No. 89802-2

SUPREME COURT

OF THE STATE OF WASHINGTON

COLLEEN KELLY, an individual,
Plaintiff/Petitioner

v.

ALLIANZ LIFE INSURANCE COMPANY OF NORTH AMERICA, a corporation organized pursuant to the laws of Minnesota,
Defendant/Respondent.

Appeal from the Court of Appeals, Division III
of the State of Washington
Cause No. 31091-4-III

PETITIONER COLLEEN KELLY'S

PETITION FOR DISCRETIONARY REVIEW

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I. IDENTITY OF PETITIONER

Petitioner is Colleen Kelly, an individual currently residing in the State of Washington.

II. CITATION TO COURT OF APPEALS DECISION

The Court of Appeals decision was filed as a "Published Opinion" denominated *Colleen Kelly v. Allianz Life Ins. Co. of North America* No. 31091-4-III (Filed Dec. 17, 2013). A true and correct copy of the decision is provided as Appendix A and is referred to herein as the "Opinion."

III. ISSUE PRESENTED FOR REVIEW

Can the statute of limitations begin to run on a claim for inadequate underpayment of statutory twelve percent interest under RCW 19.52.010, sounding in contractual rescission and arising out of a written contract, before there is any evidence, expression or discovery of an actual dispute between the parties regarding the proper rate of interest, which dispute would render the controversy justiciable? On what date does such a claim accrue?

IV. STATEMENT OF THE CASE

A. Factual Background

Petitioner Colleen Kelly placed her life savings into the purchase of three annuity contracts (the "Annuities") from an agent/broker of Respondent Allianz Life Ins. Co. of North America ("Allianz") in 2004.

After discovering that the Allianz Annuities were never approved for sale in Washington, Ms. Kelly asked the Washington Office of the Insurance Commissioner ("OIC") whether the contracts might be terminated. The Washington OIC subsequently informed Allianz that the Annuities sold to Ms. Kelly by the agent for Allianz were never approved for sale in Washington, and it requested that the contracts be terminated. (Clerks Papers ("CP") 104)

Allianz, through its Compliance Analyst, Mary Lou Fleischhacker, canceled the policies via a letter dated September 13, 2005. (CP 14) Enclosed with the letter were checks for the premium amounts as well as three percent interest. *Id.*

There was no evidence of any dispute between the parties prior to September 13, 2005 as to the proper rate of interest to be applied to the return of the premiums on the Annuities. There were no representations in the September 13, 2005 letter from Allianz, nor were there any recitals or restrictive endorsements on these checks, stating or implying that Ms. Kelly was agreeing to accept three percent interest as the final resolution of her claims against Allianz by depositing the checks, which represented her life savings that had been placed in the Annuities, plus 3 percent interest. (CP 14)

In fact, Ms. Kelly disputed the three percent interest rate, and never agreed, explicitly or implicitly, that three percent was the proper amount of interest to which she was entitled in conjunction with restitution of the Annuity premiums. (CP 96) In the months following her receipt of the checks from Allianz, Ms. Kelly contacted Allianz by phone and spoke with Ms. Fleischhacker. (CP 108) Ms. Kelly told Ms. Fleischhacker that she was dissatisfied with the amount of the checks and that she felt she was entitled to more, particularly in interest. *Id.* Ms. Fleischhacker of Allianz made notes of this conversation from March 20, 2006, and recorded that "Ms. Kelly has consulted an attorney and was told Allianz should have paid her twelve percent interest in accordance with the Washington statute regarding statutory pre judgment law. Calling to get additional 9% interest sent to her." (CP 94)

During November 2008, Ms. Kelly retained counsel and notified Allianz of this development. (CP 110) Counsel for Ms. Kelly contacted Allianz by phone to discuss the interest rate matter. (CP 90) Over time, Allianz and counsel for Ms. Kelly engaged in a series of written communications regarding the dispute over the amount of interest owed to Ms. Kelly. This process came to a head during the spring and summer of 2011, when counsel for Ms. Kelly and Allianz attempted to negotiate a resolution of the dispute over the interest paid to Ms. Kelly. (CP 116-145)

