

Ronald Raiford, <i>et al.</i>	*	IN THE
Plaintiffs	*	CIRCUIT COURT
v.	*	BALTIMORE CITY
	*	
MORTON INVESTMENTS, INC., <i>et al.</i>	*	Case No.: 24-C-03-003898
Defendants	*	

* * * * *

MEMORANDUM OPINION

This is a flipping case that arises out of 14 separate and independent residential real estate transactions. Plaintiffs Ronald Raiford (“Raiford”), Sharman Townsend (“Townsend”), and Kim and Antonio Lennon (the “Lennons”) (collectively the “Plaintiffs”) allege that in the late 1990's, the sellers of various houses in Baltimore City purchased distressed properties and subsequently resold them to Plaintiffs at inflated prices, often three to four times more than the actual market value. Plaintiffs allege that all of the Defendants participated in at least one real estate transaction in which one or more Plaintiff was the purchaser and borrower.

PROCEDURAL HISTORY

Plaintiffs filed their original complaint on May 29, 2003, a First Amended Complaint on October 24, 2003 and a Second Amended Complaint (“the Complaint”) on November 20, 2003. Plaintiffs sue 40 different Defendants—Sellers, Brokers, Lenders, Appraisers, Title Companies, and Title Company Attorneys—and allege that all of the Defendants committed: Fraud (Count I), Civil Conspiracy to Commit Fraud (Count II), Fraudulent Misrepresentation (Count III), and Negligent Misrepresentation (Count IV); that the Title Companies (Count

V), Lenders (Count VI), and Appraisers (Count VII) committed Negligence; and that the Title Company Attorneys committed Legal Malpractice (Count VIII).

Before the Court are five Motions based primarily on the argument that suit was filed after the statute of limitations expired. The Motions concern properties purchased by Plaintiffs Ronald M. Raiford (“Raiford”) and Sherman Townsend (“Townsend”). Thus, when the Court uses the term Plaintiffs in this Opinion, it does not refer to the “Lennons.”

Defendants Bank of America, Delta Funding Corp, and IndyMac Mortgage Holdings Inc. filed Motions for Summary Judgment that were denied on October 28, 2003. Those motions were heard by Judge John Miller who issued a written order denying the motions on the basis of the statute of limitations and directing Plaintiffs to complete discovery on limitations by December 31, 2003.¹ Plaintiffs did not conduct any discovery on the issue of statute of limitations and each of those Defendants renewed its motion for summary judgment. In his response to the renewed motions, Plaintiff Raiford argued that additional discovery was not necessary.

The issue before the court is whether Plaintiff Raiford had actual or implied knowledge of facts which cause a person of ordinary prudence to discover the fraud. . . .

Specifically, the issue is Mr. Raiford’s knowledge prior to the limitations date. Depositions or additional interrogatories and document requests to Defendants would not reveal what Mr. Raiford knew before the limitations date. Plaintiffs(sic) have provided the Court with relevant evidence by filing an Affidavit by Mr. Raiford which sets forth in detail his knowledge of material facts prior to the limitations date.

Plaintiff Townsend did not provide an affidavit.

¹These Defendants’ motions to dismiss Count II, the civil conspiracy count, was granted and Plaintiffs’ motion for reconsideration was denied.

On October 3, 2003, Judge Miller denied Defendants Robert T. Gonzales and Terrapin Title, LLC (the “Terrapin Title” defendants) motion to dismiss. On October 28, 2003, Judge Miller granted Defendants Federal Funding Mortgage Corporation and Nicholas J. Lazarchick’s (the “Federal Funding” defendants’) motion to dismiss Count II, the civil conspiracy count, and denied the motion on the remaining counts. Both the Terrapin Title and the Federal Funding Defendants filed Motions for Summary Judgment which were denied by Judge Stuart Berger shortly before this case was accepted into the Business and Technology Program and assigned to this judge. These Defendants filed Motions for Reconsideration and before Judge Berger scheduled a hearing on the Joint Motion for Reconsideration, Judge Berger and this Judge conferred and decided that it would be more economical for this Court to hear the motions or reconsideration.

Defendants Title Services Network, Michael H. Hirsch, and Jacqueline Gilbert (hereinafter collectively referred to as “the Network Title Defendants”) filed a Motion for Summary Judgment, which was not heard prior to being heard by this Court.

A hearing was held on all these motions on July 8, 2004.

STATEMENT OF FACTS²

Although Raiford and Townsend purchased different properties, there are some facts that are common to both of them as to all the properties involved in these motions. Both allege that they were told that they could purchase properties with no money down, regardless of their credit. They were also told that they would “receive several thousand

²The Statement of Facts comes from the Second Amended Complaint, Raiford’s Responses to Discovery attached to the various motions, documents attached to the motions and transcripts of previous hearings.

dollars ‘cash-back’ at settlement,” and at each of the settlements each of them in fact received “checks in amounts ranging from \$2,500 to \$3,500 per property.” They were also told that the Sellers would “manage all aspects of renting the property, including finding tenants, collecting rent, and making repairs.” They were told that the “properties were in good condition and would be easy to rent.” They were also told that “many of the properties already had tenants in them, and promised that those without tenants would have them by closing.” Plaintiffs were told that the rent proceeds would exceed their mortgage payments and that any necessary repairs would be completed by closing.

