SUPERIOR COURT, STATE OF CALIFORNIA
COUNTY OF SANTA CLARA

Department 1, Honorable Jacquline Duong, Presiding
Mai Jansson, Courtroom Clerk

191 North First Street, San Jose, CA 95113
Telephone 408.882-2120

To contest the ruling, call (408) 808-6856 Or Email at Department1@scscourt.org before 4:00 P.M.

PROBATE LAW AND MOTION TENTATIVE RULINGS
DATE: November 13, 2024 TIME: 10:00 A.M.

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LINE #	CASE #	CASE TITLE	RULING
LINE 1	22PR193527	Rita P. Catalano Trust of 2000	Click on LINE 1 or scroll down for attached Tentative Ruling.

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PROBATE LAW AND MOTION TENTATIVE RULINGS

LINE 2			Click on LINE 2 or scroll down for attached Tentative Ruling.
LINE 3			Click on LINE 3or scroll down for attached Tentative Ruling.
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Line 1

Case Name: *The Rita P. Catalano Trust of 2000*
Case No.: 22PR193527
Hearing date, time, and department: November 13, 2024 at 10:00 a.m. in Department 1

INTRODUCTION

In 2010, Rita Catalano ("Decedent") loaned her daughter, Regina Drysdale ("Respondent") $300,000 allegedly for the purposes of bridging a gap in funding due to the pending sale of Respondent's real property. Thereafter, Decedent made another loan of $150,000 to Michelle McCarthy, Decedent's granddaughter and Respondent's daughter. The terms of the loan appear to be in dispute but it is undisputed that Respondent agreed to pay interest on both loans. Decedent passed away on January 5, 2021.

On October 25, 2022, Petitioners Lisa Boyer and Daniel Catalano ("Petitioners"), trustees of the Rita P. Catalano Trust of 2000, initiated this action by filing a petition to confirm property. In it, they alleged causes of action for (1) financial elder abuse, (2) promissory fraud, (3) conversion, (4) accounting, and (5) declaratory relief. The petition alleges that Respondent failed to pay the interest on the loans and that, as of October 15, 2022, the amount of interest owing was $161,562.21.

Currently before the court is Respondent's motion for summary judgment or, in the alternative, summary adjudication as to Petitioners' October 25, 2022, petition and each cause of action therein. Petitioners have filed an opposition. Respondent has filed a reply.

The case came on for hearing on September 25, 2024. At the hearing, the court asked Petitioners for further information regarding how they had calculated the amount of interest mentioned above. The court continued the hearing to November 13, 2024. Petitioners filed their supplemental statement in opposition, responding to the court's request, on October 1, 2024.

On November 1, 2024, Respondent filed a supplemental declaration in support of her motion. On November 4, 2024, Petitioners filed objections to Respondent's supplemental declaration.

DISCUSSION

I. Preliminary Matters

A. Timeliness of the Motion

Petitioners contend that the motion was untimely filed and served under Code of Civil Procedure section 437c,[1] subdivision (a)(2), which provides that the motion must be served 75 calendar days before the hearing date, plus additional time depending on the method of service. The motion was originally scheduled to be heard on September 20, 2024 and the motion and supporting papers were served on July 5, 2024.

Petitioners assert that they were served electronically and thus, Respondent was required to serve the motion two court days earlier than the 75-day deadline. Petitioners rely on *Cole v. Superior Court* (2022) 87 Cal.App.5th 84, 87-88,[2] in which the Court of Appeal explained that, although section 437c does not explicitly address electronic service, the two-court-day extension under section 1010.6 applies. Due to the July 4 holiday, Petitioners maintain that the motion was required to be served by July 3, 2024.

Assuming without deciding that the motion was served two days late, the court continued the hearing on the motion to September 25, 2024 before Petitioners' opposition was due. Thus, they had the benefit of the continued hearing date at the time they filed their opposition. Accordingly, the court will reach the merits of the motion.

