

Court of Appeals
Fourth Court of Appeals District of Texas
San Antonio



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OPINION

No. 04-04-00312-CV

T. Michael **QUIGLEY**,
Appellant

v.

Robert **BENNETT**,
Appellee

From the 229th Judicial District Court, Starr County, Texas
Trial Court No. DC-02-24
Honorable Alex William Gabert, Judge Presiding

Opinion by: Catherine Stone, Justice

Sitting: Catherine Stone, Justice
Karen Angelini, Justice
Steven C. Hilbig, Justice

Delivered and Filed: February 13, 2008

REVERSED AND RENDERED IN PART AND REVERSED AND REMANDED IN PART

This appeal is on remand from the Texas Supreme Court. *See Quigley v. Bennett*, 227 S.W.3d 51, 55 (Tex. 2007). After thoroughly considering the issues on remand, we reverse and render in part and reverse and remand in part. We reverse the trial court's judgment as to Robert Bennett's quantum meruit and conversion claims and render judgment that Bennett take nothing

this court and remanded the cause to this court for consideration of parties' remaining issues and contentions. *Id.* at 55.

DISCUSSION

The central issue on remand is whether the statute of limitations bars Bennett's ability to recover under quantum meruit for the geologic services he furnished to Quigley.¹ Quigley contends there is no evidence to support the jury's findings on this issue. According to Quigley, the record conclusively establishes as a matter of law that Bennett's claim for payment accrued when Bennett completed his services in April 1997 and, because Bennett did not file suit until February 2002, the four-year statute of limitations bars his quantum meruit claim. *See* TEX. CIV. PRAC. & REM. CODE ANN. § 16.004 (Vernon 2002). Bennett responds that the discovery rule and fraudulent concealment doctrine deferred the accrual of his quantum meruit claim until sometime between April 1998 and August 2001. Thus, Bennett maintains his quantum meruit claim is not barred by limitations because he had until at least March 2002 to bring his claim.

"Statutes of limitations are intended to compel plaintiffs to assert their claims 'within a reasonable period of time while the evidence is fresh in the minds of the parties and witnesses.'" *Wagner & Brown, Ltd. v. Horwood*, 58 S.W.3d 732, 734 (Tex. 2001) (quoting *Computer Assocs. Int'l, Inc. v. Altai, Inc.*, 918 S.W.2d 453, 455 (Tex. 1996)). "As a general rule, a cause of action accrues and the statute of limitations begins to run when facts come into existence that authorize a party to seek a judicial remedy." *Provident Life & Accident Ins. Co. v. Knott*, 128 S.W.3d 211, 221 (Tex. 2003). In most circumstances, "a cause of action accrues when a wrongful act causes a legal

¹ Although Quigley has also challenged on appeal the jury's finding that he converted Bennett's property, we need not address this issue in detail on remand since Bennett has conceded that he is precluded from recovering on his conversion claim due to limitations. *See Quigley*, 227 S.W.3d at 53 n.3. Quigley's no evidence challenge to Bennett's conversion claim is therefore sustained.

It is undisputed by the parties that the statute of limitations for a quantum meruit claim is four years. *See* TEX. CIV. PRAC. & REM. CODE ANN. § 16.004. Having determined the action's limitations period, we must now determine when Bennett's quantum meruit claim accrued. The jury was charged with the following quantum meruit limitations question: "When was the last date Plaintiff Robert Bennett performed compensable work for Defendant T. Michael Quigley?" The jury answered April 1998 in response to this question. Thus, if there is any evidence to support the jury's April 1998 finding, *see City of Keller v. Wilson*, 168 S.W.3d 802, 827 (Tex. 2005) (setting forth the scope of review applicable to a no evidence challenge), Bennett's quantum meruit claim, which he filed in February 2002, was timely because he had four years from April 1998, or until March 2002, to file his claim.

The record shows that Bennett spent three or four days in April 1997 preparing maps and graphs of the Samano leases for Quigley for a sales presentation to Louis Drefus Natural Gas. Drefus decided not to purchase the leases, and Quigley kept the maps Bennett had prepared of the leases. After Drefus passed on purchasing the leases, Quigley asked Bennett to prepare an additional "production map" of the leases. Although Bennett agreed to create the production map, Bennett never completed the map as requested.² Quigley continued to market the leases over the next year and, in April 1998, Coastal Oil & Gas, U.S.A., L.P. agreed to purchase the leases from Quigley. Neither Bennett nor his maps played any role in the sale of the leases to Coastal. The record further reveals that Bennett did not begin to seek compensation from Quigley for his April 1997 geologic services until shortly after the sale of the leases to Coastal.

² It is undisputed by the parties that Bennett did not intend to charge Quigley for this "production map."

apply in quantum meruit cases, those that have addressed the issue have chosen not to utilize the discovery rule”) *but see Wohlfahrt v. Holloway*, No. 01-99-00205-CV, 2001 WL 84212, *3 (Tex. App.—Houston [1st Dist.] 2001, pet. denied) (not designated for publication) (assuming the discovery rule applies in a quantum meruit case). Accordingly, we conclude the discovery rule does not defer the accrual of Bennett’s quantum meruit claim.

This brings us to the last aspect of our limitations discussion. As noted earlier, the fraudulent concealment doctrine defers the accrual of a cause of action in much the same way as the discovery rule. Proof of fraudulent concealment suspends the running of limitations until such time as the plaintiff discovered, or should have discovered, the deceitful conduct or the facts giving rise to the cause of action. *Palombo v. Sw. Airlines Co.*, No. 04-05-00825-CV, 2006 WL 1993783, *3 (Tex. App.—San Antonio 2006, pet. denied) (mem. op.). The party who seeks to avoid the application of the statute of limitations on the basis of fraudulent concealment, however, has the burden to plead and secure jury findings on the issues. *Advent Trust Co. v. Hyder*, 12 S.W.3d 534, 541 (Tex. App.—San Antonio 1999, pet. denied).

Here, the record reveals Bennett failed to secure the requisite jury findings to avoid the application of limitations on the basis of fraudulent concealment. Although Bennett secured a jury finding that Quigley “fraudulently conceal[ed] from Robert Bennett that he was not going to pay Bennett the reasonable value of Bennett’s compensable work, thereby causing Bennett to delay filing suit,” Bennett failed to secure a finding from the jury as to the date on which he “obtained sufficient knowledge that would have required a reasonably prudent person to make inquiry that, if pursued, would lead to discovery of the concealed cause of action.” *Rodessa Res., Inc. v. Arcadia Exploration & Prod. Co.*, 5 S.W.3d 363, 366 (Tex. App.—Texarkana 1999, no pet.) (discussing jury question for

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JUDGMENT

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Honorable Alex William Gabert, Judge Presiding

BEFORE JUSTICE STONE, JUSTICE ANGELINI, AND JUSTICE HILBIG

In accordance with this court's opinion of this date, the judgment of the trial court is REVERSED AND RENDERED IN PART AND REVERSED AND REMANDED IN PART. We REVERSE the trial court's judgment as to Robert Bennett's quantum meruit and conversion claims and RENDER judgment that Bennett take nothing from T. Michael Quigley on these claims. We further REVERSE the trial court's judgment as to Bennett's fraud claim and REMAND for a new trial on liability and damages related to this claim. It is ORDERED that appellant, T. Michael Quigley, recover the costs of his appeal from appellee, Robert Bennett.

SIGNED February 13, 2008.

Catherine Stone

Catherine Stone, Justice