The Complaint is silent on whether Plaintiffs inspected the properties before settlement. Plaintiffs allege generally in the Complaint that Sellers told them that the properties would “move fast” and that the Sellers would arrange the financing in advance so they could purchase them immediately when they became available. In response to a Request for Admissions of Fact, Raiford responded as follows to a request that he admit that he had not visited two of the properties (1113 N. Patterson Park and 735 N. Kenwood Avenue) prior to settlement:

The Plaintiff was not given the property address prior to settlement. Plaintiff was told by Chad Morton that financing was arranged in advance so that as soon as a property became available Plaintiff could purchase it. Plaintiff made several attempts to have Mr. Morton show him properties for sale but Mr. Morton only took him past properties, in pleasant neighborhoods, that had supposedly just been sold.

Plaintiffs allege that “at the conclusion of each of the property sales,” they “owned properties in utter disrepair...” and that the Sellers convinced them to “purchase properties with major defects...”

At each of the settlements, Plaintiffs signed a HUD-1 Settlement Statement that had the following statement directly above the line for Plaintiff's signature:

I have carefully reviewed the HUD-1 Settlement Statement and to the best of my knowledge and belief, it is a true and accurate statement of all receipts and disbursements made on my account or by me in this transaction. I further certify that I have received a copy of the HUD-1 Settlement Statement.

The following warning appeared on the second sheet of the same Settlement Statements:

WARNING: IT IS A CRIME TO KNOWINGLY MAKE FALSE STATEMENTS TO THE UNITED STATES ON THIS OR ANY SIMILAR FORM. PENALTIES UPON CONVICTION CAN INCLUDE A FINE AND IMPRISONMENT. FOR DETAILS SEE TITLE 18:U.S. CODE § 1001 AND §1010.

As explained below, each of the Settlement Statements for all the properties involved in these motions, state that the particular plaintiff made a down payment. Plaintiffs allege throughout the Complaint that they "never made any down payment at settlement," and that instead each of them "received checks from SELLERS for between \$2,500 and \$3,500 for each property." In the Complaint Plaintiffs allege that their signatures were forged on some documents; however, Plaintiffs did not present any affidavits challenging the documents that were attached to the motions under consideration.

Plaintiff Raiford's position on what he signed is not clear. In his affidavit he admits he signed the Settlement Statement for each property:

I signed the settlement sheets for each property under the belief that they had been prepared by the title agents honestly, accurately and competently. If I had known that the documents were fraudulent or contained errors, I would not have signed them.

There is no statement in the Complaint or the Affidavit that information was added to the documents after he signed them.

Plaintiffs allege in the Complaint that they had “no knowledge of the wrongful acts perpetuated by Defendants until [an unspecified time in 2001 when] Raiford and the Lennons were separately referred to David Thurston, Esquire, by the Laurence Organization. ***The Lennons contacted Townsend and recommended that she, too, see Mr. Thurston.”³ Raiford states in his affidavit that “by the end of 2000, it became clear that Mr. Morton’s property management company was incompetent; they failed to find tenants, collect rents, make repairs, pay the necessary bills, and make payments to me.”

Facts specific to Raiford and Townsend and the particular properties they purchased are described below:

Plaintiff Raiford

Raiford is fifty-four years old, and has been working in the insurance industry for 28 years. He has been living in Takoma Park, Maryland, for twenty years. These motions involve eight of the properties that Raiford purchased: 1113 N. Patterson Park, 735 N. Kenwood Avenue, 535 Rose Street, 940 Franklinton, 2530 Orleans Street, 1627 N. Gay Street, 1411 E. Lafayette Street, and 1216 N. Montford Street.

1113 N. Patterson Park

Raiford signed the HUD-1 Settlement Statement for this property on September 29,

³The Laurence Organization is a property management company in the Baltimore area, and is not a party to this matter. Raiford and the Lennons had been unhappy with the property management services provided by Sellers’ organizations, and had approached the Laurence Organization for such services.

1999. The Settlement Statement states that he provided \$10,320.61 in cash at settlement.⁴ Raiford alleges that he did not receive a copy of the Settlement Statement recording the sale. Defendant Federal Funding Mortgage Corporations (“FFMC”), acting through Defendant Nicholas J. Lazarchick as its agent, served as the Mortgage Broker and Lender, and Defendant Terrapin Title conducted the settlement. Defendant FFMC loaned Raiford \$40,500 for this transaction. Raiford did not visit the property before he purchased it but visited it on three unspecified occasions after settlement. There were never any tenants in the property and no rent was collected after settlement.