B. Compliance With Rules of Court, Rule 3.1350

Petitioners also argue that Respondent's motion fails to comply with Rules of Court, rule 3,1350(b), which provides, "If summary adjudication is sought, whether separately or as an alternative to the motion for summary judgment, the specific cause of action, affirmative defense, claims for damages, or issues of duty must be stated specifically in the notice of motion and be repeated, verbatim, in the separate statement of undisputed material facts." Here, Respondent seeks summary judgment or summary adjudication of each cause of action, in the alternative. Thus, Respondent was required to comply with Rules of Court, rule 3,1350(b).

Here, Respondent's notice of motion states with respect to each cause of action, "Petitioners cannot overcome the Statement of Undisputed Material Facts that their [number] cause of action for [claim] is barred by the applicable statute of limitations."[3] In Respondent's separate statement, the issues are stated with respect to each cause of action in the following form: "The claim for [cause of action] should be summarily adjudicated for Respondent, and Against Petitioners, because it is barred by the statute of limitations."[4] Petitioner urges the court to deny the motion on this ground but she cites no authority in support.

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[1] All further undesignated statutory references are to the Code of Civil Procedure.

[2] Petitioner accidentally cites *Cole v. Superior Court* (1985) 173 Cal.App.3d 265, but that case does not discuss the time for electronic service of a motion for summary judgment.

[3] For example, with respect to the first cause of action, the notice of motion states, "Petitioners cannot overcome the Statement of Undisputed Material Facts that their first cause of action for Financial Elder Abuse is barred by the applicable statute of limitations."

The court's decision to deny a motion for summary judgment or adjudication based on failure to comply with Rules of Court, rule 3,1350(b) is discretionary. (*Truong v. Glasser* (2009) 181 Cal.App.4th 102, 118.) The court declines to deny the motion due to the slight change in wording between the notice of motion and the separate statement. It is clear that Respondent is seeking summary judgment (or summary adjudication in the alternative) because she believes the statute of limitations has run as to each of Petitioner's claims.

C. Evidentiary Objections

i. Petitioners' Evidentiary Objections

Petitioners object to multiple pieces of evidence Respondent has provided in support of her motion. The court declines to rule on these objections as they are immaterial to the outcome of the motion. (§ 437c, subd. (q) ["In granting or denying a motion for summary judgment or summary adjudication, the court need rule only on those objections to evidence that it deems material to its disposition of the motion."].)

ii. Respondent's Evidentiary Objections

Respondent objects to Exhibit V of the Declaration of Lisa Boyer in Opposition to the Motion. Exhibit V consists of Decedent's bank records. Respondent objects on hearsay grounds. She contends that the requirements of Evidence Code section 1271, allowing admission of authenticated business records into evidence, have not been met. Evidence Code section 1271 provides, "Evidence of a writing made as a record of an act, condition, or event is not made inadmissible by the hearsay rule when offered to prove the act, condition, or event if: (a) The writing was made in the regular course of a business; (b) The writing was made at or near the time of the act, condition, or event; (c) The custodian or other qualified witness testifies to its identity and the mode of its preparation; and (d) The sources of information and method and time of preparation were such as to indicate its trustworthiness." (Formatting altered.) Here, Lisa Boyer asserts that she downloaded some of the records from Bank of America's records and stored those records on a locked computer and that she discovered the other records in a storage center. The court finds that the requirements of Evidence Code section 1271 have not been met. Accordingly, the objection is SUSTAINED.[5]

D. Respondent's Supplemental Declaration

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[4] For example, with respect to the first cause of action, the separate statement states, "The claim for Financial Elder Abuse should be summarily adjudicated for Respondent, and Against Petitioners, because it is barred by the statute of limitations[.]"

[5] This ruling is without prejudice to any arguments Petitioners may make in seeking to admit the records at trial, if a trial occurs in this case. The court intends this ruling to have no preclusive effect on the trial court's assessment of whether the evidence is admissible.

