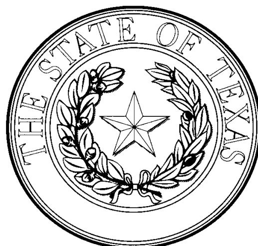
Opinion issued May 28, 2020



In The

Court of Appeals

For The

First District of Texas

NO. 01-18-00421-CV

THIM T. NGUYEN, ET AL., Appellants

V.

MIKAL C. WATTS; FRANCISCO GUERRA IV; JOHN HUNTER CRAFT; DAVID WATTS; WATTS GUERRA, LLP; WATTS GUERRA & CRAFT, LLP; ROBERT C. HILLIARD; ROBERT C. HILLIARD LLP; AND HILLIARD MUNOZ GONZALES, LLP, Appellees

---

On Appeal from the 55th District Court
Harris County, Texas
Trial Court Case No. 2016-13749

O P I N I O N

This appeal arises from a suit brought by Appellants—439 individuals[1]—against numerous attorneys and their law firms, including (1) Appellees Mikal C. Watts, Francisco Guerra IV, John Hunter Craft, David Watts, Watts Guerra, LLP,

[1] Appellants' names are listed in an appendix to this opinion as stated in a list provided by Appellants' counsel.

and Watts Guerra & Craft, LLP (collectively, "Watts Appellees") and (2) Appellees Robert C. Hilliard, Robert C. Hilliard, LLP, and Hilliard Munoz Gonzales, LLP (collectively, "Hilliard Appellees"), alleging violations of the civil barratry statute, *see* TEX. GOV'T CODE § 82.0651(c), and derivative claims of conspiracy and aiding and abetting. Appellants also sued the Watts Appellees for unjust enrichment and invasion of privacy by misappropriation of name and likeness.

The Watts Appellees and Hilliard Appellees—as well as other settling defendants that are not parties to this appeal—filed traditional motions for summary judgment. Among the grounds for summary judgment, Appellees asserted that (1) certain conduct alleged by Appellants to constitute civil barratry did not violate the civil barratry statute and (2) the statute of limitations barred Appellants' barratry claims. The Watts Appellees also challenged the propriety of the unjust enrichment claim and asserted that the invasion-of-privacy-by-misappropriation claim, conspiracy claim, and aiding and abetting claim were barred by limitations. In a series of orders, the trial court granted summary judgment, disposing of all Appellants' claims against the Watts and Hilliard Appellees. On appeal, Appellants raise four issues challenging the summary judgment against them.

We affirm in part, reverse in part, and remand for further proceedings.

Background

The Deepwater Horizon Explosion

British Petroleum ("BP") leased its offshore drilling rig, the *Deepwater Horizon*, to drill the Macondo Well off the coast of Louisiana. *In re Deepwater Horizon*, 739 F.3d 790, 795 (5th Cir. 2014). On April 20, 2010, the *Deepwater Horizon* exploded after the well blew out. *Id.* at 795–96. "After the initial explosion and during the ensuing fire, the vessel sank, causing millions of barrels of oil to spill into the Gulf of Mexico." *Id.* at 796. The oil contaminated the shores and estuaries of the Gulf Coast states, "inflicting billions of dollars in property and environmental damage and spawning a litigation frenzy." *In re Deepwater Horizon*, 745 F.3d 157, 161 (5th Cir. 2014).

Conduct Related to the BP Litigation

In June 2010, Mikal Watts and his firm Watts Guerra & Craft, LLP ("WGC") entered into a joint venture agreement with attorney Robert Hilliard to share costs and fees in the representation of clients against BP relating to the oil spill. Hilliard financed his contribution, in part, with funds from Duncan Litigation Investments. Another attorney, John Cracken, also agreed to contribute funding.

Appellants allege that Watts and WGC engaged non-lawyer case recruiters ("case recruiters") to sign up clients who had agreed to be represented by Watts and his firm in the BP litigation. Appellants alleged that Watts, and the other

parties funding the joint venture, paid the case recruiters $250 for each client they signed up to be represented by WGC.

Appellants contend that the case recruiters ultimately provided WGC with the names and personal information of over 40,000 individuals who had ostensibly agreed to be represented by WGC in the BP litigation. These individuals purportedly worked in the Gulf Coast fishing industry and had been economically damaged by the oil spill. Appellants contend that in exchange for providing the list of purported clients, Watts paid the case recruiters over $10 million. In 2010 and 2011, WGC filed claims against BP on behalf of the individuals through BP's settlement clearinghouse, the Gulf Coast Claims Facility.

All claims relating to the oil spill were consolidated into a federal multi-district litigation proceeding in the Eastern District of Louisiana. The federal court appointed Watts to the Plaintiffs' Steering Committee ("the PSC") after he stated in his PSC application that he "represented[ed] over 40,000 plaintiffs" in the BP litigation.

In 2012, BP agreed to settle the oil-spill claims. It established the Seafood Compensation Program to compensate those who earned a living in the Gulf Coast's seafood industry and had suffered economic losses as a result of the oil spill. To be part of the settlement, a claimant was required to make a formal written "presentment" to BP. In mid-January 2013, Watts and his firm, WGC, submitted

"presentment forms" on behalf of over 40,000 claimants, including Appellants. Watts signed the presentment forms representing himself to be the claimants' attorney and indicated in the forms that the claimants worked in the commercial fishing industry and had been adversely affected by the oil spill.

BP suspected that the claims made by Watts and his firm on behalf of the 40,000 plus claimants were not legitimate. An investigation showed that BP's suspicions were correct. The investigation revealed that the case recruiters had manufactured a claimant list containing false claimants. The case recruiters had used the phone book to identify individuals with Vietnamese surnames. After identifying a qualifying name, the case recruiters had then listed the person as a fisherman-claimant even though the individual had not given permission to be identified as a claimant and had not agreed to be represented by WGC.

Some of the listed claimants were not commercial fishermen who had suffered economic injury as a result of the oil spill. And some of the social security numbers listed for the claimants were false or stolen. The listed claimants—including Appellants—had not authorized Watts or WGC to represent them or to file claims on their behalf, including the presentment forms filed by Watts in January 2013.

Bexar County Class Action

On May 14, 2014, five of the Appellants[2] in this case filed a class action in Bexar County against Watts and his firm, Watts Guerra, LLP, the successor firm of WGC.[3] The class action initially asserted a claim for invasion of privacy by misappropriation of name and likeness. The class-action petition alleged that Watts had obtained his position on the PSC by stating in his application to the federal court that he and his firm "represented over 40,000 clients injured by the Deepwater Horizon Oil Spill" when they "did not actually represent the individuals and/or entities they claimed to represent."

On August 29, 2014, the class action was certified to include "[a]ll persons or entities who [Watts and Watts Guerra, LLP] claimed to represent in the BP Litigation but who [Watts and Watts Guerra, LLP] did not actually represent in the BP Litigation." A later, amended petition added claims for civil barratry pursuant to Government Code Subsection 82.0651(c).

---

2 These were Appellants Dung Van Nguyen, Nhat Van Nguyen, Joseph Nguyen, Tam V. Le, and Theresa T. Nguyen.

3 Craft left Watts Guerra & Craft, LLP in March 2013, and the name changed to Watts Guerra, LLP. For ease of reference, we will generally refer to the firm as "WGC." But, when necessary for accuracy, we will refer specifically to Watts Guerra, LLP.

Criminal Charges

In September 2015, Watts and the case recruiters (as well as others) were indicted in federal court in Mississippi on 95 counts of fraud and conspiracy. The indictment alleged that Watts and his co-conspirators—the case recruiters—had submitted the names of over 40,000 claimants in the BP litigation even though they knew (1) that the claimants had not consented to be represented by WGC, (2) that false social security numbers, addresses, and false birthdates were used to identify some of the claimants, and (3) that some of the claimants did not work in the fishing industry.

Watts defended against the charges by asserting that he had been scammed by the case recruiters. He claimed that he had believed that the claimant list and the supporting documentation provided by the case recruiters were legitimate. Two of the case recruiters were found guilty, but Watts was acquitted of all charges.

Filing of the Instant Suit and Appellants' Pleadings

In March 2016, a single plaintiff, Thim T. Nguyen, filed the instant suit against Hilliard and Cracken—the two attorneys who had agreed to provide funding for the BP litigation—for misappropriation of identity based on the filing of the BP claims.[4] The Second Amended Petition, filed in August 2016, added more plaintiffs. It also named Francisco Guerra, IV, John Hunter Craft, and

---

[4] Hilliard's and Cracken's law firms were also named as defendants.

Duncan Litigation Investments as new defendants. The plaintiffs alleged that, when Watts and WGC filed the presentment forms on behalf of over 44,000 claimants, the defendants knew that Watts and WGC did not represent the claimants. Based on these allegations, the plaintiffs asserted only a cause of action for civil barratry under Government Code Subsection 82.0651(c).

The Third Amended Petition, filed in September 2016, named 389 plaintiffs and added Mikal Watts, WGC, and David Watts as defendants. Duncan Litigation Investments's principle, Max Duncan, was also added. The plaintiffs pled that the statutes of limitations did not bar their claims because the discovery rule tolled the limitations periods. The defendants answered the suit, generally denying the claims and raising affirmative defenses, including limitations.

The Sixth Amended Petition, filed in May 2017, named 440 plaintiffs. It added claims for invasion of privacy by misappropriation of name and likeness and for unjust enrichment against the Watts Appellees. The plaintiffs supported these claims by alleging that Watts had been appointed to the PSC in the BP multidistrict litigation based on Watts's general assertion in his PSC application that he represented over 40,000 claimants—including the plaintiffs—in the BP litigation. The plaintiffs alleged that, by virtue of his position on the PSC, Watts and his firm had been awarded nearly $18 million in "common benefit" attorney's fees. The plaintiffs requested "the equitable remedy of a constructive trust to recover" the

attorney's fees that the defendants had "obtained through unjust enrichment by misappropriating [their] name[s] and likeness[es]."

The Eighth Amended Petition—the live pleading in this case—named 439 plaintiffs, who are Appellants here. In that pleading, Appellants continued to assert a cause of action for civil barratry under Government Code Subsection 82.0651(c). Appellants claimed that Watts's (and allegedly Hilliard's) filing of the presentment forms in January 2013 constituted actionable conduct under that statutory provision.

Appellants also alleged that, after realizing that the 40,000[5] individuals identified by the case recruiters had not agreed to representation by WGC, the defendants sent eight mass mailings to those individuals (which included Appellants) from July 2012 to January 2013, requesting them to sign forms agreeing to representation by WGC and giving the firm authority to act on their behalf in the BP litigation. Appellants alleged that, to further pursue representation, the defendants began telephoning the 40,000 purported claimants in October 2012. The phone calls continued until January 2013. Appellants claimed that the conduct of telephoning the 40,000 purported claimants, paying non-lawyers to solicit Appellants, and entering into a joint venture agreement to commit barratrous

[5] In some documents in the record, the number of purported claimants is identified as over 40,000 and in others it is listed as 44,000. For consistency purposes, we will generally refer to the number of purported claimants as 40,000.

conduct was actionable conduct under Government Code Subsection 82.0651(c). For the conduct violating the statute, Appellants requested statutory penalties, actual damages in the form of mental anguish damages, and attorney's fees.

Appellants continued to assert claims for unjust enrichment and invasion of privacy by misappropriation of likeness and name against the Watts Appellees. The claims were factually premised on the common benefit attorney's fees awarded to Watts for his work on the PSC in the federal multi-district litigation. Appellants dropped the invasion-of-privacy-by-misappropriation and unjust enrichment claims against the other defendants. Appellants also asserted claims for conspiracy and aiding and abetting against all defendants.

Appellants continued to assert that the discovery rule tolled the limitations' periods on all their claims.[6] Appellants were later granted leave to supplement their Eighth Amended Petition to assert that the 2014 Bexar County class action against Watts and Watts Guerra, LLP tolled the running of limitations on Appellants' claims against those two defendants.

Motions for Summary Judgment

The defendants filed a series of motions for summary judgment, challenging the barratry claims. The defendants asserted (1) that the conduct alleged by

---

[6] Appellants also asserted that limitations were tolled based on fraudulent concealment and the continuing-tort doctrine. The trial court rejected these defenses to limitations, but Appellants do not challenge those rulings on appeal.

Appellants did not support a barratry claim under Government Code Subsection 82.0651(c) and (2) that the barratry claims were barred by limitations. Among their responsive summary-judgment evidence, Appellants offered their individual declarations. In the declarations, Appellants uniformly stated that they had received phone calls from WCG in 2012 ending in January 2013. The calls had requested Appellants to permit WCG to represent them. Appellants also stated that they did not learn until 2015 that Watts had filed presentment forms on their behalf in January 2013.

