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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA  
SECOND APPELLATE DISTRICT  
DIVISION TWO

BEVERLY DENHAM, as Successor  
Trustee, etc.,

Plaintiff and Appellant,

v.

HARRY E. WESTOVER &  
ASSOCIATES et al.,

Defendants and Respondents.

B269825

(Los Angeles County  
Super. Ct. No. NC059551)

APPEAL from judgments of the Superior Court of Los Angeles County.  
Michael P. Vicencia, Judge. Affirmed.

Law Offices of Phillip K. Fife and Phillip K. Fife for Plaintiff and  
Appellant.

Baker, Keener & Nahra, Mitchell F. Mulbarger and Christopher K.  
Mosqueda for Defendant and Respondent Harry E. Westover & Associates.

Summit LA, Tracy R. Mattie-Daub and Terry J. Kent for Defendant  
and Respondent State Farm Bank, FSB.

Beverly Denham, in her capacity as successor trustee of The Markham Family Trust Dated April 11, 1990 (appellant), appeals from a judgment entered after the trial court granted summary judgment in favor of Harry E. Westover & Associates (Westover) and State Farm Bank, FBS (State Farm) (collectively “respondents”) on appellant’s claims against respondents for quiet title, to invalidate a lien, and for negligent or intentional slander of title. The trial court granted summary judgment in favor of State Farm on the ground that State Farm was a good faith encumbrancer. The trial court granted summary judgment in favor of Westover on the ground that appellant’s claims against Westover were barred by the statute of limitations under Code of Civil Procedure section 340.6, subdivision (a). We affirm the judgment.

### **FACTUAL BACKGROUND<sup>1</sup>**

The property at issue in this matter is commonly known as 181/185 Cameron Place, Long Beach, California 90807 (the property).

Appellant’s parents, Theodore R. Markham (Theodore) and Anna G. Markham (Anna G.), were married. During their marriage, they acquired the property. They had two children, appellant and her brother, Theodore R. Markham, Jr., when Anna G. died in October 1966, the property became Theodore’s sole and separate property.

In November 1967, Theodore married Anna Jean Federico, who then became known as Anna J. Markham (Anna Jean). At the time of her marriage to Theodore, Anna Jean had two children from a prior marriage: Janice Ann Emery and Samuel Betz Federico.

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<sup>1</sup> The facts are allegations taken from the complaint and the parties’ separate statements of material fact in this matter.

During their marriage Theodore and Anna Jean formed The Markham Family Trust Dated April 11, 1990 (the trust). The trust was prepared by an attorney, Pierre E. Auw (Auw), then employed by Westover & Matthews, a predecessor of Westover. At the time the trust was settled the property was designated as Theodore's separate property. The property was transferred to the trust by a trust transfer deed dated April 11, 1990, and recorded with the Los Angeles County Recorder on May 3, 1990. Appellant alleges that the transfer deed was drawn and recorded by Westover, and contained the materially false statement that Anna Jean had acquired title to the property as Anna G. Markham, when in fact Anna Jean had not acquired any interest in the property at that time.

Theodore died on May 12, 1995, while married to Anna Jean. Upon his death, Anna Jean became the sole surviving trustee of the trust and continued in that capacity until her death on January 8, 2011.

After Theodore's death, at Anna Jean's direction, Westover prepared a document entitled "Affidavit – Death of Co-trustee" which falsely asserted that the property had been at all times since its acquisition considered to be community property of the marriage of Anna Jean and Theodore. The document was prepared on May 31, 1995, and recorded on August 16, 1995. Appellant alleges that Westover should have known this was false. The property was considered the separate property of Theodore, and upon the death of Anna Jean the property was by the terms of the trust to be distributed to appellant and her brother.

On July 27, 1999, Anna Jean recorded a grant deed by which Anna Jean as trustee of the trust purported to convey title of the property from the trust to "Anna Jean Markham, a widow."

Anna Jean never provided appellant or her brother notice of the trust. Appellant was not provided with a copy of the trust until after the death of Anna Jean, when the property management firm which had been managing the property sent appellant a copy of the trust and started sending appellant the rents generated by the property under a written lease.

Following Anna Jean's death, appellant became the successor trustee of the trust. In January 2013, appellant entered into an agreement to sell the property to Howard Pringle and Leslie Pringle. It was then that appellant discovered the grant deed recorded in 1999 precluded her from conveying good and marketable title for the property to the Pringles. Appellant engaged counsel to investigate the public records as to how Anna Jean had handled the properties in the trust.

