

*This opinion is nonprecedential except as provided by  
Minn. R. Civ. App. P. 136.01, subd. 1(c).*

**STATE OF MINNESOTA  
IN COURT OF APPEALS**

**A20-1111**

**A20-1212**

Patrice Nerad,  
Appellant (A20-1111),  
Plaintiff (A20-1212),

and

Frederic W. Knaak, et al.  
Appellants (A20-1212),

vs.

Martin Chalupa, et al.,  
Respondents,

Edina Realty, Inc., et al.,  
Respondents.

**Filed April 26, 2021**

**Affirmed**

**Kalitowski, Judge\***

Washington County District Court  
File No. 82-CV-19-3614

Frederic W. Knaak, Craig J. Beuning, HKB Law, P.A., St. Paul, Minnesota (for appellant Nerad)

John H. Brennan, Wayzata, Minnesota (for respondents Chalupa, et al.)

Standford P. Hill, Bassford Remele, P.A., Minneapolis, Minnesota (for respondents Edina Realty, Inc., et al.)

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\*Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to Minn. Const. art. VI, § 10.

Considered and decided by Reyes, Presiding Judge; Worke, Judge; and Kalitowski, Judge.

## **NONPRECEDENTIAL OPINION**

**KALITOWSKI**, Judge

Following a dispute over the purchase of a home, appellants Patrice Nerad and Frederick Knaak challenge the district court's ruling that their claims were time-barred, and that appellant Knaak, Nerad's attorney, should be sanctioned for filing an action challenging the arbitration agreement that was not supported by existing law. Because appellants do not raise facts to toll the running of the 24-month period explicitly established in the arbitration agreement, and a reasonable attorney would not interpret the agreement as void, we affirm.

## **FACTS**

This case concerns appellant Patrice Nerad's purchase of a home from respondents Martin and Patricia Chalupa. Edina Realty, Inc., and its agent Mike Diebel, also respondents in this case, acted as dual agents in the transaction. On September 29, 2015, Nerad digitally signed a purchase agreement to buy the Lake St. Croix Beach home from the Chalupas, as well as signing a required disclosure statement, and a voluntary, binding arbitration agreement. The arbitration agreement in part stated:

By agreeing to binding arbitration you give up your right to go to court. By signing the [residential real property arbitration agreement] on page two (2), you agree to binding arbitration under the [residential real property arbitration system] ("Arbitration System") administered by National Center for Dispute Settlement ("NCDS"). . . .

. . . .

All disputes about or relating to disclosure of material facts affecting the use or enjoyment of the property, excluding disputes related to title issue, are subject to arbitration under the [arbitration agreement]. This includes claims of fraud, misrepresentation, warranty, and negligence. . . .

. . . .

A request for arbitration must be filed within 24 months of the date of the closing on the property or else the claim cannot be pursued. In some cases of fraud, a court or arbitrator may extend the 24-month limitation period provided herein.

The transaction closed on October 28, 2015 for \$138,000.

Following inspections that revealed nonpermitted work to the roof that resulted in structural failures, as well as heightened levels of mold in several areas of the house, Nerad's then-counsel wrote to both respondents in September 2016, accusing them of mispresenting the condition of the house and accusing Edina Realty of breaching their fiduciary duties to Nerad. Respondents denied liability and all other claims and expressly reminded Nerad of the arbitration agreement.

Nerad obtained new counsel, appellant Frederick Knaak, who in January 2018 wrote to the respondents and initially denied that Nerad's digital signature to the arbitration agreement was valid. The respondents replied that according to the timestamps, Nerad had signed all of the transactional documents within 30 minutes. Respondents also notified Knaak that pursuant to the valid arbitration agreement any claim arising out of the transaction required arbitration and that respondents would seek bad faith attorney fees if the claim was brought to district court.

Nearly 16 months after the respondents' warning, Knaak served respondents with the summons and complaint in this matter. Respondents sent appellants 21-day safe harbor letters as required by Minnesota Rule of Civil Procedure 11.03(a), and Minnesota Statutes section 549.211, subdivision 4 (2020). The letters explained that under the arbitration agreement, the district court lacked jurisdiction over the subject matter of the complaint, and further that any action was time-barred based upon the explicit 24-month limitation period. Appellants did not dismiss or amend the action within 21 days, so respondents moved for sanctions and to dismiss.

