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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

JANE SISKIN, Plaintiff and Appellant, v. PETER KORAL et al., Defendants and Respondents.	B241715 (Los Angeles County Super. Ct. No. BC462606)

APPEAL from a judgment of the Superior Court of Los Angeles County, Michelle R. Rosenblatt, Judge. Affirmed.

Brown George Ross, Peter W. Ross, Sylvia P. Lardiere, and Lori Sambol Brody for Plaintiff and Appellant.

Kelley Drye & Warren, Andrew M. White, David E. Fink, and Eric W. May for Defendants and Respondents.

INTRODUCTION

Jane Siskin appeals from a judgment of dismissal, following an order granting summary judgment in favor of respondents Peter Koral (Koral) and L'Koral Incorporated (L'Koral). Appellant contends the trial court erred in determining that her causes of action were time-barred by the applicable statutes of limitations. Finding no reversible error, we affirm.

FACTUAL AND PROCEDURAL HISTORY

Appellant began working for Koral in 1994. In 2005, she became a 9.91 percent shareholder of L' Koral; Koral owned the remaining 90.09 percent. At the beginning of 2005, appellant was the president of sales for L'Koral, and Koral was its chief executive officer. L'Koral was in the business of designing, manufacturing, and distributing apparel throughout the United States. It had two divisions: one division manufactured and sold expensive blue jeans and related apparel under the trade name "Seven for All Mankind" (the Seven Division); the other manufactured more moderately priced apparel (the Moderate Division). Later that same year, L'Koral spun off the Seven Division to a subsidiary known as Seven for All Mankind, LLC (Seven, LLC). Shortly thereafter, on March 1, 2005, L'Koral sold 50 percent of Seven, LLC to Bear Stearns. Appellant received her pro rata share of the sale proceeds.

Shortly after the sale to Bear Stearns, appellant entered into negotiations to sell her ownership interest back to L'Koral. On April 30, 2007, appellant signed an agreement (the Redemption Agreement) to sell her 9.91 percent ownership interest in L'Koral for approximately $4.2 million and a 30 percent share of the Moderate Division, which was spun off into a separate entity. As a result of the sale, Koral became the sole owner of L'Koral. Four months later, on August 31, 2007, L'Koral and Bear Stearns sold Seven, LLC to VF Corp. (VFC) for

approximately $773.1 million (the VF Sale). Appellant remained a business partner of Koral until October 2009, when she bought out Koral's 70 percent interest in the Moderate Division.

In 2010, the Internal Revenue Service (IRS) conducted an audit of L'Koral's tax accounting of the 2007 Redemption Agreement. Appellant was told that "the IRS found improbable L'Koral Inc.'s assertion that my interest in L'Koral Inc. was purchased for only $4.2 million, when the VF Sale took place just four months thereafter and, according to the IRS, established that my interest was much more valuable." In the course of the IRS audit, in February 2011, a representative of Koral admitted to appellant's representative that the negotiations between L'Koral, Bear Stearns, and VFC for the sale of Seven, LLC began within days of appellant's signing the Redemption Agreement.

On May 27, 2011, appellant filed a complaint against respondents, alleging causes of action for intentional misrepresentation, concealment, and negligent misrepresentation. Appellant alleged that she entered into negotiations to sell her ownership interest in L'Koral based upon Koral's representations that L'Koral was unlikely to sell the balance of its interest in Seven, LLC any time soon, and that any such sale would take place, if at all, many years in the future. She further alleged that in early 2007, Koral was "heavily" pressuring her to sell her ownership interest, even "threaten[ing] that, unless she did so immediately, he would simply shut down the Moderate Division." Before finally agreeing to sell her ownership interest in April 2007, appellant alleged that she sought and obtained Koral's assurances that "no plans were in the offing to sell the balance of Seven, LLC; no discussions regarding such a sale were underway; and any possibility of such a sale remained years distant." Based upon these assurances, appellant sold her ownership interest back to L'Koral.

Appellant also alleged that "[i]mmediately after learning of the VF Sale, Siskin confronted Koral and asked whether this deal had been under discussion or contemplated in any way prior to the execution of the Redemption Agreement on April 30, 2007. Koral assured Siskin that it had not. He told her the discussions between L'Koral, Inc., Bear Stearns and VF had not commenced until some months after the Redemption Agreement had closed." Appellant sought to recover approximately $34 million from respondents, the difference between what she had received for her shares and what she would have received had she not sold her shares four months earlier.

