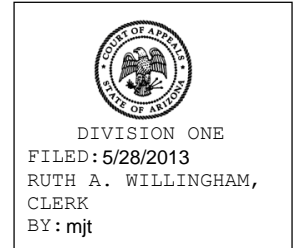


NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND MAY NOT BE CITED
EXCEPT AS AUTHORIZED BY APPLICABLE RULES.
See Ariz. R. Supreme Court 111(c); ARCAP 28(c);
Ariz. R. Crim. P. 31.24

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE



JOHN H. RYLEY, a married man,) No. 1 CA-CV 12-0178
)
Plaintiff/Appellee,) DEPARTMENT D
)
) **MEMORANDUM DECISION**
v.) Not for Publication
) (Rule 28, Arizona Rules
THE SPARKS LAW FIRM, P.C., an) of Civil Appellate Procedure
Arizona professional corporation)
and JOE P. SPARKS,)
)
Defendants/Appellants.)
_____)

Appeal from the Superior Court in Maricopa County

Cause No. CV2008-052857

The Honorable Alfred M. Fenzel, Judge

REVERSED AND REMANDED

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G E M M I L L, Judge

¶1 The Sparks Law Firm, P.C., and Joe P. Sparks appeal from the superior court's judgment in favor of John H. Ryley. The jury found in Ryley's favor on his claims for breach of contract, breach of good faith and fair dealing, and breach of fiduciary duty, and awarded Ryley \$1,297,078 in damages. Because we conclude as a matter of law that Ryley's claims are either barred by the statute of limitations or based upon an unenforceable bylaw provision, we reverse and remand for entry of judgment in favor of the Sparks Law Firm, P.C., and Joe P. Sparks.

FACTS AND PROCEDURAL HISTORY

¶2 In 1990, Joe Sparks offered John Ryley a job as an associate at Sparks & Siler, P.C. ("Firm"), a law firm then owned by Sparks at sixty percent and Dennis Siler at forty percent. Sparks and Siler had been the two partners and shareholders of the Firm since 1974. When Ryley joined the Firm, he had 22 years of litigation experience and was hired to assist, alongside Firm associate Kevin Tehan, with water rights adjudications in which the Firm represented three Indian tribes.

¶3 In 1995, Siler departed and subsequently transferred his ownership interest back to the Firm. In 1996, Sparks announced he had decided to make Tehan and Ryley shareholders in the Firm based upon their past legal services. At that time, Ryley and Tehan acquired an 11.66% and a 22.66% shareholder

interest in the Firm, respectively. Consequently, the Firm's name was changed to Sparks, Tehan & Ryley, P.C., and the Firm's income tax returns recognized Sparks, Ryley, and Tehan as shareholders. In addition to owning shares, Ryley and Tehan also became officers and directors of the Firm in 1996.

¶14 As a shareholder, consistent with Ryley's prior work at the Firm, Ryley continued to primarily work on water adjudications for the Indian tribes, clients predominately originated by Sparks. During Ryley's tenure as a shareholder, he did not make any capital investment in the Firm and denied Sparks' request to personally guarantee, along with Sparks, the Firm's office building lease.

¶15 Tehan and Ryley did not have access to the Firm's financial records. After 1996, Ryley and Tehan tried unsuccessfully on many occasions to obtain access to the Firm's financial records and to hold director and shareholder business meetings with Sparks regarding the Firm's financial operations, income, and profits. Sparks, however, concealed the financial information and refused to disclose the requested records.

¶16 In 2000, Tehan died, leaving Sparks and Ryley as the sole shareholders. Ryley subsequently delivered a series of nine written memoranda to Sparks from 2000 to 2004 regarding the financial and business operations of the Firm, and requested business meetings with Sparks to discuss the Firm's income and

profits. Sparks never responded nor were any business meetings ever held, and Sparks eventually requested that Ryley stop sending the memoranda. On June 30, 2006, Sparks terminated Ryley's employment at the Firm.