735 N. Kenwood Avenue

Raiford signed the HUD-1 Settlement Statement for this property on October 27, 1999. The Settlement Statement states that he paid \$12,645.36 in cash at settlement. Defendant Indymac loaned Raiford \$47,700 for this transaction. Defendant Terrapin Title conducted the settlement, and Defendant FFMC, acting through Defendant Lazarchick as its agent, served as the Mortgage Broker. Raiford states that he did not receive a copy of the settlement statement because the title agent at the settlement told him “he did not need signed copies of the closing and other legal documents.” Raiford did not visit the property before he purchased it but visited it on two unspecified occasions after he purchased it. At an unspecified time, he installed a new roof and new gutters in the rear of the property. He collected \$2,375 in rent over an unspecified period of time.

In response to a request for admission, he stated that he “is without sufficient knowledge and information to state whether he signed the settlement ... as [it] is not identical

⁴As discussed above, all the Settlement Statements state that Plaintiffs made a down payment and in each instance, the statement is false.

to the settlement statement contained in the Plaintiff's file for the 735 N. Kenwood Street property." Mr. Raiford has not presented to the Court any document that purports to be the "settlement statement contained in [his] file." In an interrogatory response Raiford states:

The Plaintiff did not receive a copy of the settlement statement referenced in Interrogatory No. 1 until the Plaintiff's attorneys received a copy from IndyMac as part of this litigation. The *version* of the settlement statement that Mr. Raiford received was given to him as part of a package of documents at the property closing by Defendant Joseph Pietropaoli, Jr., an employee of Terrapin Title, LLC. Mr. Pietropaoli instructed Mr. Raiford that he (Mr. Raiford) did not need signed copies of the closing and other legal documents.

(Emphasis added). Raiford has not presented to the Court the "*version* of the settlement" that he received or an affidavit or anything else to suggest that he received something different than what is attached to the defendants' motions.

Finally at the motion hearing on October 27, 2003, Raiford's counsel made statements concerning the signing of the Settlement Statement that are difficult to decipher:

Mr. Frazier (Counsel for IndyMac): The only thing I wanted to note the difference is the exhibit that we attached to our papers, the settlement sheet is signed by Mr. Raiford. Plaintiffs did file an opposition to our motion, they did not attach an affidavit for Mr. Raiford claiming that that's not his signature. So I think they have conceded at this point that he did indeed sign that settlement statement. I mean if there were some, as you brought up the possibility of a forgery earlier, that's easy to put into issue with an affidavit.

The Court: What do you say to that, Mr. McCartney [Plaintiff's counsel]?

Mr. McCartney: I say the same thing, Your Honor. Fraud, okay. When the case law says if somebody signed something, then they're bound by it, except when fraud occurs, and that's exactly what we're alleging here. So I think—

The Court: You don't have an affidavit from your guy that

says it was –

Mr. McCartney: We're not saying it's not his signature, we're saying even if he signed it, that does not start discovery running because—

The Court: Don't you prepare a motion for summary judgment, don't you have to counter with an affidavit?

Mr. McCartney: Not if we're conceding the particular issue which is whether or not he signed the settlement sheet.

The Court: You're saying he signed it—

Mr. McCartney: We're not—

The Court: He knew what he was signing?

Mr. McCartney: No, we didn't say that, we said he signed it. No one's saying that he knew what he signed, that's a question of fact for discovery and for the jury.

535 N. Rose Street

Defendant Bank of America has filed a motion as to this property attaching a microfiche copy of a Settlement Statement dated February 24, 2000. However, the signature has been cut off from the document and there is no affidavit or anything else informing the Court if the document was ever signed by Raiford and/or bank officials. Although Raiford has admitted that he signed the Settlement Statements for each of the properties there is no evidence that what is attached to the motion is the Settlement Statement for this property and/or that it was signed on February 24, 2000. In the absence of some evidence that it is and that it was signed, it cannot form the basis for a motion for summary judgment. Therefore Defendant Bank of America's motion will be denied with leave to file a supplement to the motion for summary judgment with an affidavit explaining the source of the microfiche and the procedure for putting documents on microfiche, etc.

940 Franklinton Road

Raiford signed the HUD-1 Settlement Statement for this property on January 27, 1999. The Settlement Statement states that he paid \$13,090.66 in cash at settlement. Defendant New Century Mortgage Corporation loaned Raiford \$38,400 for this transaction. Defendant Terrapin Title, LLC conducted the settlement. Defendant Residential Mortgage, acting through Defendant Carl Felton, served as Mortgage Broker. Only Defendant Terrapin Title, LLC has moved for summary judgment on this transaction.

2530 Orleans Street

Raiford signed the HUD-1 Settlement Statement for this property on February 25, 1999. The Settlement Statement states that he deposited \$4,500.00 and paid \$2,504.48 in cash at settlement. Defendant New Century Mortgage Corporation loaned him \$36,000 for this transaction. Defendant Terrapin Title, LLC conducted the settlement. Defendant Residential Mortgage, acting through Defendant Carl Felton, served as Mortgage Broker. Only Defendant Terrapin Title, LLC has moved for summary judgment on this transaction.

