IN THE SUPREME COURT OF THE STATE OF DELAWARE

LEHMAN BROTHERS HOLDINGS, INC.,	§	No. 415, 2020
	§	
	§	Court Below – Superior Court
Plaintiff Below,	§	of the State of Delaware
Appellant,	§	
	§	C.A. No. S18C-06-013
v.	§	
	§	
WINIFRED WHITE KEE, the ESTATE OF MARGARET F. WHITE, VIRGINIA T. FRAZIER, and the ESTATE OF MARY W. McMAHON,	§	
	§	
Defendants Below,	§	
Appellees.	§	
	§	
SWEETWATER POINT, LLC.,	§	No. 416, 2020
	§	
Plaintiff Below,	§	Court Below – Superior Court
Appellant,	§	of the State of Delaware
	§	
v.	§	C.A. No. S18C-06-012
	§	
WINIFRED WHITE KEE, the ESTATE OF MARGARET F. WHITE, VIRGINIA T. FRAZIER, and the ESTATE OF MARY W. McMAHON,	§	
	§	
Defendants Below,	§	
Appellees.	§	

Submitted: September 1, 2021
Decided: December 6, 2021

Before **SEITZ**, Chief Justice; **TRAYNOR** and **MONTGOMERY-REEVES**, Justices.

Upon appeal from the Superior Court. **AFFIRMED**.

John H. Newcomer, Jr., Esquire, David J. Soldo, Esquire, and R. Eric Hacker, Esquire, MORRIS JAMES LLP, Wilmington, Delaware. *Attorneys for Appellants Lehman Brothers Holdings, Inc. and Sweetwater Point, LLC*.

Kevin A. Guerke, Esquire and Lauren Dunkle Fortunato, Esquire, YOUNG CONAWAY STARGATT & TAYLOR, LLP, Wilmington, Delaware. *Attorneys for Appellees Winifred White Kee, the Estate of Margaret F. White, Virginia T. Frazier, and the Estate of Mary W. McMahon*.

MONTGOMERY-REEVES, Justice:

In 2005, Sweetwater Point, LLC ("Sweetwater") paid more than $8 million for two parcels of land. Lehman Brothers Holdings, Inc. ("Lehman") provided a $6 million loan to fund the purchase. Shortly before closing, Sweetwater learned that the State had a claim to a *de minimis* portion of one of the parcels. Although the State's claim did not appear in the sellers' chain of title, Sweetwater decided to go forward with the sale.

In 2009, the State filed a lawsuit in the Court of Chancery claiming that it had superior title to the entire parcel of land. A lengthy discovery process followed, culminating in a trial. In May 2017, the Court of Chancery held that the State had superior title to the parcel.

Approximately one year later, Sweetwater and Lehman filed separate lawsuits in the Superior Court against the sellers. The Superior Court dismissed both actions, holding that the claims were time-barred. Sweetwater and Lehman appealed, arguing that their claims were timely because the statute of limitations did not begin to run until the Court of Chancery held that the State had superior title to the parcel.

This Court affirms the judgment of the Superior Court. The three-year statute of limitations established under 10 *Del. C.* § 8106 applies to each claim. Each claim accrued at closing, and any tolling of the claims ceased, at the latest, when the State asserted ownership over the land, placing Sweetwater and Lehman on inquiry notice of the injury. That occurred more than three years before Sweetwater and Lehman filed their complaints in the Superior Court. Accordingly, each of the claims filed below is time-barred.

I. RELEVANT FACTS AND PROCEDURAL BACKGROUND[1]

A. Lehman Loans Sweetwater Money to Buy Two Parcels of Land

In 2005, non-party Oriskany, Inc. agreed to purchase approximately 90 acres of land (the "Land") from Appellees Winifred White Kee, the Estate of Margaret F. White, Virginia T. Frazier, and the Estate of Mary W. McMahon (collectively, the "Sellers").[2] The Land was divided into two parcels, identified as tax parcels 1-33-11.00-44.00 ("Parcel 44") and 1-33-11.00-46.00 ("Parcel 46").[3] Afterwards, Oriskany, Inc. assigned the sale agreements to Sweetwater.[4]

With the aid of a $6 million mortgage loan from Lehman,[5] Sweetwater paid the Sellers more than $8 million for the Land.[6] Sweetwater planned to build a residential community on Parcel 46, which was landlocked.[7] Sweetwater bought Parcel 44 to provide access to the planned residential community on Parcel 46.[8]

Shortly before closing, Sweetwater and the Sellers learned that the State might have a claim to a portion of Parcel 46.[9] The State did not appear in the Sellers' chain of title.[10] The State had also engaged in various actions over the past decades that implied the Sellers

---

[1] Unless otherwise indicated, this Opinion takes the facts from Sweetwater's complaint.
[2] App. to Opening Br. 23-24 (No. 416, 2020) (hereinafter, "Sweetwater App. _").
[3] *Id.* at 24.
[4] *Id.*
[5] App. to Opening Br. 10 (No. 415, 2020) (hereinafter, "Lehman App. _").
[6] Sweetwater App. 24.
[7] *Id.* at 26-27.
[8] *Id.*
[9] *Id.* at 24.
[10] *Id.* at 25.

and their predecessors in title owned Parcel 46, such as expressing interest in *acquiring* Parcel 46 by a gift or purchase.[11] After consulting with counsel and a surveyor, Sweetwater concluded that the State could only claim a *de minimis* portion of Parcel 46 and that the Sellers had superior title to Parcel 46.[12] Sweetwater decided to go forward with the sale.[13]

On November 4, 2005, Sweetwater closed on Parcels 44 and 46.[14] At that time, the parties believed that the Sellers owned and could convey a fee simple title to Parcel 46, "subject at most to a *de minimis* boundary line encroachment that would not adversely affect" Sweetwater's planned development.[15] Nonetheless, the sale agreement only transferred a special warranty deed to Parcel 46.[16]

Two years after closing, in 2007, the State began to signal that it believed it had more than a *de minimis* claim to Parcel 46. In particular, after Peter O'Rourke, Oriskany Inc.'s president who was acting on behalf of Sweetwater, began clearing trees from the land, the State instructed him to stop.[17] O'Rourke and Sweetwater's attorney then met with the

---

[11] *Id.* at 28-29.
[12] *See id.* at 27-29.
[13] *Id.* at 29.
[14] *Id.*
[15] *Id.*; *see also id.* at 7 (sale agreement for Parcel 46) ("TITLE: Title to the property is to be conveyed by deed of special warranty and is to be good, marketable, fee simple absolute title of record, free and clear of all liens and encumbrances of record and free and clear of zoning and governmental subdivision violations, but subject to all existing easements and restrictions of record. If Seller is unable to give good and marketable title meeting the above requirements, such as will be Insured at regular rates by a title insurer duly authorized to transact insurance in the State of Delaware, Buyer shall have the option of taking such title as Seller can give, without reduction of the purchase price, or of being repaid all deposit money, and this agreement shall be null and void.").
[16] *Id.* at 29; *id.* at 6, ¶ 6.
[17] Ex. A to Opening Br. 4-5, 8 (No. 416, 2020) (hereinafter, "Op. _").

