Supreme Court No. 102695-1

Court of Appeals No. 84946-8-I

SUPREME COURT OF THE STATE OF WASHINGTON

KYLE WILLIAM LAGOW, APPELLANT,

V.

HAGENS BERMAN SOBOL SHAPIRO LLP, a Washington Limited Liability Partnership, Defendant

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PETITION FOR REVIEW

KYLE WILLIAM LAGOW, PRO SE

3408 SWANSON DRIVE, PLANO, TEXAS 75025

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INTRODUCTION: The case is related to a dispute between the plaintiff and former attorney in which the Plaintiff has claimed the defendant did illegally access, utilize, and convert the plaintiff's privileged information for gain to the defendant(s). The lower court ruled the statutes of limitations had expired prior to the plaintiff filing the case. There are really no statutes or cases that need be cited and the plaintiff acting as pro se and not an attorney would not have the ability to produce them if they were needed. This is not a cumbersome matter, the dates are verifiable, the plaintiff is simply asking the court to determine if the statute's start date, as claimed by the defendant and relied upon by the lower court, is in fact an appropriate start date.

A. IDENTITY OF PETITIONER

Petitioner Kyle William Lagow, appellant below, asks this court to accept review of the court of appeals' decision dismissing the case due to the expiration of the statutes of limitations as attached to this document EXHIBIT A.

B. DECISION OF THE COURT OF APPEALS

Plaintiff seeks review of the opinion of the Court of Appeals in Kyle W. Lagow and Scott D. Hamilton, Appellants v Hagens Berman Sobol Shapiro, LLP, Respondent N084946-8-I, filed 11/13/2023. A copy of the decision attached as Exhibit "A".

C. ISSUES PRESENTED FOR REVIEW

1. Basic principles of due process require the defendant to deliver to Plaintiff discovery or show reason the discovery cannot be presented. The Plaintiff repeatedly requested all communications between the Plaintiff and representatives of the Defendant. In those requests it was noted that as much as 50% of the communications were in text message form. The Defendant representative has stated they do in fact keep all text messages and in fact warned the Plaintiff to be careful what he typed because they are stored on a server in the office and are reviewed. There was never any suggestion of hardship, yet the Defendant refused to produce any text message communications. These messages would clearly establish a continued representation agreement by the Defendant and would show the conditions. Despite seeking sanctions from the lower court against the Defendant, seeking to force the delivery of the text messages, the Defendant never delivered the discovery, and the court unjustly handicapped the Plaintiff in presenting the case. These are communications that are basic and freely discoverable in almost any case, yet without explanation the court did not force the Defendant to adhere to basic discovery requests. To show the court that requests were made for the text message communications the Plaintiff has included Exhibit "H" and "I".

2. Statutes of limitations were determined by the lower court to have expired. Yet the Plaintiff provided the court with sworn affidavits as to when they discovered the fraud. Both Lagow and Hamilton submitted sworn statements as to when the fraud was discovered (attached as Exhibit “F” and Exhibit “G”. Likewise, the Defendant submitted emails from Lagow that dated back to 2017 that indicated Lagow was aware the defendants were in the process of defrauding the Plaintiff and the court appears to have weighed the idea that emails start the Statutes of Limitations but yet Exhibit “D” and “E” are clearly downplaying any significant case or data usage.

The case against the Defendants was filed in 2022. Obviously, based on a simple calendar, the statutes of limitations would have expired if you simply apply the 2017 email date. Yet the lower court failed to consider that the case had in fact been filed a year before in New York and the court, backed up and delayed due to Covid issues, waited a year to decide the case needed to be refiled in another court, thus the Washington State filing. Even then, ignoring the delays for the National Emergency and delays related to Covid, it would still present some Statutes of Limitations concerns except for the fact that the lower courts failed to weigh that the Defendant was filing documents in the case, in which the Plaintiff’s data was being converted, under seal (Exhibit B) so the Plaintiff would have had little more than a suspicion of the Defendant’s wrongdoings and if the emails from Tom Loeser (Exhibit D and E) are weighed it is impossible to arrive at the plaintiffs knew or should have known. Further, the final judgement was not filed until July 16, 2020. This is well within any Statutes of Limitations concerns.

