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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS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 SEVEN

ROOHOLLAH KERMANSHAHCHI, Plaintiff and Appellant, v. HESHMATOLLAH KERMANSHAHCHI, Defendant and Respondent.	B280370 (Los Angeles County Super. Ct. No. SC123685)

APPEAL from a judgment of the Superior Court of Los Angeles County, Craig D. Karlan, Judge. Affirmed.

Fisher & Wolfe, Herbert N. Wolfe, Jeffrey R. Klein; Greines, Martin, Stein & Richland, Robert A. Olson and Cynthia E. Tobisman, for Plaintiff and Appellant.

Parker Mills, David B. Parker, Mark A. Graf and Steven S. Wang, for Defendant and Respondent.

Roohollah (Roohi) Kermanshahchi appeals from the judgment of dismissal entered after the trial court sustained without leave to amend the demurrer of Heshmatollah (Heshmat) Kermanshahchi to Roohi's third amended complaint for breach of confidential relationship, breach of fiduciary duty, fraudulent concealment, conversion and an accounting.[1] Roohi contends the court erroneously concluded each of his claims was barred as a matter of law by the applicable statute of limitations. We affirm.

FACTUAL AND PROCEDURAL BACKGROUND

1. *The Kermanshahchi Family*

Heshmat, now 93 years old, is the eldest of four brothers, including Roohi, now 87 years old.[2] Upon the death of their father in 1966, each brother received a 25 percent share in the family's substantial assets. In accordance with Iranian custom at the time, Heshmat became the head of the family. As such, he managed the family's assets and had absolute control over their disposition. Roohi believed he was bound by custom and tradition to trust Heshmat's management of the family's assets without question.

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[1] Following the practice of the parties in their appellate briefing, we refer to Roohi Kermanshahchi and his brother, Heshmat Kermanshahchi, by their shortened first names for clarity.

[2] We accept as true all facts properly pleaded in Roohi's operative third amended complaint to determine whether the demurrer was properly sustained. (*Beacon Residential Community Assn. v. Skidmore, Owings, & Merrill LLP* (2014) 59 Cal.4th 568, 571.)

The Kermanshahchi family fled Iran in 1978 as a result of the Iranian revolution. Heshmat was able to transfer a significant portion of the family's assets out of Iran before the remainder was seized by the incoming regime. Heshmat settled in Los Angeles and continued to manage the family's assets. Roohi settled in England and at some point moved to Monaco, where he currently resides. Heshmat and Roohi had "little or no communication" over the years. When they met at family gatherings "from time to time," Roohi would ask Heshmat "the status of the family assets." Heshmat always assured Roohi everything was being "appropriately managed."

2. *The Texas Corporations and the 1989 Lawsuit*

Soon after leaving Iran Heshmat formed two corporations in Texas: Miloca of Texas, Inc. and Heshma, Inc. Each of the four brothers was a 25 percent shareholder in each company. Heshmat was the Director and President of each company. Heshmat used the companies to acquire six parcels of land near Houston, Texas. A small loan was used to acquire one of the properties, but the other five were purchased outright. The goal of the acquisition was to eventually sell the properties at a profit. Over the years, when Roohi inquired about the status of the investment, Heshmat reported the real estate market in Houston was deeply depressed and the properties could not be sold at that time. Because Roohi viewed the properties as long-term investments, this response seemed reasonable to him.

On December 18, 1989 a complaint was filed against Heshmat and Miloca in Los Angeles Superior Court.[3] The

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[3] Roohi's third amended complaint contains few details regarding the allegations made in the 1989 complaint. The trial court granted Heshmat's unopposed request to take judicial

complaint listed the three younger Kermanshahchi brothers (Iraj, Norman and Roohi) as plaintiffs. The gravamen of the lawsuit was that Heshmat, through Miloca, fraudulently obtained a $2 million loan secured by one of the Texas properties and used at least a portion of the loan proceeds for his own benefit. The complaint further alleged Heshmat forged Iraj's signature (as the assistant secretary and treasurer of Miloca) to obtain the loan. In addition to alleging conversion, fraud, misappropriation and breach of fiduciary duty, the complaint requested an accounting of Miloca's corporate assets. The action was voluntarily dismissed on July 31, 1991.

