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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

CAMELOT PICTURES, LLC,

B269430

Plaintiff and Appellant,

(Los Angeles County Super. Ct. No. SC121687)

v.

LAKESHORE ENTERTAINMENT GROUP, LLC,

Defendant and Appellant.

APPEAL from a judgment of the Superior Court of Los Angeles County. Gerald Rosenberg, Judge. Reversed.

Barnes & Thornburg, Stephen R. Mick and Joel R. Meyer for Defendant and Appellant.

Eisner Jaffe, Christopher Frost, Christopher Kadish, and Kathleen Cerniglia Hipps for Plaintiff and Appellant.

This appeal arises from a judgment after a bench trial. The litigation involves a dispute between two entertainment companies over how to account for money derived from two motion pictures. The accounting issue is governed by the meaning that is given to substantively similar "Equity Term Sheets," basically co-financing deals for the films. Further, the statute of limitations looms over the parties' money dispute. The trial court entered a judgment awarding approximately \$300,000 to plaintiff and appellant Camelot Pictures, LLC, payable by defendant and appellant Lakeshore Entertainment Group, LLC.

Lakeshore contends the trial court erred in ruling that Camelot's claim for money is not barred by the statute of limitations. More specifically, Lakeshore argues the trial court erred in ruling that the "discovery rule" for accrual of breach of contract claims (see generally *April Enterprises, Inc. v. KTTV* (1983) 147 Cal.App.3d 805 (*April Enterprises*)) was applicable to Camelot's claim for money. By cross-appeal, Camelot contends the court erred in not awarding pre-judgment interest. We agree with Lakeshore's statute of limitations contention and reverse the judgment.

FACTS

Background

Lakeshore is a film production and sales and distribution company. Camelot is a film production company. At all relevant times, Tom Rosenberg was Lakeshore's principal, and Gary Gilbert was Camelot's principal. During the time frame involved in the parties' business relationship, Camelot "had limited experience in the motion picture business," whereas Lakeshore "was very experienced in the motion picture business."

Gilbert earned substantial wealth from a loan business. Around 2000, Gilbert decided he wanted to try getting into the entertainment industry. Pursuant to this endeavor, he began a series of contacts with Lakeshore's Rosenberg. From 2000 to 2006, Gilbert communicated with Rosenberg two or three times a year.

Around 2006, Gilbert and Rosenberg began more earnest discussions about their two companies collaborating on producing films. Gilbert and Rosenberg eventually negotiated the terms of agreements for the co-financing of the production of the two films, Pathology and Henry Poole is Here. Rosenberg relayed the outline of the agreement for *Pathology* to Lakeshore's chief operating officer, Eric Reid, who memorialized the agreement in a two and a half page "Equity Term Sheet" (hereafter the Pathology term sheet) which he sent to Gilbert. Gilbert, in turn, sent the term sheet to his own lawyer, Andrew Hurwitz, for review and comment. After talking with Hurwitz, Gilbert signed the Pathology term sheet. The Pathology term sheet states that it was "made as of March 14, 2007." Roughly two months later, Gilbert executed a substantively similar "Equity Term Sheet" for the motion picture *Henry Poole is Here* (hereafter the *Henry Poole* term sheet). The *Henry Poole* term sheet states that it was "made as of May 7, 2007."

The Term Sheets

1. Pathology

Section 2 of the *Pathology* term sheet states that Lakeshore would "bear all production responsibilities [for the] Picture." Thereafter, the term sheet got into the money aspects of the film. Section 3 of the *Pathology* term sheet states: "Lakeshore will be

responsible for the worldwide distribution of the Picture in all media." Further: "International distribution rights will be handled by Lakeshore and all commissions including sub-agency fees will not exceed 10%."