D. ARGUMENT WHY REVIEW SHOULD BE ACCEPTED

1. The defendant has a presence in the local courts as one of the most powerful firms in the country. For the lower court to dismiss without production of requested discovery, and no explanation from the Defendant as to why the discovery was not supplied, goes against any measure of legal fairness. Then to allow the Defendant to hide behind a Statutes of Limitations when the Defendant was knowingly filing documents under seal to hide the

data from a possible lawsuit and run out the clock, goes against any measure of legal fairness. The motive for such an action is simple: In a class action case the lawyers make the lion's share of the award while in a Whistleblower case (what the Plaintiff was engaged in) the attorneys get a portion of the award. It is simply absurd that the discovery was not required, but then to allow the defendant to hide behind a false claim that the Plaintiff knew or should have known, while the Defendant was filing under seal, simply does not hold any legal water. It is absurd. Nobody would make that case with a straight face. Yet the courts thus far have understandably bent to the Defendant simply because of their presence in legal circles.

2. More concerning is this: If this is allowed to stand any firm who identifies a possible class action case in their client's data and documents could then legally take the data and documents and file a class action case, file under seal, and run the clock out against the client. There would be no recourse. That is exactly what has happened here. The ruling by the lower court opens the door for more client data theft.

3. The court must determine when a plaintiff must act. Does the plaintiff act on suspicion, no matter how certain, and ignore that because the case was being filed under seal the plaintiff logically could not have been certain. Even so, as Tom Loeser stated in communications, simply because a case is moving along does not mean anyone will benefit (Exhibit D). Or does a plaintiff wait until the judgement is entered where the documents are fully discoverable and then file?

E. SUMMARY

If the court wishes, it can have the Defendant submit the text messages to the court and the court can review and determine that there was an agreement to continue representing the Plaintiff regarding the conventional appraisal mortgage fraud. The court will quickly see that the Plaintiff would not agree to settle the FHA mortgage side unless the Defendant agreed to continue to investigate and represent the Plaintiff's interests on the conventional mortgage side. It is in communications; it will not be remotely

vague. Shayne Stevenson plainly stated he was in the business of suing people and if someone came after the conventional piece of mortgage fraud he would be the first to the court steps to file. Tom Loeser stated he wanted to file on the Conventional side (Exhibit E), but others did not want to take the chance. Both Shayne Stevenson and Tom Loeser are attorneys for HBSS.

The plaintiff believes, obviously, that the lower court should have erred on the side of caution and at the very least should have ordered the discovery to be provided and then determined if there was sufficient evidence to move the case forward. By not requiring the discovery it cut the Plaintiff off at the knees. To then turn around and dismiss on Time Statutes when the Defendant was filing under seal and effectively running out the clock, was overly prejudiced against the Plaintiff in favor of a well-known law firm Defendant.

F. CONCLUSION

For the foregoing reasons, this Court should grant review to correct the above referenced errors in the unpublished opinion of the lower Court.

DATED: February 15, 2024.

Respectfully submitted,

_____

Kyle William Lagow-Pro Se
kylelagow@gmail.com

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Address:
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IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

KYLE WILLIAM LAGOW, Appellant, SCOTT D. HAMILTON†, Plaintiff, v. HAGENS BERMAN SOBOL SHAPIRO LLP, a Washington limited liability partnership Respondents.	No. 84946-8-I DIVISION ONE UNPUBLISHED OPINION

DÍAZ, J. — Hagens Berman Sobol Shapiro (Hagens Berman) represented Kyle Lagow (Lagow) in two lawsuits which ended nearly a decade ago. Lagow then brought several claims against Hagens Berman, alleging most relevantly that his former lawyers improperly benefitted by using Lagow's proprietary information in a separate lawsuit. The superior court dismissed that final claim and Lagow appeals. Because Lagow's final claim is barred by the statute of limitations, and he otherwise

† In the second lawsuit, and until the present appeal, Scott Hamilton was a named plaintiff. While a party throughout the superior court proceedings, Hamilton is not a signatory on this appeal.

offers inadequate support for his other claims, we affirm the superior court.

