

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN

PATRICK J. HUDEC,
Plaintiff,

v.

Case No. 25-cv-235

NICOLETTE PRPA,
Defendant.

DECISION AND ORDER

Defendant Nicolette Daniel (formerly Nicolette Prpa) moves for judgment on the pleadings pursuant to Rule 12(c). She also moves for dismissal under Rule 12(b)(2) for lack of personal jurisdiction. For the reasons that follow, defendant's motion is denied.

A. Personal Jurisdiction

Defendant asserts that this case must be dismissed for lack of personal jurisdiction because she was not properly served within 90 days of filing the complaint. See Wis. Stat. § 801.02 (service within 90 days). Service was performed on David Daniel—defendant's current husband and attorney—at his place of business. ECF No. 18 at 12. He contends that he was neither defendant's husband nor her attorney at that time, and she had not authorized him to accept service on her behalf.

If true, a Wisconsin state court would have no choice but to dismiss this case. See Wis. Stat. § 801.15 ("The 90 day period under § 801.02 may not be enlarged."). However, I must apply the federal rules of procedure:

In all cases removed from any State court to any district court of the United States in which any one or more of the defendants has not been served with process or in which the service has not been perfected prior to removal, or in which process served proves to be defective, such process or service

may be completed or new process issued in the same manner as in cases originally filed in such district court.

28 U.S.C. § 1448. Therefore, Federal Rule of Civil Procedure 4(m) permits the court “on motion or on its own” to “order that service be made within a specified time” beyond 90 days. To resolve any question of personal jurisdiction, plaintiff shall serve defendant and file proof of service pursuant to Rule 4 and applicable state law within 30 days of this order.¹

B. Judgment on the Pleadings

I first note that I have subject-matter jurisdiction pursuant to 28 U.S.C. § 1332(a) because the complaint alleges complete diversity between the parties and an amount in controversy greater than \$75,000. Defendant moves for judgment on the pleadings, arguing that plaintiff’s claims are time-barred even assuming that all allegations in the complaint are true. A motion for judgment on the pleadings is evaluated on the same standard as a motion to dismiss under Rule 12(b)(6). Therefore, relief is appropriate if the complaint fails to state a claim “that is plausible on its face.” *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007). “A claim has facial plausibility when 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). I must “accept the well-pleaded facts in the complaint as true”; however, “legal conclusions and conclusory allegations merely reciting the elements of the claim are not entitled to this presumption of truth.” *McCauley v. City of Chicago*, 671 F.3d 611, 616 (7th Cir. 2011).

¹ I further note that individuals who are subject to service have a duty to avoid unnecessary expenses by waiving service when appropriate. See Fed. R. Civ. P. 4(d)(1).

The pleadings include “the complaint, the answer, and any written instruments attached as exhibits.” *N. Ind. Gun & Outdoor Shows, Inc. v. City of South Bend*, 163 F.3d 449, 452 (7th Cir. 1998); Fed. R. Civ. P. 10(c). Written instruments include affidavits and contracts that are referenced in the complaint and are central to the plaintiff’s claims. *Brownmark Films, LLC v. Comedy Partners*, 682 F.3d 687, 690 (7th Cir. 2012).

In Wisconsin, an action for breach of contract must be brought within 6 years after the cause of action “accrues.” Wis. Stat. § 893.43(1). This occurs when the contract is breached, which is not easy to identify in the context of ongoing legal services. Defendant argues that breach should be measured either from when any invoice became past-due or, at the latest, on the date that the last payment was made on Daniel’s account—October 3, 2018. Plaintiff argues that breach ought to be measured from March 4, 2020, the date that Daniel’s divorce case ended, because Hudec and Daniel had verbally agreed to make her outstanding balance due when she received her property settlement. Plaintiff acknowledges that these allegations go somewhat beyond the complaint and requests leave to amend if needed. ECF No. 15 at 5.

I find defendant’s legal theory unpersuasive and decline to consider the alternative facts alleged by plaintiff at this time. Rather, courts have found that the attorney-client relationship is a key factor in determining whether a client’s failure to pay triggers the statute of limitations. See, e.g., *Skiles DeTrude v. Dollar General Stores*, No. 07-cv-940, 2009 WL 499542, *3 (S.D. Ind. Feb. 27, 2009). I am unable to find strong Wisconsin authority on this question, but many states identify the end of the attorney-client relationship as the date from which the statute of limitation is calculated. See *Pellettieri, Rabstein & Altman v. Protopapas*, 383 N.J. Super. 142, 150–51, 890 A.2d 1022 (N.J.

Super. Ct. App. Div. 2006) (an attorney-plaintiff's cause of action accrues on completion of services or the end of the attorney-client relationship); *see also Lackner v. McKechney*, 252 F. 403, 409 (7th Cir. 1918) ("Appellants' claim is based upon a general employment for certain litigation, not for a fixed time on a fixed salary. The cause of action, therefore, does not accrue from day to day, but only at the termination of the service.").

The policy reasons for such a rule apply equally in Wisconsin. A claim for breach of contract, like any claim, accrues when "there exists a claim capable of enforcement, a suitable party against whom it may be enforced, and a party with a present right to enforce it." *Pritzlaff v. Archdiocese of Milwaukee*, 194 Wis.2d 302, 315, 533 N.W.2d 780 (1995). But an attorney cannot enforce a claim against his or her client until the attorney-client relationship ends, and attorneys are not free to withdraw from representation at will. See Wis. SCR 20:1.7 (conflicts of interest); 20:1.16 (terminating representation). Therefore, the earliest a breach-of-contract claim could be capable of enforcement is the date when the attorney-client relationship for a particular matter ends.

At this stage, I must take every non-conclusory factual allegation as true and draw reasonable inferences in favor of plaintiff. *Iqbal*, 556 U.S. at 678. Given that the billing statement attached to the complaint as Exhibit A lists work entries through December 6, 2018, I cannot conclude from the pleadings alone that the claim for breach of contract was untimely on December 2, 2024, when this case was filed. Therefore, defendant's motion for judgment on the pleadings must be denied.

C. Conclusion

For the reasons above, **IT IS ORDERED** that defendant's motion for judgment on the pleadings (ECF No. 7) is **DENIED**.

IT IS FURTHER ORDERED that, pursuant to Rule 4(m), plaintiff shall perfect service on defendant within 30 days of this order.

IT IS FURTHER ORDERED that defendant's motion to strike (ECF No. 19) is **DENIED AS MOOT.**

Dated at Milwaukee, Wisconsin, this 13th day of February, 2026.

/s/ Lynn Adelman
LYNN ADELMAN
United States District Judge