On November 1, 2024, Respondent filed a supplemental declaration further explaining the interest payments she contends she made on the loans. On November 4, 2024, Petitioners filed objections to Respondent's supplemental declaration. Petitioners contend that the supplemental declaration is an unauthorized filing presenting new evidence after the filing of the reply and requests that the court decline to consider it. As Petitioners point out, new evidence is generally not to be presented in connection with a reply. (See *Jay v. Mahaffey* (2013) 218 Cal.App.4th 1522, 1537-1538 ["The general rule of motion practice . . . is that new evidence is not permitted with reply papers."]; see also *Nazir v. United Airlines, Inc.* (2009) 178 Cal.App.4th 243, 252 [same]; *San Diego Watercrafts, Inc. v. Wells Fargo Bank, N.A.* (2002) 102 Cal.App.4th 308, 316 [same].) In this case, the new evidence was presented after the reply was filed. Accordingly, the court declines to consider it.

II. Legal Background

Any party may move for summary judgment. (Code of Civ. Proc., § 437c, subd. (a); *Aguilar v. Atlantic Richfield Co.* (2001) 25 Cal.4th 826, 843 (*Aguilar*).) The motion "shall be granted if all the papers submitted show that there is no triable issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." (Code of Civ. Proc., 437c, subd. (c); *Aguilar, supra*, at p. 843.) The object of the summary judgment procedure is "to cut through the parties pleading" to determine whether trial is necessary to resolve the dispute. (*Aguilar, supra*, at p. 843.) Summary adjudication works the same way, except it acts on specific causes of action or affirmative defenses, rather than on the entire complaint. (§ 437c, subd. (f).) … Motions for summary adjudication proceed in all procedural respects as a motion for summary judgment.'" (*Hartline v. Kaiser Foundation Hospitals* (2005) 132 Cal.App.4th 458, 464.)

"A plaintiff or cross-complainant has met his or her burden of showing that there is no defense to a cause of action if that party has proved each element of the cause of action entitling the party to judgment on the cause of action. Once the plaintiff or cross-complainant has met that burden, the burden shifts to the defendant or cross-defendant to show that a triable issue of one or more material facts exists as to the cause of action or a defense thereto. The defendant or cross-defendant shall not rely upon the allegations or denials of its pleadings to show that a triable issue of material fact exists but, instead, shall set forth the specific facts showing that a triable issue of material fact exists as to the cause of action or a defense thereto." (§ 437c, subd. (p)(1).)

"A defendant or cross-defendant has met his or her burden of showing that a cause of action has no merit if the party has shown that one or more elements of the cause of action, even if not separately pleaded, cannot be established, or that there is a complete defense to the cause of action. Once the defendant or cross-defendant has met that burden, the burden shifts to the plaintiff or cross-complainant to show that a triable issue of one or more material facts exists as to the cause of action or a defense thereto. The plaintiff or cross-complainant shall not rely upon the allegations or denials of its pleadings to show that a triable issue of material fact exists but, instead, shall set forth the specific facts showing that a triable issue of material fact exists as to the cause of action or a defense thereto." (§ 437c, subd. (p)(2).)

"A defendant seeking summary judgment must show that at least one element of the cause of action cannot be established, or that there is a complete defense to the cause of action…The burden then shifts to the plaintiff to show there is a triable issue of material fact on that issue." (*Alex R. Thomas & Co. v. Mutual Service Casualty Ins. Co.* (2002) 98 Cal.App.4th 66, 72, internal citations omitted; emphasis added.)

When a defendant moves for summary judgment, "its declarations and evidence must either establish a complete defense to plaintiff's action or demonstrate the absence of an essential element of plaintiff's case. If plaintiff does not counter with opposing declarations showing there are triable issues of fact with respect to that defense or an essential element of its case, the summary judgment must be granted." (*Gray* v. *America West Airlines, Inc*. (1989) 209 Cal.App.3d 76, 81.)