¶17 During his entire time at the Firm, including his tenure as a shareholder, the amount of money that Ryley received from the Firm was decided solely by Sparks. In spite of Ryley's knowledge, beginning by 1999, that Sparks was receiving bonuses and taking advances, Ryley accepted the compensation set by Sparks. Ryley claims he did not have knowledge regarding the amount of compensation Sparks had apportioned for himself. During the time period Ryley owned shares, the full amount of all distributions to the Firm's shareholders (Ryley, Tehan, and Sparks), whether informally called salary, bonus, or advance, was deducted as "officer compensation" on the Firm's tax return. The Firm retained essentially no profits.

¶18 On November 27, 2006, Ryley demanded that Sparks reacquire his 11.66% shareholder interest in the Firm at its fair value. An additional demand letter was sent on April 30, 2007, but no agreement was reached between the parties. Thereafter, on July 31, 2008, Ryley filed a complaint in superior court against the Firm, Joe Sparks, and Pamela Sparks. The claims included breach of contract, breach of the duty of good faith and fair dealing, and breach of fiduciary duty.

Prior to trial, on a motion for summary judgment, the superior court granted the dismissal of Pamela Sparks on all claims after receiving argument that Ryley had failed to present evidence showing she knew, consented to, or ratified the actions of her husband. Ryley subsequently filed a motion for reconsideration, which was denied. Ryley has not appealed this ruling.

¶9 At trial, the jury heard expert testimony from Leroy Gainter, a CPA since 1985, regarding the existence and calculation of Ryley's damages. Based upon the Firm's financial records, general ledgers, payroll records, and W-2 forms for employees, Gainter provided an opinion as to the compensation he believed Ryley should have received during his time as an employee and minority shareholder at the Firm.

¶10 The jury also heard expert testimony from Richard Segal, former President of the State Bar of Arizona and a local law firm compensation committee member, regarding proper compensation of attorneys. Segal's testimony pertained to attorney compensation tax considerations for law firms and the traditional factors in determining the amount of attorney compensation at law firms.

¶11 At the close of Ryley's case and at the close of all evidence, the Firm and Sparks moved for judgment as a matter of law. The superior court denied the motions. The jury returned a verdict for Ryley for breach of contract, breach of the duty

of good faith and fair dealing, breach of fiduciary duty, and damages. The superior court then prepared, signed, and entered the judgment in favor of Ryley and "against Joe P. Sparks, a/k/a Joseph P. Sparks, a married man and against his one-half interest in his marital community and The Sparks Law Firm, P.C., jointly and severally" in the amount of \$1,297,078. In addition to the award of damages, the judgment included Ryley's reasonable attorney fees, plus costs and reasonable expert witness fees incurred. The Firm and Sparks objected to the inclusion of Sparks' community, or any part of it, in the Judgment, but the objection was overruled.

¶12 The Firm and Sparks also filed post-judgment motions for judgment as a matter of law and for a new trial. These motions were also denied. The Firm and Sparks timely appeal to this court, and we have jurisdiction under Arizona Revised Statutes ("A.R.S.") § 12-2101(A)(1) and (A)(5)(a) (Supp. 2012).

ANALYSIS

¶13 The denial of a motion for a judgment as a matter of law is reviewed de novo. *Goodman v. Physical Res. Eng'g, Inc.*, 229 Ariz. 25, 27, ¶ 6, 270 P.3d 852, 854 (App. 2011). A denial will be upheld unless "the facts produced in support of the claim or defense have so little probative value, given the quantum of evidence required, that reasonable people could not agree with the conclusion advanced by the proponent of the claim

or defense." *Id.* at 28, ¶ 6, 270 P.3d at 855. We view the evidence "in the light most favorable to the non-moving party." *Desert Mountain Props. Ltd. P'ship v. Liberty Mut. Fire Ins. Co.*, 225 Ariz. 194, 200, ¶ 12, 236 P.3d 421, 427 (App. 2010).

**Statute of Limitations Bars
Additional Compensation Claims**

¶14 On appeal, the Firm and Sparks assert Ryley's claims were filed after the applicable statute of limitations period. They argue the superior court erred as a matter of law because Ryley's cause of action accrued at the time Ryley discovered Sparks was taking bonuses, not providing financial information, and making compensation decisions unilaterally. The Firm and Sparks note that Ryley admitted that he knew by 1999 that Sparks was taking "advances," including one in the approximate amount of \$60,000. Ryley testified that Sparks agreed to provide Ryley with a monthly breakdown of the Firm's expenses and income around 1998 or 1999, and he received monthly financial statements for a time, although sporadically. These statements included the salaries for all employees of the Firm, including Sparks.

