NOT FINAL UNTIL TIME EXPIRES TO FILE REHEARING
MOTION AND, IF FILED, DETERMINED

IN THE DISTRICT COURT OF APPEAL

OF FLORIDA

SECOND DISTRICT

JOSEPH RANUCCI; ROSE RANUCCI; and AMBERWYND OF SNEAD ISLAND HOMEOWNERS ASSOCIATION, INC.,

Appellants,

v.

CITY OF PALMETTO,

Appellee.

Case No. 2D20-806

Opinion filed April 14, 2021.

Appeal from the Circuit Court for Manatee County; Edward Nicholas, Judge.

Adam C. Gurley of Rabin Parker Gurley, P.A., Clearwater, for Appellants.

Fred E. Moore and Mark Barnebey of Blalock Walters, P.A., Bradenton, for Appellee.

BLACK, Judge.

Joseph Ranucci, Rose Ranucci, and the Amberwynd of Snead Island Homeowners Association, Inc. (HOA), challenge the final judgment entered in favor of

the City of Palmetto in its action for declaratory relief and specific performance. Because the City's claims are time-barred pursuant to sections 95.11(2)(b) and 95.11(5)(a), Florida Statutes (2017), we reverse. As the statute of limitations issue is dispositive, we decline to comment on the remaining issues raised on appeal.

On July 7, 1993, the owner of two parcels of land on Snead Island, Snead Island Estates West and Snead Island Estates North—both of which were located outside the City's boundaries, entered into an agreement with the City pursuant to which the City would provide water and sewer services for the land. In exchange for those services, the agreement provided for the eventual annexation of the land pursuant to section 171.044, Florida Statutes:

> At such time that either of the two properties[—Snead Island Estates West and Snead Island Estates North—]or any lots within the properties become contiguous to the City, the . . . owner or owners of said properties will petition the City for voluntary annexation of said properties or lots in accordance with the procedures established in Section 171.044, Florida Statutes.

The annexation agreement also provided that it was binding upon the owner's successors and assignees. The annexation agreement was not recorded. Thereafter, on March 31, 1994, the owner conveyed both parcels of land to the Snead Island Development Corporation (Developer). The Snead Island Estates West parcel—which is now known as Amberwynd of Snead Island—is the subject of this action. On April 13, 1995, the Developer executed and recorded a declaration of covenants, conditions, restrictions, and easements for Snead Island Estates West, which was recorded in the public records. Approximately five years later, on August 4, 2000, the Developer

executed an amendment to the declaration of covenants, which includes a clause addressing annexation. The 2000 amendment was recorded in the public records.

In 2003, the Ranuccis purchased a lot within the Amberwynd of Snead Island subdivision, and the City's property became contiguous to their lot on February 2, 2004. The Ranuccis did not, however, petition the City for annexation. Following a meeting between representatives of the City and of the HOA, counsel for the HOA sent a letter to the City on April 14, 2004, which provided in part:

> The [HOA's] Board of Directors has unanimously determined that I communicate to you as attorney for the City of Palmetto the [HOA's] resolve to resist by all available means the annexation of the [Amberwynd of Snead Island] Subdivision into the City of Palmetto. . . .
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> . . . .
>
> In the event the City of Palmetto seeks to compel the 'voluntary' annexation of the [Amberwynd of Snead Island] Subdivision into the City on the basis of the 1993 [annexation] [a]greement or otherwise, my client will vigorously challenge such action, including through litigation as necessary . . . .

No further action was taken by the City at that time. In February 2008, the HOA amended the declaration of covenants. The amended declaration of covenants, which was recorded, does not contain a provision about annexation, nor does it reference the 1993 annexation agreement.

In February 2017, the City sent a letter to the HOA explaining that Amberwynd of Snead Island had become contiguous to the City's property and requesting that the HOA petition for annexation of all common areas owned by it pursuant to the 1993 annexation agreement. A similar letter was sent to the Ranuccis in April 2017, which explained that their lot had become contiguous to the City's

property and requested that they petition for annexation pursuant to the 1993 annexation agreement. A short time later, the Ranuccis and the HOA notified the City that they did not intend to petition for annexation. On August 29, 2017, the City filed a complaint for declaratory relief against the Ranuccis. The City sought a declaration that the Ranuccis' lot is contiguous to the City's property, that the 1993 annexation agreement is valid and enforceable, that the Ranuccis had notice of the annexation agreement, and that the Ranuccis are required to petition for annexation. The City also sought specific performance of the annexation agreement. The HOA moved to intervene, and the motion was granted.

