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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS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 FIVE

ALEX PLADOTT, Plaintiff and Appellant, v. JOSEF BLANKSTEIN et al., Defendants and Respondents.	B237164 (Los Angeles County Super. Ct. No. LC070878)

APPEAL from judgments of the Superior Court of the County of Los Angeles, Frank Johnson, Judge. Affirmed.

Alex Pladott, in pro. per., for Plaintiff and Appellant.

Manning & Kass, Ellrod, Ramirez, Trester, Rinat Klier Erlich, and Candace E. Kallberg for Defendants and Respondents Josef Blankstein and Carmella Blankstein.

McCurdy & Leibl, Michael Miretsky, and Lee M. Moulin for Defendant and Respondent Laura Avants Garbell.

Klinedinst, G. Dale Britton, Neil R. Gunny, Jose A. Mendoza; Coldwell Banker Residential Brokerage Company and Michael B. Hull for Defendants and Respondents Marc Garbell and Coldwell Banker Residential Brokerage Company.

INTRODUCTION

Defendants and respondents (defendants) Josef and Carmella Blankstein (the Blanksteins), Marc and Laura Garbell (the Garbells), and Coldwell Banker Residential Brokerage Company (Coldwell Banker) each filed motions for summary judgment that the trial court granted. Plaintiff and appellant Alex Pladott (Pladott) appeals from the judgments entered in favor of defendants and also appeals from certain orders entered by the trial court prior to the entry of the judgments.

Defendants each submitted facts in support of their summary judgment motions showing that Pladott could not establish one or more elements of his causes of action or that they had a complete defense to one or more of his causes of action, thereby shifting the burden to Pladott to show the existence of a triable issue of fact. Therefore, because Pladott failed to submit sufficient admissible facts to show the existence of a triable issue of fact as to each of his claims, the trial court properly granted the defendants' motions for summary judgment. The trial court did not abuse its discretion when it entered the orders denying the motions from which Pladott appeals.

FACTUAL BACKGROUND[1]

A. The Blanksteins' Facts

Pladott and Carmella Blankstein are sister and brother. Pladott is an experienced real estate developer. From 1985 through 1998, Pladott was a self-employed real estate developer. Pladott was the exclusive owner of a development company called Syco, which developed 500 condominiums in Israel that were later sold to the State of Israel. Pladott took the money he received from that sale in Israel and bought several tracts of land in the United States, at least one of which he developed into 20 condominiums.

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[1] The factual backgrounds relevant to the three summary judgment motions are taken from the separate statements filed in support of those motions because, as discussed *post*, most of Pladott's factual evidence was deemed inadmissible by the trial court.

In 1994, as a result of the Northridge Earthquake, several homes and parts of Pladott's developments were damaged. As a result of the damage, Pladott was having "cash flow" problems. He was paying between $20,000 and $25,000 a month to service the loans on all the properties he owned as of 1996.

To solve his "cash flow" problems and pay for repairs to his other earthquake damaged properties, in May of 1996, Pladott suggested that the Blanksteins enter into an agreement by which the Blanksteins would buy from him the real property located at 20000 Winnetka Place, Woodland Hills, California (the property), and that he would have the right to buy the property back within three years (by May 31, 1999) at the same price for which he sold it (regardless of its later fair market value), plus any expenses. The sale to the Blanksteins was a "short sale"—that is, the sale price was less than the balance of the outstanding debt secured by a deed of trust, and the lender agreed to release the deed of trust for less than the amount of the debt. Pladott asked the Blanksteins to participate in this transaction with the specific purpose of reducing his monthly payments on the property (even though he was still living in it), and, in fact, the mortgage payments after the Blanksteins' purchase were lower, as were the property taxes. It was Pladott's idea to limit the repurchase time period to three years, which at the latest would expire at the end of May 1999. Presumably, Pladott was required to either pay the new mortgage payments, taxes, and other expenses concerning the property or reimburse the Blanksteins for those expenses.

The Blanksteins agreed to purchase the property and did so in May of 1996 for $475,000, a purchase price Pladott chose as being "convenient," although Pladott was aware that the property was being listed at the time for $790,000. Pladott would have lost the property if his sister had not purchased it. But Pladott still believed he was the owner of the property. The entire repurchase agreement was 100 percent oral, with no written agreements. According to Pladott, the contract negotiations were definitely concluded and, at the time of the oral repurchase agreement, there were no ambiguities or vagueness as to the terms; on the contrary, "everything was very clear" to all parties.