¶15 Ryley contends his cause of action did not accrue until May 2007, when he was first put on notice that Sparks would not compensate him for the fair value of his shareholder interest. Additionally, Ryley argues the claims' accruals

regarding the alleged breach of fiduciary duty and the duty of good faith and fair dealing were properly left to the jury. Ryley points out that Sparks concealed the fact that he was appropriating to himself "huge amounts" of the Firm's money each year, and under *Walk v. Ring*, 202 Ariz. 310, 319, ¶ 35, 44 P.3d 990, 999 (2002), such concealment tolls any statute of limitations.

¶16 Whether a cause of action has accrued is normally a question of fact for the jury; however, when undisputed evidence establishes the minimum requisite knowledge of the claimant, the accrual of a claim becomes a question of law. *Thompson v. Pima Cnty.*, 226 Ariz. 42, 46-47, ¶ 14, 243 P.3d 1024, 1028-29 (App. 2010). We note that in *Walk*, our supreme court stated that to trigger the accrual of a claim, "it is not enough that a plaintiff comprehends a 'what'; there must also be reason to connect the 'what' to a particular 'who' in such a way that a reasonable person would be on notice to investigate whether the injury might result from fault." 202 Ariz. at 316, ¶ 22, 44 P.3d at 996. Citing *Walk*, this court has recognized a cause of action accrues at the time a party is put "on notice to investigate," not necessarily when an investigation has been completed. *Thompson*, 226 Ariz. at 45-46, ¶ 11, 243 P.3d at 1027-28; see also *Doe v. Roe*, 191 Ariz. 313, 323, ¶ 32, 955 P.2d 951, 961 (1998) ("A plaintiff need not know all the facts

underlying a cause of action to trigger accrual.”) (emphasis in original).

¶17 Here, regarding his additional compensation claims, Ryley was put “on notice to investigate” prior to May 2007. In 1996, Sparks made Ryley and Tehan shareholders in the Firm. Between 1996 and 2000, Sparks refused on multiple occasions to meet with Ryley and Tehan to discuss the Firm’s financial operations, income, and profits. Ryley testified that by 1999 he knew Sparks was taking compensation in the form of advances and bonuses, yet Ryley took no action to assert a claim. Further, Ryley’s notice of a claim regarding Sparks’ financial dealings in the Firm was memorialized by Ryley’s nine memoranda from 2000 to 2004, requesting meetings with Sparks to discuss the Firm’s income and profits.

¶18 In *Estate of Kirschenbaum v. Kirschenbaum*, a widow sued her husband’s brother for her portion of rents from a partnership property. 164 Ariz. 435, 436-37, 793 P.2d 1102, 1103-04 (App. 1989). This court rejected the widow’s argument that the statute of limitations did not begin until she discovered the brother’s secret brokerage account even though the brother owed a fiduciary duty. *Id.* at 437-38, 793 P.2d at 1104-05. Instead, this court held that the statute began running when the brother failed to provide partnership financial information when the widow requested it. *Id.* at 438, 793 P.2d

at 1105.

¶19 Similarly, Ryley requested financial information from Sparks beginning in 1996. Ryley argues that, unlike the current facts, the widow in *Kirschenbaum* received specific information regarding the existence and nature of the property at issue, thereby triggering the running of the statute of limitations. Riley contends that he did not understand the extent of Sparks' compensation, thus delaying the limitations deadline. We conclude, however, that Ryley received specific information regarding Sparks' actions through Ryley's personal knowledge of his own compensation and the Firm's financial records that he was provided, although sporadically. Ryley's continued requests for shareholder meetings to discuss the Firm's finances further evidence his requisite notice to investigate. Although Ryley contends Sparks concealed the extent of his compensation, the statute of limitations began running when Ryley began requesting the financial information.