In his third amended complaint Roohi alleged the 1989 lawsuit was filed solely by Iraj, who had "always been contentious with" and had "personal issues with" Heshmat. Roohi alleged he had never discussed a potential lawsuit with Iraj or anyone else prior to the filing of the 1989 complaint. Roohi did not learn of the lawsuit until 1990 when his mother informed him of it and told him she was "adamant that the case be dismissed as such a public trial between family members who had unmarried daughters would result in tarnishing the family reputation in the tight-knit Iranian-Jewish community, many of whom were persecuted by the Khomeini dictatorship." In consideration of his mother's wishes and her failing health, and

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notice of the 1989 complaint and its voluntary dismissal in 1991. Roohi has not appealed that ruling. We also take judicial notice of those documents. (See Evid. Code, §§ 452, subd. (d) [court may take judicial notice of court records], 459, subd. (a)(1); see also *City of Port Hueneme v. Oxnard Harbor Dist.* (2007) 146 Cal.App.4th 511, 514 [on demurrer court may "consider material documents referred to in the allegations of the complaint"].)

believing Iraj was "simply attempting to cause trouble," Roohi contacted a friend in New York who was an attorney. The attorney contacted Iraj's attorney and requested Roohi's name be removed from the lawsuit. An amended complaint was subsequently filed in which Roohi was not listed as a plaintiff. In his third amended complaint Roohi alleged "he never saw the contents of the [1989] lawsuit until after [he] filed this Action and was informed thereof by his present counsel," nor was he "aware of what had been alleged" in the lawsuit.

3. *Roohi's Discovery of the Alleged Wrongdoing*

On October 20, 2013, while visiting Los Angeles, Roohi sent a letter to Heshmat to inquire about the assets of Miloca and Heshma. The letter stated, "For the past many years we have lived in different parts of the world with little or no communication. Meanwhile we both have reached, age wise, a point in life that we need to wrap up our joint financial affairs for the sake of ourselves and the next generation . . . . [¶] . . . [¶] Yet, the affairs of Heshma, Inc., and Miloca of Texas, Corp., their assets and liabilities are mysteries and enigmas which I am hoping to be resolved by you[r] assistance. I [would] like to have a chance to meet and hear directly from you the present condition of the above corporations, their assets if any, including many pieces of lands that were purchased in their names." The letter went on to request the corporations' records and deeds to the held properties.

When he did not receive a response to his letter, Roohi contacted an attorney in Los Angeles, who sent a second letter to Heshmat inquiring about the family's assets. Roohi's attorney received a response from Heshmat's attorney, dated December 24, 2013, stating the Texas properties had been lost to

foreclosure, leaving Miloca and Heshma with no assets. Thus, the letter stated, "there are no family investments or assets under our client's trust and control." The letter attached certificates of fact issued by the Texas Secretary of State indicating Heshma "forfeited existence" and became inactive on December 5, 1988 and Miloca did the same on November 18, 1991.

After receiving this letter, Roohi investigated and confirmed the Texas properties had been lost to foreclosure. He obtained reports from title companies and learned that, between 1984 and 1986, Heshma and/or Miloca had obtained more than $8.5 million in loans secured by four of the parcels. The other two parcels were sold at an unknown time for more than $7 million. Roohi alleges, based on information and belief, that Heshmat intentionally diverted the loan and sale proceeds for his personal benefit.

4. *The Instant Lawsuit*

Roohi filed the instant action on January 27, 2015. Heshmat demurred to the complaint, arguing Roohi had failed to state a claim for relief and the statutes of limitations barred all claims. The trial court sustained the demurrer with leave to amend.

