IN THE MISSOURI COURT OF APPEALS
WESTERN DISTRICT

JEFFREY COX, et al.,	)	
	)	
Appellants,	)	
v.	)	
	)	**WD87645**
	)	
MORTGAGE ASSET SECURITIZATION TRANSACTIONS, INC. f/k/a PAINE WEBBER MORTGAGE ACCEPTANCE CORPORATION IV,	)	**OPINION FILED: December 16, 2025**
	)	
Respondent.	)	

Appeal from the Circuit Court of Clay County, Missouri
The Honorable David P. Chamberlain, Judge

Before Division Three: Alok Ahuja, Presiding Judge, Mark D. Pfeiffer, Judge, and Karen King Mitchell, Judge

Jeffrey and Michelle Cox (the Coxes), acting on behalf of the certified class of Missouri borrowers they represent (collectively, Borrowers), appeal from partial summary judgment granted to Mortgage Asset Securitization Transactions, Inc. (f/k/a Paine Webber Mortgage Acceptance Corporation IV) (MASTR) on the grounds that fourteen of the sixteen claims asserted against MASTR alleging violations of the

Missouri Second Mortgage Loan Act, §§ 408.231-408.241[1] (MSMLA), are barred by the six-year statute of limitations applicable to such claims. The Coxes raise four points on appeal. They argue the motion court erred in granting summary judgment because (1) MASTR waived its six-year statute of limitations defense, (2) Borrowers did not waive their objection to the defense by failing to move for a more definite statement, (3) Borrowers' claims were timely filed in that Borrowers sued MASTR within six years of MASTR's purchase of the underlying loans, and (4) the statute of limitations was tolled by the doctrine of class action tolling. Because we find that MASTR waived its limitations defense, we reverse and remand.

Background[2]

This case has a long and complicated history, including two prior appeals to this court, the first of which resulted in our opinion in *Baker v. Century Financial Group, Inc.*, where we held that MSMLA claims are governed by § 516.420's six-year statute of limitations.[3] 554 S.W.3d 426, 433 (Mo. App. W.D. 2018). For purposes of the present

[1] All statutory references are to the Revised Statutes of Missouri (2016), unless otherwise noted.

[2] On appeal from summary judgment, we "review the record in the light most favorable to the non-moving party and draw all reasonable inferences in that party's favor." *Baker v. Century Fin. Grp., Inc.*, 554 S.W.3d 426, 428 n.3 (Mo. App. W.D. 2018).

[3] Section 516.420 states,

> [n]one of the provisions of sections 516.380 to 516.420 shall apply to suits against moneyed corporations or against the directors or stockholders thereof, to recover any penalty or forfeiture imposed, or to enforce any liability created by the act of incorporation or any other law; but all such suits shall be brought within six years after the discovery by

appeal, which, like *Baker*, involves a fairly narrow legal issue, we endeavor to include only those facts necessary for a full understanding and evaluation of the issue presented.[4]

Borrowers are homeowners who obtained second mortgage loans[5] on their Missouri homes from Century Financial Group, Inc. (CFG). After making the loans, CFG sold or assigned them to other entities, including Master Financial, Inc. (MFI). MFI and other assignees pooled these (and other) loans and placed them in trusts; one of the MFI-sponsored trusts was the Master Financial Asset Trust 1998-2 (MFAST98-2). The pools were used to collateralize bonds or other investment instruments that were sold to investors. In connection with MFAST98-2, MFI sold and assigned all its rights, title, and interest in and to the sixteen CFG-originated Missouri loans at issue in this appeal (the Loans) to MASTR's predecessor, Paine Webber Mortgage Acceptance Corporation IV.

James and Jill Baker commenced this action on June 28, 2000, by filing a petition alleging, among other things, that CFG, MFI, and Defendants "Does 1-25" violated MSMLA by directly or indirectly charging, contracting for, and/or receiving excessive

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> the aggrieved party of the facts upon which such penalty or forfeiture attached, or by which such liability was created.

[4] Unless otherwise noted, we incorporate the factual and procedural background from *Baker*, without further attribution.