Delaware Department of Transportation, which informed Sweetwater's representatives that it intended to build a highway over Parcel 46 because State owned Parcel 46.[18] Throughout 2007, Sweetwater and the State had multiple meetings, but nothing was resolved.[19]

B. The Court of Chancery Holds that the State Has Superior Title to Parcel 46

On October 21, 2009, the State filed a lawsuit in the Court of Chancery seeking to quiet title as to Parcel 46.[20] The complaint, which named Sweetwater as the defendant,[21] claimed that the State had superior title to all of Parcel 46 under a different chain of title than Sweetwater's chain of title.[22] On January 12, 2010, the State filed an amended complaint that added Lehman as a defendant.[23] Lehman filed an answer on January 29, 2010.[24]

On May 23, 2017, after a long discovery process and trial, the Court of Chancery held that the State had superior title to Parcel 46.[25] To reach that conclusion, the court traced competing chains of title back more than a century.[26] The court found that Sweetwater and the State each had "colorable claims of title to Parcel 46," but "as between these litigants,

---

[18] *Id.* at 8, 34.
[19] *Id.* at 8.
[20] *Id.*
[21] *See* Op. 17.
[22] *See* Sweetwater App. 29; *see generally id.* at 79-91 (Court of Chancery's opinion).
[23] Op. 17.
[24] *Id.*
[25] *See generally* Sweetwater App. 79-91.
[26] *See id.* at 92-134.

title to the disputed property is with the State."[27] The Court of Chancery litigation remains active.[28]

C. Sweetwater and Lehman Sue the Sellers in the Superior Court

On June 13, 2018, Sweetwater and Lehman filed separate complaints in the Superior Court.[29]

Sweetwater's complaint alleged four counts. Count I alleged that Sweetwater was entitled to rescission because the parties made a mutual mistake about whether the Sellers owned Parcel 46 when forming the sale agreements.[30] Count II alleged that Sweetwater was entitled to rescission because the sale agreements were not supported by consideration, given that the Sellers did not own the property that they sold.[31] Count III alleged that the Sellers were unjustly enriched because they accepted and retained a substantial amount of money in exchange "for a worthless deed to Parcel 46" and "for a deed to Parcel 44 that has no value to Buyer apart from Parcel 46, and which was purchased and sold under a contract contingent upon Buyer's acquisition of Parcel 46."[32] Count IV sought a declaratory judgment that Sweetwater would be entitled to damages from the Sellers if the Court of Chancery's final order granted the State title to Parcel 46.[33]

---

[27] *Id.* at 78.
[28] *See* Op. 9.
[29] Sweetwater App. 22; Lehman App. 8.
[30] Sweetwater App. 30.
[31] *Id.* at 31.
[32] *Id.* at 31-32.
[33] *Id.* at 32-33.

Lehman's complaint alleged three counts. Count I alleged that Lehman had a claim for "False Information" because it reasonably and foreseeably relied on the Sellers' false representation that they owned Parcel 46, and that if the Court of Chancery awards the State title to Parcel 46, Lehman will suffer "harm . . . caused by Sellers' failure to exercise reasonable care and competence in providing accurate and complete information."[34] Lehman did not allege that the Sellers knowingly lied about their ownership rights.[35] Count II alleged that the Sellers had been unjustly enriched because they accepted and retained funds in exchange for selling property that they did not own.[36] Count III sought the same declaratory judgment that Sweetwater requested.[37]

The Sellers moved to dismiss both complaints under Superior Court Rule 12(b)(6) on several grounds, including that all of the claims were time-barred.[38]

D. The Superior Court Holds that All of the Claims Are Time-Barred

On November 5, 2020, the Superior Court dismissed both complaints because the claims were time-barred under 10 *Del. C.* § 8106.[39] Regarding Sweetwater's complaint, the

---

[34] Lehman App. 13-15.
[35] *See id.*; *see also id.* at 103 (Tr. from Oral Argument) ("The Court: Well, this is not a simple negligence claim, is it? [Counsel for Lehman] . . . "[I]t's not simply negligence. It could have been an honest mistake. It could have been a dishonest mistake. If it was a dishonest mistake, then we have a fraud claim. *We haven't alleged that*. I don't think the facts necessarily support that from what we know at this point.") (emphasis added).
[36] Lehman App. 15-16.
[37] *Id.* at 16-17.
[38] App. to Answering Br. (No. 416, 2020) (hereinafter, "Sweetwater Answering App. _").
[39] *See* Op. 1-35.

Superior Court held that the claims seeking rescission[40] and the unjust enrichment claim accrued on November 4, 2005, the closing date.[41] The court also held that any tolling of the statute of limitations stopped, *at the latest*, in October 2009, when the State filed suit in the Court of Chancery, putting Sweetwater on inquiry notice of the State's claim to Parcel 46.[42] Thus, the court held that Counts I, II, and III of Sweetwater's complaint were time-barred because they were filed more than three years after the statute of limitations began to run.[43] In reaching that conclusion, the court rejected Sweetwater's argument that the sale agreements were contracts under seal to which an extended statute of limitations applied.[44] The court dismissed the claim seeking a declaratory judgment, explaining that "[w]here a declaratory judgment claim is completely duplicative of the affirmative counts of the complaint, it must be dismissed."[45]

Regarding Lehman's complaint, the Superior Court held that the "False Information"[46] and the unjust enrichment claims accrued on November 4, 2005, the closing

---

[40] The court expressed some uncertainty about whether the rescission claim was a contractual cause of action, or an action based on the tort of misrepresentation. *See id.* at 28-29. Nonetheless, the court concluded that it had jurisdiction over the claim—and that the same statute of limitations applied—regardless of whether Sweetwater pleaded a contractual claim or a fraud claim. *See id.*

[41] *See id.* at 33-34.

[42] *Id.*

[43] *Id.*

[44] *See id.* at 30-33.

[45] *Id.* at 34 (citing *US Ecology, Inc. v. Allstate Power Vac, Inc.*, 2018 WL 3025418, at *10 (Del. Super. Ct. June 18, 2018); *Trusa v. Nepo*, 2017 WL 1379594, at *12 (Del. Ch. Apr. 13, 2017); *Great Hill Equity P'rs IV v. SIG Growth Equity Fund I, LLP*, 2014 WL 6703980, at *29 (Del. Ch. Nov. 26, 2014)).

[46] The court construed this claim as a simple negligence claim, rather than a negligent representation claim over which the Court of Chancery would have had exclusive jurisdiction. *Id.* at 14; *see also*

date.[47] The court also held that any tolling of the statute of limitation stopped in January 2010, when Lehman was served in the Court of Chancery.[48] Thus, the court held that both claims were time-barred because they were filed more than three years after the statute of limitations began to run.[49] The court dismissed Lehman's declaratory judgment claim for the same reason that it dismissed Sweetwater's claim.[50]

Sweetwater and Lehman each filed a timely notice of appeal.

II. STANDARD OF REVIEW

"Whether a complaint is barred by a statute of limitations is a question of law that we review *de novo*."[51] When conducting that review, the Court accepts as true all of the well-pleaded factual allegations contained in the complaint and draws all reasonable inferences in favor of the non-moving party.[52] "The grant of a motion to dismiss is only appropriate when

---

Bobcat N. Am., LLC v. Inland Waste Hldg., LLC, 2020 WL 5587683, at *9 (Del. Super. Ct. Sept. 18, 2020) ("It is well-settled that the Court of Chancery has exclusive jurisdiction over a claim of negligent misrepresentation." (citations omitted)).