A deed of trust on the property executed by "Anna Jean Markham, a widow," as borrower, was recorded on January 30, 2003. The deed of trust encumbered the property to secure the payment to State Farm of a promissory note signed by Anna Jean on January 24, 2003 in the initial principal amount of \$304,700. Appellant alleges that State Farm failed to conduct a reasonable and thorough investigation of the state of the title for the property prior to making the loan.

At the time the loan was made, State Farm had no notice that appellant had any claim to the property. Nor did State Farm have notice of any improper exercise of trustee duties by Anna Jean.

### **PROCEDURAL HISTORY**

Appellant filed her complaint on June 10, 2014. The complaint included causes of action for quiet title and to cancel the deed of trust on the basis that Anna Jean was not entitled to encumber the property after the death of Theodore. The complaint further alleged that Westover negligently

or knowingly assisted Anna Jean in clouding title to the property, resulting in damages to appellant.<sup>2</sup>

On July 23, 2015, Westover's demurrer to the complaint was overruled. The court granted Westover leave to file a motion for summary judgment. On August 5, 2015, Westover served its motion for summary judgment based solely on the statute of limitations found in Code of Civil Procedure section 340.6. The moving papers confirmed that Auw had worked at Westover and was now deceased. There was no record that Auw worked on any files for Anna Jean after the year 2000.

On August 7, 2015, State Farm served its motion for summary judgment taking the position that it had loaned \$304,700 to Anna Jean in good faith, with no knowledge that there was any issue as to her holding valid title to the property. State Farm also took the position that it was protected under Probate Code section 18100, which protects a third person dealing with a trustee or assisting a trustee in the conduct of a transaction.

State Farm's motion for summary judgment was concurrently filed with a request for judicial notice of many instruments executed by Anna Jean and recorded in Los Angeles County. The recorded instruments showed that Anna Jean had borrowed money from various lenders on the security of the property beginning in June 1996. The initial loans were to her as the sole surviving trustee of the trust. After the property transferred to Anna Jean in her individual capacity, she continued to borrow money as an individual from various lenders, culminating with the loan made to her from State Farm.

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<sup>2</sup> In addition to respondents, the complaint listed as defendants Janice Ann Emery, Samuel Betz Federico, Howard Pringle, and Leslie Pringle. These individuals are not parties to this appeal. Janice Ann Emery and Samuel Betz Federico declined to assert any interest in the property and their respective defaults were entered on November 4, 2014.

Each loan appeared to pay off the previous loan until the final loan by State Farm.

Also filed concurrently with State Farm's motion for summary judgment was a declaration from Louis Uribe and a number of recorded documents affecting the property.

Appellant opposed Westover's motion for summary judgment with a responsive separate statement of undisputed facts on October 7, 2015. Appellant also served a declaration and request for judicial notice of various documents, including marriage certificates of Theodore and Anna G. Markham, death certificates, and copies of the two recorded deeds by which Theodore and Anna G. Markham first acquired the property in 1956.

Appellant also served her response to State Farm's separate statement of undisputed facts on October 7, 2015. With that she concurrently filed a request for judicial notice with attached documents showing that State Farm had engaged Chicago Title Insurance Company in connection with the January 2003 loan to Anna Jean, and that Chicago Title Insurance Company had searched the title history for the property. The search revealed that the subject property had been free and clear of loans when Theodore died in May 1995.

On October 15, 2015, State Farm objected to appellant's request for judicial notice and its reply to appellant's opposition to the motion for summary judgment. Thereafter, Westover gave notice that it was joining in the objections of State Farm to appellant's request for judicial notice.

Both summary judgment motions were heard on October 22, 2015. The trial court indicated it would sustain State Farm's objections to appellant's evidence, indicating that the core issue was whether State Farm was on constructive notice that Anna Jean had no legal interest in the subject

property when she executed the January 2003 deed of trust which appellant sought to invalidate. The court noted, “the flaw in [appellant’s] case is that no public records . . . would have revealed the terms of the trust.” However, the court noted, even if State Farm had analyzed the trust transaction, it could rely on Probate Code section 18100 and would be entitled to the protections of that statute.

