supposed misrepresentation to the court in the Delaware proceedings, the district court ultimately concluded that Colleen had failed to state a claim for a RICO violation. The district court dismissed the complaint with prejudice.⁷

Colleen timely appealed.

II. STANDARD OF REVIEW

The district court's decision to grant a motion to dismiss pursuant to Fed. R. Civ. P. 12(b)(6) is reviewed *de novo*. *Renfro v. Nationstar Mortg., LLC*, 822 F.3d 1241, 1243 (11th Cir. 2016). The

⁷ In its initial order, the district court allowed Colleen an opportunity to file a motion for leave to file an amended pleading in accordance with its ruling and determinations. The district court cautioned that failure to do so would result in a dismissal of the action with prejudice. Although Colleen requested additional time to file a motion for leave to amend the complaint, she did not file a motion seeking leave to amend the complaint nor did she request additional time to do so, and the district court entered its subsequent order dismissing the complaint with prejudice.

district court's dismissal on *res judicata* and statute of limitations grounds is also reviewed *de novo*. *United States ex rel. Hunt v. Cochise Consultancy*, 997 F.3d 1081, 1085 (11th Cir. 2018); *EEOC v. Pemco Aeroplex, Inc.*, 383 F.3d 1280, 1285 (11th Cir. 2004).

We can affirm a district court's ruling "on any ground supported by the record." *Krutzig v. Pulte Home Corp.*, 602 F.3d 1231, 1234 (11th Cir. 2010) (citing *Bircoll v. Miami-Dade County*, 480 F.3d 1072, 1088 n.21 (11th Cir. 2007)).

III. ANALYSIS

On appeal, Colleen argues that the district court improperly found that *res judicata* bars her claims and that collateral estoppel does not provide an alternative basis to affirm. She further asserts that the district court deprived her of an opportunity to prove valid claims and misapplied the accrual and tolling rules. After careful consideration, we affirm the district court's dismissal of Colleen's claims, as the applicable statutes of limitations had expired. And because we can affirm the district court's dismissal on those grounds, we do not address the parties' remaining arguments.

To survive a motion to dismiss under Rule 12(b)(6), a complaint "must contain sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). In deciding whether a complaint states a claim upon which relief can be granted, we must "accept the facts as set forth in the plaintiff's complaint as true, and our consideration is

limited to those facts contained in the pleadings and attached exhibits.” *Griffin Indus., Inc. v. Irvin*, 496 F.3d 1189, 1199 (11th Cir. 2007) (citing *Thaeter v. Palm Beach Cnty. Sheriff’s Off.*, 449 F.3d 1342, 1352 (11th Cir. 2006)). Though this principle “usually benefits the plaintiff,” that is not always true, *Gill as Next Friend of K.C.R. v. Judd*, 941 F.3d 504, 511 (11th Cir. 2019), and a litigant risks defeat “by [her] own evidence” when “[s]he has pleaded too much and has refuted h[er] own allegations[.]” *Id.* (quoting *Simmons v. Peavy-Welsh Lumber Co.*, 113 F.2d 812, 813 (5th Cir. 1940)). In a similar vein, a Rule 12(b)(6) dismissal on limitations grounds is proper only when “it is apparent from the face of the complaint that the claim is time-barred.” *Boyd v. Wardeni, Holman Corr. Facility*, 856 F.3d 853, 872 (11th Cir. 2017) (citation modified).

Here, it is apparent from the face of Colleen’s complaint that her claims were time barred, and Colleen’s factual allegations undermine her own position. As a threshold matter, each of Colleen’s claims involves Thomas’s use of the 2006 Agreement and Purchase Option to acquire Colleen’s NBC shares in 2006.⁸ Because Thomas’s alleged misconduct plainly occurred more than a

⁸ See Complaint at 9 (Count I), ¶ 56 (“Defendant Thomas Murray induced his family to enter the 2006 Agreement to unlawfully deprive them of their ownership rights in NBC and thereby improperly obtain tax benefits as the sole owner.”); *id.* at 9–11 (Count II), ¶ 61(c) (“using the Forged Purchase Option to deceive family members into signing the 2006 Agreement”); *id.* at 11–12 (Count III), ¶ 68 (“Thomas Murray acquired greater interest in and control over NBC through orchestrating the 2006 Agreement in violation of section 772.103(2) . . . and conspired with Norbert Murray to forge the Forged Pur-

decade before Colleen filed her complaint in the Southern District of Florida, the limitations period for her claims would have run absent equitable tolling. And equitable tolling is not available to Colleen in these circumstances.

It is “well established” that “when a limitations period is tolled because of fraudulent concealment of facts, the tolling ceases when those facts are, or should have been, discovered by the plaintiff.” *Credit Suisse Sec. (USA) LLC v. Simmonds*, 566 U.S. 221, 227 (2012) (citation omitted). “Once plaintiff is on inquiry [notice] that it has a potential claim, the statute can start to run.” *Prather v. Neva Paperbacks, Inc.*, 446 F.2d 338, 341 (5th Cir. 1971)⁹ (quoting *Japanese War Notes Claimants Ass’n of Philippines, Inc. v. United States*, 373 F.2d 356, 359 (Ct. Cl. 1967)). And based on Colleen’s own allegations in her complaint, this happened no later than September 27, 2018.

