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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

TANIA BATACHE,

Plaintiff and Appellant,

v.

LINDSEY BROOKS et al.,

Defendants and Respondents.

B220944

(Los Angeles County  
Super. Ct. No. SC097725)

APPEAL from a judgment of the Superior Court of Los Angeles County.  
Joseph S. Biderman, Judge. Affirmed.

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Julie A. Ringquist for Plaintiff and Appellant.

Sedgwick, Douglas J. Collodel; Carlson Law Group, Mark C. Carlson and  
Anne M. Watson for Defendants and Respondents.  
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Tania Batache appeals from the judgment entered after the trial court granted summary judgment in favor of Boardwalk Realty, Steve Aguilar & Associates, Inc. and Lindsey Brooks (collectively, the brokers) in this action against them based on their representation of Batache in a real estate transaction. Batache contends the judgment should be reversed because the trial court erroneously determined that her causes of action for fraud and breach of fiduciary duty are time barred and, in any case, she failed to raise a triable issue of material fact in response to the brokers' showing that she cannot establish the elements of either cause of action. Because we conclude that Batache's lawsuit is time barred, we affirm the judgment.

### **FACTUAL AND PROCEDURAL BACKGROUND**

#### **1. *The Operative First Amended Complaint***

After filing an original complaint on April 7, 2008, Batache filed the operative first amended complaint on June 12, 2008, alleging causes of action against the brokers for breach of fiduciary duty and fraud based on their representation of her in connection with her purchase of real property in Los Angeles on May 14, 2004.<sup>1</sup> In the breach of fiduciary duty cause of action, Batache alleged that the brokers had "breached their fiduciary duties to [her] in various material ways[,] which include, but are not limited to, the failure to advise [her] of various material facts[,] which substantially affect the value of the property." Similarly, in her fraud cause of action, Batache alleged that the brokers had "failed to disclose various material aspects[,] which related to the value of the property [and] which were known to [them]." According to Batache, she "did not discover said concealed breaches until approximately July of 2006."

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<sup>1</sup> Batache named a number of other defendants, including the seller of the property, in her first amended complaint. None of those other defendants was a party to the summary judgment proceedings, and thus none is involved in this appeal.

2. *The Motion for Summary Judgment and Opposition*

After discovery, the brokers moved for summary judgment, arguing that Batache's fraud and breach of fiduciary duty causes of action are time barred and, even if the applicable statute of limitations were not an impediment to the lawsuit, she cannot establish the elements of either cause of action as a matter of law.

With respect to the statute of limitations, the brokers argued that the fraud cause of action and the breach of fiduciary cause of action, the gravamen of which is based on fraud, are barred by the three-year limitations period for fraud in Code of Civil Procedure section 338, subdivision (d). According to the brokers, although Batache maintained in discovery that the brokers had failed to inform her that the property was a duplex, not a triplex, and had falsely represented to her before she purchased the property that it had three income-generating units (units A, B and C), she executed numerous documents at the close of escrow indicating that the property contained only two legal units, demonstrating that, at a minimum, she was on inquiry notice as of the close of escrow regarding the purported misrepresentations as to the nature of the property. As a result, the brokers argued, the statute of limitations commenced on May 14, 2004, at the close of escrow, and Batache's lawsuit, filed almost four years later on April 7, 2008, is untimely.

Batache opposed summary judgment, contending that her fraud cause of action is timely because she did not discover the brokers' representations regarding the nature of the property were false until July or August 2006 when the city inspected the property and issued a violation notice because the property was a duplex and not zoned or in conformity with building codes for rental use of unit C. Batache maintained that the documents signed at close of escrow did not put her on notice that unit C was not for rental use. According to Batache, because she filed her lawsuit within three years of July or August 2006, her fraud cause of action is timely. In addition, she claimed, her breach of fiduciary duty cause of action is timely, being subject to the four-year, catch-all statute of limitations in Code of Civil Procedure section 343.