Section 4(a) of the *Pathology* term sheet states: "Lakeshore will finance 100% of the production cost of the Picture." Further: "Camelot will provide Lakeshore with \$1.5 [million] for the Picture in cash or acceptable letter of credit"

Section 4(b) of the *Pathology* term sheet governed a subject entitled "<u>Equity True-Up</u>." Essentially, this section was intended to explain what money, if any, would be earned by Camelot in return for its payment of its \$1.5 million to Lakeshore. Section 4(b) in its entirety reads as follows:

"At the time that substantially all territories are licensed for the Picture and the total minimum guarantees paid by worldwide subdistributors have been received ('Total MGs') and the Picture is completed with all costs of production having been paid or incurred or known ('Negative Cost'), the actual 'Equity Requirement' will be determined by calculating the difference between (i) the Negative Cost, minus (ii) the Total MGs. If each party's 50% share of the Equity Requirement is less than the \$1.5 [million] previously contributed, Lakeshore will return such difference to Camelot. If each party's 50% share of the Equity Requirement is greater than \$1.5 [million], Camelot will have the opportunity (to be exercised within 10 days) to pay to Lakeshore such additional amount necessary to maintain a 50% equity share in such Picture. If Camelot elects not to

pay such additional amount, if any, Camelot's equity share will be reduced to equal \$1.5 [million] divided by the total Equity Requirement. No Lakeshore production fees or overhead charges will be included in the Negative Cost for purposes of calculating the Equity Requirement hereunder."

Section 5 of the *Pathology* term sheet governed a subject entitled "<u>Waterfall of Revenues</u>." Section 5 in its entirety reads as follows:

"The gross revenues actually received and retained by Lakeshore in connection with the worldwide exploitation of the Picture shall be the Picture's 'Gross Receipts.' (For clarification purposes, the Gross Receipts from international exploitation shall be net of sales agency commissions/fees described above.) The Picture's Gross Receipts shall not be cross collateralized with any other picture, and the Picture's Gross Receipts shall be allocated and paid as follows:

- "a. First, 100% of Gross Receipts shall be retained by Lakeshore to recoup any and all distribution expenses paid or incurred by Lakeshore, including but not limited to P&A, third party profit participation/bonuses/deferments, residuals, withholding taxes, checking and collection costs, and other actual, out of pocket third party distributions and related expenses; and
- "b. Second, 100% of remaining Gross Receipts shall be paid to Lakeshore and Camelot pro rata and pari

passu with each of their respective equity share pursuant to the Equity True-Up in Paragraph 4(b) above in perpetuity."

2. Henry Poole

The *Henry Poole* term sheet is substantially similar to the *Pathology* term sheet, except that, for *Henry Poole*, Camelot agreed to pay \$3 million to Lakeshore, and Camelot's "Equity True-Up" return on its contribution as set forth in section 4(b) is stated as follows:

"At the time that substantially all territories are licensed for the Picture and the total minimum guarantees paid by worldwide subdistributors have been received ('Total MGs') and the Picture is completed with all costs of production having been paid or incurred or known ('Negative Cost'), the actual 'Equity Requirement' will be determined by calculating the difference between (i) the Negative Cost, minus (ii) the Total MGs. The Equity Requirement is intended to be borne 55% thereof by Lakeshore and 45% thereof by Camelot. If Camelot's \$3 [million] contribution represents less than 45% of the Equity Requirement, Lakeshore will return such difference to Camelot. If Camelot's \$3 [million] contribution represents less than 45% of the total Equity Requirement, Camelot will have the opportunity (to be exercised within 10 days) to pay to Lakeshore such additional amount necessary to maintain a 45% equity share in such Picture; however, if Camelot elects not to pay such additional

amount, if any, Camelot's equity share will be reduced to equal \$3 [million] divided by the total Equity Requirement. No Lakeshore production fees or overhead charges in excess of \$1 [million] in the aggregate will be included in the Negative Cost for purposes of calculating the Equity Requirement hereunder (\$8.3 [million] is inclusive of \$1 [million] production fee)."

The "Waterfall of Revenues" provisions in the *Henry Poole* term sheet under section 5 are identical to the *Pathology* term sheet noted above. The 10 percent commission language related to international distribution rights set out in Section 3 of the *Henry Poole* term sheet is identical to the *Pathology* term sheet noted above.

The Films Are Released, Money Comes In, and Questions Arise

Pathology was released in April 2008. Henry Poole was released in August 2008. At the bench trial, the court found that the "Negative Cost" (ante) for Pathology totaled \$7,729,871, and that the "Negative Cost" for Henry Poole totaled \$8,846,093.

