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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS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 TWO

ALBERTO VERGARA et al., Plaintiffs and Appellants, v. PAN PARTNERSHIP, INC., et al., Defendants and Respondents.	B285867 (Los Angeles County Super. Ct. No. BC617048)

APPEAL from a judgment of the Superior Court of Los Angeles County. Rafael A. Ongkeko, Judge. Affirmed.

Law Offices of Calvin Park and Calvin J. Park for Plaintiffs and Appellants.

Shore Law Offices and Michael D. Shore for Defendants and Respondents.

Appellants Alberto Vergara and Daniel Arreola appeal from the summary judgment entered in favor of respondents Pan Partnership, Inc., and its president, Gary Urbina. The case arises from the parties' 2012 purchase and sale of real estate located at 123–123½ West 58th Street in Los Angeles (the property), which at the time was being used as a duplex and which respondents marketed as a duplex.

Approximately four years after respondents sold the property to appellants, appellants sued respondents claiming respondents not only breached the parties' purchase and sale agreement, but also intentionally and negligently made false representations about the legal status of the property. In particular, appellants claimed respondents knew, but failed to disclose, that the property was not a legally permitted duplex and failed to deliver the promised "legal" duplex. The trial court granted respondents' motion for summary judgment, finding respondents did not breach the parties' agreement and the fraud-based claims were barred by the applicable statute of limitations. As discussed below, we affirm.

BACKGROUND

1. April 2012: Respondents purchase the property.

On April 27, 2012, respondent Pan Partnership purchased the property from BAC Home Loan Servicing (BAC). At the time, the property was being used as a two-unit apartment building, with each unit occupied by a paying tenant.

The next month, respondents listed the property for sale and hired a real estate agent to market and sell the property. Respondents obtained a Los Angeles County Tax Assessor property profile report (assessor's report) dated May 14, 2012.

The assessor's report stated the property was a two-unit "Duplex." Based on the assessor's report, respondents and their real estate agent advertised the property on the multiple listing service (MLS) as a tenant occupied duplex. Specifically, the listing described the property as follows: "Duplex! Standard sale! Front unit 1 bedroom 1 bath with bonus room. Back unit 1 bedroom 1 bath[.] Great opportunity for investment. New laminated hardwood floor on both units frsh [*sic*] paint and granite countertop tenant occupied!!!"

2. June–August 2012: Escrow and Sale of the Property to Appellants

a. The parties agree to the purchase and sale of the property.

On May 24, 2012, appellants submitted an offer to purchase the property from respondents. Appellants' real estate agent prepared the offer, which was a standard California Association of Realtors (CAR) residential income property purchase agreement and joint escrow instructions. Respondents responded with a one-page counteroffer (again, on a standard CAR form), which appellants accepted on June 9, 2012. We refer to the offer and counteroffer together as the agreement.

Section 9 of the agreement stated in part: "Seller has no actual knowledge: (i) of any current pending lawsuit(s), investigation(s), inquiry(ies), action(s), or other proceedings affecting the Property or the right to use and occupy it . . . . If Seller receives any such notice prior to Close of Escrow, Seller shall immediately notify Buyer." That same section required respondents "disclose to Buyer any improvements, additions, alterations, or repairs to the Property . . . known to Seller to have been made, without required governmental permits, final

inspections, and approvals. [¶] . . . Seller shall disclose to Buyer if Seller has actual knowledge of any notice of violations of Law filed or issued against the Property."

Under section 10 of the agreement, respondents were obligated to make "subsequent disclosures" to appellants in certain circumstances: "In the event Seller, prior to Close of Escrow, becomes aware of adverse conditions materially affecting the Property, or any material inaccuracy in disclosures, information or representations previously provided to Buyer, Seller shall promptly Deliver a subsequent or amended disclosure or notice, in writing, covering those items. However, a subsequent or amended disclosure shall not be required for conditions and material inaccuracies of which Buyer is otherwise aware, or which are disclosed in reports provided to or obtained by Buyer or ordered and paid for by Buyer."

