DIVISION ONE
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IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE

VAZIRANI AND ASSOCIATES FINANCIAL, LLC, an Arizona limited liability company, Plaintiff/Appellant, v. ADVISORS EXCEL, LLC, a Kansas limited liability company; CREATIVE MARKETING INTERNATIONAL CORPORATION, a Kansas corporation; ANNEXUS DISTRIBUTORS AZ, LLC (formerly known as Shurwest Product Connection, LLC); and RONALD L. SHURTS, an individual, Defendants/Appellees.	No. 1 CA-CV 12-0449 DEPARTMENT D **MEMORANDUM DECISION** (Not for Publication - Rule 28, Arizona Rules of Civil Appellate Procedure)

Appeal from the Superior Court in Maricopa County

Cause No. CV2011-002523

The Honorable Sally Schneider Duncan, Judge

AFFIRMED

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D O W N I E, Judge

¶1 Vazirani & Associates Financial, LLC ("Plaintiff") appeals the superior court's grant of summary judgment to Annexus Distributors, AZ, LLC, formerly known as Shurwest Product Connection, LLC; Ronald L. Shurts; Advisors Excel, LLC ("Advisors"); and Creative Marketing International Corporation ("CMIC") (collectively, "Defendants"). Because the superior court correctly determined that Plaintiff's claims were barred by the statute of limitations, we affirm.

FACTS AND PROCEDURAL HISTORY

¶2 Plaintiff is an independent marketing organization ("IMO") that contracts with insurance companies to market and distribute their products. Anil Vazirani is Plaintiff's president and CEO. In 2005, Plaintiff entered into a contract

with Aviva to market its insurance products. Plaintiff subsequently contracted with "downline producers" to sell Aviva products. By 2008, approximately 100 of Plaintiff's downline producers had contracted with Aviva, and roughly 40% of Plaintiff's commissions came from the sale of Aviva insurance products.

¶3 Defendants are also involved in marketing and distributing Aviva products. In 2008, Plaintiff communicated with one of Advisors' downline producers who was interested in moving to Plaintiff's team. When Advisors learned of this, it reportedly "became infuriated" and convinced Aviva to revoke an incentive trip that Vazirani had earned. In the spring of 2008, Vazirani heard from several sources that Defendants had been encouraging Aviva to terminate its relationship with Plaintiff. Defendants purportedly told others in the industry, including Aviva personnel, that Plaintiff was engaged in illegal or unethical business practices, was being investigated by government regulators, and would be shut down. In October 2008, an industry colleague told Vazirani that Aviva executive Jordan Canfield had related that Aviva had "made up its mind" to take action against Plaintiff based on complaints from other IMOs about Plaintiff's business practices.

¶4 Plaintiff contacted CMIC on November 3, 2008, to discuss a pending transfer of a CMIC advisor to Plaintiff's

team. CMIC stated that the transfer had been rejected based on Vazirani's and Plaintiff's "industry conduct and business practices."

¶5 On November 6, 2008, Canfield advised Vazirani during a telephone call that Aviva had made a "final" decision that was "not up for discussion" to terminate Plaintiff's contract, as well as those of its downline producers, effective January 30, 2009.[1] Canfield said Aviva would send Vazirani "a formal letter of termination on January 1, 2009," but stated, "the decision's been made. We're going to go a different direction." Vazirani responded that he needed more than "30 to 60" days to make the transition.

¶6 Counsel for Vazirani wrote to Aviva on November 17, 2008, requesting reconsideration of the termination decision and, alternatively, providing Vazirani's "thirty-day notice of intent to arbitrate." The next day, Vazirani wrote to the "ACLU," detailing an alleged conspiracy between Aviva and certain Defendants and seeking "legal assistance to fight against wrongful termination by Aviva." By letter dated December 12, 2008, Aviva's attorney advised that the contract termination would be effective December 19, 2008. Counsel later extended the date to December 26, 2008, and expressed

[1] Vazirani recorded the November 6 telephone call. A transcript of the call is in the record.

willingness to discuss "a termination date that comports with what Mr. Verizani [sic] alleges Jordan Canfield told him." Aviva later extended the effective date of the termination to January 30, 2009. On January 30, 2009, Aviva's attorney faxed Plaintiff a letter terminating the contract effective that day.

