

*This opinion is nonprecedential except as provided by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
A22-1729**

Kimberly S. Waller, et al.,
Appellants,

vs.

Galloway Holdings, LLC,
d/b/a Stone River Homes,
Respondent,

Toua Xiong,
Respondent,

James P. Lauria, et al.,
Respondents.

**Filed July 24, 2023
Reversed and remanded
Bratvold, Judge**

Washington County District Court
File No. 82-CV-22-1337

Jared M. Goerlitz, Goerlitz Law, PLLC, St. Paul, Minnesota (for appellants)

Valerie Sims, Brian W. Varland, Heley, Duncan & Melander, PLLP, Minneapolis,
Minnesota (for respondent Galloway Holdings, LLC)

Tou Xiong, Bradley Werner, LLC, Woodbury, Minnesota (for respondent Xiong)

Steven P. Pope, David M. Werwie & Associates, St. Paul, Minnesota (for respondents
Lauria)

Considered and decided by Larkin, Presiding Judge; Segal, Chief Judge; and
Bratvold, Judge.

NONPRECEDENTIAL OPINION

BRATVOLD, Judge

Appellants sued the owners of two neighboring properties and a residential developer/builder (collectively, respondents) for damages allegedly caused by water flowing from the neighboring properties onto appellants' property. Appellants seek review of the district court's order dismissing the action and determining that the complaint was barred by the statute of limitations. Appellants raise two issues on appeal. First, appellants argue that the district court erred by granting the motions to dismiss based on arguments raised for the first time in a reply memorandum. Second, appellants argue that the district court erred because the complaint alleges facts that, if accepted as true, show respondents may be estopped from asserting a statute-of-limitations defense. Because we agree with appellants on the second issue and conclude that the district court erred in granting respondents' motions to dismiss under Minn. R. Civ. P. 12.02(e), we reverse and remand for further proceedings and need not decide the first issue.

FACTS

Consistent with the procedural posture and standard of review identified below, we summarize the facts alleged in the complaint and refer to other facts in the record as helpful to understand the issues on appeal.

Appellants Kimberly Waller and Blair Vaillancourt have resided in Newport since 2011. In 2017, respondent Galloway Holdings LLC, doing business as Stone River Homes, bought two vacant lots next to appellants' home. In March 2018, Galloway sold one adjacent lot to respondents James and Amy Lauria with an agreement that Stone River

Homes would build them a home. “A certificate of occupancy [for the Laurias’ home] was issued on September 13, 2018.” In November 2018, Galloway sold the second adjacent lot to respondent Toua Xiong with a similar agreement to build. “A temporary certificate of occupancy [for Xiong’s home] was issued on November 26, 2018.”

“Beginning in late September 2018 and continuing thereafter, excessive amounts of water began to flow from” the two adjacent lots “onto, over and through” appellants’ property. In 2019, Galloway “attempted to correct the issue by installing a French drain system . . . for the express purpose of resolving the water intrusion,” but “water intrusion continues to affect” appellants’ property. The damages to appellants’ property include “cracking the home foundation, cracking the garage floor, deterioration of the soil both on the surface and below the surface, damage to the landscaping and trees, a sinking and deteriorating driveway, a sinking and deteriorating shed and damages to the exterior deck.”

In November 2021, appellants sued Galloway, the Laurias, and Xiong, alleging trespass and nuisance and seeking damages. Appellants served the Laurias and Xiong on November 5, 2021, and Galloway on November 10, 2021.

In lieu of an answer, Galloway moved to dismiss under Minn. R. Civ. P. 12.02(e). Galloway’s opening memorandum of law argued appellants’ “claims are barred by the [two-year] statute of limitations set forth in Minn. Stat. § 541.051” (2022) because appellants discovered the injury in September 2018 and “commence[d] this action” in November 2021. Appellants opposed the motion to dismiss, arguing in their memorandum that Galloway “cannot make a prima facie showing [that] the statute of limitations bars [appellants’] claims” because Minn. Stat. § 541.051 establishes that “accrual begin[s] no

earlier than substantial completion” and Galloway did not address substantial completion in its opening memorandum.

In its reply memorandum, Galloway argued that substantial completion “does not save [appellants’] claims” because the complaint admitted the date of substantial completion by asserting that the certificates of occupancy were issued “no later than November 2018.” By letter to the district court, appellants objected to Galloway’s reply memorandum, arguing that it raised substantial completion “for the first time” and that appellants were “significantly prejudiced by being unable to address this issue and their additional defenses that toll the statute of limitations.” The Laurias and Xiong joined Galloway’s motion to dismiss.

At a hearing on respondents’ motions to dismiss, appellants again argued that they were “significantly prejudiced” by the substantial-completion argument in Galloway’s reply memorandum because they did not have an opportunity to respond or raise their “estoppel defense” as alleged in the complaint. Galloway responded that there was “no estoppel pled in the Complaint.” The district court took the motions under advisement and stated it would “communicate” with the parties if it determined appellants needed “an opportunity to respond.”