[5] MSMLA defines "second mortgage loan" as

> a loan secured in whole or in part by a lien upon any interest in residential real estate created by a security instrument, including a mortgage, trust deed, or other similar instrument or document, which provides for interest to be calculated at the rate allowed by the provisions of section 408.232, which residential real estate is subject to one or more prior mortgage loans.

§ 408.231.1.

loan origination fees and other fees not permitted by § 408.233.1.[6] MFI and Does 1-25 are alleged to be the "purchasers and/or assignees or the trustee[s] of the assignees and/or are or were the current holders of the [s]econd [m]ortgage [l]oans of [Borrowers], which mortgage notes were originated [and made] by [CFG] to [Borrowers]."

On February 26, 2002, the Bakers, joined by the Coxes and others, moved for certification of a plaintiffs' class.[7] In their motion, the plaintiffs argued that their claims "are subject to the [six]-year statute of limitations (claims against 'moneyed corporations') [in § 516.420]" and "the class period should therefore include claims arising [six] years before the action was filed." In opposing the motion to certify, the defendants urged the court to apply the three-year statute of limitations in § 516.130(2).

On January 2, 2003, the court issued its Order Certifying Plaintiff Class. The order defined the class as "[a]ll individuals who, on or after June 28, 1994: A. obtained a '[s]econd [m]ortgage [l]oan' from [CFG]; and B. who paid [fees or interest in violation of MSMLA], or who financed the payment of [fees or interest in violation of MSMLA] as part of the principal loan balance, at or before closing . . . ." In addition to certifying the class, the court determined that the six-year statute of limitations in § 516.420 applied to Borrowers' claims.

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[6] Section 408.233.1 provides, with specific exceptions, "[n]o charge other than that permitted by section 408.232 shall be directly or indirectly charged, contracted for or received in connection with any second mortgage loan." MSMLA further provides that "[a]ny person violating [that prohibition] shall be barred from recovery of any interest on the contract," except as otherwise provided in that section. § 408.236.

[7] The court formally joined the Coxes as plaintiffs on March 4, 2002.

On February 3, 2004, Borrowers filed their Fourth Amended Petition (the Petition), the operative pleading for purposes of this appeal, naming a predecessor of MASTR as a defendant for the first time. Among other things, the Petition asserts that the Loans are "high-cost" mortgages under the Home Ownership and Equity Protection Act, 15 U.S.C. § 1602(bb) (HOEPA), and, as a result, MASTR, among others, is derivatively liable on the Loans just as CFG is and would be liable on them. The Coxes do not contend that MASTR also is liable under MSMLA for its own direct violations. Instead, Borrowers are suing MASTR based only on its alleged derivative liability for CFG's violations of MSMLA.[8]

In its answer to the Petition, MASTR asserted the following affirmative defense, among others,

> 16. To the extent that [Borrowers] assert or purport to assert any claims arising from any second mortgage transaction entered into more than three years prior to the joinder and service of [MASTR], such claims are barred by the statute of limitations applicable to claims under [MSMLA] because [MASTR] is not a "moneyed corporation."

This is the only reference in MASTR's answer to a statute of limitations.

While this case was pending, we issued our opinion in *Schwartz v. Bann-Cor Mortgage*, holding that the six-year statute of limitations in § 516.420 applies to MSMLA claims. 197 S.W.3d 168, 178 (Mo. App. W.D. 2006). Significantly for present purposes, we held in *Schwartz* that the six-year limitations period applied to entities (like MASTR)

[8] For purposes of ruling on MASTR's motion for partial summary judgment that underlies this appeal, the motion court assumed, without deciding, that Borrowers' HOEPA derivative-liability theory was applicable.