During a period between November and the end of December 2008, Lakeshore sent its first accounting statements to Camelot for *Pathology* and *Henry Poole*. The accounting for *Pathology* openly stated that Camelot's "Equity Share" in *Pathology* amounted to "19.1%." The accounting for *Henry Poole* openly stated that Camelot's "Equity Share" in *Henry Poole* amount to "33.9%."

At trial, Lakeshore's chief financial officer, Marc Reid, testified that, in calculating the money due to Camelot as indicated in the two accountings summarized above, he did not follow the formula in the "Equity True-Up" provisions in the term sheets for the two films. Reid explained that he was unable to reconcile the ambiguities and inconsistencies in the term sheets in a way that made sense to him. For this reason, Reid chose to use a different equity investor formula, which Lakeshore had used in agreements on an unrelated film. The methodology used by Reid would be commonly referred to at trial as the "Green" Street methodology" or the "Alternate Methodology." Reid maintained that he used the Alternate Methodology because he knew that the two films had performed badly at the box office, which made it very unlikely that Camelot would ever see profits on the films unless something along the lines of the Alternate Methodology was used.

Camelot's Initial Response

When Gilbert reviewed Lakeshore's first accounting statements and payments to Camelot, he did not understand "at all how [they] related to the [parties'] agreement." After receiving payments and accounting statements for both films, Gilbert had multiple discussions with Marc Reid at Lakeshore about the accounting for the films.

In January 2009, Gilbert met in person with Eric and Marc Reid of Lakeshore to discuss the accounting statements for each of the two films. At trial, Gilbert testified that both Eric and Marc Reid again explained that Lakeshore's statements used an equity formula different from the parties' "Equity Term Sheets" in accounting to Camelot. According to Gilbert, the Reids stated

at the meeting that they "didn't understand" the term sheets, and so "they had [used] an alternate structure that was actually better." The parties discussed the issue at length.

In the course of these discussions, Marc Reid prepared a side-by side comparison of his accounting for *Pathology* using the alternate methodology with an accounting using his best attempt to interpret the Equity Term Sheet for that film. Reid showed the comparative, side-by-side calculations to Gilbert, and discussed them with him. Gilbert challenged how Marc Reid had calculated the "Equity True-Up" used in the side-by-side comparison, arguing that Reid had improperly deducted a 10 percent sales fee from the calculation of the Gross Receipts (the MGs). At trial, Gilbert testified he had understood, when he entered into the agreement for *Pathology*, that Lakeshore would only be able to deduct the 10 percent sales fee as part of the "Paragraph 5 Waterfall," not as part of the Equity True-Up under Paragraph 4(b). The parties discussed the sales fee issue at length in their January 2009 meeting.

Gilbert testified that he believed at the time of the January 2009 meeting that deducting the sales fee as part of the Equity True-Up would cause Camelot to receive less money. Gilbert testified that, nevertheless, he decided at the time of the meeting to accept the Reids' representations that Camelot was receiving more money under the alternate methodology "because he didn't feel intelligent on the subject . . . ," and the Reids were making him "look as if [he] was saying the sky was red."

After the discussions summarized above, Gilbert agreed to go forward with accountings using the alternate methodology that Lakeshore's Marc Reid had employed. At the close of the meeting in January 2009, the Reids told Gilbert that they would

need to get approval from Tom Rosenberg (Lakeshore) to use the alternate methodology. Over the next few months, the parties exchanged several communications regarding Lakeshore's use of the alternate methodology.

On August 13, 2009, Eric Reid sent the following email to Gilbert: "Just spoke with Marc — he agrees that we should be ok with Tom to go with the interpretation of the deal that is reflected in the statements you have (which were the basis for the checks already cut to you and for future amounts) and we won't have to revisit the structure." Consistent with this statement, Lakeshore continued to account to Camelot in accord with the alternate methodology, and Gilbert "did not complain about the accounting for the next two years."

Camelot's Subsequent Interpretation and Accounting

In March 2011, Camelot provided the Equity Term Sheets and the accounting statements for *Pathology* to an "advisory consultant," Philip Fier. Fier, in turn, apparently suggested to Camelot that it could be due more return on its investments in *Henry Poole* and *Pathology* than it had received from Lakeshore. In May 2011, Camelot retained Fier to review the accountings provided by Lakeshore for *Henry Poole* and *Pathology*. Camelot's consulting agreement with Fier provided for a contingency fee arrangement with Camelot whereby Fier's compensation was dependent on recovering additional money for Camelot relating to its "potential claims" against Lakeshore.