[47] Op. 17, 23.

[48] *Id.*

[49] *Id.*

[50] *See id.* at 24.

[51] *Connelly v. State Farm Mut. Auto. Ins. Co.*, 135 A.3d 1271, 1274 (Del. 2016) (quoting *LeVan v. Indep. Mall, Inc.*, 940 A.2d 929, 932 (Del. 2007)).

[52] *See Wild Meadows MGC, LLC v. Weidman*, 250 A.3d 751, 756 (Del. 2021) ("The standards governing a motion to dismiss for failure to state a claim are well settled: we (1) accept all well-pleaded factual allegations as true, (2) accept even vague allegations as 'well-pleaded' if they give the opposing party notice of the claim, (3) draw all reasonable inferences in favor of the non-moving party, and (4) do not affirm a dismissal unless the plaintiff/petitioner would not be entitled to recover under any reasonably conceivable set of circumstances." (quoting *Savor, Inc. v. FMR Corp.*, 812 A.2d 894, 896-97 (Del. 2002))).

the 'plaintiff would not be entitled to recover under any reasonably conceivable set of circumstances susceptible of proof.'"[53]

III. ANALYSIS

The Superior Court held that each of the claims brought by Sweetwater and Lehman was time-barred. Generally, a party harmed by a tort, breach of contract, or similar wrong must file suit within three years of when that cause of action accrued:

> No action to recover damages for trespass, no action to regain possession of personal chattels, no action to recover damages for the detention of personal chattels, no action to recover a debt not evidenced by a record or by an instrument under seal, no action based on a detailed statement of the mutual demands in the nature of debit and credit between parties arising out of contractual or fiduciary relations, no action based on a promise, no action based on a statute, and 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 3 years from the accruing of the cause of such action . . . .[54]

"This Court has repeatedly held that a cause of action 'accrues' under Section 8106 at the time of the wrongful act, even if the plaintiff is ignorant of the cause of action."[55] A

---

[53] *Windsor I, LLC v. CWCapital Management LLC*, 238 A.3d 863, 872 (Del. 2020) (citing *In re General Motors (Hughes) S'holder Litig.*, 897 A.2d 162, 168 (Del. 2006)).

[54] 10 *Del. C.* § 8106(a); *but see* 10 *Del. C.* § 8119 ("No action for the recovery of damages upon a claim for alleged personal injuries shall be brought after the expiration of 2 years from the date upon which it is claimed that such alleged injuries were sustained; subject, however, to the provisions of § 8127 of this title.").

[55] *Wal-Mart Stores, Inc. v. AIG Life Ins. Co.*, 860 A.2d 312, 319 (Del. 2004) (citing *SmithKline Beecham Pharms. Co. v. Merck & Co.*, 766 A.2d 442, 450 (Del. 2000); *Isaacson, Stolper & Co. v. Artisan's Saving Bank*, 330 A.2d 130, 132 (Del. 1974)); *see also ISN Software Corp. v. Richards, Layton & Finger, P.A.*, 226 A.3d 727, 732 (Del. 2020) ("Delaware is an 'occurrence rule'

breach-of-contract claim "accrues and the Statute begins to run at the time the contract is broken, not at the time when actual damage results or is ascertained."[56] Fraud claims,[57] negligence claims,[58] and unjust enrichment claims[59] accrue when the elements of those claims have been met.[60]

"Even after a cause of action accrues, the 'running' of the limitations period can be 'tolled' in certain circumstances."[61] For example, "[u]nder the 'discovery rule' the statute is tolled where the injury is 'inherently unknowable and the claimant is blamelessly ignorant of the wrongful act and the injury complained of.'"[62] Where the discovery rule applies, the

---

jurisdiction, meaning a cause of action accrues 'at the time of the wrongful act, even if the plaintiff is ignorant of the cause of action.'" (citations omitted)).

[56] *Worrel v. Farmers Bank of State*, 430 A.2d 469, 472 (Del. 1981) (citation omitted) (first citing *Keller v. President, Directors and Co.*, 24 A.2d 539 (Del. Super. Ct. 1942); and then citing *Bradford Inc. v. Travelers Indem. Co.*, 301 A.2d 519 (1972)).

[57] *See, e.g.*, *Silverstein v. Fischer*, 2016 WL 3020858, at *4 (Del. Super. Ct. May 18, 2016) ("The cause of action for fraud accrues when the fraud is successfully perpetrated." (first citing *Van Lake v. Sorin CRM USA, Inc.*, 2013 WL 1087583, at *6 (Del. Super. Ct. Feb. 15, 2013); and then citing *Puig v. Seminole Night Club, LLC*, 2011 WL 3275948, at *4 (Del. Ch. Jul. 29, 2011))).

[58] *See, e.g.*, *id.* ("The cause of action for negligence accrues at 'the time of the injury.'" (quoting *Nardo v. Guido DeAscanis & Sons, Inc.*, 254 A.2d 254, 256 (Del. Super. Ct. 1969))).

[59] *See, e.g.*, *Taplin v. Schuitemaker*, 2019 WL 126981, at *8 (Del. Super. Ct. Jan. 7, 2019) ("The accrual of a claim in restitution or unjust enrichment is governed by the same general logic as any other sort of claim. Namely, it accrues at the point when the eventual action might first have been successfully brought. The statute of limitations for a claim of unjust enrichment generally begins to run upon the occurrence of (1) the wrongful act giving rise to a duty of restitution, or (2) when all of the elements of unjust enrichment are present." (citations omitted)).

[60] *See generally ISN Software*, 226 A.3d at 732-33 ("For tort claims . . . the wrongful act occurs at the time of injury. Stated another way, '[a] cause of action in tort accrues at the moment when 'an injury, although slight, is sustained in consequence of the wrongful act of another.'" (footnote omitted) (quoting *Kaufman v. C.L. McCabe & Sons, Inc.*, 603 A.2d 831, 834 (Del. 1992) (citing *Certainteed Corp. v. Celotex Corp.*, 2005 WL 217032 (Del. Ch. Jan. 24, 2005)))).

[61] *Wal-Mart*, 860 A.2d at 319 (citing *Coleman v. PricewaterhouseCoopers, LLC*, 854 A.2d 838, 842-43 (Del. 2004); *Layton v. Allen*, 246 A.2d 794 (Del. 1968)).

[62] *Wal-Mart*, 860 A.2d at 319 (quoting *Coleman*, 854 A.2d at 842).

statute of limitations is tolled until the plaintiff discovers the "facts 'constituting the basis of the cause of action *or* the existence of facts sufficient to put a person of ordinary intelligence and prudence on inquiry which, if pursued, would lead to the discovery' of such facts."[63] The statute of limitations can also be tolled where the plaintiff's ignorance is caused by "concealment or fraud."[64] "Outside of these exceptions, the statute of limitations continues to run even if the claimant is unaware of the facts supporting a cause of action."[65]

These appeals raise three issues related to the statute of limitations. First, whether Sweetwater's claims seeking rescission are timely because the sale agreements are contracts under seal subject to an extended statute of limitations. Second, whether the claims brought by Sweetwater and Lehman are timely because those claims did not accrue, or were tolled, until the Court of Chancery held that the State had superior title to Parcel 46. Third, whether the Superior Court erred by dismissing the declaratory judgment claims as duplicative of the other claims, each of which the court held was time-barred.