The trial court issued a series of orders on the motions, ultimately granting summary judgment on the barratry claims. In the orders, the trial court identified conduct by the defendants that Appellants alleged constituted a violation of Government Code Subsection 82.0651(c), a provision of the civil barratry statute. That conduct included telephoning Appellants, as late as January 2013, to obtain their authorization for WGC to represent them in the BP litigation and the filing of the presentment forms on Appellants' behalf in January 2013. Related to this conduct, the trial court made the following determinations in its orders, supporting summary judgment on the civil barratry claims:

- Section 82.0651(c) of the civil barratry statute requires "each individual plaintiff to show solicitation." "[M]erely filing an unauthorized claim, although barratry, does not constitute 'solicitation' within the meaning of [Subsection 82.0651(c)]" because civil barratry requires "actual communication with the client."

- The applicable statute of limitations for a barratry claim under Subsection 82.0651(c) is two years, and "there were no solicitations during the two-year period" prior to Appellants' filing suit because "the most recent solicitations were the phone calls, the last of which occurred in January of 2013."
- The discovery rule did not toll limitations on Appellants' civil barratry claims that were based on solicitations.
- The Bexar County class action did not toll limitations on Appellants' claims against Mikal Watts and Watts Guerra, LLP.

The Watts Appellees also sought summary judgment on Appellants' unjust enrichment and restitution claim, arising from payment of $18 million in common benefits attorney's fees to Watts and his firm for their work on the PSC. Among its summary-judgment grounds, the Watts Appellees argued that Appellants were not entitled to recover the attorney's fees because they had not paid the attorney's fees; rather, the fees were paid by BP and other defendants in the BP litigation. The trial court agreed, granting summary judgment on the unjust enrichment claim.

The trial court also granted the Watts Appellees' motion for summary judgment on Appellants' claims for (1) invasion of privacy by misappropriation of name and likeness, (2) conspiracy, and (3) aiding and abetting based on limitations. Finally, the trial court overruled Appellants' objections to the Watts Appellees' summary-judgment evidence offered in support of their motions for summary judgment on Appellants' claims for unjust enrichment and invasion of privacy by misappropriation.

The Cracken and Duncan defendants settled with Appellants, and the trial court signed an order dismissing Appellants' claims against those defendants with prejudice. The trial also severed remaining crossclaims between the defendants. Taken together, the trial court's orders dismissing the settled claims and granting summary judgment for the Watts and Hilliard Appellees (collectively, "Appellees") disposed of all the remaining claims and parties, thus constituting a final and appealable judgment. *See Webb v. Jorns*, 488 S.W.2d 407, 408–09 (Tex. 1972) (holding that interlocutory judgment merged into final judgment, which was then appealable); *see also Azbill v. Dallas Cty. Child Protective Servs. Unit of the Tex. Dep't of Human & Regulatory Servs.*, 860 S.W.2d 133, 137 (Tex. App.—Dallas 1993, no writ) (concluding that "dispositive orders need not appear in one document for a judgment to be final").

Summary Judgment

Appellants raise four issues on appeal. In their first three issues, Appellants challenge the trial court's summary judgment in favor of Appellees.

A. Standard of Review

We review de novo a trial court's ruling on a motion for summary judgment. *Mann Frankfort Stein & Lipp Advisors, Inc. v. Fielding*, 289 S.W.3d 844, 848 (Tex. 2009). A party moving for traditional summary judgment, as here, has the burden to prove that there is no genuine issue of material fact and that the movant

is entitled to judgment as a matter of law. TEX. R. CIV. P. 166a(c); *SeaBright Ins. Co. v. Lopez*, 465 S.W.3d 637, 641 (Tex. 2015). A defendant is entitled to summary judgment if it conclusively negates an essential element of the plaintiff's case or conclusively establishes all elements of an affirmative defense. *Cathey v. Booth*, 900 S.W.2d 339, 341 (Tex. 1995).

In reviewing a summary judgment, we take as true all evidence favorable to the nonmovant, indulging every reasonable inference and resolving any doubts in the nonmovant's favor. *Valence Operating Co. v. Dorsett*, 164 S.W.3d 656, 661 (Tex. 2005). When the trial court has specified the basis for its grant of summary judgment, we will consider all the summary-judgment grounds on which the trial court has ruled, that the movant has preserved for appellate review, and that are "necessary for final disposition of the appeal." *Cincinnati Life Ins. Co. v. Cates*, 927 S.W.2d 623, 626 (Tex. 1996).

B. Civil Barratry

Appellants' first issue challenges summary judgment on their barratry claims asserted pursuant to Government Code Subsection 82.0651(c). *See* TEX. GOV'T CODE § 82.0651(c).

1. Legal Principles

"Barratry is the solicitation of employment to prosecute or defend a claim with intent to obtain a personal benefit." *State Bar of Tex. v. Kilpatrick*, 874

S.W.2d 656, 658 n.2 (Tex. 1994). "Barratry by solicitation has been criminalized in the State of Texas since 1901, when the penal code was amended to outlaw 'the fomenting of litigation by attorneys at law by soliciting employment.'" *State v. Mays*, 967 S.W.2d 404, 408–09 (Tex. Crim. App. 1998) (quoting *McCloskey v. San Antonio Traction Co.*, 192 S.W. 1116, 1119 (Tex. Civ. App.—San Antonio 1917, writ ref'd)). Currently, Penal Code Section 38.12 governs the criminal offense of barratry, providing, in relevant part, as follows:

> (a) A person commits an offense if, with intent to obtain an economic benefit the person:
>
>> (1) knowingly institutes a suit or claim that the person has not been authorized to pursue;
>>
>> (2) solicits employment, either in person or by telephone, for himself or for another;
>>
>> (3) pays, gives, or advances or offers to pay, give, or advance to a prospective client money or anything of value to obtain employment as a professional from the prospective client;
>>
>> (4) pays or gives or offers to pay or give a person money or anything of value to solicit employment;
>>
>> (5) pays or gives or offers to pay or give a family member of a prospective client money or anything of value to solicit employment; or
>>
>> (6) accepts or agrees to accept money or anything of value to solicit employment.
>
> (b) A person commits an offense if the person:

> (1) knowingly finances the commission of an offense under Subsection (a);
>
> (2) invests funds the person knows or believes are intended to further the commission of an offense under Subsection (a); or
>
> (3) is a professional who knowingly accepts employment within the scope of the person's license, registration, or certification that results from the solicitation of employment in violation of Subsection (a).

TEX. PENAL CODE § 38.12(a)–(b).

Rule 7.03 of the Texas Disciplinary Rules of Professional Conduct, entitled "Prohibited Solicitations and Payments," also addresses barratry. *See* TEX. DISCIPLINARY RULES PROF'L CONDUCT R. 7.03, *reprinted in* TEX. GOV'T CODE, tit. 2, subtit. G, app. A. Rule 7.03 provides, in relevant part, as follows:

> (a) A lawyer shall not by in-person contact, or by regulated telephone or other electronic contact as defined in paragraph (f) seek professional employment concerning a matter arising out of a particular occurrence or event, or series of occurrences or events, from a prospective client or nonclient who has not sought the lawyer's advice regarding employment or with whom the lawyer has no family or past or present attorney-client relationship when a significant motive for the lawyer's doing so is the lawyer's pecuniary gain. . . .
>
> . . . .
>
> (f) As used in paragraph (a), "regulated telephone or other electronic contact" means any electronic communication initiated by a lawyer or by any person acting on behalf of a lawyer or law firm that will result in the person contacted communicating in a live, interactive manner with any other person by telephone or other electronic means. For purposes of this Rule a website for a lawyer or law firm is not considered a communication initiated by or on behalf of that lawyer or firm.

Id. R. 7.03(a), (f).

In 1989, the legislature provided a civil remedy for barratry by enacting Government Code Section 82.065. *See Neese v. Lyon*, 479 S.W.3d 368, 376 (Tex. App.—Dallas 2015, no pet.). Before the enactment, Texas did not recognize a private cause of action for barratry in favor of an improperly solicited client. *Id.* at 378.

Section 82.065 addressed contingent-fee contracts and barratry:

> (a) A contingent fee contract for legal services must be in writing and signed by the attorney and client.
>
> (b) A contingent fee contract for legal services is voidable by the client if it is procured as a result of conduct violating the laws of this state or the Disciplinary Rules of the State Bar of Texas regarding barratry by attorneys or other persons.

Act of May 27, 1989, 71st Leg., R.S., ch. 866, § 3, sec. 82.065, 1989 Tex. Gen. Laws 3855, 3857 (amended 2011 and 2013) (current version at TEX. GOV'T CODE § 82.065).

In 2011, the legislature amended Section 82.065 and enacted Section 82.0651.[7] *Neese*, 479 S.W.3d at 377. As enacted, Section 82.0651, entitled "Civil Liability for Prohibited Barratry," contained the following provisions:

> (a) A client may bring an action to void a contract for legal services that was procured as a result of conduct violating the laws of this state or the Texas Disciplinary Rules of Professional Conduct of the State Bar of Texas regarding barratry by attorneys or other persons.

[7] The 2011 amendments to Section 82.065 are not pertinent to this appeal.

(b) A client who prevails in an action under Subsection (a) shall recover from any person who committed barratry:

(1) all fees and expenses paid to that person under the contract;

(2) the balance of any fees and expenses paid to any other person under the contract, after deducting fees and expenses awarded based on a quantum meruit theory as provided by Section 82.065(c);

(3) actual damages caused by the prohibited conduct; and

(4) reasonable and necessary attorney's fees.

(c) A person who was solicited by conduct violating the laws of this state or the Texas Disciplinary Rules of Professional Conduct of the State Bar of Texas regarding barratry by attorneys or other persons, but who did not enter into a contract as a result of that conduct, may file a civil action against any person who committed barratry.

(d) A person who prevails in an action under Subsection (c) shall recover from each person who engaged in barratry:

(1) a penalty in the amount of $10,000;

(2) actual damages caused by the prohibited conduct; and

(3) reasonable and necessary attorney's fees.

(e) This section shall be liberally construed and applied to promote its underlying purposes, which are to protect those in need of legal services against unethical, unlawful solicitation and to provide efficient and economical procedures to secure that protection.

(f) The provisions of this subchapter are not exclusive. The remedies provided in this subchapter are in addition to any other procedures or remedies provided by any other law, except that a person may not recover damages and penalties under both this subchapter and another law for the same act or practice.

Act of May 5, 2011, 82d Leg., R.S., ch. 94, § 2, sec. 82.0651, 2011 Tex. Gen. Laws 534, 535.

In this case, Appellants sued Appellees for civil barratry under Subsection 82.0651(c). In 2013, the legislature amended Section 82.0651, including Subsection (c) as follows:

> (c) A person who was solicited by conduct violating Section 38.12(a) or (b), Penal Code, or Rule 7.03 of the Texas Disciplinary Rules of Professional Conduct of the State Bar of Texas, regarding barratry by attorneys or other persons, but who did not enter into a contract as a result of that conduct, may file a civil action against any person who committed barratry.

Act of May 15, 2013, 83rd Leg., ch. 315, § 2, 2013 Tex. Gen. Laws 1073, 1074 (current version TEX. GOV'T CODE § 82.0651(c)).[8] On appeal, Appellants complain that, in its summary-judgment orders, the trial court incorrectly determined that the 2013 version of Subsection 82.0651(c) applies to Appellants' barratry claims. Appellants contend that the 2011 version of Subsection 82.0651(c) applies to their claims because the conduct on which they base their barratry claims occurred after September 1, 2011 but before September 1, 2013.

The 2011 version of Subsection 82.0651(c) required "conduct violating the laws of this state or the Texas Disciplinary Rules of Professional Conduct" while the 2013 amendment more specifically requires "conduct violating Section

---

[8] The 2013 amendments took effect September 1, 2013. *See* Act of May 15, 2013, 83rd Leg., ch. 315, § 5, 2013 Tex. Gen. Laws 1073, 1074. Section 82.0651 has not been amended since 2013.

38.12(a) or (b), Penal Code, or Rule 7.03 of the Texas Disciplinary Rules of Professional Conduct." *Compare* Act of May 5, 2011, 82d Leg., R.S., ch. 94, § 2, sec. 82.0651, 2011 Tex. Gen. Laws 534, 535-36 *with* Act of May 15, 2013, 83rd Leg., ch. 215, § 2, 2013 Tex. Gen. Laws 1073, 1074. We agree with Appellees that whether we apply the 2011 or 2013 version does not change the outcome or analysis in this case.

