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IN THE SUPREME COURT
OF THE STATE OF WASHINGTON

COURT OF APPEALS, DIVISION III NO. 34540-8-III

EPIC, a non-profit corporation,

Appellant,

v.

CLIFTONLARSONALLEN LLP,

Respondent.

RESPONDENT'S ANSWER TO PETITION FOR REVIEW

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TABLE OF CONTENTS

I. Introduction 1

II. Statement of the Case 2

A. Factual Background. 2

1. The terms of the parties' relationship. 3

2. CLA's predeccessors' audit reports. 4

3. In January 2012, HHS notified EPIC that EPIC had violated federal regulations concerning matching grants to expenditures. 5

4. CLA's 2011 audit report further noted the fund mismatching issue. 6

5. EPIC accedes to HHS' administrative action. 7

6. EPIC decides to investigate possible legal action. 7

B. Procedural History. 8

III. Argument 8

A. The Contractual Limitations Clauses are Reasonable and Enforceable. 8

B. EPIC's Claims Against CLE Accrued Not Later than September 2012. 10

1. Washington law regarding the "discovery rule" 11

2. Under the discovery rule, EPIC's claims accrued in 2012 and no later than September 2012 12

3. EPIC's accrual-date arguments are inconsistent with well-established Washington law. 14

C. The Statute of Limitations Bars EPIC's Claims. 16

1. EPIC's claims are barred by the three-year statute of limitations applicable to tort claims. 16

2. EPIC's assertion of a breach of contract claim does not alter the limitations period. 16

D. Rule of Civil Appellate Procedure 13.4 Does Not Spport EPIC's Petition 18

TABLE OF CONTENTS (CONT'D)

IV. Conclusion 21

Table of Authorities iii

TABLE OF AUTHORITIES

Page(s)

Cases

1000 Virginia Ltd. Partn. v. Vertecs Corp.,
158 Wn.2d 566, 146 P.3d 423 (2006) 11, 20

August v. U.S. Bancorp,
146 Wn. App. 328, 190 P.2d 86 (2008) 11

Boguch v. Landover Corp.,
153 Wn. App. 595, 224 P.3d 795 (2009) 16, 17

Cashmere Valley Bank v. Brender,
128 Wn. App. 497, 116 P.3d. 421 (2005),
aff'd, 158 Wn.2d 655, 146 P.3d 928 (2006) 11

G.W. Constr. Corp. v. Prof'l Serv. Indus., Inc.,
70 Wn. App. 360, 853 P.2d 484 (1993) 17, 18

Germain v. Pullman Baptist Church,
96 Wn. App. 826, 980 P.2d 809 (1999) 11

Gevaart v. Metco Constr.,
111 Wn.2d 499, 760 P.2d 348 (1988) 15

Green v. A.P.C.,
136 Wn.2d 87, 960 P.2d 912 (1998) 14

Hawkes v. Hoffman,
56 Wash. 120, 105 P. 156 (1909) 11

Luna v. Household Fin. Corp. III,
236 F. Supp. 2d 166 (W.D. Wash. 2002) 8, 9

Martin v. Dematic,
178 Wn. App. 646, 315 P.3d 1126 (2013) 11

TABLE OF AUTHORITIES (CONT'D)

Page(s)

Cases

Murphey v. Grass,
164 Wn. App. 584, 267 P.3d 376 (2011) 19, 20

Owens v. Harrison,
120 Wn. App. 909, 86 P.3d 1266 (2004) 17

Sabey v. Howard Johnson & Co.,
101 Wn. App. 575, 5 P.3d 730 (2000) 19, 20

Syrett v. Reisner McEwin & Assocs.,
107 Wn. App. 524, 24 P.3d 1070 (2001) 9, 10, 13

Tjart v. Smith-Barney, Inc.,
107 Wn. App. 885, 28 P.3d 823 (2001) 9

Washington State Major League Baseball Stadium Public Facilities Dist. v. Huber, Hunt & Nichols-Kiewit Const. Co.,
176 Wn.2d 502, 296 P.3d 821 (2013) 8

