IN THE SUPREME COURT OF THE STATE OF DELAWARE

REGINA SHEA,	)	
	)	No. 619, 2008
Plaintiff Below,	)	
Appellant,	)	Court Below: Superior Court
	)	of the State of Delaware in
v.	)	and for New Castle County
	)	
DELCOLLO AND WERB, P.A.,	)	C.A. No. 08C-05-156
RAYMOND ARMSTRONG, ESQ.,	)	
and LAND AMERICA ONESTOP,	)	
INC.,	)	
	)	
Defendants Below,	)	
Appellees.	)	

Submitted: July 22, 2009
Decided: August 13, 2009

Before **STEELE**, Chief Justice, **HOLLAND** and **RIDGELY**, Justices.

O R D E R

This 13th day of August 2009, it appears to the Court that:

(1) Regina Shea, the Plaintiff-Appellant, owns an undivided one half interest in property located at 208 Glenside Avenue, Wilmington, Delaware (the Property). In 1998, Shea and her then husband Brian Bucher, executed a mortgage and purchased the Property as tenants by the entirety. Later on, Shea and Bucher divorced, at which point they became tenants in common, and agreed that Shea would maintain possession of the Property and take the "necessary steps to remove Bucher from the mortgage and deed by way of a refinance."

(2) In early 2003, Shea, representing herself, attempted to refinance her Property. "At that time, [Shea] requested that Bucher execute a deed and all other necessary documents to remove himself from the deed to the property." On May 30, 2003, Bucher's attorney wrote Shea a letter to follow up on a telephone conversation they had earlier that day. The letter states, in part:

> Regarding issues of property, [Bucher] is willing to sign over the deed to the house upon your refinancing. You are mistaken that he must do so first.

Shea did not complete this refinance.

(3) On June 16, 2004, Shea once again took steps to refinance the Property, this time engaging Raymond D. Armstrong of the law firm DelCollo & Werb, P.A., and LandAmerica Onestop, Inc., collectively the Defendants-Appellees, to assist her. Through this refinance, Shea alleges that she believed that Bucher would be removed from the deed and that the Property would be transferred to her as the sole owner. Shea, with Defendants' assistance, obtained and recorded a new mortgage in the New Castle County Recorder of Deeds, which listed Shea as the sole mortgagor. As a result of this refinance and recording, Bucher's name did not appear on the new mortgage, but his name remained on the deed to the Property.

(4) In September 2006, Shea was in the process of refinancing the Property for a second time when she discovered that Bucher's name was still on

the deed to the Property. In the time following the June 16, 2004 refinance, two separate liens against Bucher attached to the Property—an IRS lien and a civil judgment—which clouded the Property's title and prevented Shea from proceeding with the 2006 refinance.

(5) On October 4, 2007, Shea filed a petition with the Family Court to partition the Property in order to remove Bucher from the deed. On March 21, 2008, Shea entered into an agreement with Bucher in which she agreed to pay Bucher $15,000 in exchange for Bucher removing his name from the deed and having the one then remaining lien removed from the title.

(6) On May 21, 2008, Shea filed a malpractice suit against Defendants for failing to remove Bucher from the deed or to inform her that Bucher's name remained on the deed after the June 16, 2004 refinance. On July 25, 2008, Defendants filed an answer and a motion to dismiss, arguing that the Complaint failed to state a cause of action upon which relief could be granted and that the statute of limitations barred Shea's action. Shea responded, arguing that her claims were preserved by the "time of discovery" rule because she was blamelessly ignorant of her inherently unknowable injury until she attempted to refinance in September 2006 when she discovered that, contrary to her expectation, Bucher's name remained on the deed.

(7) A Superior Court judge granted Defendants' motion to dismiss on October 22, 2008, holding that Shea's Complaint was time-barred. The judge found that Shea was not "blamelessly ignorant" of her injury and that the "time of discovery" rule did not apply.[1] Shea filed a timely motion for reargument, which the judge denied.[2]

(8) When examining the Superior Court judge's decision to grant a motion to dismiss under Rule 12(b)(6), we undertake a *de novo* review "to determine whether the trial judge erred as a matter of law in formulating or applying legal precepts."[3] Dismissal is only appropriate if it appears "with reasonable certainty that, under any set of facts that could be proven to support the claims asserted, the plaintiff would not be entitled to relief."[4] We are required to view the Complaint in the light most favorable to the Plaintiff, accepting as true the well pleaded allegations of the Complaint and drawing all reasonable inferences that logically flow from those allegations.[5] Where, as here, the judge's decision is "based entirely on a paper record, the standard and scope of review on appeal requires this Court to review the entire record and draw its own conclusions with

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1 *See Shea v. DelCollo & Werb, P.A.*, No. 08C-05-156 (Del. Super. Ct. Oct. 22, 2008).

2 *See Shea v. DelCollo & Werb, P.A.*, No. 08C-05-156 (Del. Super. Ct. Nov. 25, 2008).

3 *Reid v. Alenia Spazio*, 970 A.2d 176, 182, (Del. 2009) (citing *Feldman v. Cutaia*, 951 A.2d 727, 730-31 (Del. 2008) (quoting *Dunlap v. State Farm Fire & Cas. Co.*, 878 A.2d 434, 438 (Del. 2005)).