Section 14 of the agreement was entitled, "Condition of [the] Property," and stated the property was being sold " 'as-is.' " Specifically, that section provided, "the Property is sold (a) in its PRESENT physical ('as-is') condition as of the date of Acceptance and (b) subject to Buyer's inspection rights." Section 14 also included the following provisions: "A. Seller warrants that the Property is legally approved as ____ units. [¶] B. Seller shall . . . DISCLOSE KNOWN MATERIAL FACTS AND DEFECTS affecting the Property, including known insurance claims within the past five years, and make any and all other disclosures required by law. [¶] C. Buyer has the right to inspect the Property and . . . based upon information discovered in those inspections: (i) cancel this Agreement; or (ii) request that Seller make Repairs or take other action. [¶] D. Buyer is strongly advised to conduct investigations of the entire Property in order

to determine its present condition since Seller may not be aware of all defects affecting the Property or other factors that Buyer considers important. Property improvements may not be built according to code, in compliance with current Law, or have had permits issued."

Respondents' counteroffer also provided the property would be "sold as-is with no repairs unless lender requires." The counteroffer stated "buyers understand seller has never occupied the property and therefore will not complete a seller property questionary [*sic*]."

Appellants initialed each page of their offer, including the page on which the above provisions appeared. Appellants also signed the counteroffer and, therefore, accepted all terms of the agreement.

b. Respondents provide appellants with a buyer inspection advisory and seller disclosures.

In connection with the agreement, respondents also provided appellants with a standard CAR form Buyer Inspection Advisory (advisory). As its name suggests, the advisory advised appellants to inspect both the physical and legal condition of the property. For example, the advisory stated: "YOU ARE STRONGLY ADVISED TO INVESTIGATE THE CONDITION AND SUITABILITY OF ALL ASPECTS OF THE PROPERTY. IF YOU DO NOT DO SO, YOU ARE ACTING AGAINST THE ADVICE OF BROKERS." Similarly, the advisory cautioned appellants: "You have an affirmative duty to exercise reasonable care to protect yourself, including discovery of the legal, practical and technical implications of disclosed facts, and the investigation and verification of information and facts that you know or that are within your diligent attention and observation.

. . . [¶] . . . Seller is required to disclose to you material facts known to him/her that affect the value or desirability of the Property. However, Seller may not be aware of some Property defects or conditions. Seller does not have an obligation to inspect the Property for your benefit." And the advisory explicitly advised appellants to conduct investigations into "Permits, inspections, certificates, zoning, other governmental limitations, restrictions, and requirements affecting the current or future use of the Property, its development or size." Appellants both signed the advisory, acknowledging that "they have read, understand, accept and have received a Copy of this Advisory. Buyer is encouraged to read it carefully."

Subsequently, respondents provided appellants with an additional disclosure statement, which indicated respondents were not aware of any material facts or defects affecting the property not otherwise disclosed to appellants. That disclosure statement also explicitly stated: "THIS DISCLOSURE STATEMENT IS NOT A WARRANTY OF ANY KIND BY THE SELLER OR ANY AGENT(S) AND IS NOT A SUBSTITUTE FOR ANY INSPECTIONS OR WARRANTIES THE PRINCIPAL(S) MAY WISH TO OBTAIN. . . . IF SELLER OR BUYER DESIRE LEGAL ADVICE, CONSULT AN ATTORNEY."[1]

c. Appellants receive the certificate of occupancy and 9A report.

Prior to the close of escrow, appellants received the certificate of occupancy and a June 4, 2012 City of Los Angeles

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[1] Although the record on appeal does not include a copy of this disclosure statement signed by appellants, it is an undisputed fact that they received the document during escrow.

