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NO. A10-658

State of Minnesota
In Supreme Court

Park Nicollet Clinic,

Appellant,

vs.

Arlyn A. Hamann, M.D.,

Respondent.

APPELLANT'S BRIEF AND ADDENDUM

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The appendix to this brief is not available for online viewing as specified in the *Minnesota Rules of Public Access to the Records of the Judicial Branch*, Rule 8, Subd. 2(e)(2).

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STATEMENT OF THE LEGAL ISSUE

Whether the Court of Appeals erred in reversing and remanding the District Court's ruling that Respondent Arlyn Hamann's contract and quasi-contract claims were time-barred because they accrued when Hamann learned that Appellant Park Nicollet would not follow the policy at issue.

The District Court's Ruling: The District Court correctly recognized that Hamann's claims for breach of contract and promissory estoppel accrued no later than April 2005 when Park Nicollet advised Hamann that it would no longer follow the policy at issue and Hamann's claims were, therefore, time-barred.

The Court of Appeals' Ruling: The Court of Appeals reversed and remanded, erroneously adopting the "continuing breach" theory advanced by Hamann under which the statute of limitations may never expire on a plaintiff's breach of contract claim when wage-related damages are alleged. In so ruling, the Court of Appeals misconstrued this Court's holding in *Levin v. C.O.M.B. Co.* and disregarded important policy considerations. Employers should not be subject to perpetual contract claims that may never expire simply because wage-related damages are sought.

Most Apposite Authority: *Levin v. C.O.M.B. Co.*, 441 N.W.2d 801 (Minn. 1989); *Medtronic, Inc. v. Shope*, 135 F.Supp.2d 988 (D. Minn. 2001); *Botten v. Shorma*, 440 F.3d 979 (8th Cir. 2006); *Bachertz v. Hayes-Lucas Lumber Co.*, 201 Minn. 171 (Minn. 1937); *Tull v. City of Albuquerque*, 120 N.M. 829 (N.M. App. 1995).

STATEMENT OF THE CASE

Respondent Arlyn A. Hamann was employed by Appellant Park Nicollet Clinic as a physician in its Obstetrics & Gynecology Department. Hamann served a Complaint alleging, among other things, breach of contract and a related quasi-contract claim against Park Nicollet.

Hamann concedes that his claims for breach of contract and promissory estoppel are subject to a two or three-year statute of limitations. Hamann bases his claims on a single event that occurred in April of 2005. Because he did not initiate this action until October 30, 2009, Hamann's claims are time-barred even if the three-year limitations period applies. The District Court properly dismissed Hamann's Complaint in its entirety pursuant to Minn. R. Civ. P. 12.

Hamann filed an appeal. The Court of Appeals reversed and remanded, holding that a new breach of contract claim for the recovery of lost wages or benefits accrues each pay period in which wages or benefits are due but not paid. The Court of Appeals' ruling is unsupported by Minnesota law, as it is based almost entirely on *Levin v. C.O.M.B. Co.*, an inapposite case that addressed an anticipatory repudiation of a future obligation, not an affirmative breach of an existing obligation as alleged in Hamann's Complaint. Further, the Court of Appeals' decision contravenes sound policy considerations served by enforcing limitations on claims against employers, and is contrary to the weight of authority from other jurisdictions in similar cases. Accordingly, Park Nicollet petitioned this Court for review.

STATEMENT OF THE FACTS

Hamann commenced this litigation by serving his Complaint on October 30, 2009, asserting, among other things, claims for breach of contract and promissory estoppel. (ADD-20 – ADD-29.) Hamann was then employed as a physician in the Ob-Gyn Department (“the Department”) at Park Nicollet’s St. Louis Park clinic, where he began working in 1974. (ADD-22.) According to his Complaint, the Department adopted a Length of Service Recognition Policy (“the Policy”) in 1995, which was distributed to the physicians in the Department. (ADD-22 – ADD-23.) In relevant part, the Policy provided that physicians who met certain criteria would be exempt from obstetrics night call without a corresponding salary reduction. (ADD-22 – ADD-23.)