Wothers v. Farmers Ins. Co. of Wash.,
101 Wn. App. 75, 5 P.3d 719 (2000) 9

Yakima Asphalt Paving Co. v. Dept. of Transp.,
45 Wn. App. 663, 726 P.2d 1021 (1986), *review denied*,
107 Wn.2d 1029 (1987) 9

Statutes

45 C.F.R. § 74.22 3

RCW § 4.16.080 16

Other Authorities

Rule of Appellate Procedure 13.4 ....2, 18

I. INTRODUCTION

From 2006-2012, Petitioner EPIC retained the predecessors of Respondent CliftonLarsonAllen LLP ("CLA") to audit EPIC's financial statements and to assess whether EPIC was in compliance with certain Federal grant requirements. Each of the engagement agreements between EPIC and CLA contained language that required EPIC to bring its claims within two years (though the trigger for the two-year period changed).

In January 2012, the Federal government notified EPIC that it was not in compliance with grant regulations. EPIC immediately began to incur costs to deal with the situation. Within a month, EPIC fired its CFO; by April 2012, EPIC had begun preparations to borrow money to meet the Federal government's expected repayment demand. In September 2012, CLA issued its audit report for 2011. This report described in detail the conditions that led to the Federal government's January 2012 notice.

Although EPIC reacted speedily to the January 2012 notice, it waited until September 2013 –a year after CLA's September 2012 report – to retain a forensic accountant to examine possible claims against CLA. That expert did not issue her "preliminary report" until June 2015, when almost two more years had passed. And then, EPIC waited until December 2015 to commence its action against CLA.

By the time EPIC commenced its action against CLA, the two-year deadlines imposed in the engagement agreements had passed. Not only that, but the three-year statute of limitations that would have applied to

EPIC's claims in the absence of the contractual limitations clause also had passed. Accordingly, CLA moved to dismiss EPIC's claims. The Superior Court granted CLA's motion and, on June 3, 2016, issued its Order for Dismissal. On June 20, 2017, the Court of Appeals affirmed.

The Court of Appeals rightly concluded that EPIC's claims against CLA had accrued in time for EPIC to have commenced its action within the contractual limitations period. The undisputed facts of record – many of which are ignored or glossed over in EPIC's Petition for Review – support the Court of Appeals' decision. Further, the Court of Appeals correctly applied well-established Washington law regarding the interpretation of contractual limitations clauses and the accrual of claims to a unique set of facts. For those reasons, this case does not raise any question of public interest within the meaning of Rule of Appellate Procedure 13.4(b)(4). This Court should deny EPIC's Petition for Review.

II. STATEMENT OF THE CASE

The Court of Appeals set forth the relevant facts and procedural background. (Op., pp. 1-9.) This Answer will provide a summary of the key facts.

A. Factual Background.

EPIC is a Washington non-profit corporation that operates a Head Start program that is funded by grants from a division of the U.S. Department of Health and Human Services ("HHS"). (CP 8-9.) The

regulations pertaining to such funding included a provision requiring the timing and amount of cash advances to be "as close as is administratively feasible to the actual disbursements by the recipient organization." (CP 144-45; *see also* 45 C.F.R. § 74.22(b)(2) (2010).)

CLA is a Minnesota limited liability partnership, with an office in Yakima, Washington. (CP 8, ¶ 2.) CLA is the successor to LarsonAllen LLP which, in turn, was the successor to LeMaster & Daniels PLLC ("L&D"). (CP 9, ¶ 5; CP 29-30, ¶¶ 2, 6.) As used in this brief, the term "CLA" refers to CliftonLarsonAllen and both of its predecessors.