1627 North Gay Street, 1411 East Lafayette Street, and 1216 North Montford Street

Raiford signed the HUD-1 Settlement Statements for 1627 North Gay Street and 1411 East Lafayette Street on January 7, 2000, and for 1216 North Montford Street on January 6, 2000. The Settlement Statements state that he deposited \$100.00 and paid \$4,164.69 in cash at settlement for 1627 N. Gay Street; deposited \$100.00 and paid \$4,329.47 in cash at settlement for 1411 E. Lafayette St.; and deposited \$100 and paid \$4,690.50 in cash at settlement for 1216 North Montford Avenue. Raiford alleges that he did not receive copies of the Settlement Statements recording the sales of the 1627 North Gay Street and the 1411 East Lafayette Street properties. The Network Title Defendants conducted the settlements

for the these properties. Defendant Universal Financial Group Inc. loaned \$27,750.00 for the purchase of 1627 N. Gay Street property; \$28,875.00 for the purchase 1411 East Lafayette Street; and \$31,500.00 for the purchase of 1216 N. Montford Avenue. Defendant Intrepid, acting through Defendant Michael Hirsh, served as Mortgage Broker for the purchase of these properties. Only the The Network Title Defendants have moved for summary judgment on these transactions.

Plaintiff Townsend

Plaintiff Sharman Townsend (“Townsend”) resides at 1368 E Street, N.W., Washington, D.C. 20002, and purchased the following properties that are the subject of these motions: 3206 Westwood Avenue; 1812 Rutland Avenue; 1509 Abbotston Street; and 1911 West North Avenue.

3206 Westwood Avenue

Townsend signed the HUD-1 Settlement Statement for this property on December 15, 1998. The Settlement Statement states that she deposited \$7,500.00 and paid \$3,400.32 in cash at settlement.⁵ Townsend alleges that she did not receive a copy of the Settlement Statement. Defendant Delta loaned her \$40,000 for this transaction. Defendant Terrapin Title, LLC conducted the settlement. Defendant Residential Mortgage, acting through Defendant Carl Felton, served as Mortgage Broker. Defendants Residential Mortgage and Felton have not moved for summary judgment.

⁵Unlike Raiford, there is no affidavit from Townsend where she admits that she signed the Settlement Statements. However, Defendants have asserted that the signatures on the Settlement Statements are Townsend’s and she has not disputed this contention.

1812 Rutland Avenue

Townsend signed the HUD-1 Settlement Statement for this property on December 4, 1998. The Settlement Statement states that she deposited \$2,500.00 and paid \$6,753.70 in cash at settlement. Defendant HomeGold Financial, Inc. loaned Townsend \$43,200.00 for this transaction. Defendant Terrapin Title, LLC conducted the settlement. Defendant Residential Mortgage, acting through Defendant Carl Felton, served as Mortgage Broker. Only Defendant Terrapin Title, LLC has moved for summary judgment on this transaction.

1509 Abbotston Street

Townsend signed the HUD-1 Settlement Statement for this property on January 28, 1999. The Settlement Statement states that she deposited \$4,400.00 and paid \$2,643.39 in cash at settlement. Townsend alleges that she did not receive a copy of the Settlement Statement. Defendant New Century Mortgage Corp. loaned her \$35,200.00 for this transaction. Defendant Terrapin Title, LLC conducted the settlement. Defendant Residential Mortgage, acting through Defendant Carl Felton, served as Mortgage Broker. Only Defendant Terrapin Title, LLC has moved for summary judgment on this transaction.

1911 W. North Avenue

Townsend signed the HUD-1 Settlement Statement for this property on January 28, 1999. The Settlement Statement states that she deposited \$5,900.00 and paid \$7,028.98 in cash at settlement. Townsend alleges that she did not receive a copy of the Settlement Statement. Defendant New Century Mortgage Corp. loaned her \$47,200.00 for this transaction, and Defendant Terrapin Title, LLC conducted the settlement. Defendant Residential Mortgage, acting through Defendant Carl Felton, served as Mortgage Broker. Only Defendant Terrapin Title, LLC has moved for summary judgment on this transaction.

DISCUSSION

SUMMARY JUDGMENT STANDARD

_____ Maryland Rule 2-501(a) sets forth the standard for filing a motion for summary judgment:

Any party may file at any time a motion for summary judgment on all or part of an action on the ground that there is no genuine dispute as to any material fact and that the party is entitled to judgment as a matter of law.

Md. Rule 2-501(a); *see also Russo v. Ascher*, 76 Md. App. 465, 473 (1988); *Syme v. Marks Rentals, Inc.*, 70 Md. App. 235, 237-238 (1987); *Ganter v. Kapiloff*, 69 Md. App. 97, 104 (1986). Summary judgment acts as a gate-keeping mechanism whereby only those actions that present a triable issue of fact proceed. Thus, if there is no issue of fact to be tried, judgment must be entered accordingly. *See Coffey v. Derby Steel Co.*, 291 Md. 241, 247 (1974). In sum, the trial judge, when considering a motion for summary judgment

_____ must ask [herself] not whether [she] thinks the evidence unmistakably favors one side or the other but whether a fair-minded jury could return a verdict for the plaintiff on the evidence presented. The mere existence of a scintilla of evidence in support of the plaintiff's position will be insufficient; there must be evidence on which the jury could reasonably find for the plaintiff.