(City) Section 9A Report of Residential Property Records (9A report) for the property. The certificate of occupancy was issued in 1974 and stated the property located at 123 West 58th Street was a "single family dwelling. R-1 occupancy." The 9A report also identified the 123 West 58th Street address as a "Single Family Dwelling" with one unit. With respect to the 123½ West 58th Street address, however, the 9A report identified that location as "Unknown" with "0" units. In addition, under the section entitled, "Authorized Occupancy and Use," the 9A report described the 123 West 58th Street address as a "Single Family Dwelling" with one unit, garage and carport, and one certificate of occupancy. With respect to the 123½ West 58th Street address, however, the 9A report again described that location as "Unknown" with "0" units, "0" certificates of occupancy, and "0" records found.

The 9A report explained the authorized occupancy and use section of the report was based on building permits and certificates of occupancy on record with the City. The report cautioned that "[a]ny difference between this authorized use and the current use may indicate illegal use or conversion." The 9A report further explained that, when a "0" appeared in the "No. Records Found" box (as it did for the 123½ West 58th Street address), that meant "a search of Department files has failed to reveal building permits or Certificates of Occupancy pertaining to the authorized occupancy and use for the requested property being sold."

Appellants initialed both the certificate of occupancy and every page of the 9A report, indicating they had "read and approved" both documents.

d. The City issues a 2012 substandard order with respect to the property.

On August 4, 2012, prior to the close of escrow, the City issued a "Substandard Order and Notice of Fee" (2012 substandard order) that identified the rear unit of the property as illegal and unpermitted. The City ordered that the violations be remedied and an inspection fee paid. The 2012 substandard order also stated, "A certificate has been filed with the County Recorder noting the above substandard condition." The City did not mail the 2012 substandard order to respondents, but instead mailed it to BAC, from whom respondents had purchased the property a few months earlier. Respondents never received or saw the 2012 substandard order until after appellants initiated these legal proceedings.

e. Escrow closes.

On August 17, 2012, escrow closed and appellants became the owners of the property.

3. May 2015: The City issues a 2015 substandard order with respect to the property.

In May 2015, almost three years after escrow closed, the City issued another "Substandard Order and Notice of Fee" (2015 substandard order) and mailed it to appellants. The 2015 substandard order again stated that one of the units on the property was illegal and unpermitted. The City ordered appellants to correct the violations and pay an inspection fee.

4. April 2016: Appellants sue respondents.

a. The Third Amended Complaint

On April 25, 2016, appellants filed a complaint against several defendants, including respondents.[2] The operative complaint is the third amended complaint, which alleges four causes of action against respondents: (i) breach of contract, (ii) negligent misrepresentation, (iii) intentional misrepresentation, and (iv) concealment. Each of appellants' claims against respondents revolves around respondents' marketing of the property as a duplex when it fact it was not permitted to be used a duplex, as well as respondents' failure to disclose the 2012 substandard order, and more generally their failure to disclose the fact that the property was not legally permitted as a duplex. Specifically, appellants claim respondents breached the agreement by failing to disclose the property was not legally permitted to be used as a duplex, concealing the 2012 substandard order, and failing to deliver a legal, two-unit building. Appellants also allege respondents negligently and intentionally made false representations and concealed material facts as to the legal status of the property.

b. Discovery

The parties submitted multiple discovery documents to the trial court. Of particular relevance here are excerpts from Urbina's deposition. During his deposition, Urbina testified he believed the property was a duplex ("I thought it was a duplex"). He explained his belief was based on "[d]riving by the property and seeing two different mail boxes, two different electric meters, two different gas meters, two different tenants." Urbina also

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[2] Appellants settled with or dismissed the other defendants.

testified he made no representation to respondents' real estate agent as to the legality of the property being a duplex. Rather, Urbina stated he told the agent he wanted to sell the property as-is and that respondents similarly had bought the property as-is. Urbina stated he never warranted the property as being a duplex. Rather, he testified, "I represented the property with no warranty." Urbina also explained he never checked public records on the property and he did not see the 2012 substandard order until after appellants filed this lawsuit and his attorney showed it to him.

c. Summary Judgment

Respondents moved for summary judgment on the third amended complaint. First, respondents argued appellants could not prevail on the first cause of action for breach of contract. In particular, respondents claimed that, because they were unaware the property was not permitted as a duplex, they were not obligated to disclose any such information. In addition, respondents explained the agreement included no warranty or promise as to the number of legal units at the property, rather the agreement was clear the property was to be sold as-is. Thus, respondents argued they could not and did not breach the agreement by delivering to appellants a single family dwelling as opposed to a duplex. Finally, respondents argued the second, third, and fourth causes of action were barred by the applicable three-year statute of limitations.

