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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

CHAIM B. RUBIN, Plaintiff and Appellant, v. JACOB RUBIN et al., Defendants and Respondents.	B275293 (Los Angeles County Super. Ct. No. BC535449)

APPEAL from a judgment of the Superior Court of Los Angeles County, Dalila Corral Lyons, Judge. Affirmed.

Revere & Wallace and Frank Revere for Plaintiff and Appellant.

Blank Rome, Gregory M. Bordo, Christopher J. Petersen, and Harrison M. Brown for Defendants and Respondents Jacob Rubin, Deena Zyskind, Gloria Schonberger, and Miriam Rubin.

In this intra-family litigation, appellant Chaim Rubin (Chaim) sued his three siblings for a variety of torts arising out of the distribution of the proceeds of their mother's life insurance policy.[1] After a one-day bench trial, the trial court found Chaim's claims were barred by the three-year statute of limitations because he was on inquiry notice of his claims more than three years before he filed suit. We conclude that the trial court's findings are supported by substantial evidence, and thus we affirm.

FACTUAL AND PROCEDURAL BACKGROUND

I.

Complaint

Chaim filed the present action against his three siblings, respondents Jacob Rubin (Jacob), Gloria Schonberger (Gloria), and Deena Zyskind (Deena), on February 6, 2014; he later added Jacob's wife, Miriam Rubin, as an additional defendant.[2] The operative second amended complaint, filed September 23, 2014, alleges that after the siblings' mother, Helen Rubin (Helen), died in July 2000, the siblings collected the proceeds of a $2 million life insurance policy, which was to be evenly divided among them. In July 2000, Chaim, Jacob, Gloria, and Deena placed the $2 million in a Chase Bank account on which all four had signing authority. In March 2001, Chaim's siblings opened another account with Chase Bank, entitled the "Chaim B. Rubin Escrow

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[1] Because some of the parties share a last name, we will refer to them by their first names.

[2] The action originally named an additional defendant, JP Morgan Chase Bank (Chase Bank). Chaim dismissed Chase Bank in January 2016, and thus it is not a party to this appeal.

Account," into which they deposited Chaim's one-fourth share of the insurance proceeds ($500,000). Although the account was opened under Chaim's social security number, only his siblings had signing authority on it, "giving them control of Plaintiff's funds deposited therein." Chaim "was never consulted concerning this account nor did he consent to [it] being opened." Thereafter, between 2001 and 2012, Chaim's siblings transferred his share of the insurance proceeds to several different accounts held in Chaim's name; and in 2013, approximately $426,600 was transferred to an account Jacob controlled.

Chaim alleged that through this conduct, his siblings "have wrongfully converted funds belonging to the Plaintiff and accordingly have been unlawfully enriched . . . . [¶] . . . [¶] . . . The Sibling Defendants . . . collected cash assets and insurance proceeds payable on the death of Helen Rubin of which Plaintiff owns and is entitled to a 25% share. [T]he Sibling Defendants have never accounted to Plaintiff for such cash assets and insurance proceeds despite his many demands, but rather, without his consent or knowledge placed a portion of his 25% share of the subject proceeds in one or more bank accounts . . . ." Chaim alleged that this conduct gave rise to causes of action for unjust enrichment, conversion, fraud, and breach of fiduciary duty.

II.
Pretrial Proceedings

A. Joint Stipulation

Prior to trial, the parties stipulated to the following facts: In 2001, Jacob, Gloria, and Deena each received $500,000 as their share of Helen's life insurance policy. On March 2, 2001, Jacob opened an escrow account at Chase Bank (account number 2965;

hereafter, the "first escrow account"), into which he deposited $500,000 as Chaim's share of the life insurance proceeds. In April 2007, Jacob transferred $569,100 from the first escrow account to a new account (account number 0519; hereafter, the "second escrow account"); and on August 15, 2012, Jacob transferred $594,364 from the second escrow account to another new account (account number 9859; hereafter, the "third escrow account"). Between October 2012 and February 2014, Jacob made nine transfers, totaling $428,100, from the third escrow account to accounts held in his own name. In May 2015, Jacob redeposited $428,100 in the third escrow account, bringing the balance of that account to $594,349. The current balance of the third escrow account is $594,349.

