

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA**

SIM DEVELOPMENT, LLC,

*Plaintiff,*

v.

DISTRICT OF COLUMBIA,

*Defendant.*

Civil Action No. 1:19-cv-03383 (CJN)

**MEMORANDUM OPINION**

Sim Development, LLC filed this lawsuit in the Superior Court of the District of Columbia, alleging a taking of private property without just compensation under the Fifth Amendment. *See generally* Compl., ECF No. 1-2. The District of Columbia removed to this Court and now moves to dismiss or, in the alternative, for summary judgment. *See generally* Def.’s Mot. to Dismiss or for Summ. J. (“Def.’s Mot.”), ECF No. 3. For the reasons that follow, the Court grants the District’s Motion.

**I. Background**

Sim Development owns property located at 2666 Martin Luther King, Jr. Avenue, SE, Washington, D.C. Compl. ¶ 5.<sup>1</sup> Until 2011, a vacant building stood on the property. *Id.* ¶¶ 6–7. In early December of that year, the District, without prior notice to Sim Development, razed the building (which Sim Development had itself planned to demolish) and brought in soil from another site to grade the property to street level. *Id.* ¶¶ 6, 8–11. Sim Development’s sole

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<sup>1</sup> On a motion to dismiss under Federal Rule of Civil Procedure 12(b)(6), the Court must, of course, accept well-pleaded facts in the Complaint as true. *See Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555–56 (2007).

member, Yosief Maharai, learned of the building demolition and arrived while the excavation was being filled. *Id.* ¶ 8–9. The District ultimately levied a special assessment against the property for the razing in the amount of \$34,675; as a result of interest, late payment fees, and other charges, the total assessment is currently over \$82,000. *Id.* ¶ 18.

Sim Development hired an environmental engineer to test the new soil and found that it contained petroleum and other contaminants. *Id.* ¶ 20. Together, the special assessment and the contaminated soil, which disqualified the property from development, rendered the property effectively worthless. *Id.* ¶¶ 25–26. Sim Development requested the District remove the new soil and lift the special assessment multiple times, including by a January 31, 2012 letter notifying the District of potential damages claims. *Id.* ¶¶ 21–22. The District did not respond until “[r]ecently,” *id.* ¶ 23–24, explaining it razed the property because the building was not properly enclosed—an explanation Sim Development contests. *Id.* ¶ 24.

On September 26, 2019, Sim Development filed this lawsuit in D.C. Superior Court, asserting one claim: that the District’s actions constitute a taking of private property without just compensation under the Fifth Amendment. *Id.* ¶ 30. On November 8, 2019, the District removed under 28 U.S.C. §§ 1441 and 1446, *see generally* Notice of Removal, ECF No. 1, and on November 15, 2019, moved to dismiss for failure to state a claim or, in the alternative, for summary judgment, *see generally* Def.’s Mot.

## **II. Legal Standard**

To survive a motion to dismiss under Federal Rule of Civil Procedure 12(b)(6), a plaintiff bears the burden to plead “enough facts to state a claim to relief that is plausible on its face.” *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007). When considering a Rule 12(b)(6) motion, the Court must accept all well-pleaded facts alleged in the Complaint as true and draw all reasonable inferences from those facts in the plaintiff’s favor. *W. Org. of Res. Councils v.*

*Zinke*, 892 F.3d 1234, 1240–41 (D.C. Cir. 2018). And a claim is facially plausible if “the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (citing *Twombly*, 550 U.S. at 556).

### **III. Analysis**

The District argues that the Complaint should be dismissed because “the statute of limitations on a takings claim is three years from the date the claim accrues,” and the alleged taking accrued more than three years prior to the Complaint’s filing. *See* Def.’s Mot. at 4 (citing D.C. Code § 12-301(3) (2020) (claims “for the recovery of damages for an injury to real or personal property”) and § 12-301(8) (claims “for which a limitation is not otherwise specially prescribed”)). Sim Development counters “that this action should be governed either by the fifteen (15) year limitations period set forth in D.C. Code § 12-301(a)(1) [sic], which governs actions ‘for the recovery of lands, tenements, or hereditaments’ or . . . by the equitable doctrine of laches.” Pl.’s Opp’n to the Def.’s Mot. (“Pl.’s Opp’n”) at 3, ECF No. 4.

#### **A. Statute of Limitations**

“[A] motion to dismiss may be granted on the basis that the action is time-barred only when it appears from the face of the Complaint that the relevant statute of limitations bars the action.” *Firestone v. Firestone*, 76 F.3d 1205, 1210 (D.C. Cir. 1996) (quoting *Doe v. United States Dep’t of Justice*, 753 F.2d 1092, 1115 (D.C. Cir. 1985)); *see also Wharf, Inc. v. District of Columbia*, 133 F. Supp. 3d 29, 33 (D.D.C. 2015). It is apparent from the face of the Complaint that the relevant statute of limitations is three years and that the claim accrued more than three years prior to the Complaint’s filing.

Sim Development contends that the present claim primarily “involves the recovery of the land itself” rather than “the recovery of ‘damages for an injury to real or personal property,’”

Pl.'s Opp'n at 5, and thus that the fifteen-year limitation in subsection 12-301(1) applies. That subsection applies to claims "for the recovery of lands, tenements, or hereditaments," D.C. Code § 12-301(1), and "serves to establish the period of 'actual, exclusive, continuous, open and notorious possession' required to obtain a valid title to land in the District of Columbia," *Hancock v. Homeq Servicing Corp.*, No. 05-0307, 2007 WL 1238746, at \*4 n.4 (D.D.C. Apr. 27, 2007), *aff'd*, 526 F.3d 785 (D.C. Cir. 2008) (citation omitted).

