

**IN THE SUPERIOR
COURT**

PINAL COUNTY, STATE OF ARIZONA

Date: 10/15/2025

THE HON DELIA R. NEAL,

By Judicial Administrative Assistant: Angie Newendyke

LYNDA HAMMOND & KEVIN NUNN,)	
)	<u>S1100CV202403186</u>
)	
Plaintiff(s),)	<u>RULING RE: CHESAPEAKE</u>
)	<u>HOLDINGS NCI, LLC, MOTION TO</u>
vs.)	<u>DISMISS; ATTORNEY FEES</u>
)	
CHESAPEAKE HOLDINGS NCI, LLC, &)	
WEICHERT, REALTORS – HOME PRO)	
REALTY,)	
)	
Defendant(s).)	

The Court has considered Defendant Chesapeake Holdings NCI, LLC’s (“Chesapeake”) *Motion to Dismiss* (“*Motion*”), and their related filings, as well as Plaintiff Lynda Hammond and Kevin Nunn’s (“Hammond and Nunn”) *Response* (“*Response*”), along with arguments of the parties, the record of this case, and relevant authorities. The parties were given an opportunity to present argument on the pleadings at an Oral Argument held September 25, 2025.

Chesapeake asks that the matter be dismissed under several theories: 1) Hammond and Nunn’s claims are time-barred¹; 2) Hammond and Nunn’s

¹ Chesapeake *Motion to Dismiss*, p. 6, §I.

claims are barred by laches²; 3) Hammond and Nunn’s complaint fails to state a claim upon which relief can be granted³.

Hammond and Nunn argue that their claim is timely⁴ and that their complaint is adequately pled⁵.

After considering the Parties’ pleadings and arguments, the relevant authorities and the court record for this matter, the Court has determined the Complaint does not survive the *Motion to Dismiss* for the reasons set forth below.

ANALYSIS AND FINDINGS

Briefly, Plaintiffs have filed this Complaint alleging that a real estate company, Chesapeake Holdings NCI, LLC, and a real estate broker, Weichert, Realtors – Home Pro⁶ facilitated the purchase of Plaintiff’s home in 2011, and the home has been plagued by significant and catastrophic structural defects that were not readily discernable when Plaintiffs purchased it. Essentially, Plaintiffs argue that Chesapeake should have known that the defects were present in the home and, as the realtor handling the sale, had a duty to disclose them.

It must be noted that Plaintiff’s Complaint is not easily parsed, and the separate claims are not pled with particularity, making it difficult to discern the legal theory or theories under which Plaintiffs intended to pursue Chesapeake.

² Id. at p. 7, §II.

³ Id. at p. 8, §III.

⁴ Plaintiff *Response to Motion to Dismiss*, p. 3, 4.

⁵ *Id.* at 5.

⁶ The claims against Defendant Weichert, Realtors – Home Pro were dismissed by the Court in a Ruling issued May 23, 2025.

Standard. Chesapeake asks that the Court grant their motion to dismiss on a number of fronts. The Court is aware that a motion to dismiss is not a procedure for resolving disputes about the facts or merits of a case. *Coleman v. City of Mesa*, 230 Ariz. 352, 363, ¶46 (2012). Instead, the narrow question presented by a motion to dismiss for failure to state a claim is whether facts alleged in a complaint are sufficient “to warrant allowing the [plaintiff] to attempt to prove [its] case.” *Id.* at 363, ¶46 (emphasis added). Dismissal is permitted only when a “plaintiff[] would not be entitled to relief under any interpretation of the facts susceptible of proof.” *Fid. Sec. Life Ins. Co. v. State Dep’t of Ins.*, 191 Ariz. 222, 224, ¶4 (1998) (emphasis added).

Moreover, a motion to dismiss requires a court to accept all material facts alleged by the nonmoving party as true [*Acker v. CSO Chevira*, 188 Ariz. 252, 255 (App. 1997) (citing *Lakin Cattle Co. v. Engelthaler*, 101 Ariz. 282, 284 (1966)], view those facts “in the light most favorable to the nonmoving party” [*Mirchandani v. BMO Harris Bank, N.A.*, 235 Ariz. 68, 69, ¶2 (App. 2014)], and “indulge [the nonmoving party] all reasonable inferences” that the pleaded facts permit [*Cullen v. Auto-Owners Ins. Co.*, 218 Ariz. 417, 419, ¶7 (2008)].

Statutes of Repose and Limitations. Bearing this guidance in mind, the Court turns to the arguments in Chesapeake’s *Motion*. Chesapeake first argues that A.R.S. §12-552 bars this claim in its entirety as the house was originally built in 2007, Plaintiffs purchased it in 2011, and the claim was not brought against Chesapeake until 2024.