To support their barratry claims, Appellants alleged violations of Penal Code Subsection 38.12(a) and Disciplinary Rule 7.03, as now specifically required in the 2013 version. And both the 2011 and 2013 versions of Subsection 82.0651(c) require a person to be "solicited by" the violating conduct for it to be actionable. The dispute here centers on whether Appellants were "solicited by" the violating conduct. Thus, because the outcome will be unaffected, we cite the current version of Subsection 82.0651(c) for ease of reference.

2. Unauthorized Filing of Presentment Forms

With respect to the conduct underlying their barratry claims, Appellants assert that they "primarily based their Subsection 82.0651(c) claims on the unauthorized filing of the presentment forms" in January 2013. As part of the summary-judgment proceedings, a disagreement arose regarding whether the unauthorized filing of the presentment forms was actionable conduct under Subsection 82.0651(c) as a matter of statutory interpretation.

To reiterate, Subsection 82.0651(c) provides,

> (c) A person who was solicited by conduct violating Section 38.12(a) or (b), Penal Code, or Rule 7.03 of the Texas Disciplinary Rules of Professional Conduct of the State Bar of Texas, regarding barratry by attorneys or other persons, but who did not enter into a contract as a result of that conduct, may file a civil action against any person who committed barratry.

TEX. GOV'T CODE § 82.0651(c).

In granting summary judgment on the barratry claims, the trial court determined in its orders that Subsection 82.0651(c) required "each individual plaintiff to show solicitation." The court determined that "merely filing an unauthorized claim, although barratry, [did] not constitute 'solicitation' within the meaning of [Subsection 82.0651(c)]" because civil barratry requires "actual communication with the client." In other words, the trial court determined that, to be actionable under Subsection 82.0651(c), the violative conduct must have solicited the would-be plaintiff, and a solicitation requires communication with that person.

Appellants dispute the trial court's reading of Subsection 82.0651(c). They assert that an actual communication to them need not be shown for them to have been "solicited" for purposes of Subsection 82.0651(c). They contend that they need only show that the unauthorized filing of the presentment forms was a violation of Penal Code Subsection 38.12(a)(1). That subsection provides that "[a] person commits an offense if, with intent to obtain an economic benefit[,] the

person: (1) knowingly institutes a suit or claim that the person has not been authorized to pursue." TEX. PENAL CODE § 38.12(a)(1).

Appellants assert that—because the unauthorized filing of the presentment forms was conduct violating Penal Code Subsection 38.12(a)(1)—the requirement to demonstrate that they were persons "who [were] solicited by conduct violating the laws of this state" was met. They aver that "'a person who was solicited' necessarily includes those persons who were subject to any conduct violating Texas Penal Code § 38.12(a), including the unauthorized filing of claims." Appellants equate "solicited by" with "any conduct violating Texas Penal Code § 38.12(a)."

We disagree with Appellants' reading of Subsection 82.0651(c). When interpreting a statute, we must apply it "as written" and "refrain from rewriting text that lawmakers chose." *Entergy Gulf States, Inc. v. Summers*, 282 S.W.3d 433, 443 (Tex. 2009). We give effect to all the statute's words and, if possible, do not treat any statutory language as mere surplusage. *State v. Shumake*, 199 S.W.3d 279, 287 (Tex. 2006). "We presume there is a purpose for every word and clause used, since the words used are the surest guide to the [legislature's] intent." *Kilgore Indep. Sch. Dist. v. Axberg*, 572 S.W.3d 244, 260 (Tex. App.—Texarkana 2019, pet. denied) (citing *Summers*, 282 S.W.3d at 437).

Had it intended for a plaintiff to recover under Subsection 82.0651(c) by showing only a violation of the relevant Penal Code or Disciplinary Rule provisions, the legislature could have made violations of those provisions coextensive with a right of private action without requiring the plaintiff to be "solicited by" the violation. Instead, the legislature requires plaintiffs to be "solicited by" the violative conduct as a qualifying element of recovery. *See* TEX. GOV'T CODE § 82.0651(c). If we adopt Appellants' reading of Subsection 82.0651(c), we would not be giving effect to every word in the statute and would be rendering the phrase "solicited by" surplusage. *See Shumake*, 199 S.W.3d at 287. This would be counter to the presumption that we must ensure that every word and clause in a statute has a purpose. *See Axberg*, 572 S.W.3d at 260.

We conclude that Subsection 82.0651(c) requires, not only a violation of the specific Penal Code or Disciplinary Rule provisions, it also requires the plaintiff to have been "solicited by" the prohibited conduct. *See Tex. Law Shield v. Crowley*, 513 S.W.3d 582, 590 (Tex. App.—Houston [14th Dist.] 2016, pet. denied) (concluding, in context of class-action certification, that "[p]laintiffs alleging a violation of section 82.0651(c) must establish that they were 'solicited by conduct violating' the disciplinary rules"). Construing Subsection 82.0651(c) in this manner gives meaning and effect to the words the legislature chose. *See Jaster v. Comet II Constr., Inc.*, 438 S.W.3d 556, 562 (Tex. 2014) (recognizing that courts

must give effect to every word, clause, and sentence of a statute). "Our construction does no violence to the statutory edict that courts liberally construe the civil barratry statute to accomplish its purpose to protect those in need of legal services against unethical, unlawful solicitation." *Tex. Law Shield*, 513 S.W.3d at 590 (citing TEX. GOV'T CODE § 82.0651(e)). "Liberal construction does not authorize a court to disregard the statute's plain language." *Id.* (citing *Romo v. Payne*, 334 S.W.3d 364, 369 (Tex. App.—El Paso 2011, no pet.)).

Appellants also contend that, under the common definition of "solicit," they were "solicited by" the unauthorized filing of the presentment forms. The term "solicit" is not defined in the civil barratry statute.

When a statute contains a term that is undefined, as "solicit" is in this case, the term is typically given its ordinary meaning. *See State v. $1,760.00 in U.S. Currency*, 406 S.W.3d 177, 180 (Tex. 2013). However, we will not give an undefined term a meaning that is out of harmony or inconsistent with other terms in the statute. *Id.* "[I]f a different, more limited, or precise definition is apparent from the term's use in the context of the statute, we apply that meaning." *In re Hall*, 286 S.W.3d 925, 929 (Tex. 2009).

In addition to defining "solicit" as "to make petition: entreat," dictionaries define "solicit" as "to urge." MERRIAM WEBSTER'S COLLEGIATE DICTIONARY 1118 (10th ed. 1996). Given that we are interpreting a barratry statute, the context

directs us to apply a definition of “solicit” related to attorney conduct. *See In re Hall*, 286 S.W.3d at 929 (applying dictionary’s second definition of “detention” as term used in Juvenile Justice Code). One of the definitions offered by the Seventh Edition of *Black’s Law Dictionary* for “solicitation” is “[a]n attempt or effort to gain business <The attorney’s solicitations took the form of radio and television ads>.” BLACK’S LAW DICTIONARY 1398 (7th ed. 1999). *Black’s* then notes that “[t]he Model Rules of Professional Conduct place certain prohibitions on lawyers’ direct solicitation of potential clients.” *Id.*

In their brief, Appellants cite *Black’s* Tenth Edition definition of “solicitation.” Appellants state that the Tenth Edition defines “solicitation” as “an attempt or effort to gain business,” which may occur “even if the command or urging was not actually communicated to the solicited person, as long as it was designed to be communicated.” This definition fits with the example given in the Seventh Edition regarding an attorney’s solicitations taking the form of radio and television ads; however, it does not fit the definition of the term “solicit” as used in Subsection 82.0651(c).

To be entitled to a private right of action, Subsection 82.0651(c) requires that the person “*was* solicited by” the violative conduct. TEX. GOV’T CODE § 82.0651(c) (emphasis added). This indicates the legislature’s intent that the person was actually affected by the solicitation; that is, that the solicitation was

communicated to the person in an effort to gain business. *See Molinet v. Kimbrell*, 356 S.W.3d 407, 411 (Tex. 2011) (stating that primary objective in interpreting statutes is to give effect to legislature's intent).

A private action under Subsection 82.0651(c) may be brought by a person who has been solicited by conduct violating Penal Code Subsections 38.12(a) or (b) or Disciplinary Rule 7.03.[9] *See* TEX. GOV'T CODE § 82.0651(c). Because Subsection 82.0651(c) expressly incorporates Penal Code Section 38.12 and Disciplinary Rule 7.03 into its statutory construct, definitions given in these provisions may supply insight into the meaning that the legislature intended for "solicit" in Subsection 82.0651(c).

The definitional section of Penal Code Chapter 38 defines the phrase "solicit employment" for Penal Code Subsections 38.12(a) and (b), in relevant part, as follows:

> "Solicit employment" means to communicate in person or by telephone with a prospective client or a member of the prospective client's family concerning professional employment within the scope of a professional's license, registration, or certification arising out of a particular occurrence or event, or series of occurrences or events, or concerning an existing problem of the prospective client within the scope of the professional's license, registration, or certification, for the purpose of providing professional services to the prospective client, when neither the person receiving the communication nor anyone acting on that person's behalf has requested the communication. . . .

---

[9] These are the provisions cited by Appellants in their live pleading as supporting their barratry claim.

TEX. PENAL CODE § 38.01(11).

Disciplinary Rule 7.03, entitled "Prohibited Solicitations and Payments," does not expressly define the word "solicit." However, it describes prohibited solicitations, including "in-person contact," telephonic contact, and electronic contact by attorneys or those acting on their behalf under certain prescribed circumstances. TEX. DISCIPLINARY RULES PROF'L CONDUCT R. 7.03(a), (f). Similarly, reflecting the ordinary definition of what "solicit" and "solicitation" mean in the legal profession, Rule 7.3(a) of the ABA Model Rules of Professional Conduct, entitled "Solicitation of Clients," provides the following definition:

> "Solicitation" or "solicit" denotes a communication initiated by or on behalf of a lawyer or law firm that is directed to a specific person the lawyer knows or reasonably should know needs legal services in a particular matter and that offers to provide, or reasonably can be understood as offering to provide, legal services for that matter.

AM. BAR ASSOC. MODEL RULES OF PROF'L CONDUCT R. 7.03(a), https://www.americanbar.org/groups/professional_responsibility/publications/model_rules_of_professional_conduct/rule_7_3_direct_contact_with_prospective_clients/ (last visited May 22, 2020).

Considering the statutory context in which it appears and the ordinary meaning assigned by the legal profession, we conclude that the phrase "solicited by" in Subsection 82.0651(c) should be construed to mean a person has experienced a prohibited communication directed toward him or her as a

prospective client by or on behalf of an attorney in an effort to gain employment. Here, the unauthorized filing of the presentment forms was not a communication directed toward Appellants, and Appellants were not solicited by their filing. Thus, we hold that, as a matter of law, the filing of the presentment forms does not support Appellants' claims brought under Subsection 82.0651(c).

3. Telephone Calls Ending in January 2013

On appeal, the other conduct relied on by Appellants to support their statutory barratry claims against the Watts Appellees and the Hilliard Appellees was the telephone calls made to Appellants by WGC, seeking to represent Appellants in the BP litigation. It is not disputed that, if proven, such conduct could be a violation of Subsection 82.0651(c) of the barratry statute. Solicitous telephone calls, as described in Appellants' petition, violate both Penal Code Subsection 38.12(a)(2) and Disciplinary Rule 7.03. Instead, the parties dispute whether a claim based on the solicitous phone calls is barred by limitations. Appellants' live petition, and their declarations offered as summary-judgment evidence, show that WGC solicited Appellants by telephone in 2012 through January 2013. The original plaintiff first filed suit in March 2016. Appellants' pleadings were amended throughout 2016, adding plaintiffs and defendants.

In its summary-judgment orders, the trial court determined that Appellants' statutory-barratry claims based on a solicitation, such as the telephone calls, were

barred by limitations. Supporting its ruling, the trial court determined that (1) the applicable statute of limitations for civil barratry was two years, (2) the discovery rule did not toll limitations, and (3) the class-action tolling doctrine did not apply to Appellants' barratry claim against Mikal Watts and Watts Guerra, LLP. Appellants challenge each of these bases, and we address each in turn.

a. Applicable statute of limitations

No statute of limitations expressly refers to civil barratry. Appellants assert that the four-year statute of limitations applies because, under the residual statute of limitations, a four-year period applies to "[e]very action for which there is no express limitations period." TEX. CIV. PRAC. & REM. CODE § 16.051. If the four-year statute of limitations applies, then Appellants' barratry claim, based on the phone calls, are not time-barred. The last phone calls alleged by Appellants were made in January 2013. Appellants filed their barratry claims against all parties in 2016.

Appellees assert that the two-year statute of limitations governs Appellants' barratry claims based on Section 16.003 of the Civil Practice and Remedies Code. Section 16.003 applies to suits "for trespass for injury to the estate or to the property of another, conversion of personal property, taking or detaining the personal property of another, personal injury, forcible entry and detainer, and forcible detainer." *Id.* § 16.003.