As to Westover, the court found that any alleged negligence or intentional wrongdoing was carried out in connection with professional services, and the one-year period of limitations from discovery of the alleged negligence or wrongdoing found in Code of Civil Procedure section 340.6 applied. Because appellant discovered the alleged wrongdoing in January 2013, and did not file her lawsuit until June 2014, it was time-barred. The trial court found that appellant had not met the fraud exception to that statute.

The trial court issued an order dated November 20, 2015, granting State Farm’s motion for summary judgment on the ground that State Farm was a good faith encumbrancer having had no way of knowing the terms of the trust. All 30 of State Farm’s objections to appellant’s request for judicial notice were sustained. On December 2, 2015, final judgment was entered in favor of State Farm.

The trial court also granted Westover’s motion for summary judgment. Final judgment in Westover’s favor was also entered on December 2, 2015.

Appellant filed her notice of appeal on January 28, 2016.

## **DISCUSSION**

### **I. Standards of review**

“On appeal after a motion for summary judgment has been granted, we review the record de novo, considering all the evidence set forth in the

moving and opposition papers except that to which objections have been made and sustained. [Citation.]” (*Guz v. Bechtel National, Inc.* (2000) 24 Cal.4th 317, 334.)

Evidentiary rulings on summary judgment are reviewed for abuse of discretion. (*Jackson v. County of Los Angeles* (1997) 60 Cal.App.4th 171, 192, fn. 15.) Under this standard, we affirm the ruling unless the trial court demonstrated a manifest abuse of discretion, exceeding the bounds of reason. (*In re Marriage of Chakko* (2004) 115 Cal.App.4th 104, 108.)

## **II. Evidentiary rulings**

Appellant challenges the trial court’s rulings sustaining each of respondent State Farm’s objections to the documents referenced in appellant’s request for judicial notice. Appellant argues that the court’s “wholesale refusal” to take judicial notice of the recorded documents was error.

### ***A. Documents and objections***

Appellant sought judicial notice of copies of the following documents:

(1) the marriage certificate of Theodore and Anna G. Markham, filed December 28, 1932, with the Los Angeles County Recorder;

(2) the death certificate of Anna G. Markham, filed December 1, 1966, with the Los Angeles County Recorder;

(3) the deed recorded March 22, 1956, showing that Anna G. and Theodore Markham acquired title to the property during their marriage as husband and wife;

(4) a deed recorded December 9, 1959, showing that Theodore and Anna G. Markham acquired some additional portion of interest in property adjacent to the property, probably as a result of some sort of settlement of a boundary dispute;



(5) an application for building permit filed by Theodore with the Department of Building and Safety for the City of Long Beach on August 6, 1959;

(6) a deed showing that Theodore and Anna G. Markham as husband and wife took title to the property listed as Item 2 of Schedule B of the trust as “commercial property” by grant deed recorded December 21, 1962, in the records of the Los Angeles County Recorder;

(7) the marriage certificate of Theodore and Anna Jean filed November 21, 1967, with the Los Angeles County Recorder;

(8) the trust instrument settled by Theodore and Anna Jean on April 11, 1990, listing on Schedule B as the separate property of Theodore the subject property and the commercial property;

(9) the trust transfer deed prepared by Pierre E. Auw, notarized and recorded on May 3, 1990, with the Los Angeles County Recorder;

(10) the document entitled “Affidavit – Death of Co-Trustee” prepared by Auw and recorded on August 16, 1995, in which Anna Jean swore under penalty of perjury that the subject property had been “at all times since its acquisition considered to be community property. . .” of her marriage to Theodore;

(11) A trust transfer deed affecting the commercial property prepared, notarized and recorded by Auw on May 3, 1990, in the records of the Los Angeles County Recorder;

(12) a document entitled “Affidavit – Death of Co-Trustee” recorded August 17, 1995, in which Anna Jean swore under penalty of perjury that the commercial property had been at all times since its acquisition considered to be community property, bearing the initials of Auw;

(13) pages from the Parker's Directory of Attorneys showing that Auw was affiliated professionally with Westover from and including 1990 through 2004;

(14) death certificate registration No. D20090019019 showing that Auw died on April 21, 2009;

(15) a deed of trust executed September 24, 1979, by Theodore alone as the trustor, in which he is described as "a married man who acquired title as a widower;"

(16) a full reconveyance recorded February 12, 1985, confirming that the encumbrance placed on the property as the deed of trust recorded October 22, 1979, had been fully paid; and

(17) a grant deed recorded as Document No. 99 1635374 in the records of the Los Angeles County Recorder in which Anna Jean as trustee of the trust purported to grant to "Anna Jean Markham, a widow," title for the subject property.

