

[DO NOT PUBLISH]

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 16-15732
Non-Argument Calendar

D.C. Docket No. 1:15-cv-22393-JEM

JOHN J. JACOBS, JR.,

Plaintiff-Appellant,

versus

EMILIO ESTEFAN,

Defendant-Appellee.

Appeal from the United States District Court
for the Southern District of Florida

(August 7, 2017)

Before ROSENBAUM, JULIE CARNES, and JILL PRYOR, Circuit Judges.

PER CURIAM:

Plaintiff-Appellant John J. Jacobs, Jr., appeals the dismissal of his fourth lawsuit concerning a proposed business project that he presented to Estefan Enterprises, Inc., in 1999. Each of his lawsuits has been a repeat of the prior lawsuit, with minor alterations. Sometimes the lawsuits have alleged different damages or different causes of action, but they have always pertained to the same subject matter and have always named Emilio Estefan, the founder of Estefan Enterprises, as a defendant.

After taking judicial notice of the relevant court filings in the three prior lawsuits, the district court found that the fourth lawsuit is barred by the statute of limitations and the doctrine of collateral estoppel.¹ The district court also prohibited Jacobs from filing future lawsuits related to the same subject matter, with limited exceptions.

On appeal, Jacobs challenges only the statute-of-limitations finding. He argues that the district court erred because the applicable statute-of-limitations period began to run on October 23, 2007, when he received an email from a representative of Estefan Enterprises. Using that date, he concludes that his first lawsuit was timely filed on August 12, 2011. But because Jacobs did not meet the

¹ The district court adopted the findings and recommendations of a magistrate judge.

statutory deadline for filing his claims *in this case*, the district court's ruling is now ours, too.²

"Statutes of limitations serve important purposes in promoting the fair administration of justice." *Arce v. Garcia*, 434 F.3d 1254, 1260 (11th Cir. 2006). Their primary purpose is to assure fairness to defendants by preventing surprises and minimizing spoliation of evidence. *Id.* Statutes of limitations also relieve the courts of "the burden of trying stale claims when a plaintiff has slept on his rights." *Id.* at 1260–61 (quoting *Burnett v. N.Y. Cent. R. Co.*, 380 U.S. 424, 427 (1965)).

In this case, the district court dismissed Jacobs's complaint with prejudice under Federal Rule of Civil Procedure 12(b)(6) upon a motion to dismiss. We review the district court's decision de novo, accepting all of the factual allegations in the complaint as true. *See Foudy v. Indian River Cty. Sheriff's Office*, 845 F.3d 1117, 1122 (11th Cir. 2017); *Gonsalvez v. Celebrity Cruises Inc.*, 750 F.3d 1195, 1197 (11th Cir. 2013). We are also mindful that Jacobs is proceeding pro se, so we liberally construe his complaint. *Albra v. Advan, Inc.*, 490 F.3d 826, 829 (11th Cir. 2007). Under this standard, Jacobs's complaint attempts to allege claims for negligent infliction of emotional distress and libel.

² Apart from the statute-of-limitations issue, we decline to comment on the district court's other decisions because they are not properly before us. Nor is addressing them necessary to resolve this case.

“A Rule 12(b)(6) dismissal on statute of limitations grounds is appropriate ‘if it is apparent from the face of the complaint that the claim is time-barred.’” *Gonsalvez*, 750 F.3d at 1197 (quoting *La Grasta v. First Union Sec., Inc.*, 358 F.3d 840, 845 (11th Cir. 2004)). In diversity actions, such as this one, the court must follow the statute of limitations determined by state law. *Cambridge Mut. Fire Ins. Co. v. City of Claxton, Ga.*, 720 F.2d 1230, 1232 (11th Cir. 1983). In Florida, a claim of negligence must be brought within four years, Fla. Stat. § 95.11(3)(a), and a claim of libel within two, *id.* § 95.11(4)(g).

Coincidentally, Jacobs’s first lawsuit was dismissed on statute-of-limitations grounds as well. In that case, filed August 12, 2011, Jacobs appeared to allege claims for breach of an implied oral contract. Based upon the allegations in the complaint, the district court found that the latest breach of the “implied contract” occurred in 2005, meaning that under the applicable four-year limitations period, Jacobs was required to file his complaint in 2009. *See id.* § 95.11(3)(k). On appeal, we affirmed the district court’s ruling, stating that “Jacobs should have filed his complaint by 2009 or 2010,” *Jacobs v. Estefan*, 531 F. App’x 1004, 1005 (11th Cir. 2013) (unpublished), *cert. denied*, 134 S. Ct. 2146, *reh’g denied*, 135 S. Ct. 19 (2014).