Seaboard Surety Co. v. Richard F. Kline, Inc., 91 Md. App. 236, 244-45 (1992) (quoting *Anderson v. Liberty Lobby, Ltd.*, 477 U.S. 242, 252 (1986)(emphasis removed)).

In deciding a motion for summary judgment, the Court should assume the truth of all credible evidence on the issue, and all fairly deducible inferences therefrom, in the light most favorable to the party against whom the motion is made. *Nissan Motor Co. Ltd. v. Nave*, 129

Md. App. 90, 116-17 (1999) (citations omitted), *cert. denied*, 357 Md. 482 (2000). Therefore, “if there is any evidence, no matter how slight, that is legally sufficient to generate a jury question, the case must be submitted to the jury for its consideration.” *Washington Metro. Area Transit Auth. v. Reading*, 109 Md.App. 89, 99 (1996) (citation omitted); *Orwick v. Moldawer*, 150 Md.App. 528, 531-32 (2003).

CIVIL CONSPIRACY

The Terrapin Title Defendants motion for summary judgment as to Count II, the civil conspiracy claim, will be granted because civil conspiracy is not a separate tort. *Hoffman v. Stamper*, 155 Md. App. 247, 289-90 (2004). That Count has already been dismissed as to the other Defendants involved in these motions.

STATUTE OF LIMITATIONS

_____ Defendants argue that because the sales occurred more than three years before the Complaint was filed, the statute of limitations bars Plaintiffs’ claims. In Maryland, a civil action must be filed within three years from the date the action accrues. Maryland follows the discovery rule and provides by statute: “If the knowledge of a cause of action is kept from a party by the fraud of an adverse party, the cause of action shall be deemed to accrue at the time when the party discovered, or by the exercise of ordinary diligence should have discovered the fraud.” MD. CODE ANN., COURTS & JUDICIAL PROCEEDINGS ART. § 5-203.

In *Lumsden v. Design Tech Builders, Inc.*, 358 Md. 435 (2000), the Court explained the rationale for the statute of limitations and traced the history of the discovery rule. In tracing the history, the Court noted that it had held in *Poffenberger v. Risser*, 290 Md. 631, 636 (1981), that the rule applies to all actions and that “the cause of action accrues when the

claimant in fact knew or *reasonably should have known of the wrong.*” *Lumsden*, 358 Md. at 444 (emphasis added). The Court then explained when a plaintiff has information that a wrong was committed against him or her:

Having established that a cause of action accrues only when the claimant knows or should know of the wrong, we next addressed when the statute of limitations begins to run when the claimant's knowledge of the wrong is implied from the facts and circumstances of a particular case. *A claimant reasonably should know of a wrong if the claimant has "knowledge of circumstances which ought to have put a person of ordinary prudence on inquiry [thus, charging the individual] with notice of all facts which such an investigation would in all probability have disclosed if it had been properly pursued."*

Id. at 445 (citing *Poffenberger*, 290 Md. at 637) (emphasis added).

Thus, a plaintiff may be put on “inquiry notice” of facts that begin the running of the statute of limitations although the plaintiff has not yet discovered all the facts to support the cause of action.

Under the discovery rule as stated in *Poffenberger* limitations begin to run when a claimant gains knowledge sufficient to put her on inquiry. As of that date, she is charged with knowledge of facts that would have been disclosed by a reasonably diligent investigation. *The beginning of limitations is not postponed until the end of an additional period deemed reasonable for making the investigation...*

358 Md. at 445 (quoting *O’Hara v. Kovens*, 305 Md. 280, 289) (emphasis in original). The Court explained the reason that the statute begins to run when a plaintiff has sufficient facts to be on inquiry notice, although those facts may be insufficient to support the cause of action:

From that date the statute itself allows sufficient time--three years-- for reasonably diligent inquiry and for making a decision as to whether to file suit. This application of the discovery rule serves the legislative policy that underlies the statute of

limitations, and at the same time puts the discovery rule claimant on a par with the claimant who has actual knowledge at the time of the tort such as the normal automobile-accident plaintiff. The latter has three years from the date of the accident within which to investigate further, obtain expert opinion, discuss settlement, and file suit. The former is given the same time period within which to do these things, beginning from the date that circumstances have put her to that inquiry which charges her with knowledge of the additional information that might be gleaned from a reasonably diligent investigation conducted within the three-year period.

Id. (Internal citations omitted).

