IN THE SUPREME COURT OF THE STATE OF NEVADA

TULSIE R. ISSURDUTT AND YASMINE U. ISSURDUTT, INDIVIDUALLY,
Appellants,
vs.
PHILIP M. HYMANSON, INDIVIDUALLY; AND BECKLEY, SINGLETON, JEMISON & LIST, CHTD., A NEVADA CORPORATION,
Respondents.

No. 40289

FILED

APR 21 2006

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY
CHIEF DEPUTY CLERK

ORDER OF AFFIRMANCE

This proper person appeal challenges a district court summary judgment in a legal malpractice case. Eighth Judicial District Court, Clark County; Lee A. Gates, Judge.

FACTS

Appellants, Tulsie R. Issurdutt and Yasmine U. Issurdutt, retained respondent Philip M. Hymanson, through respondent law firm Beckley, Singleton, Jemison & List, Chtd., to provide legal assistance with the startup of a new airline, Tri Star Airlines, Inc. (TSA). As a result of certain acts that allegedly took place during the startup process, on April 11, 2000, the Issurdutts filed suit against Hymanson and the law firm.

The Issurdutts' April 2000 complaint expressly asserted seven causes of action, and also alleged that respondents had committed conspiracy to defraud. The seven listed causes of action were as follows: (1) breach of contract for legal representation; (2) breach of that contract's

implied covenant of good faith and fair dealing; (3) concealment/misrepresentation regarding alleged improprieties with financing, capitalization, corporate structure, stock transfers, and bond funding; (4) negligent misrepresentation, based on grounds similar to those enumerated in the concealment claim and a lack of due diligence in completing a background check on a third-party, David Namer; (5) breach of fiduciary duties with regard to the legal representation; (6) intentional interference with prospective business advantages; and (7) negligence, apparently regarding the legal representation.

On August 23, 2002, the district court granted Hymanson's and the law firm's subsequent motion for summary judgment, determining that, as a matter of law, the Issurdutts' claims were barred by the applicable statutes of limitations. In the summary judgment order, the court specified that the following documents, each containing Tulsie Issurdutt's signature, demonstrated the Issurdutts' knowledge of the facts underlying their complaint as of September 6, 1995: (1) a July 1995 bar complaint; (2) a July 16, 1995 letter to a third-party negotiator; and (3) August 8 and September 6, 1995 letters to the Nevada Department of Transportation (NDOT). Accordingly, recognizing that the latest-running limitation period governing the Issurdutts' claims was four years, and that the Issurdutts's claims were filed after that period had expired, the court determined that respondents were entitled to judgment as a matter of law. The Issurdutts appeal from the summary judgment.

DISCUSSION

This court reviews orders granting summary judgment de novo.[1] Summary judgment is appropriate when, after an examination of the record viewed in a light most favorable to the non-moving party, no genuine issues of material fact remain and the moving party is entitled to judgment as a matter of law.[2]

In 1996, when the Issurdutts claim that their causes of action accrued, NRS 11.207 provided that parties suing an attorney for malpractice must commence the action within four years after sustaining damage or of discovering the material facts constituting the cause of

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[1]Wood v. Safeway, Inc., 121 Nev. __, __, 121 P.3d 1026, 1029 (2005).

[2]Id. We disagree with the Issurdutts' assertion that the district court improperly considered respondents' summary judgment motion after having denied their prior motion to dismiss on the same basis, under DCR 13(7) and EDCR 2.24. The record does not support the Issurdutts' contention that respondents' summary judgment motion was based on exactly the same documentation that was presented to the court with their motion to dismiss, but instead shows that respondents provided some of the same documents plus additional, post-discovery documents with their subsequent motion for summary judgment, from which the court was able to make a matter of law determination regarding the Issurdutts' fraud and conspiracy claims. As this issue was addressed by the parties in their summary judgment papers, it appears that the court, in thereafter ruling on that motion, implicitly granted respondents leave to file their summary judgment motion. Accordingly, reversal is not warranted on this basis. See Harvey's Wagon Wheel v. MacSween, 96 Nev. 215, 217-18, 606 P.2d 1095, 1096-97 (1980) (recognizing no abuse of discretion when leave to renew a motion for partial summary judgment was implicitly granted and the second motion was considered at a later date, after the judge had become more familiar with the case); cf. Moore v. City of Las Vegas, 92 Nev. 402, 551 P.2d 244 (1976) (indicating that a subsequent motion for rehearing may not be superfluous if it raises new issues of fact or law).