A. The Superior Court Properly Dismissed Both of Sweetwater's Claims Seeking Rescission

The following discussion is divided into two parts. The first part examines whether Sweetwater adequately pleaded that the sale agreements were contracts under seal. For the

---

[63] *Id.*

[64] *ISN Software*, 226 A.3d at 733 (citing *Coleman*, 854 A.2d at 842).

[65] *Id.* (citations omitted). There are other circumstances where tolling is possible. *See, e.g.*, *Oropeza v. Maurer*, 860 A.2d 811, 2004 WL 2154292, at *1 (Del. Sept. 20, 2004) (TABLE) (recognizing the existence of exceptions for "infancy" and "incapacity" (citing *Mastellone v. Argo Oil Corp.*, 82 A.2d 379, 383 (Del. 1951))). None of those exceptions are relevant to these appeals.

reasons provided below, we affirm the Superior Court's holding that the agreements are not contracts under seal. Thus, the three-year statute of limitations applies to both claims seeking rescission.

The second part examines whether the claims seeking rescission are timely under the three-year statute of limitations. For the reasons provided below, we affirm the Superior Court's holding that both claims are time-barred.

1. The agreements are not contracts under seal

Sweetwater argues that its claims seeking rescission are timely because the sale agreements are contracts under seal subject to a 20-year statute of limitations.[66] Sweetwater argues that two features of the sale agreements establish that they are under seal:

- a testimonium clause before the signature line states, "IN WITNESS WHEREOF, the parties hereto have hereupon set their hands *and seals* the day and year first above written";[67] and
- typewritten next to each signature is the symbol "(s),"[68] which Sweetwater claims "signif[ies] a seal."[69]

The Superior Court held that these features were not sufficient to create a contract under seal because the parties did not include the word "seal" or a "symbolic 'seal'" on the signature line.[70] The court explained, "It is clear here that the '(s),' which was preprinted on

---

[66] Opening Br. 15-18 (No. 416, 2020) (hereinafter, "Sweetwater Opening Br. _").
[67] Sweetwater App. 12 (emphasis added); *see also id.* at 19 (same).
[68] *Id.* at 12; *id.* at 19 (same).
[69] Sweetwater Opening Br. 17.
[70] Op. 30.

the form and which was also beside the individual sellers' signatures was not Oriskany, Inc.'s corporate seal or adopted to be used as the corporation's seal."[71] The court also "conclude[d] that the '(s)' is insufficient to render the Agreements under seal with regard to the individual sellers' signatures" because that symbol "is not a commonly accepted symbol for a seal."[72]

"Under Delaware law, a contract under seal is subject to a twenty-year statute of limitations."[73] In *Consolidated Rail Corp. v. Liberty Mutual Insurance*, the Superior Court provided the following helpful summary of the history of contracts under seal:

> A contract under seal is, like any other contract, an agreement evidencing an intention or promise to accomplish a certain goal. At common law, before the requirement of consideration came into being, contracts affixed with a seal evidencing the solemnity of the promise set forth in the agreement were enforced without the necessity of anything more to cement the bargain. The purpose of the seal was to indicate the sanctity of the promise and identify the promisor during times when illiteracy was more prevalent. The contract [sic] was not only deemed to be evidence of the obligation, but [was] the bargain itself. They "remained binding unless obliterated or cancelled." Of the formal contracts that came into being in this matter, contracts under seal, recognizances and negotiable instruments have survived into modern times up to and including the present day.[74]

---

[71] *Id.* at 31-32.
[72] Op. 32.
[73] *Whittington, II v. Dragon Grp., L.L.C.*, 991 A.2d 1, 10 (Del. 2009) (citing *Aronow Roofing Co. v. Gilbane Bldg. Co.*, 902 F.2d 1127, 1127-28 (3d Cir. 1990)). Contracts under seal are sometimes referred to as "specialty contracts." *See, e.g.*, *id.* (citations omitted). For a discussion about the history of contracts under seal, *see* 1 Williston on Contracts § 2:2 (4th ed. May 2021 update).
[74] 2002 WL 32080503, at *4 (Del. Super. Ct. Sept. 6, 2002).

During an earlier era, the only way to create a contract under seal was to affix a wax seal on a document.[75] Courts relaxed this restriction over time, allowing other substances or markings to create a sealed instrument.[76] Today, the consensus view is that a "seal may consist of any substance affixed to the document or the use of an impression such as that customarily used by notaries and corporations, or the use of any other mark, word, symbol, scrawl, or sign intended to operate as a seal."[77] Nonetheless, there is variation across jurisdictions about what steps are needed to create a contract under seal.[78] Some jurisdictions have enacted statutes that limit the special treatment of contracts under seal.[79] Other jurisdictions enumerate what is required to form a contract under seal.[80] Delaware has not enacted such statutory clarifications.[81]

---

[75] *See generally* 1 Williston on Contracts § 2:4 (4th ed. May 2021 update) (citations omitted).
[76] *Id.* (citations omitted).
[77] *Id.* (citations omitted); *see also* Restatement (Second) of Contracts § 96(1)-(2) (Am. L. Inst. 1981) ("A seal is a manifestation in tangible and conventional form of an intention that a document is sealed. A seal may take the form of a piece of wax, a wafer or other substance affixed to the document or of an impression made on the document. By statute or a decision in most States in which the seal retains significance *a seal may take the form of* a written or printed seal, *word, scrawl or other sign*." (emphasis added) (formatting altered)).
[78] *See, e.g.*, *Manning v. Perkins*, 29 A. 1114, 1114 (Me. 1894) (holding that printed symbols could not create a sealed instrument under Maine law).
[79] Mich. Comp. Laws. § 600.1401 (providing that "[n]o bond, deed of conveyance or other contract heretofore or hereafter executed in writing, signed by any party, his agent or attorney, is invalid for want of a seal or scroll annexed thereto by such party.").
[80] *See, e.g.*, Conn. Gen. State. Ann. § 52-179 (providing that people can create a sealed instrument by using the word "seal" or including the letters "L.S."); *see generally* 1 Williston on Contracts § 2:4.
[81] *Whittington*, 991 A.2d at 13 ("Delaware has not modified the common law" regarding contracts under seal "by statute.").

In *Whittington*, this Court addressed "what evidence is necessary to establish a contract under seal" under Delaware law.[82] The decision responded to two competing lines of case law.[83] In *In re Beyea's Estate*, the Orphan's Court held that "the word 'Seal' printed on the form immediately to the right of the place intended for the signature" was sufficient to create a sealed instrument regardless of "whether there is any indication in the body of the obligation itself that it was intended to be a sealed instrument."[84] Contrastingly, in *American Telephone & Telegraph Co. v. Harris Corp.*, the Superior Court held that more indications were needed to establish that the parties intended to form a contract under seal, explaining that "for an instrument other than a mortgage to be under seal, . . . 'it must contain language in the body of the contract, a recital affixing the seal, and extrinsic evidence showing the parties' intent to conclude a sealed contract.'"[85] The Court adopted the "bright line standard" established under *Beyea's Estate* and held that "in Delaware, in the case of an individual, in contrast to a corporation, the presence of the word 'seal' next to an individual's signature is all that is necessary to create a sealed instrument, 'irrespective of whether there is any indication in the body of the obligation itself that it was intended to be a sealed instrument.'"[86]

---

[82] *Id.* at 10.
[83] *Id.* at 10-12.
[84] 15 A.2d 177, 181 (Orphans' Ct. 1940).
[85] 1993 WL 401864, at *7 (Del. Super. Ct. Sept. 9, 1993) *abrogated by* 991 A.2d 1 (Del. 2009) (citing *Aronow*, 902 F.2d at 1127).
[86] *Whittington*, 991 A.2d at 14 (citations omitted) (citing *Beyea's Estate*, 15 A.2d at 180).