On or around December 11 or 12, 1997, Pladott claims he sent the Blanksteins escrow instructions to repurchase the property, but the Blanksteins refused to sign those escrow instructions. Pladott and the Blanksteins continued to attempt to negotiate the terms of the repurchase of the property throughout 1998, without success. Pladott retained an attorney and mentioned going to court. Part of the reason the Blanksteins were hesitant to agree to the repurchase terms proposed by Pladott was that Pladott's credit was, "admittedly, poor."

Pladott never signed the draft proposed agreement sent to him by the Blanksteins' attorney. Pladott stopped trying to repurchase the property by the end of 1998, or no later than the year 2000. According to Pladott, he did everything he could to buy the property back. Pladott admitted that he has not reimbursed the Blanksteins for all their expenses related to the property, including the mortgage payments and property taxes.

At the time of the filing of this lawsuit, Pladott conceded he only paid the Blanksteins approximately $50,000, even though the admitted repurchase price negotiated and agreed upon in 1997 was $503,000, which reflected certain expenses. As of the time of the Blanksteins' motion, Pladott had not made ant rent or mortgage payment on the property to the Blanksteins or anyone else since 1997, but in any event, at the latest, since May of 1998.

Pladott continued to reside at the property through 2006, even though he had not paid for the mortgage or any property taxes since May 1998. By 2005, the burden of maintaining the costs of the property with no income or reimbursement from Pladott was "weighing heavy" on the Blanksteins. On February 22, 2005, the Blanksteins filed an unlawful detainer action against Pladott.

The Blanksteins were residents of Chicago, Illinois, and had only visited California a handful of times. Pladott reached out to the Blanksteins and engaged them to buy the property. Then, as admitted by Pladott, money and title to real property changed hands as between individuals in California and others in Illinois.

The Garbells, the Blanksteins' buyers, resold the property. The individuals or entities that ultimately purchased the property are not parties to this action.

B. Coldwell Banker's and Marc's[2] Facts

The Blanksteins evicted Pladott from the property on or about March 6, 2006. On May 1, 2006, a trial court entered an order expunging various lis pendens that had been recorded on the property by Pladott and that order was recorded on May 22, 2006. In late April or early May 2006, the Blanksteins contacted Marc, a Coldwell Banker real estate agent or broker, about the property. The Blanksteins advised Marc that they owned the property and asked him whether he knew of any potential real estate investors who would be interested in the property.

Within a week of his conversation with the Blanksteins, Marc viewed the property, noticed that it was vacant and, inter alia, in need of maintenance. After inspecting the property, Marc advised the Blanksteins that he might be interested in purchasing it, and, in response, the Blanksteins asked him to make an offer. In May 2006, Marc submitted an offer to the Blanksteins to purchase the property for $1,125,000, which the Blanksteins rejected as too low. On or about May 19, 2006, Marc submitted a residential purchase agreement and joint escrow instructions (the agreement) to the Blanksteins with a purchase price of $1,350,000. The Blanksteins accepted that offer on May 31, 2006, and an escrow was opened.

Before escrow was opened, Marc was advised by the Blanksteins' attorney that there was an order expunging the various lis pendens on the property. At no time prior to the close of escrow did the Blanksteins advise Marc or Coldwell Banker about any purported agreement between them and Pladott. At no time prior to the close of escrow did Marc or Coldwell Banker know of any purported agreement between Pladott and the Blanksteins pursuant to which Pladott would buy back the property from the Blanksteins. Marc and Coldwell Banker did not have any economic or contractual relationship with Pladott with respect to the property.

Because paragraph 27(c) of the agreement erroneously stated that Coldwell Banker and Marc were the real estate agent/broker for the Blanksteins, the parties

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[2] For clarity, the Garbells will be referred to individually by their first names.

executed an addendum which clarified that (i) Marc was a licensed real estate agent; (ii) he was only representing himself in the transaction; and (iii) the Blanksteins were represented in the transaction by their attorney. The escrow for the purchase of the property closed on or about July 7, 2006.