State Farm's objection to each document listed the following objections, with little variation: not material; lacks personal knowledge (Evid. Code, § 702, subd. (a)); lacks foundation (Evid. Code, § 403, subd. (a)); not relevant (Evid. Code, § 350); hearsay (Evid. Code, § 1200); attorney arguments are not evidence (*Van de Kamp v. Bank of America* (1988) 204 Cal.App.3d 819, 843); and judicial notice does not prove truth of contents of public documents (*Love v. Wolf* (1964) 226 Cal.App.2d 378, 403). In addition, State Farm objected to the admission of the trust instrument on the ground that such instrument "is not capable of being judicially noticed as it is a private document. The act of filing a document with the Court does not permit a Court to later take judicial notice of the truth of facts asserted in that document. (*Soskinsky v. Grant* (1992) 6 Cal.App.4th 1548, 1568.)"

### ***B. The trial court's ruling***

At the October 22, 2015 hearing the trial court indicated that it would sustain State Farm's objections to appellant's request for judicial notice. The trial court did not specify which ground or grounds formed the basis for its decision, nor did appellant's counsel request any clarification.

In its written order, filed November 20, 2015, the trial court sustained each objection that State Farm raised to appellant's request for judicial notice, without elaborating as to the precise ground on which each objection was sustained.<sup>3</sup>

### ***C. Appellant has failed to establish an abuse of discretion***

Appellant does not address the validity of the specific objections that were raised by State Farm and sustained by the trial court. Instead, appellant argues that courts have the authority to take judicial notice of recorded documents, and the refusal to do so in this case was error because the documents establish that State Farm's lien is void. Appellant argues, "[i]t was error for the Court to refuse to take judicial notice of the relevant

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<sup>3</sup> Appellant makes no separate argument on appeal regarding these evidentiary rulings as they relate to the request for judicial notice filed in connection with appellant's opposition to Westover's motion for summary judgment. As set forth above, Westover joined in the objections filed by State Farm. Appellant asserts that the request for judicial notice filed in opposition to Westover's summary judgment motion was similar, but not identical to, the request for judicial notice filed in opposition to the motion of State Farm. However, appellant does not argue that any differences between the two requests for judicial notice are legally significant for the purpose of this appeal. Therefore, any argument concerning the evidentiary rulings as they related to Westover's motion, as opposed to State Farm's motion, is waived. (*Cahill v. San Diego Gas & Electric Co.* (2011) 194 Cal.App.4th 939, 956 [““When an appellant fails to raise a point, or asserts it but fails to support it with reasoned argument and citations to authority, we treat the point as waived””].)

excerpts of the Trust instrument which established that Anna Jean had no right to deed trust property to herself that Theodore owned as his separate property when it had been transferred to the Trust.”

Appellant’s analysis is insufficient to meet her burden on appeal, as she must establish both error and prejudice. (*Morgan v. Wet Seal, Inc.* (2012) 210 Cal.App.4th 1341, 1369.) We cannot satisfy this burden for her. (*Ibid.* [“One cannot simply say the court erred, and leave it up to the appellate court to figure out why”].) Appellant has failed to furnish any relevant legal argument as to why the trial court erred. Appellant has failed to address any of the specific objections raised by State Farm. Appellant’s argument that the referenced documents establish Anna Jean’s wrongdoing does not adequately address the admissibility of those documents as evidence.<sup>4</sup> Therefore, we find no abuse of discretion.<sup>5</sup>

### **III. Validity of deed**

Appellant argues that the deeds by which Anna Jean as the surviving sole trustee of the trust deeded the property from herself as trustee to herself as an individual were void. The transfer was against the interests of appellant and her brother, the remainder beneficiaries designated in the trust instrument. Thus, appellant argues, the transfer was a violation of Anna Jean’s duties as trustee and therefore void.

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<sup>4</sup> As appellant has noted, the trial court appeared to accept appellant’s position that Anna Jean had acted improperly and was not the same person as Anna G. Markham.