On August 12, 2019, the City filed an amended complaint seeking a declaration that the Ranuccis' lot is contiguous to the City's property, that the 1993 annexation agreement is valid and enforceable, that the Ranuccis and the HOA had notice of the annexation agreement, that the Ranuccis are required to petition for annexation, and that the Ranuccis and the HOA are equitably estopped from refusing to perform under the annexation agreement. The City also sought specific performance of the annexation agreement. In the event that the annexation agreement was found to be invalid and unenforceable, the City requested that the trial court declare the HOA and the Ranuccis responsible for the sewer system and order them to pay compensatory damages.

Following a two-day, nonjury trial in January 2020, the trial court entered judgment in favor of the City and made the following findings: the action is not barred by the statutes of limitations since the parties' obligations are continuing in nature, the 1993 annexation agreement is valid and enforceable, the HOA and the Ranuccis were on

notice of the agreement pursuant to the 2000 amendment to the declaration of covenants, the City became aware that the "conditions were ripe for annexation of the lots within . . . Amberwynd of Snead Island" in early 2004, the Ranuccis' lot is contiguous to the City's property, and the Ranuccis and the HOA are obligated to comply with the annexation agreement. This appeal followed.

"A legal issue surrounding a statute of limitations question is an issue of law subject to de novo review." Hamilton v. Tanner, 962 So. 2d 997, 1000 (Fla. 2d DCA 2007); accord Lexon Ins. Co. v. City of Cape Coral, 238 So. 3d 356, 358 (Fla. 2d DCA 2017). Moreover, "[a] 'statute of limitations' is a procedural statute that prevents the enforcement of a cause of action that has accrued." Houck Corp. v. New River, Ltd., Pasco, 900 So. 2d 601, 603 (Fla. 2d DCA 2005). "It does not determine the underlying merits of the claim, but merely cuts off the right to file suit on that claim." Id. (citing Allie v. Ionata, 503 So. 2d 1237, 1240-41 (Fla. 1987)). "A cause of action accrues when the last element constituting the cause of action occurs." Harris v. Aberdeen Prop. Owners Ass'n, 135 So. 3d 365, 368 (Fla. 4th DCA 2014) (quoting § 95.031(1), Fla. Stat. (2005)). "[P]ut another way, the limitations period begins to run when the action 'may be brought.' " Id. (quoting City of Riviera Beach v. Reed, 987 So. 2d 168, 170 (Fla. 4th DCA 2008)).

There is no dispute that the Ranuccis' lot became contiguous to the City's property in February 2004. To the extent that the City sought declaratory relief based on the annexation agreement, the Ranuccis and the HOA contend that the City was required to commence the legal proceedings by February 2009. See § 95.11(2)(b) (providing that "[a] legal or equitable action on a contract, obligation, or liability founded

on a written instrument" must be commenced within five years). Moreover, the Ranuccis and the HOA contend that the City was required to seek specific performance of the annexation agreement by February 2005. See § 95.11(5)(a) (providing that "[a]n action for specific performance of a contract" must be commenced within one year).

A cause of action for declaratory relief accrues when the following conditions have been met:

> "There is a bona fide, actual, present practical need for the declaration; that the declaration should deal with a present, ascertained or ascertainable state of facts or present controversy as to a state of facts; that some immunity, power, privilege or right of the complaining party is dependent upon the facts or the law applicable to the facts; that there is some person or persons who have, or reasonably may have an actual, present, adverse and antagonistic interest in the subject matter, either in fact or law; that the antagonistic and adverse interests are all before the court by proper process or class representation and that the relief sought is not merely giving of legal advice by the courts or the answer to questions propounded from curiosity."

Harris, 135 So. 3d at 368 (quoting Coal. for Adequacy & Fairness in Sch. Funding, Inc. v. Chiles, 680 So. 2d 400, 404 (Fla. 1996)). All of these conditions were met—and thus the City's cause of action for declaratory relief accrued—when the Ranuccis' lot became contiguous to the City's property and they failed to petition for annexation as contemplated by the annexation agreement. Cf. id. at 368-69 (concluding that property owner's cause of action for declaratory relief against the appellees accrued when she took title to the property and became subject to the mandatory membership amendment to the governing documents). Furthermore, a short time after the Ranuccis' lot became contiguous to the City's property, the HOA made it clear to the City that it would "vigorously challenge" the City's efforts to compel annexation of any property within the

Amberwynd of Snead Island subdivision, "including through litigation as necessary." See Pembroke Ctr., LLC v. Dep't of Transp., 64 So. 3d 737, 739 (Fla. 4th DCA 2011) ("A party is entitled to a declaration of rights where the ripening seeds of controversy make litigation in the immediate future appear unavoidable." (quoting S. Riverwalk Invs., LLC v. City of Fort Lauderdale, 934 So. 2d 620, 623 (Fla. 4th DCA 2006))). Accordingly, the City's request for declaratory relief based on the annexation agreement, which was made thirteen years after the cause of action accrued, was time-barred.