C. Laura's Facts

The Blanksteins evicted Pladott from the property on or about March 6, 2006. By court order dated May 1, 2006, all lis pendens previously filed by or on behalf of Pladott were expunged and Pladott was ordered to obtain leave of court before filing any further lis pendens on the property. Pladott did not file any further lis pendens on the property following the trial court's May 1, 2006, order expunging the lis pendens.

On or about May 31, 2006, Marc and the Blanksteins entered into a residential purchase agreement (the agreement) whereby the Blanksteins agreed to sell the property to Marc. Marc obtained an appraisal of the property at his own expense incident to obtaining a mortgage after he and the Blanksteins entered into the agreement. Laura was not personally involved in requesting or arranging the appraisal of the property. Laura did not become a party to the agreement until the escrow instructions were modified on June 22, 2006, to include her as a buyer.

On or about June 21, 2006, the R.J. Peters appraisal report was completed and thereafter obtained by Laura. Prior to this litigation, Laura never communicated with Pladott and never communicated with the Blanksteins.

At no time prior to the close of escrow on or about July 7, 2006, was Laura aware of a prospective economic relationship between Pladott and the Blanksteins. Laura did not intend to disrupt any relationship between Pladott and the Blanksteins, did not make any material misrepresentations of fact to Pladott or the Blanksteins, and committed no independently wrongful act.

PROCEDURAL BACKGROUND

In response to the Blankstein's unlawful detainer action against him, Pladott filed this action. In the operative fourth amended complaint, he asserted causes of action against Coldwell Banker and the Garbells for interference with contract,[3] interference with prospective economic advantage, and fraud. He also asserted causes of action against the Blanksteins for breach of oral contract, specific performance, fraud, and declaratory relief.

In May 2011, Pladott filed a motion to compel production of documents from the Blanksteins, seeking the production of two e-mails between and among Carmella Blankstein, her former counsel, and her brother Emmanuel who resided in Israel. The Blanksteins opposed the motion on the grounds, inter alia, that the e-mails were no longer in their possession, the e-mails were irrelevant, and the e-mails were privileged documents in any event. The trial court denied the motion on the grounds that the e-mails, which at the time of the hearing had been located, were not relevant to this action.

In June 2011, the Blanksteins, Laura, and Coldwell Banker/Marc filed their three respective motions for summary judgment. Pladott opposed the motions and filed a separate motion to stay the proceedings. At the hearing on the motions, the trial court denied the motion to stay, sustained all of the defendants' evidentiary objections to Pladott's declarations in opposition to the motions for summary judgment, and granted each motion in its entirety. The trial court subsequently entered three judgments in favor of the defendants. Pladott filed an appeal from the order granting the summary judgment motions.[4]

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[3] According to the trial court's file, which we obtained on our own motion and with which we augment the record, the trial court subsequently granted a demurrer to the interference with contract cause of action without leave to amend, a ruling that Pladott does not challenge on appeal.

[4] Although an order granting summary judgment is not an appealable order, we will exercise our discretion to entertain the appeal by treating the notice as if the appeal was

DISCUSSION

A. Standard of Review

Our review of the trial court's rulings on the summary judgment motions is governed by the well established principles. "'"A trial court properly grants a motion for summary judgment only if no issues of triable fact appear and the moving party is entitled to judgment as a matter of law. (Code Civ. Proc., § 437c, subd. (c); see also *id*., § 437c, subd. (f) [summary adjudication of issues].) The moving party bears the burden of showing the court that the plaintiff 'has not established, and cannot reasonably expect to establish,'" the elements of his or her cause of action. (*Miller v. Department of Corrections* (2005) 36 Cal.4th 446, 460 [30 Cal.Rptr.3d 797, 115 P.3d 77].)' (*Wilson v. 21st Century Ins. Co*. (2007) 42 Cal.4th 713, 720 [68 Cal.Rptr.3d 746, 171 P.3d 1082].) We review the trial court's decision de novo, liberally construing the evidence in support of the party opposing summary judgment and resolving doubts concerning the evidence in favor of that party. (*Yanowitz v. L'Oreal USA, Inc*. (2005) 36 Cal.4th 1028, 1037 [32 Cal.Rptr.3d 436, 116 P.3d 1123].)" (*State of California v. Allstate Ins. Co.* (2009) 45 Cal.4th 1008, 1017-1018.)

