

171 A.D.3d 580  
Supreme Court, Appellate Division,  
First Department, New York.

Shelley RUBIN, Plaintiff–Appellant,

v.

Nisha SABHARWAL, et al.,  
Defendants–Respondents.

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ENTERED: APRIL 23, 2019

### Synopsis

**Background:** Indian jewelry purchaser, co-founder and co-chair of museum specializing in part in Indian art brought action against seller alleging fraudulent inducement, fraud, conspiracy to commit fraud, breach of contract, and rescission. The Supreme Court, New York County, [Gerald Lebovits](#), J., granted purchaser's motion to dismiss. Seller appealed.

**Holdings:** The Supreme Court, Appellate Division, held that:

purchaser failed to show she reasonably relied on seller's assertions about jewels and she exercised due diligence during transaction for fraudulent inducement claim;

seller's alleged misrepresentations constituted opinion, and thus were not actionable for a fraud claim;

doctrine of equitable estoppel did not apply to toll four-years limitations period applicable to sale of goods, for purchaser's breach of contract and rescission claims;

purchaser failed to show fraudulent conveyance.

Affirmed.

### Attorneys and Law Firms

**\*\*18** The Law Offices of Neal Brickman, P.C., New York ([Neal Brickman](#) of counsel), for appellant.

Certilman Balin Adler & Hyman LLP, East Meadow ([Paul B. Sweeney](#) of counsel), for respondents.

[Sweeney](#), J.P., [Richter](#), Tom, [Kapnick](#), Oing, JJ.

### Opinion

**\*580** Order, Supreme Court, New York County (Gerald Lebovits, J.), entered on or about February 20, 2018, which, to the extent appealed from as limited by the briefs, granted defendants' motion to dismiss the fraud-based claims, the breach of contract and rescission claims to the extent **\*\*19** based on transactions that occurred before February 16, 2013, the unjust enrichment claim to the extent based on transactions that occurred before February 16, 2011, and the claims against defendants OM Vastra and Vastra Miami, unanimously affirmed, without costs.

Plaintiff's claims for fraudulent inducement, fraud and conspiracy to commit fraud were properly dismissed. Plaintiff failed to assert sufficient facts to establish reasonable reliance and that she exercised due diligence to determine the value of the property. Plaintiff cannot assert reasonable reliance where she had the means to discover the true nature of the transaction by the exercise of ordinary intelligence, and failed to make use of those means (*see Rosenblum v. Glogoff*, 96 A.D.3d 514, 515, 946 N.Y.S.2d 167 [1st Dept. 2012]). As the co-founder and co-chair of a museum specializing, in part, in Indian art, plaintiff had the means to conduct an appraisal of the jewelry prior to purchasing the jewelry, and yet she took no steps to verify the alleged misrepresentations. Moreover, plaintiff had the wherewithal to conduct an appraisal several years after the first transaction when she wanted to sell some of the items and verify the authenticity of the jewelry. Plaintiff could have discovered the truth had she conducted an inquiry into the value of the property during the many transactions at issue in this case.

**\*581** The alleged misrepresentations—that the items were of “museum quality,” of “highest quality,” and “generational”—ultimately go to the value of the jewelry, which constitutes “nonactionable opinion that provides no basis for a fraud claim” (*MAFG Art Fund, LLC v. Gagosian*, 123 A.D.3d 458, 459, 998 N.Y.S.2d 342 [1st Dept. 2014], *lv denied* 25 N.Y.3d 901, 2015 WL 1422950 [2015]; *see also Augsbury v. Adams*, 135 A.D.2d 941, 942, 522 N.Y.S.2d 691 [3d Dept. 1987]).

The four year statute of limitations applicable to sales of goods was properly applied to plaintiff's breach of contract

and rescission claims (UCC § 2-725[1] ), and plaintiff's failure to conduct any due diligence with respect to the jewelry that was sold to her precludes her reliance on the doctrine of equitable estoppel to toll the limitations period (see *Zumpano v. Quinn*, 6 N.Y.3d 666, 683–84, 816 N.Y.S.2d 703, 849 N.E.2d 926 [2006] ).

Plaintiff's conclusory statements that proceeds from the transactions at issue herein were fraudulently transferred to the Florida entity defendants so they could be “hidden” and “disbursed” are not sufficiently detailed to plead a claim for

fraudulent conveyance pursuant to Debtor and Creditor Law § 276 (*Wildman & Bernhardt Constr. v. BPM Assoc.*, 273 A.D.2d 38, 38–39, 708 N.Y.S.2d 400 [1st Dept. 2000] ).

We have considered plaintiff's remaining arguments and find them unavailing.

#### All Citations

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