The parties were unable to resolve the dispute, Allianz has never paid Ms. Kelly the full 12% interest owed to her, and the complaint in this litigation was filed on August 19, 2011. (CP 36)

B. Procedural History

Because of the amount in controversy, this matter was subject to Mandatory Arbitration. An arbitration hearing was scheduled for September 21, 2012. However, shortly before the arbitration went forward, Allianz succeeded on a motion for summary judgment and the matter was dismissed on July 27, 2012. (CP 169-170) The Court of Appeals affirmed the trial court's summary judgment dismissal in its opinion filed December 17, 2013. (Appendix A.) The Court of Appeals' opinion (the "Opinion") found that the parties agreed that a six-year limitations period applies to Ms. Kelly's claims because it arises from a written contract, but disagreed on the accrual date. However, the Opinion misapplies the statute of limitations analysis and effectively ignores the doctrine of justiciability, as applied in a contractual context.

V. LAW AND ARGUMENT

Ms. Kelly was entitled to 12% interest on her returned premiums under applicable Washington law.[1] A claim to recover such interest is

[1] RCW 19.52.010; *Hornback v. Wentworth*, 132 Wn. App. 504, 505, 132 P.3d 778, 782 (2006) (applying twelve percent interest rate from RCW

subject to a six year limitations period per RCW 4.16.040. *See, e.g., Hornback,* 132 Wn. App. at 514.

However, a statute of limitations cannot begin to run prior to accrual of a claim for relief, which cannot occur as a matter of law until the doctrine of justifiability is satisfied. Here, there was simply no dispute between the parties as to the proper rate of interest before September 13, 2005, the date Allianz underpaid Ms. Kelly three percent interest instead of the lawful amount owed 12 percent -- in fact the topic of interest rate had never been discussed before that date. Accordingly this dispute necessarily arose after on or after September 13, 2005, and Ms. Kelly's claim could not have accrued any earlier than that day. Her complaint was timely filed within six years on August 19, 2011. The Opinion was in error when if found her claims time barred under RCW 4.16.040(1), when it found Ms. Kelly had grounds to bring this litigation as of June 2005.

This Court should accept review because the Opinion implicates important public policy considerations inherent in a statute of limitations analysis, RAP 13.4(a)(4) but the analysis in the Opinion errs on this question, and is in conflict with Court of Appeals decisions on the

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19.52.010 to rescinded contract for funds paid pursuant thereto, reasoning "[r]escission is an equitable remedy and requires the court to fashion an equitable solution."); *Wright v. Dave Johnson Ins., Inc.*, 167 Wn. App. 758, 776, 275 P.3d 339, 350 (2012) (applying RCW 19.52.010 rate to reimbursement of insurance premium payments).

relationship of justiciability and statute of limitations, RAP 13.4(a)(2). The proper relationship between the doctrines of justiciability and statute of limitations has far-reaching implications for parties entering contracts, and requires clarification to allow contracting parties certainty regarding their rights and timing of judicial review.

A. The Court of Appeals Opinion Did Not Address the Doctrine of Justiciability and Misapplies the Statute of Limitations Analysis as a Result, Because No Actual, Present or Existing Dispute Existed between the Parties Prior to the Underpayment of Interest on September 13, 2005

Statutes of limitations serve two broad and important public policy interests. First, the statute of limitations "instill[s] a measure of certainty and finality into one's affairs by eliminating the fears and burdens of threatened litigation[--repose]. Second, it is intended to protect one against stale claims because they are more likely to be spurious and consist of untrustworthy evidence than are fresh claims[--staleness]." *Kittinger v. Boeing Co.*, 21 Wn. App. 484, 486-87, 585 P.2d 812 (1978); *see also 1000 Virginia Ltd. P'ship v. Vertecs Corp.*, 158 Wn.2d 566, 146 P.3d 423 (2006).