that purchased second mortgage loans from the original lenders, "whether or not the assignees are 'moneyed corporations' under Missouri law." *Id.* at 179. Six years later, the U.S. Court of Appeals for the Eighth Circuit issued its opinion in *Rashaw v. United Consumers Credit Union*, which involved claims under the Missouri Uniform Commercial Code and the Missouri Merchandizing Practices Act. 685 F.3d 739 (8th Cir. 2012). There, the Eighth Circuit held that § 516.420 "is limited to penal statutes and does not apply to civil actions to recover penalties and forfeitures governed by § 516.130(2)." *Id.* at 744. Relying on *Rashaw*, the Eighth Circuit subsequently held that MSMLA claims are subject to the three-year limitations period in § 516.130(2), rather than the six-year limitations period in § 516.420. *See Washington v. Countrywide Home Loans, Inc.*, 747 F.3d 955, 958 (8th Cir. 2014); *Thomas v. US Bank NA ND*, 789 F.3d 900, 902 (8th Cir. 2015); *Wong v. Wells Fargo Bank N.A.*, 789 F.3d 889, 898 (8th Cir. 2015).

Based on those cases, one of MASTR's co-defendants moved to dismiss the Petition, arguing that Borrowers' claims were barred by the three-year statute of limitations in § 516.130(2). The circuit court granted the motion. Several other defendants then filed similar motions to dismiss and motions for summary judgment, which were granted. Borrowers' appeal of those judgments resulted in our opinion in *Baker*, wherein we reaffirmed *Schwartz*'s holding that § 516.420's six-year limitations period applied to MSMLA claims.

On January 4, 2024, MASTR moved for partial summary judgment based on expiration of the six-year statute of limitations for claims arising from fourteen of the sixteen Loans. In its motion, MASTR argued that Borrowers' alleged damages were

incurred and ascertainable at the time the Loans closed, such that if a Loan closed more than six years before Borrowers filed the Petition suing MASTR's predecessor, the MSMLA claim based on that Loan is time barred.

Following a hearing, the court granted MASTR's motion on October 16, 2024. In doing so, the court rejected Borrowers' arguments that (1) MASTR had waived the six-year statute of limitations defense and (2) the limitations period was tolled under the doctrine of class action tolling. The court's October 16, 2024 judgment resolved claims as to the fourteen Loans based on a common legal issue and is a final judgment subject to appeal pursuant to Rule 74.01(b).[9]

This appeal follows.

[9] Missouri Supreme Court Rule 74.01(b) states, in relevant part, "[w]hen more than one claim for relief is presented in an action . . . , or when multiple parties are involved, the court may enter a judgment as to one or more but fewer than all of the claims or parties only upon an express determination that there is no just reason for delay." *Baker*, 554 S.W.3d at 431 n.15 (quoting Rule 74.01(b)). Here, the motion court expressly concluded that there was no just reason for delay. We review the court's decision to enter a final judgment under Rule 74.01(b) for abuse of discretion. *Id.* Where a "trial court resolved all legal issues and left open no remedies" as between some plaintiffs and a particular defendant, the court had the authority under Rule 74.01(b) to "enter [a] judgment as to fewer than all parties and certify that there is 'no just reason for delay.'" *Id.* (quoting *Gibson v. Brewer*, 952 S.W.2d 239, 245 (Mo. banc 1997)). In the present case, the court's award of partial summary judgment resolved claims as to fourteen Loans based on a common legal issue that controls the disposition of all similarly situated claims asserted in the class action, rendering the judgment appealable under Rule 74.01(b). *Id.* Thus, the court did not abuse its discretion in entering a final judgment, and its judgment is properly before us for review. *Id.* All rule references are to the Missouri Supreme Court Rules (2024).

Standard of Review

"We review the grant of summary judgment *de novo*." *Amoroso v. Truman State Univ.*, 683 S.W.3d 298, 302 (Mo. App. W.D. 2024) (quoting *Malin v. Mo. Ass'n of Cmty. Task Forces*, 669 S.W.3d 315, 320 (Mo. App. W.D. 2023)). Additionally, whether a claim is barred by the statute of limitations is a question of law which we review *de novo*. *Schultz v. Bank of Am. Merrill Lynch Credit Corp.*, 645 S.W.3d 689, 695 (Mo. App. E.D. 2022).