1. The terms of the parties' relationship.

For 2006–2009, EPIC retained L&D to audit EPIC's year-end financial statements; for 2010-2012 EPIC retained LarsonAllen to perform the same task. EPIC and CLA's predecessors entered into yearly written engagement contracts. (CP 9, ¶ 5; CP 34-82.) In these contracts, CLA's predecessors agreed to conduct the audits in accordance with generally accepted accounting principles and with Federal government requirements. (CP 35, 40, 47, 54, 65, 74-75.) Each of these contracts also contained language that required EPIC to bring any claims it might have arising out of the audit within two years. In the agreements from 2006-2009, the two-year period began to run from the date of the last audit report:

> It is agreed by Client and L&D or any successors in interest that no claim arising out of services rendered pursuant to this agreement by or on behalf of Client shall be asserted

> more than two years *after the date of the last audit report* issued by L&D.

(CP 38, 44, 52, 57 (italics added).) In the agreements for 2010-2012, the two-year period began to run on the date of the report at issue:

> **Time limitation**
>
> The nature of our services makes it difficult, with the passage of time, to gather and present evidence that fully and fairly establishes the facts underlying any Dispute. We both agree that, notwithstanding any statute or law of limitations that might otherwise apply to a Dispute, any action or legal proceeding by you against us must be commenced within twenty-four (24) months ('Limitations Period') *after the date when we deliver our final audit report under this agreement*, regardless of whether we do other services for you relating to the audit report, or you shall be forever barred from commencing a lawsuit or obtaining any legal or equitable relief or recovery.
>
> The Limitation Period applies and begins to run even if you have not suffered any damage or loss, or have not become aware of the existence or possible existence of a Dispute.

(CP 70, 79 (bold in original, italics added). Throughout its Petition, EPIC fails to note the difference in the "trigger date" for the limitations period, and mistakenly asserts that that two-year period for claims arising out of all of the audits begins to run on the date of the report at issue. (*See, e.g.*, Petition, p. 2.) But the Court of Appeals accurately noted and considered the difference in the "trigger date" for the contractual limitations clauses. (Op., pp. 13-14.)

2. CLA's predecessors' audit reports.

Pursuant to these six engagement agreements, CLA's predecessors issued the following audit reports:

- 2006 audit report: May 22, 2007.
- 2007 audit report: May 17, 2008.
- 2008 audit report: June 29, 2009.
- 2009 audit report: May 18, 2010.
- 2010 audit report: March 28, 2011.
- 2011 audit report: September 19, 2012.

(CP 9, ¶¶ 5, 8; CP 84, 86, 88, 91, 94, 97-123.) [1] On June 25, 2013, CLA issued its last audit report, for the 2012 financials. (CP 125-26.)[2]

3. In January 2012, HHS notified EPIC that EPIC had violated federal regulations concerning matching grants to expenditures.

On January 17, 2012, HHS notified EPIC that a review of EPIC's financials had shown that EPIC was mismanaging grant funds. (CP 169, ¶ 4; CP 157-64.) In February 2012, EPIC "put a stop" to the issue by terminating its CFO's employment. (CP 145, ¶ 8.) EPIC's management "spent most of the rest of 2012" working on this issue. (CP 171.) In 2012, EPIC took out loans, at least in part to deal with the anticipated Federal disallowance of grant funds. (*Id.*)

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[1] An audit of the financial statements for a given year is necessarily done during the following year.

[2] EPIC makes no claim arising out of the reports for 2011 and 2012. (*See* CP 9.)

4. CLA's 2011 audit report further noted the fund mismatching issue.

On September 19, 2012, CLA issued its audit report for 2011. (CP 97-123.) This report fully identified and discussed the funds mismatching issue. The report stated, in part:

> As discussed in note 12, the opening balance of unrestricted net assets in the accompanying financial statements has been restated.

(CP 99.) This audit report also stated,

> **NOTE 12 PRIOR PERIOD RESTATEMENT**
>
> Net assets at the beginning of 2011 have been adjusted to properly reflect cash receipts on accounts receivable for prior years and to match grant expenditures with reimbursements applicable to prior years. The adjustment resulted in a decrease in net assets and an increase in accrued expenses of $331,095. The effect of the restatement on the previously reported change in net assets for the year December 31, 2010 has not been determined.

(CP 111 (bold in original).) This report also stated,

> As described in items 2011-01, 2011-02 and 2011-03 in the accompanying schedule of findings and questioned costs, EPIC did not comply with requirements regarding cash management and period of availability of federal funds ….