If the moving party makes the necessary initial showing, the burden of production shifts to the opposing party to make a prima facie showing of the existence of a triable issue of material fact. (Code of Civ. Proc., 437c, subd. (c); *Aguilar, supra*, 25 Cal.4th at p. 850.) A triable issue of material fact exists "if, and only if, the evidence would allow of reasonable trier of fact to find the underlying facts in favor of the party opposing the motion in accordance with the applicable standard of proof." (*Aguilar, supra*, at p. 850, fn. omitted.) If the party opposing summary judgment presents evidence demonstrating the existence of a disputed material fact, the motion must be denied. (*Id*. at p. 843.)

Throughout the process, the trial court "must consider all of the evidence and all of the inferences drawn therefrom." (*Aguilar, supra*, 25 Cal.4th at p. 856.) The moving party's evidence is strictly construed, while the opponent's is liberally construed. (*Id*. at p. 843.)

III. Merits of the Motion

Respondent contends that the statute of limitations has run with respect to each cause of action in Petitioner's petition. The following discussion is applicable to all cause of action.

Respondent states that she executed a promissory note for the $300,000 loan on January 10, 2010. (Respondent's Separate Statement of Undisputed Material Facts ("UMFs"), No. 8.) The note required her to pay 10% interest and had a due date of January 12, 2014. (UMF No. 8.)[6]
Respondent also executed a promissory note for the $150,000 loan. (See Declaration of Regina Drysdale in Support of Motion ("Drysdale Decl."), Ex. D.) The note had a due date of July 1,

[6] Petitioners dispute UMF No. 8 but they do not dispute that a promissory note was executed by Respondent, that it bore a 10% interest rate and had a due date of January 12, 2014. To the extent Respondent is incorrect about the date the document was executed, this is immaterial to the outcome of the motion and the document speaks for itself.

2015. (*Ibid*.) The note mentions interest but does not specify the amount of interest to be paid. (*Ibid*.)

Petitioners do not dispute that Respondent paid Decedent $300,000 on April 19, 2011, from the close of escrow on a parcel of real property she sold. (UMF No. 18.) Petitioners dispute that this amount paid off the balance of the $300,000 loan in full because they contend that the interest owed at that time was not paid. Petitioners also do not dispute that Respondent paid $150,000 to a trust account maintained by Decedent. (UMF No. 19.)

Respondent contends that she made any required interest payments. She has provided records from the Quicken software program which show 11 payments in 2010 of "Loan Interest" to payee Rita Catalano. (See Drysdale Decl., Ex. I.)[7] The payments are each in the amount of $2,500 or $3,125. She has also provided the declaration of her former tax accountant, Bruce Knowlton, who states that Respondent paid $9,167 in home mortgage interest to Rita Catalano in 2010. (Declaration of Bruce Knowlton in Support of Motion ("Knowlton Decl."), ¶ 4, Ex. A.) Knowlton also states that Respondent paid $20,875 in mortgage interest in 2010. (*Id.*, ¶ 6, Ex. B.)[8] With respect to the $300,000 loan, Respondent has provided evidence that Decedent signed a document indicating that the loan was repaid in full with no interest owing. (See Biegel Decl., Ex. B.) No similar documentation is provided with respect to the $150,000 loan. She also provides an email from Decedent indicating that Decedent received a check from Respondent. (Drysdale Decl., Ex. K.)[9]

Petitioners have presented evidence that no interest payments were received by Decedent. Respondent objects to Exhibit V of Petitioner Lisa Boyer's declaration in opposition to the motion, which consists of a table prepared by Lisa Boyer and Decedent's bank statements, which allegedly do not show receipt of the payments allegedly made by Respondent to Decedent. (Declaration of Lisa Boyer in Opposition to Motion ("Boyer Declaration" or "Boyer Decl."), Ex. V.) As discussed above, the court has sustained Respondent's objection to Exhibit V. Nonetheless, Lisa Boyer declares that she found no

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[7] Respondent indicates that she served a subpoena for her bank records from the relevant time period but she received no records and the custodian of records indicated that the bank's records retention policy is to keep records for seven years. (Declaration of Lawrence Biegel in Support of Motion ("Biegel Decl."), Ex. C.)

