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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM HORRY COUNTY

Court of Common Pleas, 15th Circuit

Benjamin H. Culbertson, Circuit Court Judge

COMMON PLEAS CASE NO.: 2023-CP-26-02475

Appellate Case No. 2024-000440

Nicholas F. Wilson,

Appellant,

v.

Janet P. Gochenour; Janet P. Gochenour Trustee; James B. Parker; James B. Parker, Sr.; Mary Ann Parker; Kenneth Gregory Moore; R&G Corp. d/b/a Century 21 The Harrelson Group; Patton Development SC, LLC; Flagstar Bank, N.A.; Sonia M. Raymond; Raymond Law Firm, P.A.;

Respondents.

APPELLANT'S INITIAL BRIEF

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STATEMENT OF ISSUE(S) ON APPEAL

I. DID THE LOWER COURT ERR BY NOT APPLYING THE "DISCOVERY RULE" TO THE STATUTE OF LIMITATIONS ?

II. DID THE LOWER COURT ERR IN APPLYING CIVIL RULE 12(B)(6) IN EFFECTIVELY CONCLUDING "THERE IS NO SET OF FACTS UPON WHICH RELIEF CAN BE GRANTED" TO APPELLANT AS REQUIRED BY THE SUPREME COURT IN ITS 2019 *SKYDIVE MYRTLE BEACH* DECISION ?

   a. DID THE LOWER COURT ERR IN EFFECTIVELY CONCLUDING APPELLANT COULD NOT AMEND HIS COMPLAINT TO STATE A CLAIM AND / OR TO SET FORTH FACTS TO CREATE A GENUINE ISSUE OF MATERIAL FACT AS TO THE RUNNING OF THE STATUTE OF LIMITATIONS ?

STATEMENT OF THE CASE

This lawsuit involves a real estate closing on the sale of several parcels of property, including a residential house, from Respondent Janet Gochenour to Appellant Nick Wilson. The original contract between Appellant and Respondent Gochenour was signed on Jan. 22, 2020. (Complaint at ¶ 21; proposed Amended Complaint at ¶ 21). That contract was amended on Jan. 23, 2020 to state as follows: "Seller shall have the property surveyed, including the additional acreage listed as being included in the sale to reach no less than 8 acres and recorded as part of this parcel confirming total acreage. Seller to include the deed of the driveway as part of the sale." (Complaint at ¶ 22; proposed Amended Complaint at ¶ 22).

On or about Feb. 2, 2020, Appellant's real estate agent, Respondent Kenneth Gregory Moore, and agent at Respondent R&G Corp. d/b/a Century 21 The Harrelson Group, provided Appellant a survey prepared by K&R Land Surveyors, Inc., showing Appellant receiving parcels A, B, C, and D, totaling 8.24 acres. (Exhibit 1 to Complaint, Original Survey, dated Jan. 30, 2020). The description of the property on this "Original Survey" dated Jan. 30, 2020, states as follows: "**~Plat~** of a Subdivision Survey creating Tract 1 having 8.24 Acres and an 0.23 Acre Utility Easement Serving Address 4704 Highway 90 Both being located in Conway Township, Horry County, S.C. surveyed for **Janet P. Gochenour**." *Id.*

Appellant relied on this survey and was never shown any other survey or plat prior to the closing on March 6, 2020, or thereafter by the Respondent closing attorney or any other Defendant / Respondent. (Complaint at ¶¶'s 42-43; proposed Amended Complaint at ¶¶'s 42-43). The Respondent closing never provided Plaintiff / Appellant a copy of the 2nd survey / plat recorded on March 3, 2020. Respondent Flagstar Bank, NA. has this same January 30, 2020 1st survey in its underwriting file identified as the Subject Survey Plat Map. (Exhibit 2 to Complaint, Original

Survey, dated Jan. 30, 2020).

A different 2nd survey from K&R Land Surveyors, Inc., prepared on Feb. 10, 2020, and signed by Respondent Gochenour on Feb. 11, 2020, was recorded in the Horry County RMC office on March 3, 2020. (Horry County RMC Office, Book EG, Page 48354). The description of the Feb. 10, 2020 recorded survey prepared by K&R Land Surveyors, Inc., states: "**~Plat~** of a Subdivision Survey creating Tract 1 having 7.79 Acres and an 0.23 Acre Utility Easement - As Noted & Serving Address 4704 Highway 90 And a 30' Right of Way Easement, All being located in Conway Township Horry County, S.C. surveyed for **Janet P. Gochenour**."

