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ATTORNEY FOR APPELLANTS

Patrick C. Badell  
Badell & Wilson, P.C.  
Rushville, Indiana

ATTORNEYS FOR APPELLEE

Crystal G. Rowe  
Kightlinger & Gray, LLP  
New Albany, Indiana

Michael E. Brown  
Kightlinger & Gray, LLP  
Indianapolis, Indiana

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IN THE  
COURT OF APPEALS OF INDIANA

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Residential Warranty Services,  
Inc. and P. Nathan Thornberry,  
*Appellants-Plaintiffs,*

v.

L.M. Henderson and Company,  
LLP,  
*Appellee-Defendant.*

September 28, 2022

Court of Appeals Case No.  
22A-PL-408

Appeal from the Hamilton  
Superior Court

The Honorable William J. Hughes,  
Judge

Trial Court Cause No.  
29D03-2108-PL-5802

**Tavitas, Judge.**

### Case Summary

- [1] Residential Warranty Services and Nathan Thornberry (collectively, “Plaintiffs”) appeal the trial court’s grant of judgment on the pleadings to L.M.

Henderson and Company, LLP (“Accountant”). Plaintiffs argue that the trial court erred by: (1) failing to convert the motion to a motion for summary judgment, and (2) applying a one-year statute of limitations pursuant to the Indiana Accountancy Act, Indiana Code Section 25-2.1-15-2. Finding that it was unnecessary to convert the motion to a motion for summary judgment and that the trial court applied the correct statute of limitations, we affirm the trial court’s grant of judgment on the pleadings.

## **Issues**

[2] Plaintiffs raise two issues, which we restate as:

- I. Whether the trial court erred by failing to convert Accountant’s motion into a motion for summary judgment.
- II. Whether the trial court properly granted Accountant’s motion for judgment on the pleadings pursuant to Indiana Trial Rule 12(C).

## **Facts**

[3] Accountant prepared Plaintiffs’ corporate tax returns for the years 2013 through 2017. On August 16, 2021, Plaintiffs filed a complaint against Accountant. Plaintiffs alleged that, in September 2019, Plaintiffs learned that their corporate tax returns prepared by Accountant for the years 2013 through 2017 were filed “on a cash basis of accounting” which resulted in Plaintiffs paying “significantly more Federal and Indiana Taxes.” Appellant’s App. Vol. II p. 9.

- [4] Accountant filed an answer, which asserted, in part, that Plaintiffs' claims were barred by the applicable statute of limitations. Accountant also filed a motion for judgment on the pleadings pursuant to Indiana Trial Rule 12(C). Accountant argued that the Accountancy Act, Indiana Code Section 25-2.1-15-2, provides for a one year statute of limitations and that, per the complaint, Plaintiffs learned of their claim in September 2019 but did not file their complaint until August 2021. Accountant, thus, argued that it was entitled to judgment on the pleadings.
- [5] In response, Plaintiffs then filed a motion to amend their complaint, which the trial court granted. The amended complaint alleged that Accountant "provided tax advice and prepared returns on Plaintiffs' behalf for many years"; that "the negligent representations of [Accountant] that the tax filings for the accrual basis year 2013 through 2017 was in Plaintiff's advantage was not correct"; and that Plaintiffs paid significantly more in taxes due to Accountant's "negligent misrepresentations." *Id.* at 22.
- [6] Plaintiffs also filed a response to Accountant's motion for judgment on the pleadings. Plaintiffs argued that the Accountancy Act does not apply because Plaintiffs' claims are based upon "negligent misrepresentation" not "its actions in submit[ting] the returns." *Id.* at 27. Accountant filed a reply and argued that the amended complaint's claims were similarly barred by the Accountancy Act's one-year statute of limitations.

- [7] Plaintiffs then filed a motion to deny Accountant’s motion for judgment on the pleadings. Plaintiffs argued that the motion for judgment on the pleadings did not apply to the amended complaint and that their amended complaint stated a claim for breach of fiduciary duty and negligent misrepresentation, which are not subject to the Accountancy Act’s one-year statute of limitations. Plaintiffs also attached an affidavit by Thornberry (“Thornberry Affidavit”).
- [8] Accountant filed a response to Plaintiff’s motion to deny. Accountant contended that the motion for judgment on the pleadings applied equally to the amended complaint as it did to the original complaint; that the Thornberry Affidavit was evidence outside the pleadings and should not be considered; that Plaintiffs were attempting to raise a new theory of breach of fiduciary duty; and that Plaintiffs’ claims were subject to the Accountancy Act’s one-year statute of limitations.
- [9] Finally, Plaintiffs filed a sur-reply and argued that the Thornberry Affidavit converted the matter to a motion for summary judgment. Plaintiffs further argued that their claims for breach of fiduciary duty and negligent misrepresentation were discovered in January 2020 and are subject to a two-year statute of limitations.
- [10] The trial court held a hearing on the motion for judgment on the pleadings on January 26, 2022. The trial court noted that it was “not converting this to Summary Judgment” and stated that it had “never read” the Thornberry

Affidavit. Tr. Vol. II p. 13. On January 26, 2022, the trial court granted Accountant’s motion for judgment on the pleadings. Plaintiffs now appeal.