I. BACKGROUND

Hagens Berman (a Seattle law firm) twice represented Lagow (a Texas resident) in actions against mortgage companies and banks. Lagow formerly worked as a mortgage appraiser from 2004-2008. As told by Lagow, he "accumulated a vast amount of proprietary knowledge, and evidence pertaining to the mortgage companies' fraudulent practices." Hagens Berman settled both matters in 2012 and 2014 respectively.

After the 2014 case settled, Hagens Berman formally terminated its representation of Lagow, in a letter dated March 12, 2015, which stated: "With this payment, our representation of you under the existing retainer agreement comes to an end . . ." Beginning in 2013, a Texas-based law firm, Baron & Budd P.C., brought a separate action in federal court against the same mortgage companies that Hagens Berman had sued (Waldrup Action). Baron & Budd deposed Lagow in that lawsuit on March 16, 2016.[1]

The parties dispute the nature of Lagow's participation in the Waldrup Action. As told by Shayne Stevenson (Stevenson), a partner at Hagens Berman, Stevenson informed Lagow that Baron & Budd planned to depose him and Lagow assented to sharing his contact information instead of Baron & Budd subpoenaing him. As told by Lagow, Hagens Berman *forced* him to participate in the deposition without legal representation.

[1] Neither Lagow nor Hagens Berman provided the full transcript of Lagow's deposition or the portion of the deposition in which he allegedly referred to "proprietary information."

On November 14, 2016, the federal court consolidated the Waldrup Action with a similar separate action where Hagens Berman represented unrelated plaintiffs. Between 2016 and 2017, Lagow began to correspond with the partners at Hagens Berman, alleging that they used his "data" for the consolidated lawsuit without his permission.

It is unnecessary to summarize the entirety of the litigation that followed. But, relevantly, Lagow first sued Hagens Berman in New York on June 10, 2020. On April 28, 2021, the New York trial court dismissed his complaint for lack of personal jurisdiction. Lagow next sued Hagens Berman in King County Superior Court on February 23, 2022.

Lagow brought four claims: 1) breach of contract, 2) legal malpractice, 3) breach of implied covenant of good faith and fair dealing, and 4) unjust enrichment. On June 3, 2022 the trial court granted Hagens Berman's motion to dismiss on Lagow's first three claims with prejudice, but allowed the final claim, unjust enrichment, to proceed to discovery. Lagow did not appeal this order. Hagens Berman also defended the trial court's order on granting its 12(b)(6) motion to dismiss the claims of the breach of contract, legal malpractice, and breach of implied covenant of good faith and fair dealing, to which Lagow also did not assign error, so we decline to consider this argument.

In November 2022, Lagow's local counsel withdrew both its representation of Lagow and its sponsorship of Lagow's pro hac vice counsel. Lagow continued, pro se.

Later, the trial court granted Hagens Berman's motion for summary judgment, dismissing Lagow's final unjust enrichment claim, and thereafter denied several motions Lagow filed. Lagow timely appeals.

II. ANALYSIS

As a preliminary matter, pro se litigants are bound by the same rules of procedure and substantive law as licensed attorneys. Holder v. City of Vancouver, 136 Wn. App. 104, 106, 147 P.3d 641 (2006). Failure to comply with the rules of appellate procedure may preclude appellate review. State v. Marintorres, 93 Wn. App. 442, 452, 969 P.2d 501 (1999). An appellant's brief must contain "argument in support of the issues presented for review, together with citations to legal authority and references to relevant parts of the record." RAP 10.3(a)(6). Representing himself on appeal, Lagow filed a brief that does not contain a table of authorities, separate assignments of error, almost any reference to legal authority, or consistent citations to the record. However, the brief does contain arguments in support of most of the discernible assignments of error, and the respondent supplied the record on appeal. Thus, we exercise our discretion to hear the matter consistent with our obligation to liberally interpret our rules of appellate procedure "to promote justice and facilitate the decision of cases on the merits." RAP 1.2(a).