On July 22, 2021, Appellant emailed Flagstar Bank and stated, inter alia, "Until last week, we never saw or knew about the existence of the second survey, the one that was actually recorded."

As of May 1, 2024, Tract D (*i.e.*, the driveway) as shown on the Jan. 30, 2020 "Original Survey" (Complaint, Exhibits 1 and 2) which was provided to Appellant by his real estate agent on Feb. 2, 2020, is shown on Horry County GIS data as owned by Respondent Janet P. Gochenour *et al*, and measures 0.49 acres. (Horry County GIS Property Card for PIN: 36201010005).

The closing on the property occurred on March 6, 2020. According to the recorded deed, Appellant acquired parcels A, B, and C totaling 7.79 acres. (Exhibit 3 to Complaint, Original Survey, dated Jan. 30, 2020). On the date of the closing, Appellant's loan closing attorney, Respondent Sonia Raymond gave Appellant a letter that stated, inter alia, "Enclosed please find your closing documents for the above-referenced transaction. Your original Deed and Final Title Policy will be forwarded to you as soon as we receive the same from the Courthouse." (Complaint at ¶ 43; proposed Amended Complaint at ¶ 43, and at Exhibit 4). On May 7, 2020, Respondent

Sonia Raymond mailed Appellant a letter that stated, inter alia, "Enclosed please find your original Deed and Owner's Title Policy for the purchase of the above stated property" (Complaint at ¶ 43; proposed Amended Complaint at ¶ 43, and at Exhibit 5).

Appellant filed his *Lis Pendens* No. 2023-LP-26-00335 on March 31, 2023. This lawsuit was filed on April 19, 2023. Appellant brought eleven (11) claims in the lawsuit, as follows:

1. **Breach of Contract** against Respondent Janet P. Gochenour;

2. **Interference with Contract** against Respondents Jim Parker and Mary Ann Parker;

3. **Breach of Fiduciary Duty / Loyalty / Buyer Representation Agreement** against Respondents Kenneth Gregory Moore and R&G Corp., d/b/a Century 21 The Harrelson Group;

4. **Breach of Dual Agency Agreement** against Respondents Kenneth Gregory Moore and R&G Corp., d/b/a Century 21 The Harrelson Group;

5. **Negligence *Per Se*** for violations of S.C. Code Ann. § 40-57-10 *et seq.*, including but not limited to §§'s 40-57-135, 40-57-350, and 40-57-370 against Respondents Kenneth Gregory Moore and R&G Corp., d/b/a Century 21 The Harrelson Group;

6. **Breach of Fiduciary Duty / Legal Malpractice** against Respondents Sonia M. Raymond, and Raymond Law Firm, P.A.;

7. **Fraud** against Respondents Janet P. Gochenour, Kenneth Gregory Moore and R&G Corp., d/b/a Century 21 The Harrelson Group;

8. **Constructive Fraud** against Respondents Janet P. Gochenour, Kenneth Gregory Moore and R&G Corp., d/b/a Century 21 The Harrelson Group;

9. **Breach of Contract Accompanied by Fraudulent Act** against Respondent Janet P. Gochenour;

10. **Declaratory Judgment** under S.C. Code Ann § 15-53-10 *et seq.*, seeking an order declaring Appellant owns the 0.49 acre driveway (Tract D on Exhibits 1 and 2 to Complaint) and modifying the recorded mortgage to reflect the same; and

11. **S.C. Unfair Trade Practices Act** ("UTPA"), S.C. Code Ann. § 39-5-10 *et seq* against Respondents Kenneth Gregory Moore and R&G Corp., d/b/a Century 21 The Harrelson Group;

(Complaint at ¶¶'s 53 to 131).

Respondents Sonia M. Raymond and Raymond Law Firm filed their motion to dismiss under Rule 12(b)(6), SCRCP, on May 24, 2023, alleging the "grounds for this Motion are that Plaintiff's claims are barred by the applicable statute of limitations, S.C. Code Ann. § 15-35-[530]." Respondent Gochenour filed her motion to dismiss under Rule 12(b)(6), SCRCP, on June 14, 2023, alleging the "grounds for this Motion are that Plaintiff's claims are barred by the applicable statute of limitations. The Statute of Limitations for all the Plaintiff's causes of action including those against Defendants Janet P. Gochenour and Janet P. Gochenour Trustee is three years."