¶7 In February 2009, Vazirani reviewed the online Aviva agent portal and saw that his contracts and those of his downline agents were still listed as active. He emailed Aviva, stating:

> plz advise status of VAZIRANI & ASSOC.....AND ITS DOWNLINE WITH AVIVA....none of us have rec[ei]ved any WRITTEN COMMUNICATION in the mail from AVIVA.....my advisors have been processing biz....I ALSO HAVE NOT REC[EI]VED ANY RESPONSE FROM YOU in regards to my concerns that i have e-mailed you in the recent past.

A letter from Canfield dated February 9, 2009, advised Plaintiff that all agreements with Aviva would terminate April 1. Plaintiff's downline agents received similar correspondence. The contracts in fact terminated on April 1, 2009.

¶8 On January 27, 2011, Plaintiff sued Defendants for tortious interference with contract and business expectancies. The complaint alleged that Defendants wrongfully interfered with Plaintiff's relationship with Aviva, causing Aviva to terminate Plaintiff's contract. Advisors moved for summary judgment, arguing the complaint was barred by the statute of limitations.

The other Defendants joined the motion, which the superior court granted.[2] Plaintiff timely appealed. We have jurisdiction pursuant to Arizona Revised Statutes ("A.R.S.") section 12-2101.

DISCUSSION

¶9 We consider the facts in the light most favorable to Plaintiff, against whom summary judgment was entered. *See Angus Med. Co. v. Digital Equip. Corp.*, 173 Ariz. 159, 162, 840 P.2d 1024, 1027 (App. 1992) (citation omitted). We review *de novo* "any questions of law relating to the statute of limitations defense." *Logerquist v. Danforth*, 188 Ariz. 16, 18, 932 P.2d 281, 283 (App. 1996). "[A]lthough dismissal of an action based on expiration of the statute of limitations is generally disfavored, . . . claims that are clearly brought outside the relevant limitations period are conclusively barred." *Montano v. Browning*, 202 Ariz. 544, 546, ¶ 4, 48 P.3d 494, 496 (App. 2002).

¶10 The parties agree that a two-year statute of limitations applies. *See Clark v. Airesearch Mfg. Co.*, 138 Ariz. 240, 243-44, 673 P.2d 984, 987-88 (App. 1983) (actions for tortious interference with contract and business expectancies are governed by two-year statute of limitations set forth in

[2] The superior court rejected Defendants' claim that the action was barred under an issue preclusion theory because similar claims had been dismissed in Kansas. Defendants have not challenged that decision on appeal.

A.R.S. § 12-542). Plaintiff's claims are therefore time-barred if they accrued before January 27, 2009.

¶11 According to Plaintiff, its causes of action accrued as of March 1, 2009, when Aviva stopped accepting new policy applications, or April 1, 2009, when the contracts actually terminated. Defendants, on the other hand, contend Plaintiff's claims accrued in November 2008, when Aviva communicated its "final decision" to terminate the contracts. We agree with Defendants.

¶12 We begin by considering the elements of Plaintiff's claims. *See Glaze v. Larsen*, 207 Ariz. 26, 29, ¶ 10, 83 P.3d 26, 29 (2004) ("The determination of when a cause of action accrues requires an analysis of the elements of the claim presented."). "As a general matter, a cause of action accrues, and the statute of limitations commences, when one party is able to sue another." *Gust, Rosenfeld & Henderson v. Prudential Ins. Co.*, 182 Ariz. 586, 588, 898 P.2d 964, 966 (1995).

¶13 The Arizona Supreme Court has identified the following elements of an intentional interference with business expectancies claim:

> (1) The existence of valid contractual relationship or business expectancy;
>
> (2) knowledge of the relationship or expectancy on the part of the interferor;

> (3) intentional interference inducing or causing a breach or termination of the relationship or expectancy; and
>
> (4) resultant damage to the party whose relationship or expectancy has been disrupted.