<sup>5</sup> Appellant notes that the trial court sustained the objections at the conclusion of oral argument and without entertaining any argument. Appellant makes no specific legal argument that the trial court abused its discretion in not specifically inviting argument on this topic. Therefore, we consider this issue to be waived. (*Cahill v. San Diego Gas & Electric Co.*, *supra*, 194 Cal.App.4th at p. 956.)

***A. The 1999 deed and trust instrument are not in evidence***

Appellant has failed to show the deed is invalid. First, the 1999 deed by which Anna Jean took title to the property is not part of the record. Nor is the trust instrument which purportedly designated the property at issue as the community property of Theodore and Anna G. Markham. State Farm's objections to admission of these documents on numerous grounds were sustained, and appellant has made no effective legal argument that the evidentiary rulings were an abuse of the trial court's discretion.

***B. Even if Anna Jean violated her duties as trustee, the transaction was merely voidable, not void***

Probate Code section 16004, which governs a trustee's duties to avoid self-dealing, provides: "The trustee has a duty not to use or deal with trust property for the trustee's own profit or for any other purpose unconnected with the trust, nor to take part in any transaction in which the trustee has an interest adverse to the beneficiary." (Prob. Code, § 16004, subd. (a).)

Even if Anna Jean violated the law prohibiting a trustee from dealing with trust property for her own profit, the transaction would be voidable at the election of the beneficiary, not void, as appellant suggests. Where such a transaction is voidable, not void, the beneficiary may rescind the transaction but must restore the consideration to the third party. (*Fair v. Bakhtiari* (2011) 195 Cal.App.4th 1135, 1155 [where agreement violated an attorney's fiduciary duties within the meaning of Probate Code section 16004, agreement was voidable]; see also *BGJ Associates v. Wilson* (2003) 113 Cal.App.4th 1217, 1229 (*BGJ Associates*); Civ. Code, § 1691, subd. (b) [rescinding party must "[r]estore to the other party everything of value which he has received from him under the contract or offer to restore the same upon condition that the other party do likewise"].)

While the recent case law cited above discusses Probate Code section 16004 in the context of the attorney-client relationship, it relies on well-established legal principles. (See *BGJ Associates, supra*, 113 Cal.App.4th at p. 1229, citing *Estate of Berry* (1925) 195 Cal. 354, 362 [“[I]f a contract is entered into between a trustee and beneficiary . . . the latter is entitled to rescind the contract, subject to the limitations imposed by the law governing the application of this remedy”]; *Phillips v. Sanger Lumber Co.* (1900) 130 Cal. 431, 433 [where trustee violates fiduciary obligations by entering contract, such action “do[es] not make the contract void, but voidable only at the option of the beneficiary, who may either affirm or repudiate it”].)

Appellant has directed us to case law pre-dating the enactment of Probate Code section 16004 involving trustees who wrongfully dealt with trust property for their own benefit. These cases agree that, where a trustee deals with trust property for the trustee’s own benefit, such transactions are voidable at the election of the beneficiary. (*Wickersham v. Crittenden* (1892) 93 Cal. 17, 29 [where trustee has dealings in the trust property, court will set the transaction aside “at the mere option of the *cestui que trust*”]; see also *Estate of Howard* (1955) 133 Cal.App.2d 535, 541 [“a guardian, in purchasing or otherwise acquiring the property of his ward, violates the duty imposed by the fiduciary character of his position. Such a transaction, whether made directly to the guardian or through another, is voidable at the suit of any proper party in interest”].)

If a transaction is void, it has no effect on a subsequent bona fide purchaser. However, where a transaction is merely voidable, as was the transaction at issue here, “it may have been subject to cancellation and rescission as against the trustee, but could be relied upon by a subsequent bona fide purchaser for value.” (*Schiavon v. Arnaudo Brothers* (2000) 84

Cal.App.4th 374, 378; see also *Triple A Management Co. v. Frisone* (1999) 69 Cal.App.4th 520, 530 (*Triple A*) [“A good faith encumbrancer for value . . . takes its interest in the real property free and clear of unrecorded interests”].)

***C. State Farm was a bona fide encumbrancer for value***

Assuming the 1999 deed was voidable because the terms of the trust did not permit Anna Jean to deed the property to herself as an individual, State Farm prevails as a matter of law because it was a bona fide encumbrancer for value. (*Triple A, supra*, 69 Cal.App.4th at p. 530.)