We will affirm the grant of summary judgment "if there is no genuine dispute as to any material fact and the moving party is entitled to judgment as a matter of law." *Baker*, 554 S.W.3d at 432. When summary judgment is based on an affirmative defense such as a statute of limitations, "there must be no genuine dispute as to the facts required to support the defense." *Id.*

Analysis

The Coxes raise four points on appeal. They argue the motion court erred in granting partial summary judgment to MASTR because (1) MASTR waived its six-year statute of limitations defense, (2) Borrowers did not waive their objection to the defense by failing to move for a more definite statement, (3) Borrowers' claims were timely in that Borrowers sued MASTR's predecessor within six years of MASTR's purchase of the underlying loans, and (4) the statute of limitations was tolled by the doctrine of class action tolling.

A. MASTR waived its statute of limitations defense by failing to plead the six-year limitations period on which MASTR's summary judgment motion relies (Point I).

For their first point, the Coxes assert the motion court erred in granting partial summary judgment to MASTR because it failed to properly plead the six-year statute of limitations or MASTR otherwise waived that defense.

In its answer to the Petition, MASTR asserted,

> 16. To the extent that [Borrowers] assert or purport to assert any claims arising from any second mortgage transaction entered into more than three years prior to the joinder and service of [MASTR], such claims are barred by the statute of limitations applicable to claims under [MSMLA] because [MASTR] is not a "moneyed corporation."

Paragraph 16 is the only reference in MASTR's answer to a statute of limitations, and MASTR never moved to amend Paragraph 16.

"The statute of limitations is an affirmative defense, and as such, it must be raised in the responsive pleadings." *Heintz v. Swimmer*, 922 S.W.2d 772, 774 (Mo. App. E.D. 1996) (citing Rule 55.08). Rule 55.08 states, in part, "A pleading that sets forth an affirmative defense . . . shall contain a short and plain statement of the facts showing that the pleader is entitled to the defense . . . ." Missouri courts have interpreted Rule 55.08 to "require the party asserting the statute of limitations to plead the specific statutory section relied on." *Id.*; *see also Bateman v. Platte Cnty.*, 363 S.W.3d 39, 42 (Mo. banc 2012) ("A general reference to 'the statute of limitations' does not satisfy the necessity of pleading the particular provision relied upon."). "The pleading requirements for affirmative defenses serve to ensure that an opposing party is informed of and prepared to address the issues being raised by the defense." *Dieser v. St. Anthony's Med. Ctr.*, 498 S.W.3d 419,

429 (Mo. banc 2016). And, in the case of summary judgment, it cannot be awarded on the basis of an unpleaded affirmative defense. *Eaker v. Kansas City Power & Light Co.*, 473 S.W.3d 153, 161 (Mo. App. W.D. 2015) (finding the circuit court erred by granting summary judgment on the basis of an unpleaded affirmative defense).

Paragraph 16 of MASTR's answer does not refer to § 516.420, the six-year statute of limitations that is the basis for MASTR's summary judgment motion. Notably, Paragraph 16 actually argues *against* application of § 516.420 because MASTR alleged that it "is not a moneyed corporation," and § 516.420 expressly applies to "suits against moneyed corporations or against the directors and stockholders thereof." Thus, Paragraph 16 does not meet Missouri's pleading requirements for the six-year statute of limitations defense.

While acknowledging that it did not plead § 516.420 as an affirmative defense, MASTR argues that, having litigated the applicable limitations period for years, the Coxes cannot have been unfairly surprised, after *Baker*, by MASTR's assertion of the six-year limitations period. Following years of litigation during which Borrowers insisted that their MSMLA claims were subject to § 516.420, MASTR contends that the Coxes cannot now credibly assert that they were not "informed of and prepared to address the issues being raised by" MASTR's invocation of that very statute. *See Dieser*, 498 S.W.3d at 429.