B. Plaintiff's Trial Brief

Chaim's trial brief asserted that in 2001, his siblings "took and at all times since have had possession and control of Plaintiff's share of life insurance proceeds ($500,000) payable on the death of their mother. . . . Despite Plaintiff's demand, Defendants refuse to restore Plaintiff's funds." Chaim claimed damages of $500,000, plus 10 percent interest from March 3, 2001 to the present, for a total of $1,250,000.

Notwithstanding his claim that his siblings had controlled his share of the life insurance proceeds since 2001, Chaim contended there was no conversion of funds until October 18, 2012, when $160,000 was withdrawn from the third escrow account. He further contended that he did not discover the conversion until November 2013, when he learned escrow accounts had been maintained at Chase Bank in his name. Chaim also contended his siblings fraudulently concealed the conversion of his funds.

C. Defendants' Trial Brief

Defendants' trial brief asserted that while the siblings' mother Helen was still alive, Chaim withdrew money from a family trust account by forging his siblings' signatures, and collected and kept rents from Helen's income properties. After Helen's death, with Chaim's consent, Jacob deposited Chaim's one-fourth share of Helen's $2 million life insurance policy in the first escrow account, which was associated with Chaim's social security number. In 2002, at Chaim's request, Jacob transferred Chaim's portion of the insurance proceeds to the second escrow account, which was not associated with Chaim's social security number, so that Chaim did not have to pay taxes on the interest. In 2012, Jacob opened the third escrow account, again in Chaim's name, when he transferred all of the Chase Bank accounts he controlled from a branch in New York to one in New Jersey.

In late 2012, Jacob learned of an opportunity to invest in a distressed mortgage deed. Jacob believed the investment would yield a much higher rate of return than what was provided by the escrow account. Accordingly, he initiated several transfers from the third escrow account, for a total of $420,000, to purchase the mortgage deed. The balance of the insurance proceeds remained in the third escrow account. After Chaim filed the present action, Jacob redeposited $428,100 into the third escrow account in the hope of resolving the litigation. Since that time, the balance of the account has been $594,349.

Defendants asserted that under the so-called discovery rule, the statute of limitations begins to run " 'when the plaintiff suspects or should suspect that [his] injury was caused by wrongdoing.' " In this case, by 2001, Chaim knew or had reason to suspect that his siblings were wrongfully withholding his

share of the insurance proceeds; and he made demands on his siblings for the funds beginning in mid-2009. Defendants thus asserted that each of Chaim's claims was barred by the three-year statute of limitations applicable to fraud claims.

D. Defendants' Motion to Bifurcate

On March 21, 2016, defendants made an oral motion to bifurcate trial, with the affirmative defense of statute of limitations to be tried first. All parties stipulated that the statute of limitations on all causes of action was three years. The trial court granted the motion to bifurcate, finding that it "would be a waste of judicial resources and the parties' time and money to proceed with the facts of the case if the statute of limitations bars some or all of the causes of action."

III.
Statute of Limitations Trial

A. Defendants' Case[3]

Defendants' only witness was Chaim, who was examined pursuant to Evidence Code section 776. His testimony, introduced primarily through statements he made during his depositions in the present and prior litigation, was as follows.

When Helen died in 2000, Chaim knew that she had a $2 million life insurance policy of which he and his siblings were the beneficiaries. In 2000, the siblings agreed that Jacob would make a claim on the policy and then disburse the funds. When Chaim did not receive his share, he inquired of his siblings in 2000, "[a]nd they said . . . '[you, Chaim,] are not going to get the

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[3] Defendants presented their case first because they had the burden of proof as to the affirmative defense of the statute of limitations.

money,' or, you know, whatever reasons, ridiculous claims that they could think of raising, they wanted to do that." In 2005, Chaim consulted a lawyer in connection with a separate dispute with his siblings, and "[a]t that time I told [attorney] Marks that maybe they're hiding . . . my half a million dollars of insurance proceeds. . . . There was a conversation between [the parties' attorneys], and [the siblings' attorney] assured [attorney Marks] that . . . insurance proceeds would be forthcoming." Thereafter, "we started asking[,] like making demands on where [are] the insurance proceeds. No response. No response."

