No. 325687

(Spokane County Superior Court No. 11-2-02470-3)

COURT OF APPEALS
DIVISION III
OF THE STATE OF WASHINGTON

ROCKROCK GROUP, LLC, a Washington limited liability company, and RUSSELLROCK GROUP, LLC, a Washington limited liability company

Appellants,

vs.

VALUE LOGIC, LLC, a Washington limited liability company, TERRY SAVAGE and JANE DOE SAVAGE, a married couple, and JENNY BENSON and JOHN DOE BENSON,

Respondents/Cross-Appellants.

REPLY BRIEF OF RESPONDENTS/CROSS-APPELLANTS REGARDING STATUTE OF LIMITATIONS

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I. INTRODUCTION

Value Logic's cross appeal is based upon the applicable limitations period. Plaintiffs were obliged to bring their claims within three years of accrual. That is not in dispute. Plaintiffs' sole response is a naked assertion that their claims did not accrue until their members became aware of the alleged misrepresentations. That, however, is not consistent with settled Washington State law. As a matter of law, an entity's action accrues when the entity's authorized agent has knowledge sufficient for the claim to accrue.

In Plaintiffs' case, there were two agents who as a matter of law had knowledge chargeable to Plaintiffs. And it is undisputed that those agents had knowledge sufficient for this action to accrue more than three years before Plaintiffs decided to file this action.

In their Complaint, Plaintiffs alleged that Eric Sachtjen was their lawyer and that he had knowledge of the misrepresentations more than four years before this matter's filing. (CP 191-93) Plaintiffs cannot deny those facts. And those facts conclusively establish that this action is time-barred. Mr. Sachtjen's knowledge is imputed (by operation of law) onto Plaintiffs and that knowledge caused the claims made against Value Logic to accrue in 2006.

Plaintiffs are manager-managed limited liability companies. As a matter of law, therefore, the members are not agents for either entity. They are of no greater legal significance than a multinational corporation's shareholders. The entity's knowledge is adjudged by what the manager knew – and by when he or she knew it. It is undisputed that Plaintiffs shared a manager, Bart Johnson, and it is undisputed that Mr. Johnson had facts sufficient for this action's accrual more than three years before its filing.

Thus, whether the Court looks to Mr. Sachtjen or to Mr. Johnson, the only people whose knowledge matters for purposes of the limitations period, they had knowledge that establishes (as a matter of law and undisputed fact) that Plaintiffs' claims in this action are time-barred. Value Logic, therefore, respectfully asks the Court to reverse the trial court's decision to allow this matter to proceed. The Court of Appeals should hold that this matter is fatally untimely.

II. ARGUMENT

A. It Is Undisputed Attorney Eric Sachtjen Had Knowledge Sufficient for Plaintiffs' Claims to Accrue No Later than January 11, 2007; that Knowledge Is Imputed to Plaintiffs and Makes Their Claims Untimely Under the Applicable Limitation Period.

"When a pleading is properly made and uncontradicted, it may be taken as true for purposes of deciding summary judgment." *Leland v.*

Frogge, 71 Wn.2d 197, 200 (1967); *see also Peterson v. Pac. First Fed. Sav. & Loan Ass'n*, 23 Wn. App. 688, 691 (1979)("As CR 56(a) and (b) make clear, a party's motion for summary judgment . . . may be based on the pleadings."). Value Logic's argument does nothing more than take Plaintiffs' own allegations as true, and based on those allegations Plaintiffs' claims accrued more than three years before this action was filed. Plaintiffs made two factual allegations, neither of which is disputable. When those two facts are considered in light of the limitations period it becomes clear that Plaintiffs' claims are time-barred. Plaintiffs' Complaint alleges: (i) that Eric Sachtjen was their lawyer at all relevant times; and (ii) that Mr. Sachtjen was aware of the alleged misrepresentations that are asserted in this case by October 2006 – more than four year before this action's filing. (CP 191-193)

In taking the facts set forth in Plaintiffs' Second Amended Complaint regarding Eric Sachtjen to be true – including his role as Plaintiffs' attorney and the material information of Plaintiffs' claims he possessed but failed to disclose – dismissal of Plaintiffs' action against Value Logic as untimely under the statute of limitations is appropriate.