When no statute of limitations expressly refers to a cause of action, "courts look to analogous causes of action for which an express limitations period is available either by statute or by case law." *Johnson & Higgins of Tex., Inc. v. Kenneco Energy, Inc.*, 962 S.W.2d 507, 518 (Tex. 1998). As mentioned, before the enactment of the civil barratry statute, Texas did not recognize a private cause of action for barratry in favor of an improperly solicited client. *Neese*, 479 S.W.3d at 378. Nor are we aware of an analogous statutory or common law cause of action, permitting a claim based on the act of soliciting business without additional wrongful conduct accompanying the act of solicitation.

"In general, torts developed from the common law action for 'trespass,' and a tort not expressly covered by a limitation provision nor expressly held by this court to be governed by a different provision would presumptively be a 'trespass' for limitations purposes." *Williams v. Khalaf*, 802 S.W.2d 651, 654 (Tex. 1990). "[I]f a tort is not expressly covered by a statute of limitations, we presume the tort is a trespass for purposes of determining the statute of limitations and apply the two-year limitations period as per civil practice and remedies code section 16.003(a)." *David L. Smith & Assocs., LLP v. Advanced Placement Team, Inc.*, 169 S.W.3d 816, 822–23 (Tex. App.—Dallas 2005, pet. denied); *see Almazan v. United Servs. Auto. Assoc.*, 840 S.W.2d 776, 779–80 (Tex. App.—San Antonio 1992, writ

denied) (applying *Khalaf* presumption regarding Section 16.003(a) to statutory tort based on wrongful dismissal for filing workers' compensation claim).

As mentioned, civil barratry under Government Code Subsection 82.0651 is not covered by a statute of limitations, and the Supreme Court of Texas has not expressly held that limitations for civil barratry is governed by a different provision. Thus, if Appellants' civil barratry claim is a tort, we presume the two-year statute of limitations applies. *See Khalaf*, 802 S.W.2d at 654.

"Generally, breach of a duty created by contract gives rise to a contract claim, whereas breach of a duty imposed by operation of law gives rise to a tort claim." *Nghiem v. Sajib*, 567 S.W.3d 718, 723–24 (Tex. 2019). "As one prominent authority has explained: 'Tort obligations are in general obligations that are imposed by law—apart from and independent of promises made and therefore apart from the manifested intention of the parties—to avoid injury to others.'" *Sw. Bell Tel. Co. v. DeLanney*, 809 S.W.2d 493, 494 (Tex. 1991) (quoting W. KEETON, D. DOBBS, R. KEETON & D. OWEN, PROSSER AND KEETON ON THE LAW OF TORTS § 92 at 655 (5th ed. 1984)). Here, Appellants base their barratry claims on duties imposed by law under Government Code Subsection 82.0651(c), not on a breach of duty created by a contract. In fact, to recover under Subsection 82.0651(c), a plaintiff must show that he was "solicited by" prohibited conduct and "did not

enter into a contract" as a result of that conduct. *See* TEX. GOV'T CODE § 82.0651(c).

To determine whether a claim sounds in tort or whether it sounds in contract, courts consider not only the source of the duty imposed, but also the nature of the relief sought. *See JCW Elecs., Inc. v. Garza*, 257 S.W.3d 701, 705 (Tex. 2008) (stating "precise nature of the claim is ordinarily identified by examining the damages alleged"). When the damages are purely economic, the claim sounds in contract. *Id.*

Here, the relief Appellants requested for their barratry claim includes non-economic damages. The barratry statute permits a person who prevails on a Subsection 82.0651(c) claim to recover "a penalty in the amount of $10,000" and "actual damages caused by the prohibited conduct." TEX. GOV'T CODE § 82.0651(d). In addition to statutory penalties, Appellants requested non-economic mental anguish damages for Appellees' alleged violations of Subsection 82.0651(c). Mental anguish damages are generally tort damages. *See Delgado v. Methodist Hosp.*, 936 S.W.2d 479, 486 (Tex. App.—Houston [14th Dist.] 1996, no writ) (stating "mental anguish damages are not recoverable in any tort action based on rights growing out of the breach of a contract").

Therefore, based on the source of the duty imposed and the type of damages permitted and sought, we hold that a civil barratry claim under Subsection

82.0651(c) is a tort claim. Because no statute of limitations expressly covers it, we presume a Subsection 82.0651(c) claim is a "trespass" for limitations purposes, and the two-year statute of limitations applies. *See* TEX. CIV. PRAC. & REM. CODE § 16.003.

Appellants cite *Neese* to support their assertion that the four-year statute of limitations applies to their claims under Subsection 82.0651(c). 479 S.W.3d at 383. In *Neese*, the court held that the four-year statute of limitations applies to claims under Government Code Subsection 82.065(b). *Id.* That subsection provides that any contract for legal services "procured as a result of" violations of prohibited barratry "is voidable" by the client. TEX. GOV'T CODE § 82.065(b). In short, Subsection 82.065(b) allows a person who enters into an employment relationship with an attorney, as a result of barratry, to sue for rescission of the unlawful contract. *See id.*

Although a claim under Subsection 82.065(b) is imposed by operation of law, absent a contract, the claim does not arise. *Cf. Nghiem*, 567 S.W.3d at 725 (explaining that, although implied warranty is imposed by operation of law, obligation still arises from contract). And the remedy provided by Subsection 82.065(b), rescission, is a contract remedy, not a tort remedy. *See Humphrey v. Camelot Ret. Cmty.*, 893 S.W.2d 55, 59 (Tex. App.—Corpus Christi 1994, no writ) (stating that rescission is an equitable remedy that operates to set aside a contract).

Thus, *Neese* is consistent with our decision that the two-year statute of limitations applies to Appellants' Subsection 82.0651(c) barratry claims.

b. Discovery rule

In the trial court, Appellants pleaded that the discovery rule tolled the accrual of the statute of limitations on their barratry claim. The trial court expressly ruled that the discovery rule did not apply. On appeal, Appellants assert that the trial court erred when it granted summary judgment based on limitations because the discovery rule applied to their barratry claim.

A defendant moving for summary judgment on the affirmative defense of limitations bears the burden of conclusively establishing the elements of that defense. *Schlumberger Tech. Corp. v. Pasko*, 544 S.W.3d 830, 833 (Tex. 2018) (citing *KPMG Peat Marwick v. Harrison Cty. Hous. Fin. Corp.*, 988 S.W.2d 746, 748 (Tex. 1999)). This includes conclusively establishing when the cause of action accrued. *Id.* at 833–34.

"Causes of action accrue and statutes of limitations begin to run when facts come into existence that authorize a claimant to seek a judicial remedy." *Exxon Corp. v. Emerald Oil & Gas Co.*, 348 S.W.3d 194, 202 (Tex. 2011). That is, "[n]ormally a cause of action accrues when a wrongful act causes some legal injury." *Via Net v. TIG Ins. Co.*, 211 S.W.3d 310, 313 (Tex. 2006) (citing *S.V. v. R. V.*, 933 S.W.2d 1, 4 (Tex. 1996)). But, when a plaintiff asserts that the discovery

rule tolls accrual, the defendant moving for summary judgment on limitations bears the additional burden of negating the rule. *Pasko*, 544 S.W.3d at 834. Defendants may accomplish this by either conclusively establishing (1) that the discovery rule does not apply, or (2) if the rule applies, that the summary-judgment evidence negates it. *Id.*

The supreme court has "restricted the discovery rule to exceptional cases to avoid defeating the purposes behind the limitations statutes." *Via Net*, 211 S.W.3d at 313; *see S.V.*, 933 S.W.2d at 25 (noting that application of discovery rule "should be few and narrowly drawn"). When applicable, the discovery rule defers accrual until the plaintiff knew or should have known of the facts giving rise to the cause of action. *S.V.*, 933 S.W.2d at 4. The discovery rule applies only when the nature of the injury is inherently undiscoverable, and the evidence of injury is objectively verifiable. *Id.* at 6. "These two elements attempt to strike a balance between the policy underlying statutes of limitations (barring stale claims) and the objective of avoiding an unjust result (barring claims that could not be brought within the limitations period)." *Archer v. Tregellas*, 566 S.W.3d 281, 290 (Tex. 2018).

In their summary-judgment motions, Appellees asserted that the discovery rule does not apply to barratry claims brought under Subsection 82.0651(c) because the legal injury that a plaintiff suffers under that provision is not inherently

undiscoverable. "An injury is inherently undiscoverable if it is, by its nature, unlikely to be discovered within the prescribed limitations period despite due diligence." *Wagner & Brown, Ltd. v. Horwood*, 58 S.W.3d 732, 734–35 (Tex. 2001). "This legal question is decided on a categorical rather than case-specific basis; the focus is on whether a *type* of injury rather than a *particular* injury was discoverable." *Via Net*, 211 S.W.3d at 314.

The purpose of the civil barratry statute is "to protect those in need of legal services against unethical, unlawful solicitation and to provide efficient and economical procedures to secure that protection." TEX. GOV'T CODE § 82.0651(e). Considering the purpose of the statute, a person has a right to be free of solicitation that violates the specified provisions of Penal Code Section 38.12 and Disciplinary Rule 7.03. It follows, then, that a plaintiff suffers a "legal injury" under Subsection 82.0651(c) when he "is solicited by conduct" violating those specified provisions. *See* TEX. GOV'T CODE § 82.0651(c), (e); *Murphy v. Campbell*, 964 S.W.2d 265, 270 (Tex. 1997) (defining "legal injury" as "an injury giving cause of action by reason of its being an invasion of a plaintiff's right").

Appellants do not dispute that a plaintiff knows when he has been solicited by an attorney's communication prohibited by the specified provisions, such as a

telephone call.[10] And the summary-judgment evidence, here, shows that Appellants knew they were being solicitated by WGC's phone calls at the time they were received.

Instead, Appellants argue that a putative plaintiff who receives a prohibited solicitation cannot discover his legal injury because he will not know that the solicitation violated the law. Appellants imply that the accrual of a barratry claim under Subsection 82.0651(c) should be deferred until a plaintiff learns that the law prohibited the attorney's conduct. However, we cannot agree that an injury is inherently undiscoverable when a plaintiff knows enough facts to file suit but fails to do so only because he is not knowledgeable about the law. As stated, a cause of action accrues when *facts* come into existence that authorize a party to seek a judicial remedy. *See Emerald Oil*, 348 S.W.3d at 202. By the nature of the claim, a putative plaintiff knows about the facts giving rise to a claim under Subsection 82.0651(c) at the time they occur; that is, he knows about the solicitous conduct that the statute makes actionable. *See id.*; *see also* TEX. GOV'T CODE § 82.0651(c), (d); *cf. Stine v. Stewart*, 80 S.W.3d 586, 592 (Tex. 2002) ("[B]reach of contract claim accrues when the contract is breached").

---

[10] Appellants assert that a plaintiff may not know that an unauthorized claim has been filed on his behalf. As discussed, the unauthorized filing of a claim does not support a cause of action under Subsection 82.0651(c) because it is not a solicitation.

To support application of the discovery rule, Appellants analogize their barratry cause of action to a legal-malpractice claim. They assert that barratry claims are inherently undiscoverable because "it is unlikely that a victim of barratry would know they had been wrongfully solicited when it occurred." They contend that, "[a]s with legal malpractice, victims of barratry typically do not appreciate they have been injured when the injury occurs." They assert that "they lacked the legal acumen to understand, that they had been 'wrongfully solicited' and injured because of [the phone calls]."

In making their argument, Appellants rely on *Willis v. Maverick*, 760 S.W.2d 642 (Tex. 1988). In *Willis* and cases following it, the Supreme Court of Texas held that, because the discovery rule applies to legal-malpractice claims, accrual is deferred until the client discovers, or should discover, the wrongful act and injury. *See id.* at 646; *Childs v. Haussecker*, 974 S.W.2d 31, 40 (Tex. 1998). Appellants point to the *Willis* court's statement that "it is unrealistic to expect a layman client to have sufficient legal acumen to perceive an injury at the time of the negligent act or omission of his attorney." 760 S.W.2d at 645 (internal quotation marks omitted.)

After *Willis*, the supreme court made clear that the fiduciary duty owed by an attorney to his client is integral to the application of the discovery rule in legal-malpractice cases. In *S.V. v. R.V.*, the court recognized that it had "twice held a

fiduciary's misconduct to be inherently undiscoverable," including in *Willis*. 933 S.W.2d at 8 (citing *Willis*, 760 S.W.2d at 645 and *Slay v. Burnett Trust*, 187 S.W.2d 377, 394 (Tex. 1945) (trustee as fiduciary)). The court then explained, "The reason underlying both decisions is that a person to whom a fiduciary duty is owed is either unable to inquire into the fiduciary's actions or unaware of the need to do so." *Id.* (citing, inter alia, *Willis*, 760 S.W.2d at 645 ("Facts which might ordinarily require investigation likely may not excite suspicion where a fiduciary relationship is involved.")).