In the instant case, it is apparent from the face of the complaint that Jacobs’s claims, though relabeled as negligence and libel claims, are still time-barred. In

his complaint, Jacobs again alleges injury occurring “in 2005.” No other dates are referenced in the complaint. In his response to Estefan’s motion to dismiss, Jacobs adds that October 23, 2007, is the relevant limitations date. But Jacobs filed his complaint on June 25, 2015—well over four years after his causes of actions accrued using either date. And as in the first lawsuit, he has failed to allege any facts that would toll the statute of limitations. *See* Fla. Stat. § 95.051. So it is clear that Jacobs’s claims were filed after the applicable limitations period. *See id.* § 95.11(3)(a), (4)(g).

Although Jacobs appears to raise some form of relation-back argument in an attempt to save his claims, we decline to revisit our earlier decision from the first lawsuit. For statute-of-limitations purposes, the instant claims were commenced by the filing of the instant complaint, not the first complaint filed in a prior lawsuit. In a case premised on diversity jurisdiction, state law governs when, for statute-of-limitation purposes, the action began. *See Walker v. Armco Steel Corp.*, 446 U.S. 740, 753 (1980). And under Florida law, “an action is ‘commenced’ for limitations purposes, when a complaint is filed.” *Totura & Co. v. Williams*, 754 So. 2d 671, 679 (Fla. 2000) (quoting *Frew v. Poole & Kent Co.*, 654 So. 2d 272, 275 (Fla. Dist. Ct. App. 1995)); *Szabo v. Essex Chem. Corp.*, 461 So. 2d 128, 129 (Fla. Dist. Ct. App. 1984) (“Since 1955, an action is commenced in Florida by the filing of a complaint.”). Finally, even if we were to find that the limitations period

was tolled while the prior lawsuits were pending, the filing of the instant complaint would still fall outside the applicable limitations period. Accordingly, we affirm the district court's dismissal of the complaint with prejudice.

AFFIRMED.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 15-22393-CV-MARTINEZ/GOODMAN

JOHN J. JACOBS, JR.,

Plaintiff,

v.

EMILIO ESTEFAN,

Defendant.

REPORT AND RECOMMENDATIONS ON
DEFENDANT'S MOTION TO DISMISS WITH PREJUDICE

Defendant Emilio Estefan filed a Motion to Dismiss with Prejudice ("Motion").¹ [ECF No. 16]. *Pro se*² Plaintiff John A. Jacobs, Jr. submitted a letter, which was docketed as a response in opposition to the Motion. [ECF No. 18]. Defendant filed a reply. [ECF No. 27]. Subsequently, Plaintiff filed a document entitled "Plaintiff's Response to Defendant's Motion to Dismiss." United States District Judge Jose E. Martinez referred all pretrial proceedings to the Undersigned. [ECF No. 6]. As outlined below, the

¹ Defendant also filed a Notice of Correction of Scrivener's Error in Defendant's Motion to Dismiss with Prejudice, making minor corrections. [ECF No. 17].

² The Undersigned recognizes that Plaintiff is proceeding *pro se* and holds his *pro se* pleadings to a less-stringent standard than pleadings drafted by attorneys. *See Green v. Secretary, Dep't of Corrections*, 618 F. App'x 655 (11th Cir. 2015) (citing *Tannenbaum v. United States*, 148 F.3d 1262, 1263 (11th Cir. 1998)). However, "this leniency does not give the court license to serve as de facto counsel for a party . . . or to rewrite an otherwise deficient pleading in order to sustain an action." *GJR Invs., Inc. v. Cty. of Escambia, Fla.*, 132 F.3d 1359, 1369 (11th Cir. 1998) (citations omitted).

The defendants in that case filed a motion to dismiss, and United States District Judge Marcia G. Cooke found that the applicable Florida statute of limitations had expired. More specifically, Judge Cooke stated that Plaintiff alleged "he entered an implied oral contract with Defendants in 1999, and that since 1999, Defendants breached this contract by failing to meet with him and sign the 'paperwork.' Plaintiff [did] not allege that he signed any paperwork or entered any written contract with Defendants at that, or any, time. Therefore, Plaintiff [] needed to file his complaint in 2003." [ECF No. 16-2]; *Jacobs v. Estefan*, Case No. 11-CIV-24291-MGC, ECF No. 26, p. 6 (S.D. Fla. July 13, 2012). Judge Cooke also found that, even if Plaintiff's allegations were given "the most liberal reading" and construed as alleging "a continuing breach" of an implied contract, the action would still be facially barred by the statute of limitations. *Id.* at pp. 6-7. Additionally, Judge Cooke found that Plaintiff did not allege any facts that would have tolled the statute of limitations. *Id.*