(CP 115.) Finding 2011-02 to this September 2012 report further described the fund mismatching issue:

> Condition: EPIC drew down funds from current Head Start grants for expenditures incurred in previous grant years.
>
> ***
>
> Context: During the reconciliation process of accounts receivable and grant draw downs, it was noted that the expenses incurred in the last month of the previous grant year were claimed on the current year grant draw down.

> *This occurred for at least two consecutive prior grant years*. The questioned costs noted above are the amounts drawn down on the respective grants to pay expenses incurred in October 2010 and October 2011.

(CP 119 (underlining in original; italics added).)

Thus, by September 2012, EPIC knew: (1) EPIC had retained CLA to audit its financials in accordance with Federal requirements; (2) HHS had identified a problem with how EPIC managed and administered Federal grant funds; (3) EPIC had terminated the employment of the officer responsible; (4) EPIC had incurred costs, including obtaining a loan, to deal with the problem; and (5) the problem had occurred in at least two prior years.

5. EPIC accedes to HHS' administrative action.

On February 8, 2013, HHS formally notified EPIC that EPIC would be required to repay more than $1.1 million in funds that were improperly used to pay expenses incurred during an earlier funding period. (CP 9, ¶ 9, Sub. No. 36, Hudson Decl., ¶ 3).) In April 2013, EPIC decided to relinquish federal funds it had received in the amount of $303,287. (CP 9, ¶ 11; Sub. No. 36, Hudson Decl., ¶¶ 5, 6).)

6. EPIC decides to investigate possible legal action.

In September 2013, EPIC retained a forensic accountant, Tiffany Couch, to investigate a claim against CLA. (CP 148, ¶ 2.) In June 2015, Couch reached a "preliminary opinion" that the audits should have detected the grant mismanagement. (CP 149, ¶ 3.)

B. Procedural History.

EPIC commenced this lawsuit on December 17, 2015, and filed an Amended Complaint on January 22, 2016. (CP 1-11). On April 1, 2016, CLA filed a motion to dismiss under CR 12(b)(6) or, in the alternative, for summary judgment under CR 56. (CP 12-28). The Superior Court, Judge Susan L. Hahn presiding, filed an Order dismissing the case on June 1, 2016. (CP 175-183). The Court of Appeals affirmed on June 20, 2017.

III. ARGUMENT

This Court should deny EPIC's Petition for Review. The Court of Appeals correctly applied well-established law concerning (a) the interpretation and application of contractual limitations clauses and (b) the accrual of claims. This led the Court of Appeals to conclude that EPIC's claim against CLA had accrued in time for EPIC to have commenced legal action within the contractual limitations periods. In addition, and although not addressed by the Court of Appeals, EPIC's claim is barred by the three-year statute of limitations. EPIC's claims accrued no later than September 2012, but EPIC did not file its lawsuit until December 2015.

A. The Contractual Limitations Clauses are Reasonable and Enforceable.

Contractual time limitations clauses are enforceable under Washington law. *See, e.g., Washington State Major League Baseball Stadium Public Facilities Dist. v. Huber, Hunt & Nichols-Kiewit Const. Co.*, 176 Wn.2d 502, 512-13, 296 P.3d 821, 826-27 (2013) (recognizing

that parties can contractually modify the statute of limitations and can likewise agree to set the time for accrual of causes of action under their contracts); *Syrett v. Reisner McEwin & Assocs.,* 107 Wn. App. 524, 527-28, 24 P.3d 1070, 1072 (2001) ("Under Washington law, parties may agree to a shorter limitation on filing suit than the period of the applicable statute of limitations."); *Wothers v. Farmers Ins. Co. of Wash.,* 101 Wn. App. 75, 79-80, 5 P.3d 719, 721 (2000) ("A statute of limitation cannot enlarge the time for the commencement of an action when the time limitation therefor is fixed by contract."). "A contract limitation period prevails over the general statute of limitations unless prohibited by statute or public policy, or unless the provision is unreasonable." *Yakima Asphalt Paving Co. v. Dept. of Transp.*, 45 Wn. App. 663, 666, 726 P.2d 1021, 1023 (1986), *review denied*, 107 Wn.2d 1029 (1987). The burden of proving that the clause is unconscionable rests with the claimant. *Tjart v. Smith-Barney, Inc.*, 107 Wn. App. 885, 898, 28 P.3d 823, 830 (2001); *Luna v. Household Fin. Corp. III*, 236 F. Supp. 2d 166, 1174 (W.D. Wash. 2002).