Unlike a legal-malpractice claim, a civil barratry claim under Subsection 82.0651(c) involves no fiduciary or confidential relationship. To the contrary, a plaintiff can file a Subsection 82.0651(c) claim only if he did not enter into an attorney-client contract as a result of the prohibited solicitation. *See* TEX. GOV'T CODE § 82.0651(c). Therefore, the reasoning underlying the application of the discovery rule to legal-malpractice claims does not apply to Subsection 82.0651(c) barratry claims.[11]

[11] Appellants cite *Chambers v. Green Tree Servicing LLC*, pointing out that, there, the federal court applied the discovery rule to a statutory claim under the Texas Consumer Protection Act for unlawful telephonic debt collection practices. No. No. 3:15-cv-1879-M-BN, 2016 WL 8672775, *8 (N.D. Tex. 2016). However, in *Chambers*, the plaintiff argued for application of the discovery rule based on fraudulent concealment of information, an allegation not made here on appeal relating to the telephone solicitations. *See id.* Appellants also cite two federal circuit court cases in which the courts "applied the discovery rule" to claims under the Fair Debt Collection Practices Act: (1) *Mangum v. Action Collection Serv., Inc.*, 575 F.3d 935, 940 (9th Cir. 2009) and (2) *Lembach v. Bierman*, 528 F. App'x

In sum, Appellees conclusively showed that the discovery rule did not toll limitations on Appellants' barratry claims because a claim under Subsection 82.0651(c) does not involve the type of injury that is inherently undiscoverable. It is the plaintiff's knowledge of the conduct constituting a prohibited solicitation, and not his knowledge of the law, that triggers accrual of the claim. Accordingly, a plaintiff's Subsection 82.0651(c) barratry claim accrues when he is solicited by the conduct prohibited in that provision. *See Emerald Oil*, 348 S.W.3d at 202; *see also* TEX. GOV'T CODE § 82.0651(c). Here, Appellants' barratry claims accrued when Appellants were solicited by WGC's phone calls, occurring at the latest in January 2013.

c. Class-action tolling rule

Appellants also challenge the summary judgment by asserting that the class-action tolling rule suspended the statute of limitations on their barratry claims against Mikal Watts and his firm, Watts Guerra, LLP, the only two defendants against whom the class action in Bexar County was filed. Appellants assert that

---

297, 302 (4th Cir. 2013). The second case, *Lembach*, relied on the holding of the first case, *Magnum*. 528 F. App'x at 302. After Appellants filed their briefing here, the United States Supreme Court abrogated the Ninth's Circuit ruling in *Magum* by rejecting the application of the discovery rule (when not predicated on fraud) to FDCPA claims. *Rotkiskie v. Klemm*, 140 S. Ct. 355, 357 (2019). Based on the statute's language, the Supreme Court held that the statute of limitations for an FDCPA action "begins to run on the date on which the alleged FDCPA violation occurs, not the date on which the violation is discovered." *Id.* at 357. Thus, the cases cited by Appellants do not aid our decision regarding application of the discovery rule in this case.

Mikal Watts and Watts Guerra, LLP did not meet their summary-judgment burden to conclusively negate the application of the class-action tolling rule. *See Clark v. ConocoPhillips Co.*, 465 S.W.3d 720, 724 (Tex. App.—Houston [14th Dist.] 2015, no pet.) (recognizing that defendant must "conclusively negate any relevant tolling doctrines the plaintiff raised in the trial court" in determining application of class-action tolling rule in summary-judgment context). We agree with Appellants.

The class-action tolling rule was articulated by the United States Supreme Court in *American Pipe & Construction Co. v. Utah*, 414 U.S. 538, 554 (1974). *American Pipe* and its progeny provide that the filing of a class action tolls the applicable statutes of limitations as to all putative class members until class certification is denied or until the individual ceases to be a member of the class. *Id.*; *Crown, Cork, & Seal Co. v. Parker*, 462 U.S. 345, 349, 354 (1983) (holding filing of class action operates to toll limitations for putative class members who file individual actions after class certification is denied); *see also see Eisen v. Carlisle & Jacquelin*, 417 U.S. 156, 176 n.13 (1974) (indicating that tolling continues after class action is certified until a putative class member opts out of class). Texas courts have utilized the class-action tolling rule. *See Asplundh Tree Expert Co. v. Abshire*, 517 S.W.3d 320, 332–34 (Tex. App.—Austin 2017, no pet.) (applying *American Pipe* tolling rule and identifying numerous intermediate Texas courts of appeals' cases applying class-action tolling rule).

Appellants assert that the trial court erred in granting summary judgment on their barratry claim against Mikal Watts and Watts Guerra, LLP based on limitations because the class action filed in Bexar County in May 2014 against Watts and his firm tolled limitations as to those two defendants. On August 29, 2014, the class action was certified to include "[a]ll persons or entities who [Watts and Watts Guerra, LLP] claimed to represent in the BP Litigation but who [Watts and Watts Guerra, LLP] did not actually represent in the BP Litigation."

The parties do no dispute that Appellants are putative members of the certified class. Appellants contend that, even accepting the Watts Appellees' position that the barratry claim accrued in January 2013, the statute of limitations against Watts and Watts Guerra, LLP was tolled less than two years later in May 2014 on the filing of the class action. When Appellants filed the instant suit against Mikal Watts and Watts Guerra, LLP in 2016, the class action remained pending, and Appellants assert that the statute of limitations remained tolled.

At the time Watts and Watts Guerra, LLP filed their motion for summary judgment based on limitations, Appellants had not pleaded the class-action tolling rule to avoid application of the defendants' limitations defense. *Cf. Via Net*, 211 S.W.3d at 313 ("[A] defendant's motion for summary judgment based on limitations need not negate the discovery rule unless the plaintiff has pleaded it."); *see Wyeth-Ayerst Lab. Co. v. Medrano*, 28 S.W.3d 87, 95 (Tex. App.—Texarkana

2000, no pet.) (concluding appellant waived reliance on class-action tolling rule because not pleaded). Nonetheless, Appellants raised the class-action tolling rule in their summary judgment response, asserting that the statute of limitations had been tolled in May 2014 when the class action was filed. At that point, Watts and Watts Guerra, LLP did not object that Appellants had not pleaded the class-action tolling rule; nor did they respond on the merits to Appellants' assertion in their response that the filing of the Bexar County class action had suspended the statute of limitations. *See Via Net*, 211 S.W.3d at 313 (stating that, when plaintiff asserts discovery rule for first time in his summary-judgment response, defendant has two choices: he can object that it had not been pleaded, or he can respond on the merits and try issue by consent).

Because Appellants raised the class-action tolling rule in their response to the defendants' motion for summary judgment on barratry without objection from Watts and Watts Guerra, LLP, Watts and his firm had a duty to conclusively negate the application of the tolling rule.[12] *See Diaz v. Westphal*, 941 S.W.2d 96,

---

[12] Appellants filed their response to the Watts Appellees' motion for summary judgment on the barratry claim on January 22, 2018, and the trial court granted the summary judgment on February 1, 2018. Had Watts and WGC objected that Appellants had not pleaded the class-action tolling rule, Appellants could have sought permission at that time from the trial court to amend or supplement their petition (which it later did, as discussed in the following footnote) to include the class-action tolling rule. *See* TEX. R. CIV. P. 166a(c) (providing that trial court shall render summary judgment if the pleadings and summary judgment evidence "on file at the time of the hearing, or filed thereafter and *before judgment with*

98 (Tex. 1997) ("[T]he defendant must conclusively negate any relevant tolling doctrines the plaintiff asserted in the trial court."); *Bradshaw v. Bonilla*, No. 13-08-00595-CV, 2010 WL 335676, at *9 (Tex. App.—Corpus Christi Jan. 28, 2010, pet. denied) (mem. op.) (holding that defendant had burden to negate discovery rule not pleaded when raised in plaintiff's summary-judgment response and defendant did not object to lack of pleading).

In short, Watts and Watts Guerra, LLP failed to address the class-action tolling rule or to argue that it did not apply after it was raised by Appellants and before the trial court granted summary judgment in their favor on the barratry claim based on limitations.[13] By not offering responsive argument or evidence,

---

permission of the court" show the movant is entitled to judgment as a matter of law (emphasis added)).

[13] The trial court's February 1, 2018 order granting summary judgment on the Watts Appellees' motion for summary judgment on Appellants' barratry claim did not mention the class-action tolling rule. On February 16, 2018, the Watts Appellees filed a motion for summary judgment based on limitations regarding Appellants' claims for unjust enrichment and invasion of privacy by misappropriation. On March 5, 2018, Appellants filed a response to the February 16 motion, which again asserted the class-action tolling rule. On March 12, 2018, Watts and WGC filed a letter in the trial court for the first time objecting that Appellants had not pleaded the class-action tolling rule. Appellants responded to the letter, pointing out that they had raised the class-action tolling rule in their January 22, 2018 response to the motion for summary judgment on their barratry claims without objection. Appellants also requested to supplement their Eighth Amended Petition to include the class-action tolling rule. The court granted the request to supplement and made the supplementation "retroactive" to when Appellants filed their Eighth Amended Petition in December 2017. The court ordered that the supplement had been considered when the court had ruled on the earlier motion for summary judgment on barratry. In its March 13, 2018 order granting summary judgment on

Watts and his firm failed to meet their burden to conclusively negate application of the class-action tolling rule. *See Bradshaw*, 2010 WL 335676, at *9 (reversing summary judgment on fraud claim based on limitations because defendant did not object or respond to plaintiff's reliance on discovery rule in her summary-judgment response and thus had failed to conclusively negate application of discovery rule); *Proctor v. White*, 172 S.W.3d 649, 652 (Tex. App.—Eastland 2005, no pet.) (reversing summary judgment when defendant did not object or respond on merits after plaintiff raised discovery rule in response).

On appeal, Watts and Watts Guerra, LLP assert that Appellants forfeited their right to raise the class-action tolling rule in the trial court because they filed the instant suit while the Bexar County class action was still pending without first electing to opt-out of the class action.[14] However, their argument on appeal

---

Appellants' invasion of privacy claim based on limitations, the trial court addressed the class-action tolling rule, stating that it did not apply.

[14] In their reply brief, Appellants assert that they have "opted out" of the Bexar County class action. *See Bara v. Major Funding Corp. Liquidating Trust*, 876 S.W.2d 469, 472 (Tex. App.—Austin 1994, writ denied) (recognizing that "federal courts have held that tolling applies to class members who opt out and subsequently file separate suits"). To support their assertion, Appellants cite their original petition and subsequent amended petitions in this suit, apparently to indicate their position that the filing of this suit operated as an opt-out of the class action. We note that neither side states whether the Bexar County trial court gave notice to the class members to inform them that they may opt-out of the class. *See* TEX. R. CIV. P. 42(c)(2)(B)(v) (providing that trial court must provide notice to class members in class certified under Rule 42(b)(3) (as was the Bexar County class action) to inform them "that that the court will exclude from the class any member who requests exclusion, stating when and how members may elect to be

addressing the class-action tolling rule cannot provide a basis for affirming the summary judgment. "[S]ummary judgments must stand or fall on the grounds raised therein; we cannot consider grounds raised for the first time on appeal as a basis for affirming or reversing the trial court's judgment." *Fleming & Assocs., L.L.P. v. Barton*, 425 S.W.3d 560, 572 (Tex. App.—Houston [14th Dist.] 2014, pet. denied) (citing *McConnell v. Southside Indep. Sch. Dist.*, 858 S.W.2d 337, 341 (Tex. 1993)).

We hold that Mikal Watts and Watts Guerra, LLP failed to meet their burden to negate the application of the class-action tolling rule as an exception to limitations on Appellants' barratry claim. The trial court erred in granting

---

excluded"). We also note that federal courts have reached divergent conclusions regarding whether the filing of a separate, individual suit operates as an opt-out in a pending class action, depending on the circumstances. *Compare Butler v. Fairbanks Capital*, No. Civ.A. 04-0367(RMU), 2005 WL 5108537, at *6 (D.D.C. 2005) ("Because it is undisputed that the plaintiff was acting in good faith and clearly demonstrated to Fairbanks her intent to pursue this litigation as her sole remedy, she should not be barred from continuing her suit merely because she has not formally opted-out under the procedures set forth in the notice."); *McCubbrey v. Boise Cascade Home & Land Corp.*, 71 F.R.D. 62, 69 (N.D. Cal. 1976) (holding filing of separate suit during opt-out period "constituted an effective expression of a class member's desire to opt out"), *with Demint v. NationsBank Corp.*, 208 F.R.D. 639, 641 (M.D. Fla. 2002) ("[T]he mere pendency and continued prosecution of a separate suit, which the litigant instituted *before* commencement of the 'opt-out' period in a related class action, neither registers nor preserves a litigant's election to 'opt out' of the related class action." (emphasis in original)). In any event, because Mikal Watts and Watts Guerra, LLP did not raise their argument regarding Appellants' failure to opt-out of the class as a ground supporting summary judgment, the issues underlying this argument were not presented in the trial court, and we do not resolve them here.

summary judgment in favor of Mikal Watts and Watts Guerra, LLP on Appellants' barratry claim.