Roohi filed the first amended complaint on October 19, 2015. Heshmat again demurred. The trial court sustained the demurrer with leave to amend and instructed Roohi, should he file a second amended complaint, to allege facts regarding the date of the alleged conversion of assets, the date he learned of the conversion and why the 1989 action did not trigger the statute of limitations.

Roohi filed the second amended complaint on April 21, 2016, and Heshmat again demurred. The trial court sustained the demurrer and instructed Roohi that a third amended complaint, if filed, must allege specific facts "detailing how the lawsuit filed in 1989, in which Roohi was a named plaintiff and of which he admittedly received notice in March 1990, was not sufficient to arouse the suspicions of a reasonable person that there was some wrongdoing or mismanagement of the family's assets by Defendant."

Roohi filed the third amended complaint on July 29, 2016, alleging causes of action for breach of confidential relationship, breach of fiduciary duty (duty of undivided loyalty), breach of fiduciary duty (failure to use reasonable care), fraudulent concealment and conversion and seeking an accounting and imposition of a constructive trust. In opposition to Heshmat's demurrer Roohi argued the delayed discovery rule postponed accrual of his causes of action until he received the 2013 letter from Heshmat's attorney.

The trial court sustained the demurrer without leave to amend. The court found Roohi's failure to review the complaint in the 1989 lawsuit and failure to discuss the case with his brothers at that time were manifestly unreasonable. The court further rejected Roohi's contention an investigation would not have revealed the wrongdoing because the 1989 lawsuit concerned only one parcel, whereas the current lawsuit involved seven parcels. The court found "the allegations and judicially noticeable facts establish, as a matter of law, that Plaintiff had sufficient knowledge regarding HESHMAT's alleged wrongdoing by virtue of the 1989 lawsuit to vitiate application of the delayed discovery rule. . . . The court finds at a minimum, Plaintiff had

presumptive knowledge of facts sufficient to put him on inquiry [notice] in 1990 and that Plaintiff has failed to demonstrate he was not negligent in failing to make the discovery over twenty years sooner."

DISCUSSION

1. *Standard of Review*

A demurrer tests the legal sufficiency of the factual allegations in a complaint. We independently review the superior court's ruling on a demurrer and determine de novo whether the complaint alleges facts sufficient to state a cause of action or discloses a complete defense. (*Loeffler v. Target Corp.* (2014) 58 Cal.4th 1081, 1100; *Committee For Green Foothills v. Santa Clara Bd. of Supervisors* (2010) 48 Cal.4th 32, 42.) We assume the truth of the properly pleaded factual allegations, facts that reasonably can be inferred from those expressly pleaded and matters of which judicial notice has been taken. (*Evans v. City of Berkeley* (2006) 38 Cal.4th 1, 20; *Schifando v. City of Los Angeles* (2003) 31 Cal.4th 1074, 1081.) We liberally construe the pleading with a view to substantial justice between the parties (Code Civ. Proc., § 452; *Gilkyson v. Disney Enterprises, Inc.* (2016) 244 Cal.App.4th 1336, 1340; see *Schifando*, at p. 1081 [complaint must be read in context and given a reasonable interpretation]); but, "[u]nder the doctrine of truthful pleading, the courts 'will not close their eyes to situations where a complaint contains allegations of fact inconsistent with attached documents, or allegations contrary to facts which are judicially noticed.'" (*Hoffman v. Smithwoods RV Park, LLC* (2009) 179 Cal.App.4th 390, 400; see *Brakke v. Economic Concepts, Inc.* (2013) 213 Cal.App.4th 761, 767 ["[w]hile the 'allegations [of a

complaint] must be accepted as true for purposes of demurer,' the 'facts appearing in exhibits attached to the complaint will also be accepted as true and, if contrary to the allegations in the pleading, will be given precedence'"]; *SC Manufactured Homes, Inc. v. Liebert* (2008) 162 Cal.App.4th 68, 83 ["[i]f the allegations in the complaint conflict with the exhibits, we rely on and accept as true the contents of the exhibits"].)