Subsequently, appellant served a document subpoena on VFC. In response, VFC produced (1) a confidentiality agreement between VFC and Seven, LLC on May 14, 2007, (2) a letter of intent for the VF Sale signed June 15, 2007, and (3) a transcript of a deposition taken in June 2009 in an unrelated action, in which Koral testified that his intention as of March 2005 was to sell Seven, LLC within three years.

Appellant also served a document subpoena on Irving Place Capital Management, L.P. (IPC), the successor to Bear Stearns. IPC informed appellant that it could not locate any responsive records, as Bear Stearns had been sold to JP Morgan Chase in May 2008. "As a result . . . , IPC simply does not have, in its possession, custody or control, all of [Bear Stearns's] electronic documents and communications."

On September 8, 2011, appellant filed a first amended and supplemental complaint, which added allegations related to the documents produced by VFC. Specifically, she alleged that in a June 2, 2009 deposition, Koral testified that, at the time of the sale of 50 percent of Seven, LLC to Bear Stearns on March 1, 2005, he had "a plan to sell the rest of Seven *within three years*." As to the sale of

Seven, LLC to VFC, appellant alleged that "[a] Confidentiality Agreement was signed between VF and Seven on May 14, 2007, just two weeks after Siskin signed the Redemption Agreement. A Letter of Intent for the VF Sale was signed one month later, on June 15, 2007."

After filing an answer generally denying the allegations and raising the affirmative defense of statute of limitations, respondents filed a motion for summary judgment. In their motion, respondents alleged that all of appellant's claims were time-barred as a matter of law. Respondents asserted that in verified discovery responses, appellant had stated that she first learned of the VF Sale "just a few days before that transaction was reported by the press in late August 2007." Appellant also admitted that she "confronted" Koral regarding the timing of the VF Sale within one week of learning of it, and that she conducted no investigation other than that inquiry. Thus, respondents asserted, appellant was on inquiry notice in August 2007. Unless the statute of limitations was tolled or Koral was estopped from asserting it as a defense, appellant's claims for intentional misrepresentation and concealment expired in August 2010, and her claim for negligent misrepresentation expired in August 2009.

Respondents also contended that appellant could not show the applicable statutes of limitations were tolled. They argued that a reasonable and diligent investigation would have revealed information indicating that Koral likely misled appellant in April 2007. They asserted that appellant could have contacted VFC and Bear Stearns to inquire about the timing of the negotiations for the VF Sale, as the contact information for the parties and their attorneys was publicly available. They noted that VFC produced the transactional documents and deposition transcript immediately after appellant requested them from VFC. Respondents also submitted a Form 8-K filed by VFC with the Securities and Exchange

Commission (SEC) on July 26, 2007. In the publicly available Form 8-K, VFC included a July 26, 2007 "Agreement and Plan of Merger By and Among VF Corporation, Ring Company, Ring Five LLC, Seven For All Mankind, LLC, and Certain Unitholders" (the Purchase Agreement), and a press release announcing the purchase. The Purchase Agreement included the contact information for VFC, Bear Stearns, L'Koral, and Koral, and for their respective attorneys.

Appellant opposed the motion for summary judgment, contending that the reasonableness of her investigation was a question of fact that could not be decided on summary judgment. She argued that her duty to investigate Koral's representations was relaxed because Koral was her fiduciary and a long-time business partner. In a declaration, appellant stated that after learning of the VF Sale, she asked Koral whether the sale had been under discussion or contemplated prior to the execution of the Redemption Agreement on April 30, 2007. Koral assured her that it had not; rather, he represented, the discussion between L'Koral, Bear Stearns and VFC had commenced months later. Appellant asserted that: "I trusted Koral and accepted his word on the matter. I had no reason to disbelieve him. He had been my business partner for thirteen years. He remained my business partner until two years later (October 2009), when my current partner and I bought defendants' controlling interest in the Moderate Division. Further, I was not aware of any means available to me to investigate or challenge his assurances. I had no information available to me that would have established that Koral was lying."