Thus, “a plaintiff is . . . on inquiry notice. . . , when the plaintiff has ‘knowledge of circumstances which would cause a reasonable person in the position of the plaintiff[] to undertake an investigation which, if pursued with reasonable diligence, would have led to knowledge of the alleged [tort].’” *Id.* at 446 (*quoting Pennwalt Corp. v. Nasios*, 314 Md. 433, 448-49 (1988)). If a plaintiff is on inquiry notice and fails to conduct an investigation that would reveal facts to support the cause of action, “it can fairly be said that the plaintiff has inexcusably slept on his rights.” *Id.* In sum, “a statute of limitations generally is not delayed by any period of investigation to ascertain the precise cause of the injury.” *Id.* From the time the claimant has “knowledge sufficient to put [him] on inquiry notice,” that he has been wronged, that claimant “will be charged with knowledge of facts that would have been disclosed by a reasonably diligent investigation, *regardless of whether the investigation has been conducted* or was successful.” *Id.* (emphasis added)

The fact that the defendant failed to disclose information that was part of the fraud is not sufficient to delay the start of the statute of limitations. *See Edwards v. Demedis*, 118 Md. App. 541, 564 (1997) (A lawyer’s failure to disclose a conflict of interest that he had and his failure to inform clients of a crucial communication from the Internal Revenue Service

“did not prevent knowledge of a cause of action and did not cause the failure of [the] appellants to initiate an action at an earlier date.”). *See also Doe v. Archdiocese of Washington*, 114 Md. App. 169 (1997).

A plaintiff has the burden of showing that the failure to discover the facts was not because of a lack of diligence by the plaintiff. *Fairfax Savings F.S.B. v. Weinberg & Green*, 112 Md. App. 587 (1996).

[T]he burden is on Plaintiffs to prove that they did not discover the alleged wrong more than three years before they filed suit and that this lack of discovery was not due to Plaintiffs' unreasonable failure to exercise ordinary diligence. A plaintiff who invokes Section 5-203 of the Courts and Judicial Proceedings Article must “show affirmatively that he was kept in ignorance of his right of action by the fraud” of defendant, and “*must specifically allege and prove when and how his knowledge of the fraud was obtained, so that the court will be enabled to determine whether he exercised reasonable diligence to ascertain the facts.*”

112 Md. App. at 623 (footnotes and citations omitted) (emphasis added). *See also Doe v. Archdiocese of Washington*, 114 Md. App. 169, 187 (1997) (“complaint relying on the fraudulent concealment doctrine must also contain specific allegations of how the fraud kept the plaintiff in ignorance of a cause of action, how the fraud was discovered, and why there was a delay in discovering the fraud, despite the plaintiff’s diligence.”); *Mettee v. Boone* 251 Md. 332, 394 (1968) (burden is on plaintiff to show affirmatively that he was kept in ignorance by the fraud of the defendant).

As with any other issue, whether the statute of limitations bars an action may be decided on motion for summary judgment “[w]hen there is no genuine issue as to a material fact relative to the accrual of a cause of action...” *Edwards v. Demedis*, 118 Md. App. 541, 553 (1997) (citations omitted). Thus in *Baysinger v. Schmid Products Co.*, 307 Md. 361, 367

(1986), summary judgment was not appropriate because reasonable minds could disagree about whether a “reasonably prudent person should then have undertaken a further investigation.” *Lumsden*, 358 Md. at 448. In contrast, in *Lumsden* summary judgment was appropriate because the plaintiffs “knew immediately upon seeing the damage done to their driveway that a defect existed for which someone was responsible.” *Id.* at 448-49.

Thus, this Court must decide whether the undisputed facts would have put an “ordinarily prudent person” on notice of potential fraud in the above listed transactions. While Plaintiffs acknowledge that they filed suit more than three years after the alleged fraud transpired, Plaintiffs contend that there is a dispute of fact as to when Raiford and Townsend were put on inquiry notice of the possible fraud. Defendants counter that Raiford and Townsend should have discovered the fraud by the time they settled on the properties in question.

For the reasons stated below, the Court concludes that Plaintiffs had “actual knowledge of facts sufficient to put an *ordinarily prudent person* on inquiry,” *DeGroft v. Lancaster Silo Co., Inc*, 72 Md. App. 164, 171 (emphasis added), and have failed to come forward with evidence upon which a jury could find that their failure to discover the fraud “was not due to [their] unreasonable failure to exercise ordinary diligence.” *Fairfax Savings F.S.B.*, 112 Md. App. at 623. Thus, as a matter of law, the statute of limitations bars Plaintiffs’ claims.

Statements Made by Sellers to Plaintiffs

Plaintiffs allege that the Sellers represented that the properties “were in good condition and would be easy to rent,” and “that any necessary repairs to the properties would be completed by closing.” Plaintiffs also assert that the Sellers represented that the properties

could be purchased for “no money down, regardless of credit,” and that plaintiffs “would receive several thousand dollars “cash-back” at settlement.” These representations alone were sufficient to cause Plaintiffs to conduct an investigation.

