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Cruz v. City of Tucson, CA-CV 16-0223, (2017)

The Arizona Court of Appeals, Division Two was asked to decide as a matter of law whether the record showed Appellant's abuse of process claim was timely.

Cruz successfully prosecuted a special action against the City of Tucson for Tucson's failure to produce properly requested public records. In the special action, the court ultimately held Tucson had intentionally refused production of the public records and made false representations in the process.

Approximately six months after the court issued its final order against Tucson, Cruz served a notice of claim on the City alleging abuse of process by Tucson. Specifically, she asserted she had been damaged by the City's intentional refusal to produce the public records and false statements. When Tucson failed to respond to the notice, Cruz filed an abuse of process action.

Tucson moved for summary judgment asserting Cruz's notice of claim was untimely under ARIZ. REV. STAT. § 12-821.01(A) because it had not been filed within 180 days of its accrual. Specifically, the City argued her claim had accrued during the special action when she "realized she had been damaged and knew or reasonably should know the cause, source, act, event, instrumentality or condition that caused or contributed to the damage." The trial court granted Tucson's summary-judgment motion. Cruz timely appealed.

On appeal, the court analyzed the abuse of process standard, holding it requires a willful act in the use of judicial process done for an ulterior purpose not proper in the regular conduct of the proceedings. Here, Cruz was aware the City of Tucson abused process and withheld public records as early as August 2013, when she had filed her motion for a new trial asserting Tucson, "continue[d] to refuse to comply" with her public records requests by failing to disclose "public records known to exist." Over the next two years, Tucson followed a pattern of public-record denial followed by subsequent disclosure of the records sought. This led Cruz to attempt to amend her complaint in December 2014, to include a statutory obstruction claim, which the trial court had denied because Cruz failed to file a notice of claim for obstruction.

A cause of action accrues when a "reasonable person would have been on notice to investigate," **not** when one conclusively knows of the action. Accordingly, an abuse of process claim accrues under ARIZ. REV. STAT. § 12-821.01(A) from the date of the abuse, **not** the date of the final judgment. Accordingly, Cruz could have timely filed a notice of claim during the pendency of the prior action, and there was no good reason to wait for final judgment before filing her 12-821.01 notice.

The court also rejected Cruz's claim that Tucson's conduct was an "ongoing tort" that tolled ARIZ. REV. STAT. § 12-821.01's applicability because she provided no evidence of any abuse by Tucson in the 180 days before her notice of claim.

Accordingly, the court found Cruz's claim accrued on or before December 2014, and therefore her notice of claim was untimely, affirming the trial court's ruling.