Appellant further contended that neither VFC nor Bear Stearns would have provided information voluntarily to her; VFC had produced the documents during the discovery process. Appellant also filed evidentiary objections to respondents' assertion that "[c]opious information about the VF Sale, including numerous

documents and contact information for multiple parties involved in the VF Sale and their attorneys has been available to the public since July 26, 2007."

Respondents filed a reply, contending that appellant's investigation was not diligent or reasonable as a matter of law, because she did nothing to investigate whether Koral had misled her, other than confronting him. They also filed evidentiary objections to two assertions in appellant's declaration -- that she was not aware of any means available to her to investigate Koral's representations when she confronted him after the VF Sale, and that she had no information available to determine whether Koral was then lying to her.

On April 26, 2012, the trial court granted respondents' motion for summary judgment, overruled appellant's evidentiary objections, and sustained respondents' evidentiary objections. The court held that appellant was on inquiry notice of her claims in late August 2007, as by that time, appellant had a suspicion of wrongdoing. As the court characterized it, "what the complaint and Siskin describe in late August 2007 can be boiled down to her inquiring as to whether or not Defendant Koral had lied to her [in April]." The court determined that appellant could not avail herself of the delayed discovery rule because "she did not actually conduct an investigation of whether or not Koral was lying to her beyond taking Koral's word that he did not lie to her." For the same reason, appellant was not entitled to the tolling of the applicable statutes of limitations under the fraudulent concealment doctrine. In addition, the court found appellant's assertion that VFC and Bear Stearns would not have cooperated with her requests for documents in August 2007 was speculative and unsupported by evidence.

A judgment of dismissal of appellant's amended and supplemental complaint was entered May 17, 2012. Appellant timely appealed.

DISCUSSION

Appellant contends the trial court erred in determining that she was on inquiry notice of her claims in August 2007. She disputes the court's determination that she was not entitled to tolling of the applicable limitations period under the fraudulent concealment doctrine. Finally, she challenges the trial court's evidentiary ruling that struck two assertions in her declaration -- that she was not aware of any means to investigate Koral's representations in August/September 2007, and that she had no information available to determine whether he was then lying to her.

A. Standard of Review

"A defendant is entitled to summary judgment if the record establishes as a matter of law that none of the plaintiff's asserted causes of action can prevail. [Citation.]" (*Molko v. Holy Spirit Assn*. (1988) 46 Cal.3d 1092, 1107.) Generally, "the party moving for summary judgment 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." (*Aguilar v. Atlantic Richfield Co*. (2001) 25 Cal.4th 826, 850.) In moving for summary judgment, "all that the defendant need do is to show that the plaintiff cannot establish at least one element of the cause of action -- for example, that the plaintiff cannot prove element *X*." (*Id*. at p. 853.)

"'Review of a summary judgment motion by an appellate court involves application of the same three-step process required of the trial court. [Citation.]'" (*Bostrom v. County of San Bernardino* (1995) 35 Cal.App.4th 1654, 1662.) The three steps are (1) identifying the issues framed by the complaint, (2) determining

whether the moving party has made an adequate showing that negates the opponent's claim, and (3) determining whether the opposing party has raised a triable issue of fact. (*Ibid*.)

"Although we independently review the grant of summary judgment [citation], our inquiry is subject to two constraints. First, we assess the propriety of summary judgment in light of the contentions raised in [appellant's] opening brief. [Citation.] Second, to determine whether there is a triable issue, we review the evidence submitted in connection with summary judgment, with the exception of evidence to which objections have been appropriately sustained. [Citations.]" (*Food Safety Net Services v. Eco Safe Systems USA, Inc*. (2012) 209 Cal.App.4th 1118, 1124.)

B. Accrual of Causes of Action

Appellant alleged three causes of action in her complaint: intentional misrepresentation, concealment, and negligent misrepresentation. The first two causes of action are governed by the three-year limitations period set forth in California Code of Civil Procedure section 338, subdivision (d).[1] (§ 338, subd. (d) [fraud claims]; *Alfaro v. Community Housing Improvement System & Planning Assn., Inc.* (2009) 171 Cal.App.4th 1356, 1391.) The cause of action for negligent misrepresentation is governed by the two-year limitations period set forth in section 339. (§ 339 [claims upon an obligation or liability not based on a writing]; *E-Fab, Inc. v. Accountants, Inc. Services* (2007) 153 Cal.App.4th 1308, 1316.)