On June 10, 2011, using only Lakeshore's accounting statements and the parties' Equity Term Sheets, Fier prepared a draft report to Camelot for the film *Pathology* revealing his

interpretations of the parties' Equity Term Sheets and his associated calculations.

On October 21, 2011, Fier sent a report to Lakeshore for both *Pathology* and *Henry Poole*, stating his conclusion that Lakeshore's accountings did not follow the parties' Equity Term Sheets because Lakeshore did not perform the Equity True-Up calculation in accord with Fier's interpretation of the language of the term sheets. Fier asserted, based on his interpretations of the contract formula, that Camelot was owed \$524,306 more for *Henry Poole* and \$670,642 more for *Pathology*.

On a date not explicitly discernible from the record, Fier met with Marc and Eric Reid of Lakeshore to discuss Fier's calculations and interpretations of the Equity Term Sheets between Camelot and Lakeshore. During this meeting, the Reids went through the same exercise with Fier that they had with Gilbert more than two years earlier, including doing the same side-by-side comparison of accountings using Reid's best attempt to interpret the term sheets and the alternative methodology.

The Litigation

In November 2013, Camelot filed a complaint against Lakeshore alleging causes of action for breach of contract, breach of the implied covenant of good faith and fair dealing, and unjust enrichment. All of Camelot's causes of action were premised on allegations that Lakeshore underpaid Camelot as to its "Equity True-Up" share of monies derived from *Pathology* and *Henry Poole* by failing to abide the terms of the Equity Term Sheets for the two films.

Camelot's contract-based claims were tried to the trial court in August 2015. On November 3, 2015, the court signed a statement of decision. On the same day, the court signed and entered a final judgment awarding \$300,738.95 to Camelot.

DISCUSSION

Lakeshore's Appeal

Lakeshore contends judgment in favor of Camelot must be reversed because Camelot's claim for more money is barred by the four-year statute of limitations governing causes of action for breach of written contract as prescribed in Code of Civil Procedure section 337, subdivision (1). We agree.

I. The Standard of Review

Lakeshore's arguments on appeal concerning the statute of limitations involve the trial court's application of law to facts. Thus, two standards must be kept in mind.

"Where findings of fact are challenged on a civil appeal, we are bound by the 'elementary, but often overlooked principle of law, that . . . the power of an appellate court begins and ends with a determination as to whether there is any substantial evidence, contradicted or uncontradicted,' to support the findings below. [Citation.] We must therefore view the evidence in the light most favorable to the prevailing party, giving it the benefit of every reasonable inference and resolving all conflicts in its favor [Citations.]" (Jessup Farms v. Baldwin (1983) 33 Cal.3d 639, 660.) Stated in other words: "As long as there is . . . evidence, and it is 'substantial' — that is, of 'ponderable legal significance,' 'reasonable in nature, credible, and of solid value' — we are bound to uphold [the trial court's findings]." (Grappo v. Coventry Financial Corp. (1991) 235 Cal.App.3d 496, 507.)

On the other hand, where the record on appeal "presents an undisputed or established set of facts, the interpretation and application of a statutory scheme to those facts are treated as questions of law and are subject to de novo review on appeal." (Community Youth Athletic Center v. City of National City (2013) 220 Cal.App.4th 1385, 1407.) In such a situation, the trial court's interpretation and application of law is "not treated as binding on an appellate court." (Ibid.)¹

II. Statute of Limitations Principles

A. General Principles

The statute of limitations for a particular cause of action prescribes a "definite period of time" within which a plaintiff must commence the cause of action. (Citizens for a Green San Mateo v. San Mateo County Community College Dist. (2014) 226 Cal.App.4th 1572, 1588 (San Mateo).) Statutes of limitations are intended to "promote justice by preventing surprises through the revival of claims that have been allowed to slumber until evidence has been lost, memories have faded, and witnesses have disappeared." (Adams v. Paul (1995) 11 Cal.4th 583, 592.) In this vein, statutes of limitations have long been acknowledged to serve important purpose apart from resolving the merits of particular disputes, for example, to "give stability to transactions, protect settled expectations, promote diligence, encourage the prompt enforcement of substantive law, and reduce the volume of litigation." (San Mateo, supra, 226) Cal.App.4th at p. 1588.) The possibility that the application of

