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COURT OF APPEALS
DIVISION II

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STATE OF WASHINGTON

BY  DEPUTY

NO. 46498-5-II

COURT OF APPEALS, DIVISION II
OF THE STATE OF WASHINGTON

VFW 3348 FOUNDATION,
a Washington Nonprofit Organization

Appellant,

v.

ALBERT BREDE and SANDY BREDE,
and the marital community composed thereof,

Respondents,

BRIEF OF RESPONDENTS ALBERT AND SANDY BREDE

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I. INTRODUCTION

Appellant VFW 3348 Foundation (“VFW Foundation”) does not assign error to any of the trial court’s finding of facts. Accordingly, this appeal poses a pure question of law: does the discovery of a substantial theft start the statute of limitations running on conversion claims based on that theft? Under well-established Washington law, the answer to this question is clearly “yes.” Since the VFW Foundation discovered that Respondent Albert Brede (hereinafter referred to collectively with his wife Sandra Brede as “Mr. Brede”) had stolen substantial amounts of its money by no later than the end of January, 2008, it needed to file suit against Mr. Brede by no later than the end of January, 2011 if it wished to recover for Mr. Brede’s pre-2008 conversions. However, the VFW Foundation did not commence this matter until March 31, 2011. As a consequence, the trial court correctly found that the majority of the VFW Foundation’s conversion claims were time-barred.¹ This Court should affirm the trial court, and deny the VFW Foundation’s appeal.

II. RESPONDENTS’ RESTATEMENT OF THE CASE

The VFW Foundation commenced this action on March 31, 2011. CP 4-6. Ultimately, the action proceeded to a bench trial on March 24 and March 25, 2014. CP 387. After the VFW Foundation completed the

¹ The trial court also dismissed the VFW Foundation’s claims for breach of contract. Since the VFW Foundation does not appeal from that dismissal, this Brief of Respondent will not discuss the breach of contract claims. *See* Brief of Appellant at p. 11 (disclaiming any intention to seek relief from the trial court’s disposal of the breach of contract claims).

presentation of its case, counsel for Mr. Brede made an oral motion to dismiss. RP (3/25/14) at 3. The trial court construed the motion as one made pursuant to CR 41(b)(3), and entered findings of fact and conclusions of law. RP (3/25/14) at 3; CP 387-392.

Although the VFW Foundation's summary of the trial court's findings in its Statement of the Case is generally accurate, it fails to reference Finding of Fact number 12, which states in pertinent part as follows:

In reviewing the 2007 year end statements from Morgan Stanley, Mr. Landrum [a member or the board of the VFW Foundation] learned that Mr. Brede had stolen a substantial amount of money from the foundation (\$40,000 or \$50,000) in the calendar year 2007. Mr. Landrum and the rest of the board confronted Mr. Brede in January, 2008.

CP 390, at ¶ 12 (emphasis added).² Contrary to the VFW Foundation's assertion, it was the discovery of this theft, and not simply Mr. Landrum's "access to the 2007 bank statements," that the trial court found to have "triggered the statute of limitations."³

² See also RP (3/25/2014) at p. 9:21-23 (stating that "[i]n December of 2007, Mr. Landrum learned that Mr. Brede had stolen that \$40, \$50,000 from the Foundation").

³ Compare Brief of Appellant at p. 10 (asserting that "[i]n simplest terms, Judge Schaller ruled that once Mr. Landrum had access to the 2007 bank statements, this triggered the statute of limitations") with the Findings of Fact and Conclusions of Law, which make it clear that it was the fact of "learn[ing] that Mr. Brede had stolen a substantial amount of money from the foundation" which triggered the statute of limitations. CP 390 at ¶ 12 and ¶ 15, CP 391 at ¶ 6. Indeed, the trial court actually found that Mr. Landrum had access to the bank statements starting "sometime in the calendar year 2006" (CP 389, at ¶ 10 (emphasis added)), and not starting in 2008, as the VFW Foundation perhaps inadvertently implies. See Brief

Based on its factual finding that the VFW Foundation knew of Mr. Brede's theft of a "substantial amount of money" by no later than January, 2008, and its legal conclusion that this started the running of the three year statute of limitations, the trial court determined that the vast majority of the VFW Foundations claims—those relating to conversions that occurred prior to the end of January, 2008—were time barred. CP 391, at ¶ 6. This appeal followed.