Chaim also was questioned about a case he brought against his siblings in 2009 to dissolve a family partnership. During a 2010 deposition in that action, Chaim testified that in 2005, the partnership's tenant offered $1 million in exchange for a document referred to as an estoppel certificate. The certificate required the signatures of all four siblings; Chaim refused to sign it because "all the communications . . . going on between them [was] for one purpose and one purpose only, how do we deceive Chaim Rubin; how do we deceive him and rob him of what he's entitled to. That is the focus and the whole . . . intent of these siblings, okay. And whether it be done in a partnership or whether it be done in a trust, the whole intent is how do they deceive me. We're going to continue to deceive him. We're going to continue to swindle him. We're going to continue to rob him of what he's entitled to." Chaim further testified that his siblings were "taking money, distributing it among themselves and keeping [me] out of it and not giving me my share" of a family trust. And, he said: "[W]ho knows how many more times they got away with all kinds of garbage between [them] and the tenants and how much more money was exchanged and how

many more deals were made that I wasn't privy to [¶] . . . [¶] . . . I don't [want to] have to go through these bunch of bastards and crooks [and] give them the opportunity to deceive me and steal my money and, yes, rob me. Not allegedly rob, but rob me again and again and again."

Chaim said his siblings' intentionally deceitful conduct began when his parents died in 2000. He became suspicious that they were withholding money from him shortly thereafter:

"[Q]: When did you first become . . . suspicious that [you] were not getting all of the income you were entitled to[?]

"[A]: Once they started conducting themselves in such secrecy they wouldn't talk to me[,] I knew right away they would be robbing me.

"[Q]: When was that?

"[A]: Right away . . . 2001."

Chaim testified in 2010 that he "probably" believed his siblings had "swindled" him and were hiding "other bank accounts that they haven't revealed here." When asked whether he believed there was undistributed income being maintained in bank accounts, he answered: "I'm sure there are. I can't tell you exactly how much and I can't tell you exactly what account, but . . . [I] still suspect that there are other accounts and other monies that belong to me that haven't been distributed." In response to a question about distributions from a family partnership, he said: "I believe that there are funds that I'm entitled to that were not given to me hidden somewhere in different accounts. Money starts popping up in the bank account out of nowhere. We don't know where it came from. We don't know where it went. So, yes, I do believe I'm entitled to more money, and I believe they deceived me from it." He believed

anyone with common sense would have been suspicious of his siblings because they are "a bunch of crooks."

B. Chaim's Evidence

Chaim testified on his own behalf that his parents established several trusts and life insurance policies for the benefit of Chaim, the defendants, and their younger brother Chesky, who was physically and mentally disabled. There were "millions of dollars of life insurance, life insurance policies. How many policies or how much it was totally, I don't know." After his mother died, Chaim met with his siblings to discuss his mother's $2 million life insurance policy. It was agreed that Jacob would file a claim for the proceeds of the policy, which would be held until it could be determined that there were sufficient funds for Chesky's support, and then the remainder would be distributed equally among the four older siblings. In 2013, Chaim learned for the first time that his siblings had distributed the life insurance proceeds among themselves, had opened an escrow account in his name, and had withdrawn money from it. He never directed his siblings to place his portion of the insurance proceeds in an account, never had concerns about creditors reaching his portion, and never had creditors with claims approaching $500,000. He never told Jacob that he relinquished his interest in the life insurance proceeds. Chaim never thought his siblings had converted, or would convert, his portion of the life insurance proceeds for their own use.

Called pursuant to Evidence Code section 776, Jacob testified that the account holding Chaim's portion of the life insurance was designated an "escrow account" because Chaim owed his siblings a lot of money: "He owed us an accounting for him taking our monies. My father's life insurance proceeds he

kept. He wouldn't give us an accounting on the rent. He wouldn't give us an accounting on anything. . . . We asked him for an accounting. We begged him. We sat down with him, and he said in very, very unfavorable language to us that he doesn't have to give us anything. So we put the [money] in escrow until he would. And if he wouldn't, he wouldn't get it. And I told him that and he agreed to that."