¹ In its opening brief, Lakeshore maintains that the historical facts in this case are not materially disputed such that de novo review is proper. As we discuss this below, we agree the material facts in this case are undisputed.

statutes of limitations ""may bar meritorious causes of action as well as unmeritorious ones is the 'price of the orderly and timely processing of litigation' [citation] —a price that may be high, but one that must nevertheless be paid."" (*Ibid.*, quoting *Norgart v. Upjohn Co.* (1999) 21 Cal.4th 383, 410.)

B. Statute of Limitations Principles in a Contract Context

A cause of action for breach of contract "generally" accrues at the time of the breach regardless of whether any substantial damage is apparent or ascertainable." (Ram's Gate Winery, LLC v. Roche (2015) 235 Cal.App.4th 1071, 1084; italics added, quoting Menefee v. Ostawari (1991) 228 Cal.App.3d 239, 246, see also 3 Witkin, Cal. Procedure (5th ed. 2008) Actions, § 520, p. 664]; see also Cochran v. Cochran (1997) 56 Cal.App.4th 1115, 1120 ["A cause of action for breach of contract accrues at the time of breach, which then starts the limitations period running."].)

This definitive rule of accrual *upon breach* for contract-based claims is premised on the general proposition that a breach is ordinarily recognized at the time it occurs, and was explained in *April Enterprises* with the following example: "In the typical contract for purchase of widgets, for example, the buyer is well aware the contract has been breached when the date for delivery arrives and he has not received his widgets. Similarly, the seller knows when payment is due under the contract. If that time passes without receipt of the amount due he is easily aware that the contract has been breached." (*April Enterprises, supra,* 147 Cal.App.3d at p. 831.)

Nevertheless, the definitive rule of accrual *upon breach* for contract-based causes of action has been ruled to be subject to the exception of the "discovery rule" of accrual in certain, limited

circumstances. As Division Seven of our court stated in April *Enterprises*, supra, a judgment on the pleadings (JOP) case, "the discovery rule may be applied to breaches which can be, and are, committed in secret and, moreover, where the harm flowing from those breaches will not be reasonably discoverable by plaintiffs until a future time." (April Enterprises, supra, 147 Cal.App.3d at p. 832, italics added.) In April Enterprises, the creator of a children's show² sued the television station that had aired the show, alleging that the station had breached the parties' producer-distributor contract (including the implied covenant of fair dealing) by erasing all of the original videotapes of the show. In examining whether the discovery rule should be applied to such claims, the Court of Appeal noted that the plaintiff did not allege the date on which it had actually suffered injury, that is, the date on which the tapes had been erased, because it did not and could not know the date of erasure in that it occurred while the tapes were in the defendant's possession and control. (Id. at pp. 825-833.) The Court of Appeal ruled that the plaintiff's contract causes of action sufficiently alleged facts to show accrual on the date of discovery of the injury (the date of the discovery of the erasure), rather than the date of breach (the actual date of the erasure). The Court of Appeal applied the discovery rule because the plaintiff had been ignorant that it had a cause of action until discovery of the erasure. That is, it did not know about the secret act of erasure at the time of the erasure. through no fault of its own. (*Ibid.*)

III. The Trial Court's Ruling

The trial court's statement of decision addressing the statutes of limitations issue reads as follows:

The television show was Winchell-Mahoney Time.