The statute states, in pertinent part that:

[I]n the case of injury to real property or an improvement to real property, if the injury occurred during the eighth year after the substantial completion or, in the case of a latent defect, was not

discovered until the eighth year after substantial completion, an action to recover damages for injury to the real property may be brought within one year after the date on which the injury to real property or an improvement to real property occurred or a latent defect was discovered, but an action ***may not be brought more than nine years after the substantial completion of the improvement.***” A.R.S. §12-552(E) [Emphasis added].

Here, Plaintiffs acknowledge that in 2013, after they had lived in the home for close to two years, they began to address “small issues” that had been documented in an inspection report they obtained prior to the sale⁷. They continued to engage various contractors and repair companies to fix or replace a number of “problem areas” over the years between 2017 and 2021⁸. It was not until after a substantial tear-down operation in 2022 that Plaintiffs discovered a major structural collapse on the second floor⁹.

Chesapeake argues, and Plaintiffs do not refute, that there are no allegations in the Complaint that point to Chesapeake having some special knowledge about the construction defects buried behind the drywall of the home. Nor do Plaintiffs allege that Chesapeake was aware of the actions taken by the builder during the construction of the home three years before Chesapeake bought it and subsequently sold it to Plaintiffs.

Plaintiffs note in their Complaint that “no one—not experts, not homeowners, could possibly *know* the *cause(s)* of the collapse and *if* anyone is to blame for it¹⁰.” [Emphasis in original].

Although Plaintiffs seem to imply in their Complaint, and at argument, that Chesapeake “selected” them to purchase the home only because it was

⁷ *Complaint*, p. 9, ¶45.

⁸ *Id.*

⁹ *Id.* at 10, ¶51-54.

¹⁰ *Id.* at ¶ 54.

unlikely that Plaintiffs would discover the defects¹¹, there is simply nothing in their pleadings to support that suggestion and it appears to be pure conjecture. However, even if there was evidence of fraudulent behavior, or negligent misrepresentation by Chesapeake, A.R.S. §12-550¹² and 12-542¹³ would still bar Plaintiffs' claims.

It is clear that Plaintiffs have expended significant funds, and have endured years of repair efforts, however, they have simply failed to allege any actions by Chesapeake, or legal authority that would allow this case to proceed in 2024, thirteen years after they purchased the property, and seventeen years after the home was built¹⁴.

Moreover, the Court concurs with Chesapeake that their duty as regards disclosure, is limited to *known* latent defects in the property. (*See, S Dev. Co. v. Pima Cap. Mgmt. Co.*, 201 Ariz. 10, 16, 31 P.3d 123, 129 (Ct. App. 2001) “a vendor *must* disclose *latent* defects in property that are known to the vendor, notwithstanding the existence of a burden-shifting “as is” clause or

¹¹ Complaint, p. 6, ¶ 27, fn. 7.

¹² “Actions other than for recovery of real property for which no limitation is otherwise prescribed shall be brought within four years after the cause of action accrues, and not afterward.” A.R.S. §12-550.

¹³ “Except as provided in section 12-551 there shall be commenced and prosecuted within two years after the cause of action accrues, and not afterward, the following actions: [...]

3. For trespass for injury done to the estate or the property of another.
[...]

A.R.S. §12-542

¹⁴ Chesapeake cites to the several other actions brought by Hammond and Nunn against other entities including the builder. It is not insignificant that the home was purchased “as is” and the original builder lost the home through a deed-in-lieu of foreclosure action. “[P]ublic records regarding matters referenced in a complaint, are not ‘outside the pleading,’ and courts may consider such documents without converting a Rule 12(b)(6) motion into a summary judgment motion.” *Coleman*, 230 Ariz. at 356, ¶ 9; Rule 12(d), Ariz. R. Civ. P.

disclaimer of warranties. [...] A latent defect is defined as “[a] hidden or concealed defect. One which could not be discovered by reasonable and customary observation or inspection....” Black's Law Dictionary 611 (Abridged 6th ed.1991).”).

Here, Plaintiffs do not allege that Chesapeake was aware of these defects, and do not point to any authority that would hold them liable for the hidden construction issues in this home. Moreover, Plaintiffs do not allege any legal theory or set of circumstances that defeat the time limitations imposed by A.R.S. §§12-552, -542, or -550.

Although dismissals on the basis of a violation of the statute of limitations are generally disfavored, here the allegations in the complaint itself conclusively demonstrate that the claims fall outside the applicable limitations periods

Therefore, the Court **FINDS** that the Complaint against Chesapeake is barred by A.R.S. §12-552 et seq.

IT IS THEREFORE ORDERED dismissing the Complaint in its entirety with prejudice for the reason that it is time-barred by A.R.S. §12-552 et seq.

The Court further **FINDS** that any individual claims as to Fraud or Negligent Misrepresentation are time barred by A.R.S. §§12-550, 12-542.