In opposition, appellants argued respondents expressly warranted that the property was legally permitted for use as a duplex. And, although the property was to be sold "as-is," that provision referred only to the property's physical condition, not its legal condition. Appellants also claimed respondents

breached their duty to disclose because they failed to conduct a sufficient investigation into the legal status of the property prior to representing that the property was a duplex. Finally, appellants stated they did not discover respondents' alleged misrepresentations and concealments until they received the 2015 substandard order. Thus, appellants argued their second through fourth causes of action were not time-barred.

The trial court granted respondents' motion for summary judgment. With respect to the first cause of action for breach of contract, the court held respondents could not be liable for failure to disclose facts not known to them and that, in any event, the 9A report provided clear and unmistakable notice to appellants that the property was a single family dwelling. The court concluded, "As a result of [respondents'] lack of knowledge and the disclosures actually provided to [appellants], the undisputed facts establish that [respondents] did not breach any provision of the Purchase Agreement related to their disclosure obligations."

The trial court also held neither respondents nor the agreement guaranteed or warranted the legal status of the property. With respect to the blank space left in section 14 of the agreement (regarding the seller's warranty of legally approved units), the court concluded the blank space "denotes that [respondents were] making no representation as to the number of legally approved units in the Purchase Agreement." The court also explained, "[N]othing in the MLS listing is inherently incorrect or represents a warranty as to the number of legal units on the property. Given that two structures were/are affixed to the land, it was indeed a duplex as that term is commonly known."

Finally, the trial court held the second through fourth causes of action were barred by the applicable three-year statute of limitations. The court concluded the 2012 substandard order gave appellants constructive notice of the facts giving rise to their claims. Moreover, the court determined the separate certificate of occupancy and 9A report notified appellants of the condition of the property prior to the close of escrow in 2012. The court "soundly rejected" appellants' arguments to the contrary. The trial court also held that, even if the fraud-based causes of action were not barred, they would nonetheless fail, "given that the undisputed facts bear out that no representations were ever made by [respondents] regarding the legally permitted status of the property as a duplex or that [respondents] knowingly concealed any facts from [appellants]."

On August 14, 2017, the trial court entered judgment in favor of respondents on the third amended complaint.

5. Appeal

Appellants appealed from the judgment.

DISCUSSION

1. Applicable Law and Standard of Review

" 'The purpose of the law of summary judgment is to provide courts with a mechanism to cut through the parties' pleadings in order to determine whether, despite their allegations, trial is in fact necessary to resolve their dispute.' " (*Borders Online v. State Bd. of Equalization* (2005) 129 Cal.App.4th 1179, 1187 (*Borders Online*).) Summary judgment is appropriate "if all the papers submitted show that there is no triable issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." (Code Civ. Proc., § 437c, subd. (c) (section 437c).)

"There is a triable issue of material fact only if 'the evidence would allow a reasonable trier of fact to find the underlying fact in favor of the party opposing the motion in accordance with the applicable standard of proof.' [Citation.] The party moving for summary judgment generally 'bears an initial burden of production to make a prima facie showing of the nonexistence of any triable issue of material fact; if he carries his burden of production, he causes a shift, and the opposing party is then subjected to a burden of production of his own to make a prima facie showing of the existence of a triable issue of material fact.' " (*Borders Online*, *supra*, 129 Cal.App.4th at pp. 1187–1188.) " ' " 'A defendant seeking summary judgment has met the burden of showing that a cause of action has no merit if that party has shown that one or more elements of the cause of action cannot be established [or that there is a complete defense to that cause of action]. . . . Once the defendant's burden is met, the burden shifts to the plaintiff to show that a triable issue of fact exists as to that cause of action.' " ' " (*Villacres v. ABM Industries Inc.* (2010) 189 Cal.App.4th 562, 575 (*Villacres*).)

