

**IN THE SUPERIOR COURT OF FULTON COUNTY
 STATE OF GEORGIA**

EGBERT PERRY and)	
INTEGRAL DEVELOPMENT, LLC,)	
)	
Plaintiffs,)	
)	
v.)	CIVIL ACTION FILE
)	
PAUL HASTINGS LLP,)	NO. 2019CV320299
WILLIAM K. WHITNER and)	
ERIC D. STOLZE,)	
)	
Defendants.)	

FINAL ORDER GRANTING JUDGMENT ON PLEADINGS

The above-captioned case is before the Court on Defendants’ Motion for Judgment on the Pleadings (“Motion”), filed pursuant to O.C.G.A. § 9-11-12(c). After consideration of the Motion, the Response, and the Reply, the Court hereby GRANTS the Motion for the reasons that follow.

BACKGROUND

The Complaint in this case asserts a single count for abusive litigation pursuant to O.C.G.A. § 51-7-80, *et seq.*, which requires the “final termination” of the underlying action alleged to be abusive as a condition precedent to such claim. O.C.G.A. § 51-7-84(b). On March 3, 2020, this Court entered an order denying Defendants’ Motion to Dismiss (the “Order”), which rejected Defendants’ argument that a “dismissal without prejudice” of the underlying action was not a “final termination” as a matter of law under the holding of *Stocks v. Glover*, 220 Ga. App. 557 (1996). In so ruling, the Court held that Plaintiffs “may be able to offer evidence that Defendants’ claims in the underlying lawsuit are now time-barred . . . making Plaintiffs’ abusive litigation claim ripe.” (3/3/20 Order at 3).

On August 13, 2020, Defendants filed the instant Motion. In the Motion, Defendants argued that whether the claims in the underlying lawsuit are now time-barred can *also* be determined as a matter of law based on the pleadings. In their Response, Plaintiffs opposed the Motion, arguing that the expiration of the statute of limitations cannot be decided as a matter of law at the pleadings stage.

LEGAL STANDARD ON A MOTION FOR JUDGMENT ON THE PLEADINGS

Under Georgia law, “[a]fter the pleadings are closed but within such time as not to delay the trial, any party may move for judgment on the pleadings.” O.C.G.A. § 9-11-12(c). “[A] motion for judgment on the pleadings is authorized where the undisputed facts that appear from the pleadings establish that the movant is entitled to judgment as a matter of law.” *Novare Group, Inc. v. Saff*, 290 Ga. 186, 191 (2011). On motion for judgment on the pleadings, “[a]ll well-pleaded facts are to be accepted as true. However, the trial court is not required to adopt a party’s legal conclusions based on those facts.” *Id.* The Court may consider attachments to all the pleadings, including the answer. *Trop, Inc. v. City of Brookhaven*, 296 Ga. 85, 89 (2014).

LEGAL ANALYSIS

Although the complaint in the underlying lawsuit alleged multiple causes of action under different theories of recovery, the focus of the instant Motion was on the Georgia RICO claim. Defendants argued that the Georgia RICO claim, at a minimum, was not time-barred as a matter of law when Plaintiffs commenced this action for abusive litigation. If the Georgia RICO claim could be renewed, there has not been any “final termination” of the underlying action, and Plaintiffs’ claim for abusive litigation is not ripe under O.C.G.A. § 51-7-84(b).

As a threshold issue, this Court must first determine whether the limitations period for the Georgia RICO claim asserted in the underlying action is governed by the *former* O.C.G.A. § 16-

14-8 or the *current* O.C.G.A. § 16-14-8. Under the former version of the statute, the limitations period for a Georgia RICO claim is “five years after the conduct in violation of a provision of this chapter terminates or the cause of action accrues.” O.C.G.A. § 16-14-8 (effective through June 30, 2015). The current version of the statute expanded the limitations period for a Georgia RICO claim, such that the limitations period does not begin to run until “five years after the conduct in violation of a provision of this chapter terminates.” O.C.G.A. § 16-4-8 (effective July 1, 2015).

Under Georgia law, a newly enacted limitations period cannot apply retroactively to revive a claim that was already time-barred. *Loveless v. Grooms*, 180 Ga. App. 424 (1986). A newly enacted limitations period, however, is effective if the claim was not already time-barred at the time of passage. As explained by the Georgia Court of Appeals:

Statutes of limitation look only to remedy and not to substantive rights, and, unless the cause of action is barred at the time of the passage of the act extending the statute of limitation, **it will be effective.**

Hollingsworth v. Hubbard, 184 Ga. App. 121, 121 (1987) (emphasis added). The holding in *Hollingsworth* has been discussed with approval by the Georgia Supreme Court for the rule that “a newly enacted statute of limitation, though not retroactive, should be applied to an action barred under a previous statute of limitation where the time for bringing the action had not expired under the previous statute at the time the new statute was enacted.” *McNeal Const. Co. v. Wilson*, 271 Ga. 540, 542 (1999).

The question before the Court, therefore, is whether the Georgia RICO claim asserted in the underlying action was already time-barred as of July 1, 2015, the effective date of the current version of O.C.G.A. § 16-14-8. Regarding the pre-July 1, 2015 version of O.C.G.A. § 16-14-8, the Court of Appeals has held that “the statute of limitation begins to run when the civil RICO cause of action accrues,” which means “when the plaintiff discovers, or reasonably should have

discovered, that he has been injured and that his injury is part of a pattern.” *Glock, Inc. v. Harper*, 340 Ga. App. 65, 66 (2017).