The statute of limitations begins running when the plaintiff's cause of action accrues, which, in contract claims, occurs on breach. *1000 Virginia Ltd. P'ship*, 158 Wn.2d at 576. While the discovery rule does not

ordinarily apply to breach of contract claims, certain circumstances justify its application where expansion "is a logical and desirable expansion of the discovery rule." *Id.* at 579. In deciding whether to apply the discovery rule, a court balances the purposes behind the statute of limitations—repose and staleness—with the injustice that results from depriving an aggrieved person of justice. *See Kittinger*, 21 Wn. App. at 487 ("The discovery rule is applied whenever the [purposes of the statute of limitations] are outweighed by the grave injustice of a literal application of the statute of limitations.").

Statute of limitations accrual must also be considered in light of the important doctrine of justiciability, which defines when a claim accrues as a matter of law.

For a party to request a court for relief, there must first exist a justiciable controversy between the parties. *Thompson v. Wilson,* 142 Wn. App. 803, 818, 175 P.3d 1149, 1156 (2008); *Erickson v. Chase*, 156 Wn. App. 151, 157, 231 P.3d 1261 (2010) ("[t]he statute of limitations does not necessarily begin running from the date of the written agreement. It begins running when the cause of action accrues, meaning when a party has the right to apply to the court for relief.") (citing RCW 4.16.005; *Haslund v. Seattle*, 86 Wn.2d 607, 619, 547 P.2d 1221 (1976); *Campbell v. Loftus*, 36 Wn. App. 678, 679 (1984)). The essence of a justiciable controversy is

the existing of actual, present, opposing interests that are direct and substantial, between the parties:

> (1) ... an actual, present and existing dispute, or the mature seeds of one, as distinguished from a possible, dormant, hypothetical, speculative, or moot disagreement, (2) between parties having genuine and opposing interests, (3) which involves interests that must be direct and substantial, rather than potential, theoretical, abstract or academic, and (4) a judicial determination of which will be final and conclusive.

Thompson, 142 Wn. App. at 818.

Prior to September 13, 2005, Ms. Kelly could have had no actual dispute with Allianz regarding the amount of interest to be paid on her principal amounts. No factual material in the record hints that Allianz may have picked a three percent rate prior to September 13, 2005. Ms. Kelly could not reasonably have known Allianz's intent to violate the law in advance. Accordingly, this case and controversy could not have arisen prior to Ms. Kelly having notice that Allianz would underpay the interest to which she was entitled. As a matter of law, the statute of limitations could therefore not have begun to run until September 13, 2005, at the earliest.[2] The case was filed on August 19, 2011. Thus, this Court should not hold that the statute of limitations in the case at bar began to run

[2] *See, e.g, Alabama v. U.S.*, 630 F.Supp.2d 1320, 1327 (S.D. Ala. 2008) ("a cause of action does not accrue, so as to trigger the limitations period, until the claim is ripe for judicial resolution.")

before Ms. Kelly had the right to bring a cause of action against Allianz for wrongful payment of interest.

Moreover, were this Court to apply the "discovery" rule here, Ms. Kelly could not have discovered her injury (underpayment of statutory interest) prior to the date of the underpayment. Courts and parties should not infer or anticipate a wrongful act or breach before it occurs, absent clear and positive statements to the contrary. *Versuslas, Inc. v. Stoel Rives, LLP*, 127 Wn. App. 309, 321-22, 111 P.3d 866, 872 (2005). It logically follows that no justiciable controversy exists prior to the breaching party's wrongful act as discussed above. *Schwindt v. Commonwealth Ins. Co.*, 140 Wn.2d 348, 353, 997 P.2d 353, 356 (2000) ("the contract statute of limitations begins to run against an insured on the date the insurer breaches the contract of insurance"); David K. DeWolf, Keller W. Allen, & Darlene B. Caruso, 25 *Wash. Practice* § 16:20, at 402 (2d ed. 2007) ("In any action based upon a written contract, or where liability is express or implied arising out of a written agreement, the action itself must be commenced within six years *after breach.*") (emphasis added). Prior to underpayment of interest, Allianz made no clear and positive statements (or any statements at all) expressing an intent to violate its legal obligations to Ms. Kelly. Here, "breach" occurred on September 13, 2005 when Allianz failed to pay statutory 12% interest.