Hamann further alleges that he reached age 60 in July 2004 and that earlier that year, he spoke with the Department Chair at Park Nicollet about exercising the Policy. (ADD-24.) During this conversation, Hamann agreed to voluntarily defer exercising the Policy until April 2005 so that the Department would not be understaffed while other physicians were out on leave. (ADD-24.)

In his Complaint, Hamann alleges that “[i]n April 2005, when [he] informed the Department Chair that he wished to exercise the Policy and stop taking night call, he was told for the first time that the Policy no longer existed and would no longer be honored.” Hamann was told that he had to continue to take OB night call and that his salary would be cut if he refused.” (ADD-25.) Hamann continued to work night call for nearly three years at his full salary, until February 2008. (*Id.*) Hamann claims that he sustained damages as a result of working night call during that time, which “left him exhausted and

physically worn out and ... adversely affected his health.” (*Id.*) According to his Complaint, Hamann did not incur any lost income or reduced salary between 2005 and 2008. (*Id.*) In February 2008, Hamann stopped working night call and received a corresponding reduction in his salary. (*Id.*)

Hamann asserts the following causes of action based on the factual allegations set forth in the Complaint: 1) breach of contract; 2) promissory estoppel; and 3) unjust enrichment. (ADD-25 – ADD-28.) The breach of contract and promissory estoppel claims are the subject of this appeal.¹

LEGAL ARGUMENT

I. THE STANDARD OF REVIEW

When reviewing a case dismissed pursuant to Minn. R. Civ. P. 12.02(e), the question is whether the Complaint sets forth a legally sufficient claim for relief. *Barton v. Moore*, 558 N.W.2d 746, 749 (Minn. 1997). A motion to dismiss for failure to state a claim will be granted under Rule 12 if it appears to a certainty from the pleadings as a whole that no facts exist which could be introduced to support granting the relief demanded. *Lorix v. Crompton Corp.*, 736 N.W.2d 619, 623 (Minn. 2007). This Court reviews the District Court’s decision *de novo*, and must “consider only the facts alleged in the Complaint, accepting those facts as true and must construe all reasonable inferences in favor of the nonmoving party.” *Bodah v. Lakeville Motor Express, Inc.*, 663 N.W.2d 550, 553 (Minn. 2003).

¹ The Court of Appeals affirmed the dismissal of Hamann’s unjust enrichment on other grounds. (*See* ADD-10 – ADD-19.)

II. THE COURT OF APPEALS' DECISION IS INCORRECT AND IS NOT SUPPORTED BY THE LAW OR SOUND POLICY.

Hamann's causes of action for breach of contract and promissory estoppel (Counts I and II) are time-barred. Each of those claims is subject to a two-year statute of limitations. And those claims accrued no later than April 2005, if they accrued at all, when Hamann alleges he was told unequivocally that the Policy did not exist and would not be followed. The Court of Appeals' holding, that Hamann's claims accrued anew each time he received a paycheck reflecting a reduced salary because he did not work night call, is contrary to applicable law and good policy, and should be reversed.

A. The Applicable Statute Of Limitations

From the plain allegations in the Complaint, Hamann's claims for breach of contract and promissory estoppel arise out of his employment with Park Nicollet. Hamann alleges that the Policy was an enforceable contract and complains that Park Nicollet breached the contract by "failing to honor the agreement and refusing to allow [him] to be exempt from night call without salary reduction." (ADD-26.) Therefore, the applicable statute of limitations as to each of these claims is set forth in Minn. Stat. § 541.07(5).