4. Conclusion Regarding Barratry Claims

The trial court properly determined that, as a matter of law, Appellants' Subsection 82.0651(c) barratry claims could not be premised on the filing of the presentment forms. And the trial court correctly ruled that the two-year-statute of limitations applies to barratry claims under that subsection.

Appellees met their summary-judgment burden to show that the barratry claims accrued no later than January 2013, when Appellants were last solicited by telephone. They also conclusively showed that the discovery rule did not apply to those claims. However, Mikal Watts and his firm, Watts Guerra, LLP, failed to conclusively negate the application of the class-action tolling rule to Appellants' barratry claims.[15] Therefore, all Appellees, except Watts and his firm, met their summary-judgment burden to show that Appellants' barratry claims, filed more than three years after the cause of action accrued, were barred by limitations as a matter of law.

We hold that the trial court properly granted summary judgment on Appellants' Subsection 82.0651(c) barratry claims in favor of Appellees, except

---

[15] To reiterate, because the Bexar County class action was filed in May 2014 against only Mikal Watts, individually, and his firm Watts Guerra, LLP, the class action tolling rule applied only to those two defendants.

the trial court erred in granting summary judgment in favor of Mikal Watts and Watts Guerra, LLP on that claim. We overrule Appellants' first issue to the extent that the trial court properly granted summary judgment on the barratry claims, and we sustain the issue to the extent that the trial court erred in granting summary in favor of Mikal Watts and Watts Guerra, LLP.

C. Unjust Enrichment, Invasion of Privacy, and Derivative Claims

In their second issue, Appellants contend that the trial court erred by granting summary judgment, based on limitations, on their claims for invasion of privacy by misappropriation and on their derivative claims of conspiracy and aiding and abetting. In their third issue, Appellants assert that the trial court improperly granted summary judgment on their claims for unjust enrichment and restitution.

1. Appellants Not Entitled to Common Benefit Attorney's Fees

Appellants base their claims (1) for invasion of privacy by misappropriating their names and likenesses and (2) for "unjust enrichment/restitution" on the award of over $18 million[16] in common benefit attorney's fees paid to Mikal Watts and his firm for the legal work they did on the Plaintiffs' Steering Commission (as

[16] In their live pleading, Appellants alleged that Watts and his firm received $16,790,494.18 in common benefits attorney's fees and $141,000 in expenses in the multi-district litigation. At other points, they allege that it was $18 million. The summary-judgment evidence indicates that the awarded fees were over $18 million. Therefore, we will refer to the total amount as $18 million, including the $141,000 in expenses.

previously abbreviated, “the PSC”) in the federal multi-district litigation. Appellants alleged that, in his application to the PSC, Watts misrepresented to the federal court overseeing the multi-district litigation that Watts’ firm “represented over 40,000 plaintiffs,” when that was not true. Appellants asserted that Watts attained his position on the PSC “by misappropriating the names and likenesses of approximately 44,510 Vietnamese Americans,” including those of Appellants. Appellants asserted that the $18 million award of the common benefit attorney’s fees unjustly enriched the Watts Appellees because they had wrongfully obtained the award by Watts’s appointment to the PSC, and it would be unconscionable to allow them to keep it.

Appellants claimed that they were entitled to the common benefit attorney’s fees as restitution for their claim for unjust enrichment and invasion of privacy by misappropriation. For these claims, Appellants sought imposition of “the equitable remedy of a constructive trust to recover” the $18 million in common benefit attorney’s fees because the fees had been “obtained through unjust enrichment by misappropriating [their] names and likenesses.”

In their motion for summary judgment, the Watts Appellees asserted that Appellants were not entitled to recover the $18 million in attorney’s fees because Appellants were not the source of the fees paid to the Watts Appellees. Rather, BP

and other defendants in the multi-district litigation paid the fees. The trial court agreed with the Watts Appellees, ruling in its summary-judgment order as follows:

> The problem with the Plaintiffs' unjust enrichment/restitution claim has always been that if the Watts Defendants were unjustly enriched, it was not at Plaintiffs' expense. For Plaintiffs to recover for unjust enrichment, that enrichment must have been at the Plaintiffs' expense. The principle of seeking an equitable remedy such as disgorgement or loss of Watts' fees may have been appropriate given the Watts Defendants' use of Plaintiffs' names and identities, but such a remedy would be to deny the underlying claim for fees, or to refund those fees to BP which paid them. There is no basis for the Plaintiffs being the beneficiaries of that disgorgement under an unjust enrichment theory.

The trial court acknowledged that Appellants were arguing that "Mr. Watts never would have been appointed to [the PSC] had he not stolen their identities" and that "the expense to Plaintiffs [Appellants] was the loss of their identities." The trial court stated that the evidence did not indicate whether Watts would have been have appointed to the PSC without having misappropriated Appellants' identities. The trial court noted that Appellants did not claim that Watts and his firm did not do the work on the PSC for which they were paid $18 million. The trial court stated that what the record showed "about the BP litigation . . . is that Watts was on the committee, worked for the benefit of the parties in that case, and was paid."

We agree with the Watts Appellees that the trial court's grant of summary judgment on the unjust enrichment and restitution claim squares with Texas law and the summary-judgment record.

Recovery for unjust enrichment arises from the equitable principle that a person receiving benefits, which were unjust for him to retain, should make restitution. *Villarreal v. Grant Geophysical, Inc.*, 136 S.W.3d 265, 270 (Tex. App.—San Antonio 2004, pet. denied). "To recover for unjust enrichment, a plaintiff must show that the defendant has obtained a benefit from her by fraud, duress, or the taking of an undue advantage." *M & E Endeavours LLC v. Cintex Wireless LLC*, No. 01-15-00234-CV, 2016 WL 1590642, at *3 (Tex. App.—Houston [1st Dist.] Apr. 19, 2016, no pet.) (mem. op.) (citing *Heldenfels Bros., Inc. v. City of Corpus Christi*, 832 S.W.2d 39, 41 (Tex. 1992)). It follows, then, that a plaintiff seeking restitution from an unjustly enriched defendant must show that she is the source of the alleged improper benefit rather than having only a remote or attenuated connection to it. *Cf. Wilson v. Cinemark Corp.*, 858 S.W.2d 645, 648 (Tex. App.—Fort Worth 1993, no writ) (holding summary judgment proper on claim for unjust enrichment when plaintiff failed to show defendant theater received improper benefit from its patrons parking in plaintiff's parking lot); *Tex. Carpenters Health Benefit Fund v. Philip Morris, Inc.*, 21 F. Supp. 2d 664, 676 (E.D. Tex. 1998) (dismissing claim of unjust enrichment when alleged benefit was too indirect, remote and speculative); *see also Nationscredit Corp. v. CSSI, Support Grp., Inc.*, No. 05-99-01612-CV, 2001 WL 200147, at *6 (Tex. App.—Dallas, 2001, no pet.) (not designated for publication) ("Subsumed in this

holding of entitlement [to restitution] is the principle that the claimant seeking restitution must be the source of the benefit to the unjustly enriched party. . . . The remedy of restitution necessarily is available only to the party who provided the benefit. To conclude otherwise would provide a windfall to any other claimant.”).

Here, the summary-judgment record shows that Appellants’ connection to the benefit for which they seek restitution—the $18 million in common benefit attorney’s fees—was too attenuated to support recovery under a claim for unjust enrichment and restitution. As part of their summary-judgment evidence, the Watts Appellees offered the written recommendation of the special master appointed by the federal court in the multi-district litigation to evaluate the amount of attorney’s fees each law firm assigned to the PSC should receive for its work. The special master’s written recommendation, filed in October 2017, detailed the history of the PSC and described the basis for his recommendation. The special master indicated that the federal court had appointed attorneys to the PSC “to aid in and manage the prosecution of the MDL” for the common benefit of the plaintiffs at the beginning of the multi-district litigation in 2010. Among those appointed were Mikal Watts and his firm.

The special master’s recommendation described the type of work performed by the PSC for the common benefit of the plaintiffs’ group. The recommendation stated that the work of the plaintiffs’ counsel “resulted in settlements worth billions

of dollars" and that the federal court had concluded that PSC counsel had "earned compensation for their efforts on behalf of the common benefit." As part of the settlements with the BP defendants, nearly $700 million was allocated to pay the PSC counsel for their work.

In his recommendation, the special master described the methodology that he applied to determine how much in attorney's fees each firm would receive for its work on the PSC. His recommendation discussed each firm and its work separately.

The special master stated that Watts's firm had "devoted 18,704.97 approved hours toward the common benefit." The special master indicated that, based on the 18,704.97 hours of "approved work" performed by Watts's firm, he recommended that the firm be paid "$18,290,494.18 for common benefit fee" and $141,000 for expenses. Appellants allege in their Eighth Amended Petition that the federal court "entered an order" that any objections to the special master's recommendations be filed no later than October 20, 2017. After no objections were filed, the Watts Appellees received the attorney's fees and expenses recommended by the special master.

Appellants contend that, because their identities were used to help secure a position for Watts on the PSC, they are entitled to restitution of the attorney's fees

by awarding them a constructive trust over the funds.[17] While there may appear to be some inequity in permitting the Watts Appellees to retain the funds, we are mindful that restitution based on the theory of unjust enrichment is not a proper remedy "merely because it might appear expedient or generally fair that some recompense be afforded for an unfortunate loss to the claimant, or because the benefits to the person sought to be charged amount to a windfall." *Heldenfels Bros., Inc.*, 832 S.W.2d at 42 (internal quotation marks omitted).

The Watts Appellees' summary-judgment evidence demonstrated that the $18 million in attorney's fees paid by the BP defendants to the Watts Appellees were based on the amount and quality of legal work they performed on the PSC for the common benefit of the plaintiffs in the multi-district litigation. Any benefit derived from the use of the identities of Appellants—who were 439 individuals out of 44,000 claimants—to secure Watts's appointment to the PSC was too speculative to calculate after Watts's firm performed nearly 19,000 hours of legal work over many years for the PSC and the award of fees was expressly based on that work. The greater inequity would be to award the $18 million common benefit attorney's fees to Appellants on such an attenuated basis. *See id.*; *see also*

---

[17] "A constructive trust is a relationship with respect to property, subjecting the person by whom the title to the property is held to an equitable duty to convey it to another, on the ground that his acquisition or retention of the property is wrongful and that he would be unjustly enriched if he were permitted to retain the property." *Talley v. Howsley*, 76 S.W.2d 158, 160 (Tex. 1943).

RESTATEMENT (THIRD) OF RESTITUTION AND UNJUST ENRICHMENT § 44(3)(b)–(c) (2011) (providing that restitution for consciously interfering with claimant's legally protected interests will be limited or denied "to the extent it would result in an inappropriate windfall to the claimant, or would otherwise be inequitable in a particular case" or "if the benefit derived from the interference cannot be adequately measured").

We hold that the trial court properly granted summary judgment on Appellants' claims for unjust enrichment and restitution. Accordingly, we overrule their third issue.

2. Summary Judgment on Invasion of Privacy: Harmless Error

The trial court granted summary judgment on Appellants' claim for invasion of privacy by misappropriation of name or likeness based on limitations. Appellants challenge that ruling in their second issue. However, even if we were to conclude that the trial court erred in granting summary judgment on that issue, any error was harmless. *See In re K.K.W.*, No. 05-16-00795-CV, 2018 WL 3968475, at *9 (Tex. App.—Dallas Aug. 20, 2018, pet. denied) (mem. op.) (affirming summary judgment on constructive fraud claim after holding that trial court erred in granting summary judgment because appellate court's holdings on other issues in appeal negated appellant's constructive fraud, rendering error in granting summary judgment harmless).