Applying these principles to this case leads to only one conclusion: the act giving rise to Ms. Kelly's claims for twelve percent interest was Allianz's underpayment of interest, which occurred on September 13, 2005. This is the key operative fact upon which Ms. Kelly's claims are founded and the accrual of her claims could not (and did not) occur before then.

The Court of Appeals errs in holding that Ms. Kelly could have sued Allianz for underpayment of interest from the moment the Annuities were entered into. *See* Opinion at 8 ("Ms. Kelly had grounds to sue Allianz in 2005"). This statement is factually and legally incorrect. First, Ms. Kelly was not aware of the Annuities' illegality at the time, and second, there was no actual, present, and existing *dispute* between her and Allianz at that time. The Opinion therefore conflicts with the decisions cited above on justiciability, accrual of limitations periods, and anticipatory breach. The record establishes that once the parties discovered the illegality of the Annuities, they were in full agreement to rescind the contracts -- up until the moment Allianz underpaid interest. At that moment, Ms. Kelly discovered Allianz's breach of its legal obligations to her, and her claim for relief arose. Any other result unjustifiably rewards Allianz for issuing Annuities unlawfully. It should be kept in mind that the dispute here does <u>not</u> concern whether the

Annuities should have been rescinded or were lawful (on which the parties agreed) but rather the dispute centers on what was the appropriate rate of interest to apply. This issue did not arise until September 13, 2005 when the checks were issued.

VI. CONCLUSION AND RELIEF SOUGHT

In light of all the foregoing, this Court should accept review pursuant to RAP 13.4(a)(4) and (2).

RESPECTFULLY SUBMITTED this 16th day of January, 2014.

K&L GATES LLP

By _____
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CERTIFICATE OF SERVICE

I hereby certify that on the 16th day of January, 2014, I caused to be served a true and correct copy of the foregoing **COLLEEN KELLY'S PETITION FOR DISCRETIONARY REVIEW** to the parties below via email and by hand:

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DATED this 16th day of January, 2014.

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Appendix A

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CASE # 310914
Colleen Kelly v. Allianz Life Ins. Co., North America
SPOKANE COUNTY SUPERIOR COURT No. 112034563

Counsel:

Enclosed please find a copy of the opinion filed by the Court today.

A party need not file a motion for reconsideration as a prerequisite to discretionary review by the Supreme Court. RAP 13.3(b); 13.4(a). If a motion for reconsideration is filed, it should state with particularity the points of law or fact which the moving party contends the court has overlooked or misapprehended, together with a brief argument on the points raised. RAP 12.4(c). Motions for reconsideration which merely reargue the case should not be filed.

Motions for reconsideration, if any, must be filed within twenty (20) days after the filing of the opinion. Please file an original and two copies of the motion. If no motion for reconsideration is filed, any petition for review to the Supreme Court must be filed in this court within thirty (30) days after the filing of this opinion (may be filed by electronic facsimile transmission). The motion for reconsideration and petition for review must be received (not mailed) on or before the dates they are due. RAP 18.5(c).

Sincerely,

Renee S. Townsley

Renee S. Townsley
Clerk/Administrator

RST:pb
Enc.

c: Hon. Greg Sypolt

FILED
DECEMBER 17, 2013
In the Office of the Clerk of Court
WA State Court of Appeals, Division III

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION THREE

COLLEEN KELLY, an individual, Appellant, v. ALLIANZ LIFE INSURANCE COMPANY OF NORTH AMERICA, a corporation organized pursuant to the laws of Minnesota, Respondent.	)	No. 31091-4-III PUBLISHED OPINION

KULIK, J. — Colleen Kelly appeals summary judgment dismissal of her lawsuit against Allianz Life Insurance Company. She contends the trial court erred in deciding her claims were time barred under the six-year statute of limitations applicable to contract based claims. Ms. Kelly additionally contends that she was entitled to 12 percent interest on the principal repayment rather than the 3 percent interest Allianz paid her when it returned her investment. We review a challenge to the statute of limitations de novo. Here, we agree that Ms. Kelly's action is time barred because she did not file within the six-year statute of limitations, which began to run on June 27, 2005, if not earlier when

she purchased the annuities in 2004. Ms. Kelly filed her lawsuit on August 19, 2011.