¶20 As stated in the uncontested jury instructions, a two year statute of limitations applies to the claims for the breach of a fiduciary duty and for a breach of the covenant of good faith and fair dealing. See also A.R.S. § 12-542 (2003); *Crook v. Anderson*, 115 Ariz. 402, 403, 565 P.2d 908, 909 (App. 1977); *Manterola v. Farmers Ins. Exch.*, 200 Ariz. 572, 576, ¶ 10, 30 P.3d 639, 643, (App. 2001). Because Ryley based his additional

compensation claim, in part, on Spark's fiduciary duty and the duty of good faith and fair dealing, the two year statute of limitations applies to Ryley's claim made on these bases. Ryley brought his claim on July 31, 2008. Therefore, applying the principles from *Kirschenbaum* and *Walk*, Ryley's additional compensation claims based on a fiduciary duty and the duty of good faith and fair dealing originating prior to July 31, 2006 are barred by the statute of limitations.

¶21 The evidence presented regarding the additional compensation claim was limited to the Firm's financial information from 1996 to 2006, the time period in which Ryley was a shareholder, officer, and employee of the Firm. Accordingly, Ryley's evidence of Spark's breach was limited to a time period that ended more than two years prior to the filing of the complaint, and his claim is barred by the two year statute of limitations.

¶22 Ryley also claims he is entitled to additional compensation based on a contract formed in 1996, when Ryley was made a shareholder in the Firm. He claims the manner and amount of Sparks' compensation between 1996 and 2006 resulted in a contract breach. A three year statute of limitations applies to oral contracts and a six year statute of limitations applies to written contracts. A.R.S. §§ 12-543 (2003), -548 (Supp. 2012). Prior to July 31, 2002, Ryley failed to make a claim although he

had direct knowledge that Sparks had received bonuses and advances. The record further shows Ryley's knowledge at the time by his multiple requests to Sparks to discuss the Firm's financial operations, income, and profits. The record is clear that Ryley had notice, sufficient under *Kirschenbaum* and *Walk*, of Spark's alleged breach of contract prior to the year 2002. Therefore, Ryley's additional compensation claim based on a breach of contract, whether oral or written, originated prior to July 31, 2002, and is barred by the statute of limitations.

¶23 We conclude for these reasons that the trial court erred in not granting judgment as a matter of law on the entirety of Ryley's additional compensation claims because such claims are barred by the statute of limitations.

**Repurchase of Ryley's 11.66%
Professional Corporation Shares**

¶24 Ryley also claims damages relating to the repurchase of his shareholder interest in the Firm after his departure as an employee. According to Ryley, his entitlement is equal to the fair value of his 11.66% shareholder interest. For this claim, Ryley asserts the corporate bylaws as a basis. Corporate bylaws may constitute a contract. See *Samaritan Health Sys. v. Superior Court*, 194 Ariz. 284, 288, 981 P.2d 584, 588 (App. 1998) (holding that bylaws can constitute a contract); *Rowland v. Union Hills Country Club*, 157 Ariz. 301, 304, 757 P.2d 105,

108 (App. 1988) (recognizing bylaws constitute a contract between the members of an organization). Therefore, if an enforceable contract exists, the applicable statute of limitations for this claim is six years, as applied to written contracts. A.R.S. § 12-548; see also *La Canada Hills Ltd. P'ship v. Kite*, 217 Ariz. 126, 130, 171 P.3d 195, 199 (App. 2007) (recognizing six year statute of limitations for breach of a written contract).

¶25 Here, Ryley was not terminated from the Firm until June 2006 and thereafter requested the Firm buy back his shares. Therefore, Ryley's claim for repurchase of his corporate shares filed on July 31, 2008, is not barred by the statute of limitations.

¶26 The Firm and Sparks also challenge the stock repurchase claim on substantive grounds. Ryley asserts the Firm and Sparks breached the parties' contract when refusing to redeem Ryley's shareholder interest in the Firm after his termination. At trial, the superior court determined there was sufficient evidence concerning the terms of the shareholder contract between the parties to submit the claim to the jury. As evidence of the contract, Ryley relies on the Firm's bylaws, as amended in 1979, which state:

Within 90 days following the death,
insanity, bankruptcy, retirement,
resignation, *expulsion* or other legal

disqualification of a shareholder, *all of the shares of such shareholder shall be transferred to or acquired by persons qualified to own such shares or by the corporation.* Until such transfer is effected, such shares shall not be entitled to be voted.