"[W]e review the trial court's grant of summary judgment de novo, applying the same standards that governed the trial court. [Citation.] We consider 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." (*Borders Online*, *supra*, 129 Cal.App.4th at p. 1188.) " ' " 'We must determine whether the facts as shown by the parties give rise to a triable issue of *material* fact. . . . In making this determination, the moving party's affidavits are strictly construed while those of the opposing party are liberally construed.' . . . We accept as

undisputed facts only those portions of the moving party's evidence that are not contradicted by the opposing party's evidence. . . . In other words, the facts alleged in the evidence of the party opposing summary judgment and the reasonable inferences therefrom must be accepted as true." ' " (*Villacres*, *supra*, 189 Cal.App.4th at p. 575.)

However, a reasonable inference cannot be based on mere speculation. " 'When opposition to a motion for summary judgment is based on inferences, those inferences must be reasonably deducible from the evidence, and not such as are derived from speculation, conjecture, imagination, or guesswork.' " (*Advent, Inc. v. National Union Fire Ins. Co. of Pittsburgh* (2016) 6 Cal.App.5th 443, 459 (*Advent, Inc.*).) " ' "Speculation . . . is not evidence" that can be utilized in opposing a motion for summary judgment.' " (*Ibid.*)

Finally, we review issues of contract interpretation de novo, absent admission of extrinsic evidence. (*Taylor v. Nu Digital Marketing, Inc.* (2016) 245 Cal.App.4th 283, 288.)

2. Breach of Contract Cause of Action

"[T]he elements of a cause of action for breach of contract are (1) the existence of the contract, (2) plaintiff's performance or excuse for nonperformance, (3) defendant's breach, and (4) the resulting damages to the plaintiff." (*Oasis West Realty, LLC v. Goldman* (2011) 51 Cal.4th 811, 821.) Only the third element—whether respondents breached the agreement—is at issue here. As explained below, we conclude the undisputed material facts establish that respondents did not breach the agreement.

a. Respondents did not warrant the legal status of the property.

Appellants repeatedly and incorrectly insist respondents warranted that the property was a "legal" duplex. Appellants claim respondents made this warranty when they listed the property as a duplex. In addition, appellants point to the blank space of the agreement's section 14(A), which stated: "Seller warrants that the Property is legally approved as ____ units." According to appellants, this blank space confirms, or at the least raises an ambiguity not suitable for summary adjudication, that respondents warranted the property was a "legal" duplex. Appellants even assert respondent Urbina "admitted at his deposition that he instructed his real estate agent to market the property as a legal duplex."

The record does not support these contentions. The MLS listing for the property made no warranty as to the property's legal status. Respondents never listed the property as, or stated the property was, a "legal" duplex. Rather, based on the physical appearance of the property and the assessor's report, respondents and their real estate agent listed the property as a duplex, which as the trial court correctly noted was accurate "as that term is commonly known." Moreover, the property was sold "as-is" and appellants were advised repeatedly to conduct thorough investigations into the property, including specifically whether improvements or additions made to the property were permitted and approved.

In addition, as a matter of basic contract interpretation, the blank space left in section 14 of the agreement is not a warranty. Appellants used a CAR form agreement to make their offer, and neither they nor respondents sought to complete the form

warranty provision included in section 14. We will not supply language (or in this case a number) when the parties themselves declined to do so. Appellants urge us to consider the "totality of the circumstances" and extrinsic evidence in order to fill in the blank. Even if we were to accept that invitation, however, our conclusion would not change. When viewing the evidence in the light most favorable to appellants, as we must do here, there is no extrinsic evidence demonstrating respondents warranted that the property was legally permitted to be used as a duplex. Although it is undisputed respondents marketed the property as a duplex, that is not the same as providing a warranty that the property is legally permitted to be used a duplex. Indeed, respondents repeatedly advised appellants to investigate that very aspect of the property. And respondents' disclosure statement expressly advised it was "not a warranty of any kind."