Failure to Inspect Property

At a minimum, the events leading up to the sale of the property, and the events occurring at the settlement for the properties, would have prompted an ordinary prudent person to investigate the condition of the property before, or at least shortly after, the settlement. Indeed, if what Plaintiffs allege is true—that the properties were “in utter disrepair” and had “major defects” at the time of closing—a simple visit to the property before or after closing would have placed the Plaintiffs on notice and would have resulted in an investigation of the Sellers’ other representations. Any failure by Plaintiffs to view the property in a timely manner does not toll the statute of limitations.

Plaintiffs have an obligation to allege and produce evidence of “how the fraud kept [them] in ignorance,” and “why there was a delay in discovering the fraud, despite [their] diligence.” *Doe v. Archdiocese of Washington*, 114 Md. App. at 187. There is no allegation or evidence of either. There is nothing in the Complaint to explain how defendants kept them from learning of the conditions of the houses through a simple inspection before or after purchasing them.

In fact, Raiford’s affidavit states facts that suggest that he should have been extremely vigilant about inspecting the properties. He states that Morton refused to show him the properties or provide him with the address for the properties before settlement.

Prior to purchasing the properties [Raiford] made several unsuccessful attempts to visit the properties. Each time, however, Defendant Chad Morton informed [Raiford] that he

(Morton) did not know the addresses of the properties until they became available for sale, and that as soon as the properties were available for sale, [Raiford] had to be ready to buy or the properties would go to someone else.

Raiford also stated that he “made several attempts to have Mr. Morton show him properties for sale but Morton only took him past properties, in pleasant neighborhoods, that had supposedly just been sold.” The fact that Morton avoided showing the properties prior to settlement should have alerted Raiford to a possible scam, or at the very least, suggested the importance of visiting the properties immediately after settlement.

Townsend is silent on why she did not discover the fraud earlier through a simple inspection of the houses before or after the sale. But because the burden of proof is on her, the absence of evidence justifying the failure to inspect, along with the allegations in the Complaint, compel the conclusion that she slept on her rights.

There is a body of case law holding that a plaintiff has an obligation to inspect real estate before or shortly after the purchase. *See Taglient v. Himmer*, 949 F.2d 1 (1st Cir. 1991) (purchaser of commercial lot who waited more than three years after the sale to inspect property failed to exercise due diligence in discovering that seller had lied about lot’s visibility from highway; a simple drive along the highway would have revealed the misrepresentation); *Hughes v. Cloud*, 504 So.2d 734 (Ala. 1987) (more than three years after purchasing house, purchaser filed claim against seller alleging that seller had lied about the square footage of the house); *Albrecht v. Clifford*, 767 N.E.2d 42, 49-50 (Mass. 2002) (it was unreasonable as a matter of law for home buyer to neither inspect nor use allegedly defective fireplaces in home for more than three years after purchasing home). *Cf. Fulcher v. United States*, 696 F.2d 1073, 1077 (4th Cir. 1982) (landowner is responsible to exercise reasonable

diligence in informing himself of the condition of his property and is chargeable with knowledge of those facts that reasonable diligence would reveal); *Woefel v. Tyng*, 221 Md. 539, 543 (1960) (doubtful that purchaser exercised due diligence when he did not inspect real property before he purchased it).

There is no evidence that Defendants prevented Plaintiffs from visiting the homes.

Misstatements on Settlement Statements

_____ For each of the property sales in question, plaintiffs signed Settlement Statements that clearly contained false information. In particular, the Settlement Statements provided that Plaintiffs contributed thousands of dollars towards the purchase of the properties, when in fact they paid none. Further, Plaintiffs signed HUD-1 Settlement Statements immediately below language providing that they had “carefully reviewed” the Settlement Statements, and to the best of their knowledge, the statements made in the settlements were “true and accurate” reflections of “all receipts and disbursements made on [their] accounts or by [them] in [these] transaction[s],” and that they “received a cop[ies]” of the Settlement Statements. The Settlement Statements also made clear that it is a crime to make false statements on the forms. Nonetheless, Plaintiffs signed them, attesting to the truth of information that they clearly knew was false.

Plaintiffs had a duty to read and learn the contents of the loan documents they signed. *See Holzman v. Fiola Blum, Inc.*, 125 Md. App. 602, 629 (1999); *Sass v. Andrew*, 152 Md. App. 406, 440 (Md. Ct. Spec. App. 2003) (“And, ordinarily, ‘a person who executes a document is legally obligated to read it before executing it . . .’” (citation omitted)). These blatantly inaccurate Settlement Statements would have led a reasonable person to seriously question the legitimacy of these transactions. *See Jacobson v. Sweeney*, 82 F. Supp. 2d 458,

462 (D. Md. 2000) (Maryland law) (“Clearly, any reasonable person who believed that the [seller] had lied about the condition of the property would have had reason to investigate [the fair market value of the property.]”). In *Miller v. Pacific Shore Funding*, 224 F. Supp.2d 977, 983 (D. Md. 2002), a mortgagor alleged he had obtained an illegal loan from his lender. The Court held that the statute of limitations ran from the date of the loan because the illegal fees “were itemized on the face of the loan documents” that the plaintiff had signed on the closing date *Id.* at 990.