IT IS FURTHER ORDERED that claims for Fraud and/or Negligent Misrepresentation are dismissed with prejudice.

Laches. Chesapeake also argues that the Doctrine of Laches precludes Plaintiffs’ claim. Plaintiffs’ response seems to be based on their theory (which the Court rejects) that their cause of action did not accrue until very recently when they discovered the imminent collapse of the second floor.

While reasonable minds may differ as to the exact moment this cause of action accrued, it is not reasonable to assert, under these circumstances, that it accrued an entire decade after the Plaintiffs purchased the home.

Moreover, Plaintiffs have acknowledged that the structural defects in the home were essentially hidden, and not discernable to a number of professionals who inspected the home or performed minor repairs to the home.

While the Court understands a homeowner's reluctance to engage in a costly construction investigation to determine the cause of numerous structural issues, the fact that Plaintiffs delayed their investigation for approximately ten years after moving in to a home they purchased "as-is" is inexcusably dilatory and precludes them from bringing suit against Chesapeake. The doctrine of laches "is an equitable counterpart to the statute of limitations, designed to discourage dilatory conduct." *Sotomayor v. Burns*, 199 Ariz. 81, 83, 13 P.3d 1198, 1200.

Chesapeake raises a concern that their ability to defend against these claims well over a decade after Plaintiffs first became aware of potential issues with the home is "severely compromised"¹⁵ by this delay. Certainly, it is reasonable to expect that evidence has degraded or disappeared over time.

Here, the Court **FINDS** that Plaintiffs' actions in bringing this complaint so long after a cause of action may have accrued are exactly type of actions the doctrine of laches is designed to prevent.

Therefore,

¹⁵ *Motion to Dismiss*, p. 7:21-23.

IT IS ORDERED granting Chesapeake’s Motion to Dismiss the Complaint in its entirety for the separate and independent reason that the Complaint runs afoul of the doctrine of laches.

Complaint Fails to State a Claim Upon Which Relief can be Granted; Complaint Violates Pleading Standards. Chesapeake next argues that the Complaint itself is poorly crafted and violates Ariz.R.Civ.P. 8 and 9¹⁶. Plaintiffs counter that they have sufficiently pled their claims and that Chesapeake (and since-dismissed co-defendant Weichert) “knew or should have known” about the state of home, and that information was not disclosed by Chesapeake.

Arizona law does disfavor motions to dismiss for failure to state a claim upon which relief can be granted. *State ex rel. Corbin v. Pickrell*, 136 Ariz. 589, 594 (1983). Moreover, such motions are not to be used as a vehicle to resolve disputes about the facts or merits of the case. *Coleman v. City of Mesa*, 230 Ariz. 352, 363 ¶ 46 (2012). Instead, the narrow question presented by the motions pursuant to Rule 12(b)(6), Ariz. R. Civ. P., is whether the facts alleged by Plaintiff are sufficient “to warrant allowing [Plaintiff] to attempt to prove [his] case.” *See id.*

The Court will grant the motion only if the plaintiff is not entitled to relief “under any facts susceptible of proof in the statement of the claim.” *ELM Ret. Ctr., LP v. Callaway*, 226 Ariz. 287, 289 (App. 2010), quoting *Mohave Disposal, Inc. v. City of Kingman*, 186 Ariz. 343, 346 (1996). The Court will not “accept as true allegations consisting of conclusions of law, inferences or deductions that are not necessarily implied by well-pleaded facts, unreasonable inferences or unsupported conclusions from such facts, or legal

¹⁶ *Id.* p. 8.

conclusions alleged as facts.” *Jeter v. Mayo Clinic Ariz.*, 211 Ariz. 386, 389 (App. 2005).

The Court noted, above, that the separate claims in the Complaint are not clearly outlined or explained, Plaintiffs do not establish a legal basis for the duties they ascribe to Chesapeake, and the Complaint contains a number of conclusory and unfounded claims¹⁷.

Although Arizona’s notice pleading standard only requires that a complaint meet “minimal requirements,” Ariz.R.Civ.P. 8 still requires that a complaint contain “a short and plain statement of the claim showing that the pleader is entitled to relief.” Ariz.R.Civ.P. 8(a)(2).

Plaintiffs have an obligation to clearly state the grounds for their relief, which “requires more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do.” *Dube v. Likins*, 216 Ariz. 406, 424, 167 P.3d 93, 111 (Ct. App. 2007) (citing *Bell Atl. Corp. v. Twombly*, 550U.S. 544, —, 127 S.Ct. 1955, 1964–65, 167 L.Ed.2d 929 (2007), quoting Fed.R.Civ.P. 8(a)(2)).