We affirm the trial court's summary judgment dismissal.

FACTS

In 2004, Colleen Kelly purchased three annuity contracts from Curtis Horton, an Allianz Life Insurance Company insurance agent. On June 27, 2005, the Washington State Office of Insurance Commissioner informed Ms. Kelly that the annuities were not authorized for sale in Washington State. On August 5, 2005, Ms. Kelly then requested that Allianz terminate the contracts "at their current value, without penalty." Clerk's Papers (CP) at 104. She did not mention interest.

On September 13, 2005, Allianz notified Ms. Kelly that it agreed to cancel the three policies and return the premiums with 3 percent interest. With the cancellation letter, it included three checks for the premium money, plus 3 percent interest, for a total of $141,221.69. Ms. Kelly deposited the checks in her bank account and the funds cleared.

On March 20, 2006, Ms. Kelly contacted Allianz, stating that an attorney had advised her that she should have received a refund based on a 12 percent rate of interest. Over the next several years, Ms. Kelly and her attorney sporadically discussed the added interest Ms. Kelly claimed she was owed.

Ms. Kelly filed a lawsuit against Allianz on August 19, 2011, asserting a cause of action for unpaid interest in the amount of $14,544 under RCW 19.52.010.[1] Allianz filed a CR 12(b)(6) motion to dismiss, arguing that Ms. Kelly failed to allege any cause of action. The trial court denied the motion, but ordered Ms. Kelly to submit an amended complaint making a more definite statement under CR 12(e).

Ms. Kelly filed an amended complaint on December 19, 2011, asking for a declaratory judgment and asserting causes of action for rescission and restitution. She claimed that a 12 percent interest rate under RCW 19.52.010 applied to her restitution claim and asked for a judgment of $14,354, which represented the "remaining portion of full restitution which Allianz Life has not made." CP at 8.

Allianz moved for summary judgment, arguing that Ms. Kelly's causes of action were barred by the six-year statute of limitations for actions on contracts under RCW 4.16.040. Allianz also argued that even if Ms. Kelly's claims were not time barred, RCW 19.52.010 was inapplicable because the statute does not apply to private agreements between parties where those parties do not seek judicial relief. It also argued if Ms. Kelly's claims arose out of the rescission of the annuities, Allianz had properly

[1] RCW 19.52.010 states in relevant part: "(1) Every loan or forbearance of money, goods, or thing in action shall bear interest at the rate of twelve percent per annum where no different rate is agreed to in writing between the parties."

paid 3 percent interest, as agreed to by the parties. Allianz pointed out that RCW 19.52.010 applies only where no different rate is agreed to in writing by the parties.

Ms. Kelly responded that she was entitled to 12 percent interest because, upon rescission of the contracts, she had a common law right to restitution under RCW 19.52.010. She argued, "Allianz rescinded the Annuities, but its fulfillment of its rescission duties are not complete, and proper restitution including the proper applicable interest has yet to be made to Ms. Kelly." CP at 151. She also argued that her claims were not barred by the statute of limitations because her claim did not accrue until September 13, 2005, when Allianz paid 3 percent interest, rather than the statutory 12 percent.

The trial court granted Allianz's motion for summary judgment, ruling that Ms. Kelly's claims were time barred. It rejected Ms. Kelly's argument regarding the accrual date, stating: "I disagree that it's—that in this particular set of facts that it would be six years from September 13th of 2005." Report of Proceedings at 15. The trial court did not reach the other issues in its ruling. Ms. Kelly appeals.

ANALYSIS

Summary Judgment—Statute of Limitations. The issue is whether the trial court erred in summarily dismissing Ms. Kelly's claims as time barred under RCW 4.16.040(1).