In Washington, contractual limitations on the time to bring suit ranging between three months and a year have been found to be reasonable and not violative of public policy. *Syrett,* 107 Wn. App. at 530, 24 P.3d at 1073. In *Syrett*, the court enforced a six-month contract limitations period, after first noting that a contractual limitations period "is not unreasonable if the time allowed affords a plaintiff sufficient

opportunity to ascertain and investigate the claim and prepare for the controversy." *Syrett*, 107 Wn. App. at 529-30, 24 P.3d at 1073.

Here, as the Court of Appeals concluded, the contractual limitations clauses are reasonable and enforceable, specifically because EPIC had sufficient opportunity from the time the claims accrued to investigate the claim and prepare for the controversy. As to the audits for 2006-2009, EPIC had two years from the date of the *last* audit report to commence its claims. Since the last audit report was issued in June 2013, EPIC had until June 2015 to commence an action. As to the audits for 2010 and 2011, EPIC had two years from the date of the report *at issue* to commence its claims. Thus, the two-year limitations period for the 2010 audit report ended on March 28, 2013. (*See* Op., p. 13-14 ("Note that the limitation period for the 2010 and 2011 audits expired earlier than the 2006-2009 audits, with the period for the 2010 audit expiring first."))

The Court of Appeals' conclusion that, under these facts, these contractual limitations clauses gave EPIC a sufficient opportunity to investigation and assert its claims should not be disturbed.

B. EPIC's Claims Against CLA Accrued No Later than September 2012.

The Court of Appeals correctly held that EPIC's claim against CLA accrued in 2012, and certainly no later than September 2012.

1. Washington law regarding the "discovery rule."

Under the discovery rule, a cause of action accrues when the plaintiff learns the salient facts, even if the plaintiff does not understand the legal significance of those facts. *1000 Virginia Ltd. Partn. v. Vertecs Corp.*, 158 Wn.2d 566, 576, 146 P.3d 423, 428 (2006). Determining when a claim accrues can involve fact questions, but it is proper for the trial court to resolve the issue as a matter of law if reasonable minds cannot differ as to the interpretation of the relevant facts. *Martin v. Dematic*, 178 Wn. App. 646, 653, 315 P.3d 1126 (2013). The court considers whether the plaintiff had knowledge of the factual basis of the cause of action, not the legal basis. *August v. U.S. Bancorp*, 146 Wn. App. 328, 342, 190 P.2d 86 (2008); *Germain v. Pullman Baptist Church*, 96 Wn. App. 826, 832, 980 P.2d 809 (1999). The claimant need not be aware of the full extent of the damages. *Cashmere Valley Bank v. Brender*, 128 Wn. App. 497, 508, 116 P.3d. 421 (2005), *aff'd*, 158 Wn.2d 655, 146 P.3d 928 (2006). A person who has notice of facts that are sufficient to put him or her upon inquiry notice is deemed to have notice of all facts that reasonable inquiry would disclose. *Id*. (citing *Hawkes v. Hoffman*, 56 Wash. 120, 126, 105 P. 156 (1909).) A cause of action may accrue even when the claimant is not aware of the full extent of the damages. *Cashmere Valley Bank. v. Brender*, 128 Wn. App. 497, 508, 116 P.3d 421 (2005), *aff'd*, 158 Wn.2d 655, 146 P.3d 928 (2006).