Plaintiffs' Second Amended Complaint includes the following assertions:

- "Mr. Sachtjen was the attorney for the plaintiffs at the time

of [the] transactions."[1] (CP 192)

- A separate appraiser "returned an appraised value that was less than twenty-five percent of the value of appraisals issued at or around the same time as Value Logic." (CP 191)

- "Mr. Sachtjen did not communicate to the Plaintiffs this other appraisal amount." (CP 192)

- "Mr. Sachtjen was **aware of the material facts on these transactions**" and he breached his duty to Plaintiffs "**by not disclosing material facts to the Plaintiffs**." (CP 193)(emphasis added).

"Knowledge by the attorney is imputed to the client." *Hill v. Dep't of Labor & Indus.*, 90 Wn.2d 276, 279 (1978) citing *Yakima Fin. Corp. v. Thompson*, 171 Wash. 309, 318 (1933); *Stubbe v. Stangler*, 157 Wash. 283 (1930). Regardless of whether Mr. Sachtjen passed the information along to Plaintiffs, and regardless of whether he had any duty to do so, Mr. Sachtjen's undisputed possession of the information is imputed (by operation of law) to Plaintiffs. And that imputed knowledge caused Plaintiffs' claims to accrue immediately. *See Matson v. Weidenkopf*, 101 Wn. App. 472, 481-82 (2000); *see also Huff v. Roach*, 125 Wn. App. 724,

[1] On appeal, Plaintiffs continue to present as an undisputed fact that Mr. Sachtjen was their attorney and received information regarding a separate opinion of value which was never communicated to Plaintiffs. *See Appellants' Initial Brief*, p. 11 ("On October 17, 2006 the attorney for RockRock Group received a letter from Mr. Rothrock stating an evaluation appraisal had been done by Mr. Sweitzer on the Rothrock Land. . . CP 624-25." Eric Sachtjen is the recipient of the letter, therefore, no other individual could be presumed to be "the attorney for RockRock.")

730 (2005) ("[Plaintiffs] were injured by [their attorney] when he missed the statute of limitations, effectively invading their legal interests.").

That Plaintiffs did not become aware of Mr. Sachtjen's failure to disclose the material facts for their claim against Value Logic until years later is irrelevant to this Cross-Appeal. Mr. Sachtjen, as Plaintiffs' agent, possessed those material facts to Plaintiffs' claims on October 17, 2006.[2] (CP 193-94; 624-25). Over four years passed before Plaintiffs jointly filed their complaint against Value Logic on June 1, 2011, well after the statute of limitations ran. RCW 4.16.080(4). Dismissal of Plaintiffs' claims based on their own undisputed facts set forth in the complaint is appropriate as the statute of limitations expired.

B. Plaintiffs' Legally Incorrect and Illogical Argument that Member "Reliance" Flows to the Entity Results in Untimely Claims Barred By the Statute of Limitations.

Washington's Limited Liability Act, the Plaintiff-LLC operating agreements, documents signed by Plaintiffs' manager, and Plaintiffs' counsel's communications unequivocally state that the manager was the exclusive authority of Plaintiffs. "If the certificate of formation vests management of the limited liability company in a manager or managers, no member, acting solely in the capacity as a member, is an agent of the

[2] The Rothrock Land (RockRock Group) transaction closed on or about November 9, 2006 and the Sundevil Land (RussellRock Group) transaction closed on or about January 11, 2007. (CP 5)

limited liability company." RCW 25.15.150(3). The Operating Agreements are explicit that the manager is the sole individual authorized to act on behalf of the LLCs. (CP 278; 344 §§ 4.1-4.12)