We review a grant of summary judgment de novo, engaging in the same inquiry as the trial court. *Auto. United Trades Org. v. State*, 175 Wn.2d 537, 541, 286 P.3d 377 (2012). Summary judgment is proper when there are no genuine issues of material fact and the moving party is entitled to judgment as a matter of law. CR 56(c); *Huff v. Budbill*, 141 Wn.2d 1, 7, 1 P.3d 1138 (2000). We construe facts and reasonable inferences from those facts in the light most favorable to the nonmoving party. *Michak v. Transnation Title Ins. Co.*, 148 Wn.2d 788, 794, 64 P.3d 22 (2003). Summary judgment is appropriate if reasonable persons could reach but one conclusion. *Wilson v. Steinbach,* 98 Wn.2d 434, 437, 656 P.2d 1030 (1982).

Whether a claim is time barred is a legal question we review de novo. *Goodman v. Goodman*, 128 Wn.2d 366, 373, 907 P.2d 290 (1995); *Wilson*, 98 Wn.2d at 437. A statute of limitations is designed to protect individuals and courts from stale claims. *Burns v. McClinton*, 135 Wn. App. 285, 293, 143 P.3d 630 (2006). A statutory period begins to run when the plaintiff's cause of action accrues. *Malnar v. Carlson*, 128 Wn.2d 521, 529, 910 P.2d 455 (1996). A cause of action accrues when the party has the right to apply to a court for relief. *Id.* Accrual of contract claims occurs on breach. *1000 Virginia Ltd. P'ship v. Vertecs Corp.*, 158 Wn.2d 566, 576, 146 P.3d 423 (2006).

Generally, the discovery rule does not apply to an action for breach of contract. *See 1000 Virginia Ltd.*, 158 Wn.2d at 576.

RCW 4.16.040(1) provides that contract based claims are subject to a six-year statute of limitations. The parties do not dispute the applicable statutory period, but disagree on the accrual date of Ms. Kelly's claims. Ms. Kelly contends that the six-year statute of limitations did not begin to run until September 13, 2005, when Allianz underpaid her by adding only 3 percent interest to her principal repayment. She contends that before that date, she had no actual dispute with Allianz regarding the amount of interest and, therefore, no basis to apply to a court for relief.

Allianz responds that Ms. Kelly is attempting to avoid dismissal under the statute of limitations by mischaracterizing her breach of contract claim as one for "'wrongful payment of interest.'" Resp't's Br. at 11. It argues that Ms. Kelly's claim accrued when she learned of the annuities' purported illegality on June 27, 2005, and that she could have asserted her claim for 12 percent interest at any time after the annuities were issued, including her request for rescission.

Arguably, if accrual of a contract claim occurs on breach, then Ms. Kelly's right to rescission accrued upon issuance of the unauthorized annuities in 2004. The contract was essentially breached at its inception, entitling Ms. Kelly to immediate restitution. *Noel v.*

Cole, 98 Wn.2d 375, 383, 655 P.2d 245 (1982). In fact, Ms. Kelly acknowledges as much, stating "she had a right to the money from the moment she paid for the illegal investment Annuities." Appellant's Br. at 10. Nevertheless, if the claim accrued upon discovery of the illegality, Ms. Kelly had a cause of action on June 27, 2005, when the Office of Insurance Commissioner informed her the annuities were unauthorized for sale.

Ms. Kelly argues that she did not have an "actual dispute" with Allianz regarding the amount of interest to be paid on her principal amounts until September 13, 2005, when Allianz paid the 3 percent interest on the principal repayments.[2] Appellant's Br. at 19. But her argument ignores the central fact that she was put on notice of the annuities' illegality in June 2005, more than six years before she filed her lawsuit. At that point, the elements for a cause of action on the contract were existent and known to Ms. Kelly. Ms. Kelly's failure to demand 12 percent interest did not delay or extend the statutory period.