III. ARGUMENT

A. This Court should perform a *de novo* review of a narrowly focused question of law.

The "VFW Foundation is not alleging that [any of] the findings of fact made by [the trial court] are inaccurate."⁴ Unchallenged findings of fact are treated as verities on appeal, which means that this Court does not inquire if such findings are supported by substantial evidence.⁵ *A fortiori*, this Court will not scrutinize the record to evaluate whether the trial court interpreted the evidence in the light most favorable to the plaintiff when the trial court made unchallenged findings. Instead, this Court takes the facts found by the trial court as given, and asks only whether the

of Appellant at p. 7, p. 20; *see also* RP (3/25/14) at p. 8:17-18. As the trial court noted, it could have found that the statute of limitations began to run "as early as mid 2006 when Mr. Landrum started getting the statements," but it did not rest its ruling on this basis. RP (3/25/14) at 11:23-25.

⁴ Brief of Appellant, at p. 18. *See also* Brief of Appellant at p. 4 (assigning no error to any findings of fact).

⁵ *See, e.g. Martin v. Clinton*, 67 Wn. 2d 608, 609, 408 P.2d 895 (1965).

conclusions of law are supported by those facts. Since conclusions of law are reviewed *de novo*, this matter is subject to *de novo* review, albeit one focused exclusively on whether the unchallenged facts concerning the VFW Foundation's discovery of Mr. Brede's theft support the legal conclusion that the statute of limitations began to run no later than the end of January, 2008.⁶

In contrast, the VFW Foundation suggests that this Court should review the evidence in the light most favorable to the VFW Foundation.⁷ This is demonstrably incorrect, and not just because the VFW Foundation failed to preserve the evidence for review by not requesting a full trial transcript.⁸ Critically, the VFW Foundation fundamentally misunderstands the law governing motions under CR 41(b)(3). It signals this misunderstanding by beginning its discussion of the standard of review by citing to *Brant v. Market Basket Stores, Inc.*, 72 Wn.2d 446, 433 P.2d 863 (1967).⁹ Although *Brant* itself does not expressly say that it involved a jury trial, more recent cases cite to it as articulating the

⁶ See, e.g., *Sunnyside Valley Irr. Dist. v. Dickie*, 149 Wn.2d 873, 880, 73 P.3d 369 (2003) (noting that “[q]uestions of law and conclusions of law are reviewed *de novo*”).

⁷ Brief of Appellant at p. 11 and p. 21.

⁸ See, e.g., *In re Marriage of Haugh*, 58 Wn. App. 1, 6, 790 P.2d 1266, (1990) (noting that “[t]he appellant has the burden of perfecting the record so that the court has before it all the evidence relevant to the issue”). In the absence of a full record, it is literally impossible for this Court to review the evidence at all, let alone in the light most favorable to the VFW Foundation.

⁹ See Brief of Appellant, at pp. 11-12.

standard for motions for judgment as a matter of law under CR 50(a), not motions under CR 41(b)(3).¹⁰

The standard of review applicable to a motion for judgment as a matter of law in a jury case is simply not identical with the standard of review for a motion to dismiss in a bench trial brought under CR 41(b)(3). In a non-jury trial, a motion to dismiss at the conclusion of the plaintiff's case "may be granted for two very distinct and different reasons."¹¹ First of all, "the trial court may weigh the evidence . . . and make a factual determination that plaintiff has failed to establish a prima facie case by credible evidence, or that the credible evidence establishes facts which preclude plaintiff's recovery."¹² When it adopts this approach, "the trial court, as the trier of the facts, is not required to accept all of plaintiff's evidence as true or accord to plaintiff the most favorable inferences that

¹⁰ See, e.g., *Holland v. Columbia Irr. Dist.*, 75 Wn.2d 302, 304, 450 P.2d 488 (1969) (citing to *Brant* as a case that articulates "[t]he rule in this jurisdiction applying to challenges to the sufficiency of evidence in jury cases") (emphasis added). See also *Brown v. Dahl*, 41 Wn. App. 565, 573, 705 P.2d 781 (1985), *opinion modified on denial of reconsideration* (Nov. 14, 1985) (same).

¹¹ *N. Fiorito Co. v. State*, 69 Wn.2d 616, 618, 419 P.2d 586 (1966). Like *Brant*, *N. Fiorito Co.* predates the adoption of the Civil Rules. But just as *Brant* is cited by more recent cases as giving the standard for motions under CR 50, *N. Fiorito* is cited by more recent cases as giving the standard for motions under CR 41(b)(3). See, e.g., *McLanahan v. Farmers Ins. Co. of Washington*, 66 Wn. App. 36, 40, 831 P.2d 160, 162-63 (1992) (citing to *N. Fiorito Co.* for the CR 41(b)(3) standard); and *In re Dependency of Schermer*, 161 Wn.2d 927, 939-40, 169 P.3d 452 (2007) (same).