### 3. *The Trial Court's Ruling and Judgment*

On November 3, 2009, the trial court entered an order granting the motion for summary judgment. The court noted, “The parties appear to agree that [Batache’s] claims are based on [the brokers’] failure to disclose to her that unit C of the subject property was illegal and unpermitted, their representation that the property was a 3-unit property and their representation that unit C was an income generating unit on the property.” It concluded that the fraud and breach of fiduciary causes of action both were subject to the three-year statute of limitations for fraud under Code of Civil Procedure section 338, subdivision (d), that the statute began to run upon close of escrow and that Batache had failed to file her lawsuit within three years thereafter. The court rejected Batache’s argument that the statute of limitations did not commence until July or August 2006 when the property was inspected and Batache claimed she first learned that the property contained only two legal units. According to the court, the brokers “present a plethora of evidence indicating that as early as May 2004, [Batache] knew or should have known that there were only two legal units on the property and that one of the three marketed units [on the property] was illegal. [The brokers] present document after document relating to the purchase of the property indicating not only that there were only two units on the property, but that there was in fact a room, unit, etc. that was illegal and unpermitted on the property. [Citation.] Specifically, the Seller indicated ‘Yes’ on the Item C(4) of the Transfer Disclos[ure] Statement signed on 4/7/04. Item C(4) asked whether Seller was ‘aware of any of the following . . . Room additions, structural modifications, or other alterations or repairs made without necessary permits . . . [.]’ [Citation.] In addition, the Purchase Agreement dated 4/2/04 indicates that ‘Seller warrants that the Property is legally approved as 2 units.’ [Citation.] Finally, all of the relevant closing documents refer only to Units A and B on the property. There is no mention of Unit C. All of these facts would have led a reasonable person to inquire as to whether there were two or three legal units on the property. [¶] . . . [¶] . . . Given that this was a \$1.5 million real estate transaction, a reasonable person would have read through the documents and undertaken further inquiry.” “Based on the undisputed facts, the

Court finds that there is only one legitimate inference to be drawn with regard to the issue of delayed discovery. As early as April or May 2004, a reasonable person would have known or would have discovered that the property contained only 2 legal units and not three, as [Batache] maintains [the brokers] represented to her.” Batache thus had to file her lawsuit by May 2007, but did not until April 2008.<sup>2</sup>

Alternatively, the trial court determined that Batache cannot establish the elements of either her fraud or breach of fiduciary duty causes of action because “[e]ven if there were a duty [of the brokers] to investigate the permitting of the property, . . . [they] establish that they did not breach that duty. Despite the representations of [the brokers], ultimately all relevant documents clearly and expressly indicated that there were only two legal units. As such, whether [the brokers] affirmatively investigated the issue or obtained the information of Seller, [the brokers] disclosed the true nature of the property to [Batache] in all relevant documents.” “[G]iven the overwhelming number of documents signed by [Batache] and presented to [Batache] indicating that the property was only a duplex, the problematic element for her is justifiable reliance.” “Regardless of [the brokers’] implied representations that the units were legally permitted, [Batache’s] reliance on those representations was unjustified. Had [Batache] thoroughly read the relevant documents, it would have been apparent to her that there were only two legal units. The Court finds that no reasonable mind could come to a different conclusion based on the undisputed facts presented.”

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<sup>2</sup> Although the brokers also relied on the two-year statute of limitations in Civil Code section 2079.4, and the trial court found Batache’s claims time barred to the extent she based them on violations of the duties in Civil Code section 2079, Civil Code section 2079, and the attendant two-year limitations period in Civil Code section 2079.4, does not apply to this case in which Batache alleges failures of the brokers based on their representation of her as the buyer. (*William L. Lyon & Associates, Inc. v. Superior Court* (2012) 204 Cal.App.4th 1294, 1305 [“statutory duty of care owed by a seller’s broker to a buyer under [Civil Code] section 2079 is subject to the two-year statute of limitations set forth in [Civil Code] section 2079.4[,]” but that limitations period does not apply to causes of action premised on duties owed to buyers by brokers for the buyers, even if the brokers are in a dual representation capacity].)

On December 4, 2009, Batache filed a notice of appeal, purporting to appeal from a judgment entered after an order granting summary judgment. On January 6, 2010, the court entered judgment in favor of the brokers. We construe Batache's notice of appeal as though it were filed immediately after entry of judgment. (Cal. Rules of Court, rule 8.104(d)(2); see Code Civ. Proc., § 437c, subd. (m)(1); *Kasparian v. AvalonBay Communities* (2007) 156 Cal.App.4th 11, 14, fn. 1 ["An appeal lies from the judgment, not from an order granting a summary judgment motion"].)

## **DISCUSSION**

### **1. *Standard of Review***

A trial court must grant a summary judgment motion when no triable issue exists as to any material fact and the moving party is entitled to judgment as a matter of law. (Code Civ. Proc., § 437c, subd. (c).) We independently review the trial court's decision, "considering all of the evidence the parties offered in connection with the motion (except that which the court properly excluded) and the uncontradicted inferences the evidence reasonably supports. [Citation.] In the trial court, once a moving defendant has 'shown that one or more elements of the cause of action, even if not separately pleaded, cannot be established,' the burden shifts to the plaintiff to show the existence of a triable issue; to meet that burden, the plaintiff 'may not rely upon the mere allegations or denials of its pleadings . . . but, instead, shall set forth the specific facts showing that a triable issue of material fact exists as to that cause of action . . . .' [Citations.]" (*Merrill v. Navegar, Inc.* (2001) 26 Cal.4th 465, 476-477.)