[8] Knowlton's declaration states that this amount is attributable to the mortgage on Respondent's property and does not explicitly state that the mortgage interest was paid to Decedent. (Knowlton Decl., ¶ 6.) However, Exhibit C to his declaration, an email chain, contains an email he authored indicating that the $20,875 reflects interest paid to Decedent.

[9] The court notes that the email does not indicate that the check was for mortgage interest, it does not state the amount of the check, and the fact that Respondent sent a check rather than an automatic payment suggests that the check may not be for payment of mortgage interest as Respondent's own evidence suggests that the interest was to be repaid via deposits into Decedent's account.

evidence of any deposits of interest payments in Decedent's bank accounts and Respondent does not object to the declaration. (Boyer Decl., ¶ 31.)

Assuming, without deciding, that all of the evidence presented by both parties is admissible,[10] there is an issue of fact as to whether the full amount of interest has been paid with respect to both loans. However, Respondent contends that the statute of limitations has run on these claims and that whether all of the interest has been paid is irrelevant if the statute of limitations has run. In other words, although there is an issue of fact as to whether the interest was paid, it would be neither triable nor material if the statutes of limitations have run. The parties do not dispute the relevant statutes of limitations applicable to each claim. Petitioners argue that they are "entitled to a postponement of the accrual" of the statutes of limitations for various reasons as will be discussed below.

Briefly, as to the first cause of action for financial elder abuse, the parties agree that the statute of limitations is "four years after the plaintiff discovers or, through the exercise of reasonable diligence, should have discovered, the facts constituting the financial abuse." (Welf. & Inst. Code, § 15657.7.) As to the second cause of action, Respondent contends and Petitioners do not dispute, that the statute of limitations is three years pursuant to section 338, subdivision (d), which states, "Within three years: . . . An action for relief on the ground of fraud or mistake. The cause of action in that case is not deemed to have accrued until the discovery, by the aggrieved party, of the facts constituting the fraud or mistake." With respect to the third cause of action for conversion, Respondent contends, and Petitioners do not dispute, that the statute of limitations is three years pursuant to section 338, subdivision (c)(1), which states "Within three years: . . . An action for taking, detaining, or injuring goods or chattels, including an action for the specific recovery of personal property." As to the fourth cause of action for an accounting, Respondent states that the statute of limitations is either three or four years depending on the underlying claims supporting the request for accounting. (See *Glue-Fold, Inc. v. Slautterback Corp.* (2000) 82 Cal.App.4th 1018, 1023, fn. 3.) Finally, with respect to the fifth cause of action for declaratory relief, Respondent maintains that the statute of limitations is four years under section 337, subdivision (a), which provides for a four-year limitations period for an action based on a contract.

Respondent asserts that the causes of action began to accrue during Rita's lifetime while she was still trustee because she was aware of the breach, if any. She relies on *Security First Nat'l Bank v. Ross* (1963) 214 Cal.App.2d 424, 430-431, in which the Court of Appeal explained, "The defendant [successor trustee] claims that he personally had no knowledge of the plaintiff's alleged wrongful acquisition of the subject three-fourths interest until the instant complaint had been filed and, for this reason, the statutory period prescribed by section 338 subdivision 4, if it applies, did not commence to run against the action alleged in his cross-complaint until that time. His trustee predecessor in interest, the court that administered the trust, and the beneficiary thereof, all had notice of the facts which form the basis of the alleged constructive trust cause of action in question in 1950, if not before that time, and the

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[10] As discussed above, Petitioners object to some of the evidence presented by Respondent.

defendant's personal lack of knowledge respecting the same did not toll the running of the statutory period after that date."