The complaint in the underlying action, filed by the City of Atlanta against Plaintiffs, appears as Exhibit A to the Complaint in this action. The crux of the City’s complaint was an alleged “backroom deal” under which Plaintiffs and their affiliated entities would receive rights to purchase vacant real estate from the Atlanta Housing Authority (“AHA”) for a fraction of fair market value, pursuant to certain Option Agreements (“Options”) and Amendments to Revitalization Agreements (“Amendments”), executed on September 16, 2011. (Compl., Ex. A ¶¶ 36- 60). The City commenced the underlying action to challenge the legality of the Options, the enforcement of which the City alleged would be to the severe detriment to the residents of the City and the City’s core initiatives to promote affordable housing. (*Id.* at 2-3). Specific to Count I for violations of Georgia RICO, the City alleged that it “has been harmed in terms of not obtaining anything remotely close to a fair purchase price for the land, and has been stripped of nearly 25% of AHA’s vacant real estate, which is not being developed to further the City’s affordable housing goals.” (Compl., Ex. A ¶¶ 90, 99).

Whether a cause of action is barred by the statute limitations generally is a mixed question of law and fact, “but the question is one of law for the court when the facts are not disputed.” *Harrison v. McAfee*, 338 Ga. App. 393, 395 (2016). In this case, it is undisputed that the Options forming the basis of the City’s injury in the underlying action were executed, along with the Amendments, on September 16, 2011. (Compl., Ex. A ¶¶ 36, 39).¹ Under *Glock*, the statute of

¹ Copies of the Amendments and the Options were attached as Exhibits 17-20 and 22-25 to the City’s complaint and were filed as part the Answer in this case. (See Notice of Filing, 6/5/2019, Exs. 17-20, 22-25).

limitations under the prior version of O.C.G.A. § 16-14-8 accrued when the City “discover[ed], or reasonably should have discovered, that [it] has been injured and that [its] injury is part of a pattern.” *Glock*, 340 Ga. App. at 66. This Court, however, need not resolve any factual disputes as to when the City discovered or reasonably should have discovered the Options and Amendments. Even assuming that the City should have discovered the existence of the Options and Amendments upon their execution on September 16, 2011 (*i.e.*, the earliest possible date), the statute of limitations under the prior version of O.C.G.A. § 16-14-8 would have expired five years later on September 16, 2016, which is **after** the date of passage of the current version of O.C.G.A. § 16-14-8 on July 1, 2015. Because the City’s Georgia RICO claims were not already time barred as of the date of passage, the current version of O.C.G.A. § 16-14-8 is applicable.

As discussed above, the current version of O.C.G.A. § 16-14-8 expanded the limitations period for a Georgia RICO claim, such that the cause of action does not accrue until “five years after the conduct in violation of a provision of this chapter terminates.” Based on the allegations in the complaint filed by the City, the racketeering activity alleged by the City continued at least through August 11, 2017, when Plaintiffs issued default letters to the AHA as part of their efforts to enforce the Options that the City alleged were illegal. (Compl., Ex. A at ¶¶ 60, 87). This Court need not determine the date on which the City’s Georgia RICO claim expires under the current version of O.C.G.A. § 16-14-8. It is sufficient for purposes of ruling on this Motion that the City’s Georgia RICO claim, as a matter of law, was not time barred and remained subject to renewal when Plaintiffs commenced this action for abusive litigation on April 26, 2019.

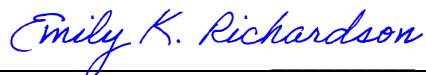
In their Response, Plaintiffs do not dispute that the City’s Georgia RICO claims remained subject to renewal under the current version of O.C.G.A. § 16-14-8 as of the filing of this action. Instead, Plaintiffs argue that the City’s Georgia RICO claims were already time-barred by July 1,

2015, the date of passage of the new limitations period, rendering the new statute inapplicable. Plaintiffs' arguments, however, focus on the dates of the alleged wrongful acts rather than the date of the injury, which is not the correct analysis. *Southern Intermodal Logistics, Inc. v. D.J. Powers Co., Inc.*, 251 Ga. App. 865, 867-868 (2001) (distinguishing between injury and the wrongful conduct for purposes of applying the limitations period for a Georgia RICO claim). In this case, as a matter of law, the injury to the City could not have pre-dated execution of the Options and Amendments on September 16, 2011 that form the basis of the City's Georgia RICO claim.

CONCLUSION

Because the City's claim for Georgia RICO was not time-barred as of July 1, 2015, the current version of O.C.G.A. § 16-14-8 is applicable, under which there is no dispute that the limitations period had not run as of the date Plaintiffs commenced this action for abusive litigation. Accordingly, there has been no "final termination" as required under O.C.G.A. § 51-7-84(b). It is hereby **ORDERED** and **ADJUDGED** that Defendants are entitled to judgment on the pleadings. Defendants shall file the Civil Case Disposition Form as per O.C.G.A. § 9-11-58(b) and O.C.G.A. § 9-11-133 within ten (10) days of the entry of this Order and Final Judgment, and the Clerk of Court shall **CLOSE** this matter.

SO ORDERED this 26th day of February, 2021.



Emily Richardson, Judge
Fulton County Superior Court

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