Section 541.07(5) provides that actions for the recovery of wages or overtime shall be commenced within two years or, alternatively, three years if non-payment is willful. Minn. Stat. § 541.07(5). "Minnesota courts consistently hold that 'all damages arising out of the employment relationship are subject to the two-year statute of limitations set forth in Minn. Stat. § 541.07(5).'" *Stowman v. Carlson Cos., Inc.*, 430 N.W.2d 490, 493

(Minn. App. 1988) (citing *Portlance v. Golden Valley State Bank*, 405 N.W.2d 240, 243 (Minn. 1987); accord *Kulinski v. Medtronic Bio-Medicus, Inc.*, 112 F.3d 368, 371 (8th Cir. 1997); *McGoldrick v. Datatrak Int'l, Inc.*, 42 F. Supp.2d 893, 898 (D. Minn. 1999). Certainly, a claim based upon an employer's alleged breach of a unilateral contract that purportedly results in lost income is a claim arising out of the employment relationship.

The two-year statute applies regardless of whether Hamann premises his claim upon a breach of contract or an equitable theory of recovery. See *Roaderrick v. Lull Engineering Co., Inc.*, 208 N.W.2d 761, 763 (Minn. 1973) (“[I]t is our opinion, based on the broad definition of wages stated in [Minn. Stat. § 541.07(5)], that claims for wages based on quantum meruit are also controlled by [Minn. Stat. § 541.07(5)].”); *Burns v. Kraft Foods N. Am.*, 2004 U.S. Dist. LEXIS 20134 (D. Minn. Aug. 26, 2004) (“The two-year statute of limitations also applies to plaintiff’s promissory estoppel claim, as this, too, is a claim ‘arising out of the employment relationship.’”). Thus, in the present case, both the breach of contract and promissory estoppel claims are subject to dismissal if they accrued before October 30, 2007. Moreover, although Hamann alleges a “willful” violation, the three-year statute of limitations period applicable to such claims does not save his claims because he failed to initiate this action within three years of accrual.

B. Accrual Of The Purported Claims

Hamann’s claims are unavoidably time-barred. Taking his allegations as true, at the very latest, the claims for breach of contract and promissory estoppel arose in April 2005 when Park Nicollet allegedly told Hamann the Policy was no longer in effect. That

is when Hamann contends the contract was breached or the promise was broken. That is, therefore, when his contract and promissory estoppel claims accrued.

“[I]t has long been settled that a cause of action for breach of contract accrues on the breach of the terms of the contract.” *Levin v. C.O.M.B. Co.*, 441 N.W.2d 801, 805 (Minn. 1989) (citing *Bachertz v. Hayes-Lucas Lumber Co.*, 201 Minn. 171, 176, 275 N.W. 694, 697 (1937)). “This is true even when actual damages resulting from the breach do not occur until some time afterwards.” *Jacobson v. Bd. of Trs.*, 627 N.W.2d 106, 110 (Minn. App. 2001).

By Hamann’s own admission, the alleged breach occurred in 2005 based on his allegation as follows: “In April 2005, when [Hamann] informed the Department Chair that he wished to exercise the Policy and stop taking night call, he was told for the first time that the Policy no longer existed and would no longer be honored.” Because Hamann did not initiate this action until October 2009, more than four years after the alleged breach, it is untimely.

Hamann’s promissory estoppel claim is similarly time-barred. Hamann alleges as the basis for this claim that “Park Nicollet represented to [Hamann] that, if he continued to practice with Park Nicollet as a physician in its Ob-Gyn Department until he was 60 years old, took OB call for at least 15 years and met other criteria, he would be exempt from night call without salary reduction.” Thus, as pled, the alleged promise was broken, if at all, in July 2004 when Hamann reached age 60 or, at the latest, in April 2005 when he was allegedly told for the first time that the Policy no longer existed. Regardless, the promissory estoppel claim is untimely.