State Farm established that it was a bona fide encumbrancer for value.<sup>6</sup> To establish its status as a bona fide encumbrancer, State Farm was required to show payment of value, in good faith, without actual or constructive notice of another’s rights. (*Gates Rubber Co. v. Ulman* (1989) 214 Cal.App.3d 356, 364.) Thus, as the trial court noted, the core issue was whether State Farm had constructive notice that Anna Jean had no legal interest in the property. Because no public records revealed the terms of the trust, State Farm had no way of knowing the terms of the trust. State Farm was entitled to rely on the validity of the recorded deed.<sup>7</sup> (*Triple A, supra*, 69 Cal.App.4th at p. 530 [“[I]t clearly is the law that, in the absence of conflicting knowledge, a good faith encumbrancer is entitled to rely on the recorded chain of title”].) Because appellant produced no evidence suggesting

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<sup>6</sup> Bona fide encumbrancers are treated the same as bona fide purchasers, using the same legal principles. (*Caito v. United California Bank* (1978) 20 Cal.3d 694, 702.)

<sup>7</sup> Pursuant to Civil Code section 1091 and Code of Civil Procedure section 1971, in order to be valid a deed must be written and subscribed by the party transferring the subject property. There is no dispute that the 1999 deed met those requirements.

that State Farm was aware of any flaw in Anna Jean's title to the property, State Farm prevails as a matter of law on appellant's claim for quiet title and to invalidate the lien.

#### **IV. Probate Code section 18100**

As an alternative ground for its ruling in favor of State Farm, the trial court noted that even if State Farm "had to get down into the trust transactions," it could rely on Probate Code section 18100 and would be entitled to the protections of that statute.

Probate Code section 18100 provides:

"With respect to a third person dealing with a trustee or assisting a trustee in the conduct of a transaction, if the third person acts in good faith and for a valuable consideration and without actual knowledge that the trustee is exceeding the trustee's powers or improperly exercising them:

"(a) The third person is not bound to inquire whether the trustee has power to act or is properly exercising a power and may assume without inquiry the existence of a trust power and its proper exercise.

"(b) The third person is fully protected in dealing with or assisting the trustee just as if the trustee has and is properly exercising the power the trustee purports to exercise."

Appellant argues on appeal that Probate Code section 18100 affords no protection to State Farm because at the time of the transaction, appellant was acting as an individual, not as a trustee. Thus, appellant argues, the statute had no application under the facts of this case.

A determination of whether Probate Code section 18100 applies to facts before us is not necessary for State Farm to prevail as a matter of law. The trial court simply noted that if, as appellant insists, State Farm were required to delve into the validity of the 1999 deed, it would have been



entitled to rely on Probate Code section 18100 and assume that Anna Jean was acting within her power as trustee in deeding the property to herself as an individual.

However, as set forth above, State Farm was not required to determine the validity of the 1999 deed. It was valid on its face, and State Farm was entitled to rely on it. Therefore, we need not discuss Probate Code section 18100 further.

## **V. Code of Civil Procedure section 340.6**

Appellant's final argument involves her claim for negligent or intentional slander of title arising out of allegations of misconduct against Westover occurring in 1999, over 16 years ago. The trial court determined that Westover was entitled to summary judgment on this issue due to the one-year statute of limitations for claims other than actual fraud arising out of the performance of professional services. (Code Civ. Proc., § 340.6, subd. (a).)<sup>8</sup>

### ***A. Appellant's claim is barred by the statute of limitations***

The facts leading to appellant's discovery of the claim begin after Anna Jean's death in January 2011 when appellant first became aware of the existence of the trust. In January 2013, appellant entered into an agreement to sell the property to the Pringles. It was then that appellant discovered

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<sup>8</sup> Code of Civil Procedure section 340.6, subdivision (a), provides in part: "An action against an attorney for a wrongful act or omission, other than for actual fraud, arising in the performance of professional services shall be commenced within one year after the plaintiff discovers, or through the use of reasonable diligence should have discovered, the facts constituting the wrongful act or omission, or four years from the date of the wrongful act or omission, whichever occurs first." The period is tolled whenever the plaintiff is under "a legal or physical disability which restricts the plaintiff's ability to commence legal action." (Code Civ. Proc., § 340.6, subd. (a)(4).)

that the grant deed recorded in 1999 precluded her from conveying good and marketable title for the property to the Pringles. Appellant engaged counsel to investigate how Anna Jean had handled the properties in the trust.