action, regardless of whether the action is based on a breach of duty or on contract.[3] In addition, NRS 11.190 provides different limitation periods for filing other actions, depending on the type of action. Generally, parties have four years to bring actions based on oral obligations from the date that the alleged breach occurred,[4] and three years for actions based on fraud or mistake from the date that the facts constituting the fraud or mistake were discovered.[5] Finally, conspiracy-based actions are subject to a four-year limitation period.[6] Like actions for fraud and misrepresentation, "an action for civil conspiracy accrues when the plaintiff discovers or should have discovered all of the necessary facts constituting a conspiracy claim."[7] Thus, as the Issurdutts admittedly suffered the alleged harm before they claim they became aware of all of the surrounding circumstances, the latest time at which the Issurdutts' could have timely filed their complaint is just before the expiration of four years from the date when they discovered or should have discovered the facts constituting their claims.

As other jurisdictions have recognized, under a discovery-based standard, a plaintiff is not required to have actual knowledge of the facts constituting a cause of action before the statute of limitations will

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[3]NRS 11.207 (amended 1997).

[4]NRS 11.190(2)(c).

[5]NRS 11.190(3)(d).

[6]Siragusa v. Brown, 114 Nev. 1384, 1391-92, 971 P.2d 801, 806 (1998); NRS 11.220.

[7]Siragusa, 114 Nev. at 1393, 971 P.2d at 807.

commence to run.[8] Instead, once the plaintiff knows of circumstances that should cause him or her to realize that someone might have wrongfully caused an injury, the plaintiff bears the burden to further inquire as to the existence of a cause of action.[9] When the plaintiff learns of such circumstances, the limitations period commences and continues to run during any ensuing investigation;[10] thus, the limitations period's commencement does not depend upon whether the plaintiff has assurance as to the success of a cause of action,[11] but rather commences as soon as the plaintiff knows facts sufficient to justify further inquiry.

Ordinarily, determinations of when a cause of action accrues under a discovery-based rule are for the fact-finder.[12] When the "uncontroverted evidence proves that the plaintiff discovered or should have discovered the facts giving rise to the claim," however, the district court may properly determine that, as a matter of law, the claim is barred by the statute of limitations.[13]

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[8]Weger v. Shell Oil Company, 966 F.2d 216, 218 (7th Cir. 1992); see generally Siragusa, 114 Nev. at 1393, 971 P.2d at 807.

[9]Weger, 966 F.2d at 218; see generally Siragusa, 114 Nev. at 1393, 971 P.2d at 807.

[10]American General Assur. Co. v. Pappano, 822 A.2d 1212, 1219 (Md. Ct. App. 2003).

[11]Weger, 966 F.2d at 219 (citing Nendza v. Board of Review of Ill., Etc., 434 N.E.2d 470, 474 (Ill. App. Ct. 1982)).

[12]Siragusa, 114 Nev. at 1393, 1400, 971 P.2d at 807, 812.

[13]Id. at 1401, 971 P.2d at 812.

Here, having reviewed the record in a light most favorable to the Issurdutts, we agree with the district court that, as a matter of law, the claims underlying their April 2000 complaint were barred by the statute of limitations, so that respondents were entitled to summary judgment.

Specifically, the documents referenced in the district court's order demonstrate that, at least as of September 1995, the Issurdutts knew of the facts constituting their claims, because in those documents, they alleged misconduct substantially similar to the purported misconduct that they connected with Hymanson in their April 2000 complaint. Although the Issurdutts assert that they first learned of the conspiracy and other causes of action when Hymanson was deposed in May and July, 1996, the portions of the deposition to which they cite contain no information regarding an element of any possible cause of action distinct from the allegations made in the 1995 documents.

For example, the Issurdutts insist that their civil conspiracy-based causes of action for concealment/intentional misrepresentation, negligent misrepresentation, breach of fiduciary duty, and negligence are not barred by the limitations period because the July 1996 deposition date is when they first learned of Hymanson's involvement in a conspiracy to assume control of TSA. They assert that Hymanson admitted, in the July 1996 deposition, that without Tulsie's knowledge, he interviewed another person and negotiated an employment contract to replace Tulsie in his position with TSA, that he acted on behalf of Namer, and that he "lied" about having advised Tulsie to send a March 1995 letter to Namer.