A. Statute of Limitations on Unjust Enrichment Claim

A plaintiff shows a defendant is unjustly enriched when: "(1) the defendant receives a benefit, (2) the received benefit is at the plaintiff's expense, and (3) the circumstances make it unjust for the defendant to retain the benefit without payment." Young v. Young, 164 Wn.2d 477, 484-85, 191 P.3d 1258 (2008).

Washington applies a three-year statute of limitations to unjust enrichment claims. Seattle Prof'l Eng'g Emps. Ass'n v. Boeing Co., 139 Wn.2d 824, 837-38, 991 P.2d 1126 (2000) (citing RCW 4.16.080 (3)). "Under the discovery rule the statute of limitations does not begin to run until the plaintiff, using reasonable diligence, should have discovered the cause of action." Hart v. Clark County, 52 Wn. App. 113, 117, 758 P.2d 515 (1988). "The discovery rule does not require knowledge of the existence of a legal cause of action itself, but merely knowledge of *the facts necessary to establish the elements of the claim*." Douchette v. Bethel Sch. Dist. No. 403, 117 Wn.2d 805, 814, 818 P.2d 1362 (1991) (emphasis added).

We review orders for summary judgment de novo. Ranger Ins. Co. v. Pierce County, 164 Wn.2d 545, 552, 192 P.3d 886 (2008). "Summary judgment is appropriate when 'there is no genuine issue as to any material fact and . . . the moving party is entitled to a judgment as a matter of law.'" Id. (quoting CR 56(c)).

Lagow first argues that the trial court erred granting summary judgment because "unjust enrichment could not have been known [by Lagow] until . . . someone had been enriched." And he asserts that "the final judgment [in the Waldrup Action] was not entered on or around July of 2020," well within the three-year statute of limitations. Lagow additionally avers that there is a genuine issue of material fact as to whether Hagens Berman actually represented him through 2020. Neither argument is persuasive.

As to both arguments, uncontroverted evidence shows that Lagow had "knowledge of the facts necessary to establish the elements of" a claim for unjust enrichment. Douchette, 117 Wn.2d at 814. Namely, he sent several emails to

Hagens Berman attorneys asserting they had, or were going to, receive a benefit at his expense unfairly. For example, in 2017, he threatened, "If the firm really has convinced itself . . . that they should profit while I am excluded and should be allowed to use the benefit of everything I shared with the firm . . ., then maybe it is time that there was a consequence."

This email plainly shows that Lagow believed (a) Hagens Berman received something of value (information on the "appraisal fraud" which it "profited" from), (b) at his expense or "exclusion," as early as 2017 (c) without rightly sharing or intending to share the fruits with him. These are the elements of an unjust enrichment claim. Young, 164 Wn.2d at 484-85. He did not, however, file his claim in King County Superior Court until 2022. Thus, applying the discovery rule, Lagow's own words establish that the statute of limitations on his unjust enrichment claim began to run in 2017, if not earlier. Douchette, 117 Wn.2d at 814.

Lagow, again, counters that the unjust enrichment claim did not actually "ripen" until Hagens Berman *received* the settlement money. Lagow, however, offers no authority supporting the proposition that the discovery rule permits a litigant to wait until a "check is cut" before bringing suit. Where a party fails to provide citation to support a legal argument, we assume counsel, like the court, has found none. State v. Loos, 14 Wn. App. 2d 748, 758, 473 P.3d 1229 (2020).