"We review the trial court's decision [on a summary judgment motion] de novo, 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. (*Artiglio v. Corning, Inc.* (1998) 18 Cal.4th 604, 612 [76 Cal.Rptr.2d 479, 957 P.2d 1313].) 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

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taken from the subsequently entered judgments. (*Susag v. City of Lake Forest* (2002) 94 Cal.App.4th 1401, 1407, fn. 2; *Avila v. Standard Oil Co.* (1985) 167 Cal.App.3d 441, 445.)

material fact exists as to that cause of action . . . .' (Code Civ. Proc., § 437c, subd. (*o*)(2); see *Aguilar v. Atlantic Richfield Co*. (2001) 25 Cal. 4th 826, 854-855 [107 Cal.Rptr.2d 841, 24 P.3d 493].)" (*Merrill v. Navegar, Inc*. (2001) 26 Cal.4th 465, 476-477.)

B. Blanksteins' Motion

The trial court ruled, inter alia, that Pladott's claims against the Blanksteins were barred by the applicable statutes of limitations. On appeal, Pladott contends that there were triable issues of fact concerning whether his claims against the Blanksteins were time-barred.

1. Statute of Limitations

The California Supreme Court has discussed the statute of limitations in detail. We quote at length from one of its most recent opinions on the subject. "A statute of limitations strikes a balance among conflicting interests. If it is unfair to bar a plaintiff from recovering on a meritorious claim, it is also unfair to require a defendant to defend against possibly false allegations concerning long-forgotten events, when important evidence may no longer be available. Thus, statutes of limitations are not mere technical defenses, allowing wrongdoers to avoid accountability. (*Norgart v. Upjohn Co.* (1999) 21 Cal.4th 383, 395-397 [87 Cal.Rptr.2d 453, 981 P.2d 79].) Rather, they mark the point where, in the judgment of the Legislature, the equities tip in favor of the defendant (who may be innocent of wrongdoing) and against the plaintiff (who failed to take prompt action): '[T]he period allowed for instituting suit inevitably reflects a value judgment concerning the point at which the interests in favor of protecting valid claims are outweighed by the interests in prohibiting the prosecution of stale ones.' (*Johnson v. Railway Express Agency* (1975) 421 U.S. 454, 463-464 [44 L.Ed.2d 295, 95 S.Ct. 1716].)" (*Pooshs v. Philip Morris USA, Inc*. (2011) 51 Cal.4th 788, 797 (*Pooshs*).)

"Critical to applying a statute of limitations is determining the point when the limitations period begins to run. Generally, a plaintiff must file suit within a designated period after the cause of action *accrues*. (Code Civ. Proc., § 312.) A cause of action

accrues 'when [it] is complete with all of its elements'—those elements being wrongdoing, harm, and causation. (*Norgart v. Upjohn Co.*, *supra*, 21 Cal.4th at p. 397.) [¶] Application of the accrual rule becomes rather complex when . . . a plaintiff is aware of both an injury and its wrongful cause but is uncertain as to how serious the resulting damages will be or whether additional injuries will later become manifest. Must the plaintiff sue even if doing so will require the jury to speculate regarding prospective damages? Or can the plaintiff delay suit until a more accurate assessment of damages becomes possible? Generally, we have answered those questions in favor of prompt litigation, even when the extent of damages remains speculative. Thus, we have held that 'the infliction of appreciable and actual harm, however uncertain in amount, will commence the statutory period.' (*Davies* [*v. Krasna* (1975)] 14 Cal.3d [502,] 514.)" (*Pooshs*, *supra*, 51 Cal.4th at p. 797.)

"The most important exception to that general rule regarding accrual of a cause of action is the 'discovery rule,' under which accrual is postponed until the plaintiff 'discovers, or has reason to discover, the cause of action.' (*Norgart v. Upjohn Co.*, *supra*, 21 Cal.4th at p. 397.) Discovery of the cause of action occurs when the plaintiff 'has reason . . . to suspect a factual basis' for the action. (*Id.* at p. 398; see also *Jolly v. Eli Lilly & Co.* (1988) 44 Cal.3d 1103, 1110-1111 [245 Cal.Rptr. 658, 751 P.2d 923].) 'The policy reason behind the discovery rule is to ameliorate a harsh rule that would allow the limitations period for filing suit to expire before a plaintiff has or should have learned of the latent injury and its cause.' (*Buttram v. Owens-Corning Fiberglas Corp.* (1997) 16 Cal.4th 520, 531 [66 Cal.Rptr.2d 438, 941 P.2d 71].)" (*Pooshs*, *supra*, 51 Cal.4th at pp. 797-798.)

