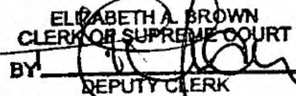
IN THE SUPREME COURT OF THE STATE OF NEVADA

JUSTIN YAMEK; DANIEL GROSS; MICHAEL PIERCE; ANTHONY LEGEZA, JR.; OHIO'S IT ALLIANCE; ANTHONY GROSS; CINDY YODER; THOMAS YODER; JASON BADER; HUDSON KELLY; ROBIN MCKELVY; HEATH LIEN; DOUGLAS HOWARD; RAYMOND CORNWELL; WILLIAM SKEELS; DEAN CRAVENS; DAVID GIRELL; DAN TROCCHIO; JEREMY CONN; AND JAN FLEEGER,
Appellants,
vs.
GAMECO LLC; MASH3, INC.; BLAINE GRABOYES GOLDMAN; ROBERT MONTGOMERY; AND PATRICK MEALEY ANDING,
Respondents.

No. 84720

FILED

OCT 26 2023



ORDER OF AFFIRMANCE

This is an appeal from a district court order granting a motion to dismiss a complaint with prejudice and without leave to amend in a civil RICO and torts action. Eighth Judicial District Court, Clark County; Nancy L. Allf, Judge.

Appellants Justin Yamek and Daniel Gross (the "Yamek parties") were the alleged inventors of the intellectual property now in dispute. The Yamek parties, together with Anthoy Legeza, formed Beyond Gaming, LLC ("BGL") with the intent to house and commercially exploit the intellectual property. Sometime thereafter, Legeza left BGL and Robert

23-35098

Montgomery and Blaine Goldman joined BGL. Unable to achieve commercial success, BGL filed for Chapter 7 bankruptcy in October of 2014. An order accepting the bankruptcy trustee's report and closing the bankruptcy was entered on December 4, 2014.

Thereafter, Montgomery and Goldman formed GameCo, LLC, with Patrick Anding acting as counsel (the "GameCo parties"), and began to use the disputed intellectual property, or some version thereof, for commercial purposes. As a result, the Yamek parties filed suit against the GameCo parties and alleged several causes of action, including five racketeering claims, two civil conspiracy claims, tortious breach of the covenant of good faith and fair dealing, negligent misrepresentation, intentional misrepresentation, fraudulent concealment, and breach of fiduciary duty. At the core of their allegations, the Yamek parties alleged that they were the inventors of the intellectual property in dispute and that the GameCo parties conspired to bankrupt BGL with the intent to misappropriate the intellectual property for their own financial gain, to the detriment of the Yamek parties.

In their original complaint, the Yamek parties alleged that the disputed intellectual property was developed by the Yamek parties and owned by BGL.[1] The GameCo parties thereafter moved to dismiss asserting

---

[1]The Yamek parties failed to provide an appendix with their opening brief. However, the GameCo parties submitted an appendix with all documents necessary to decide this case on the merits, including the Yamek parties' original complaint. Under the Nevada Rules of Appellate Procedure, if a joint appendix is not prepared, the appellant is required to submit an appendix containing all required and relevant documents. *See* NRAP 30(b)(3). Further, "[i]f an appellant's appendix is so inadequate that justice cannot be done without requiring inclusion of documents in the respondent's appendix which should have been in the appellant's

that the Yamek parties had no standing to bring their claims because the allegations in the complaint posited that BGL, and not the Yamek parties, owned the intellectual property in dispute. They also asserted that even if the Yamek parties did have standing, each of their claims were barred by the relevant statute of limitations.

In response, the Yamek parties moved the court for leave to amend their complaint to assert, *inter alia*, that the Yamek parties owned the intellectual property, as opposed to BGL. The district court denied the Yamek parties' request for leave to amend their complaint and granted the GameCo parties' motion to dismiss with prejudice on the grounds that (1) the statute of limitations for the Yamek parties' claims had expired, (2) the Yamek parties lacked standing, and (3) the Yamek parties failed to state a claim upon which relief could be granted as required under NRCP 12(b)(5).

"When the facts are uncontroverted," as they are here, "the application of the statute of limitations is a question of law that this court reviews de novo." *Holcomb Condo. Homeowners' Ass'n, Inc. v. Stewart Venture, LLC*, 129 Nev. 181, 186-87, 300 P.3d 124, 128 (2013). "The general rule concerning statutes of limitation is that a cause of action accrues when the wrong occurs and a party sustains injuries for which relief could be sought." *Petersen v. Bruen*, 106 Nev. 271, 274, 792 P.2d 18, 20 (1990). However, "under the discovery rule, the statutory period of limitations is tolled until the injured party discovers or reasonably should have discovered facts supporting a cause of action." *Id.* (citations omitted.) "[A]

---

appendix . . . the court may impose monetary sanctions." NRAP 30(g)(2). Though we do not exercise our discretion to impose sanctions in this case, counsel for appellants is cautioned that continued failure to comply with appellate procedural rules may result in sanctions.