C. Hamann’s Continuing Breach Theory Must Be Rejected.

In an effort to save his claims from dismissal, Hamann advances a continuing breach theory under which the statute of limitations would never run on his claims as long as he remained with Park Nicollet. In its decision, the Court of Appeals erroneously endorsed this misguided theory, holding that “each pay period during which Park Nicollet failed to satisfy its obligations under the [Policy] constitutes a separate alleged breach” (ADD-15.) In its obviously cursory review of the District Court’s decision and reasoning, the Court of Appeals failed to cite any persuasive or applicable legal authority supporting its decision. In addition, the adoption of Hamann’s theory makes for very bad public policy and is inconsistent with decisions in other jurisdictions on facts nearly identical to those alleged in Hamann’s Complaint.

1. According to the Complaint, Park Nicollet’s Declaration in April 2005 constituted a breach of a present obligation and not an anticipatory repudiation.

As an initial matter, the Court of Appeals’ ruling rests entirely on its characterization of the alleged breach in April 2005 as an anticipatory repudiation of a future obligation. This characterization, however, is unfounded, and is not supported by any reasoned analysis.

It is well established that anticipatory repudiation occurs when one party communicates to the other his repudiation of the contract before the time fixed by the contract for his performance. *In re Haugen*, 278 N.W.2d 75 (Minn. 1979.). Hamann contends that when the alleged breach occurred in April 2005, he had met all of the requisite criteria under the Policy. Hamann argued to the Court of Appeals that once he

met all requirements of the Policy, “the Policy could not be rescinded or revoked, and Park Nicollet was bound to perform *at that time.*” (APP-15) (emphasis added). Thus, Park Nicollet’s alleged refusal to abide by the Policy’s terms was not an anticipatory repudiation but an affirmative breach of an existing obligation. In April 2005, according to Hamann’s theory, Park Nicollet had a present obligation – a duty of immediate performance – to abide by the terms of the Policy, *i.e.*, Hamann had the immediate right to cease taking night call without a corresponding reduction in salary. Park Nicollet allegedly breached its obligation once and only once, in April 2005 by telling Hamann “that he had to continue to take OB night call and that his salary would be cut if he refused.” The Court of Appeals’ conclusion that this declaration was an anticipatory repudiation completely ignores well-settled law and the facts alleged in Hamann’s Complaint.

2. The Court of Appeals’ Decision is not supported by Minnesota law.

The Court of Appeals rested its ruling almost entirely on this Court’s holding in *Levin*. However, *Levin* is inapplicable since it addressed the anticipatory repudiation of a future payment obligation, not an alleged breach of a duty of immediate performance as is the case here. *See Levin v. C.O.M.B. Co.*, 441 N.W.2d 801, 805 (Minn. 1989).

In *Levin*, this Court reversed the lower court decision accelerating accrual of all of an employee’s separate claims to the date of the employer’s repudiation of a commission agreement, noting that it “has long been established ... that the renunciation and repudiation of a contract by one of the parties does not set the statute of limitations in

motion against the other party although it gives the latter an election to sue immediately.” 441 N.W.2d at 803-04 (citation omitted). The commission agreement in *Levin* was more like an installment contract, and the plaintiff alleged a series of breaches arising from repeated failures to pay commissions owed, each of which came due only at the close of a contract year – a predetermined future date. *Id.* at 803. The *Levin* Court characterized the complaint as asserting separate causes of action with different accrual dates: “Levin’s complaint alleges ... nonpayment of commissions based on sales made during the year ending August 31, 1984, the year ending August 31, 1985, and the period beginning September 1, 1985 and ending June 4, 1986, and from June 4, 1986 forward.” Based on this characterization, the court pointed out that “Levin’s cause of action with respect to each contract period could not have accrued prior to the close of the period.” *Id.* The Court of Appeals mischaracterized the court’s analysis in *Levin*, which made no mention of “continuing” breaches, and, instead, concluded that separate, discrete breaches on each of the plaintiff’s separate causes of action occurred on the dates when each commission was due but not paid.