Both parties cite *Bradler v. Craig* (1969) 274 Cal.App.2d 466, 472, in which the Court of Appeal stated, "Under [*Oakes v. McCarthy Co.* (1968) 267 Cal.App.2d 231], the statute [of limitations] commenced to run when 'the consequential damage is sufficiently appreciable to a reasonable man.' Plaintiffs allege this was August 1966. Although they allege their predecessors in interest knew of the alleged defects, there is no allegation as to when the prior owners acquired such knowledge, or whether the defects caused any appreciable damage during the 18-year period before plaintiffs purchased the property. Knowledge or notice of defects or damage that came to the attention of their predecessors in interest would be imputed to plaintiffs as of the date thereof. Likewise, if the facts imposed a duty on plaintiffs' predecessors in interest, plaintiffs are chargeable with that duty as of the date the facts became known. If the defects were such that a reasonable man would have taken corrective action, the statute would commence to run. If there was damage as a result of such defects and such damage met the test of *Oakes*, the statute would commence to run."

Under these authorities, the cause of action begins to accrue when *the predecessor in interest*, here, Decedent, either has knowledge of the facts supporting the cause of action or should have known of said facts under a duty to investigate. Respondent has presented evidence that the interest payments were to be made into a Bank of America account then controlled by Decedent. (See Biegel Decl., Ex. A - Deposition testimony of Decedent's attorney Peter Muncey, p. 56:17-23.) Petitioners do not dispute that the funds were to go directly into Decedent's bank account. In fact, it is undisputed that Decedent believed that the interest payments were to go directly into her bank account. (See Respondent's Reply to Petitioner's Opposition to UMFs, Petitioner's Claimed Undisputed Material Facts, No. 46.) Instead, they contend that Decedent relied on assurances by Respondent and her relationship with her attorney to determine if anything had gone wrong with the loans.

Respondent has shown that she paid off the entire principal of each loan in 2011. By the terms of the promissory notes for the $300,000 loan, Respondent would cease to pay interest when the principal was paid off. (Drysdale Decl., Ex. B [With respect to the $300,000 loan, the promissory notes states, "Accumulated Interest shall be due and payable on the 15 of each month on the amount of principal remaining from time to time unpaid, *until said principal sum is paid in full* as required hereunder." (Italics added.)].) As to the $150,000 both the previously accrued interest and the principal would have to be paid before interest was no longer owing. (Drysdale Decl., Ex. D [With respect to the $150,000 loan, the promissory note states, "Accumulated interest is due and payable on the 15th day of each month starting August 15, 2010 and continuing until said principal sum and the interest thereon has been fully paid."].) Nonetheless, it appears that the injury forming the basis of the causes of action would have occurred or begun to occur in 2010 or 2011 because Respondent was required to, but allegedly did not, pay interest during that time. At that time, Decedent was the trustee and the party to whom the injury complained of in the petition was inflicted, if at all.

Petitioners argue that Decedent had no duty to investigate into her own bank account to determine if the interest payments had been made due to Respondent's undue influence and fiduciary relationship with Decedent as well as the fiduciary relationship between Decedent and her attorney. It is undisputed that Decedent had full control of her bank accounts until she passed away. (See UMF No. 27.)

With respect to the fiduciary relationship argument, Petitioners rely on *WA Southwest 2, LLC v. First American Title Ins. Co.* (2015) 240 Cal.App.4th 148, 157, in which the court stated, " 'Where a fiduciary obligation is present, the courts have recognized a postponement of the accrual of the cause of action until the beneficiary has knowledge or notice of the act constituting a breach of fidelity. [Citations.] The existence of a trust relationship limits the duty of inquiry. "Thus, when a potential plaintiff is in a fiduciary relationship with another individual, that plaintiff's burden of discovery is reduced and he is entitled to rely on the statements and advice provided by the fiduciary." ' [Citation.] But, even assuming for the sake of argument that each of the respondents had a fiduciary duty to plaintiffs, this does not mean that plaintiffs had no duty of inquiry if they were put on notice of a breach of such duty. [Citation.]" However, in *Britton v. Girardi* (2015) 235 Cal.App.4th 721, 725, the court explained that "where there are facts sufficient to put one on inquiry notice, the fraud statute of limitations starts running even when the defendant is a fiduciary." Accordingly, whether Respondent was a fiduciary is irrelevant if Decedent was on inquiry notice.