C. Court's Ruling

At the conclusion of the statute of limitations trial, the trial court ruled that all of Chaim's claims were time-barred. It explained:

"In this case, after considering the evidence that has been presented to the court here today, I am ruling in favor of the defense. I believe that the defendants have met their burden and have proven that the statute of limitations bars all of the claims.

"It was extremely clear to the court that plaintiff in this case had either or both actual knowledge or a suspicion that there was wrongdoing by the defendants in this case. The . . . statute of limitations was triggered as early as . . . 2001, [when plaintiff] asserted they were robbing him, or even as late as 2009. The case in this matter was filed on February 6, 2014. Therefore, I believe it is time-barred.

"I also want to make sure to make a factual finding that I do not find the plaintiff credible. He was impeached repeatedly with the deposition in this case and the other case that was presented. Based on those findings, the statute of limitations bars all of the claims in this case."

Judgment for defendants was entered on April 8, 2016. Chaim timely appealed.

DISCUSSION

I.

Standard of Review

In reviewing a judgment following a bench trial, we review questions of law de novo, and apply a substantial evidence standard of review to the trial court's findings of fact. Under the deferential substantial evidence standard of review, "findings of fact are liberally construed to support the judgment and we consider the evidence in the light most favorable to the prevailing party, drawing all reasonable inferences in support of the findings. [Citation.]" (*Thompson v. Asimos* (2016) 6 Cal.App.5th 970, 981 (*Thompson*).) "A single witness's testimony may constitute substantial evidence to support a finding. [Citation.] It is not our role as a reviewing court to reweigh the evidence or to assess witness credibility." (*Ibid.*) Further, where, as here, neither side requested a statement of decision, we must presume the court made all necessary findings supported by substantial evidence. (*Carbajal v. CWPSC, Inc.* (2016) 245 Cal.App.4th 227, 244, fn. 3.)

II.

The Trial Court Did Not Err in Concluding that Chaim's Causes of Action Were Barred by the Statute of Limitations

A. A Three-Year Statute of Limitations Applies to Each of Chaim's Claims

Chaim asserted four causes of action arising out of his siblings' alleged wrongful retention of his share of Helen's life insurance proceeds: (1) unjust enrichment, (2) conversion, (3) fraud, and (4) breach of fiduciary duty. As stipulated by the parties, the limitations period for each of these causes of action is

three years. (See *Naftzger v. American Numismatic Society* (1996) 42 Cal.App.4th 421, 428–429 (*Naftzger*) [conversion claim subject to three year statute of limitations under Code of Civil Procedure section 338, subd. (c)(1)]; *Fuller v. First Franklin Financial Corporation* (2013) 216 Cal.App.4th 955, 963 [three-year statute of limitations period applies to cause of action for breach of fiduciary duty where the gravamen of the claim is deceit]; *Broberg v. The Guardian Life Ins. Co. of America* (2009) 171 Cal.App.4th 912, 920 [limitations period for fraud claim is three years].)[4]

B. Substantial Evidence Supported the Trial Court's Implied Accrual Findings

As a general matter, the statute of limitations begins to run "when the cause of action *accrues*. (Code Civ. Proc., § 312; *Fox v. Ethicon Endo–Surgery, Inc.* (2005) 35 Cal.4th 797, 806 (*Fox*); *Norgart v. Upjohn Co.* (1999) 21 Cal.4th 383, 397 (*Norgart*).) 'Generally speaking, a cause of action accrues at "the time when the cause of action is complete with all of its elements." ' (*Fox*, at p. 806, quoting *Norgart*, at p. 397.)" (*E-Fab, Inc. v. Accountants, Inc. Services* (2007) 153 Cal.App.4th 1308, 1317–1318 (*E-Fab*), italics added.)