The Court of Appeals justified its reliance on *Levin*, despite the existence of separate, discrete breaches in that case, by asserting that “fixed due dates were not a critical factor in the *Levin* court’s analysis.” (ADD-16.) This statement is simply inaccurate. In fact, the *Levin* Court stated that the portion of the contract in which the due date was not fixed created a question of fact regarding the date on which the statute commenced to run and precluded summary resolution. 441 N.W.2d at 804. This statement demonstrates that fixed due dates *were* critical to the court’s holding in *Levin*,

and is entirely consistent with its conclusion that “the bar of the statute depends on the annual due date for payment of the commission.” *Id.*

In the present case, the only thing Hamann claims he was ever entitled to is the right to stop taking OB night call without a reduced salary. Hamann alleges that he attempted to invoke his rights under the Policy in April 2005 and that he was harmed immediately by Park Nicollet’s refusal, in the form of exhaustion and negative health effects. The salary reduction in February 2008 was merely another manifestation of a single event that occurred three years earlier. Hamann just chose to put off this monetary effect for three years. Hamann’s election in February 2008 to stop working night call and receive a reduced salary certainly did not constitute some new breach by Park Nicollet.

The Court should follow the holdings of other Minnesota courts that have distinguished *Levin* on facts like those alleged in this case. *See Medtronic, Inc. v. Shope*, 135 F.Supp.2d 988, 992 (D. Minn. 2001); *Botten v. Shorma*, 440 F.3d 979, 981 (8th Cir. 2006) (relying on *Levin* and holding that a cause of action for unpaid wages arose when the terms of the employment contract were breached). In *Shope*, the court held that an action on stock certificates issued to an employee was an action for wages subject to the two or three-year limitations period set forth in Minn. Stat. § 541.07(5). *Id.* at 991. The employee in that case relied principally on *Levin* to support his argument that the limitations period did not begin to run when the employer canceled the certificates more than five years before the suit was commenced. *Id.* at 992. However, the court distinguished *Levin*, recognizing that the holding of *Levin* only applies to anticipatory repudiation of future obligations, not to breaches of present contractual obligations. The

court held that the employer's cancellation of the stock certificates was not an anticipatory repudiation, but was "without a doubt, a breach of contract [and] precisely the kind of 'dramatic breach, which completely severed the contractual relationship' that begins the running of the statute of limitations." *Id.*, citing *Griffin v. American Motors Sales Corp.*, 618 F.Supp. 455, 460 (D. Minn. 1985). In the present case, if any breach occurred, it undoubtedly happened in April 2005 when Hamann alleges he attempted to exercise the Policy and was told unequivocally that it was no longer in effect.

Like the cancellation of the stock certificates in *Shope*, Hamann's allegation that in April 2005 he was told for the first time that the Policy no longer existed and would no longer be honored and his salary would be cut if he refused to take night call amounts to an allegation of a dramatic breach of a present obligation that very clearly began the running of the statute of limitations. Based on the facts alleged in the Complaint, Hamann could not have received more definite notice that the Policy was no longer in effect than he did in April 2005. Thus, by his own allegations, if any breach occurred or any promise was broken, it happened more than three years before Hamann brought suit. He knew without any doubt or ambiguity in April 2005 that the policy in question no longer existed, that he was harmed, and that he would not receive its purported benefits.

3. Sound policy mandates reversal of the Court of Appeals' Decision.

There are compelling policy reasons for rejecting the "continuing breach" theory adopted by the Court of Appeals. In essence, the Court of Appeals' ruling proposes that

contract claims for damages that happen to be wages accrue over and over, while contract claims seeking other types of damages accrue only once, when the plaintiff knows of the breach and resulting harm. Under this flawed reasoning, the limitations period for wage-related claims based on a change to an employer's policy will never expire so long as the plaintiff continues to work for the same employer. The United States Supreme Court has, understandably, rejected this rationale in the employment discrimination context. *Del. State College v. Ricks*, 449 U.S. 250, 257 (U.S. 1980) ("Mere continuity of employment, without more, is insufficient to prolong the life of a cause of action for employment discrimination.").