Thus, the facts as pled show that appellant discovered the wrongful act in January 2013.<sup>9</sup> Her lawsuit was not filed until June 2014, more than one year after she discovered, or should have discovered, the wrongful act or omission of Westover. It is therefore barred by Code of Civil Procedure section 340.6, subdivision (a).

***B. Appellant has not shown the fraud exception***

Appellant argues that she has met the fraud exception to Code of Civil Procedure section 340.6.

The fraud exception in Code of Civil Procedure section 340.6 applies only “to intentional fraud, not constructive fraud resulting from negligent misrepresentation.” (*Quintilliani v. Mannerino* (1998) 62 Cal.App.4th 54, 69-70.) In order to bring an intentional fraud claim against Westover, appellant was required to plead such a claim with particularity. (*Small v. Fritz Companies, Inc.* (2003) 30 Cal.4th 167, 184 [“In California, fraud must be

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<sup>9</sup> Appellant makes much of her allegation that “within one year last past [she] has become informed thereby, and has come to believe, that the title of the record for the CAMERON PROPERTY remains in the name of ‘Anna Jean Markham, a widow.’” This allegation does not change the fact that the statute of limitations began to run in January 2013 or shortly thereafter. In January 2013, when she discovered that she did not have marketable title to the property, appellant had sufficient knowledge of her claim. The statute of limitations began to run at that time. (Code Civ. Proc., § 340.6, subd. (a).) It was not necessary that she know every detail of the past transactions involving the property. “A plaintiff need not be aware of the specific ‘facts’ necessary to establish the claim. . . . Once the plaintiff has a suspicion of wrongdoing, and therefore an incentive to sue, she must decide whether to file suit or sit on her rights.” (*Jolly v. Eli Lilly & Co.* (1988) 44 Cal.3d 1103, 1110-1111.)

pled specifically; general and conclusory allegations do not suffice. . . .’ This particularity requirement necessitates pleading *facts* which ‘show how, when, where, to whom, and by what means the representations were tendered’].)<sup>10</sup>

Appellant did not allege a claim of fraud against Westover, and conceded this point in court on October 22, 2015. In response to the trial court’s request that appellant “point to that part of the complaint that alleges fraud against Westover,” appellant responded, “It doesn’t allege fraud per se.”

Nonetheless, appellant argues that a jury could infer intentional fraud from the evidence before the court. Appellant argues that a jury could infer that Auw altered the language of the May 1990 trust transfer deed outside of the presence of Theodore so that when he recorded it two weeks later it appeared to indicate that Anna Jean had been a co-owner of the subject property for the same length of time as Theodore. Further, appellant argues, by setting up the recording instructions so that the trust transfer deed as altered and recorded would come back from the recorder not to Theodore but to Auw, Theodore would not see the deed as was actually recorded. In addition, three weeks after Theodore’s death, Auw prepared the false affidavit claiming the subject property had been, from the time of its acquisition, community property of the marriage of Anna Jean and Theodore. The required inference would be that Auw, and thus Westover, knew that this statement was false.

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<sup>10</sup> *Quick v. Pearson* (2010) 186 Cal.App.4th 371, cited by appellant, does not suggest otherwise. The matter was decided on demurrer, and the court was required to accept the allegations as true. The second amended complaint alleged that Quick was a beneficiary of a trust and was unaware of the existence of the trust, that a trustee failed to inform him of the existence of the trust and also instructed the other beneficiaries not to inform him of the existence of the trust. These allegations adequately stated a cause of action for breach of trust by a trustee. (*Id.* at p. 380.)