Finally, appellants twice cite to 12 pages of the record as purported support for their contention that Urbina "admitted" he told the real estate agent to market the property as a "legal" duplex. None of those cites supports that contention.

Appellants also claim the references to "as-is" in the agreement do not refer to the property's legal status, but rather only refer to the property's physical status. Again, we do not agree. Although section 14 of the agreement stated the property was to be sold "in its PRESENT physical ('as-is') condition," that language is quickly followed by an advisory that appellants should "conduct investigations of the entire Property . . . . Property improvements may not be built according to code, in compliance with current Law, or have had permits issued." Moreover, the counteroffer expressly stated the property was

being sold "as-is" with no reference or limitation to its physical condition.

In sum, appellants base many of their arguments on the specious proposition that respondents both represented and warranted that the property was a "legal" duplex. Because that proposition is entirely unsupported by the record, however, those arguments fail.

b. Respondents did not breach their duty to disclose.

In light of the undisputed facts, appellants cannot demonstrate that respondents breached the agreement for failure to make required disclosures.

It is undisputed that the agreement required respondents to make certain disclosures with respect to the property. In particular, under section 9 of the agreement, respondents were required to disclose to appellants if any work had been done to the property without required permits, inspections, and approvals. That same section required respondents to disclose to appellants if they had actual knowledge of any notice of a violation of law issued against the property. Section 14 includes a similar provision. But respondents were required to make these disclosures only if respondents were aware of facts necessitating disclosure. If, during escrow, respondents became aware of information required to be disclosed, section 10 of the agreement obligated respondents to make subsequent or amended disclosures. However, respondents were not obligated to make subsequent or amended disclosures if appellants were also aware of the conditions or material inaccuracies at issue, or if those conditions or inaccuracies were disclosed in reports provided to or obtained by appellants. And the buyer's advisory

notified appellants that respondents were not required to inspect the property for appellants' benefit. Instead, appellants were under "an affirmative duty to exercise reasonable care to protect" themselves.

It is also undisputed that work had been done to the property without the required permits and approvals and that the 2012 substandard order was a notice of violation of law issued against the property. It is similarly undisputed that, although the City did not mail the 2012 substandard report to respondents, the City "filed" a certificate with the Los Angeles County Recorder noting the property's substandard condition. Finally, it is undisputed that, prior to the close of escrow, appellants received a copy of the certificate of occupancy and 9A report, which revealed the property was a single family dwelling and not a duplex. The 9A report clearly stated that "[a]ny difference between [the] authorized use and the current use may indicate illegal use or conversion." As such, appellants were on notice that the property was not legally permitted to be used as a duplex. And, thus, under section 10 of the agreement, respondents were under no obligation to disclose those conditions or inaccuracies.

Appellants argue the 9A report and certificate of occupancy were ambiguous and insufficient to notify them of the true legal status of the property. For example, they claim that, although the 9A report unequivocally states the property is a single family dwelling and the rear unit is an "unknown" with "0" units, other information about the property (including the MLS listing and assessor's report) indicated the property was a legal duplex. Even in light of such conflicting information, however, we conclude it cannot reasonably be disputed that the 9A report at

the least put appellants on notice that the property was not a legally permitted duplex. This, coupled with appellants' "affirmative duty to exercise reasonable care to protect" themselves, leads to the inescapable conclusion that respondents were under no obligation to notify appellants further of that same information.

Appellants also claim that respondents breached their duty of disclosure by not disclosing the 2012 substandard order, which the City issued shortly before the close of escrow. First, it is undisputed respondents did not have actual notice of the 2012 substandard order. The City mailed the 2012 substandard order to BAC and respondents never saw the document until after this lawsuit was filed. Thus, at most, respondents had constructive notice of the 2012 substandard order by virtue of the fact the City "filed" a certificate with the County Recorder noting the stated substandard condition. Even assuming, as appellants urge, that respondents had constructive notice of the 2012 order, we conclude that did not trigger respondents' duty to disclose under the agreement. (*Assilzadeh v. California Federal Bank* (2000) 82 Cal.App.4th 399, 410 [seller "must have actual knowledge in order to be liable for failing to disclose a material fact"].)