2. Under the discovery rule, EPIC's claim accrued in 2012 and no later than September 2012.

Given these principles, the Court of Appeals concluded that the undisputed facts show that EPIC's claim against CLA had accrued in 2012, and no later than September 2012. (Op., pp. 18-20.) This conclusion is supported by the record and should not be disturbed.

EPIC's full and fair opportunity to pursue its claims is demonstrated by two undisputed points. First, contrary to EPIC's contention that it had no opportunity to sue CLA for claims arising out of the 2006 through 2009 audits, EPIC actually had several years in which to bring a claim arising out of those reports. On this point, EPIC misses a key term in the engagement agreements. Unlike the later engagement agreements, the agreements for those earlier audits require a claim to be brought within two years "after the *last* audit report issued by [LeMaster & Daniels PLLC (now CLA)]." (CP 38; CP 44; CP 52; CP 57.) The issuance date of the last audit report was June 25, 2013. (CP 125.) Thus, EPIC had until June 25, 2015 to commence a lawsuit against CLA based upon an alleged failure by CLA to uncover funds mismanagement in the 2006 through 2009 audits.

Second, with regard to EPIC's claim arising out of the March 28, 2011 report for the 2010 audit, EPIC had plenty of time to assert such a claim after the misuse of Head Start funds was disclosed and before the expiration of the two-year period that ran from the date of that report. The

Court of Appeals noted that the January 17, 2012 notification from HHS warned EPIC that it had mismanaged grant funds, and stated,

> EPIC had available then the 2010 audit report in addition to earlier reports. A review of the 2010 report would have confirmed that CLA failed to warn EPIC of its violation of the federal regulations.

(Op., p. 18.)[3] This statement is amply supported by the record. The Court of Appeals further noted that EPIC could have reviewed its own records and reached the same conclusion. (*Id.*) As a result of the HHS notification, EPIC took immediate action and began to incur expenses. (*Id.*, p. 19) By April 2012, EPIC knew that "any failure to catch the mistake by CLA was reaping damage." (*Id.*) In the September 19, 2012 audit report, CLA disclosed misuse of Head Start funds dating back to at least the end of 2009. (*Id.*, *see also* CP 119.) Thus, during the two-year period after the March 28, 2011 report, EPIC had more than a year – and at least six months from CLA's September 2012 report – in which to assert claims arising out of the March 2011 report. Washington cases have enforced contractual limitations as short as three months. *Syrett,* 107 Wn. App. at 530, 24 P.3d at 1073.

In short, on this record EPIC had ample opportunity to learn of and investigate any potential claim against CLA, well before the expiration of the contractual limitations period. The record amply supports the Court of

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[3] Of course, CLA does not concede that its predecessors committed any breaches of the duty of care.

Appeals' analysis and its decision to affirm the Superior Court's dismissal of EPIC's claim.

3. EPIC's accrual-date arguments are inconsistent with well-established Washington law.

In its Petition, EPIC contends that the claim did not accrue until August 2013. First, EPIC argues that HHS did not issue its "final disallowance" until that time. But this argument ignores the undisputed fact that almost immediately after the January 2012 notice, EPIC began to take action and to incur costs to deal with the funds mismatching problem. (Op., p. 18-19.)

EPIC also argues that it justifiably waited until August 2013 to begin focusing on whether CLA was responsible for not uncovering the error in its earlier audit reports. Even if the claim did not accrue until August 2013, EPIC waited for more than two years to commence its action. Further, EPIC's argument ignores precedent from this Court. When a plaintiff is placed on notice by some appreciable harm occasioned by another's wrongful conduct, the plaintiff must make further diligent inquiry to ascertain the scope of the actual harm. *Green v. A.P.C.*, 136 Wn.2d 87, 96, 960 P.2d 912 (1998). EPIC did not retain its forensic accountant until September 2013. This person provided her "preliminary report" to EPIC in June 2015. (CP 149.) EPIC does not point to anything in the record that explains why EPIC could not have retained Couch in 2012, why EPIC had to wait for Couch to finish her work, or why Couch

could not have issued her preliminary report much sooner than she did. And, as the Court of Appeals properly observed, EPIC does not identify any *material* fact which it knew when it filed the lawsuit in December 2015 that it did not know within the limitations period.