Moreover, as Hagens Berman correctly explains, case law interpreting the discovery rule suggests that such a claim would actually begin to mature when a claim of unjust enrichment was "susceptible of proof." Br. of Resp't at 42 (citing Eckert v. Skagit Corp., 20 Wn. App. 849, 851, 583 P.2d 1239 (1978) (where the

defendant was allegedly unjustly enriched for three years before the plaintiff filed their claim); see also, e.g., Cawdrey v. Hanson Baker Ludlow Drumheller, P.S., 129 Wn. App. 810, 818, 120 P.3d 605 (2005) ("The discovery rule does not allow the plaintiff to wait until she knows the specific cause of action"). Here, Lagow identifies no legal impediment from bringing his claim sooner and, on these facts, he otherwise is not permitted to wait until Hagens Berman received its settlement monies, if any. The claim was ripe when he became fully aware of the elements of the claim. Douchette, 117 Wn.2d at 814.

Second, Lagow argues that Hagens Berman actually represented him through 2020 because they "continued to advise and exchange data," through emails and text messages. But "a client's subjective belief . . . does not control the issue unless it is reasonably formed based on the attending circumstances, including the attorney's words or actions." Bohn v. Cody, 119 Wn.2d 357, 363, 832 P.2d 71 (1992), amended on denial of reconsideration (June 22, 1992), holding modified by Trask v. Butler, 123 Wn.2d 835, 872 P.2d 1080 (1994), abrogated on other grounds. Lagow offers email correspondence between him and an attorney at Hagens Berman in June 2019, where he suggested a strategy for a lawsuit, and the attorney responded that "it would be immediately rejected by any court." This correspondence occurred, however, approximately four years after Hagens Berman unambiguously terminated its representation of Lagow. The record contains no new agreement of representation after 2015. Based on the evidence presented, there is no genuine issue of material fact that Hagens Berman terminated its representation in 2015 and did not make any suggestion it was

reopening that representation. Lakey v. Puget Sound Energy, Inc., 176 Wn.2d 909, 924, 296 P.3d 860 (2013) (summary judgment is appropriate "as a matter of law where reasonable minds could come to only one conclusion.").

Stated otherwise, it is clear that this innocuous email exchange from 2017 did not relate to or reopen Hagens Berman's original representation of Lagow, or create a new matter. Occasional, sporadic discussion between a lawyer and a layman does not unilaterally create an attorney-client relationship if it is not "reasonably formed." Bohn,119 Wn.2d at 363.

The trial court did not err granting summary judgment to Hagens Berman on Lagow's unjust enrichment claim.[2]

B. Lagow's Remaining Unsupported Assignments of Error

Lagow first posits that the superior court erred by allowing his local counsel to withdraw without further inquiry.

An attorney may withdraw from a civil trial if they file notice ten days before withdrawing and withdrawal is effective after those ten days, whether or not the court orders it. CR 71(c)(1)-(2). We defer to a trial court's handling of withdrawal, reviewing only for abuse of discretion. Kingdom v. Jackson, 78 Wn. App. 154, 158, 896 P.2d 101 (1995).

[2] Hagens Berman asserts that Lagow claims that it represented him continuously between 2015 and 2020 pursuant to the "continuous representation doctrine." The continuous representation doctrine may toll the statute of limitations in legal malpractices cases. It does not appear to us, however, that Lagow himself in fact made or preserved that argument, as he did not assign error to the dismissal of his legal malpractice claim in his notice of appeal, or otherwise brief this issue. Thus, we decline to address it. RAP 2.4(a).

Consistent with CR 71, Lagow's local counsel moved to withdraw per CR 71(c)(1). The trial court did not err by not sua sponte preventing Lagow's local counsel to withdraw.[3] Although it is unfortunate Lagow was unable to retain counsel for his subsequent summary judgment hearing, the trial court did not abuse its discretion in permitting withdrawal.