In their Complaint, Plaintiffs alleged that defendants Chesapeake Holdings NC1 LLC (“Chesapeake”) failed to properly disclose “major structural issues” with the home Plaintiffs purchased in 2011¹⁸. However, Plaintiffs do not

¹⁷ There are several instances in the Complaint where Plaintiffs attribute questionable motives, without support, to Chesapeake and their agents including insinuating that Chesapeake sold the home to them specifically because Plaintiffs “were not planning any improvements or work on the house.” *Complaint*, p. 6, fn. 2. Plaintiffs also seem to find significance in their realtor, Danette Ellis, winning an award for “highest amount in sales” the year they purchased the home *Id.* at p. 9, ¶44. Neither of these assertions, without more, provide any relevant information to support the cause of action.

¹⁸ *Complaint*, p. 4, ¶8, et. seq.

provide any basis for this allegation and do not clearly articulate the legal theory behind this assertion given the hidden nature of the defects.

Moreover, although Plaintiffs claim in their introduction that Chesapeake “possibly” engaged in “negligent fraud and fraudulent concealment¹⁹,” Plaintiffs do not elaborate on this contention in the body of the Complaint and do not adhere to the requirements of Ariz.R.Civ.P. 9(b) as regards allegations of fraud²⁰. Further, as pertains to any claims of fraud, a litigant must state “(1) A representation; (2) its falsity; (3) its materiality; (4) the speaker's knowledge of its falsity or ignorance of its truth; (5) his intent that it should be acted upon by the person and in the manner reasonably contemplated; (6) the hearer's ignorance of its falsity; (7) his reliance on its truth; (8) his right to rely thereon; (9) his consequent and proximate injury.” *Moore v. Meyers*, 31 Ariz. 347, 354, 253 P. 626, 628, *on reh'g*, 31 Ariz. 519, 255 P. 164 (1927).

Plaintiffs provide none of these basic elements in their Complaint, and no support for any claims of fraud. Finally, under the section in the Complaint labeled “Applicable Law Supporting Claims²¹,” Plaintiffs fail to offer any statutory references or caselaw to support their claims.

While Arizona courts are expected to grant leave to amend a complaint if the deficiencies can be cured, here, leave to amend was never requested by Plaintiffs. Moreover, the expiration of the statute of repose and the statutes of limitations are fatal to this Complaint and cannot be cured by amendment.

¹⁹ Complaint, p. 4, ¶8.

²⁰ “In alleging fraud or mistake, a party must state with particularity the circumstances constituting fraud or mistake. Malice, intent, knowledge, and other conditions of a person's mind may be alleged generally.” Ariz.R.Civ.P. 9(b)

²¹ *Id.*, p. 12.

Ultimately, the Court FINDS that the Complaint fails to comply with the rules governing pleading and fails to state claims upon which relief can be granted.

IT IS THEREFORE ORDERED, on the separate and independent ground that the Complaint fails to state a claim upon which relief can be granted, Chesapeake's Motion to Dismiss is granted.

Attorney Fees. Chesapeake argues that Plaintiffs' claim for attorney fees is "without merit or support," as Plaintiffs are self-represented. Plaintiffs respond that "if they wish to seek attorney fees at the entry of judgment, they must include a claim for attorney fees."²² As Plaintiffs have not been represented by counsel throughout these proceedings, it appears that Plaintiffs misunderstand the requirements of Ariz.R.Civ.P. 54(g)(1). Self-represented litigants are not entitled to an award of attorney fees.

As the Court has granted the Motion to Dismiss on multiple grounds, Chesapeake may file an application and affidavit for attorney fees, as described below.

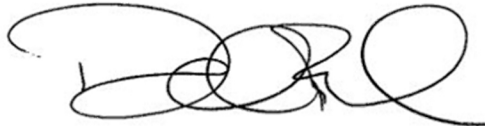
THIS ORDER IS NOT FINAL UNTIL A FORM OF ORDER CONTAINING Ariz.R.Civ.P. 54(C) LANGUAGE IS SIGNED.

IT IS FURTHER ORDERED that not later than twenty (20) calendar days after the entry of these Orders, Defendants may submit an application for attorney's fees and costs as well as a proposed form of Judgment pursuant to A.R.S. §§ 12-341, 12-341.01, and 12-349, with blanks left in the proposed form of Judgment for the amount of fees and costs. If Plaintiff wishes to

²² Response, p. 7:21-23.

object to the application and proposed form of Judgment submitted, a response must be filed *not later than 20 calendar days* after service of the same. Defendants are not permitted to file a reply unless requested to do so by the Court. The proposed form of Judgment may incorporate by reference from this minute entry ruling, but otherwise should be confined to Rule 54(c), Ariz. R. Civ. P., language

FURTHER ORDERED setting this matter for Internal Review (for review of application for attorney fees and any response thereto) on December 1, 2025.



eSigned by HONORABLE DELIA R NEAL, 10/15/2025 06:09:29 OTY6YiIR

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