¹² *N. Fiorito Co.*, 69 Wn.2d at 618.

may be drawn from the evidence.”¹³ On review of such a decision, the Court of Appeals “will accept such findings of fact as verities, unless a review of the evidence demonstrates them to be without substantial evidentiary support. And, if, in turn, the relevant and sustainable findings support the judgment of dismissal, this court will not disturb the judgment.”¹⁴

Alternatively, the trial court *may* decline to make findings of fact, and instead “accept as true all of plaintiff’s evidence, accord to plaintiff the most favorable inferences to be drawn therefrom and determine, as a matter of law, that plaintiff has failed to establish a *prima facie* case.”¹⁵ In such a case—and only in such a case—the Court of Appeals on review “likewise looks upon plaintiff’s evidence in its most favorable light and determines only whether the trial court correctly applied the law in sustaining the challenge to the sufficiency of the evidence.”¹⁶

Here, however, the trial court plainly made findings of fact. CP 387-390. In particular, it found that “credible evidence establishes facts which preclude plaintiff’s recovery” by showing the majority of VFW’s claims to be time-barred.¹⁷ CP 390-391. The trial court made these findings after weighing conflicting testimony and evaluating the credibility of witnesses. CP 387; RP (3/25/14) at 5:14 to 7:25 (indicating

¹³ *Id.* at 619.

¹⁴ *Id.* at 619.

¹⁵ *Id.* at 619.

¹⁶ *Id.* at 620.

¹⁷ *Id.* at 618.

its disbelief in Mr. Brede and its belief in Mr. Landrum).¹⁸ The trial court thus clearly adopted the first approach to the CR 41(b)(3) motion. Accordingly this Court must “accept [the trial court’s] findings of fact as verities,” particularly since the VFW Foundation assigns no error to those findings.¹⁹ Neither the evidence nor the findings are to be interpreted in the light most favorable to the plaintiff. Instead, the only question is whether the unchallenged findings support the judgment of dismissal.²⁰

B. As the VFW Foundation concedes, its conversion claims are subject to a three year statute of limitations, as governed by the discovery rule.

Under RCW 4.16.080, conversion claims are subject to a three-year statute of limitations.²¹ That statute provides in pertinent part as follows:

The following actions shall be commenced within three years:

(2) An action for taking, detaining, or injuring personal property, including an action for the specific recovery

¹⁸ See *Id.* at 620 (noting that “[i]f findings of fact are entered, and if, for any reason, it cannot readily be determined therefrom which approach the trial court adopted in ruling upon the motion before it, we look to the trial court’s oral or memorandum decision for guidance”).

¹⁹ *Id.* at 619. See also *Martin*, 67 Wn. 2d at 609.

²⁰ See *N. Fiorito Co.*, 69 Wn.2d at 619 (noting that the court of appeals will not overturn a CR 41(b)(3) dismissal “if the relevant and sustainable findings support the judgment of dismissal”). In this case, the relevant findings are not merely “sustainable,” but unchallenged.

²¹ See also *Crisman v. Crisman*, 85 Wn. App.15, 19, 931 P.2d 163 (1997) (noting that “[c]onversion claims are subject to a three-year statute of limitations”).

thereof, or for any other injury to the person or rights of another not hereinafter enumerated.²²

Normally, this three-year limitation period “begins to run when the plaintiff’s cause of action accrues,” and this in turn “occurs when the plaintiff suffers some form of injury or damage.”²³

In this case, however, the trial court held that the three year statute of limitations is subject to the “discovery rule.” CP 391 at ¶ 5. The discovery rule operates to toll the date of accrual until the plaintiff knows or, through the exercise of due diligence, should have known the essential elements of the cause of action.²⁴ Traditionally, the rule has been applied in cases where the defendant fraudulently conceals a material fact from the plaintiff and thereby deprives the plaintiff of the knowledge of accrual of the cause of action.²⁵ Here, the trial court found that “Mr. Brede routinely and systematically destroyed records . . . in an effort to conceal his actions.” CP 390, at ¶ 14. This concealment by Mr. Brede, combined with his fiduciary role as the director of the VFW Foundation, justified the trial court’s imposition of the discovery rule.²⁶

²² RCW 4.16.080.