Lagow next argues that the court should have ordered Hagens Berman to produce text message correspondence between him and Hagens Berman. According to Lagow, the text messages would show (1) Hagens Berman continued to represent him through 2020, and (2) that Hagens Berman relied upon Lagow's allegedly proprietary information.

Again, we hold pro se litigants to the same standard that we do a licensed attorney. Holder, 136 Wn. App. at 106. The rules of appellate procedure require that parties cite to the record to support their assertions. RAP 10.3(a)(6). To the extent that these arguments are distinct from those arguments previously rejected, Lagow does not cite to the record on appeal or any relevant legal authority to support this argument and, essentially and belatedly, asks us to take his word that further evidence may vindicate his claims.[4] Regardless, we do not consider

[3] Additionally, Lagow asserts that his local counsel (sponsoring his pro hac vice counsel) withdrew because Hagens Berman intimidated him. However, because Lagow does not support this assertion with citations to the record, we do not consider it. Cowiche Canyon Conservancy v. Bosley, 118 Wn.2d 801, 809, 828 P.2d 549 (1992); RAP 10.3(a)(5).

[4] Lagow refers to one case in his reply brief: Bell Atl. Corp. v. Twombly, 550 U.S. 544, 127 S. Ct. 1955, 167 L. Ed. 2d 929 (2007), arguing that because he alleged concrete facts, the court erred by dismissing his case. However, Twombly is inapposite because that case addressed what a party must allege or show to survive a 12(b)(6) motion to dismiss and not a motion for summary judgment as here. Twombly, 550 U.S. 544, at 552.

arguments unsupported by references to the record, meaningful analysis, or citation to pertinent authority. Cook v. Brateng. 158. Wn. App. 777, 794, 262 P.3d 1228 (2010). Thus, these arguments do not warrant review. [5]

C. Attorney Fees and Costs

"An appellate court may order a party to pay compensatory damages or terms for filing a frivolous appeal." Lutz Tile, Inc. v. Krech, 136 Wn. App. 899, 906, 151 P.3d 219 (2007) (citing RAP 18.9(a)). "An appeal is frivolous if, considering the entire record, the court is convinced that the appeal presents no debatable issues upon which reasonable minds might differ and that it is so devoid of merit that there is no possibility of reversal." Id. We resolve doubts about whether an appeal is frivolous in favor of the appellant. Id.

Hagens Berman requests we award attorney fees and costs because Lagow's briefs fail to comply with the rules of appellate procedure, which it claims is frivolous on its face. Hagens Berman further asserts that Lagow did not raise an issue that could result in reversal of the trial court on any issue.

Although this is a close question, we decline to grant fees and costs to Hagens Berman because Lagow raises an at least somewhat debatable issue of law as to whether a claim of unjust enrichment must be fully developed before the

[5] According to Hagens Berman, Lagow's (ostensible) attempts to obtain discovery are best construed as requests to continue pursuant to CR 56(f). CR 56(f) permits the trial court to "order a continuance to permit affidavits to be obtained or depositions to be taken or discovery to be had." Colwell v. Holy Family Hosp., 104 Wn. App. 606, 615, 15 P.3d 210 (2001), abrogated on other grounds. Again, Lagow never made this type of motion, and did not assign error to the denial of any sort of continuance, so we do not consider it. Brown v. Vail, 169 Wn.2d 318, 336 n. 11, 237 P.3d 263 (2010).

statute of limitations start running. Although we concluded the trial court did not err, we resolve doubts about frivolous appeals in favor of the appellant. Lutz Tile, 136 Wn. App. at 906. Thus, we deny Hagens Berman's request for attorney fees on appeal.

III. CONCLUSION[6]

We affirm the superior court.

Díaz, J.

WE CONCUR:

Chung, J.

Smith, C.J.

[6] As part of his appeal, Lagow filed a supplemental declaration of Timothy McIlwain, which was originally provided to the superior court proceedings in reply to Hagens Berman's opposition to his pro hac vice status. Respondent filed a motion to strike that declaration. We deny the motion to strike as moot given the resolution of this matter.