4 *Reid*, 970 A.2d at 182.

5 *Feldman*, 951 A.2d at 731 (citation omitted). *See also In re Tyson Foods*, 2007 WL 2351071, at 4 (Del. Ch. 2007) (stating that the court is "bound to give plaintiffs the benefit of

respect to facts if the findings below are clearly wrong and justice requires us to do so."[6]

(9) The applicable statute of limitations for a legal malpractice claim is three years.[7] The statute of limitations begins to run upon the commission of the act or omission giving rise to the cause of action.[8] The statute of limitations begins to run even if the aggrieved party is unaware of the injury because "ignorance of the facts constituting a cause of action does not act as an obstacle to the operation of the statute," under Delaware law.[9]

(10) We have recognized, however, a limited "time of discovery" exception to the rigid application of the statute of limitations that tolls the three-year period in cases where the negligence was inherently unknowable by a blamelessly ignorant plaintiff.[10] If the exception applies, the statute of limitations will not begin to run on the plaintiff's claim until the "discovery of facts 'constituting the basis of the cause of action or the existence of facts sufficient to

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every reasonable inference, not to give the defendants the benefit of every doubt.").

[6] *Ivanhoe Partners v. Newmont Mining Corp.*, 535 A.2d 1334, 1340-41 (Del. 1987).

[7] See 10 *Del. C.* § 8106 ("No action to recover damages caused by an injury unaccompanied with force or resulting indirectly from the act of the defendant shall be brought after the expiration of three years from the accruing of the cause of such action.").

[8] *Isaacson, Stolper & Co. v. Artisan's Sav. Bank*, 330 A.2d 130, 132 (Del. 1974).

[9] *Oropeza v. Maurer*, 2004 WL 2154292, at *1 (Del.).

[10] *Coleman v. Pricewaterhousecoopers, LLC.*, 854 A.2d 838, 842 (Del. 2004); See *Child, Inc. v. Rodgers*, 377 A.2d 374, 377 (Del. Super. 1977) *rev'd in part, aff'd in pertinent part*, 401 A.2d 68 (Del. 1979); *Isaacson*, 330 A.2d at 133 (stating title defects are inherently unknowable to the average layman because he may not perceive existing title defects based on a reasonable inspection of settlement documents); *Ruger v. Funk*,1996 WL 110072, at *3 (stating "a client who fails to investigate the quality of a title search without circumstances placing him on notice

put a person of ordinary intelligence and prudence on inquiry which, if pursued, would lead to the discovery' of such facts."[11]

(11) When reviewing the motion judge's decision to grant a motion to dismiss, we focus on the complaint. Shea's Complaint alleges that she was "to have Bucher removed from the mortgage and deed by way of a refinance." To that end, Shea alleged that each of the Defendants was hired, in part, to "remov[e] Bucher from the Deed as agreed to by the parties," and to "complet[e] [Shea]'s goal of being the sole owner of the Property." Shea's Complaint further alleges that each of the Defendants "represent[ed] to [Shea] that the Property was in her name only," and the Defendants "at no time informed [Shea] that Bucher would remain an owner of the Property while she would be solely responsible for the new loan." These statements, when viewed in the light most favorable to the non-moving party, demonstrate that Shea relied on Defendants' legal judgment and expertise with the understanding that they would remove Bucher's name from the deed to the Property at or in conjunction with the June 16, 2004 refinance. Shea's continuing injury, therefore, occurred on June 16, 2004, when Defendant failed to remove Bucher's name from the deed or otherwise inform Shea that Bucher's name remained on the deed to the Property.

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of a problem in that search remains 'blamelessly ignorant.'").

[11] *Id.* (quoting *Becker v. Hamada, Inc.*, 455 A.2d 353, 356 (Del. 1982)).

(12) Under 10 *Del. C.* § 8106, Shea had three years from June 16, 2004, the date of the injury, to file a legal malpractice suit. Because Shea's Complaint was filed on May 21, 2008, almost a year after the statute of limitations expired, her claim is time-barred unless the "time of discovery" rule applies. Viewing the complaint in the light most favorable to the non-moving party, we find that Shea was unaware that Bucher's name remained on the deed until she attempted to refinance in or around September 2006. Because Shea's Complaint sufficiently alleges that she relied on Defendants' legal judgment and expertise to remove Bucher from the deed to the Property and that Defendants' never informed her that Bucher's name remained on the deed at the June 16, 2004 refinance and thereafter, we also find that Shea was blamelessly ignorant of her inherently unknowable claim until she discovered the injury in September 2006. Therefore, we hold that under these facts the "time of discovery" rule applies and that Shea timely filed her Complaint.

(13) In arriving at this conclusion, we have considered the statements in the May 30, 2003 letter from Bucher's attorney to Shea, and we find that these statements are insufficient "to put a person of ordinary intelligence and prudence on inquiry which, if pursued, would lead to the discovery" that a refinance alone would not remove Bucher from the deed.[12]

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[12] *See Coleman*, 854 A.2d at 842 (quoting *Becker*, 455 A.2d at 356).

NOW, THEREFORE, IT IS ORDERED that the judgment of the Superior Court is **REVERSED and REMANDED**.

BY THE COURT:

/s/ Myron T. Steele
Chief Justice