²³ *Crisman*, 85 Wn. App. at 20.

²⁴ *See, e.g., Allen v. State*, 118 Wn. 2d 753, 757-58, 826 P.2d 200 (1992) (holding that “[u]nder the discovery rule, a cause of action accrues when the plaintiff knew or should have known the essential elements of the cause of action”).

²⁵ *Crisman*, 85 Wn. App. at 20.

²⁶ The trial court’s written findings and conclusions do not explicitly refer to Mr. Brede’s fiduciary duties toward the VFW Foundation. In its oral ruling, however, the trial court explicitly stated that Mr. Brede “owed a fiduciary duty, which [he] breached terribly time and time again.” RP (3/25/14) at 6:9-10. *See also* Brief of Appellant, at p. 14 (acknowledging

Critically, the VFW Foundation does not assign error to the trial court's decision to invoke the discovery rule.²⁷ It takes issue not with the applicability of the discovery rule, but rather with the trial court's conclusion as to what event or events constituted "discovery." In its own words, "[t]he ultimate issue . . . is when did the cause of action accrue [under the terms of the discovery rule] and for what period of time were the plaintiff's claims tolled."²⁸ Unfortunately for the VFW Foundation, the trial court's implementation of the discovery rule was plainly correct, as is demonstrated below.

C. The VFW Foundation "learned that Mr. Brede had stolen a substantial sum of money" by no later than January, 2009.²⁹ Under the discovery rule, this sufficed to start the statute of limitations running on the VFW Foundation's conversion claims.

As previously noted, "under the discovery rule a cause of action accrues when the plaintiff knew or should have known the essential

that "the court correctly concluded that [Mr. Brede] had a fiduciary duty to the plaintiff"). For the purpose of implementing the discovery rule, fraudulent concealment can be established by showing that a fiduciary breached an affirmative duty to disclose a material fact. *See Stiley v. Block*, 130 Wn.2d 486, 515-16, 925 P.2d 194 (1996) (Talmadge, J., concurring); and *Oates v. Taylor*, 31 Wn.2d 898, 902-03, 199 P.2d 924 (1948).

²⁷ *See, e.g.*, Brief of Appellant, at p. 15 (asserting that "Mr. Brede's behavior implicates the so-called 'discovery rule'"); and p. 16 (stating that "the court could have reached no other conclusion" with reference to the trial court's decision to apply the discovery rule).

²⁸ Brief of Appellant at p. 16.

²⁹ CP 390, at ¶12.

elements of the cause of action.”³⁰ Here, the trial made the following unchallenged finding of fact:

In reviewing the 2007 year end statements from Morgan Stanley, Mr. Landrum learned that Mr. Brede had stolen a substantial amount of money from the foundation (\$40,000 or \$50,000) in the calendar year 2007. Mr. Landrum and the rest of the board confronted Mr. Brede in January, 2008.

CP 390 at ¶ 12. Given this unchallenged finding of fact, the only possible legal conclusion is that “the statute of limitations for the conversion claims began to run either in December, 2007 or at the latest in [sic] January 19 or January 20, 2008.” CP 391, at ¶ 6.

This is because knowledge of the theft of a substantial sum of money necessarily entails knowledge of the “essential elements” of a conversion claim.³¹ Theft is defined as “wrongfully obtain[ing] or exert[ing] unauthorized control over the property or services of another or the value thereof, with intent to deprive him or her of such property or services.”³² Conversion, on the other hand, “is the willful interference with another’s property without lawful justification, resulting in the deprivation of the owner’s right to possession.”³³ The VFW Foundation’s knowledge of Mr. Brede’s theft thus necessarily entailed its knowledge of Mr.

³⁰ *Allen* 118 Wn. 2d at 757-58.

³¹ *Id.*

³² RCW 9A.56.020(1)(a).

³³ *Lowe v. Rowe*, 173 Wn. App. 253, 263, 294 P.3d 6, 11 (2012), *reconsideration denied* (Jan. 31, 2013), *review denied*, 177 Wn.2d 1018, 304 P.3d 114 (2013).

Brede's conversion.³⁴ Because the VFW Foundation knew of Mr. Brede's conversion by no later than January, 2008, under the discovery rule its cause of action necessarily accrued as of that date.