[party] discovers [its] injury when he knows or, through the use of reasonable diligence, should have known of facts that would put a reasonable person on *inquiry notice* of his cause of action." *Winn v. Sunrise Hosp. & Med. Ctr.*, 128 Nev. 246, 252, 277 P.3d 458, 462 (2012) (quotations marks omitted) (emphasis in original). "[A] person is put on inquiry notice when he or she should have known of facts that would lead an ordinarily prudent person to investigate the matter further." *Id.* (quotation marks omitted).

We agree with the district court that the Yamek parties were on inquiry notice no later than when bankruptcy proceedings for the Yamek parties' company, Beyond Gaming, LLC, closed. The bankruptcy petition listed "Uncategorized Assets (Software developed but not copyrighted or patented - value unknown)" and the proceedings were public. Importantly, the Yamek parties were identified as creditors or security holders in the bankruptcy proceedings, which means that the Yamek parties were provided with notice that the subject intellectual property was included in the bankruptcy estate as BLG's property.[2] Accordingly, the Yamek parties were on inquiry notice that ownership of the intellectual property in question was implicated by the bankruptcy. At the latest, an ordinarily prudent person in the Yamek parties' circumstances would have investigated the claims alleged in their complaint when the bankruptcy proceedings closed on December 4, 2014. Thus, appellants were on inquiry notice no later than December 4, 2014.

[2]We note that Legeza was not listed as a creditor or security holder; however, we hold that Legeza was nevertheless on inquiry notice as the proceedings were public.

In their complaint, as noted above, the Yamek parties asserted twelve claims against the GameCo parties. The longest statute of limitations for any of the Yamek parties' claims was five years. *See* NRS 207.470; NRS 207.520 (stating that civil racketeering claims must be brought 5 years after the violation occurs or when the injured person sustains injury). Thus, when the Yamek parties filed their complaint on December 20, 2021—more than seven years after they were on inquiry notice of their causes of action—the applicable statutes of limitations had long since expired.

We now turn to whether the district court erred when it denied the Yamek parties' motion for leave to amend their complaint. Under NRCP 15(a), "[t]he court should freely give leave" to amend "when justice so requires." *See also Kantor v. Kantor*, 116 Nev. 886, 891, 8 P.3d 825, 828 (2000). However, leave to amend "should not be granted if the proposed amendment would be futile." *Gardner on Behalf of L.G. v. Eighth Judicial Dist. Court in and for County of Clark*, 133 Nev. 730, 732, 405 P.3d 651, 654 (2017) (quoting *Halcrow, Inc. v. Eighth Judicial Dist. Court*, 129 Nev. 394, 398, 302 P.3d 1148, 1152 (2013)).

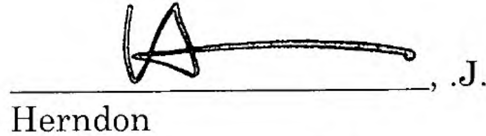
We hold that the district court did not err when it denied the Yamek parties' motion to amend their complaint because the statute of limitations for all asserted causes of action had expired, and any amendment would have therefore been futile.[3]

---

[3]Though the district court denied the Yamek parties' motion for leave to amend because the requested amendments would fundamentally contradict the original complaint, we need not affirm on the same grounds articulated by the district court. *Milender v. Marcum*, 110 Nev. 972, 977, 879 P.2d 748, 751 (1994) ("[I]t is well established that this court may affirm

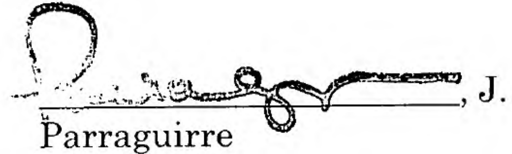
Accordingly, we

ORDER the judgment of the district court AFFIRMED.



_______________, J.
Herndon

_______________, J.
Lee



_______________, J.
Parraguirre

cc: Hon. Nancy L. Allf, District Judge
Eleissa C. Lavelle, Settlement Judge
Lee Landrum & Ingle
Mark A. Litman & Associates, P.A.
Pisanelli Bice, PLLC
Greenberg Traurig, LLP/Las Vegas
Brownstein Hyatt Farber Schreck, LLP/Las Vegas
Eighth District Court Clerk

---

rulings of the district court on grounds different from those relied upon by the district court.")