Finally, appellants argue respondents were willfully blind to the true legal status of the property and did not act in good faith. Appellants point to Urbina's deposition testimony where he stated he did not review any public records concerning the property. Appellants did not raise this argument before the trial court. Therefore, we decline to address it here. (*North Coast Business Park v. Nielsen Construction Co.* (1993) 17 Cal.App.4th 22, 28–30 [issue waived on appeal when not raised below in opposition to motion for summary judgment].)

Even if appellants had raised this issue below, however, we would not be persuaded. As noted, the advisory clearly states respondents were not obligated to inspect the property for the benefit of appellants. Rather, appellants were affirmatively obligated to investigate all aspects of the property. Moreover, appellants' argument rests on speculation that cannot support their opposition to respondents' motion for summary judgment. (*Advent, Inc.*, *supra*, 6 Cal.App.5th at p. 459.) For example, appellants state respondents "deliberately" and "intentionally" refused to review or inquire as to the legal status of the property. Although Urbina testified at deposition that he did not check public records for the property during escrow, there is no evidence that he purposely avoided doing so. And in fact the evidence shows that, before listing the property, respondents and their real estate agent reviewed the assessor's report, which stated the property was a duplex.

Appellants' remaining contentions are factually unsupported. For example, appellants assert Urbina's deposition testimony conflicts with his declaration filed in support of summary judgment. This is not accurate. Contrary to appellants' assertion, Urbina did not testify at his deposition that he knew the property was not legally permitted as a duplex. Rather, Urbina consistently testified he believed the property was a duplex. Appellants also point to documents related to a loan on the property prior to respondents' purchase of the property. There is no evidence either that respondents saw those loan documents or why they should have seen them when they do not relate to respondents' purchase of the property. As such, those documents are of no moment here.

3. Remaining Causes of Action

Appellants' remaining causes of action against respondents are negligent misrepresentation, intentional misrepresentation, and concealment. We agree with respondents that the trial court properly found each of those causes of action time-barred.

Appellants' three fraud-based causes of action are subject to a three-year statute of limitations. (Code Civ. Proc., § 338, subd. (d).) Causes of action for relief on the ground of fraud or mistake are "not deemed to have accrued until the discovery, by the aggrieved party, of the facts constituting the fraud or mistake." (*Ibid.*)

Appellants strenuously argue that they did not discover the property was a single family dwelling and not a legally permitted duplex until 2015, when they received the 2015 substandard order. The undisputed facts refute this claim. Of particular importance, appellants agree they received the 9A report and certificate of occupancy during escrow in August 2012. Both documents state the property is a single family dwelling—i.e., not a duplex. And the 9A report further specifies that no permits or certificate of occupancy had been issued for the rear unit of the property. Thus, appellants' second, third, and fourth causes of action accrued and the three-year statute of limitations began to run in August 2012, when appellants received the 9A report and certificate of occupancy. Appellants filed their initial complaint more than three years later in April 2016. As a result, the trial court correctly held the second, third, and fourth causes of action are time-barred.

In addition to arguing they did not receive actual notice of the property's legal status, appellants also argue they did not receive constructive notice by way of the 2012 substandard order. Because we conclude, however, that the 9A report and certificate of occupancy notified appellants of the legal status of the property in 2012, we need not and do not address this issue.

Thus, because appellants cannot demonstrate that respondents breached the agreement and because appellants' fraud-based causes of action against respondents are time-barred, the trial court correctly granted summary judgment in favor of respondents.

DISPOSITION

The judgment is affirmed. Respondents are awarded their costs on appeal.

NOT TO BE PUBLISHED.

LUI, P. J.

We concur:

CHAVEZ, J.

HOFFSTADT, J.