Although a general demurrer does not ordinarily reach affirmative defenses, it "will lie where the complaint 'has included allegations that *clearly* disclose some defense or bar to recovery.'" (*Casterson v. Superior Court* (2002) 101 Cal.App.4th 177, 183; accord, *Nolte v. Cedars-Sinai Medical Center* (2015) 236 Cal.App.4th 1401, 1406; *Favila v. Katten Muchin Rosenman LLP* (2010) 188 Cal.App.4th 189, 224.) "Thus, a demurrer based on an affirmative defense will be sustained only where the face of the complaint discloses that the action is necessarily barred by the defense." (*Casterson,* at p. 183; accord, *Favila,* at p. 224; see *Aryeh v. Canon Business Solutions, Inc.* (2013) 55 Cal.4th 1185, 1191 [application of a statute of limitations based on facts alleged in a complaint is a legal question subject to de novo review].)

2. *The Delayed Discovery Rule*

Traditionally, a claim accrues "'"when [it] is complete with all of its elements"—those elements being wrongdoing, harm, and causation.'" (*Aryeh v. Canon Business Solutions, Inc., supra,* 55 Cal.4th at p. 1191; accord, *Howard Jarvis Taxpayers Assn. v. City of La Habra* (2001) 25 Cal.4th 809, 815.) "This is [known as] the 'last element' accrual rule . . . ." (*Aryeh,* at p. 1191; see *ibid.* ["ordinarily, the statute of limitations runs from 'the occurrence of the last element essential to the cause of action'"]; *Howard*

Jarvis, at p. 815 [same]; *Quarry v. Doe I* (2012) 53 Cal.4th 945, 960.)

An exception to the general rule of accrual is the delayed discovery rule, "which postpones accrual of a cause of action until the plaintiff discovers, or has reason to discover, the cause of action." (*Fox v. Ethicon Endo-Surgery, Inc.* (2005) 35 Cal.4th 797, 807 (*Fox*).) "Under the discovery rule, the statute of limitations begins to run when the plaintiff suspects or should suspect that her injury was caused by wrongdoing, that someone has done something wrong to her." (*Jolly v. Eli Lilly & Co.* (1988) 44 Cal.3d 1103, 1110.) In other words, the limitations period begins "'once the plaintiff has notice or information of circumstances to put a reasonable person on inquiry. [Citation.] Subjective suspicion is not required. If a person becomes aware of facts which would make a reasonably prudent person suspicious, he or she has a duty to investigate further and is charged with knowledge of matters which would have been revealed by such an investigation.'" (*McCoy v. Gustafson* (2009) 180 Cal.App.4th 56, 108; accord *Fox,* at pp. 807-808 ["plaintiffs are charged with presumptive knowledge of an injury if they have ""information of circumstances to put [them] *on inquiry*"" or if they have ""*the opportunity to obtain knowledge* from sources open to [their] investigation."""" (fn. omitted)].)

"Thus, a two-part analysis is used to assess when a claim has accrued under the discovery rule. The initial step focuses on whether the plaintiff possessed information that would cause a reasonable person to inquire into the cause of his [or her] injuries. Under California law, this inquiry duty arises when the plaintiff becomes aware of facts that would cause a reasonably prudent person to suspect his [or her] injuries were the result of

wrongdoing. [Citation.] If the plaintiff was in possession of such facts, thereby triggering his [or her] duty to investigate, it must next be determined whether 'such an investigation would have disclosed a factual basis for a cause of action[.]'" (*Alexander v. Exxon Mobil* (2013) 219 Cal.App.4th 1236, 1251.) "A plaintiff need not be aware of the specific 'facts' necessary to establish the claim; that is a process contemplated by pretrial discovery. Once the plaintiff has a suspicion of wrongdoing, and therefore an incentive to sue, she must decide whether to file suit or sit on her rights. So long as a suspicion exists, it is clear that the plaintiff must go find the facts; she cannot wait for the facts to find her." (*Jolly v. Eli Lilly & Co.*, *supra*, 44 Cal.3d at p. 1111; accord, *Norgart v. Upjohn Co.* (1999) 21 Cal.4th 383, 398 [once on inquiry plaintiff "must indeed seek to learn the facts necessary to bring the cause of action in the first place"].)