In response to Value Logic's interrogatories, Bart Johnson as manager was the sole person identified who was "a witness to the decisions of the entity made at the time of its investment in the property." (CP 817) No other witnesses were identified to testify as to the decisions of either entity to purchase the parcels, only the reliance of its members. In discovery, Plaintiffs were unwavering in their position that a member's knowledge, beliefs, and understanding are not binding on the Plaintiffs. (CP 817, 826; 829-30; 832)

Despite settled law and Plaintiffs' prior assertions, they now insist that it is the individual members' knowledge (and not the manager's knowledge) that dictates when the claims in this case accrued. It is inappropriate to look at a member's reliance for their own personal investment in a manager-managed limited liability company, particularly in isolation, where only Bart Johnson was authorized to act on Plaintiffs' behalf in purchasing the parcels.

Furthermore, Plaintiffs are selectively picking which member's knowledge to consider. Plaintiffs ignore unequivocal testimony from their members which demonstrates that the entity had notice of the purported

misrepresentations. Members testified that the documents the manager executed "raise[d] a red flag" and, therefore, put the entity on notice of a potential claim. (CP 841, 844; *see also* CP 462-63; 851) Members claim that information in closing documents demonstrated that Plaintiffs were overpaying for the parcels based on underlying transactions. (CP 841)("[W]e were buying the property from ourselves for four times the value."). Thus, even if the LLC members' knowledge was legally significant, the facts of this case show that the LLC members had knowledge sufficient for their action to accrue more than three years before the action's filing.

Plaintiffs were created as manager-managed LLCs in order to afford their members specific protections and to clearly define the role of their managing agent. As manager of both entities at the time of the transactions, Bart Johnson was the sole authority permitted to act on behalf either the LLC. (CP 278; 344 §§ 4.1-4.12) It is undisputed that Mr. Johnson did not review or rely on the appraisals. (CP 453-54, 456, 470) Nor did Mr. Johnson communicate with the members regarding their reliance in making their personal investments in the Plaintiff-LLCs. Plaintiffs now ask the Court to disregard the corporate structure their members sought for protection and governance. Plaintiffs cannot have it both ways. If the Court changes Washington law to allow an individual

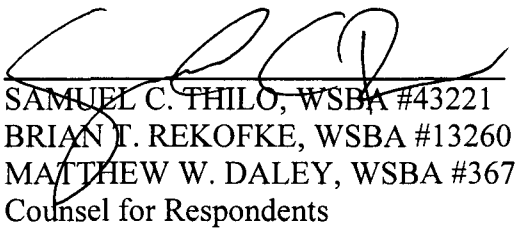
member's reliance to substitute for the reliance of the entity's designated authority and sole agent in support of a cause of action against Value Logic for negligent misrepresentation, then the same should be true for the purposes of the statute of limitations. The "red flags" were present to the manager at the time of closing, barring Plaintiffs' claims by the statute of limitations.

VI. CONCLUSION

Based on the foregoing, Value Logic requests that the Court dismiss Plaintiffs claims as untimely under the statute of limitations.

RESPECTFULLY SUBMITTED, this 4th day of December, 2015.

WITHERSPOON • KELLEY, P.S.



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CERTIFICATE OF SERVICE

On the 4th day of December, 2015, I caused to be served a true and correct copy of the within document described as REPLY BRIEF OF RESPONDENTS/CROSS-APPELLANTS REGARDING STATUTE OF LIMITATIONS on all interested parties to this action as follows:

M. Casey Law, PLLC Marshall Casey, WSBA #42552 1318 W. College Spokane, WA 99201 Counsel for Appellants	Via United States Mail Via Federal Express Via Hand Delivery Via Facsimile Via Electronic Mail	[ ] [ ] [x] [ ] [ ]
M. Casey Law, PLLC J. Gregory Casey, WSBA #2130 1318 W. College Spokane, WA 99201 Counsel for Appellants	Via United States Mail Via Federal Express Via Hand Delivery Via Facsimile Via Electronic Mail	[ ] [ ] [x] [ ] [ ]

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