Generally, the limitations period starts running when the last element of a cause of action is complete. (*Fox v. Ethicon Endo-Surgery, Inc*. (2005) 35 Cal.4th 797, 806 (*Fox*).) As used in this context, the "'elements'" of a cause of action are the "'generic'" elements of wrongdoing, causation, and injury. (*Id*. at p. 807.)

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[1] All further statutory citations are to the Code of Civil Procedure.

Here, the wrongdoing that formed the basis for appellant's causes of action were Koral's alleged misrepresentations in April 2007. According to the complaint, Koral made three misrepresentations: (1) that "no plans, were in the offing to sell the balance of Seven[, LLC]"; (2) that "no discussions regarding such a sale were underway"; and (3) that "any possibility of such a sale remained years distant." Appellant contended these misrepresentations caused her injury, as she would not have sold her 9.91 percent ownership interest in L'Koral had she known the representations were false. Finally, appellant alleged she suffered an economic injury as a result of the alleged misrepresentations when Seven, LLC was sold in August 2007; she contends she would have made over $38 million from the VF Sale had she kept her ownership interest.

In their motion for summary judgment, respondents made an adequate showing that appellant's causes of action were time-barred as a matter of law. On the face of her complaint, appellant's causes of action accrued in August 2007, when the last element of her causes of action was completed. However, the applicable statutes of limitations here codified the "'discovery rule,' which postpones accrual of a cause of action until the plaintiff discovers, or has reason to discover, the cause of action." (*Fox, supra*, 35 Cal.4th at p. 807 ["The discovery rule only delays accrual until the plaintiff has, or should have, inquiry notice of the cause of action."].) For example, section 339 provides that a negligent misrepresentation cause of action "shall not be deemed to have accrued until the discovery of the loss or damage suffered by the aggrieved party thereunder." Similarly, section 338, subdivision (d) provides that a cause of action on a fraud claim "is not deemed to have accrued until the discovery, by the aggrieved party, of the facts constituting the fraud." As our Supreme Court has explained, "[t]he Legislature, in codifying the discovery rule, has . . . required plaintiffs to pursue

their claims diligently by making accrual of a cause of action contingent on when a party discovered or *should have* discovered that his or her injury had a wrongful cause." (*Fox, supra,* 35 Cal.4th at p. 808; see also *Dias v. Nationwide Life Ins. Co*. (E.D. Cal. 2010) 700 F.Supp.2d 1204, 1222 (*Dias*) ["The limitations period for fraud . . . incorporates the 'delayed discovery rule.'"]; *Doe v. Roman Catholic Bishop of Sacramento* (2010) 189 Cal.App.4th 1423, 1430-1431 [concealment claim accrues on inquiry notice].)[2]

"[T]he 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 (*Jolly*).) The plaintiff has reason to suspect when she has notice or information of circumstances to put a reasonable person on inquiry. The plaintiff need not know the specific facts necessary to establish the cause of action. Rather, the plaintiff must seek to learn the facts necessary to bring the cause of action in the first place; she cannot "'sit'" on her rights. (*Norgart v. Upjohn Co*. (1999) 21 Cal.4th 383, 398 (*Norgart*); see also *Kline v. Turner* (2001) 87 Cal.App.4th 1369, 1374 ["[D]iscovery" in the context of the accrual of a fraud claim occurs "when the plaintiff suspected or should have suspected that an injury was caused by wrongdoing"].) "In other words, plaintiffs are required to conduct a reasonable investigation after becoming aware of an injury, and are charged with knowledge of the information that would have been revealed by such an investigation." (*Fox, supra*, 35 Cal.4th at pp. 807-808.)

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[2] Although the parties separately discuss the delayed discovery rule, as the cases make clear, the rule is incorporated into the statutes of limitations applicable to appellant's claims.

"While resolution of the statute of limitations issue is normally a question of fact, where the uncontradicted facts established through discovery are susceptible of only one legitimate inference, summary judgment is proper." (*Jolly, supra*, 44 Cal.3d at p. 1112; see also *Norgart, supra*, 21 Cal.4th at p. 405 [affirming summary judgment on statute of limitations ground]; *Gutierrez v. Mofid* (1985) 39 Cal.3d 892, 902-903 [same]; *Sanchez v. South Hoover Hospital* (1976) 18 Cal.3d 93, 103 [same].)