Focusing on the *Whittington* Court's intent to establish a "bright line standard," the Superior Court below held that including the symbol "(s)" on a signature line was not sufficient to create a contract under seal, explaining:

> The marking "(s)" is not a commonly accepted symbol for a seal. For a frame of reference, in other jurisdictions, "L.S." is an accepted abbreviation for "*locus sigilli*," which means "the place of the sale," and which is considered to replace actual seals. "L.S." after a signature then renders a document under seal if the parties intended it to be under seal. That law does not help here because "L.S." is not the abbreviation used.
>
> . . . .
>
> . . . Both the majority and dissent in *Whittington* considered the importance of adopting a bright line standard that is easily applied when determining whether the signatories meant for a document that is not a mortgage or promissory note to be under seal. The clarity is significant in light of the lengthy statute of limitations imposed on a sealed instrument. A twenty-year statute of limitations may well frustrate the reasonable expectations of a party to a contract. That concern is particularly pertinent here where the Agreements provided for a contractual relationship meant to be of a short duration.
>
> Based on the foregoing, I conclude that the "(s)" marking beside the individual signatures is not sufficient as a matter of law to turn this ordinary contract into a specialty contract.[87]

We affirm the Superior Court's holding that Sweetwater has failed as a matter of law to plead that the sale agreements are contracts under seal. As the Superior Court correctly recognized, *Whittington* sought to adopt a bright line standard that would be easily applied

[87] Op. 32-33 (first italics added) (citations omitted).

and would clearly show the individual signatories meant to create a contract under seal. "*Whittington* did not hold that a contract containing *only* a testimonium clause creates a contract under seal. In fact, the cases that *Whittington* relies upon suggest otherwise."[88] Further, Delaware case law has held that a contract was under seal where it contained *both* a testimonium clause and the word "SEAL" printed next to the signature line.[89] But the parties have not identified any Delaware case since *Whittington* holding that a contract was under seal where the word "SEAL" was not next to the individual's signature line.

Here, the preprinted "(s)" on a form does not clearly indicate that the parties intended to affix a seal and could stand for something innocuous, like "signature" or "sign here." Allowing such a vague marking to establish the existence of a contract under seal—even at the motion to dismiss stage and even with the presence of the testimonium clause—would create a trap for the unwary, forcing a party to incur the costs of discovery and preparing for trial up to *twenty years* after a breach of contract purportedly occurred. Delaware law requires a clearer indication of the intent to create a sealed instrument before increasing the three-year statute of limitations by a factor of six.[90] Given the high cost of extending the statute of limitations to twenty years, it is not unreasonable to require that the parties use the word "seal" next to the individual signature to create a contract under seal. Thus,

---

[88] *Sunrise Ventures, LLC v. Rehoboth Canal Ventures, LLC*, 2010 WL 975581, at *2 (Del. Ch. March 4, 2010) (first emphasis added) (citations omitted).
[89] *See Peninsula Methodist Homes & Hosp., Inc. v. Architect's Studio, Inc.*, 1985 WL 634831, at *1-2 (Del. Super. 1985).
[90] This case does not implicate 10 *Del. C.* § 8106(c).

Sweetwater's claim that the sale agreements were under seal fails because the parties did not include the word "seal" next to the signature lines, did not affix an official seal, and did not use some other conspicuous marking showing that they intended to create a contract under seal, such as the abbreviation "L.S."

2. Sweetwater's claims seeking rescission are time-barred under the three-year statute of limitations

Sweetwater argues that even if the three-year statute of limitations applies to its claims seeking rescission, the claims are still timely because they did not accrue, or alternatively were tolled, until the Court of Chancery held that the State had superior title to Parcel 46.[91]

a) Sweetwater's claims seeking rescission accrued at closing

Under Delaware law, "a cause of action 'accrues' under Section 8106 at the time of the wrongful act, even if the plaintiff is ignorant of the cause of action."[92] Stated differently, claims accrue when the elements of those claims have been met.[93] Here, the elements of Sweetwater's rescission claims were satisfied at closing.[94] That was when Sweetwater

---

[91] Sweetwater Opening Br. 11.

[92] *Wal-Mart Stores, Inc.*, 860 A.2d at 319 (Del. 2004) (citing *SmithKline Beecham Pharms. Co.*, 766 A.2d at 450; *Isaacson, Stolper & Co.*, 330 A.2d at 132); *see also ISN Software Corp.*, 226 A.3d at 732 ("Delaware is an 'occurrence rule' jurisdiction, meaning a cause of action accrues 'at the time of the wrongful act, even if the plaintiff is ignorant of the cause of action.'" (citations omitted)).

[93] *See generally ISN Software*, 226 A.3d at 732-33 ("For tort claims . . . the wrongful act occurs at the time of injury. Stated another way, '[a] cause of action in tort accrues at the moment when 'an injury, although slight, is sustained in consequence of the wrongful act of another.'" (footnote omitted) (quoting *Kaufman*, 603 A.2d at 834 (citing *Certainteed Corp.*, 2005 WL 217032 (Del. Ch. Jan. 24, 2005)))).

[94] *See Lee v. Linmere Homes, Inc.*, 2008 WL 4444552, at *3 (Del. Super. Ct. Oct. 1, 2008) (holding that a breach of contract claim related to the purchase of a home accrues on the date of the settlement or closing).

finalized the transaction that transferred the purchase money to the Sellers in exchange for a purportedly worthless deed. It was also when the parties finalized the transaction based on a mutual mistake that the Sellers could convey absolute title to Parcel 46.[95] Thus, Sweetwater's claims accrued at closing.

In an effort to sidestep established Delaware law on when a cause of action accrues, Sweetwater attempts to distinguish its facts from Delaware case law that upholds the rule on when a cause of action accrues. In *Krahmer v. Christie's, Inc.*, the plaintiffs brought claims of "negligent misrepresentation and equitable fraud" after purchasing a forged painting.[96] The Court of Chancery held that both claims accrued when the plaintiffs bought the painting "because on that date [the defendant] allegedly injured [the plaintiffs] by misrepresenting the authenticity of the painting."[97] Sweetwater argues that *Krahmer* is distinguishable because

[95] The doctrine of mutual mistake focuses on what the parties believed when they *formed* a contract, not on subsequent developments that materially change the value of the bargain. *Hicks v. Sparks*, 89 A.3d 476, 2014 WL 1233698, at *2 (Del. Mar. 25, 2014) (TABLE) ("To establish a mutual mistake of fact, the plaintiff must show by clear and convincing evidence that (1) both parties were mistaken as to a basic assumption, (2) the mistake materially affects the agreed-upon exchange of performances, and (3) the party adversely affected did not assume the risk of the mistake. Under the principles of contract law, a contract is voidable, *inter alia*, on the grounds of mutual mistake existing *at the time of contract formation*." (first citing *Cerberus Int'l v. Apollo Mgmt.*, 794 A.2d 1141, 1151-52 (Del. 2002); then citing *Am. Bottling Co. v. Crescent/Mach I Partners, L.P.*, 2009 WL 3290729, at *2 (Del. Super. Ct. Sept. 30, 2009); then citing Restatement (Second) of Contracts § 152 (1981); and then citing *Tatman v. Phila., Balt. & Washington R.R. Co.*, 85 A. 716, 721 (Del. Ch. 1913))).