Plaintiff sought review of the order and the Eleventh Circuit found that the district court properly dismissed Plaintiff's claim because it is barred by Florida's statute of limitations:

Viewing the allegations in the complaint as true and in the light most favorable to Jacobs, he entered into an implied contract with Estefan, Inc. sometime in 1999. Six-and-a-half years later, at some point in 2005 or 2006, Estefan, Inc. breached the contract. Consequently, Jacobs should have filed his complaint by 2009 or 2010. *See* Fla. Stat. Ann. § 95.11(3)(k). Because he did not file his complaint until August of 2011, the action is barred by the statute of limitations. Further, Jacobs did not allege any facts that would have tolled Florida's statute of limitations. *See* Fla. Stat. Ann. § 95.051.

On May 26, 2015, Plaintiff filed another complaint (which is nearly identical to the complaint in this case) and a motion to proceed *in forma pauperis*. [ECF No. 16-8]. He alleged that he presented a project to Estefan Enterprises and was led to believe that he would meet with Emilio Estefan to sign the “paperwork” related to that project. Plaintiff contended that various meetings were scheduled with Estefan, but they were all cancelled. He alleged that these cancellations further worsened his health. He raised a claim of negligent infliction of emotional distress and appeared to allege a cause of action for libel.

United States District Judge Cecilia M. Altonaga, the presiding judge in that case, reviewed Plaintiff’s claims *sua sponte* when evaluating Plaintiff’s *in forma pauperis* motion and dismissed the case without prejudice. [ECF No. 16-9]; *Jacobs v. Estefan*, Case No. 15-CV-21989, ECF No. 5 (S.D. Fla. May 29, 2015). Judge Altonaga found that Plaintiff failed to properly state claims for relief for negligent infliction of emotional distress and libel.

MOTION TO DISMISS

Defendant filed the instant Motion, contending that the Court should dismiss the complaint because Plaintiff fails to assert a claim upon which the Court could grant relief. *See* Fed. R. Civ. P. 12(b)(6). This is the fourth lawsuit filed by Plaintiff concerning the same events. Defendant contends that the claims are precluded by collateral

statute of limitations precludes Plaintiff's claims. He asserts that Plaintiff has failed to sufficiently allege a claim of relief upon which the Court could grant relief.

Federal Rule of Civil Procedure 12(b)(6) allows a defendant to move to dismiss a complaint that fails to state a cause of action for which relief may be granted. Fed. R. Civ. P. 12(b)(6). "To survive a motion to dismiss, a Complaint must contain sufficient factual matter, accepted as true, to 'state a claim of 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 reviewing a motion to dismiss, the Court must accept the factual allegations as true and construe them broadly in the light most favorable to the plaintiff. *See Watts v. Fla. Int'l Univ.*, 495 F.3d 1289, 1295 (11th Cir. 2007). When conducting this analysis, the Court may examine only the four corners of the complaint. *St. George v. Pinellas Cnty.*, 285 F.3d 1334, 1337 (11th Cir. 2002).

Here, Defendant provides former court filings as attachments to his motion to dismiss. The Court may consider Defendant's exhibits under the judicial notice doctrine, without converting this motion to dismiss into a summary judgment motion, because they are central to the claims in Plaintiff's complaint and are undisputed. *See Horne v. Potter*, 392 F. App'x 800, 802 (11th Cir. 2010) (the district court did not err in considering the exhibits attached to the [defendant's] motion to dismiss . . . because they were central to the claims in [the plaintiff's] complaint and were undisputed."). Moreover, the Court can take judicial notice of the filings in Plaintiff's former cases

The four criteria are satisfied here. Plaintiff has filed three previous lawsuits concerning Defendant's promise to meet with Plaintiff to finalize the paperwork for his project. The Undersigned has reviewed those cases and the orders disposing of them. Plaintiff again uses the same alleged events (that occurred between 1999 and 2007, at the latest) to support Plaintiff's claims in the instant case.

The District Court previously determined that the four-year limitations period has run from the events Plaintiff asserts give rise to his causes of action. As such, Plaintiff's allegations were, and continue to be, time barred. The Eleventh Circuit affirmed the District Court's Order, and found that the action was barred by the statute of limitations because Plaintiff did not timely file his complaint or allege any facts that would have tolled the statute of limitations,. *See Jacobs*, 531 F. App'x at 1005-06.

Although Plaintiff has restyled his claims since his first case (originally framed as breach of contract claims and now relabeled as negligence claims), they still remain fundamentally the same and are based on an identical set of facts. *See Abram-Abrams v. Citigroup, Inc.*, No. 12-80399-CIV, 2-13 WL 451897, *2 n.2 ("The Court notes that Plaintiff has restyled and reorganized her claims. . . . Notwithstanding their new names, these claims are identical to those the Eleventh Circuit addressed.").