We do not reach the same conclusion. Before *Baker*, MASTR relied on the three-year limitations period in § 516.130(2). Then, in *Baker*, we rejected the three-year limitations period in § 516.130(2) in favor of the six-year period in § 516.420. The effect

of *Baker* was to double the limitations period applicable to Borrowers' claims. When MASTR failed to assert § 516.420 as an affirmative defense following *Baker*, the natural interpretation would be that, although MASTR believed Borrowers' claims were barred under § 516.130(2), it accepted that the claims were timely under the longer period afforded by § 516.420. It is unreasonable to expect the Coxes to assume that, years after *Baker*, MASTR would choose to assert a new and different limitations defense (and one that MASTR had previously rejected) with a limitations period double in length. Thus, we reject MASTR's argument that the Coxes should have foreseen MASTR's reliance on § 516.420, especially where MASTR failed to seek leave to amend its answer to reference § 516.420.[10]

Notwithstanding MASTR's failure to amend its affirmative defense, MASTR argues, for the first time on appeal, that we should affirm the grant of partial summary judgment in its favor because it could have requested leave to amend its defense and it would have been an abuse of discretion for the trial court to deny that leave. MASTR relies on *Rose v. City of Riverside*, 827 S.W.2d 737 (Mo. App. W.D. 1992), which refused to reverse a circuit court's grant of summary judgment based on an unpleaded

[10] MASTR cites *Reynolds v. Carter County*, 323 S.W.3d 447 (Mo. App. S.D. 2010), and its discussion of *Cox v. Ripley County*, 2010 WL 2944428 (Mo. App. S.D. July 27, 2010), for the proposition that a later change in the law can excuse a defendant from properly pleading a limitations defense. *Reynolds*, 323 S.W.3d at 453. But *Cox* is no longer good law because the Missouri Supreme Court granted transfer in that case, thereby vacating the appellate court's decision, and the parties later dismissed the case following settlement. Moreover, even though *Cox* excused a defendant from having to file an amended answer after a change in the law, *Cox* itself noted that "better practice may have dictated the [defendant's] amendment of its answer." *Cox*, 2010 WL 2944428, at *3.

statute of limitations defense, where "[i]t would be an abuse of discretion to refuse to allow the respondent to amend its answer to include a statute of limitations defense," if the case were to be reversed and remanded. *Id.* at 739. In its briefing, MASTR asserts that the circuit court would be required to permit it to amend its answer, based on the fact that it actually pleaded a different limitations defense, and based on its contention that the Coxes were on notice of MASTR's intent to rely on § 516.420. We have already rejected the assertion that MASTR's reliance on the three-year statute of limitations put the Coxes on notice that MASTR intended to rely on the six-year statute of limitations, and MASTR points to no other facts in the record that supports this assertion. Given MASTR's limited arguments, we cannot determine on appeal that it would have been an abuse of discretion for the court to deny them leave.

Point I is granted.

B. The Coxes did not waive their objection to MASTR's statute of limitations defense by failing to move for a more definite statement (Point II).

The Coxes also contend the motion court erred in concluding that they waived any objection to MASTR's six-year statute of limitations defense by failing to move for a more definite statement (Point II). We agree.

The Coxes' contention is not that MASTR insufficiently pleaded the three-year statute of limitations in § 516.130(2). Rather, their assertion is that MASTR did not plead the six-year statute of limitations in § 516.420 *at all*. There is no requirement that the Coxes file a motion asking MASTR to, in effect, assert a different or additional limitations defense than the one it asserted in its answer. It was MASTR's burden to

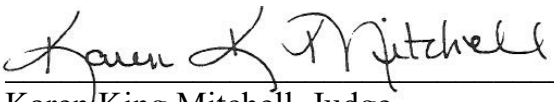
plead a limitations defense under § 516.420 (even in the alternative) if it believed that Borrowers' claims were untimely under the longer, six-year limitations period. MASTR simply failed to so do.

Point II is granted.

Our conclusion that MASTR waived its six-year statute of limitations defense renders the Coxes' remaining points on appeal moot. Thus, we do not reach Points III and IV.

Conclusion

Because MASTR waived its six-year limitations defense by failing to plead it and Borrowers did not waive their objection to the defense, the motion court erred in granting partial summary judgment to MASTR. Accordingly, we reverse and remand for further proceedings consistent with this opinion.



Karen King Mitchell, Judge

Alok Ahuja, Presiding Judge, and Mark D. Pfeiffer, Judge, concur.