

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

NOV 25 2020

FOR THE NINTH CIRCUIT

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

MICHAEL GRECCO PRODUCTIONS,
INC., DBA Michael Grecco Photography,
Inc.,

Plaintiff-Appellant,

v.

ZIFF DAVIS, LLC,

Defendant-Appellee.

No. 19-56465

D.C. No.
2:19-cv-04776-DSF-PJW

MEMORANDUM*

Appeal from the United States District Court
for the Central District of California
Dale S. Fischer, District Judge, Presiding

Argued and Submitted November 16, 2020
Pasadena, California

Before: FERNANDEZ, PAEZ, and OWENS, Circuit Judges.

Plaintiff-Appellant Michael Grecco Productions, Inc. (MGP) appeals from the district court's dismissal on statute of limitations grounds of its copyright claims against Defendant-Appellee Ziff Davis, LLC (Ziff). As the parties are familiar with the facts, we do not recount them here. We review de novo the

* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

district court's grant of a motion to dismiss on statute of limitations grounds. *See Hoang v. Bank of Am., N.A.*, 910 F.3d 1096, 1100 (9th Cir. 2018). We have jurisdiction under 28 U.S.C. § 1291, and we reverse and remand for further proceedings.

We apply the discovery rule when analyzing statute of limitations questions in copyright cases. “[A] copyright infringement claim accrues – and the statute of limitations begins to run – when a party discovers, or reasonably should have discovered, the alleged infringement.” *Oracle Am., Inc. v. Hewlett Packard Enter. Co.*, 971 F.3d 1042, 1047 (9th Cir. 2020) (citation omitted).

The statute of limitations discovery rule analysis is a factual one. *Polar Bear Prods., Inc. v. Timex Corp.*, 384 F.3d 700, 707 (9th Cir. 2004). Here, it is not clear from the face of the First Amended Complaint that MGP's copyright infringement claims were untimely. For example, whether the Google reverse image search technology would have captured the images is a question of fact, inappropriate for dismissal at the motion to dismiss stage. The facts alleged in MGP's First Amended Complaint are sufficient to survive a motion to dismiss. *See Fed. R. Civ. P. 8.*

On remand, the district court may order limited discovery that focuses on the statute of limitations question.

REVERSED AND REMANDED.