Finally, EPIC argues that it did not actually know it had a claim against CLA until June 2015, when the expert issued her preliminary report. (Petition, p. 4.) But the running of a limitations period is not tolled until a plaintiff consults an expert or is informed by an attorney that a breach of the applicable standard of care has occurred. *Gevaart v. Metco Constr.*, 111 Wn.2d 499, 501-502, 760 P.2d 348 (1988). Further, nothing in Washington law supports EPIC's apparent position that, before bringing a claim, EPIC was required to wait until it could be assured that the claim would prevail. CR 8 simply requires that the Complaint provide a short and plain statement of the claim, and CR 11 simply requires that a claim be "well grounded in fact" and "warranted by existing law." Indeed, when EPIC finally commenced its lawsuit, it did so on the basis of the information it had no later than September 2012.

In short, the record in this case establishes, beyond any doubt, that EPIC had a full and fair opportunity to investigate and bring its claims against CLA. EPIC knew about the regulatory violations for which it seeks to hold CLA responsible for more than three years before it commenced its lawsuit. Therefore, the two-year limitations clause is not unreasonable as applied to the facts of this case. The Court of Appeals'

conclusion that the limitations period is enforceable should not be disturbed.

C. The Statute of Limitations Bars EPIC's Claims.

Even if the contractual limitations clause were not enforceable, the applicable Washington statute of limitations would still apply to bar EPIC's claims against CLA. Although this issue was addressed in the parties' briefs, it was not reached by the Court of Appeals.

1. EPIC's claims are barred by the three-year statute of limitations applicable to tort claims.

The statute of limitations bars EPIC's claims against CLA. Under Washington law, a three-year statute of limitations applies to tort claims, including professional malpractice actions. RCW § 4.16.080. As established above, EPIC had knowledge of facts under the "discovery rule" sufficient to put it on notice of its potential claims against CLA by no later than September 2012. However, EPIC waited until December 2015 – nearly four years after learning of the issue, and three years and three months after receiving CLA's 2012 audit report – to commence this lawsuit. As a result, its claims are barred by the statute of limitations.

2. EPIC's assertion of a breach of contract claim does not alter the limitations period.

Before the Superior Court, EPIC contended that its breach of contract claim against CLA allows it to proceed on the basis of the six-year statute of limitations applicable to contract claims. But EPIC's

purported contract claim fails to state any cause of action and does not permit EPIC to invoke the six-year statute of limitations.

To assert a viable breach of contract claim, EPIC would have had to allege that CLA "violated a specific contractual undertaking," as opposed to alleging a breach of a duty to use reasonable care in the performance of the audit engagements. *See Boguch v. Landover Corp.*, 153 Wn. App. 595, 618-19, 224 P.3d 795, 807-08 (2009) (citing *G.W. Constr. Corp. v. Prof'l Serv. Indus., Inc.*, 70 Wn. App. 360, 366, 853 P.2d 484 (1993)). The court in *Boguch* held that "[a] claim that a realtor breached his or her duty to a seller is not an action on a contract, unless the seller claims that the realtor's omission 'violated a specific contractual undertaking.'" 153 Wn. App. at 618-19, 224 P.3d at 807-08. Similarly, in *G.W. Construction*, 70 Wn. App. 360, 853, P.2d 484 (1993), this Court held that an action against inspecting engineers who erroneously certified that the placement of rebar in a building met the plans and specifications sounded in tort, not contract, because the faulty certification "was not a breach of a specific term of [the engineers'] contract." 70 Wn. App. at 366; 853 P.2d at 487. Similarly, in *Owens v. Harrison*, 120 Wn. App. 909, 86 P.3d 1266 (2004), this Court stated,

> If the tortious breach of a duty, rather than a breach of a contract, gives rise to the cause of action, the claim is not properly characterized as breach of contract.