Respondent contends that Decedent was not absolved from investigating into the concerns Petitioner Lisa Boyer and her siblings had in 2010 regarding the loans. In Exhibit G to the Boyer Declaration, an email from Decedent to Judi LeBel, Decedent stated, "Now for you to bring up any further discussion now that Regina stated how this loan was approached and finalized, find the subject is closed! There being others with concern about this is news to me. I suggest you accept this statement from Regina about her finances – I am sure you realize it is of no further concern to anyone now that you know our attorneys are accepting all of this as well as my bankers and investment counselors. Again, Subject is closed." (Formatting altered.) This can be viewed as evidence that the siblings shared their concerns with Decedent and, instead of investigating them Decedent dismissed them. However, it is also evidence that Decedent believed that any issue with the loans was resolved and that she did not need to investigate because she trusted her attorney and bankers. Additionally, Petitioners have provided some evidence that Decedent relied on professionals, such as the Bank of America bankers and her attorney, Muncey. (See Declaration of Karen Catalano in Opposition to Motion, ¶ 3.) Accordingly, the court finds that there is a triable issue of fact as to whether and when Decedent knew or should have known of the circumstances forming the basis of the causes of action alleged in the petition.

With respect to Petitioners' own knowledge of facts sufficient to put them on notice of the need to investigate, Petitioners became co-trustees on August 20, 2019.[11] The petition was

[11] Another relative of Decedent, Judith LeBel became co-trustee with Decedent in 2018. LeBel is now deceased.

filed October 25, 2022. Petitioner and Co-Trustee Daniel Catalano has provided his declaration indicating that he was unaware of whether the interest had been repaid at least until August 30, 2021. (Declaration of Daniel Catalano in Opposition to Motion, ¶ 2.) Petitioner and Co-Trustee Lisa Boyer declares that "from the year 2010 to late 2021, [she] was aware that [Respondent] Regina had borrowed money from [Decedent]. [She] was led to believe by [Respondent] Regina during this time that [Respondent] made automatic payments of 10% interest on both loans and both of her loans were secured by a first Deed of Trust." (Boyer Decl., ¶ 23.) She also declares that Decedent never spoke to her about the loans after sending an email asking the siblings not to look further into the loans. (*Ibid*.) She states that she "had no reason to suspect the loans were not in compliance with the repayment terms of the promissory notes" until late 2021. (*Ibid*.)

Although it is clear that Petitioner and Co-Trustee Lisa Boyer was aware of the concerns regarding the propriety of making the loans as early as 2010, it is not clear that Petitioners had any basis to believe that Respondent was not paying interest on the loans. In other words, although they may have been suspicious of the loans in general, it is unclear that the facts that form the basis of the causes of action in the petition were known to them, nor is it what facts were known to put them on inquiry notice that these injuries allegedly occurred.

Petitioners have provided evidence that Respondent told Judi LeBel that she was paying interest on the loans in September 2010. (See Declaration of Nancy Battel in Opposition to Motion, Exhibit E.) Further, Lisa Boyer declares that she believed that Respondent was paying interest on the loans in September 2010 based on what Respondent had told her. (Boyer Decl., ¶ 5.) Thus, it is not clear what would put Petitioners on inquiry notice of the alleged failure to repay the loans in 2010 or at any point before they became trustees in 2019. Both Co-Trustees indicate that they did not know about the alleged failure to pay the loans until 2021. The court finds that there is a triable issue of material fact as to whether and when Petitioners knew or should have known of the facts forming the basis of their causes of action.

The motion is DENIED.

CONCLUSION

The motion is DENIED in its entirety.

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