On September 7, 2023, Appellant filed his Supplemental Memorandum in Opposition to the Motions to Dismiss. Also on Sept. 7, 2023, a virtual hearing was held before The Honorable Benjamin H. Culbertson on the motions to dismiss filed by Respondents Raymond, Raymond Law Firm and Gochenour. On Sept. 8, 2023, the lower court issued its order on the motions heard on Sept. 7, 2023, stating, as follows:

> Defendant, Raymond Law Firm's Motion to Dismiss is GRANTED. Plaintiff's action is barred by the Statute of Limitations.
>
> Plaintiff's Motion/Dismiss and Summary Judgment is DENIED.
>
> Defendant, Janet P Gochenour's Motion/Dismiss is GRANTED. Plaintiff's action is barred by the Statute of Limitations.
>
> Plaintiff's Motion/Dismiss or Strike Counterclaim is GRANTED. Defendant Parker's counterclaim is dismissed.
>
> Defendant, Janet P Gochenour's Motion/Dismiss crossclaim of defendant MERS is CONTINUED.

Id.

On Sept. 18, 2023, Appellant filed his motion to alter or amend / for reconsideration. On Oct. 5, 2023, Respondents Sonia M. Raymond and Raymond Law Firm, P.A. filed their response in opposition to Appellant's Rule 59 motion. On Dec. 6, 2023, Appellant filed his Reply in Support

of the Rule 59 Motion. On Jan. 29, 2024, Appellant sent a letter to Judge Culbertson's chambers requesting a ruling on the motion for reconsideration (filed Sept. 18, 2023), providing a copy of the transcript of hearing from Sept. 7, 2023, and inquiring if the trial court needed anything further from counsel prior to ruling on the Sept. 18, 2023 Motion to Alter or Amend under Rule 59. On Feb. 7, 2024, the lower court issued its order denying the motion for reconsideration, stating, as follows:

> Plaintiff's Motion to Alter or Amend Order Filed Sept. 8, 2023, is DENIED.
>
> This motion is decided on the contents of plaintiff's motion, prior arguments and memorandums of the parties, and letter dated January 29, 2024, from plaintiff's lawyer, without oral arguments.

Id.

Appellant's Motion to Amend to add Amended Verified Complaint

On Dec. 5, 2023, Appellant filed his Motion to Alter or Amend under Rule 15 to Amend his Verified Complaint with the addition / substitution of his proposed Verified Amended Complaint. This motion was set to be heard by The Honorable Stephen H. DeBerry, Jr., on Feb. 27, 2024. In an order dated March 12, 2024, the lower court denied Appellant's Motion to Amend to include his proposed Verified Amended Complaint, stating, inter alia, "Plaintiff asks this court to interpret Judge Culbertson's orders as dismissals without prejudice, even though Judge Culbertson himself denied that very relief by Order dated February [7], 2024."

Motions to Dismiss Filed After Order Dated Feb. 7, 2024

On Feb. 7, 2024, Respondents Kenneth Gregory Moore and R&G Corp., d/b/a Century 21 The Harrelson Group filed their motion to dismiss under Rule 12(b)(6), SCRCP, alleging, the

"grounds for this motion are that Plaintiff's Complaint fails to state a viable claim because Plaintiff's alleged causes of action against Defendants are all time-barred. This is evidenced and supported by prior rulings from the Court that have become the 'law of the case.'" On Feb. 14, 2024, Respondents Jim Parker and Mary Ann Parker filed their motion to dismiss under Rule 12(b)(6), SCRCP, alleging "Plaintiff's Complaint fails to state a viable claim because Plaintiff's alleged causes of action against Movants are all time-barred. This is evidenced and supported by rulings from this Court that have become the 'law of the case.'"

No further action has been taken in the lower court on these recently filed motions to dismiss.