2. All of Pladott's Claims Against the Blanksteins Were Barred by the Applicable Statutes of Limitations

In support of their motion, the Blanksteins submitted evidence showing that their agreement with Pladott, if any, entitled him to repurchase the property at any time within the three year time period following their May 1996 purchase, i.e., on or before May 31,

1999. Pladott's claims against the Blanksteins—breach of oral agreement and specific performance, fraud, and declaratory relief—were predicated upon their alleged failure to sell him the property within that time, notwithstanding his efforts to repurchase the property. The Blanksteins also submitted evidence showing that no repurchase of the property occurred prior to the May 31, 1999, deadline. Therefore, Pladott's claims accrued, if at all, by May 31, 1999, the last date upon which Pladott could have repurchased the property. The evidence in support of the motion supported a reasonable inference that Pladott knew or should have known of the Blanksteins' failure to reconvey the property to him by that date on the terms he demanded. That evidence also supported a reasonable inference that Pladott was aware, as of May 31, 1999, of the damage he suffered as a result of the Blanksteins' alleged failure to keep their promise to reconvey. Although he may not have been aware of the precise amount of damage he had suffered by that date, he knew or should have known that the Blanksteins' alleged conduct had inflicted upon him appreciable injury or actual damage in some unspecified amount, presumably based upon his inability to own the property in which he was residing and which he wanted (including the likelihood of the appreciation of the value of the property).

Under the authorities discussed above, Pladott's claims against the Blanksteins accrued, at the latest, at the end of the three-year repurchase period. But the record shows that Pladott did not file his complaint against them until March 17, 2005, i.e., over five and a half years from the accrual of his claims against the Blanksteins. Because none of the statutes of limitations applicable to Pladott's claims was longer than three years,[5] the trial court correctly concluded that those claims were untimely filed and time-barred.

Pladott suggests that the statutes of limitations applicable to his claims against the Blanksteins were tolled for some unspecified period of time due to the conduct of the

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[5] The longest statute of limitations applicable to Pladott's claims was the three-year statute applicable to his fraud claim. (Code Civ. Proc., § 338, subd. (d).)

Blanksteins and that there was delayed discovery of those claims. The trial court sustained each of the defendants' objections to his declarations submitted in opposition to the motions. Pladott did not challenge on appeal the trial court's exclusion of that evidence, thereby forfeiting on appeal any contentions based on such excluded evidence. (See *Salas v. Dept. of Transportation* (2011) 198 Cal.App.4th 1058, 1074 ["Because [the] plaintiffs failed to properly raise a challenge to the [trial] court's many evidentiary rulings and failed to support such challenge with reasoned argument and citations to authority, they have forfeited their challenge to the exclusion of most of [the witness's] declaration. (*Badie v. Bank of America* (1998) 67 Cal.App.4th 779, 784-785 [79 Cal.Rptr.2d 273]"].) Thus, there was insufficient factual evidence in the record to support his tolling and delayed discovery assertions. Absent such factual evidence, Pladott failed to sustain his evidentiary burden on the motion to rebut the Blanksteins' prima facie factual showing in support of their statute of limitations defense.

C. Coldwell Banker's and Marc's Motion

1. Tortious Interference Cause of Action

Pladott contends that he raised triable issues of fact concerning each of the elements of his claim for interference with prospective economic advantage. "In order to prove a claim for intentional interference with prospective economic advantage, a plaintiff has the burden of proving five elements: (1) an economic relationship between the plaintiff and a third party, with the probability of future economic benefit to the plaintiff; (2) the defendant's knowledge of the relationship; (3) an intentional act by the defendant, designed to disrupt the relationship; (4) actual disruption of the relationship; and (5) economic harm to the plaintiff proximately caused by the defendant's wrongful act, including an intentional act by the defendant that is designed to disrupt the relationship between the plaintiff and a third party. (*Korea Supply Co. v. Lockheed Martin Corp.* (2003) 29 Cal.4th 1134, 1153-1154 [131 Cal.Rptr.2d 29, 63 P.3d 937].) The plaintiff must also prove that the interference was wrongful, independent of its

interfering character. (*Della Penna v. Toyota Motor Sales, U.S.A., Inc.* (1995) 11 Cal.4th 376, 392-393 [45 Cal.Rptr.2d 436, 902 P.2d 740].) '[A]n act is independently wrongful if it is unlawful, that is, if it is proscribed by some constitutional, statutory, regulatory, common law, or other determinable legal standard.' (*Korea Supply Co., supra*, 29 Cal.4th at p. 1159.)" (*Edwards v. Arthur Andersen LLP* (2008) 44 Cal.4th 937, 944.)