- "17. This action was filed in November 2013, within four (4) years of the summer of 2011.
- "18. In ordinary contract claims, the statute of limitations begins to run upon the occurrence of the last element essential to the cause of action and a plaintiff's ignorance of the cause of action does not toll the statute. Citing from the case of *April Enterprises v. KTTV* (1983) 147 Cal.App.3d 805, the court held that 'the discovery rule, under which a cause of action accrues when the plaintiff discovers or should have discovered all of the facts essential to his cause of action, is applicable to causes of action involving the breach of a fiduciary relationship. The discovery rule is applied to a fiduciary relationship when strict adherence to the otherwise applicable date-of-injury rule would result in unfairness to the plaintiff and *would encourage wrongdoers to mislead their fiduciary to delay bringing suit*. It is particularly appropriate when the defendant maintains custody and control of a plaintiff's property or interests.'
- "19. Plaintiff had received accounting statements and knew in 2008 that Defendant was not following the Equity True-Up formula in the Term Sheets, but Plaintiff had no other information to know it had not been paid the proper amount of money in 2008. Plaintiff was not in possession of sufficient facts that it knew or should have known Defendant had breached the Term Sheets for 'Pathology' and 'Henry Poole Is Here' prior to November 20, 2009, nor was Plaintiff in possession of sufficient facts that it knew or should have known that Defendant's alternative accounting structure was not more beneficial to Plaintiff than if Defendant had properly followed the Equity True Up formula in the Term Sheets. Defendant misrepresented to Plaintiff that sales agency commissions/fees are always deducted

in calculating an equity true up, and Defendant misrepresented that the alternative accounting structure used by Defendant was better for Plaintiff (i.e., resulted in more money to Plaintiff) than if Defendant followed the Equity True Up formula in the Term Sheets." (Italics added.)

IV. Analysis

We agree with Lakeshore that the trial court's statute of limitations decision is erroneous because the court did not focus on the date on which Camelot knew that Lakeshore breached the Equity Term Sheets by employing the alternate methodology to calculate Camelot's "Equity True-Up." Further, we agree with Lakeshore that the court erred by instead focusing on the date on which Camelot was advised by its consultant that the alternate methodology of calculation was not "more beneficial" to Camelot than a calculation applying the Equity True-Up formula in the Equity Term Sheets.

The undisputed facts in the record establish that Camelot suspected in December 2008 that Lakeshore had not followed the term sheets' provisions. This occurred when Camelot received the first accountings for *Henry Poole* and *Pathology*. Camelot's principal, Gilbert testified at trial to his suspicion, and that he thereon began an intensive inquiry for answers. Further, the undisputed facts in the record establish that Camelot knew in January 2009 that Lakeshore was employing the alternate methodology, because Lakeshore explicitly told Camelot that it was using the alternate methodology during the parties' meeting in January 2009. Again, Gilbert testified about these facts. There truly are no material disputed facts in this case. The trial court's statement of decision recognizes these undisputed facts — as noted above, the court expressly stated that Camelot was

aware in 2008 that Lakeshore did not follow the Equity True-Up provisions in the term sheets. Based on all the above, the facts in this case do not support the concept of a "secret breach" by Lakeshore allowing for the application of the discovery rule as contemplated under *April Enterprises*.

To avoid this conclusion, Camelot argues that the statute of limitations did not begin to run in 2008 or 2009 because it did not recognize at that time that it was being underpaid by Lakeshore. Significantly, however, Camelot has never argued that it did not understand in 2008 or 2009 that Lakeshore was not following the parties' Equity Term Sheets by employing the alternate methodology.

The trial court accepted Camelot's position, but we do not. A cause of action for breach of contract accrues at the time of the breach of contract, and the statute of limitations begins to run at that time regardless of whether any damage is apparent or ascertainable. (Ram's Gate Winery, LLC v. Roche, supra, 235 Cal.App.4th at p. 1084.)

After retaining a consultant in 2011, Camelot finally came to an appreciation that Lakeshore's representations that employing the alternate methodology was "better" for Camelot did not ring true. Again, no secret breach was uncovered, only a belated appreciation that damage had been suffered. Camelot was earlier aware of the breach and could have filed a lawsuit alleging breach of the term sheets within four years of late 2008 or early 2009 (by early 2013), if it wanted to claim a loss from a breach or noncompliance with the formula for calculating Equity True-Up set out in the parties' Equity Term Sheets. Instead, after discussions of the issue, Camelot and Lakeshore elected to use the alternate methodology. Camelot did not file its claims

until late 2013, more than half a year too late. The facts do not support the trial court's finding in its statement of decision that Camelot "was not in possession of sufficient facts that it knew or should have known [Lakeshore] had breached."