## Discussion and Decision

### *I. Conversion to Summary Judgment Proceedings*

[11] Plaintiffs first argue that the trial court erred by failing to convert Accountant’s motion for judgment on the pleadings into a motion for summary judgment after Plaintiffs filed the Thornberry Affidavit in support of their reply to Accountant’s motion. Indiana Trial Rule 12(C) provides:

If, on a motion for judgment on the pleadings, matters outside the pleadings are presented to and not excluded by the court, the motion shall be treated as one for summary judgment and disposed of as provided in Rule 56, and all parties shall be given reasonable opportunity to present all material made pertinent to such a motion by Rule 56.

“The ‘pleadings’ consist of a complaint and an answer, a reply to any counterclaim, an answer to a cross-claim, a third-party complaint, and an answer to a third-party complaint.” *Consol. Ins. Co. v. Nat’l Water Servs., LLC*, 994 N.E.2d 1192, 1196 (Ind. Ct. App. 2013), *trans. denied*. “‘Matters outside the pleadings’ are those materials that would be admissible for summary judgment purposes, such as depositions, answers to interrogatories, admissions, and affidavits.” *Holmes v. Celadon Trucking Servs. of Ind., Inc.*, 936 N.E.2d 1254, 1256 (Ind. Ct. App. 2010).

[12] After reviewing the record, it is clear that the court did not consider matters outside of the pleadings. The trial court was not even aware of the Thornberry Affidavit until the hearing on this matter, and it was apparent from the discussion that the trial court was not considering the Thornberry Affidavit. Accordingly, the trial court did not err by applying Trial Rule 12(C) rather than converting the matter to summary judgment proceedings. *See, e.g., Consol. Ins. Co.*, 994 N.E.2d at 1196 n.4 (noting that the trial court did not consider matters outside of the pleadings and applying Trial Rule 12(C)).

## ***II. Motion for Judgment on the Pleadings***

[13] Next, Plaintiffs argue that the trial court erred by granting Accountant’s motion for judgment on the pleadings. Indiana Trial Rule 12(C) provides: “After the pleadings are closed but within such time as not to delay the trial, any party may move for judgment on the pleadings.” “A motion for judgment on the pleadings under Trial Rule 12(C) tests the sufficiency of a claim or defense presented in the pleadings and should be granted ‘only where it is clear from the face of the complaint that under no circumstances could relief be granted.’” *KS&E Sports v. Runnels*, 72 N.E.3d 892, 898 (Ind. 2017) (quoting *Veolia Water Indianapolis, LLC v. National Trust Ins. Co.*, 3 N.E.3d 1, 5 (Ind. 2014)). We “base our ruling solely on the pleadings,” and “we accept as true the material facts alleged in the complaint.” *Id.*

[14] A trial court should grant a motion for judgment on the pleadings “only when it is clear from the face of the pleadings that the plaintiff cannot in any way succeed under the operative facts and allegations made therein.” *Bayer Corp. v.*

*Leach*, 147 N.E.3d 313, 315 (Ind. 2020). “[W]hen a pleaded claim provides no circumstances in which relief can be granted, there is no need to put either the parties or the court through costly and time-consuming litigation.” *Id.* We review a Trial Rule 12(C) ruling “de novo.” *KS&E Sports*, 72 N.E.3d at 898.

[15] “When a complaint shows on its face that it has been filed after the running of the applicable statute of limitations, judgment on the pleadings under Ind. Trial Rule 12(C) is appropriate.” *Richards-Wilcox, Inc. v. Cummins*, 700 N.E.2d 496, 498 (Ind. Ct. App. 1998). We will dismiss a complaint at the pleading stage as barred by the statute of limitations only if the complaint states facts that, on its face, indicate the complaint was filed after the statute of limitations period expired. *State v. Alvarez ex rel. Alvarez*, 150 N.E.3d 206, 216 (Ind. Ct. App. 2020). “[W]hen the complaint states facts indicating the plaintiffs may prevail on a claim notwithstanding the statute of limitations, the question of when the plaintiffs discovered or should have discovered their harm becomes a factual dispute and the claims should not be dismissed.” *Id.*

[16] Indiana Code Section 25-2.1-15-1 provides:

This chapter governs an action based on negligence or breach of contract brought against an accountant, a partnership of accountants, or an accounting corporation registered, licensed, or practicing in Indiana by an individual or a business entity claiming to have been injured as a result of financial statements or other information examined, compiled, certified, audited, or reported on by the defendant accountant as a result of an agreement to provide professional accounting services.