STANDARD OF REVIEW

"In reviewing a motion to dismiss, this Court applies the same standard of review as the trial court." *Carolina Park Assocs., LLC v. Marino*, 400 S.C. 1, 6, 732 S.E.2d 876, 878 (2012) (citing *Doe v. Marion*, 373 S.C. 390, 395, 645 S.E.2d 245, 247 (2007)). "A ruling dismissing a complaint for failure to state facts sufficient to constitute a cause of action must be based solely on allegations set forth in the complaint." *Doe*, 645 S.E.2d at 247. "'If the facts alleged and inferences reasonably deducible therefrom, viewed in the light most favorable to the plaintiff, would entitle the plaintiff to relief on any theory,' dismissal is improper." *Id.* "'Questions of law may be decided with no particular deference to the trial court.'" *Carolina Park*, 732 S.E.2d at 878 (citing *Wiegand v. U.S. Auto. Ass'n*, 391 S.C. 159, 163, 705 S.E.2d 432, 434 (2011)).

ARGUMENT AND APPLICABLE LAW

I.A. The three-year statute of limitations on a legal malpractice claim of this nature necessarily involves questions of fact.

In *Stokes-Craven Holding Corp. v McKenzie*, 416 S.C. 517, 787 S.E.2d 485 (2016), the Supreme Court analyzed and restated the law on when the three-year statute of limitations commences on a legal malpractice claim. The Supreme Court reviewed its decision in *Epstein v. Brown*, 363 S.C. 372, 610 S.E.2d 816 (2005), in which the statute of limitations commencement date was analyzed, including, among other things, its rejection of the continuous representation rule where the statute of limitations is tolled until the client-lawyer relationship is terminated. *Id.* at 488-95. The Supreme Court noted the difficulties in determining the accrual date in a legal malpractice claim:

> As evidenced by this case, the key question is when the claimant's cause of action accrues to trigger the running of the three-year statute of limitations. The answer to this question is complicated by the seemingly endless factual scenarios surrounding the underlying claim of a legal malpractice cause of action. For example, legal malpractice claims may stem from matters involving litigation or negotiated settlements while others may arise out of matters involving the probate of a will or a divorce.
>
> Our decision regarding the accrual date must also take into consideration the preservation of the attorney-client relationship as well as the public policy that is fundamental to the efficient management of our judicial system.
>
> ---
>
> As previously stated, a legal malpractice cause of action is predicated on an injury or damage to a client caused by an alleged breach of duty by the client's attorney. This predicate injury or damage may take many forms, including one that stems from a favorable court ruling or successful yet insufficient award.

Stokes-Craven, 787 S.E.2d at 493-94 (underline emphasis added).

While this appeal involves the granting of two motions to dismiss, there has been no evidence provided or argument advanced by any Respondent asserting Appellant was ever provided with a copy of the recorded plat / 2nd survey.

B. Discovery Rule.

The statute of limitations for a legal malpractice cause of action is three years. *Id.* at 489 (citing S.C. Code Ann. § 15-3-530(5)). As also noted in *Stokes-Craven*, significant differences exist between analysis of accrual of a medical malpractice claim, compared to a legal malpractice claim. *Id.* at 490-491 (noting the "Legislature set absolute time restrictions [in S.C. Code Ann. §§'s 15-3-535 and 545] for the bringing of medical malpractice actions in the statutes of repose both for medical malpractice and for persons operating under disability."). The Legislature has not enacted a statue of repose with respect to claims for legal malpractice. Instead, as set forth in S.C. Code Ann. § 15-3-535, a cause of action for legal malpractice "must be commenced within three years after the person knew or by the exercise of reasonable diligence should have known that he had a cause of action." *Id.* (underline emphasis added).

The existence of the "reasonable diligence" provision in the statute necessarily brings "questions of fact" into almost every analysis of a statute of limitations accrual date in a legal malpractice action. *See e.g.*, *Allwin v. Russ Cooper Assocs.*, 426 S.C. 1, 16-17, 825 S.E.2d 707, 715 (Ct. App. 2019) (finding a "question of fact existed as to whether the appellant was reasonably diligent in determining whether the construction company caused the damage to her building, thereby triggering the statute of limitations in 1984." (underline emphasis added)).

In this case, Appellant's Verified Complaint alleges, "Plaintiff was never informed by

anyone that the Original Survey was not the survey that would be recorded to show the Property he was to receive from Janet under their Contract." (Verified Complaint at ¶ 43). Similarly, but with greater specificity, Appellant alleged in his proposed Amended Verified Complaint, "Plaintiff never received a copy of the deed or title policy from Sonia Raymond until it was mailed to him by her office on May 7, 2020. (*See* attached Exhibits 4 and 5)." (proposed Amended Verified Complaint at ¶ 43).