The trial court's statement of decision included a finding that Camelot was not in possession of sufficient facts "that it knew or should have known that [Lakeshore]'s alternative accounting structure was not more beneficial to [Camelot] than if [Lakeshore] had properly followed the Equity True-Up formula in the Term Sheets." Basically, the court found that Camelot failed to appreciate that a loss had ensued from Camelot's undisputed recognition of the breach of the parties' contract. However, this focus on appreciation of loss misses the point for the issue of accrual of Camelot's claim for a breach of the term sheets. Camelot understood in late 2008 or early 2009 that Lakeshore had breached the parties' deal because it knew Lakeshore was not adhering to the formula for calculating the Equity True-Up set up in the term sheets. Lakeshore made no representation that had the effect of concealing the fact of its breach of the Equity Terms Sheets.

Under California law, the discovery rule is limited to cases where a factual predicate for a claim was concealed or misrepresented or not readily knowable. (See, e.g., *April Enterprises, supra*, 147 Cal.App.3d at pp. 825-833 and cases discussed therein.) It is the "knowledge of the facts, rather than knowledge of the available legal theories or remedies," that sets the discovery rule accrual date, and starts the running of the statute of limitations. (*Love v. Fire Ins. Exchange* (1990) 221 Cal.App.3d 1136, 1143.) Stated in similar words, "it is the

discovery of facts, not their legal significance, that starts the statute." (*Jolly v. Eli Lilly & Co.* (1988) 44 Cal.3d 1103, 1113.)

In our view, Neff v. New York Life Ins. Co. (1947) 30 Cal.2d 165 (Neff) is useful for purposes of analyzing the statute of limitations issues presented by Camelot's present case. In Neff, a son acting as administrator of his deceased father's estate instituted litigation over the denial of his deceased father's claim for disability benefits which neither the insured father nor his widow had pressed in the sixteen years since the father's claim had been denied. At trial, the insurer essentially made an oral motion for judgment on the pleadings, and the trial court granted the motion. The Supreme Court affirmed. In so doing, the Supreme Court distinguished cases where an insured "concealed from plaintiff a fact essential to his statement of a cause of action," from cases which an insurer was alleged to have misled the insured by making a misrepresentation as to the interpretation of the insurance contract. (Neff, supra, 30 Cal.2d at pp. 171-172.) The plaintiff in Neff argued that the discovery rule should be applied because the insurer misrepresented to the insured that he was not entitled to disability benefits under the insurance policy by stating that the insured was required to prove permanent disability, even though that was not required for benefits under the terms of the policy. (*Id.* at pp. 167-168.) The plaintiff argues that he relied on this "misrepresentation" and only discovered that the insurer may have breached the contract when he consulted with an attorney years later, and the lawyer offered a different interpretation than had been given by the insurer. (Id. at p. 170.)

The Supreme Court rejected this argument for invoking the discovery rule, finding that the insurer had "plainly stated that it

denied liability," and merely offered a different interpretation of the policy than the plaintiff later came to appreciate. (*Neff*, *supra*, 30 Cal.2d at p. 172.) As the Supreme Court explained, the plaintiff's "act of discovery' uncovered no fact that was not known to the insured" when he received the denial letter. "The situation here is simply one where plaintiff [later] undertook . . . an inquiry which could have been made as readily" when he received the denial letter. (*Id*. at pp. 170-171.) In short, the critical *fact* for triggering the running of the statute of limitations in *Neff* was that the insured knew he had been denied benefits.

By parity of reasoning here, Camelot knew that Lakeshore had made an accounting calculation of Camelot's Equity True-Up, and knew that Lakeshore had done so by not following the formula set forth in the term sheets. Further, we decline to ignore that Fier, the expert consultant hired by Camelot in 2011, in making the belated "discovery" that Camelot had a possible claim against Lakeshore, looked no further than documents that Camelot had in its possession since 2008 into early 2009 to construct his discovery. Specifically, Fier had prepared his conclusions based on parties' term sheets themselves, and the accounting statements that Lakeshore provided in 2008 and early 2009. Because the entirety of Camelot's alleged "discovery" in 2011 is derived from the documents in Camelot's possession in 2008 and early 2009, we find Camelot's case falls under the reach of *Neff*'s reasoning.