The VFW Foundation's attempts to avoid this conclusion all fail. It does not matter that the VFW Foundation did not know the full extent of Mr. Brede's conversions by January, 2008, because established Washington law holds that "[t]he plaintiff need not be aware of the full extent of the damages; knowledge of some actual, appreciable damage is sufficient to begin the running of the statute of limitations."³⁵ Put another way,

[n]otice sufficient to excite attention and put a person on guard or to call for an inquiry is notice of everything to which such inquiry might lead.³⁶

Here, notice of the theft of \$40,000 to \$50,000 was clearly "sufficient to excite attention." As the trial court expressly held,

³⁴ Logically, conversions are a subset of theft: the only relevant difference between conversion and theft is that "proof of the defendants' knowledge or intent are not essential in establishing a conversion," but is essential for theft. *Judkins v. Sadler-Mac Neil*, 61 Wn. 2d 1, 3, 376 P.2d 837, 838 (1962). Compare RCW 9A.56.020(1)(a). Thus, all thefts are also conversions.

³⁵ *Hudson v. Condon*, 101 Wn. App. 866, 875, 6 P.3d 615 (2000). Compare Brief of Appellant at p. 5 (implying that the VFW Foundation's claims did not accrue until it discovered all of the details of "Mr. Brede's pattern of theft and conversion"). See also Brief of Appellant at p. 9 (emphasizing that even after the discovery of the theft, the VFW Foundation "did not know the full extent of the conversion").

³⁶ *Interlake Porsche & Audi, Inc. v. Bucholz*, 45 Wn. App. 502, 518, 728 P.2d 597 (1986).

[w]hen Mr. Landrum and the board discovered Mr. Brede's 2007 conversions of property, the board did not know the full extent of the conversion, but a reasonable person in the exercise of diligence would not have taken the word of the thief and would have looked further into the matter at that time.

CP 390, at ¶ 15.

Contrary to the VFW Foundation's assertion, this entire finding is a finding of fact.³⁷ Because it is unchallenged, it is a verity on appeal. In any event, regardless of whether some part of this statement could be construed as a conclusion of law, it is unimpeachable in view of the principle that "a clue to the fact which if followed up diligently would lead to discovery is in law equivalent to discovery."³⁸ Nor, for the reasons previously stated, did the trial court err by holding that the "plaintiff discovered the information necessary to trigger the applicable statute of limitations" for conversion on the date of the discovery of the theft. CP 390, at ¶ 15.

Secondly, the fact that Mr. Brede owed fiduciary duties to the VFW Foundation provides no basis for deviating from the standard application of the discovery rule.³⁹ Mr. Brede did not and does not

³⁷ See *Crisman*, 85 Wn. App. at 23 (stating that "[t]he determination of when the plaintiff discovered or should have discovered the factual basis for a cause of action is a factual question") (emphasis added). Compare Brief of Appellant, at p. 19 (asserting that the trial court's statement that "a reasonable person . . . would not have taken the word of a thief" must be seen as a conclusion of law).

³⁸ *Bay City Lumber Co. v. Anderson*, 8 Wn.2d 191, 211, 111 P.2d 771 (1941) (noting that "a clue to the fact which if followed up diligently would lead to discovery is in law equivalent to discovery").

³⁹ Compare Brief of Appellant, at pp. 14-24.

dispute that he owed fiduciary duties to the VFW Foundation.⁴⁰ But the fact that Mr. Brede owed fiduciary duties to the VFW Foundation is a key justification for invoking the discovery rule in the first place, not a reason to supplant the discovery rule with something else.⁴¹ Under the discovery rule, the VFW's cause of action accrued when it "knew or should have known all of the essential elements of the cause of action."⁴² On the undisputed facts here, this occurred no later than the end of January, 2008, when the VFW Foundation's board confronted Mr. Brede with the fact of his theft. CP 390 at ¶ 12.

⁴⁰ Although the trial court made no express written finding that Mr. Brede had fiduciary duties toward the VFW Foundation, its oral ruling made this clear. RP (3/25/14) at 6:9-10. Under Washington law, directors and officers stand in a fiduciary relation to the corporation they serve and are not permitted to retain any personal profit or advantage gleaned "on the side." *Interlake Porsche & Audi, Inc. v. Bucholz*, 45 Wn. App. 502, 508-09, 728 P.2d 597 (1986).