C. Inquiry Notice

As our Supreme Court has held, "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*, *supra*, 44 Cal.3d at p. 1110.) Here, the only legitimate inference from the undisputed facts is that appellant actually suspected Koral had done something wrong in August 2007. Appellant alleged that Koral pressured her heavily to sell her shares in early 2007, even threatening to shut down the Moderate Division if she did not sell immediately. Before agreeing to sell in April 2007, she sought and obtained Koral's assurances that [1] "no plans were in the offing to sell the balance of Seven[, LLC]; [2] . . . no discussions regarding such a sale were underway; and [3] . . . any possibility of such a sale remained years distant." It is undisputed that a mere four months later, Koral and Bear Stearns sold Seven, LLC to VFC for nine times the value appellant had received from L'Koral. Immediately after learning of the sale, appellant -- in the words of her complaint -- "confronted Koral" and asked him whether discussions regarding the sale had been underway or contemplated prior to April 30, 2007. The only legitimate inference from these undisputed facts is that in August 2007, appellant suspected that Koral had lied to her in April 2007 and caused her to suffer an economic loss.

Appellant contends that it is reasonable to infer that in August 2007, she had no suspicion that Koral had lied to her, because (1) she believed in and trusted him, based upon their lengthy business partnership; (2) the timing of the VF Sale did not conclusively establish that Koral had lied to her in April 2007, as the VF opportunity might have arisen after April 30, 2007; and (3) Koral owed a fiduciary duty to appellant to disclose his intent to sell Seven, LLC. Appellant's contentions do not obviate the fact that she confronted Koral to inquire whether the negotiations to sell Seven, LLC to VFC had been underway or contemplated before April 30, 2007 -- conduct irreconcilable with her current claim that she trusted him, believed that the timing of the VF Sale was not inherently suspicious, and relied on the fiduciary relationship between them. Rather, the only legitimate inference is that despite her later assertions, appellant was suspicious of Koral's wrongdoing in August 2007, and acted upon her suspicions by asking him about the timing of the negotiations to sell Seven, LLC. As the trial court aptly observed, appellant's conduct amounted to "inquiring as to whether or not Defendant Koral had lied to her." Her inquiry evinced an understandable suspicion as to the truth of Koral's April representations. In short, the evidence establishes that upon learning of the VF Sale in August 2007, appellant suspected that Koral had wronged her in August 2007; her causes of actions accrued at that time.

Even were we to find a triable issue of fact existed as to her actual suspicion, we would conclude that a reasonable person in appellant's position "should have suspected that an injury was caused by wrongdoing." (*Kline v. Turner*, *supra*, 87 Cal.App.4th at p. 1374.) No reasonable person would have placed much trust in Koral based upon, in appellant's words, "the fact that he had treated her fairly in the past." Months before the sale, Koral had heavily pressured appellant to sell her shares, including using economic threats. In addition, although appellant now

argues she received what seemed like a fair price for her ownership interest in April 2007, it could not have appeared nearly so fair in August after the VF sale, when what had been her minority interest sold for nine times the price she had received only four months earlier.

Likewise, no reasonable person would have found the timing of the VF Sale innocuous. The sale of Seven, LLC in August 2007 established that Koral's third April representation -- that any sale would occur years in the future -- was wrong, and cast doubt on the truthfulness of the other two representations. Koral had represented that he did not intend to sell Seven, LLC in the near future; yet a mere four months later, he had secured a buyer, negotiated a deal satisfactory to the company's other shareholder, and closed a sale involving three-quarters of a billion dollars.

Finally, a reasonable person would have been suspicious in August 2007, despite the fiduciary relationship that existed when Koral made his three representations in April 2007. As stated in *Hobbs v. Bateman Eichler, Hill Richards, Inc*. (1985) 164 Cal.App.3d 174, 201-202 (*Hobbs*), "[w]here a fiduciary relationship exists, facts which ordinarily require investigation may not incite suspicion [citation] and do not give rise to a duty of inquiry [citation]." However, "once a plaintiff becomes aware of facts which would make a reasonably prudent person suspicious, the duty to investigate arises and the plaintiff may then be charged with knowledge of the facts which would have been discovered by such an investigation." (*Id.* at p. 202, italics omitted; *Lee v. Escrow Consultants, Inc*. (1989) 210 Cal.App.3d 915, 921 (*Lee*) [same].) While appellant may have been entitled to rely on Koral's representations in April regarding his present and future plans for L'Koral, the VF Sale necessarily cast them in a different light. As explained above, the facts known to appellant following the VF Sale would have

caused any reasonable person to question the veracity of Koral's representations in April that he had no plans to sell the company and did not contemplate doing so for years.