The three year statute of limitations applicable to "taking" or "detaining" personal property " 'is triggered by the act of wrongfully taking property.' " (*AmerUS Life Ins. Co. v. Bank of*

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[4] " 'Unjust enrichment is not a cause of action, . . . or even a remedy, but rather " ' "a general principle, underlying various legal doctrines and remedies." ' . . . . [Citation.] It is synonymous with restitution. [Citation.]" [Citation.]' (*McBride v. Boughton* (2004) 123 Cal.App.4th 379, 387.)" (*Bank of New York Mellon v. Citibank, N.A.* (2017) 8 Cal.App.5th 935, 955.)

America, N.A. (2006) 143 Cal.App.4th 631, 639.) If the property has been entrusted to another, the owner's cause of action for conversion accrues at the time that the possessor "acts in a manner inconsistent with the owner's interests." (*Naftzger*, *supra*, 42 Cal.App.4th at pp. 428–429, citing *Niiya v. Goto* (1960) 181 Cal.App.2d 682, 688.)

When a cause of action accrues is a question of fact. (*Institoris v. City of Los Angeles* (1989) 210 Cal.App.3d 10, 17.) Therefore, the trial court's finding on the accrual of a cause of action is upheld on appeal if supported by substantial evidence. (*Ibid.*)

Chaim contends his causes of action did not accrue until August 15, 2012, when Jacob transferred Chaim's share of the life insurance proceeds to the third escrow account; prior to that time, he says, his siblings had not exercised "actionable dominion" over his share of the life insurance proceeds because he had "allowed his funds to be deposited by" them.[5] But while this is perhaps *a* plausible inference to be drawn from the evidence, there was substantial evidence supporting the trial court's conclusion that any conversion of Chaim's share of the life

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[5] We note that this assertion is inconsistent both with Chaim's operative pleading and his testimony at trial, which was that he did not know about, and never consented to, the opening of *any* of the escrow accounts, including the first such account, which was opened in March 2001. For example, Chaim's second amended complaint alleged that his siblings "without [Chaim's] consent or knowledge placed a portion of his 25% share of the subject proceeds in one or more bank accounts with Defendant, Chase Bank." He testified similarly at trial that he never "g[a]ve any authority for the maintenance of" an escrow account in his name at Chase Bank.

insurance proceeds occurred many years earlier. It is undisputed that Chaim was aware that there were insurance policies on his mother's life and that he was entitled to a portion of the funds. Chaim's purported share of the proceeds of Helen's life insurance policy was placed in the first of three escrow accounts in 2001, approximately 13 years before Chaim filed the present action. Chaim was not a signatory to the first escrow account, and he testified that the account was opened without his knowledge or consent. As a result, both because he did not have signing authority on the account and was unaware the funds had been transferred into such an account, it appears to be beyond dispute that Chaim could not access the funds the account contained. On this record, therefore, the trial court reasonably could have concluded that Chaim's causes of action accrued in 2001—*not*, as he suggests, in 2012.

C. Substantial Evidence Supports the Trial Court's Finding That Chaim Discovered His Siblings' Alleged Tortious Conduct No Later Than 2009–2010

"An exception to the general rule for defining the accrual of a cause of action—indeed, the 'most important' one—is the discovery rule. [Citation.] . . . It postpones accrual of a cause of action until the plaintiff discovers, or has reason to discover, the cause of action. (*Ibid.*; see *Neel v. Magana, Olney, Levy, Cathcart & Gelfand* [(1971)] 6 Cal.3d [176,] 179 [postponing accrual 'until the [plaintiff] discovers, or should discover, his cause of action'].)

". . . [T]he plaintiff discovers the cause of action when he at least suspects a factual basis, as opposed to a legal theory, for its elements, even if he lacks knowledge thereof—when, simply put, he at least 'suspects . . . that someone has done something wrong' to him (*Jolly v. Eli Lilly & Co.* [(1988)] 44 Cal.3d [1103,] 1110),