[96] 903 A.2d 773, 775-79 (Del. Ch. 2006).

[97] *Id.* at 778. The court also rejected the plaintiffs' claim that the injury was inherently unknowable, noting that they were sophisticated art collectors and had obtained only a six-year warranty from the defendant about the painting's authenticity. *Id.* at 781-83. The plaintiffs filed suit *after* that warranty had expired.

"the purchased painting was a forgery on the date it was purchased."[98] Contrastingly, in this case Sweetwater held title to Parcel 46 until the Court of Chancery issued its opinion, and Sweetwater continued to believe that it held superior title.[99]

This argument is unpersuasive. Like the forged painting in *Krahmer*, the Sellers' title was deficient at closing. The Court of Chancery's opinion did not create the State's claim of ownership to Parcel 46. Rather, it confirmed that the State's chain of title, which stretched back more than 150 years, was superior to Sweetwater's chain of title.[100] Accordingly, *Krahmer* supports the Superior Court's holding that Sweetwater's mutual-mistake and lack-of-consideration claims accrued at closing.

As such, we hold that Sweetwater's rescission claims accrued at closing.

b) Any tolling ended when the State first asserted ownership over Parcel 46

Sweetwater next argues that it was inherently unknowable that the State had superior title to Parcel 46 before the Court of Chancery issued its decision in May 2017. Thus, even if the claims seeking rescission accrued at closing, they are timely because the discovery rule tolled the statute of limitations until May 2017.[101]

---

[98] Sweetwater Opening Br. 28.
[99] *Id.*
[100] *See* Sweetwater App. 92-134.
[101] Sweetwater Opening Br. 23 ("Even if the Rescission Claims accrued on the date of settlement on the Land in 2005, the time of discovery rule tolled the statute of limitations until the Court of Chancery issued the Ruling. Until that opinion issued, Sweetwater's injury was 'inherently unknowable.'" (citing *Wal-Mart*, 860 A.2d at 321)). For purposes of this opinion, this Court assumes, but does not hold, that the discovery rule tolled the statute of limitations.

Sweetwater's tolling argument relies heavily on this Court's *Wal-Mart* decision.[102] In *Wal-Mart*, the corporation purchased numerous corporate-owned life insurance ("COLI") policies as part of a plan to reduce its federal income taxes.[103] At the advice of brokers, Wal-Mart established a grantor trust under Georgia law to ensure that Georgia law would govern any litigation challenging whether the COLI policies satisfied the insurable interest requirement.[104] Between 1993 and 1995, Wal-Mart paid the premiums on the COLI policies and deducted those costs on its federal income tax returns.[105]

In 1996, Congress *prospectively* disallowed COLI-related deductions as part of the Health Insurance Portability and Accountability Act.[106] The next year, the Internal Revenue Service (the "IRS") took an aggressive stance and filed suits seeking to disallow COLI deductions claimed *before* 1996.[107] The IRS sued various companies around this time, but not Wal-Mart.[108] Nonetheless, after a few federal courts rendered decisions adverse to corporate taxpayers, Wal-Mart reached a settlement with the IRS that retrospectively disallowed Wal-Mart's COLI-related deductions.[109] The settlement was finalized in 2002.[110]

---

[102] *See id.*
[103] 860 A.2d at 315.
[104] *Id.*
[105] *Id.*
[106] *Id.*
[107] *Id.* at 316.
[108] *See id.*
[109] *Id.*
[110] *Id.*

Separately, beginning in 2001, Wal-Mart faced multiple lawsuits from the estates of deceased employees arguing that the corporation did not have an insurable interest in the lives of its employees.[111] In 2002, a federal district court hearing one of those lawsuits (the "Texas Action") held that Texas law governed the insurable interest issue, meaning that the Georgia grantor trust was ineffective, and Wal-Mart could not claim the death benefits paid under the COLI policies.[112]

In 2002, Wal-Mart filed a complaint in the Court of Chancery, alleging various causes of action against the brokers that had recommended the COLI plans.[113] The Court of Chancery held that all of Wal-Mart's claims were time-barred because they accrued when Wal-Mart purchased the COLI policies (between 1993 and 1995).[114] The court also held that any tolling ceased when the following evidence put Wal-Mart on inquiry notice of its claims: (1) the IRS had issued two technical advisory memoranda ("TAMs") to companies other than Wal-Mart expressing the view that COLI-related deductions should be disallowed because they involved sham transactions and (2) several news articles published raised questions about COLI-related deductions.[115]

---

[111] *Id.*
[112] *Id.*
[113] *Id.* at 317.
[114] *Id.*
[115] *Id.* at 317-18.

This Court reversed the Court of Chancery's decision on appeal for three reasons.[116] First, the Court held that it was inappropriate for the lower court to consider either piece of evidence on a motion to dismiss "because th[ose] materials were neither attached to, nor incorporated by reference into, the complaint. Matters extrinsic to a complaint generally may not be considered in a ruling on a motion to dismiss."[117]

Second, the Court held that even if the TAMs and articles were incorporated into the complaint, they would not have put Wal-Mart on inquiry notice.[118] The Court explained that "TAMs are IRS rulings issued to private parties. As such those rulings have questionable value either as binding or persuasive authority as to non-parties."[119] Further, "[t]he [news] articles . . . discussed proposed legislation that could *prospectively* eliminate the [COLI-related] loophole. But the articles did not discuss the *retrospective* disallowance of the deductions, which is the gravamen of Wal-Mart's tax-related claims."[120] Thus, the Court concluded that reading the news articles would not have put Wal-Mart on inquiry notice that the IRS intended to take an aggressive position and argue that COLI-related deductions should *retroactively* be disallowed.