"Erroneous rulings require reversal only if a review of the record reveals the error was harmful." *See Sw. Energy Prod. Co. v. Berry–Helfand*, 491 S.W.3d 699, 728 (Tex. 2016). "It is the complaining party's burden to show harm on appeal." *Bowser v. Craig Ranch Emergency Hosp. L.L.C.*, No. 05-16-00639-CV, 2018 WL 316880, at *2 (Tex. App.—Dallas Jan. 8, 2018, no pet.) (mem. op.) (citing *Ford Motor Co. v. Castillo*, 279 S.W.3d 656, 667 (Tex. 2009)).

> The harmless error rule states that, before reversing a judgment because of an error of law, the reviewing court must find that the error amounted to such a denial of the appellant's rights as was reasonably calculated to cause and probably did cause "the rendition of an improper judgment," or that the error "probably prevented the appellant from properly presenting the case [on appeal]."

G & H Towing Co. v. Magee, 347 S.W.3d 293, 297 (Tex. 2011) (quoting TEX. R. APP. P. 44.1(a)).

The harmless error rule applies to all errors, including erroneously granting summary judgment or otherwise erroneously disposing of a claim. *See id.* at 298 (holding that, although trial court errs in granting summary judgment on claim not addressed in summary-judgment motion, error is harmless when unaddressed claim "is precluded as a matter of law by other grounds raised in the case"); *Progressive Cty. Mut. Ins. Co. v. Boyd*, 177 S.W.3d 919, 921 (Tex. 2005) (concluding that any error committed by granting summary judgment on insurance bad-faith and extra-contractual claims was harmless because jury's finding in subsequent proceeding negated coverage, which was prerequisite for asserting bad-faith and extra-

contractual claims); *Tana Oil & Gas Corp. v. McCall*, 104 S.W.3d 80, 82 (Tex. 2003) (holding that directed verdict granted during first witness's testimony was "irregular" but harmless because plaintiffs had "affirmatively limited their claim to damages they could not recover as a matter of law"). In *G & H Towing*, the supreme court favorably quoted a practice treatise's statement of the harmless error exception for summary judgments as follows: "If the defendant has conclusively disproved an ultimate fact or element which is common to all causes of action alleged, or the unaddressed causes of action are derivative of the addressed cause of action, the summary judgment may be affirmed." 347 S.W.3d at 297 (citing Timothy Patton, SUMMARY JUDGMENTS IN TEXAS: PRACTICE, PROCEDURE AND REVIEW § 3.06[3] at 3–20 (3d ed. 2010)).

Here, Appellants' invasion of privacy by misappropriation claim, like their unjust enrichment and restitution claim, arises out of the Watts Appellees' receipt of the $18 million in common benefit attorney's fees for their work on the PSC. As pleaded, Appellants' invasion of privacy by misappropriation claim overlaps and is intertwined with their unjust enrichment and restitution claim.

In support of both claims, Appellants allege that the Watts Defendants misappropriated Appellants' identities by using them to attain a position on the PSC. Appellants claim that, by attaining a position on the PSC, Watts and his firm were then able to receive the common benefit attorney's fees, which unjustly

enriched them. Appellants seek restitution for their invasion of privacy by misappropriation claim in the form of "the equitable remedy of a constructive trust to recover any attorney's fees or expenses which the Watts Defendants obtained through unjust enrichment by misappropriating Plaintiffs' name[s] and likeness[es]." *See KCM Fin. LLC v. Bradshaw*, 457 S.W.3d 70, 87 (Tex. 2015) ("A constructive trust is an equitable, court-created remedy designed to prevent unjust enrichment.").

However, we have already determined in affirming the trial court's grant of summary judgment on the unjust enrichment and restitution claim that Appellants are not entitled to recover the common benefits attorney's fees paid to the Watts Appellees. As a result, any error in granting summary judgment on the invasion of privacy by misappropriation claim based on limitations would be harmless error.[18] *See In re K.K.W.*, 2018 WL 3968475, at *9. Accordingly, we hold that, even if we assume that the trial court erroneously granted summary judgment on Appellants' invasion of privacy claim based on limitations, the error was harmless. *See* TEX. R. APP. P. 44.1(a).

---

[18] Appellants also pleaded nominal damages for their invasion of privacy by misappropriation claim; however, we will not reverse only for a possible recovery of nominal damages. *See MBM Fin. Corp. v. Woodlands Operating Co., L.P.*, 292 S.W.3d 660, 666 (Tex. 2009) ("[W]here the record shows as a matter of law that the plaintiff is entitled only to nominal damages, the appellate court will not reverse merely to enable him to recover such damages." (citation omitted)).

We overrule Appellants' second issue to the extent that Appellants challenge the trial court's summary judgment on their invasion-of-privacy-by-misappropriation claim.

3. Derivative Claims Fail if Underlying Tort Fails

Appellants also challenge the trial court's summary judgment on their conspiracy and aiding and abetting claims based on limitations.[19] In their Eighth Amended Petition, Appellants alleged conspiracy and aiding and abetting in conjunction with each of the independent torts they asserted.

---

[19] The Supreme Court of Texas has not expressly decided whether Texas recognizes a cause of action for aiding and abetting. *See First United Pentecostal Church of Beaumont v. Parker*, 514 S.W.3d 214, 224–25 (Tex. 2017). We note that, in their motion for summary judgment on the barratry claim requesting summary judgment based on limitations, the Watts Appellees mentioned in one sentence in a footnote, without citing authority or making substantive argument, that "no such cause of action exists" in Texas. However, the trial court's orders indicate that summary judgment was granted on the aiding and abetting claim based on limitations. The trial court did not address whether aiding and abetting is a recognized cause of action. An appellate court may consider, in the interest of justice, grounds that the summary-judgment movant preserved for review and on which the trial court did not rule. *Cincinnati Life Ins. Co. v. Cates*, 927 S.W.2d 623, 626 (Tex. 1996). On appeal, the parties do not raise or brief the issue of whether aiding and abetting is a recognized cause of action in Texas. Given the paucity of attention paid by the parties to that issue here and in the trial court, we do not address whether it could be a ground to affirm summary judgment. *See id.* (appellate courts "may" consider other grounds on which trial court did not base its ruling); *see also Cohen v. Tour Partners, Ltd.*, No. 01-15-00705-CV, 2017 WL 1528776, at *8 (Tex. App.—Houston [1st Dist.] App. Apr. 27, 2017, no pet.) (mem. op.) (declining to address summary-judgment grounds not ruled on by trial court and stating that "the better course is to remand to allow the trial court to consider these issues in the first instance"); *Elwess v. Farm Bureau Cty. Mut. Ins. Co. of Tex.*, No. 11-12-00339-CV, 2014 WL 6755662, at *3 (Tex. App.—Eastland Nov. 26, 2014, no pet.) (mem. op.) (holding that appellate court would "decline to address" summary-judgment grounds not addressed by trial court).

"Conspiracy is a derivative tort because 'a defendant's liability for conspiracy depends on participation in some underlying tort for which the plaintiff seeks to hold at least one of the named defendants liable.'" *W. Fork Advisors, LLC v. SunGard Consulting Servs., LLC*, 437 S.W.3d 917, 920 (Tex. App.—Dallas 2014, pet. denied) (quoting *Tilton v. Marshall*, 925 S.W.2d 672, 681 (Tex. 1996)); *see Agar Corp. v. Electro Circuits Int'l, LLC*, 580 S.W.3d 136, 142–43 (Tex. 2019) (recognizing conspiracy as theory of derivative liability, not an independent tort). Because there "can be no independent liability for civil conspiracy," a plaintiff does not have a viable conspiracy claim if the trial court correctly grants summary judgment on the underlying tort. *Spencer & Assocs., P.C. v. Harper*, No. 01-18-00314-CV, 2019 WL 3558996, at *11 (Tex. App.—Houston [1st Dist.]. Aug. 6, 2019, no pet.) (quoting *W. Fork Advisors, LLC*, 437 S.W.3d at 920). In addition, because it is a derivative claim, civil conspiracy takes the limitations period of the underlying tort that is the object of the conspiracy. *Agar Corp.*, 580 S.W.3d at 148. And, because aiding and abetting is a derivative tort—to the extent it is an actionable tort in Texas—the trial court's proper grant of summary judgment on the underlying tort serves to grant summary judgment on the aiding and abetting claim as well. *See W. Fork Advisors*, 437 S.W.3d at 921 (citing *Ernst & Young, L.L.P. v. Pac Mut. Life Ins. Co.*, 51 S.W.3d 573, 583 (Tex. 2001)). Therefore, we hold that the trial court properly granted summary judgment on Appellants'

derivative conspiracy and aiding and abetting claims, except the trial court erred in granting summary judgment on those claims as they relate to Appellants' Subsection 82.0651(c) barratry claim against Mikal Watts and Watts Guerra, LLP based on the class-action tolling rule as discussed above.

We overrule Appellants' second issue to the extent it challenges the summary judgment on their conspiracy and aiding and abetting claims, except we sustain the issue with respect to the conspiracy and aiding and abetting claims as they derive from Appellants' Subsection 82.0651(c) barratry claim against Mikal Watts and Watts Guerra, LLP.

D. Challenge to Summary-Judgment Evidence

In their fourth issue, Appellants challenge the trial court's denial of their objections to Watts's affidavit and documents attached to his affidavit, offered in support of the Watts Appellees' motions for summary judgment on Appellants' claims for unjust enrichment and restitution and invasion of privacy by misappropriation.

We review a trial court's decision to admit or exclude summary-judgment evidence for an abuse of discretion. *Starwood Mgmt., LLC v. Swaim*, 530 S.W.3d 673, 678 (Tex. 2017). Even if a trial court abuses its discretion, we will only reverse if the error probably caused the rendition of an improper judgment. TEX. R.

APP. P. 44.1(a)(1); *see Wal-Mart Stores, Inc. v. Johnson*, 106 S.W.3d 718, 723 (Tex. 2003).

In affirming the summary judgment on Appellants' claims for unjust enrichment and restitution, we relied on the statements in Appellants' live petition and on the special master's report offered by the Watts Appellees. The special master's recommendation was attached to and authenticated by Mikal Watts's affidavit.

Appellants objected to various aspects of Watts's affidavit. As it relates to the special master's recommendation, Appellants objected that "Watts may not act as both an advocate and provide summary judgment testimony on contested issues of fact." *See Aghili v. Banks*, 63 S.W.3d 812, 818 (Tex. App.—Houston [14th Dist.] 2001, pet. denied) (concluding trial court abused its discretion by allowing lawyer for defendant to testify about relevant facts by affidavit in response to summary judgment motion because "a lawyer who represents clients as an advocate before a court should be incompetent to provide evidence in the matter unless one of the exceptions to Rule [of Disciplinary Procedure] 3.08 applies").

Appellants asserted that Watts's status as counsel precluded him from authenticating documents attached to his affidavit, including the special master's recommendation. However, the record shows that the special master's written recommendation was not a "contested fact." Appellants had already offered the

special master's written recommendation in support of their response to an earlier-filed motion for summary judgment. Given that the special master's written recommendation was already introduced into the record by Appellants in support of their own summary-judgment response, the special master's report was not inadmissible on the basis asserted by Appellants on appeal. And, even if the trial court abused its discretion in overruling Appellants' objection to Watts's authentication of the special master's report, that error probably did not cause the rendition of an improper judgment; that is, it would be harmless error because it had previously been relied on by Appellants.[20] *See* TEX. R. APP. P. 44.1(a)(1).

We overrule Appellants' fourth issue.

Conclusion

We reverse the portions of the trial court's judgment granting summary judgment in favor of Mikal Watts and his firm, Watts Guerra, LLP, on Appellants' claims for Subsection 82.0651(c) barratry and the derivative claims of conspiracy and aiding and abetting that relate to the barratry claim. We remand those claims—that is, Appellants' claims against Mikal Watts and Watts Guerra, LLP for Subsection 82.0651(c) barratry and the derivative claims of conspiracy and aiding and abetting that relate to the barratry claim—to the trial court for further

[20] If the trial court abused its discretion in overruling Appellants' objections to other aspects of Watts' affidavit, the error would be harmless because we do not otherwise rely on the affidavit to the extent the summary judgment is affirmed. *See* TEX. R. APP. P. 44.1(a).

proceedings consistent with our opinion. We affirm the remainder of the trial court’s judgment.

Richard Hightower
Justice

Panel consists of Chief Justice Radack and Justices Landau and Hightower.