But the 1995 bar complaint alleged that Hymanson acted improperly in failing to adequately represent Tulsie's interests with

regard to the employment contract that Hymanson negotiated. Moreover, Tulsie's subsequent July 16 letter to a third-party negotiator alleged that Namer "bought" Hymanson, that Hymanson and Namer "collaborated" to "illegally take over" TSA, and that, as a part of that plot, the employment contract was used as a front for Namer, to "eliminate" Tulsie from TSA management. Thus, Tulsie was aware of circumstances connecting Hymanson with the employment contract, and the alleged improper purpose for which it was drafted, in 1995.

In addition, the Issurdutts claim that any cause of action relating to the background check on Namer arose when Hymanson testified, at the deposition, that he and the law firm conducted a background check on Namer and found no prior criminal history.

The July 1995 bar complaint, however, specifically alleged that Hymanson failed to disclose any criminal record for Namer. Thus, the Issurdutts connected Hymanson to the claims involving an alleged lack of due diligence shortly before Tulsie filed suit against Namer in August 1995.[14]

Finally, the Issurdutts assert that they first learned about the facts that gave rise to their claims when Hymanson admitted to approving by-laws for the holding company without their approval (in order to establish the holding company so to accomplish the stock exchange) and to changing the TSA board of directors, and when he misrepresented his professional expertise.

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[14]Cf. Siragusa, 114 Nev. at 1393-94, 971 P.2d at 807 (recognizing that the identity of a specific tortfeasor is a necessary element, so that the statute of limitations will not begin to run until the plaintiff knows or should have known, to a reasonable probability, the tortfeasor's identity).

But the September 6, 1995 letter to NDOT demonstrates Tulsie's belief that Hymanson signed an illegal list of officers and directors (transferring resident agent status from Tulsie to the law firm), that the stock transfer was improper, and that Hymanson and Namer "assumed control" of TSA, documenting a series of alleged "illegal and fraudulent" activities. Moreover, to the extent that the Issurdutts' fraud and misrepresentation claims were based on allegations unrelated to their conspiracy claims—including those claims relating to Hymanson's legal expertise—those claims fall within NRS 11.190(3)(d)'s three-year limitation period. In light of the Issurdutts' assertion that they learned of all the underlying facts in 1996, any fraud and misrepresentation claims unrelated to the alleged conspiracy are clearly barred by the statute of limitations.

Consequently, the above documents demonstrate that the Issurdutts had discovered the circumstances giving rise to their claims as of 1995, and the Issurdutts have not pointed to any new facts that they discovered from the deposition.[15]

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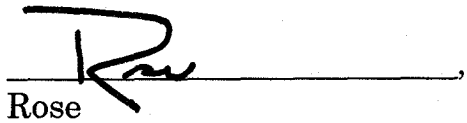
[15]See Weger, 966 F.2d at 219 (affirming summary judgment based on the statute of limitations when the evidence showed that the plaintiffs were aware of potential legal liability for a personal injury when they connected the injury to possible chemical exposure and inquired further by contacting an attorney); Pappano, 822 A.2d at 1222 (concluding that certain respondents were entitled to summary judgment based on the statute of limitations when the plaintiff was put on inquiry-notice of the facts underlying her cause of action, because even though she might not have been aware, at that time, of the reasons behind the cause of action, as "the limitations period is not tolled until her investigation bears fruit").

CONCLUSION

Accordingly, as the Issurdutts' complaint was barred by the statute of limitations as a matter of law and respondents were therefore entitled to summary judgment, we

ORDER the judgment of the district court AFFIRMED.[16]



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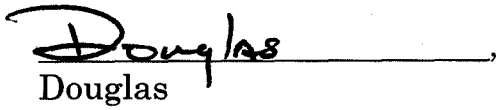
Rose



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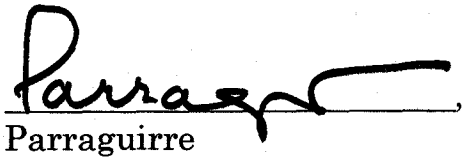

_____, J.
Parraguirre

cc: Hon. Lee A. Gates, District Judge
Tulsie R. Issurdutt
Yasmine U. Issurdutt
Schreck Brignone Godfrey/Las Vegas
Schreck Brignone/Las Vegas
Clark County Clerk

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[16]Although the Issurdutts were not granted leave under NRAP 46(b) to file additional documents in proper person, we have received and considered the July 13, 2005 letter from them. The Issurdutts' request that sanctions be imposed against respondents is denied.