Additionally, even if the issues raised here were not precluded by collateral estoppel principles, Plaintiff still fails to state a claim upon which the Court could grant relief because the claims alleged are barred by the statute of limitations.

request is appropriate. Plaintiff has now filed four cases against Defendant based on the same set of facts. The claims are meritless because they are based on Plaintiff's factual allegations that are barred by the statute of limitations and the District Court has dismissed each one of his complaints.

Plaintiff is engaging in a vexatious pattern of harassing and meritless litigation over the same events. "Federal courts have both the inherent power and the constitutional obligation to protect their jurisdiction from conduct which impairs their ability to carry out Article III functions." *Martin-Trigona v. Shaw*, 986 F.2d 1384, 1386-87 (11th Cir. 1993) (quoting *Procup v. Strickland*, 792 F.2d 1069, 1073 (11th Cir. 1986) (en banc)). "The only restriction this Circuit has placed upon injunctions designed to protect against abusive and vexatious litigation is that a litigant cannot be 'completely' foreclosed from *any* access to the court.'" *Id.* (quoting *Procup*, 792 F.2d at 1074) (emphasis in original).

Accordingly, the Undersigned **respectfully recommends** that the District Court prohibit Plaintiff from filing future complaints based on the same facts unless they are filed by an attorney or approved in advance by the Court.

CONCLUSION

The Undersigned **respectfully recommends** that the district court **grant** Defendants' motion and **dismiss with prejudice** Plaintiff's complaint. Additionally, I **respectfully recommend** that the District Court prohibit Plaintiff from filing future

UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION

Case Number: 15-22393-CIV-MARTINEZ-GOODMAN

JOHN J. JACOBS, JR.,

Plaintiff,

vs.

EMILIO ESTEFAN,

Defendant.

**ORDER ADOPTING MAGISTRATE JUDGE GOODMAN'S REPORT AND
RECOMMENDATION**

THE MATTER was referred to the Honorable Jonathan Goodman, United States Magistrate Judge, for a Report and Recommendation on Plaintiff's *pro se* civil complaint. Judge Goodman filed a Report and Recommendation [ECF No. 33], recommending granting Defendant's motion to dismiss Plaintiff's complaint with prejudice, and further recommending that this Court prohibit Plaintiff from filing future complaints based on the same facts unless they are filed by counsel or approved in advance by the Court. The Court has reviewed the entire file and record and has made a *de novo* review of the issues that the objections to the Magistrate Judge's Report and Recommendation present. After careful consideration, the Court affirms and adopts the Report and Recommendation. Accordingly, it is hereby **ADJUDGED** that United States Magistrate Judge Goodman's Report and Recommendation [ECF No. 33] is **AFFIRMED** and **ADOPTED**. Accordingly, it is:

ADJUDGED that

UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION

Case Number: 15-22393-CIV-MARTINEZ-GOODMAN

JOHN J. JACOBS, JR.,

Plaintiff,

vs.

EMILIO ESTEFAN,

Defendant.

FINAL JUDGMENT

Pursuant to Federal Rule of Civil Procedure 58, and in accordance with the reasons stated in the Court's Order Adopting Judge Goodman's Report and Recommendation, judgment is entered in favor of Defendant and against Plaintiff.

DONE AND ORDERED in Chambers at Miami, Florida, this 29 day of July, 2016.



JOSE E. MARTINEZ
UNITED STATES DISTRICT JUDGE

Copies provided to:
Magistrate Judge Goodman
All Counsel of Record
John J. Jacobs, Jr., *pro se*

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 16-15732-DD

JOHN J. JACOBS, JR.,

Plaintiff - Appellant,

versus

EMILIO ESTEFAN,

Defendant - Appellee.

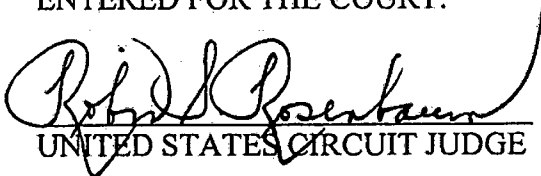
Appeal from the United States District Court
for the Southern District of Florida

BEFORE: ROSENBAUM, JULIE CARNES, and JILL PRYOR, Circuit Judges.

PER CURIAM:

The petition(s) for panel rehearing filed by JOHN J. JACOBS, JR. is DENIED.

ENTERED FOR THE COURT:


UNITED STATES CIRCUIT JUDGE

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