In Nerad's written response to the motions to dismiss, Knaak argued in part that the arbitration agreement phrase stating "[i]n some cases of fraud, a court or arbitrator may extend the 24-month limitation period provided" means that cases of fraud are entirely excluded from arbitration and instead of addressing issues raised in the motions to dismiss, including that the claim was brought in bad faith, or requesting the court to toll the 24-month limitation period, Knaak's response addressed the merits of the underlying claim. At the motion hearing in district court, Knaak additionally argued that there was fraud in the inducement of the purchase agreement, making the arbitration agreement, a separate document, void.

The district court, after clarifying that the scope of the proceeding was limited to determining whether the 24-month limitations period should be extended by the "discovery rule," found that the claims were time-barred because the claims were brought well after the discovery of the potential fraud. The district court also found that the question of fraud in the inducement was not properly before the court because it was not pleaded in the initial

complaint, and dismissed the case for failure to state a claim. Additionally, the district court concluded that no objective and reasonable attorney would read the arbitration agreement and conclude that claims of fraud are exempt from arbitration, and sanctioned Knaak for respondents' attorney fees: \$18,282.55 to Diebel and Edina Realty, Inc., and \$6,923 to the Chalupas.

Appellants separately appealed, and this court consolidated the actions.

## DECISION

### **I. The district court properly dismissed Nerad's claims for failure to state a claim for which relief can be granted due to being time-barred.**

Appellants argue that the district court erred by dismissing their claims, contending that the complaint properly pleaded claims of fraudulent inducement of the arbitration agreement. But the district court, in a well-reasoned decision, correctly limited its review to whether the 24-month limitations period in the arbitration agreement should be extended by applying the discovery rule to toll the period of discovery of the alleged fraud.

A party may move to dismiss based upon a claimant's "failure to state a claim upon which relief can be granted." Minn. R. Civ. P. 12.02(e). A claim is legally sufficient "if it is possible on any evidence which might be produced, consistent with the pleader's theory, to grant the relief demanded." *Walsh v. U.S. Bank, N.A.*, 851 N.W.2d 598, 603 (Minn. 2014). "We accept the facts alleged in the complaint as true and construe all reasonable inferences in favor of the nonmoving party." *Id.* at 606. We review de novo a district court's grant of a motion to dismiss for failure to state a claim. *Abel v. Abbott Nw. Hosp.*, 947 N.W.2d 58, 68 (Minn. 2020).

In cases involving a statute or rule of limitations, dismissal is proper under rule 12.02(e) “only if it clearly and unequivocally appears from the face of the complaint that the statute of limitations has run and only if the complaint contains no facts to toll that running.” *Pederson v. Am. Lutheran Church*, 404 N.W.2d 887, 889 (Minn. App. 1987), *review denied* (Minn. June 30, 1987). “Stated another way, at the preliminary motion to dismiss stage of litigation, a court should construe the complaint to allow the plaintiff’s claim to go forward unless there is no way to construe the alleged facts—and the inferences drawn from those facts—in support of the plaintiff’s claim.” *Hansen v. U.S. Bank Nat’l Ass’n*, 934 N.W.2d 319, 326 (Minn. 2019). In *Pederson*, we held that because the accrual of the plaintiff’s cause of action and the expiration of the limitations period was evident from the complaint’s allegations, it was reasonable “to require that facts to support a possible tolling of the limitations period appear on the face of the complaint.” *Pederson*, 404 N.W.2d at 889-90. Because the complaint contained “no facts to toll th[e] running” of the statute, we concluded that the district court correctly dismissed the complaint. *Id.* at 889.

Here, appellants argue that because the arbitration agreement allows for a district court to extend the 24-month period under the discovery rule, the district court erred in not tolling the running of the arbitration period. The purpose of the discovery rule is to delay the accrual of a cause of action bound by a statute or rule of limitation until the plaintiff knew or should have known about the injury. *Antone v. Mirviss*, 720 N.W.2d 331, 335 (Minn. 2006). But Minnesota has rejected the discovery rule in favor of the “damage rule,” under which the statute of limitations begins to run when “some” damage has occurred. *Id.*

at 335-36. Therefore, we consider when the alleged harm to Nerad occurred, and toll the 24-month period from that date.