### **2. *Statute of Limitations for Fraud Cause of Action***

A cause of action for fraud is governed by a three-year statute of limitations. (Code Civ. Proc., § 338, subd. (d).) The action accrues when the aggrieved party discovers the facts constituting the fraud. (*Ibid.*) "The courts interpret discovery in [the] context [of fraud] to mean not when the plaintiff became aware of the specific wrong alleged, but when the plaintiff suspected or should have suspected that an injury was caused by wrongdoing. The statute of limitations begins to run when the plaintiff has information [that] would put a reasonable person on inquiry. A plaintiff need not be

aware of the specific facts necessary to establish a claim since they can be developed in pretrial discovery. Wrong and wrongdoing in this context are understood in their lay and not legal senses. [Citation.] [¶] . . . “Under this rule constructive and presumed notice or knowledge are equivalent to knowledge. So, when the plaintiff has notice or information of circumstances to put a reasonable person on inquiry, or has the opportunity to obtain knowledge from sources open to [her] investigation (such as public records or corporation books), the statute commences to run.” [Citation.]’ [¶] Generally, statute of limitations issues raise questions of fact that must be tried; however, when the uncontradicted facts are susceptible of only one legitimate inference, summary judgment is proper. [Citation.]” (*Kline v. Turner* (2001) 87 Cal.App.4th 1369, 1374.)

Escrow on Batache’s property closed on May 14, 2004. As a result, Batache’s fraud cause of action, filed more than three years later, is time barred unless she can justify her claim of delay in her discovery of the purported fraud. (See *William L. Lyon & Associates, Inc. v. Superior Court*, *supra*, 204 Cal.App.4th at p. 1312 [close of escrow is starting point for fraud statute of limitations absent delayed discovery].) Batache asserts that, during the purchase of the property, before the close of escrow, the brokers misrepresented to her that the property contained three legal units and that the third unit (unit C) could be rented for \$1,600 per month. According to Batache, she relied on these representations and did not discover that they were false until July or August 2006 when the property was inspected and she then learned the property consisted of only two legal units. Batache maintains that her fraud cause of action did not accrue until that time and she timely filed her lawsuit within three years. We disagree.

According to the evidence presented on summary judgment, numerous papers executed by Batache as part of her real estate purchase, including the escrow closing instructions, the deed of trust and the loan documents, defined the property as “41 Club House Avenue #A&B,” thereby indicating the property contained only two legal units. That information, even in light of the purported misrepresentations by the brokers and Batache’s asserted unfamiliarity with buying real estate and focus at the time of closing on the interest rate of her loan, at a minimum put Batache on inquiry notice

that the property might consist of only two legal units. Once on inquiry notice, an investigation by Batache would have revealed the purported misrepresentations regarding the property. As a result, delayed discovery does not apply, and Batache's fraud cause of action is barred by the statute of limitations. (*Kline v. Turner, supra*, 87 Cal.App.4th at p. 1374 [summary judgment properly granted on statute of limitations grounds for fraud cause of action when plaintiff was on inquiry notice and "[d]iscovery and/or investigation concerning the events would have revealed the fraud . . .".])

Despite the many sale documents that refer to two units "(A&B)," Batache contends that the line item regarding the number of legal units on the property was blank on her copy of the Purchase Agreement, that she was not on inquiry notice because a physical inspection of the dwelling showed three marked units (units A, B and C), that each was occupied and generating rental revenue and that the property inspection report evaluated three units. Even if true, the question is not whether facts exist to support Batache's belief that the dwelling consisted of three legal units, but whether under the circumstances she was on inquiry notice that the dwelling did not contain three legal units. The numerous sale documents put her on such notice. As to the property inspection report, nothing in that report discusses, much less warrants, that all three of the units inspected were legal and thus rentable. The report states that the purpose of the evaluation was a "structural and mechanical inspection" of the property. It, therefore, does not pertain to the number of rentable units on the property.