On October 6, 2022, the district court granted Galloway’s motion to dismiss in a written order. The district court determined that the two-year statute of limitations barred appellants’ complaint, reasoning, first, that the cause of action accrued upon substantial completion and, second, that substantial completion occurred no later than November 2018 based on the complaint’s allegations about the certificates of occupancy. The district court

relied on *Village Lofts at St. Anthony Falls Association v. Housing Partners III-Lofts, LLC*, which established that “a certificate of occupancy is powerful evidence that an improvement is substantially complete for purposes of Minn. Stat. § 541.051.” 937 N.W.2d 430, 442 (Minn. 2020). The district court did not discuss appellants’ arguments about prejudice and estoppel. The district court issued a second order granting the Laurias’ and Xiong’s motions to dismiss the complaint as barred by the statute of limitations.

On October 12, appellants submitted a letter requesting that the district court “allow a motion for reconsideration,” arguing that they were prejudiced by Galloway’s reply memorandum and seeking “the opportunity to raise [their estoppel] defense[.]” Respondents opposed reconsideration. The district court denied appellants’ request, stating that appellants “failed to show compelling circumstances to bring a motion for reconsideration.”

This appeal follows.

DECISION

Appellate courts review de novo “whether a complaint has stated a claim sufficiently to survive a motion to dismiss.” *Hansen v. U.S. Bank Nat’l Ass’n*, 934 N.W.2d 319, 325 (Minn. 2019). “When a motion to dismiss is based on the running of a statute of limitations, [appellate courts] follow[the] same general rule: look to the facts alleged in the complaint, accept those facts as true, and construe inferences from those facts in favor of the plaintiff.” *Id.* In the statute-of-limitations context, “a motion to dismiss should be granted only when it is clear from the stated allegations in the complaint that the statute of limitations has run.” *Id.* at 326.

Appellants argue that they were prejudiced because the district court granted the motions to dismiss based on arguments that Galloway raised for the first time in its reply memorandum and appellants were not able “to address [their] defense that the statute of limitations has been tolled by estoppel.” Appellants contend that the complaint alleges “installation of the French drain system” by Galloway after the dates of substantial completion and that these facts “establish an estoppel defense” to respondents’ statute-of-limitations argument.

Galloway urges affirmance, arguing that “[t]he complaint contains no . . . theory of estoppel or promise of future action.” The Laurias and Xiong also argue that appellants “failed to properly preserve the estoppel issue for appeal” because “no language in the Complaint alerted any of the parties that Appellants planned to pursue a claim based on estoppel” and “Appellants failed to present the estoppel claim in their responsive memorandum.”

We disagree with respondents and conclude that the district court erred for three reasons. First, appellants’ complaint asserts facts supporting an estoppel claim in response to the statute of limitations. “[A] builder may be estopped from asserting the bar of the statute of limitations if his conduct satisfies the elements of equitable estoppel.” *Rhee v. Golden Home Builders, Inc.*, 617 N.W.2d 618, 621 (Minn. App. 2000). “When a party allegedly responsible for remedying a defect in real property makes assurances or representations that the defect will be repaired, that party may be estopped from asserting a statute-of-limitations defense if the injured party reasonably and detrimentally relied on the assurances or representations.” *Id.* at 622. For example, in *Rhee*, we reversed the district

court’s decision to grant summary judgment for the defendant based on the statute of limitations; we determined that summary judgment was “inappropriate.” *Id.* We reasoned that the evidence raised a genuine issue of material fact about estoppel because the builder “made repeated assurances and repair efforts from the time the [appellants] discovered the defect.” *Id.*

Here, appellants’ complaint alleges that Galloway made repairs after certificates of occupancy were issued for the neighboring properties on September 13, 2018, and November 26, 2018, respectively. The complaint states that “[i]n 2019, [Galloway] attempted to correct the [water-intrusion] issue by installing a French drain system,” which “slowed the intruding water,” but the “intrusion continues.” Thus, appellants’ complaint alleges facts supporting their claim that respondents may be estopped on their statute-of-limitations defense based on repairs that Galloway made to address the water-intrusion issue. *See id.* at 621-22.

Second, appellants’ estoppel claim raises questions of fact that may not be resolved at this stage of the proceedings. “Estoppel depends on the facts of each case and is ordinarily a fact question for the jury to decide.” *N. Petrochem. Co. v. U.S. Fire Ins. Co.*, 277 N.W.2d 408, 410 (Minn. 1979). Questions of fact are “generally inappropriate for disposition on a motion to dismiss.” *McDeid v. Johnston*, 984 N.W.2d 864, 877 n.6 (Minn. 2023).

Third, the district court failed to address appellants’ estoppel claim. Appellants repeatedly asked the district court for an opportunity to present their estoppel claim in

response to the motions to dismiss. But neither of the district court's orders—dismissing the complaint or denying reconsideration—addressed estoppel.

In sum, appellants' complaint alleges facts that, if accepted as true, support an estoppel claim in response to respondents' statute-of-limitations defense. Because estoppel is generally a question of fact, it is inappropriate for resolution on a motion to dismiss. Thus, while we express no opinion on the merits of appellants' estoppel claim, we conclude that the district court erred by granting respondents' motions to dismiss based on the statute of limitations. As a result, we need not decide the first issue appellants raise regarding whether the district court erred by granting the motions to dismiss based on arguments Galloway made for the first time in its reply memorandum.

Reversed and remanded.