To this point, Colleen’s complaint expressly alleges that the Delaware Court of Chancery determined that she “was on inquiry notice of the potential invalidity of the Forged Purchase Option by

chase Option. . .”); *id.* at 12–13 (Count IV), ¶ 74 (“Thomas Murray took positive, overt acts inconsistent with Colleen McGuigan’s ownership rights, including forging her signature on the Forged Purchase Option, using the Forged Purchase Option to deceive her into signing the 2006 Agreement, holding himself out as the sole owner of NBC. . .”); *id.* at 13–14 (Count V), ¶ 78 (Defendants “obtained or used Colleen McGuigan’s property with the intent to deprive her of a right to the property or a benefit from the property and to appropriate the property to their own use.”).

⁹ In *Bonner v. City of Prichard*, 661 F.2d 1206, 1209 (11th Cir. 1981) (en banc), this Court adopted as binding precedent all decisions of the former Fifth Circuit handed down prior to October 1, 1981.

25-11698

Opinion of the Court

13

September 27, 2018.” Colleen further alleges that, on this basis, the Delaware Court of Chancery determined that her counterclaims were “barred by laches.” At no point in the complaint does Colleen contradict or take exception to the Delaware court’s finding that she had notice as of September 27, 2018. In other words, she effectively concedes that she was on notice as of that date. Accepting the complaint’s factual allegations as true, as we must at this stage, we conclude that Colleen was on notice of potential claims relating to the 2006 Agreement and Purchase Option by September 27, 2018.

We now consider what this means for the counts in the complaint.

A. Federal RICO Claim

“The statute of limitations for civil RICO actions is four years.” *Lehman v. Lucom*, 727 F.3d 1326, 1330 (11th Cir. 2013) (quoting *McCaleb v. A.O. Smith Corp.*, 200 F.3d 747, 751 (11th Cir. 2000) (internal quotation marks omitted)). And the action “begins to run ‘when the injury was or should have been discovered, regardless of whether or when the injury is discovered to be part of a pattern of racketeering.’” *Id.* (quoting *Maiz v. Virani*, 253 F.3d 641, 676 (11th Cir. 2001)). Colleen’s federal RICO claim is premised on Thomas’s alleged orchestration of the 2006 Agreement and conspiracy to forge the Purchase Option. Colleen brought her RICO claim on December 31, 2024, more than four years after September 27, 2018—the date on which she was on inquiry notice of potential

claims arising out of those documents, and it is therefore time-barred.

B. Florida Statutory Claims

Both Colleen’s claim under the Florida Civil Remedies for Criminal Practices Act pursuant to Florida Statutes §§ 772.103(2)–(4) and 772.104(1), and her claim for Florida civil theft pursuant to Florida Statute § 772.11(1) are subject to a five-year statute of limitations period. *See* § 772.17, Fla. Stat.; *see also Seymour v. Adams*, 638 So. 2d 1044, 1049 (Fla. 5th DCA 1994). Section 772.17 requires these statutory causes of action to commence within a 5-year period “after the conduct in violation of a provision of this act terminates or the cause of action accrues.” Both claims center on alleged conduct, including Thomas’s acquisition of Colleen’s NBC shares by inducing her to sign the 2006 Agreement, that took place more than a decade before Colleen filed her complaint in Florida. Indeed, as the Delaware Court of Chancery also recognized, the harm Colleen alleged occurred in June 2006. And even if these claims did not accrue until September 27, 2018, the date on which Colleen was on inquiry notice, the five-year limitation period had run by the time she filed her Complaint. These claims are therefore time-barred.

C. Florida Common Law Claim

Under Florida law, a conversion claim is subject to a four-year statute of limitations and the limitations period begins to run when the conversion occurs. *See* Fla. Stat. § 95.11(3); *Bove v. PBW Stock Exch., Inc.*, 382 So. 2d 450, 452–53 (Fla. 2d DCA 1980). In her

complaint, Colleen alleges that in 2006 Thomas “took positive, overt acts” that were “inconsistent” with Colleen’s ownership rights, including acquiring her shares in NBC through deception and withholding distributions from other shareholders. These actions occurred more than ten years before Colleen filed her complaint. And even if equitable tolling were to apply to a claim for conversion (a question we need not decide), Colleen was on inquiry notice more than four years before she filed her complaint, and her claim is time-barred.

D. Claim for Declaratory Judgment

Colleen’s complaint alleges that the parties “disagree on the validity of the 2006 Agreement” and requests a declaratory judgment to “end the controversy.” As with Colleen’s other claims, this claim focuses on Thomas’s acquisition of the other family members’ NBC shares after he induced them to enter the 2006 Agreement. Requests for declaratory relief are barred “to the same extent that the claim for substantive relief on which it is based would be barred.” *Int’l Ass’n of Machinists & Aerospace Workers v. Tenn. Valley Auth.*, 108 F.3d 658, 668 (6th Cir. 1997); *Algrant v. Evergreen Valley Nurseries Ltd. P’ship*, 126 F.3d 178, 181 (3d Cir. 1997); *Stone v. Williams*, 970 F.2d 1043, 1048 (2d Cir. 1992) (“Because a declaratory judgment action is a procedural device used to vindicate substantive rights, it is time-barred only if relief on a direct claim would also be barred.”). Because Colleen’s claims for substantive relief are each barred by the relevant statute of limitations, her request for declaratory relief is also time-barred.

16

Opinion of the Court

25-11698

IV. CONCLUSION

For the reasons discussed, we affirm the district court's order of dismissal with prejudice.

AFFIRMED.