On this point, *Miller v. Bechtel Corp.* (1983) 33 Cal.3d 868 (*Miller*) is particularly instructive. There, the plaintiff wife sued her husband for misrepresenting the value of a marital asset (stock in Bechtel) and fraudulently inducing her to relinquish her interest in the stock during the dissolution proceedings. (*Id*. at pp. 871-872.) Our Supreme Court affirmed a grant of summary judgment in favor of the husband. The court held that notwithstanding the fiduciary relationship between the parties, the wife was aware of facts that imposed upon her a duty to investigate her husband's representations. Specifically, her attorneys had expressed suspicions about the stated value of the stock, and had written the husband's attorney seeking more information about the valuation. (*Id*. at pp. 874-875.) Because the wife had failed to make further inquiry, such as asking Bechtel or examining public records, the court found she could be charged with the knowledge acquired from such inquiry, which would "at the very least have reinforced plaintiff's doubts whether the 'true value' of the stock was as represented in the property settlement agreement." (*Id*. at p. 875.)

Here, from April to August 2007, appellant had no duty to investigate Koral's April representations because a reasonably prudent person would have had no reason to become suspicious of the representations. However, in late August 2007, appellant learned that Koral had sold Seven, LLC for multiples of the price she had received from L'Koral, just four months after assuring her that it would be years before Seven, LLC would be sold. When viewed in conjunction with the fact that Koral had pressured appellant heavily to sell her shares just months earlier, a reasonable person in appellant's situation would have been suspicious of Koral's

April representations. Thus, a duty to investigate arose. Appellant confronted Koral and inquired about the timing of the negotiations to sell Seven, LLC, but failed to conduct a further inquiry that would "at the very least have reinforced plaintiff's doubts." (*Miller*, *supra*, 33 Cal.3d at p. 875.) In short, appellant had inquiry notice in August 2007.

D. Fraudulent Concealment Doctrine

Appellant contends the applicable limitations periods were tolled under the fraudulent concealment doctrine. "'It has long been established that the defendant's fraud in concealing a cause of action against him tolls the applicable statute of limitations, but only for that period during which the claim is undiscovered by plaintiff or until such time as plaintiff, by the exercise of reasonable diligence, should have discovered it.'" (*Bernson v. Browning-Ferris Industries* (1994) 7 Cal.4th 926, 931.) Stated differently, the fraudulent concealment doctrine tolls the limitations period only as long as a plaintiff's reliance on the defendant's misrepresentations is reasonable. (*Grisham v. Phillip Morris U.S.A., Inc*. (2007) 40 Cal.4th 623, 637.) "'[W]hether reliance was reasonable is a question of *fact* for the jury, and may be decided as a matter of law only if the facts permit reasonable minds to come to just one conclusion.'" (*Id*. at pp. 637-638, quoting *Boeken v. Philip Morris, Inc*. (2005) 127 Cal.App.4th 1640, 1666, italics omitted.)

Here, appellant contends that her suspicions about Koral's representations in April 2007 were allayed and that she was lulled into not filing her lawsuit within the applicable limitations periods by Koral's August misrepresentations about the timing of the negotiations to sell Seven, LLC to VFC. (See *Mercer v. Elliott* (1962) 208 Cal.App.2d 275, 281 ["One cannot justly or equitably lull his adversary into a false sense of security and thereby cause him to subject his claim to the bar

of the statute of limitations . . . ."].) On the record before us, however, appellant's asserted reliance was not reasonable as a matter of law. Koral was the one person who had heavily pressured appellant to sell her ownership interest, who had falsely assured her that "any possibility" of a sale remained "years distant," who had then sold Seven, LLC for nine times the price that appellant had received just four months prior, and who had benefitted greatly from the transaction. (See *Roland v. Hubenka* (1970) 12 Cal.App.3d 215, 225 ["Where a buyer learns one representation by a seller is false, he may not assume other representations by the seller were true."].)