The delayed discovery rule applies equally when a fiduciary relationship exists—while the beneficiary in a fiduciary relationship generally has a limited duty to exercise due diligence, the statute of limitations will begin to run once "'the [putative plaintiff] has knowledge or notice of the act constituting a breach of fidelity.' [Citations.] The existence of the fiduciary relationship . . . does not empower that plaintiff to "'sit idly by'" when ""facts sufficient to arouse the suspicions of a reasonable [person][ ]"" "'come to his [or her] attention."'" (*Ferguson v. Yaspan* (2014) 233 Cal.App.4th 676, 683; accord, *Stella v. Asset Management Consultants, Inc.* (2017) 8 Cal.App.5th 181, 197, fn. 13.)

To defeat a demurrer by relying on the delayed discovery rule, a plaintiff "'must specifically plead facts to show (1) the time and manner of discovery *and* (2) the inability to have made

earlier discovery despite reasonable diligence.' [Citation.] In assessing the sufficiency of the allegations of delayed discovery, the court places the burden on the plaintiff to 'show diligence'; 'conclusory allegations will not withstand demurrer.'" (*Fox*, *supra*, 35 Cal.4th at p. 808; accord *Investors Equity Life Holding Co. v. Schmidt* (2011) 195 Cal.App.4th 1519, 1533 ["the burden of pleading and proving belated discovery of a cause of action falls on the plaintiff"].)

When a plaintiff reasonably should have discovered wrongdoing for purposes of the accrual of a cause of action or application of the delayed discovery rule is generally a question of fact, properly decided as a matter of law only if the evidence (or, in this case, the allegations in the complaint and facts properly subject to judicial notice) can support only one reasonable conclusion. (*Jolly v. Eli Lilly & Co.*, *supra*, 44 Cal.3d at p. 1112; *Broberg v. The Guardian Life Ins. Co. of America* (2009) 171 Cal.App.4th 912, 921.)

3. *Roohi's Causes of Action Are Time-barred*

The statutes of limitations applicable to Roohi's claims are three years or, possibly, four,[4] either of which was exceeded if

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[4] Code of Civil Procedure section 338, subdivision (d), specifies a three-year limitations period for actions grounded on fraud or mistake. "This section effectively codifies the delayed discovery rule in connection with actions for fraud, providing that a cause of action for fraud "'is not to be deemed to have accrued until the discovery, by the aggrieved party, of the facts constituting the fraud or mistake.'"" (*Britton v. Girardi* (2015) 235 Cal.App.4th 721, 733-734.) "The statute of limitations for breach of fiduciary duty is three or four years, depending on whether the breach is fraudulent or nonfraudulent." (*American Master Lease LLC v. Idanta Partners, Ltd.* (2014)

Roohi's causes of action accrued in 1990, as the trial court concluded. Roohi argues he adequately pleaded facts demonstrating the applicability of the delayed discovery rule and the trial court erred in finding his failure to investigate after the 1989 lawsuit unreasonable as a matter of law. We disagree.