Here, the complaint acknowledges that Nerad discovered the alleged fraud within months of closing on the house, thus establishing a timeline that prevents appellants from bringing this claim. In the light most favorable to the appellants, the latest date the tolling could begin would be her then-counsel's September 12, 2016 letter accusing respondents of fraud and breach of fiduciary duty. The right to arbitration would have ended 24 months later, on September 12, 2018, well before Knaak served respondents with a summons and complaint on June 28, 2019. The complaint does not contain, nor do appellants raise in their brief, facts to toll the running of the 24-month period explicitly established in the arbitration agreement.

To persuade this court otherwise, appellants argue that the complaint properly pleaded fraud in the inducement of the arbitration agreement, thus giving the district court jurisdiction over disputes arising from the arbitration and purchase agreements. This argument, which was not made in the initial complaint, is not properly before this court because it was not timely raised in the district court. *Thiele v. Stich*, 425 N.W.2d 580, 582 (Minn. 1988).

Moreover, even if the arguments regarding fraud in the inducement were properly before this court, caselaw does not support appellants' contentions. The Minnesota Supreme Court in *Peggy Rose Revocable Trust v. Eppich* stated that a claim of fraud in the inducement was not properly before the court because it was not made in the initial complaint. 640 N.W.2d 601, 607 n.7 (Minn. 2002). "To plead with particularity is to plead

the ultimate facts or the facts constituting fraud.” *Hardin Cty. Sav. Bank v. Hous. & Redevelopment Auth. of Brainerd*, 821 N.W.2d 184, 191 (Minn. 2012) (quotations omitted). When describing fraudulent inducement, the complaint only alleges that respondents “purposely concealed from [Nerad] in order to induce her into the *purchase of the Subject Property*,” with no reference to the arbitration agreement. (Emphasis added). Here, appellants did not make an assertion of fraud in the inducement of the arbitration agreement in the complaint, nor did they make that assertion in the arguments against the respondent’s motions to dismiss.

Therefore, because appellants did not raise facts to toll the running of the 24-month limitation period, the district court did not err in dismissing Nerad’s claims.

## **II. The district court did not abuse its discretion when awarding sanctions against Knaak.**

When an attorney or party presents pleadings or motion papers to the court, the attorney certifies that the claims are not being presented for an improper purpose, such as harassment; that they are supported by existing law or a nonfrivolous argument to change the law; and that factual allegations or their denials have evidentiary support. Minn. Stat. § 549.211, subd. 2 (2020); Minn. R. Civ. P. 11.02. A district court may impose sanctions against an attorney or a party who violates these requirements. Minn. Stat. § 549.211, subd. 3 (2020); Minn. R. Civ. P. 11.03.

To award sanctions requires determining whether counsel had an objectively reasonable basis for making the factual or legal claim. *Uselman v. Uselman*, 464 N.W.2d 130, 143 (Minn. 1990), *superseded by statute on other grounds*, Minn. Stat. § 549.21

(1990) (repealed 1997). When evaluating this reasonableness standard, this court does not focus on whether the arguing attorney personally believes his challenged argument is compelling, but whether “a competent attorney could form a reasonable belief that it arises from the facts and law.” *In re Adoption of T.A.M.*, 791 N.W.2d 573, 579 (Minn. App. 2010) (quotation omitted). But the aim is to penalize only the filing of clearly meritless claims, not the advancement of arguably merited claims or theories. *Id.*

Here, there was an explicit, bolded section in the arbitration agreement that said that appellants had to file their request for arbitration within two years of closing or else the claim could not be pursued. Although the agreement provided that in some cases a court or arbitrator could extend the 24-month period in cases of fraud, appellants never filed a demand for arbitration or requested that the period be extended. Instead, they brought claims that were explicitly arbitrable to a district court after being warned before the period had closed that arbitration was the proper avenue for remedy. An objectively reasonable attorney would know not to bring these claims to a district court. Filing an action after expiration of the limitations period is sanctionable. *Cole v. Star Tribune*, 581 N.W.2d 364, 370-71 (Minn. App. 1998). And district court actions brought to circumvent arbitration may support an award of attorney fees as a sanction. *Mears Park Holding Corp. v. Morse/Diesel, Inc.*, 426 N.W.2d 214, 218-19 (Minn. App. 1988).

In this appeal, Knaak repeats his arguments that the purchase agreement and arbitration clause were void and that the claims for fraud in the inducement were properly pleaded. But these issues are not properly before us. *Thiele*, 425 N.W.2d at 582.

Because it is objectively unreasonable to bring explicitly arbitrable claims to a district court instead of an arbitrator, the district court did not abuse its discretion when sanctioning Knaak.

**Affirmed.**