Appellant contends she could reasonably rely upon Koral's August representations because he was still her fiduciary at that time. Although Koral and appellant were no longer partners in Seven, LLC in August 2007, appellant contends Koral had a fiduciary duty to fully disclose the truth about the negotiations to sell Seven, LLC. Assuming Koral owed appellant a continuing fiduciary duty with respect to the sale of her interest in L'Koral, by August 2007, appellant was aware of facts that should have raised her suspicions regarding his April representations. (*Hobbs*, *supra*, 164 Cal.App.3d at p. 202.) As the *Alfaro* court stated, "A person in a fiduciary relationship may relax, but not fall asleep." (*Alfaro*, *supra*, 171 Cal.App.4th at p. 1394.) Here, appellant was aware that one of Koral's April representations was demonstrably false, which should have raised her suspicions about his remaining representations. She was also aware that her April sale resulted in Koral's having reaped $34 million more from the VF Sale than he would have earned had appellant not acceded to his pressure to sell her shares. (See *Rutherford v. Rideout Bank* (1938) 11 Cal.2d 479, 486 [when plaintiff discovered that a representation "by one in whom she had implicit trust and confidence" had been motivated by personal gain, "[a]t this point inquiry became a

duty and plaintiff was chargeable with what she would discover if inquiry were made."].) On these undisputed facts demonstrating that at least one of Koral's April representations was not true, that the timing of the sale cast doubt on the remaining representations, and that the sale of appellant's shares Koral had pressured her to make redounded to his financial benefit and to her detriment, no reasonable person in appellant's position could blindly have accepted his assurances that no sale had been planned and no negotiations initiated until "months" after she relinquished her shares.

Appellant's reliance on *Dias* and *Lee* is misplaced. Those cases involved facts that would not have made a reasonably prudent person suspicious that the fiduciary had committed wrongdoing. In *Lee*, the plaintiff was aware that escrow had not closed, but had no notice that the escrow agent was disbursing monies to other parties in violation of the escrow instructions. (*Lee*, *supra*, 210 Cal.App.3d at pp. 921-922.) In *Dias*, the plaintiffs received notices that insurance premiums were owed, but the notices did not establish or suggest that their insurance agent had lied when he previously told them that the premiums would vanish over time. (*Dias*, *supra*, 700 F.Supp.2d at pp. 1208, 1224-1225.) In contrast here, appellant had notice of facts establishing that Koral had lied to her or suggesting that he had harmed her by depriving her of the significant financial gain from a planned sale of Seven, LLC.

Dias is also distinguishable because, in addition to the agent's assurance that the premium notices were a mistake, the company did not cancel the plaintiffs' insurance, despite their disregard of the premium notices. (*Dias*, *supra*, 700 F.Supp.2d at pp. 1223-1224.) The conduct of the company thus supported the plaintiffs' reliance. Here, in contrast, appellant neither sought nor obtained confirmation of Koral's August representations. Given the level of suspicion a

reasonable person would have possessed (and appellant evidently did possess), it was unreasonable to rely on Koral's uncorroborated assurances about the timing of the VF Sale. As no reasonable person would have relied on the assurances of the person most likely to have misled her, appellant may not rely on the doctrine of fraudulent concealment to toll the running of the statute of limitations. (See *Miller*, *supra*, 33 Cal.3d at p. 875 [despite fiduciary relationship between husband and wife, wife's claims for fraud were time-barred because she did not investigate his representations despite her suspicions].)

E. Futility of Investigation

Appellant argues that assuming a duty to investigate arose, any investigation would have been futile. In connection with this argument, she contends the trial court improperly sustained objections to two assertions in her declaration.[3] Appellant asserted that after speaking with Koral following the VF Sale, (1) "I was not aware of any means available to me to investigate or challenge his assurances," and (2) "I had no information available to me that would have established that Koral was lying." As to the latter, being on inquiry notice obligated appellant to seek out the information necessary to bring her claims. (See *Norgart*, *supra*, 21 Cal.4th at p. 398 [inquiry notice means that "within the applicable limitations period, [plaintiff] must indeed seek to learn the facts necessary to bring the cause of action in the first place -- he 'cannot wait for' them 'to find' him and 'sit on' his 'rights'; he 'must go find' them himself if he can"]; cf. *Miller*, *supra*, 33 Cal.3d at