Similarly, the City's request for specific performance of the annexation agreement was time-barred. The statute of limitations on an action for specific performance of an agreement begins to run on the date the agreement is breached. McMillan v. Shively, 23 So. 3d 830, 831 (Fla. 1st DCA 2009) (citing Cent. Nat'l Bank v. Cent. Bancorp, Inc., 411 So. 2d 358, 362 (Fla. 3d DCA 1982)). Therefore, once the Ranuccis failed to petition for annexation, the City had one year within which to file its claim for specific performance of the annexation agreement. See § 95.11(5)(a); cf. Langley Ltd. P'ship, LLLP v. Sch. Bd. of Lake Cnty., Fla., 113 So. 3d 995, 998 (Fla. 4th DCA 2013) (holding that the school board's action for breach of contract and specific performance accrued when Langley failed to deed the property to the school board by the date set forth in the agreement and therefore the action—filed more than five years later—was barred by the five-year and one-year limitations periods set forth in section 95.11(2)(b) and section 95.11(5)(a), respectively). Moreover, the City, as part of its claim for declaratory relief, requested that the trial court "declare . . . that Ranucci is required to petition the City for annexation," which was also effectively a request for

specific performance subject to the one-year statute of limitations. See Melbourne Ocean Club Condo. Ass'n v. Elledge, 71 So. 3d 144, 146 (Fla. 5th DCA 2011) ("As a general rule, contractual obligations may be classified as affirmative, where one agrees that something has been or will be done, or negative, where one agrees that something has not been or will not be done. The equitable remedy for breach of the former is an order requiring specific performance . . . . Here, Appellees were requesting the court to enter an order requiring [one of the appellants] to perform an affirmative obligation under the rental agreements . . . . Thus, Appellees' claim against [the appellant] constituted an action for specific performance, subject to a one year statute of limitations." (citing Seaboard Oil Co. v. Donovan, 128 So. 821, 824 (Fla. 1930))).

Despite being aware that the Ranuccis' lot had become contiguous to the City's property in early 2004 and that the HOA had no intention to petition for annexation of any of the property within the Amberwynd of Snead Island subdivision, the City waited thirteen years to seek to enforce the annexation agreement. Such inaction for an extended duration of time is exactly the type of conduct that a statute of limitations is designed to prevent. See Raymond James Fin. Servs., Inc. v. Phillips, 126 So. 3d 186, 192 (Fla. 2013) ("Clearly, the purpose of the statute of limitations includes 'protect[ing] defendants from unfair surprise and stale claims.' As this Court has recognized: 'As a statute of [limitations], they afford parties needed protection against the necessity of defending claims which, because of their antiquity, would place the defendant at a grave disadvantage. In such cases how resolutely unfair it would be to award one who has willfully or carelessly slept on his legal rights an opportunity to enforce an unfresh claim against a party who is left to shield himself from liability with nothing more than tattered

or faded memories, misplaced or discarded records, and missing or deceased witnesses. Indeed, in such circumstances, the quest for truth might elude even the wisest court.' " (alterations in original) (first quoting Fla. Dep't of Health & Rehab. Servs. v. S.A.P., 835 So. 2d 1091, 1096 (Fla. 2002); and then quoting Major League Baseball v. Morsani, 790 So. 2d 1071, 1075 (Fla. 2001))).

Furthermore, the trial court's conclusion that the City's claims are not time-barred by section 95.11 because all the parties' obligations under the annexation agreement are ongoing and continuous in nature is erroneous. Cf. Grove Isle Ass'n v. Grove Isle Assocs., 137 So. 3d 1081, 1095 (Fla. 3d DCA 2014) ("[W]here an obligation is continuing in nature, a party's 'ongoing nonperformance constitute[s] a continuing breach while the contract remain[s] in effect.' " (second and third alteration in original) (quoting City of Quincy v. Womack, 60 So. 3d 1076, 1078 (Fla. 1st DCA 2011))). While the City's obligation to provide services to Amberwynd of Snead Island is ongoing and continuous in nature, the obligation of the Ranuccis and of the HOA to petition for annexation under the terms of the annexation agreement is not. The obligation on any given property or lot owner within the Amberwynd of Snead Island subdivision arises only once—when the owner's property or lot becomes contiguous to the City's property.

In this case, the City's causes of action accrued in 2004. As such, the City's requests for declaratory relief and specific performance were barred by the respective five-year and one-year limitations periods set forth in section 95.11. Accordingly, we reverse the final judgment and remand for the trial court to enter judgment in favor of the Ranuccis and the HOA.

Reversed and remanded.

MORRIS and STARGEL, JJ., Concur.