'wrong' being used, not in any technical sense, but rather in accordance with its 'lay understanding' (*id.* at p. 1110, fn. 7). [Fn. omitted.] He has reason to discover the cause of action when he has reason at least to suspect a factual basis for its elements. (*Jolly v. Eli Lilly & Co.*, *supra*, 44 Cal.3d at p. 1110.) He has reason to suspect when he has ' " ' "notice or information of circumstances to put a reasonable person *on inquiry*" ' " ' " (*id.* at pp. 1110–1111, italics in original); he need not know the 'specific "facts" necessary to establish' the cause of action; rather, he may seek to learn such facts through the 'process contemplated by pretrial discovery'; but, within the applicable limitations period, he must indeed seek to learn the facts necessary to bring the cause of action in the first place—he 'cannot wait for' them 'to find' him and 'sit on' his 'rights'; he 'must go find' them himself if he can and 'file suit' if he does (*id.* at p. 1111)." (*Norgart*, *supra*, 21 Cal.4th at pp. 397–398.) " 'Generally speaking, the factual determination of when a reasonable person would have been aware of the substantial possibility of the elements of a claim is a [factual] question.' " (*Oregon State University v. Superior Court* (2017) 16 Cal.App.5th 1180, 1188 (*Oregon State University*).)

Chaim contends he did not discover his siblings' alleged wrongdoing—and therefore the statute of limitations did not begin to run—until he learned of the existence of the second escrow account in late 2013. The trial court concluded otherwise, finding that Chaim suspected wrongdoing by his siblings no later than 2009. That conclusion was supported by substantial evidence, including Chaim's testimony to the following:

● When Chaim asked his siblings in 2000 about their mother's life insurance policy, they told him " 'you [Chaim] are not going to get the money.' "

● In 2005, Chaim consulted a lawyer in connection with a separate dispute with his siblings, and "[a]t that time I told [attorney] Marks that maybe they're hiding . . . my half a million dollars of insurance proceeds."

● During a 2010 deposition, Chaim testified that his siblings were "bastards and crooks" who were "taking money, distributing it among themselves and keeping [me] out of it and not giving me my share." During the same deposition, Chaim testified that his siblings "probably" had "swindled" him and were hiding "other bank accounts that they haven't revealed here." He believed that anyone with common sense would have been suspicious of his siblings because they are "a bunch of crooks." Chaim said he became suspicious as early as 2000 or 2001 that his siblings were withholding money from him.

Thus, by 2009 or 2010, Chaim knew that he had not received his share of the proceeds of his mother's life insurance policies, and he suspected that his siblings were withholding money from him, possibly through hidden bank accounts. Based on this evidence, the trial court reasonably could have concluded that Chaim was on inquiry notice of his claims because a " 'reasonable person would have been aware of the substantial possibility of the elements of a claim.' " (*Oregon State University*, *supra*, 16 Cal.App.5th at p. 1188.)

Chaim concedes that our Supreme Court has held that inquiry notice will trigger the statute of limitations, but he urges that the "better view is that unless the plaintiff is already under a duty to inquire, the mere fact that means of knowledge are

open to him and he does not avail himself of them, does not debar him from relief when thereafter he shall make actual discovery." Whatever the merits of the rule Chaim proposes, the California Supreme Court has held otherwise (*Norgart*, *supra*, 21 Cal.4th 383), and we are required to follow that precedent (*Auto Equity Sales, Inc. v. Superior Court* (1962) 57 Cal.2d 450, 455).

D. Chaim Has Forfeited His Remaining Appellate Contentions by Failing to Raise Them Below or to Adequately Brief Them on Appeal

1. Fraudulent Concealment

Chaim contends the statute of limitations was tolled because his siblings fraudulently concealed their wrongful conduct. The fraudulent concealment doctrine will toll the statute of limitations if defendants, "having by fraud or deceit concealed material facts and by misrepresentations[,] hindered the plaintiff from bringing an action within the statutory period." (*Prakashpalan v. Engstrom, Lipscomb and Lack* (2014) 223 Cal.App.4th 1105, 1123.) The burden of pleading and proving fraudulent concealment falls on the plaintiff. (*Investors Equity Life Holding Co. v. Schmidt* (2011) 195 Cal.App.4th 1519, 1533.)

We generally apply the substantial evidence test when the sufficiency of the evidence is at issue on appeal. But where the party who had the burden of proof at trial contends the trial court erred in making findings against it, "the question for a reviewing court becomes whether the evidence compels a finding in favor of the appellant as a matter of law. [Citation.] Specifically, the question becomes whether the appellant's evidence was (1) 'uncontradicted and unimpeached' and (2) 'of such a character and weight as to leave no room for a judicial determination that

it was insufficient to support a finding.' [Citation.]" (*In re I.W.* (2009) 180 Cal.App.4th 1517, 1527–1528.)