Third, the Court noted that neither the news articles nor the TAMs "discuss[ed] the insurable interest-related issue, nor did the Court of Chancery make any specific

---

[116] *Id.* at 317-21.
[117] *Id.* at 320 (citing *In re Santa Fe Pacific Corp. S'holder Litig.*, 669 A.2d 59, 68 (Del. 1995)).
[118] *Id.*
[119] *Id.* (citations omitted).
[120] *Id.*

determination of how Wal-Mart was placed on inquiry notice of its insurable interest-related claims."[121] Noting that "[t]he first case that challenged whether Wal-Mart had a legally valid insurable interest in its employees was not filed until 2001" and that "Wal-Mart alleges that it relied on the advice of the broker-dealer defendants in establishing the Georgia Grantor Trust," the Court held that "Walmart's insurable interest-related injuries were inherently unknowable before 2002," when a court decided that Georgia law would not govern the insurable interest requirement.[122]

Wal-Mart does not support Sweetwater's argument. First, the *Wal-Mart* analysis is inapposite because the Superior Court did not rely on extrinsic evidence to conclude that Sweetwater was on inquiry notice of its claim. [123]

Second, Sweetwater's complaint does not dispute that the State asserted superior title to Parcel 46 in 2007.[124] Thus, a reasonable person in Sweetwater's position would have inferred that there were serious reasons to doubt whether the Sellers had "convey[ed] . . . good, clear, marketable fee simple absolute title to the Land, free and clear of all adverse agreements, easements, encroachments and encumbrances."[125] In other words, the Delaware Department of Transportation's communication to Sweetwater about the State's

---

[121] *Id.* at 321.
[122] *Id.*
[123] *See, e.g.*, Sweetwater App. 25 ("In 2009, the State brought an action in the Court of Chancery, styled as *State of Delaware v. Sweetwater Point, LLC, et al.*, C.A. No. 5009-VCG . . . .").
[124] *See id.*
[125] *Id.* at 30.

ownership claim to Parcel 46 put Sweetwater on notice of facts suggesting that the sale agreements lacked consideration because the parties made a mistake about whether the Sellers could convey absolute title to Parcel 46.

This leaves the third point considered in *Wal-Mart*. According to Sweetwater, there is no distinction between Wal-Mart's knowledge of the insurable interest issue and its knowledge of the superior title issue. Thus, Sweetwater argues that the State's superior claim of ownership was inherently unknowable until the Court of Chancery issued its decision holding that the State's chain of title was superior to Sweetwater's chain of title.[126] We reject Sweetwater's interpretation of *Wal-Mart*. A holistic review of the *Wal-Mart* opinion suggests that the Court did not intend to create the rule Sweetwater proposes. Instead, the focus of that ruling was "that the limitations defense pose[d] issues that require[d] a more developed record, for which reason this matter was improperly disposed of on a motion to dismiss."[127] To the extent *Wal-Mart* can be read to establish the rule Sweetwater suggests, we limit that portion of the *Wal-Mart* analysis to the unique facts and circumstances present in that case. Further, Sweetwater's reasoning is too broad. If adopted, Sweetwater's rule would render inherently unknowable any claim that relies on a predicate question that a court had not answered, even if—like here—that predicate question regards how to apply settled law to facts. We decline the invitation to expand the discovery rule in this manner.

---

[126] *See* Sweetwater Opening Br. 25-26.
[127] *Wal-Mart,* 860 A.2d at 314.

According to long-standing Delaware case law, including *Wal-Mart*, the discovery rule tolls the statute of limitations when the injury is "inherently unknowable and the claimant is blamelessly ignorant of the wrongful act and the injury complained of."[128] But the statute of limitations begins to run once the claimant is placed on inquiry notice of a potential claim or injury.[129]

Here, the Superior Court found that "in 2007, the State told O'Rourke to stop clearing trees on the property and that it intended to build a highway over Parcel 46 because it owned the land."[130] The Superior Court found, based on these facts, that "Sweetwater was on notice then that the State claimed title to the land and that defendants may have wronged it."[131] We agree that those facts are "'sufficient to put a person of ordinary intelligence and prudence on inquiry . . . .'"[132] Thus, we

---

[128] *Coleman*, 854 A.2d at 842 (citing *Isaacson, Stolper & Co.*, 330 A.2d at 132-33); *accord Wal-Mart*, 860 A.2d at 319.

[129] *See Wal-Mart*, 860 A.2d at 319 (citing *Coleman*, 854 A.2d at 842); *Becker v. Hamada, Inc.*, 455 A.2d 353, 356 (Del. 1982); *Isaacson, Stolper & Co.*, 330 A.2d at 133; *Layton*, 246 A.2d 794.

[130] Op. 34.

[131] *Id.* Lehman does not argue that its unjust enrichment or "false information" claims are timely because the discovery rule tolled the statute of limitations. Rather, it argues only that, under *Wal-Mart*, those claims did not accrue until the Court of Chancery ruled that the State had superior title to Parcel 46. Opening Br. 12-25 (No. 415, 2020) (hereinafter, "Lehman Opening Br. _"). For reasons stated in Sections III.B. and III.C., each claim accrued at closing. Despite not making a tolling argument, Lehman's claims tolled on December 1, 2009, when Sweetwater defaulted on its loan due to the State's assertion of superior title to Parcel 46, thus placing Lehman on inquiry notice of the facts constituting the injury. Sweetwater Answering App. 230, 247.

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

affirm the Superior Court's finding that Sweetwater had inquiry notice at that time.[133]

Sweetwater's attempt to distinguish other case law is similarly deficient. For example, in *Lee v. Linmere Homes, Inc.*, the plaintiffs hired the defendant to build a home.[134] Shortly after moving in, the plaintiffs discovered numerous window leaks.[135] The defendant made numerous attempts to repair the leaks, claimed responsibility for the problems, and threatened to stop making repairs if the plaintiffs took legal action.[136] Over the next few years, the plaintiffs found various other problems with the home, such as "rotting trim," "holes in the outer stucco wall," and a "lack of HVAC control in a walk-in closet."[137] The defendants agreed to repair some of the problems but refused to fix others.[138] Approximately eight years after closing on their purchase of the home, the plaintiffs filed suit in the Superior Court alleging various claims related to the defendant's deficient construction.[139] The court held that once the plaintiffs discovered the window leaks, any tolling of their claims ceased.[140]

---

[133] We need not determine whether the red flags that appeared before closing put Sweetwater on notice. *See* Sweetwater Opening Br. 27-29. This opinion also does not address equitable tolling doctrines.
[134] 2008 WL 4444552, at *1 (Del. Super. Ct. Oct. 1, 2008).
[135] *Id.*
[136] *Id.*
[137] *Id.*
[138] *Id.*
[139] *Id.* at *2.
[140] *Id.* at *3.

Sweetwater argues that its situation is distinguishable from *Lee* because "the defects in title to the Land did not manifest themselves until" the Court of Chancery ruled that the State had superior title to Parcel 46.[141] This argument is incorrect. Setting aside the red flags that appeared before closing,[142] there is no dispute that the Delaware Department of Transportation informed Sweetwater that the State intended to build a highway over Parcel 46 because it believed it owned the land.[143] Thus, like the homeowners discovering the window leaks in *Lee*, the Delaware Department of Transportation's communication to Sweetwater would have alerted Sweetwater that the State had a claim to Parcel 46. Accordingly, Sweetwater is unable to distinguish its facts from those present in *Lee*.

For the reasons provided above, this Court affirms the Superior Court's holding that Sweetwater's claims seeking rescission are time-barred.

B. The Superior Court Properly Held that the Unjust Enrichment Claims Are Time-Barred

Sweetwater and Lehman both argue that their unjust enrichment claims did not accrue until the Court of Chancery held in May 2017 that the State had superior title to Parcel 46.[144] Both parties reason that "[b]efore the Ruling, Sweetwater held record title to Parcel 46, and the Sellers were entitled to the loan proceeds. Any claim . . . for return of the proceeds would

---

[141] Sweetwater Opening Br. 29.
[142] *See id.* at 27-29 (admitting that Sweetwater was aware that the State had a claim to a "*de minimis*" portion of Parcel 46).
[143] Op. 8, 34.
[144] Sweetwater Opening Br. 31; Lehman Opening Br. 25-30.

have been premature" at that time.[145] "Only after the Ruling decreed that the State held superior title to Parcel 46 did the Sellers' continued retention" of the purchase money "become unjust."[146] Thus, the elements of the unjust enrichment claims were not met until the State received a legal judgment that it had superior title to Parcel 46.