(Emphasis added.)

¶127 In support of his stock repurchase claim under the Firm's bylaws, Ryley points to the Arizona Professional Corporations Act, which provides that "[a] provision for the acquisition of shares contained in a professional corporation's articles of incorporation or bylaws or in a private agreement is specifically enforceable." A.R.S. § 10-2223(E) (2013). Ryley argues the bylaw provision for transfer of his shareholder interest is therefore enforceable as a contract. Ryley further asserts his shareholder interest should be priced at its "fair value."

¶128 The Firm and Sparks contend, however, that any award arising from the repurchase of Ryley's stock is improper as a matter of law. They argue there is no enforceable contract requiring a stock repurchase and the evidence upon which Ryley relies is too indefinite to be enforceable.

¶129 For a contract to be enforceable, it is fundamental that the agreement be "definite and certain so that the liability of the parties may be exactly fixed." *Pyeatte v. Pyeatte*, 135 Ariz. 346, 350, 661 P.2d 196, 200 (App. 1982). As

quoted above, the bylaws fail to include language requiring the purchase of the applicable shareholder's interest, but instead state the shares shall be "transferred" or "acquired." This bylaw provision does not specifically require a repurchase, and shares may be transferred or acquired without a reciprocal payment from an individual or the corporation. Therefore, we do not interpret the bylaws to require a repurchase.

¶30 Even if this bylaw provision was interpreted to require a repurchase of Ryley's shares, it would still be unenforceable because of the absence of a price term. The bylaw provision neither specifies the price of the shares nor provides a formula or mechanism of valuing the shares. No guidance is provided as to whether the price of the shares is to be determined on the basis of "fair market value," "book value," "reasonable value," "fair value," or some other formulation.

¶31 Under appropriate circumstances, there is support for enforcing a contract without a price term. See *Goodman*, 229 Ariz. at 28, ¶ 7, 270 P.3d at 855. In considering whether an omitted term is fatal to a contract, the court considers the manifest intent of the contracting parties and the parties' course of dealings. See *AROK Constr. Co. v. Indian Constr. Servs.*, 174 Ariz. 291, 295, 848 P.2d 870, 874 (App. 1993). In this case, Ryley had no prior course of dealings with the Firm or Sparks regarding the sale of stock. Also, Ryley presents no

evidence on appeal to show any manifestation of intent for the stock repurchase beyond the bylaw language itself. The record contains no evidence of the parties' actual intent or understanding of the meaning of the bylaw provision. Further, even if a court was determined to insert a price term, it is undetermined which method of valuation would be proper. The court's function cannot be that of a contract maker. *Savoca Masonry Co. v. Homes & Son Constr. Co.*, 112 Ariz. 392, 395, 542 P.2s 817, 820 (1975).

¶132 The absence of any evidence regarding the parties' intent coupled with the absence of any method provided to determine the share price compel us to conclude this bylaw provision is unenforceable to require Ryley's shares to be repurchased by the Firm or Sparks. This is not the type of situation in which a court can reasonably imply a repurchase requirement or a method for determining the missing price term.

¶133 In light of our determination that the Firm and Sparks are entitled to judgment as a matter of law on all claims, we need not address the Firm and Sparks' arguments concerning the superior court's admission of Gaintner's testimony and the entry of judgment against a one-half interest in the community property of Joe Sparks and his wife, Pamela Sparks.

CONCLUSION

¶134 For the foregoing reasons we vacate the superior

court's judgment in favor of Ryley and remand for entry of judgment in favor of the Firm and Sparks.

¶135 On appeal, both parties ask for attorneys' fees based on A.R.S. § 12-341.01 (Supp. 2012). Ryley is not the successful party and therefore not entitled to fees. Regarding the Firm and Sparks, in the exercise of our discretion we deny their request for an award of attorneys' fees.

/s/

JOHN C. GEMMILL, Presiding Judge

CONCURRING:

/s/

JON W. THOMPSON, Judge

/s/

DONN KESSLER, Judge