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[2] Ms. Kelly also argues that Allianz's "partial payment" tolled the statute of limitations under RCW 4.17.270, which provides that when partial payment is made on an existing contract, the statute of limitations commences from the time the last payment was made. Ms. Kelly did not raise this argument below; therefore, we need not reach this contention. However, even if we address the argument, it fails. "'Where circumstances are relied upon to toll the running of the statute of limitations, they must show a clear and unequivocal intention on the part of the obligor to keep alive the debt.'" *Walker v. Sieg*, 23 Wn.2d 552, 561, 161 P.2d 542 (1945) (quoting *Stockdale v. Horlacher*, 189 Wash. 264, 267, 64 P.2d 1015 (1937)). Nothing in the record suggests that Allianz had any intention to renew a debt or pay more in the future. Where no reasonable juror could find for the nonmoving party, summary judgment is proper. If Ms. Kelly had presented this

It is the fact of damage, not the amount, that is critical in determining when her claim accrued. In short, Ms. Kelly had grounds to sue Allianz in 2005, if not earlier. She did not file a lawsuit until over six years later. Accordingly, the trial court did not err in ruling that her claims were time barred under RCW 4.16.040(1).

The trial court did not reach the issue of what interest rate would apply. We affirm the trial court's summary judgment dismissal.

Kulik, J.

WE CONCUR:

Siddoway, A.C.J.

Fearing, J.

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argument, it would not have prevented summary judgment dismissal.

Appendix B

RCW 19.52.010
Rate in absence of agreement — Application to consumer leases.

(1) Every loan or forbearance of money, goods, or thing in action shall bear interest at the rate of twelve percent per annum where no different rate is agreed to in writing between the parties: PROVIDED, That with regard to any transaction heretofore or hereafter entered into subject to this section, if an agreement in writing between the parties evidencing such transaction provides for the payment of money at the end of an agreed period of time or in installments over an agreed period of time, then such agreement shall constitute a writing for purposes of this section and satisfy the requirements thereof. The discounting of commercial paper, where the borrower makes himself or herself liable as maker, guarantor, or indorser, shall be considered as a loan for the purposes of this chapter.

(2) A lease shall not be considered a loan or forbearance for the purposes of this chapter if:

(a) It constitutes a "consumer lease" as defined in RCW 63.10.020;

(b) It constitutes a lease-purchase agreement under chapter 63.19 RCW; or

(c) It would constitute such "consumer lease" but for the fact that:

(i) The lessee was not a natural person;

(ii) The lease was not primarily for personal, family, or household purposes; or

(iii) The total contractual obligation exceeded twenty-five thousand dollars.

[2011 c 336 § 542; 1992 c 134 § 13. Prior: 1983 c 309 § 1; 1983 c 158 § 6; 1981 c 80 § 1; 1899 c 80 § 1; RRS § 7299; prior: 1895 c 136 § 1; 1893 c 20 § 1; Code 1881 § 2368; 1863 p 433 § 1; 1854 p 380 § 1.]

Notes:

Short title -- Severability -- 1992 c 134: See RCW 63.19.900 and 63.19.901.

Severability -- 1983 c 158: See RCW 63.10.900.

Appendix C

RCW 4.16.040
Actions limited to six years.

The following actions shall be commenced within six years:

(1) An action upon a contract in writing, or liability express or implied arising out of a written agreement, except as provided for in RCW 64.04.007(2).

(2) An action upon an account receivable. For purposes of this section, an account receivable is any obligation for payment incurred in the ordinary course of the claimant's business or profession, whether arising from one or more transactions and whether or not earned by performance.

(3) An action for the rents and profits or for the use and occupation of real estate.

[2012 c 185 § 3; 2007 c 124 § 1; 1989 c 38 § 1; 1980 c 105 § 2; 1927 c 137 § 1; Code 1881 § 27; 1854 p 363 § 3; RRS § 157.]

Notes:

Application -- 2007 c 124: "This act applies to all causes of action on accounts receivable, whether commenced before or after July 22, 2007." [2007 c 124 § 2.]

Application -- 1980 c 105: See note following RCW 4.16.020.