In support of their summary judgment motion, Coldwell Banker and Marc submitted evidence that they had no actual knowledge of the alleged repurchase agreement between Pladott and the Blanksteins, as well as evidence that the trial court had expunged all of the lis pendens that Pladott had recorded against the property arising from his dispute with the Blanksteins. The evidence showing that Marc and Coldwell Banker lacked knowledge of the repurchase agreement supported a reasonable inference that Pladott could not prove an essential element of his tortious interference claim against Coldwell Banker and Marc—actual knowledge of the alleged prospective economic advantage.

Because the trial court sustained each of the defendants' objections to Pladott's declarations, Marc's testimony that neither he nor Coldwell Banker were aware of the repurchase agreement was unrebutted by Pladott. As a result, that testimony, by itself, was sufficient to show that Pladott could not prove his tortious interference claim. Therefore, we do not need to reach the issue of whether the evidence showing the expungement of the lis pendens also insulated Marc and Coldwell Banker from liability on Pladott's claims against them.

2. Fraud Cause of Action

Pladott contends that there were triable issues of fact concerning each of the elements of his fraud claim against Coldwell Banker and Marc. "The elements of fraud are: (1) a misrepresentation (false representation, concealment, or nondisclosure); (2) knowledge of falsity (or scienter); (3) intent to defraud, i.e., to induce reliance; (4) justifiable reliance; and (5) resulting damage. (*Lazar v. Superior Court* (1996) 12 Cal.4th 631, 638 [49 Cal.Rptr.2d 377, 909 P.2d 981].)" (*Robinson Helicopter Co., Inc. v. Dana*

Corp. (2004) 34 Cal.4th 979, 990; see also *Conroy v. Regents of University of California* (2009) 45 Cal.4th 1244, 1255.) Pladott contends specifically in this regard that Marc and Coldwell Banker were somehow involved with the Blanksteins' alleged misdeeds in connection with the sale of the property.

"'[T]he elements of a cause of action for fraud based on concealment are: "'(1) the defendant must have concealed or suppressed a material fact, (2) the defendant must have been under a duty to disclose the fact to the plaintiff, (3) the defendant must have intentionally concealed or suppressed the fact with the intent to defraud the plaintiff, (4) the plaintiff must have been unaware of the fact and would not have acted as he did if he had known of the concealed or suppressed fact, and (5) as a result of the concealment or suppression of the fact, the plaintiff must have sustained damage. [Citation.]' [Citation.]" [Citation.]' (*Kaldenbach v. Mutual of Omaha Life Ins. Co.* (2009) 178 Cal.App.4th 830, 850 [100 Cal.Rptr.3d 637] (*Kaldenbach*); accord, *Levine v. Blue Shield of California* (2010) 189 Cal.App.4th 1117, 1126-1127 [117 Cal.Rptr.3d 262].) [¶] There are '"four circumstances in which nondisclosure or concealment may constitute actionable fraud: (1) when the defendant is in a fiduciary relationship with the plaintiff; (footnote omitted) (2) when the defendant had exclusive knowledge of material facts not known to the plaintiff; (3) when the defendant actively conceals a material fact from the plaintiff; and (4) when the defendant makes partial representations but also suppresses some material facts. [Citation.]" [Citation.]' (*LiMandri v. Judkins* (1997) 52 Cal.App.4th 326, 336 [60 Cal.Rptr.2d 539] (*LiMandri*).)" (*Bank of America Corp. v. Superior Court* (2011) 198 Cal.App.4th 862, 870-871.) When there is no fiduciary relationship, "[e]ach of the other three circumstances in which nondisclosure may be actionable presupposes the existence of some other relationship between the plaintiff and defendant in which a duty to disclose can arise." (*LiMandri*, *supra*, 52 Cal.App.4th at pp. 336-337.)