To avoid such a conclusion, Camelot in its respondent's brief argues that *Neff* and other cases upon which Lakeshore relies are "outdated" and "readily distinguishable" from Camelot's current case. We disagree. As to Camelot's latter proposition, we have already explained why we see *Neff* and Camelot's case to fit

under the same umbrella. As for Neff being "outdated," we simply note that the Supreme Court has never overruled Neff. Further, more recent cases from the Supreme Court, for example, Jolly v. Eli Lilly & Co., supra, 44 Cal.3d at pages 1111-1114, do not stray far from *Neff's* core value that it is the "discovery of facts" that triggers the running of the statute of limitations. What we will acknowledge is that (1) *Neff* is a case involving the insurer-insured relationship, and that (2) insurers today are held to higher standards (often as a result of statutory enactments) when dealing with their insureds than they were in the 1940s, all of which may be seen to undermine Neff's end result — were an insurance case before us. However, Neff's core reasoning and principles applicable to contract claims remain in place, namely, that the running of the statute of limitations under the discovery rule begins when a party knows, for a fact, that he or she has not received the benefits of a contract. Here, Camelot knew facts of such in 2008 or early 2009.

This leaves only one final issue to address, which is whether the trial court erred in citing Lakeshore's "misrepresentations" in support of its conclusion that there was justification for applying the discovery rule in Camelot's case. We agree with Lakeshore that the misrepresentations cited by the trial court did not support application of the discovery rule. The misrepresentations by Lakeshore did not in any way conceal that Lakeshore was failing to abide the Equity True-Up provisions of the parties' contracts. As we have stated more than once above, a cause of action for breach of contract accrues at the time of the breach of contract, and the statute of limitations begins to run at that time regardless of whether any damage is apparent or ascertainable. (Ram's Gate Winery, LLC v. Roche,

supra, 235 Cal.App.4th at p. 1084.) Inasmuch as awareness of loss is not relevant for examining whether the running of the statute of limitations is triggered, Lakeshore's representation that Camelot was going to do "better" under the Alternate Methodology is equally irrelevant for purposes of the discovery rule analysis.

Although we do not interpret the trial court's statement of decision to have found that Lakeshore's misrepresentations estopped it from asserting a statute of limitations defense, this issue is examined in Lakeshore's opening brief, and we find it worth examining, if only briefly. We agree with Lakeshore that the facts in this case do not support estoppel.

First, Camelot's position on the statute of limitations in the trial court rested on the discovery rule. Camelot contended that it did not discover that it had a claim against Lakeshore until 2011 when Camelot's consultant, Fier, told Camelot that it had a potential claim. A claim by Camelot now that it did not file its contract action sooner because it was put off by Lakeshore is inconsistent with the claim of late discovery of a claim. Second, estoppel is unavailing legally given the facts. For a defendant to be equitably estopped from asserting a statute of limitations, the plaintiff must show that the defendant's actions "directly prevented" the plaintiff from filing a suit on time. (Vaca v. Wachovia Mortgage Corp. (2011) 198 Cal.App.4th 737, 746, quoting *Lantzy v. Centex Homes* (2003) 31 Cal.4th 363, 385].) While we have no doubt that Lakeshore hoped to placate Camelot and avoid a lawsuit when it told Camelot in 2008 that it was getting a "better" deal," there is absolutely no evidence that Lakeshore did anything that "prevented" Camelot from filing a suit as soon as it discovered Lakeshore's deviation from the terms of the parties' Equity Term Sheets in 2008 into early 2009. Camelot had all the facts that it needed in 2008 into early 2009 to initiate a lawsuit against Lakeshore. Camelot was not "prevented" from filing suit.

For all of the reasons explained above, we conclude that the trial court erred in finding that Camelot's cause of action did not begin to run in 2008 or 2009, and, instead, did not begin to run until 2011. The undisputed facts in this case establish that Camelot knew in 2008 or 2009 that Lakeshore was not calculating Camelot's Equity True-Up in accord with the formula set forth in the Equity Term Sheets. No more was needed to start the running of the statute of limitations.

Camelot's Appeal

Having determined that Camelot's claim for money is barred by the statute of limitations, we need not address its contention on appeal that the trial court erred in declining to award prejudgment interest.

DISPOSITION

The judgment is reversed. Each party to bear its own costs on appeal.

BIGELOW, P.J.

We concur:

GRIMES, J. SORTINO, J.*

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