Roohi acknowledges he became aware of the 1989 lawsuit in 1990, but argues it was reasonable for him to disregard it because "Iraj was known as the family troublemaker" and Roohi believed Iraj was "simply attempting to cause trouble." Roohi further urges an interpretation of the delayed discovery rule that would allow a jury to consider his subjective beliefs based on

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225 Cal.App.4th 1451, 1479; see also *Fuller v. First Franklin Financial Corp.* (2013) 216 Cal.App.4th 955, 963 ["limitations period is three years . . . for a cause of action for breach of fiduciary duty where the gravamen of the claim is deceit, rather than the catchall four-year limitations period that would otherwise apply"]; *William L. Lyon & Associates, Inc. v. Superior Court* (2012) 204 Cal.App.4th 1294, 1312 ["[b]reach of fiduciary duty not amounting to fraud or constructive fraud is subject to the four-year 'catch-all statute' of Code of Civil Procedure section 343"].) The limitation period governing claims for conversion is also three years (Code Civ. Proc., § 338, subd. (c)). That period starts to run immediately upon the interference with a person's right of possession in personal property and may be tolled only when the defendant "fraudulently conceals the relevant facts or where the defendant fails to disclose such facts in violation of his or her fiduciary duty to the plaintiff." (*AmerUS Life Ins. Co. v. Bank of America, N.A.* (2006) 143 Cal.App.4th 631, 639; see also *Prakashpalan v. Engstrom, Lipscomb & Lack* (2014) 223 Cal.App.4th 1105, 1135 [elements of conversion are plaintiff's ownership or right to possess property at time of conversion; defendant's conversion by a wrongful act or disposition of those rights of ownership or possession; and damage].)

cultural traditions and family dynamics. However, the governing standard applies an objective test to determine whether a reasonable person would have suspected wrongdoing. (*Nguyen v. Western Digital Corp.* (2014) 229 Cal.App.4th 1522, 1552; *Kitzig v. Nordquist* (2000) 81 Cal.App.4th 1384, 1391.) We agree with the trial court that, upon learning a lawsuit had been filed in his or her name, a reasonably prudent person would, at the very least, ask one of the other parties about the subject of the action, if not request and review a copy of the pleadings. Roohi did neither of these things. Iraj's purported status as family troublemaker does not excuse Roohi's failure. Based on the facts alleged in the third amended complaint, a reasonably prudent person would have been suspicious upon learning of the 1989 lawsuit, thus triggering his or her duty to investigate. (See *Czajkowski v. Haskell & White, LLP* (2012) 208 Cal.App.4th 166, 179 [CEO had duty to investigate auditors' alleged wrongdoing when he discovered unpaid tax bill "because on an objective basis, all of these circumstances placed [CEO] on '"notice of facts sufficient to arouse the suspicions of a reasonable man"'"].)

Roohi's argument he would not have discovered any wrongdoing had he investigated is similarly unavailing and fundamentally misconstrues the duty to investigate. Roohi "was not under a duty to discover, [but] merely to investigate diligently." (*Doe v. Roman Catholic Bishop of Sacramento* (2010) 189 Cal.App.4th 1423, 1432.) If Roohi had diligently investigated 28 years ago, he would have satisfied this duty and "could now show that diligent investigation did not reveal the [wrongdoing], rather than simply speculating that might be so." (*Id.* at pp. 1432-1433.) Having failed to investigate, the burden was on Roohi to '"specifically plead facts to show . . . the inability to have

made earlier discovery despite reasonable diligence.'" (*Fox*, *supra*, 35 Cal.4th at p. 808; accord *Grisham v. Philip Morris U.S.A., Inc.* (2007) 40 Cal.4th 623, 638 ["'[i]n assessing the sufficiency of the allegations of delayed discovery, the court places the burden on the plaintiff to "show diligence"; "conclusory allegations will not withstand demurrer"'"].)

Not only has Roohi failed to allege any specific facts demonstrating an inability to have discovered Heshmat's wrongdoing in 1990, but also the facts alleged in the third amended complaint and those of which we take judicial notice undermine his position. Roohi argues an inspection of the 1989 complaint would not have alerted him to any wrongdoing because Heshmat had absolute authority to manage the family's assets, including using the Texas property as collateral for a loan. In addition he argues the earlier lawsuit alleged wrongdoing as to only one parcel while the current action alleges wrongdoing as to all the Texas properties. However, the gravamen of the 1989 complaint was not that Heshmat obtained a secured loan on one specific property, but that he forged documents to do so, improperly diverted assets from Miloca and converted the loan proceeds for his personal benefit. An examination of the 1989 complaint would have alerted a reasonable person to the possibility of wrongdoing as to all assets under Heshmat's management.