Coldwell Banker's and Marc's evidence in support of their summary judgment motion on the fraud claim supported a reasonable inference that they were unaware of the alleged repurchase agreement between Pladott and the Blanksteins. That evidence

supported a reasonable inference that neither Coldwell Banker nor Marc could have made any intentional misrepresentations relevant to that agreement. Moreover, as noted, Pladott did not have any evidence that would have supported a reasonable inference that either Coldwell Banker or Marc made any material misrepresentation relevant to the dispute over the alleged repurchase agreement or Marc's purchase of the property from the Blanksteins. That failure of proof regarding the material misrepresentation element of Pladott's fraud claim against Coldwell Banker and Marc demonstrated that Pladott failed to satisfy his burden of proof concerning that fraud claim.

Moreover, to the extent Pladott's fraud claim against Coldwell Banker and Marc was based on alleged intentional concealment, their evidence in support of their motion supported a reasonable inference that they had no relationship with Pladott, much less the type of relationship that would give rise to a duty to disclose under the case law cited above. And, Pladott had no evidence that would have raised a triable issue as to whether either Coldwell Banker or Marc had a relationship with Pladott sufficient to give rise to a duty to disclose. Absent such evidence, Pladott failed to carry his burden of establishing a triable issue on that duty element of a concealment claim.

D. Laura's Motion

The trial court's ruling on Laura's motion for summary judgment must be affirmed for all the reasons that support our affirmance of the trial court's ruling on the motions brought by Coldwell Banker and Marc. Her evidence supported a reasonable inference that she was unaware of any relationship between Pladott and the Blanksteins based on her testimony that she lacked such knowledge, and that she made no representations to and did not have any relationship with Pladott. Pladott's failure to rebut that evidence supported the conclusion that he had failed to carry his burden on Laura's summary judgment motion.

E. Denial of Motion to Stay

Pladott contends that the trial court should have granted his motion to stay the action. According to Pladott, this action embraced matters that were then pending before the Court of Appeal based on an appeal he had filed in case number B233191 (Superior Court case number LC081576).

"We review the trial court's denial of [a] plaintiffs' motion for a stay under the abuse of discretion standard of review. (See *Avant! Corp. v. Superior Court* (2000) 79 Cal.App.4th 876, 889 [94 Cal.Rptr.2d 505] (*Avant!*) [applying abuse of discretion standard of review in determining whether trial court erred in denying party's motion to stay proceedings in light of pending related criminal proceeding].)" (*Bains v. Moores* (2009) 172 Cal.App.4th 445, 480.)

Pladott's argument concerning the trial court's denial of his motion to stay is predicated on a general assertion about the similarities between certain issues in this case and the issues that were then pending before the Court of Appeal in case number B233191. But Pladott fails to explain which of the issues in this case were being considered in that appeal. Moreover, based on the opinion in case number B233191, it appears that the matters at issue in that case were distinct from those that were before the trial court on the summary judgment motions in this action. As the opinion states, that appeal involved claims by Pladott and his son against the Blanksteins based on allegations that the Blanksteins had fraudulently misused the unlawful detainer procedure. On appeal, the Court of Appeal ultimately held that all of the claims in that case were barred by the litigation privilege because they were based on statements made by litigants in connection with a pending judicial proceeding. Thus, the gravamen of that action was distinct from that of this action, which involves Pladott's assertion that the Blanksteins failed to reconvey to him the property as promised and does not directly implicate the litigation privilege. Given the differences between the two actions, it was not an abuse of discretion for the trial court to deny the motion to stay.

F. Denial of Motion to Compel

Pladott argues that the trial court erred when it denied his motion to compel the Blanksteins to produce two e-mails. He maintains that the "two e-mails are relevant as evidence of the Blanksteins' intent at that period of time to deceive Pladott in connection with his rights at the property under [the repurchase agreement]."