Indeed, Hamann's theory leads to absurd results in other contexts as well. Consider the following example: An employee signs an employment contract with a term of five years. The contract provides he will be paid every two weeks. On the first day of his employment, the employee is terminated in violation of the contract. Under Hamann's theory and the Court of Appeals' ruling, the employee's claim accrues when the employee is terminated, and repeatedly thereafter every two weeks for the next five years. Thus, the employee would be allowed to bring a claim *at any time in the seven or eight years after his termination*, even though he knew, without a doubt, that he could maintain a breach of contract claim and what the resulting harm would be when he was discharged.

This is not the law in Minnesota. *See, e.g., Portlance v. Golden Valley State Bank*, 405 N.W.2d 240 (Minn. 1987) (holding that a claim for breach of an employment contract must be initiated within two years of the date of termination). Nor should it be.

The United States Supreme Court has repeatedly observed that statutes of limitations “promote important interests; ‘the period allowed for instituting suit inevitably reflects a value judgment concerning the point at which the interests in favor of protecting valid claims are outweighed by the interests in prohibiting the prosecution of stale ones.’” *Id.* at 259-60, citing *Johnson v. Railway Express Agency, Inc.*, 421 U.S. 454, 463-464 (1975).

Similarly, this Court has recognized the important policy considerations served by enforcing limitations on a party’s ability to bring an action: “[i]t would encourage fraud, oppression, and interminable litigation, to permit a party to delay a contest until it is probable that papers may be lost, facts forgotten, or witnesses dead. A statute of limitation is based to a great extent on the proposition that if one person has a claim against another ... it would be inequitable for him to assert such claim after an unreasonable lapse of time, during which such other has been permitted to rest in the belief that no such claim existed.” *Bachertz v. Hayes-Lucas Lumber Co.*, 201 Minn. 171, 176 (Minn. 1937). If this Court of Appeals’ decision is affirmed, plaintiffs can sit on their hands while evidence is lost, memories fade, and witnesses disappear. In fact, under Hamann’s theory, the applicable statute of limitations might *never* run -- even if a plaintiff chooses to continue working for another 20 years. In the instant case, Hamann elected to sleep on his rights for more than four years, even though, according to his allegations, he attempted to invoke his rights under the Policy and was unequivocally told it did not exist. This Court should not validate his flawed, troublesome theory just to save his claims. Put simply, Hamann’s theory is not consistent with established

Minnesota law, nor does it serve any policy considerations recognized by this or any other court.

4. Other jurisdictions have rejected the Court of Appeals' reasoning.

Other jurisdictions have recognized the pernicious consequences of endorsing Hamann's continuing breach theory, and have rejected the theory under circumstances strikingly similar to those alleged here. For instance, the North Dakota Supreme Court held that an employee's breach of contract claim accrued when he received the first retirement check that he later claimed was improperly calculated. *Snortland v. State*, 2000 ND 162, 615 N.W.2d 574, 577-78 (N.D. 2000). Likewise, the New Mexico Court of Appeals rejected the employees' argument that a new breach of contract occurred with each paycheck that did not include the raise to which they claimed they were entitled. *Tull v. City of Albuquerque*, 120 N.M. 829, 831 (N.M. App. 1995). The court held that the only actionable wrong was the employer's initial refusal to increase the employees' salaries, and, "[a]lthough that wrong has continuing consequences in the form of lower paychecks, the continuing effects do not extend the life of Plaintiffs' breach of contract cause of action, which is based solely on that initial refusal." *Id.* at 832.