The Court disagrees. Subsection 12-301(1)'s fifteen-year statute of limitations does not apply in this case because "there is no cloud on Plaintiff's title or question as to Plaintiff's ownership of the property." Def.'s Reply to Pl.'s Opp'n at 2, ECF No. 5. In other words, Sim Development's alleged harm does not relate to the possession of the land. Instead, Sim Development seeks to recover "damages for an injury to real or personal property," D.C. Code § 12-301(3), resulting from the District's having razed the building at an allegedly inflated cost and graded the land with allegedly contaminated soil.

That should end the matter, but the Parties also disagree over the relevance of the decision in *Wharf, Inc.*, 133 F. Supp. 3d 29. Sim Development incorrectly argues that *Wharf, Inc.* is not persuasive authority because the limitation period there was uncontested. *See* Pl.'s Opp'n at 4. The Court in *Wharf, Inc.* expressly held that subsection 12-301(3) applied to the facts of the case. 133 F. Supp. 3d at 34 n.5 ("The Court finds that section (3) is applicable because Plaintiffs' takings claim is premised on an alleged injury to real property."). The other authorities on which Sim Development relies to suggest a fifteen-year limitation period are also distinguishable from the present case. *See, e.g., D.C. Redevelopment Land Agency v. Dowdey*, 618 A.2d 153, 157 (D.C. 1992) (finding a fifteen-year statute of limitations because the lien "attached to the [Plaintiff's] share of the condemnation proceeds rather than to the property that

was the subject of the condemnation proceedings. The lien was explicitly on land, not any structure on the land.”). Subsection 12-301(3) and its three-year limitations period thus governs here.

Sim Development filed suit in D.C. Superior Court on September 26, 2019. For Sim Development’s claim not to be barred by the three-year statute of limitations, it must have accrued no earlier than September 26, 2016. A takings claim “first accrues when all the events have occurred which fix the alleged liability of the [government] and entitle the plaintiff to institute an action.” *Wharf, Inc.*, 133 F. Supp. 3d at 36 (quoting *Hopland Band of Pomo Indians v. United States*, 855 F.2d 1573, 1577 (Fed. Cir. 1988)). “Therefore, a claim under the Fifth Amendment accrues when [the] taking action occurs.” *Id.* (quoting *Goodrich v. United States*, 434 F.3d 1329, 1333 (Fed. Cir. 2006)). Further, under the District of Columbia’s discovery rule, “a claim does not accrue until a plaintiff knows, or by the exercise of reasonable diligence should know, of (1) an injury, (2) its cause, and (3) some evidence of wrongdoing.” *Bradley v. Nat’l Ass’n of Secs. Dealers Dispute Resolution, Inc.*, 433 F.3d 846, 850 (D.C. Cir. 2005) (citation omitted).

Sim Development was on notice of the damage to the property when the initial demolition was still ongoing, or at the latest on January 31, 2012, when it conveyed notice of its claim to the District. *See supra* at 2. Sim Development’s own allegations demonstrate that it had actual notice of the alleged taking well prior to September 26, 2016, and its claim is therefore time-barred.

## **B. Laches**

Sim Development alternatively suggests “this type of action where equitable relief is sought would be more appropriately governed by the doctrine of laches.” Pl.’s Opp’n at 5. Laches is typically an equitable affirmative defense and not a cause of action, *see, e.g., Naccache*

*v. Taylor*, 72 A.3d 149, 153 (D.C. 2013) (“In actions at equity, the defense of laches [is] available.”), so it is unclear exactly what Sim Development argues here. In any event, Sim Development’s claim does not arise in equity, but rather is a claim for monetary compensation for the excessive cost of demolishing the building and the harm caused by adding contaminated soil to the property.<sup>2</sup> These claims are for damages related to the District’s actions, rather than for equitable relief relating to the removal of the building itself or some other act. The equitable defense of laches thus does not apply.

Sim Development incorrectly relies on distinguishable Supreme Court precedent to support its claim to equitable relief. *See* Opp. To Mot. For Summ. J. at 6 (citing *E. Enters. v. Apfel*, 524 U.S. 498, 521 (1998)). While the Court in *Eastern Enterprises* “assumed the lack of a compensatory remedy and . . . granted equitable relief for Takings Clause violations,” there is no need for that assumption here. 524 U.S. at 521; *cf. New York v. Microsoft Corp.*, 209 F. Supp. 2d 132, 155 (D.D.C. 2002) (declining to dismiss Takings Clause action where equitable relief was sought until conducting “a substantive evaluation of the competing remedy proposals”). As outlined above, Sim Development expressly seeks compensatory damages rather than equitable relief. And none of the other authorities Plaintiff cites are analogous to the present case because they involve property rights rather than compensation for an injury to property. *See, e.g., Granville v. Hunt*, 566 A.2d 65, 68 (D.C. 1989) (holding “the guiding principle is one of laches” for an equitable action involving property rights).

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<sup>2</sup> Sim Development disputes the high value of the special assessment, *see* Compl. ¶ 29, implies the lien would have been reasonable had it been for the amount of the \$12,000 third-party contract bid, *see id.* ¶ 19, and asserts damages from the contaminated soil, *see id.* ¶¶ 26, 28.

#### **IV. Conclusion**

For the foregoing reasons, the District's Motion to Dismiss is **GRANTED**. An Order will be entered contemporaneously with this Memorandum Opinion.

DATE: July 2, 2020

A handwritten signature in black ink, appearing to read "Carl J. Nichols", written over a horizontal line.

CARL J. NICHOLS  
United States District Judge