"A trial court's determination of a motion to compel discovery is reviewed for abuse of discretion. (*2,022 Ranch v. Superior Court* (2003) 113 Cal.App.4th 1377, 1387 [7 Cal.Rptr.3d 197].) An abuse of discretion is shown when the trial court applies the wrong legal standard. (*Zurich American Ins. Co. v. Superior Court* (2007) 155 Cal.App.4th 1485, 1493 [66 Cal.Rptr.3d 833].) However, when the facts asserted in support of and in opposition to the motion are in conflict, the trial court's factual findings will be upheld if they are supported by substantial evidence. (*HLC Properties, Ltd. v. Superior Court* (2005) 35 Cal.4th 54, 60 [24 Cal.Rptr.3d 199, 105 P.3d 560]; *D. I. Chadbourne, Inc. v. Superior Court* (1964) 60 Cal.2d 723, 729 [36 Cal.Rptr. 468, 388 P.2d 700].)" (*Costco Wholesale Corp. v. Superior* Court (2009) 47 Cal.4th 725, 733.) "In general, we review the trial court's ruling on a motion to compel discovery for an abuse of discretion, because the trial court is vested with wide statutory discretion to manage discovery. (*John B. v. Superior Court* (2006) 38 Cal.4th 1177, 1186 [45 Cal.Rptr.3d 316, 137 P.3d 153].) 'In addition, if the trial court reached its decision after resolving conflicts in the evidence, or inferences that could be drawn from the evidence, we review those factual findings to determine whether they are supported by substantial evidence. [Citation.]' (*County of Los Angeles v. Superior Court* (2006) 139 Cal.App.4th 8, 12 [42 Cal.Rptr.3d 390].) [¶] However, 'where the propriety of a discovery order turns on statutory interpretation, an appellate court may determine the issue de novo as a question of law. [Citation.]' (*Britts v. Superior Court* (2006) 145 Cal.App.4th 1112, 1123 [52 Cal.Rptr.3d 185].)" (*Pomona Valley Hospital Medical Center v. Superior Court* (2012) 209 Cal.App.4th 687, 692-693.)

As noted above, the trial court determined that the two e-mails were not relevant to any issue in this action. Although Pladott generally asserts on appeal that the two e-

mails were relevant to the Blanksteins' intent to deceive him, he does not provide a factual basis to support that assertion or to demonstrate that the e-mails contained facts or statements that might lead to the discovery of admissible evidence. Moreover, he does not make any showing of prejudice from the trial court's denial of his motion to compel. He argues the documents are relevant to the Blanksteins' intent to deceive him in connection with the oral repurchase agreement, but provides no further information. Before the trial court, he argued that the documents concerned fraud in connection with his tenancy and in connection with "fraudulent utilization of the jurisdiction of Code of Civil Procedure section 1161 et seq.," matters not involved in this case. Accordingly, we conclude that Pladott has not carried his burden on appeal to demonstrate prejudicial error. The order denying his motion to compel is therefore affirmed.

G. Leave to Amend

Pladott maintains that he should have been allowed to amend his fourth amended complaint. Although the proposed amendments are not specified, Pladott suggests that they would have been based upon the appellate opinion in case number B233191, which, at the time of Pladott's motion to stay, had yet to be issued.

We review a trial court's denial of a request for leave to amend for abuse of discretion. "'[T]he trial court has wide discretion in allowing the amendment of any pleading [citations], [and] as a matter of policy the ruling of the trial court in such matters will be upheld unless a manifest or gross abuse of discretion is shown. [Citations.]' (*Bedolla v. Logan & Frazer* (1975) 52 Cal.App.3d 118, 135-136 [125 Cal.Rptr. 59].)" (*Record v. Reason* (1999) 73 Cal.App.4th 472, 486.)

Pladott did not make a formal motion to amend his pleading. And, the only references in the record to an amendment are two statements in one of his opposition briefs wherein he asserts that he intended to amend his complaint following the determination of his appeal in case number B233191 and his statement to the trial court at the hearing on the motion to stay that he was reserving his right to amend the fourth amended complaint based on the outcome of his then pending appeal in case number

B233191. Moreover, Pladott did not provide the trial court with the proposed amendments, much less a proposed amended complaint, and he provided no explanation for the delay in moving to amend his complaint. At best, in connection with his motion to stay, he raised the amendment issue generally as one ground for granting a stay, but at no point did he provide the trial court with an adequate factual or legal basis upon which it could have granted leave to amend. Because it does not appear that any error occurred in the trial court concerning the amendment issue, we conclude that Pladott has failed to carry his burden on appeal to demonstrate prejudicial error in connection with that issue.

DISPOSITION

The judgments and orders from which Pladott appeals are affirmed. Defendants are awarded their costs on appeal.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

MOSK, J.

We concur:

TURNER, P. J.

KRIEGLER, J.