Similarly, the Alabama Court of Civil Appeals, addressing an employee's claim that her salary schedule was improperly classified, held that her breach of contract claim accrued on the date the first alleged incorrect salary payment was made, and further incorrect payments did not toll the running of the limitations period. *McCord-Baugh v. Birmingham City Bd. of Educ.*, 2001 Ala. Civ. App. LEXIS 556, * 2-5 (Ala. Civ. App.

2001); *see also Goldman Copeland Assocs., P.C. v. Goodstein Bros. & Co.*, 268 A.D.2d 370, 702 N.Y.S.2d 269 (2000) (holding that breach of lease claim accrued on date the landlord had sent the first yearly statement containing the porter wage escalation and was barred by statute of limitations); *Maher v. Tietex Corp.*, 331 S.C. 371, 500 S.E.2d 204 (S.C. Ct. App. 1998) (holding that the statute of limitations barred the employee's breach of contract claim because the claim had accrued at the point when the employee should have known that his employer had reduced his bonus amount even though the employee had accepted the reduced amount for several years before filing a lawsuit).

Ignoring this body of established law, the Court of Appeals erroneously maintained that its "analysis also comports with the application of limitations periods to lost-wages claims in other jurisdictions." (ADD-17.) However, the Court of Appeals' decision refers only to cases addressing claims under the Fair Labor Standards Act and similar state wage and hour statutes, which are distinctly different from the contract and quasi-contract claims asserted here. While it is true that statutory wage claims accrue with each violative paycheck, an entirely different rationale applies in that context. *See, e.g., Brooklyn Savings Bank v. O'Neil*, 324 U.S. 697, 706-07 (explaining that the purpose of the FLSA is "to protect certain groups of the population from substandard wages and excessive hours which endangered the national health and well-being and the free flow of goods in interstate commerce"). Here, Hamann pursues wage-based damages based on the alleged violation of an employment policy that he claims was a contract. As the D.C. Circuit explained, in an FLSA action, "an employee has carried out his burden if he proves that he has in fact performed work for which he was improperly compensated.

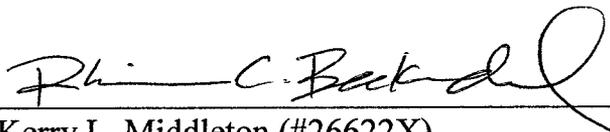
Each of those elements, performance and improper compensation, recurs with each pay period The underpayment is not the ‘effect’ of a prior violation; it is the violation itself.” *Figueroa v. Dist. of Columbia Metro. Police Dept.*, 2011 U.S. App. LEXIS 3168, * 13-15 (D.C. Cir. 2011). But in contract claims alleging wage-based damages, the time for performance of the contract occurs *once*, not with each pay period. According to Hamann’s allegations, the time for Park Nicollet to perform in accordance with the Policy was in April 2005, when Hamann alleges he met all of the Policy’s requirements and requested the benefits of the Policy. Unlike a wage claim under the FLSA, the underpayment Hamann alleges beginning in 2008 was not the violation itself. It was simply an effect of Park Nicollet’s alleged refusal to follow the Policy in 2005. Accordingly, the Court of Appeals’ decision directly contradicts better reasoned opinions from several other jurisdictions. Other courts have repeatedly rejected the notion that a new cause of action for the recovery of lost wages flowing from a breach of contract accrues with each pay period after the breach.

CONCLUSION

Hamann’s claims are time-barred. The District Court properly concluded that Hamann’s contract and promissory estoppel claims accrued, if at all, in April 2005, when the alleged breach of contract or promise occurred. The Court of Appeals erroneously reversed, applying inapposite case law and disregarding the plain allegations in Hamann’s Complaint, as well as significant policy considerations served by enforcing limitations on a party’s ability to bring an action within a specified timeframe. For all these reasons, Park Nicollet respectfully requests that the Court of Appeals’ decision be

reversed, and the District Court's Order dismissing Hamann's Complaint be affirmed in its entirety.

Date: April 14, 2011



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