Roohi further argues it would have been labor- and cost-prohibitive to discover any wrongdoing in 1990 because he "lived on another continent" and "[r]ecords that might have been digitized and searchable in 2013 could well have been bound in paper volumes in 1990." This argument borders the frivolous. Inquiries into corporate assets and title records were routine in

the era before digitization. Roohi was able to retain an attorney in 1990 to be removed as a plaintiff from the lawsuit. He has failed to explain why he could not have requested that attorney or one of his or her colleagues investigate the status of Miloca, Heshma and the Texas properties. Such an investigation would have revealed that secured loans had been obtained on four of the Texas properties between 1984 and 1986 and that Heshma had ceased doing business in Texas in 1988.[5] This information would lead a reasonable person to question the status of the companies' assets and the current ownership of the properties. Roohi's failure to investigate and discover this publicly available information defeats his delayed discovery argument. (See *Utility Cost Management v. Indian Wells Valley Water Dist.* (2001) 26 Cal.4th 1185, 1197 [where information is publicly available "a diligent plaintiff should be able to discover, within the statutory period, whether a cause of action exists"]; see also *Bank of New York Mellon v. Citibank, N.A.* (2017) 8 Cal.App.5th 935, 957 [delayed discovery did not toll statute of limitations when bank had reason to suspect fraud related to lien priority but failed to inspect public records].)

Finally, Roohi's generalized allegations Heshmat had reassured him "from time to time" that the family investments were being "appropriately managed" are insufficient to excuse Roohi's failure to investigate. (See *Grisham v. Philip Morris*

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[5] While Roohi alleged the foreclosure of the property at issue in the 1989 action could not have been discovered by diligent investigation in 1990 because it did not occur until 1991, he has failed to allege the dates of foreclosure for the remaining properties or allege other facts demonstrating discovery of such information would have been impossible at the time.

U.S.A., Inc., *supra,* 40 Cal.4th at p. 638 [""conclusory allegations will not withstand demurrer""]; *Fox*, *supra*, 35 Cal.4th at p. 808 [same].) Even if Roohi's allegations of Heshmat's assurances were sufficiently specific, they would not relieve Roohi's duty to investigate in light of facts reasonably arousing suspicion. (See *NBCUniversal Media*, *LLC v. Superior Court* (2014) 225 Cal.App.4th 1222, 1236 [plaintiffs who suspected infringement had duty to inquire despite assurances by defendants]; *Doe v. Roman Catholic Bishop of Sacramento*, *supra*, 189 Cal.App.4th at p. 1433 [defendant's misrepresentations did not relieve duty to investigate where "circumstances . . . cast serious doubt on those representations"]; see also *Ferguson v. Yaspan, supra,* 233 Cal.App.4th at p. 683.)

In sum, the allegations in the third amended complaint and the exhibits attached thereto support only one reasonable conclusion—Roohi should have suspected wrongdoing when he learned of the 1989 lawsuit. Further, Roohi has failed to allege specific facts supporting his allegation that reasonable diligence would not have uncovered his claims. The delayed discovery rule does not apply, and the demurrer was properly sustained without leave to amend.[6]

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[6] Roohi has not identified any additional facts he can allege that would justify application of the delayed discovery rule in this case. (See *Schifando v. City of Los Angeles, supra,* 31 Cal.4th at p. 1081 ["plaintiff has the burden of proving that an amendment would cure the defect"].)

DISPOSITION

The judgment of dismissal is affirmed. Heshmat is to recover his costs on appeal.

PERLUSS, P. J.

We concur:

ZELON, J.

FEUER, J.*

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