APPENDIX

No.	Name of Appellant
1	Amy Hang Nguyen
2	An Ngoc Nguyen
3	An Ngoc Pham
4	An Van Nguyen
5	Andy Van Nguyen
6	Anh Duong Huynh
7	Anh Nguyen
8	Anh Que Nguyen
9	Anh Thi Nguyen
11	Ann Nguyen
12	Anthony Hoa Nguyen
13	Tieng Thi Nguyen, Independent Executrix of the Estate of Ba Nguyen, Deceased
14	Ba Thu Nguyen
15	Bac Hoai Le
16	Bao Van Nguyen
17	Be Chin Thi Huynh
18	Bien Van Tran
19	Bill Quang Nguyen
20	Billy Binh Duong
21	Billy Nguyen
22	Billy Van Tran
23	Binh V. Nguyen
24	Binh V. Nguyen
25	BNM Studio, LLC
26	Bon Van Nguyen
27	Bong Thi Ngo
28	Buong Thi Ho
29	Cam H Huynh
30	Cam Thi Lanh Nguyen
31	Chau Ho Nguyen
32	Chau Minh Nguyen
33	Chau Thien Nguyen
34	Chau Van Tran
35	Chi Huu Nguyen

36	Chi Thi Nguyen d/b/a New
37	Chi Van Tran
38	Chin Van Tran
39	Chung Khac Nguyen d/b/a E-Z Stop Seafood Deli
40	Chuong Van Vu
41	Co Van Mai
42	Cong Huu Phan
43	Cuong Minh Vo
44	Cuong Van Cao
45	Da Thi Nguyen
46	Dang Nguyen
47	Danny V Nguyen
48	Dao Van Phu
49	Dat Dinh
50	Dat Phat Truong
51	Dau Van Tran
52	David Dieu Nguyen
54	David Ngo
55	David Nguyen
56	Den Tran
57	Dich Bui
58	Dien Xuan Le
59	Dieu Van Nguyen
60	Dinh Ho
61	Dinh Nguyen
62	Dinh Nguyen
63	Doi Tran
64	Donald Hanh Tran
65	Dong Van Nguyen
66	Dong Van Pham
67	Dong Van Tran
68	Dong Viet Vu
69	Dua V Nguyen
70	Duc Hoai Nguyen
71	Duc Huu Nguyen
72	Duc V. Pham

73	Duc Van Le
74	Dung Anh Nguyen
75	Dung Hong Nguyen
76	Dung Minh Pham
77	Dung Ngoc Huynh
78	Dung Phuong Thi Tran
79	Dung Thi Doan
81	Dung Thi Pham
82	Dung Van Nguyen
83	Dung Van Nguyen
84	Dung Van Nguyen
85	Dung Van Nguyen
86	Duong Minh Le
87	Duy Quoc Ha
88	Duyen Van Tran
89	Elaine N. Le
90	Eric Oanh Nguyen
91	Frank Huynh
92	George Lai Lu
93	Gia Thi Nguyen
94	Giai Nguyen
95	Giau Nguyen
96	Ha Thi Nguyen
97	Ha Van Tran
98	Hai Cong Pham
100	Hai Minh Tran
101	Hai Tran
102	Hai Trung Vo
103	Hai Van Le
104	Hai Van Pham
105	Hai Van Phan
106	Hang Thi Nguyen
107	Hanh Thi Pham
108	Hanh V Tran
109	Hao Dinh Tran
110	Hao Thi Vo
111	Hao Van Ngo

112	He Thi Nguyen
113	Henry Nguyen
114	Hien Kim Thi Le
115	Khai Pham
116	Hien Van Dang
117	Hien Van Luong
118	Hien Van Nguyen
119	Hien Van Nguyen
120	Hieu Nguyen
121	Hieu Trung Tran
122	Hoa T. Le
123	Hoa Thi Bui
124	Hoa Thi Duong
125	Hoa Thi Nguyen
126	Hoan Thanh Nguyen
127	Hoang Van
128	Hoang Van Nguyen
129	Hoang Van Nguyen
130	Hoat Vu
131	Holly H. Nguyen
132	Hong Bui
133	Hong Hoa Thi Tran
134	Hong T. Thach
135	Hong Thanh Bui
137	Hue Tran
138	Hung H. Nguyen
139	Hung Hoa Nguyen
140	Hung Le
141	Hung Nguyen
142	Hung Tran
143	Hung Van Ha
144	Hung Van Pham
145	Huong Hoai Nguyen
146	Huong Tran
147	Jackie Lun Nguyen
148	Jimmy Nguyen
149	Jimmy Nguyen
150	John Nguyen
151	John Nguyen

152	John Nguyen
153	John Phuc Duong
154	John Thanh Nguyen
155	John Van Nguyen
156	John Vu
157	Johnny V Nguyen
158	Joseph Nguyen
159	Joseph Tinh Nguyen
160	Kevin Hoang
161	Khai Pham
162	Khang Quoc Le
163	Khang Thai Nguyen
164	Khang Trong Bui
165	Khanh Van Nguyen
166	Khanh Van Tran
167	Khanh Van Tran
168	Khoa Van Nguyen
169	Khoi Van Vu
170	Khuong Bao Nguyen
171	Kia Minh Lam
172	Kieu Diem Tran
173	Kim Anh Do
174	Kim Dung T Tran
175	Kim Oanh Thi Ngo
176	Kim Thi Chau
177	Kim Tran Nguyen
178	Kim-Anh Thi Vu
179	Ky Pham
180	Lai Le
181	Lam Nguyen
182	Lan Thi Nguyen
183	Lan Thi Nguyen
184	Lan Thi Vu
185	Lap Van Nguyen
186	Larry Liem Nguyen
187	Laura Trinh
188	Le Nguyen
189	Lee Van Nguyen
190	Liem Thanh Nguyen

191	Liem Thanh Nguyen
192	Lien Nguyen
193	Lien Thi Nguyen
194	Lien Van Vo
195	Liep Van Tran
196	Lieu Nguyen
197	Linda Ho
198	Linda Thi Phung
199	Linda Thuy Nguyen
200	Linda Tran
201	Linda Tran
202	Lisa Huong Huynh
203	Lisa Nguyen
204	Lo Van Ngo
205	Loan Do Pham
206	Loan Kim Nguyen
207	Loan Nguyen
208	Loan Tuong Pham
209	Loc Phi Nguyen
210	Long Ngoc Nguyen
211	Long Nguyen
213	Luan Nguyen
214	Lucky Thanh Ngo
215	Luot Thi Nguyen
216	Luu Hoa T Pham
217	Luyen Do
218	Mai H Tran
219	Mai Quynh Pham
220	Mai Thi Doan
221	Mai Thi Le
222	Man Minh Tran
223	Manh Huu Nguyen
224	Mao Quy Nguyen
225	Mary Ngo
226	Mary T. Nguyen
227	Melissa T Nguyen
228	Menh Van Nguyen
229	Michael Nguyen
230	Michael Nguyen

231	Michelle Le Tran
232	Micki Khanh Tran
233	Mike Pham
234	Minh Dinh Tran
235	Minh Duc Hong Vo
236	Minh Pham
237	Minh Tan Vo
238	Minh Trang Ngo
239	Minh Van Le
240	Minh Van Nguyen
241	Minh Van Nguyen
242	My Ai Tran
243	My Ha Thi Nguyen
244	My Ha Thi Tran
245	My Linh T. Nguyen
246	My Thanh Duong
247	My Thi Nguyen
248	Nam Be Tran
249	Nam Ngoc Nguyen
250	Nam Phuong Thi Do
251	Nam Van Le
252	Nam Van Nguyen
253	Nam Van Tran
254	Nancy Bui
255	Nancy Tran
256	Nga Thi Nguyen
257	Nga Thi Tran
258	Ngan T. Tran
259	Nghia M Nguyen
260	Ngoc Dung Thi Le
261	Ngoc-Trang Thi Nguyen
263	Nhan T. Tran
264	Nhanh Van Tran
265	Nhat D. Nguyen
266	Nhat Van Nguyen
267	Nhi Thi Nguyen
268	Nu Thi Nguyen
269	Oanh Hoang Nguyen
270	Oanh Nguyen

271	Oanh Thuc Hoang
272	Paul Phan Pham
273	Peter Duc Kieu
274	Peter Thanh Nguyen
275	Phat Tan Huynh
276	Phi-Linh Vu Nguyen
277	Phu Thanh Le
278	Phuc Du Nguyen
279	Phuc Huu Nguyen
280	Phung Ngoc Nguyen
281	Phuoc Van Nguyen
282	Phuong Kim Nguyen
283	Phuong Mai Thi Nguyen
284	Phuong Nga Thi Vu
285	Phuong Nguyen
286	Phuong Thi Lyanna
287	Quang Van Dang
288	Qui Quan Tran
289	Qui Thi Dang
290	Quoc Minh Vo
291	Quoc Tuan Nguyen
293	Quyen Hoang Nguyen
294	Quyen Pham
295	Ret Thi Ho
296	Richard Hien Vo
297	Sac Van Vu
299	Sang Thanh Bui
300	Sang Tran
301	Sao Thanh Nguyen
302	Sen Minh Nguyen
303	Si Van Pham
304	Simon H. Le
305	Son Kim Le
306	Son Truc Nguyen
307	Son Truong Le
308	Song Van Vo
310	Steven Nguyen

311	Steven Nguyen
313	Tai Lam
314	Tai Minh Ngo
315	Tai Thi Nguyen
316	Tam Dinh Nguyen
317	Tam Hong Tran
318	Tam M. Phan
320	Tam Thi Nguyen
321	Tam Thi Pham
322	Tam V. Le
323	Tan Phat Nguyen
324	Tang Van Nguyen
325	Thai Quang Tran
326	Thai Van Nguyen
327	Tham Thi Dinh
328	Thang V. Tran
329	Thang Van Tran
330	Thanh Ba Nguyen
331	Thanh Cao Huynh
332	Thanh Minh Hoang
333	Thanh Ngoc Huynh
334	Thanh Van Nguyen
335	Thanh Van Nguyen
336	Thanh Van Nguyen
337	Thanh Van Tran
338	Thanh-Huong Thi Hoang
339	Thanh-Huyen Nguyen
340	Thanh-Linh Vu Nguyen
341	Thao Phuong Thi Nguyen
342	Thao Van Pham
343	Thi Truong Nguyen
344	Thien Huong Le
345	Thim Thi Nguyen
346	Thin Le
347	Thinh T. Nguyen
348	Thomas Thanh Nguyen
349	Thong Van Trinh
350	Thu Hanh Thi Huynh

352	Thu Trang T Nguyen
353	Thu V. Nguyen
355	Thuan Nguyen
356	Thuong Tran
357	Thuong Truong
358	Thuy Anh Thi Le
359	Thuy Le Pham
360	Thuy Linh Thi Nguyen
361	Thuy Thi Hoang
362	Thuy Thi Thu Nguyen
363	Thy Phuong T. Le
364	Tien Le
366	Tien Van Nguyen
367	Tien Van Nguyen
368	Tieng Nguyen
369	Tiffany Vo
370	Tin Van Ho
371	Tina Chau Vu
372	Tina Hoang
373	Tinh Viet Nguyen
374	Toan Ba Nguyen
375	Toan D. Nguyen
376	Toan T. Nguyen
377	Tom Phan
378	Tommy Thong Nguyen
379	Tony Nguyen
380	Tony Tang
381	Tony Thai Nguyen
382	Trang Kim Nguyen
383	Trang Mai
384	Trang Thi Nguyen
385	Trang Thuy Au
386	Trang Xuan Dinh
387	Tri Nguyen
388	Tru Ngoc Dang

390	Trung K Hoang
391	Trung Thanh Nguyen
392	Trung Tran
393	Tu Tran
394	Tu Van Nguyen
395	Tuan Anh Nguyen
396	Tuan T. Dang
397	Tuoi Ngoc Nguyen
398	Tuong Huu Nguyen
399	Tuong Le Pham
400	Tuy Nguyen
401	Tuyen Bang Nguyen
402	Tuyen Minh Hoang
403	Tuyet Nguyen
404	Tuyet Thi Nguyen
405	Ut T. Chau
406	Ut Thi Le
407	Ut V. Nguyen
408	Ut Van Nguyen
409	Uyen T Dinh
410	Van Hong Truong
411	Van Huu Duc Nguyen
412	Van Vo
413	Vi Duc Luu
414	Victor Tran
415	Victoria Nguyen
416	Viet Anh Nguyen
417	Vinh V Nguyen
418	Vinh Van Nguyen
419	Vu Nguyen
420	Vui Le
421	Vuong Van Nguyen
422	Xe Thi Dao
423	Xinh Van Nguyen
424	Xuan Van Pham
425	Bao Loc Ho
426	Dung Van Lai
427	Loc Phuoc Duong
428	Minh Din Dui
429	Quyen Duc Doan

430	Luon Danh Nguyen
431	Victoria Hue Vu
432	Doi Nguyen
433	Nghia Huu Nguyen
434	Thuan Kim Nguyen
435	Tuong Vi Ngoc Nguyen
436	Christopher Hoang Tran
437	Sharon Bich Nhu Tran
438	Nang Van Tran
439	Jennifer Nguyen Penchas