Indiana Code Section 25-2.1-15-2 provides that an action under this chapter must be commenced by the earlier of the following:

(1) One (1) year from the date the alleged act, omission, or neglect is discovered or should have been discovered by the exercise of reasonable diligence.

(2) Three (3) years after the service for which the suit is brought has been performed or the date of the initial issuance of the accountant's report on the financial statements or other information.

[17] The unambiguous language of the Act clearly states that the statute only controls [a plaintiff's] negligence claim if it arises 'as a result of an agreement to provide professional accounting services.'" *Bambi's Roofing, Inc. v. Moriarty*, 859 N.E.2d 347, 353 (Ind. Ct. App. 2006) (quoting I.C. § 25-2.1-15-1). "In order to assign meaning to the phrase 'professional accounting services' we turn to other related statutory definitions provided within the Accountancy Act to ensure an harmonious interpretation with the larger Act." *Id.* "This definitional section of the Act is applicable throughout the entirety of the Accountancy Act." *Id.* (citing I.C. § 25-2.1-1-2).

[18] The Accountancy Act defines "professional" as "[f]or a certified public accountant, arising out of or related to the specialized knowledge or skills associated with certified public accountants." I.C. § 25-2.1-1-10.3(1). Further, the Act defines the "practice of accountancy" as:



the performance or the offering to perform by a licensee of a service involving:

- (1) the use of accounting or auditing skills, including the issuance of reports on financial statements;
- (2) management advisory, financial advisory, or consulting services; or
- (3) the preparation of tax returns or the furnishing of advice on tax matters.

I.C. § 25-2.1-1-10(a).

[19] Plaintiffs concede in their complaint that they became aware of the alleged negligent preparation of tax returns in September 2019. Thus, under Indiana Code Section 25-2.1-15-2, Plaintiffs would have been required to file their complaint within one year of discovering the alleged neglect. Plaintiffs, however, did not file their complaint until August 2021.

[20] Plaintiffs seek to avoid the statute of limitations by characterizing their claims as negligent misrepresentation and breach of fiduciary duty. Plaintiffs only added a negligent misrepresentation claim in their amended complaint after Accountant raised a statute of limitations defense, and Plaintiffs did not mention breach of fiduciary duty until late in the briefing of the motion for judgment on the pleadings.

[21] Our Supreme Court has held that:

[T]he applicable statute of limitations should be ascertained by reference to the nature of the harm alleged rather than by reference to theories of recovery. In other words, the applicable statute of limitations is ascertained by identifying the nature or substance of the cause of action and not of the form of the pleadings.

*Whitehouse v. Quinn*, 477 N.E.2d 270, 273 (Ind. 1985).

[22] Contrary to Plaintiffs' categorization of its claims as negligent misrepresentation or breach of fiduciary duty, the substance of Plaintiffs' cause of action sounds in negligence. Plaintiffs' claim that Accountant improperly prepared several years of tax returns, resulting in Plaintiffs overpaying taxes, is an action governed by the Accountancy Act. *See Crowe, Chizek, & Co., L.L.P. v. Oil Tech., Inc.*, 771 N.E.2d 1203, 1207 (Ind. Ct. App. 2002) (applying the Accountancy Act's statute of limitations for an action against an accountant for preparation of tax returns and advice regarding tax returns), *trans. denied*; *Bambi's Roofing*, 859 N.E.2d at 354 (noting that "run-of-the-mill accountancy services . . . squarely fall within the purview of 'Practice of Accountancy' . . .").

[23] It is apparent that Plaintiffs are trying to recharacterize their negligence claims as negligent misrepresentation and breach of fiduciary duty in an attempt to avoid the Accountancy Act's one-year statute of limitations. The substance of Plaintiffs' claims, however, are governed by the Accountancy Act. As such, Plaintiffs' claims are barred by the one-year statute of limitations, and the trial court properly granted Accountant's motion for judgment on the pleadings.

## Conclusion

[24] The trial court did not err by considering Accountant's motion as a motion for judgment on the pleadings rather than a motion for summary judgment.

Further, the trial court properly granted Accountant's motion for judgment on the pleadings because Plaintiffs' action is barred by the statute of limitations.

Accordingly, we affirm.

[25] Affirmed.

Riley, J., and May, J., concur.