The existence of these allegations in the verified pleadings is all that is needed to overcome the statute of limitations, particularly at the motion to dismiss stage in the lawsuit. *See e.g.*, *Slack v. James*, 364 S.C. 609, 615, 614 S.E.2d 636, 639 (2005) (noting, "The Court of Appeals properly found a question of fact exists as to whether Buyers' reliance on the misrepresentation was reasonable although the falsity of the alleged misrepresentation could have been ascertained by examining the public records." (citations omitted)). As noted above, Appellant was never provided a copy of the recorded 2nd survey / plat by any Respondent, despite the duties owed to him by the Respondents Raymond, Raymond Law Firm, Moore and R&G.

Under the discovery rule, "the statute of limitations accrues at the time of the negligence or when the facts and circumstances would put a person of common knowledge on notice that there might be a claim against another party." *True v. Monteith*, 327 S.C. 116, 489 S.E.2d 615, 616 (1997) (underline emphasis added). *See also Personal Care, Inc. v. Theos*, 426 S.C. 78, 89, 825 S.E.2d 281, 287 (Ct. App. 2019); *Holmes v. Haynsworth, Sinkler & Boyd, PA*, 408 S.C. 620, 623-33, 760 S.E.2d 399, 405 (2014). In addition, as noted above in *Allwin v. Russ Cooper Assocs.*, 426 S.C. 1, 16-17, 825 S.E.2d 707, 715 (Ct. App. 2019), many times, the issue of running of the statute in a legal malpractice claim necessarily involves questions of fact, such as whether or not a plaintiff was "reasonably diligent" in discovering the injury. *Id.*

In *Rumpf v. Mass. Mut. Life Ins. Co.*, 357 S.C. 386, 394, 593 S.E.2d 183, 187 (Ct. App. 2004), this Court stated, "The statute runs from the date the injured party either knows or should have known by the exercise of reasonable diligence that a cause of action arises from the wrongful conduct." *Id.* (citations omitted) (underline emphasis added). "The date on which discovery of the cause of action should have been made is an objective, rather than a subjective, question." *Id.*

While the inquiry is "objective, rather than subjective," our courts have held the running of the statute of limitations can be an issue for the jury to determine. *Id.* at 186 (stating, "[i]f triable issues exist, those issues must go to the jury."). *See also Black v. Lexington Sch. Dist. No. 2*, 327 S.C. 55, 61, 488 S.E.2d 327, 330 (1997) (noting "the issue whether a defendant is estopped from claiming the statute of limitations is ordinarily a question of fact, summary judgment is appropriate where there is no evidence of conduct on the defendant's part warranting estoppel." (underline emphasis added).

II. To the extent the initial pleading failed to set forth sufficient facts to create a material issue of fact on the statute of limitations, Appellant should have been allowed to amend his Complaint under *Skydive Myrtle Beach*.

As set forth in *Skydive Myrtle Beach v. Horry Cty.*, 426 S.C. 175, 180, 826 S.E.2d 585, 587 (2019), "[w]hen a trial court finds a complaint fails 'to state facts sufficient to constitute a cause of action' under Rule 12(b)(6), the court should give the plaintiff an opportunity to amend the complaint pursuant to Rule 15(a) before filing the final order of dismissal." *Id.* at 587. The Supreme Court in *Skydive* stated, as follows: "The circuit court erred by failing even to consider allowing Skydive to amend its complaint." *Id.* at 587 (citing *Patton v. Miller*, 420 S.C. 471, 489-90, 804 S.E.2d 252, 261 (2017) (holding trial court's failure to exercise its discretion under Rule 15(a) is itself an abuse of discretion).

The Supreme Court in *Skydive* also stated, "Under Rules 12(b)(6) and 15(a), the circuit court may not dismiss a claim with prejudice unless the plaintiff is given a meaningful chance to amend the complaint, and after considering the amended pleading, the court is certain there is no set of facts upon which relief can be granted. As we will explain, *Spence* supports this principle." *Id.* at 592 (underline emphasis added). The Supreme Court further stated, "A circuit court does not have "discretion" to dismiss a complaint with prejudice for failure to state a claim under Rule 12(b)(6) without at least considering whether to allow leave to amend under Rule 15(a)." *Id.* at 592 (underline emphasis added); *see also Baughman v. At&T*, 306 S.C. 101, 112, 410 S.E.2d 537, 543 (1991) (stating, "[t]his means, among other things, that summary judgment must not be granted until the opposing party has had a full and fair opportunity to complete discovery.").