⁴¹ See, e.g., *Matter of Estates of Hibbard*, 118 Wn. 2d 737, 746, 826 P.2d 690, 694 (1992) (surveying history of discovery rule, and noting that "application of the discovery rule was warranted because of the fiduciary relationship between plaintiff . . . and defendant") (emphasis added). See also *Interlake*, 45 Wn. App. at 517 (noting that the discovery rule "applies in an action for fraud involving a fiduciary relationship"). It is also worth noting that the VFW Foundation has never argued that it was the beneficiary, and Mr. Brede the trustee, of a direct, express, or continuing trust, such that the old common law rule could apply to the effect that "the statute of limitations does not run between the trustee and beneficiary as long as the trust subsists." See *Gillespie v. Seattle-First Nat. Bank*, 70 Wn. App. 150, 159-161, 855 P.2d 680 (1993) (discussing old common law rule, and describing how it was supplanted by the adoption of RCW 11.96.060 (now RCW 11.96A.070), which imposed a modified discovery rule).

⁴² *Matter of Estates of Hibbard*, 118 Wn.2d at 744-45.

Finally, contrary to the VFW Foundation’s argument, the case of *Crisman v. Crisman*, 85 Wn. App.15, 931 P.2d 163 (1997) does not undermine the trial court’s decision in this matter.⁴³ Indeed, *Crisman* emphasizes that the discovery rule—and not some undefined alternative—applies to conversion claims when the defendant breached fiduciary duties to the plaintiff.⁴⁴ Moreover, in *Crisman* the trial court had granted a CR 50(b) motion for judgment as matter of law after a jury trial based on the argument that the plaintiff should have discovered a theft “when she assumed control of [a] business and found it to be in a precarious financial state.”⁴⁵ The Court of Appeals reversed, holding that there was ample evidence to support the jury’s factual finding that the plaintiff neither could nor should have discovered the conversion until the defendant’s estranged wife informed the plaintiff that the defendant “had destroyed financial records and secreted jewelry.”⁴⁶ Finding a business “to be in a precarious state” is a far, far weaker basis for asserting that a conversion claim should have been discovered than is learning “that Mr. Brede had stolen a substantial amount of money.” CP 390 at ¶12.⁴⁷ And since

⁴³ Compare Brief of Appellant at pp. 23-24.

⁴⁴ *Crisman*, 85 Wn. App. at 22-23 (applying statutory discovery rule for fraud based on defendant’s breach of fiduciary duties).

⁴⁵ *Id.* at 23.

⁴⁶ *Id.*

⁴⁷ That the VFW Foundation feels obliged to portray the finding that “Mr. Landrum learned that Mr. Brede had stolen a substantial amount of money” as a finding that “the VFW Foundation discovered limited activity in 2007 which raised questions” says a good deal about the strength of its argument. See Brief of Appellant, at p. 24.

Crisman acknowledges that learning of “secret[ing] jewelry” can constitute discovery of a broader set of conversion claims, it necessarily supports the conclusion that learning of a substantial theft of money also constitutes discovery of conversion claims. Accordingly, *Crisman* supports the trial court’s conclusions in the instant case.

D. Given the timing of the discovery of the VFW Foundation’s claims, the trial court properly concluded that the majority of its claims are time barred.

Because the VFW Foundation knew or should have known of all the essential elements of its conversion claim by no later than the end of January, 2008, its claims for conversions occurring before that date had to be brought by the end of January, 2011, or be barred by the three year statute of limitations.⁴⁸ Unfortunately for the VFW Foundation, it did not bring its claims until March 31, 2011. CP 4. Accordingly, the trial court properly concluded that all of the claims based on conversions occurring before the end of January, 2008 were barred by the statute of limitations. None of the VFW Foundation’s arguments on appeal succeeds in establishing any error by the trial court.

V. CONCLUSION

This appeal raises only one question: did the discovery by the VFW Foundation that Mr. Brede had stolen a substantial amount of its money start the three year statute of limitations running on the VFW Foundation’s conversion claims against Mr. Brede? Under established

⁴⁸ RCW 4.16.080.

Washington law, the answer to this question is clearly “yes.” Since the VFW Foundation made its discovery by the end of January, 2008, at the latest, the VFW Foundation was required to initiate a suit against Mr. Brede by the end of January, 2011, or find its claims time-barred. The VFW Foundation did not file suit until March 31, 2011. Accordingly, its claims regarding conversions that occurred prior to March 31, 2008 are time-barred, and the trial court did not err by so holding.

DATED this 11th day of December, 2014.

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CERTIFICATE OF SERVICE

I certify that on December 11, 2014, I placed the foregoing Brief of Respondents Albert and Sandy Brede in the United States mail, first class postage prepaid, for delivery to counsel for Appellant John Frawley at the following address:

John Frawley
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Dated this ___ day of December, 2014

By: David J. Corbett
David J. Corbett

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