120 Wn. App at 915, 86 P.3d at 12 69 (citing *G.W. Constr.*, 70 Wn. App. at 364). As this Court further explained in *Owens*:

> [A]n attorney who agrees to draft a will for a client breaches the client contract by failing to draft the will. But if the attorney drafts the will negligently, the client has a tort claim even though the attorney drafted the will and did not breach the contract.

Id. at 915-16, 86 P.3d at 1269 (citing *G.W. Constr.*, 70 Wn. App. at 364, 853 P.2d 484).

Here, EPIC has not alleged that CLA either entirely failed to perform the services that were the subject of the engagement agreements between EPIC and CLA or that CLA breached a particular provision of any of those agreements. Rather, EPIC contends that CLA breached the standard of care applicable to an auditor in failing to identify EPIC's financial mismanagement. (CP 9, ¶ 8; CP 149, ¶ 3; CP 174, ¶ 3.) That is a tort claim, not a contract claim.

Absent an allegation that CLA "violated a specific contractual undertaking," EPIC's purported breach of contract claim fails to state a claim on which relief can be granted and should be dismissed accordingly. Therefore, EPIC's argument that it is asserting a breach of contract claim does not allow it to claim the benefit of the six-year statute of limitations. Instead, the three-year limitations period applies and bars EPIC's claims.

D. Rule of Civil Appellate Procedure 13.4 Does Not Support EPIC's Petition.

Finally, EPIC's Petition for Review is not supported by Rule of Civil Appellate Procedure 13.4(b).

This case does not involve a matter of "substantial public interest." Although EPIC attempts to portray this case as one in which the accountants are improperly using unreasonable limitations clauses to shield themselves from wrongdoing, that portrayal is not supported by the record. As established above, EPIC was on notice, no later than September 2012, of the factual basis of its claims against CLA. Despite that notice, EPIC failed to act diligently. It waited a year to retain an expert; that expert waited nearly two years to issue a report; then EPIC waited six more months to commence the action. Instead of a matter of substantial public interest, this case presents an unremarkable and fact-specific instance of a claimant failing to act diligently to pursue its claims.

Similarly, contrary to EPIC's contention, there is no conflict among Court of Appeals decisions for this Court to resolve by granting review in the present case. EPIC cites two cases not considered by the Court of Appeals in this case, *Murphey v. Grass*, 164 Wn. App. 584, 267 P.3d 376 (2011) and *Sabey v. Howard Johnson & Co.*, 101 Wn. App. 575, 5 P.3d 730 (2000), for the proposition that Division I provides a different standard for determining when a claim accrues.[4] Not so. In *Murphey*, the court was concerned with the limitations period for filing a claim against a CPA for negligent preparation of tax returns. The court considered and applied the specific statute regarding when a tax assessment becomes

[4] It appears that this Court was not asked to review the decisions in either *Murphey* or *Sabey.*

final. *Murphey*, 164 Wn. App. at 591, 267 P.3d 376. Based upon this statute, the plaintiff had no certain liability until the tax appeals division made the assessments final, binding and due for payment. *Id*. at 594-95. In *Sabey*, the court concluded that claims against an actuarial consultant accrued when the shareholder agreed to pay the Pension Benefit Guaranty Corporation for the shortfall. *Sabey*, 101 Wn. App. at 593. Here, by contrast, the Court of Appeals concluded that EPIC had already incurred actual expenses by February 2012. (Op., p. 19.) Thus, the decisions in *Murphey* and *Sabey* are consistent with the Court of Appeals' analysis in this case.

More important, EPIC does not identify any conflict between the Court of Appeals' analysis in this matter and the analysis applied by this Court in previous cases, including *1000 Virginia*. To the contrary, the Court of Appeals properly applied long-standing principles of Washington law as established and articulated by this Court.

In short, EPIC's Petition for Review does not identify any basis for review under RCAP 13.4(b).

IV. CONCLUSION

For the foregoing reasons, EPIC's Petition for Review should be denied.

Respectfully submitted this 18th day of August, 2017.

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CERTIFICATE OF SERVICE

I certify that a copy of the foregoing document has been served by email via the Washington State Appellant Court's Secure Portal on the 18th day of August, 2017, to

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