Both parties claim to find support for this argument in the Superior Court's opinion in *Taplin v. Schuitemaker*.[147] In *Taplin*, the plaintiff bought a mobile home for her sister and paid the sister's living expenses based on the sister's promise that she would reimburse the plaintiff after receiving a disability settlement.[148] After receiving the settlement, the sister refused to reimburse the plaintiff and abandoned the mobile home.[149] The plaintiff filed suit in the Court of Common Pleas, seeking to recoup costs on various grounds, including *quantum meruit* and unjust enrichment.[150] The Court of Common pleas dismissed the suit, and the plaintiff appealed to the Superior Court.[151]

On appeal, the Superior Court held that the unjust enrichment claim did not accrue until the sister received her disability settlement.[152] The court reasoned that "[t]here was no unjust retention of a benefit prior to that point, because there was a promise to repay [the

---

[145] Lehman Opening Br. 28.
[146] *Id.*; *see also* Sweetwater Opening Br. 31 (making the same argument).
[147] 2019 WL 126981 (Del. Super. Ct. Jan. 7, 2019).
[148] *Id.* at *1.
[149] *See id.* at *1-2.
[150] *Id.* at *2.
[151] *Id.* at *2-3.
[152] *Id.* at *8.

plaintiff] after receipt of that money and not before. . . . [T]hat was the point of the alleged unjust retention of the benefit."[153]

Contrary to the Appellants' arguments, *Taplin* supports the Superior Court's holding that the unjust enrichment claims accrued at closing. Both complaints allege that it was wrongful for the Sellers to retain the purchase money in exchange for transferring "a worthless deed to Parcel 46."[154] The Court of Chancery's May 2017 decision did not render Sweetwater's deed worthless. It confirmed that the State had a superior claim to Parcel 46 based on a chain of title that extended back more than 150 years.[155] The title that the Sellers transferred at closing was subject to this defect. Thus, the Sellers' retention of the purchase money was unjust from the outset. This is distinguishable from the facts in *Taplin*, where the sister's retention of benefits did not become unjust until she broke her promise to repay the plaintiff with funds from a disability settlement.[156]

Sweetwater and Lehman also repackage the argument that *Wal-Mart* stands for the proposition that a claim is inherently unknowable—and therefore does not accrue—until any

---

[153] *Id.*

[154] Lehman App. 16; *see also* Sweetwater App. 32 (same).

[155] *See* Sweetwater App. 92-134.

[156] 2019 WL 126981, at *8. This argument also seems to blur the distinction between the occurrence of "an injury sufficient for a cause of action to accrue" and the damages that the defendant's wrongful conduct proximately caused. *See ISN Software*, 226 A.3d at 735. "Under the Delaware occurrence rule, injury is distinct from damages. The statute of limitations can start to run before any 'actual or substantial damages' occur." *Id.* (quoting *Kaufman*, 603 A.2d at 834) (citing 51 Am. Jur. 2d Limitation of Actions § 130 (Nov. 2019)).

contingent legal questions are resolved.[157] This argument is rejected for the reasons provided above.[158]

Accordingly, this Court affirms the Superior Court's holding that the unjust enrichment claims are time-barred.

C. The Superior Court Properly Held that Lehman's "False Information" Claim Is Time-Barred

Lehman claims that the Superior Court made two errors in analyzing its "False Information" claim. First, Lehman argues that the Superior Court misapplied the standard for a motion to dismiss by characterizing its "False Information" claim as a claim for simple negligence.[159] This argument is incorrect for several reasons, but the Court need not analyze each of those faults to affirm the Superior Court's analysis. Regardless of whether Lehman pleaded a claim for fraud or negligence,[160] a three-year statute of limitations would apply. And each of those claims would have accrued at closing when Lehman relied on the false information the Sellers provided to fund Sweetwater's purchase of the Land. It is therefore irrelevant whether the Superior Court mischaracterized the nature of Lehman's "False Information" claim when analyzing the statute of limitations.

Second, Lehman argues that it did not suffer an injury until the Court of Chancery held that the State had superior title to Parcel 46. Lehman asks,

---

[157] Sweetwater Opening Br. 35-36; Lehman Opening Br. 30.
[158] *See supra* Section III.A.2.b.
[159] Lehman Opening Br. 13-14.
[160] *Silverstein*, 2016 WL 3020858, at *4.

> If, as the Superior Court determined, Lehman's cause of action against the Sellers for providing false information accrued at the time of the sale of the Land to Sweetwater, what injury did Lehman sustain at that point? Stated another way, what harm did Lehman incur upon closing that would have justified Lehman suing the Sellers at any time prior to the issuance of the Rule?

The Superior Court gave the correct answer to these questions. According to the complaint, the harm Lehman suffered was providing a $6 million mortgage loan to help Sweetwater buy from the Sellers a parcel of property that they did not own.[161] That injury occurred at closing, as it was untrue at that time that the Sellers had absolute title to Parcel 46. The discovery rule may have tolled this claim, but any tolling ceased when Sweetwater defaulted on its loan as a result of the State's assertion of superior title to Parcel 46. That occurred more than three years before Lehman filed suit in the Superior Court.[162] Thus, Lehman's "False Information" claim is untimely.

Finally, Lehman relies on the *Wal-Mart* opinion to make the same argument that Sweetwater made regarding its claims seeking rescission—that a claim is inherently

---

[161] *See, e.g.*, Lehman App. 14-15 ("If Lehman is harmed by the provision of false information to Lehman's attorneys, such harm will have been caused by Sellers' failure to exercise reasonable care and competence in providing accurate and complete information known to Sellers, which if communicated to Lehman's attorneys would have resulted in Lehman being advised that any mortgage placed against the Land was at risk, *based on which Lehman would not have made the Loan to Sweetwater*." (emphasis added)).

[162] *See* Op. 17.

unknowable and, as such, does not accrue until any contingent legal questions are resolved.[163] This Court rejects this argument for the same reasons provided above.[164]

Accordingly, this Court affirms the Superior Court's holding that Lehman's "False Information" claim is time-barred.

D. The Declaratory Judgment Claims Brought by Sweetwater and Lehman Are Duplicative of their Other Claims

Sweetwater and Lehman both concede that if all of their affirmative claims are time-barred, their claims seeking declaratory relief should be dismissed too.[165] For the reasons provided above, this Court affirms the Superior Court's judgment.

IV. CONCLUSION

For the reasons provided above, the Superior Court's judgment is AFFIRMED.

---

[163] Lehman Opening Br. 16-20.

[164] *See supra* Section III.A.2.b.

[165] *Compare* Op. 24, 34 (dismissing the claims seeking declaratory judgments); *with* Sweetwater Opening Br. 37-38 (arguing that the Court should reinstate the claim seeking a declaratory judgment "if the Court reinstates Sweetwater's affirmative claims"); Lehman Opening Br. 31 (making the same argument).