Batache also contends that, because a fiduciary relationship existed between her and the brokers, she should not be held to have been on inquiry notice as of the close of escrow and any duty she had to investigate was delayed until the city's violation notice, thus commencing the statute of limitations in July or August 2006. "A person in a fiduciary relationship may relax, but not fall asleep. '[I]f [Batache] became aware of facts [that] would make a reasonably prudent person suspicious, she had a duty to investigate further, and she was charged with knowledge of matters [that] would have been revealed by such investigation.' [Citation.]" (*Alfaro v. Community Housing Improvement System & Planning Assn., Inc.* (2009) 171 Cal.App.4th 1356, 1394; see also



*Bedolla v. Logan & Frazer* (1975) 52 Cal.App.3d 118, 131 [“only distinction between the rules of discovery in the ordinary fraud case and those in the confidential relationship category is that in the latter situation the duty to investigate may arise later by reason of the fact that the plaintiff is entitled to rely upon the assumption that his fiduciary is acting in his behalf. But, once the plaintiff becomes aware of facts [that] would make a reasonably prudent person suspicious, the duty to investigate arises and the plaintiff may then be charged with the knowledge of facts [that] would have been discovered by such an investigation”].) The documents involved in Batache’s purchase of the property would have made a reasonably prudent person suspicious, given they repeatedly referred to the property as consisting of units A and B. Thus, even relying on her fiduciary relationship with the brokers, Batache cannot demonstrate that her fraud cause of action is timely.

### 3. *Statute of Limitations for Breach of Fiduciary Duty Cause of Action*

Batache maintains that, even if her fraud cause of action is barred by the three-year statute of limitations, her breach of fiduciary cause of action is timely because the four-year, catch-all statute of limitations in Code of Civil Procedure section 343 applies to that cause of action and she filed her lawsuit within four years of the close of escrow. Again, we disagree.

“The statute of limitations that applies to an action is governed by the gravamen of the complaint, not the cause of action pled.” (*City of Vista v. Robert Thomas Securities, Inc.* (2000) 84 Cal.App.4th 882, 889.) “[W]here the gravamen of the complaint is that defendant’s acts constituted actual or constructive fraud, the applicable statute of limitations is the [Code of Civil Procedure section 338, subdivision (d)[,] three-year] limitations period,’ governing fraud even though the cause of action is designated by the plaintiff as a claim for breach of fiduciary duty. [Citation.]” (*Thomson v. Canyon* (2011) 198 Cal.App.4th 594, 607.)

The gravamen of Batache’s breach of fiduciary duty cause of action is that the brokers committed fraud or constructive fraud. According to Batache, the brokers falsely represented to her that the property contained three legal units and that she could rent the

third unit for \$1,600 per month, concealing the nature of the property as a duplex not a triplex. The breach of fiduciary duty cause of action thus is premised on a theory of fraud or constructive fraud, not on the brokers' breach of a specified duty. (*City of Vista v. Robert Thomas Securities, Inc.*, *supra*, 84 Cal.App.4th at p. 889 [three-year statute of limitations for fraud governed breach of fiduciary cause of action when gravamen of complaint was that broker-dealer's acts in connection with purchase of securities constituted fraud or constructive fraud]; *Hydro-Mill Co., Inc. v. Hayward, Tilton & Rolapp Ins. Associates, Inc.* (2004) 115 Cal.App.4th 1145, 1159-1160 [allegations relating to professional negligence based on insurance broker's failure to obtain requested insurance coverage and to disclose that failure subsumed allegations in breach of fiduciary duty cause of action and thus two-year limitations period for professional negligence applied]; cf. *Thomson v. Canyon*, *supra*, 198 Cal.App.4th at p. 607 [fraud statute of limitations did not apply to breach of fiduciary duty cause of action when gravamen was not misrepresentation or concealment of facts, including false reassurance, but rather agent/broker's alleged failure to draft documents necessary to the real estate transaction, which relates to the duty to obey the client's instructions and provide diligent and faithful service].) The breach of fiduciary duty cause of action, therefore, is time barred under the three-year statute of limitations for fraud.<sup>3</sup>

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<sup>3</sup> Batache suggests in her appeal that the brokers breached their fiduciary duty to her by failing to be present at the close of escrow and to inspect the public records to determine that the property was a duplex, not a triplex. Batache, however, cannot rely on the brokers' failure to appear at the close of escrow or to inspect public records as grounds to delay commencement of the statute of limitations on her breach of fiduciary duty cause of action when she was on inquiry notice that the property was a duplex. Because we decide that Batache's causes of action for breach of fiduciary duty and fraud are time barred, we need not reach her argument that the trial court erred by granting summary judgment on the ground that she failed to raise a triable issue of material fact in response to the brokers' showing that she cannot prove the elements of either cause of action.

**DISPOSITION**

The judgment is affirmed. The brokers are entitled to recover their costs on appeal.

NOT TO BE PUBLISHED.

ROTHSCHILD, Acting P. J.

We concur:

CHANEY, J.

JOHNSON, J.