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[3] Generally, we review a trial court's evidentiary ruling for an abuse of discretion; however, where the ruling is based only upon written objections without further reasoning, it is reviewed de novo. (See *Reid v. Google, Inc.* (2010) 50 Cal.4th 512, 535.) Although the parties dispute what standard of review is applicable here, we reach the same conclusions under either standard of review.

pp. 874-875 [where plaintiff did not actually make an inquiry, her assertion that her inquiry to a third party would be unavailing is not a fact within her personal knowledge].) Thus, the trial court properly sustained the objection on relevance grounds.

As to appellant's first assertion -- that she was not aware of any means to find the necessary information -- her actual knowledge is irrelevant. Appellant is charged with knowledge of all available means to investigate, even if she was not actually aware of those means. (See *Fox, supra*, 35 Cal.4th at p. 808 [plaintiff deemed to have inquiry notice of defendant's wrongdoing when she discovers or *should have discovered* facts]; *Hobbs*, *supra*, 164 Cal.App.3d at p. 202 [where plaintiff has duty to investigate, she may be "charged with knowledge of the facts which would have been discovered by such an investigation."].) Regardless of appellant's actual knowledge of the means to investigate or challenge Koral's August assertions, she should have been aware (1) that she could contact VFC and Bear Stearns directly and ask for information that could corroborate or contradict Koral's assertions, and (2) that she could review publicly available SEC filings of the various parties for such information.

Appellant contends that any investigation would have been futile. Specifically, she asserts that VFC and Bear Stearns were prohibited from disclosing the timing of the negotiations under the May 14, 2007 confidentiality agreement, which applied to VFC, Seven, LLC, and their affiliates, who appellant contends included Bear Stearns and Koral.[4] We are not persuaded. Even assuming the confidentiality agreement prohibited any disclosure, appellant could have

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[4] Because Bear Stearns did not sign the confidentiality agreement, it arguably was not bound by the contract.

discovered information indicating that Koral had lied about the timing of the negotiations. Specifically, VFC filed a publicly available Form 8-K, which included a July 26, 2007 Purchase Agreement and press release. In the Purchase Agreement, VFC agreed to a plan to purchase Seven, LLC, as the boards of directors for the respective companies had approved the transaction. The date of the Purchase Agreement and the board approval process created a reasonable inference that the negotiations to sell Seven, LLC did not commence months after appellant sold her ownership interest. Thus, appellant cannot show that any investigation would have been futile, as such investigation would, "at the very least[,] have reinforced plaintiff's doubts" as to the veracity of Koral's representations in August 2007.[5] (*Miller, supra,* 33 Cal.3d at p. 875.)

Appellant's causes of action accrued in August 2007 because she was on inquiry notice following the VF Sale. As she was not entitled to tolling under the fraudulent concealment doctrine, the applicable limitations periods expired by August 2010. Because she first filed her complaint in May 2011, her causes of action were time-barred. The trial court properly granted summary judgment to respondents and dismissed appellant's complaint.

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[5] Appellant contends her duty of inquiry did not include reviewing regulatory filings. However, the cases she cites do not support her contention. (See *Miller, supra*, 33 Cal.3d at p. 875 [after noting that a plaintiff who sues a fiduciary for fraud is not charged with knowledge contained in the public records, the court stated that when suspicions are aroused, plaintiff could be so charged]; *Bennett v. Hibernia Bank* (1956) 47 Cal.2d 540, 562 [on appeal from demurrer, where plaintiffs alleged a fiduciary relationship had not been repudiated, "the fact that a document disclosing these events was a matter of public record filed with the Secretary of State cannot alone cause the statute to run"]; *Cameron v. Evans Securities Corp*. (1931) 119 Cal.App. 164, 171 [where respondent has no duty to inquire, he was under no duty to investigate public records].) Here, appellant had a duty to investigate, and thus, she is charged with any knowledge reasonably obtained from examining public records.

DISPOSITION

The judgment of dismissal is affirmed. Costs are awarded to respondents.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS.

MANELLA, J.

We concur:

EPSTEIN, P. J.

SUZUKAWA, J.