In the present case, Chaim does not demonstrate through citations to authority and to the appellate record that the "uncontradicted and unimpeached" evidence at trial required a finding that his siblings fraudulently concealed their wrongful conduct. His failure to do so forfeits the claim on appeal. (*Badie v. Bank of America* (1998) 67 Cal.App.4th 779, 784–785 (*Badie*) ["[w]hen 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"]; accord, *In re Marriage of Falcone & Fyke* (2008) 164 Cal.App.4th 814, 830 ["[t]he absence of cogent legal argument or citation to authority allows this court to treat the contentions as waived"]; see *Reyes v. Kosha* (1998) 65 Cal.App.4th 451, 466, fn. 6 [appellate court's review limited to issues that have been adequately raised and supported in appellant's brief]; see also Cal. Rules of Court, rule 8.204(a)(1)(B) [appellate brief must "[s]tate each point under a separate heading or subheading summarizing the point, and support each point by argument and, if possible, by citation of authority"].)

2. Demand for Return of Property

Chaim next contends the statute of limitations on his conversion claim did not begin to run until he demanded and was refused possession of the life insurance proceeds. He contends this did not occur until October 18, 2012, and thus the trial court erred in ruling that his causes of action were time-barred.

The claim is without merit. If an original taking is lawful, the statute of limitations for conversion does not begin to run until the return of the property has been demanded and refused. If the original taking is *unlawful*, however, the statute of

limitations begins to run from the time of the unlawful taking. (*Coy v. County of Los Angeles* (1991) 235 Cal.App.3d 1077, 1087–1088; *H. Russell Taylor's Fire Prevention Service, Inc. v. Coca Cola Bottling Corp.* (1979) 99 Cal.App.3d 711, 725.) Therefore, to establish that the trial court erred in finding his claim time-barred, Chaim must demonstrate that the evidence compelled a finding that, among other things, the original taking was lawful. He has not made such a showing, and thus we deem his appellate claim waived. (See *Badie*, *supra*, 67 Cal.App.4th at pp. 784–785.)

3. Confidential Relationship, Continuous Accrual, Equitable Estoppel, and Voluntary Constructive Trust

Chaim cites several additional legal theories that he contends delay or toll the running of the statute of limitations. In brief, he contends his siblings were fiduciaries, and thus he was under a relaxed duty to discover their wrongful conduct; his siblings' conversion of the life insurance proceeds was a continuing wrong, thus triggering the "continuous accrual" doctrine; his siblings are equitably estopped from benefiting from their wrongful conduct; and his siblings' conduct gave rise to a voluntary constructive trust not subject to the statute of limitations.

None of these issues was raised in the trial court, and thus they are forfeited on appeal. As one court has explained: "It is a well-established tenet of appellate jurisprudence that a litigant may not pursue one line of legal argument in the trial court, and having failed in that approach, pursue a different, and indeed, contradictory line of argument on appeal, thus depriving the trial court of the opportunity to consider what the appellant contends on appeal is the real dispute. (See Eisenberg et al., Cal. Practice

Guide: Civil Appeals and Writs (The Rutter Group 2012) ¶ 8:229, p. 8-155 (rev. # 1, 2011) [theories not raised in trial court generally may not be asserted for the first time on appeal].) Such new arguments may be deemed waived, based on common notions of fairness. 'Appellate courts are loath to reverse a judgment on grounds that the opposing party did not have an opportunity to argue and the trial court did not have an opportunity to consider. . . . Bait and switch on appeal not only subjects the parties to avoidable expense, but also wreaks havoc on a judicial system too burdened to retry cases on theories that could have been raised earlier.' [Citation.]" (*Brandwein v. Butler* (2013) 218 Cal.App.4th 1485, 1519.)

DISPOSITION

The judgment is affirmed. Respondents are awarded their appellate costs.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

EDMON, P. J.

We concur:

EGERTON, J. KALRA, J.*

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