The lower court order did not address or consider whether or not "plaintiff [should be provided] a meaningful chance to amend the complaint." *Skydive* at 592.

The lower court order also did not "expressly" specify whether or not the Appellant's Verified Complaint claims were dismissed with prejudice or without prejudice. At a minimum, Appellant is entitled to re-plead and include even more specific facts as to when he could have first discovered the fraud perpetrated on him in January, February and March of 2020. Paragraph 43 of the Verified Complaint, which states, Appellant "was never informed by anyone that the Original Survey was not the survey that would be recorded to show the Property he was to receive from Janet under their Contract," was sufficient to survive a motion to dismiss on the statute of limitations.

In *Slack v. James*, 356 S.C. 479, 482-483, 589 S.E.2d 772, 774 (Ct. App. 2003), our Court of Appeals stated, "[t]he person committing the fraud cannot defeat a claim for misrepresentation

simply because the person defrauded is charged with notice under a recording statute, particularly where the misrepresented facts are peculiarly within the representor's knowledge." *Id.* The Court of Appeals in *Slack*, further stated, "[t]he purpose of the recording act is to protect one who buys a recorded title against one who acquires a paper title but fails to record it. The recording act is not intended to protect a seller who makes a false or misleading statement." *Id.*; *see also* *Moseley v. All Things Possible*, 395 S.C. 492, 498, 719 S.E.2d 656, 659 (2011) (noting, "general rule must at times yield when confronted with fraudulent misrepresentations. The purpose of the recording act is, after all, to protect innocent purchasers, not fraudulent sellers." (citing *Slack*)).

Fuller–Ahrens Partnership v. S.C. Dept. of H'ways and Pub. Trans., 311 S.C. 177, 180, 427 S.E.2d 920, 922 (Ct. App. 1993), which counsel to Respondents stated they relied upon at the hearing on Sept. 7, 2023, was decided in 1993, years before both *Slack* in 2003 and *Moseley* in 2011. *Id.* Further, the facts of *Fuller-Ahrens* are very different from this case. For example, in *Fuller*, the "constructive notice" at issue involved a deed recorded in the chain of title in favor of the South Carolina Department of Highways and Public Transportation in 1956. *Id.* at 921. The party held to have been on "constructive notice" of the deed, namely Fuller-Ahrens Partnership, was a successor to the purchasers of the subject property from "Andrew Patterson and others in his family" in 1985. *Id.* The party held to have been on constructive notice of the 1956 deed in the chain of title of its grantor was not even formed until 1986, after the property was purchased by Frederick B. Fuller and Leslie H. Ahrens individually. *Id.* (stating, "Fuller-Ahrens Partnership was formed in 1986 and purchased the property from Fuller and Ahrens shortly thereafter."). Ultimately in 1993, this Court held, "Fuller-Ahrens had constructive notice of the pipe's existence because of a 1956 deed in Fuller-Ahrens' chain of title." *Id.*

In this case, the contents of the recorded deed and the 2nd survey / plat were withheld

from the Plaintiff / Appellant at the closing on March 6, 2020, and thereafter by Respondents. Appellant had no reason to believe his real estate agent and closing attorney, each of which owed him fiduciary duties, would be involved in violating those duties. Therefore, he had no reason to go and check the record to discover documents or information they had a duty to provide him with in the first instance.

Further, in ***Fuller***, the party held to have been on "constructive notice" of the "ditch" could have discovered it via a title search. In contrast, Appellant here would have had to conduct a second title search after the one he had already relied upon from the Respondent Sonia M. Raymond and the Raymond Law Firm. The Fuller-Ahrens Partnership acknowledged they ultimately found out about the "ditch" via actual notice. ***Id.*** (stating, "it discovered the pipe 'sometime after the property was purchased on June 20, 1985.'"). Here, it was only after the fraud and the failure to disclose occurred on March 6, 2020, that Appellant could have been on "constructive" or "inquiry" notice.

CONCLUSION

For the reasons set forth herein, Appellant respectfully requests the orders of the lower court dismissing Appellant's claim on the "statute of limitations" be reversed and this matter be remanded for further proceedings.

Respectfully submitted,

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