Antwerp Diamond Exch. of Am. v. Better Bus. Bureau of Maricopa County, 130 Ariz. 523, 529-30, 637 P.2d 733, 739-40 (1981). A claim for tortious interference with contract requires proof of the same elements. *See Miller v. Hehlen*, 209 Ariz. 462, 471, ¶ 32, 104 P.3d 193, 202 (App. 2005) (citation omitted). "[A] cause of action for tortious interference accrues when the plaintiff knew or reasonably should have known of the intentional interference with the plaintiff's business expectancy, resulting in its termination; and the plaintiff realized he or she was damaged by that termination." *Dube v. Likins*, 216 Ariz. 406, 411, ¶ 8, 167 P.3d 93, 98 (App. 2007).

¶14 The record is clear that Plaintiff knew of Defendants' allegedly tortious conduct in 2008. Vazirani's November 2008 memorandum to the ACLU recited in great detail the conduct that was later alleged in the 2011 complaint as the basis for Plaintiff's claims. The fact that Plaintiff did not know its full measure of damages at that time is irrelevant. "Commencement of the statute of limitations 'will not be put off until one learns the full extent of his damages.'" *Commercial Union Ins. Co. v. Lewis & Roca*, 183 Ariz. 250, 255, 902 P.2d

1354, 1359 (App. 1995). "Rather, the statute commences to run when the plaintiff incurs 'some injury or damaging effect . . . .'" *Id.* The November 2008 communication to the ACLU reveals Plaintiff's belief it had already suffered damage to its reputation in the insurance industry, as well as a deprivation of rights, based on Defendants' conduct and Aviva's termination decision.

¶15 The question thus becomes when Defendants' alleged interference resulted in the "breach or termination" of Plaintiff's contract/business expectancies.[3] *Antwerp*, 130 Ariz. at 529-30, 637 P.2d at 739-40; *Miller*, 209 Ariz. at 471, ¶ 32, 104 P.3d at 202. Whether Aviva complied with contractual notification provisions is not the proper focus –- especially where Aviva is not a party to this litigation. The relevant inquiry is when Plaintiff knew or reasonably should have known that Defendants' alleged conduct had caused Aviva to terminate its business relationships with Plaintiff.

¶16 As Plaintiff itself has unequivocally alleged, it knew on November 6, 2008, that Aviva had made a "final" decision, "not up for discussion" to sever ties with Plaintiff and its downline agents. Plaintiff requested an extended wind-up period

[3] Neither side has discussed whether a "breach" is something less than a termination, *see Antwerp*, 130 Ariz. at 529-30, 637 P.2d at 739-40, so we do not address that issue.

and made an arbitration demand that same month.[4] Also in November 2008, Vazirani sought legal assistance from the ACLU "to fight against wrongful termination by Aviva," stating he was being deprived of his rights and suffering reputational damage.

¶17 Given these facts, the superior court correctly ruled that Plaintiff's causes of action accrued in 2008, making the January 2011 complaint untimely. Vazirani's subjective hope that Aviva would not follow through with its termination decision is insufficient to defeat summary judgment in light of the complaint's express acknowledgement that Aviva's decision was "final" and "not up for discussion" and the absence of any evidence that the termination decision (as opposed to its effective date) was being reconsidered. *Cf. Del. State Coll. v. Ricks*, 449 U.S. 250, 258, 261 (1980) (limitations period triggered when plaintiff learned of decision to deny tenure, not when termination later became effective, despite college's

[4] The "Arbitration" clause of the contract between Plaintiff and Aviva reads:

> You and we agree that any disputes arising out of or relating to this Contract will be arbitrated in accordance with the Rules of the American Arbitration Association and the Federal Arbitration Act. Arbitration may not be initiated unless the party requesting arbitration has given the other party at least 30 days prior written notice of its intent to initiate arbitration and a detailed description of the basis of the dispute.

expressed "willingness to change its prior decision" if pending grievance was successful); *Weber v. Moses*, 938 S.W.2d 387, 392 (Tenn. 1996) ("An employee's hope for rehire, transfer, promotion, or a continuing employment relationship cannot toll the statute of limitations absent some employer conduct likely to mislead an employee into sleeping on his rights.").

CONCLUSION

¶18 The superior court properly ruled that Plaintiff's claims were barred by the statute of limitations. We therefore affirm the grant of summary judgment to Defendants.

/s/
MARGARET H. DOWNIE, Judge

CONCURRING:

/s/
ANDREW W. GOULD, Presiding Judge

/s/
PATRICIA A. OROZCO, Judge