This court may only determine the existence of triable issues of fact based on admissible evidence and reasonable inferences drawn therefrom. (Code Civ. Proc., § 437c, subd. (c).) Appellant has not set forth any admissible evidence supporting her claim of intentional fraud. Even if the trust and transfer deeds had been admitted into evidence, there is simply no evidence suggesting that Auw had any fraudulent intent or acted to deceive anyone. In the fraudulent conveyance context, “[p]roof of fraudulent intent often consists of “*inferences* from the circumstances surrounding the transaction . . . .” [Citation.]’ [Citation.]” (*Annod Corp. v. Hamilton & Samuels* (2002) 100 Cal.App.4th 1286, 1298). Such circumstances include “‘secrecy or concealment . . . [or] the relationship of the parties.’ [Citation.]” (*Eddy v. Temkin* (1985) 167 Cal.App.3d 1115, 1122.) Appellant sets forth no specific evidence suggesting that Auw acted with fraudulent intent. There is no evidence that he acted with secrecy, intentionally misled anyone, or had anything other than a professional relationship with Anna Jean. Appellant presents nothing but speculation. “Speculation, however, is not evidence.” (*Aguilar v. Atlantic Richfield Co.* (2001) 25 Cal.4th 826, 864.)<sup>11</sup>

Because appellant has not set forth a claim for intentional fraud against Westover, appellant’s claim does not fit within the fraud exception to Code of Civil Procedure section 340.6.

***C. Appellant’s claim against Westover arose out of the performance of professional services***

Appellant next argues that Code of Civil Procedure section 340.6 does not apply because Auw was not engaged in professional attorney services at the time of the acts in question. Appellant cites *Lee v. Hanley* (2015) 61

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<sup>11</sup> Given the similarity of the names of Theodore’s two wives, it seems more likely that Auw made an honest mistake and simply confused the names of Anna G. and Anna Jean.

Cal.4th 1225 (*Lee*) for the proposition that “Section 340.6(a) . . . does not bar a claim arising from an attorney’s performance of services that are not ‘professional services,’ meaning ‘services performed by an attorney which can be judged against the skill, prudence and diligence commonly possessed by other attorneys.’ [Citation.]” (*Lee, supra*, at p. 1237.) In *Lee*, an individual’s claim for conversion against her former attorney was not barred by Code of Civil Procedure section 340.6 because “conversion does not necessarily depend on proof that Hanley violated a professional obligation.” (*Lee*, at p. 1240.)

Appellant argues that Auw was not acting in his capacity as a lawyer at the time of the alleged acts, but instead was acting in his capacity as a licensed notary public. Appellant argues that if, while acting as a notary public, the notary public alters the deed to the benefit of one of two clients who have conflicting interests, the act should not be subject to Code of Civil Procedure section 340.6.

However, Code of Civil Procedure section 340.6 is not limited to an attorney’s professional negligence in performing the tasks involved with traditional legal work. The *Lee* court explained that Code of Civil Procedure section 340.6 intentionally used broader terms, allowing the statute to apply to any “‘wrongful act or omission, other than for actual fraud, arising in the performance of professional services.’” (*Lee, supra*, 61 Cal.4th at p. 1234.) “Thus, in enacting the final version of the bill, the Legislature intended to establish a limitations period that would apply broadly to any claim concerning an attorney’s violation of his or her professional obligations in the course of providing professional services regardless of how those claims were styled in the plaintiff’s complaint.” (*Id.* at p. 1235.) While *Lee*’s action for conversion did not fall within the ambit of the statute, acts related to an

attorney's professional services, such as "fiduciary obligations, the obligation to perform competently, the obligation to perform the services contemplated in a legal services contract into which an attorney has entered, and the obligations embodied in the State Bar Rules of Professional Conduct," do fall within the ambit of the statute. (*Id.* at p. 1237.)

The services provided by Auw to Theodore and Anna Jean were professional services. "[T]he attorney-client relationship often requires attorneys to provide nonlegal professional services such as accounting, bookkeeping, and holding property in trust. [Citation.]" (*Lee, supra*, 61 Cal.4th at p. 1237.) "In light of the Legislature's intent that [Code of Civil Procedure] section 340.6(a) cover more than claims for legal malpractice, the term 'professional services' is best understood to include nonlegal services governed by an attorney's professional obligations." (*Ibid.*) In this case, the notary services that Auw provided during the course of his representation of Theodore and Anna Jean fall within the ambit of Code of Civil Procedure section 340.6, subdivision (a). Therefore, appellant's claim is barred by the one-year state of limitations set forth within that statute.

## DISPOSITION

The judgments are affirmed. Respondents are awarded their costs of appeal.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS.

\_\_\_\_\_, J.  
CHAVEZ

We concur:

\_\_\_\_\_, Acting P. J.  
ASHMANN-GERST

\_\_\_\_\_, J.\*  
GOODMAN

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\* Retired Judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.