Raiford and Townsend signed the Settlement Statements at closing that falsely provided that they had contributed thousands toward the purchase of these properties. Thus they “had sufficient knowledge of circumstances indicating [that they] might have been harmed.” *Id.* As with the plaintiff in *Miller*, there is no evidence that Plaintiffs were prevented from reading the Settlement Statements before signing them. Nor are Plaintiffs helped by the fact that in some instances they did not receive copies of the Settlement Sheet not receiving a copy was further inquiry notice to Plaintiffs. In fact Plaintiffs signed documents stating that they received a copy of the Settlement Sheets. Thus at the time they did not receive a copy, they had reason to investigate a potential wrong.

Plaintiffs contend that *Hoffman v. Stamper*, 155 Md. App. 247 (2004) supports their argument that they were not unreasonable in signing the inaccurate Settlement Statements or in relying upon falsely inflated appraisals. Plaintiffs point out that the *Hoffman* plaintiffs signed gift letters that were facially fraudulent. However, Plaintiffs reliance on *Hoffman* is misguided. Because the plaintiffs in *Hoffman* filed their complaint within three years of the alleged fraud, the *Hoffman* Court never addressed the statute of limitations issue. The issue before that Court was whether the fact that the *Hoffman* plaintiffs had signed false gift letters

established that as a matter of law they had participated in the fraud or if it was a question for the jury. *Id.* at 314-16. The issue before this Court is whether the statements on the Settlement Statement that they knew to be false were sufficient to put them on inquiry notice. They were.

In fact, Plaintiffs point to the false information on the Settlement Statements to support their claim that the Title Companies and Brokers should have been on inquiry notice of fraud and/or negligence:

86. TITLE COMPANIES knew, or should have known, of the fraud or negligence of the SELLERS, BROKERS, and LENDERS because:

- D. Down-payments shown on the settlement sheets were not produced by PLAINTIFFS at closing; and
- E. PLAINTIFFS received “cash-back” from SELLERS at settlement.

Plaintiffs also allege that the Title Companies were negligent in signing “blatantly inaccurate documents,” and in making “inaccurate statements on the settlement sheets,” and that the Lenders were negligent for failing to “adequately examine the loan application packages, which [would] have revealed the fraud or negligence of the other Defendants.” (emphasis added). Similarly Plaintiffs allege that the Title Companies and Brokers were on notice because they signed false documents: “TITLE COMPANIES and/or BROKERS signed Affidavits of Consideration and Disbursement, thereby falsely or negligently affirming to LENDERS the consideration that had been paid for the properties.” Plaintiffs allege that the Brokers knew or should have known that, contrary to the information in the documents, Plaintiffs had not “paid valuable consideration,” and that Title Companies “falsely or mistakenly affirmed” the same thing. Each of these allegations apply equally to Plaintiffs

who knowingly signed blatantly inaccurate documents and at best did not adequately examine the documents they were signing.

Finally Plaintiffs allege that they “were not aware of the fraudulent or negligent misrepresentations made by TITLE COMPANIES in the settlement documents they signed,” but they have not produced any evidence in opposition to the motion to explain why they were not made aware that the information was false. With respect to 735 N. Kenwood Avenue, Raiford has made some statements about a “version” of a settlement statement but has not come forward with any evidence that suggests that he did not sign the documents attached to the motion in its present condition. This Court will not “fill in the blanks” with speculation.

Experience with Real Estate

Plaintiffs state that none of the facts discussed are determinative because they were unsophisticated in the real estate market. In *Mettee v. Boone*, 251 Md. 332 , 339-40 (1968) the Court made clear that an allegation that someone is a layman is not sufficient to invoke the discovery rule. In *Mettee*, the plaintiff claimed that his status as a layman prohibited him from understanding the significance of information that was visible on some pipes and he was therefore excused from discovering that they were not the appropriate pipes for his house. The Court rejected his claim noting that “even an ordinary layman can ask what kind of pipe is being installed in his house.” *Id.* at 340. Similarly Plaintiffs’ claim of lack of sophistication in the real estate investment market does not save them.

The representations of no money down and cash back was “too good to be true” and would have raised the eyebrow of anyone using ordinary diligence. The false statements in the Settlement Statements put them on notice that they were not dealing with honest people.

And of course, a simple inspection of the houses would have revealed that they were in “utter disrepair.” As in *Lumsden*, “the harm to petitioners was . . . apparent, enough so that a reasonably prudent person would have begun investigating. . . .” 358 Md. at 449.

When Plaintiffs were on Inquiry Notice

In both Plaintiffs’ Opposition to the Federal Funding Defendants’ Motion for Summary Judgment, and Plaintiffs’ Opposition to the Federal Funding Defendants’ and the Terrapin Title Defendants’ Joint Motion for Reconsideration of their Motions for Summary Judgment, Plaintiffs state that Mr. Morton fulfilled his promises for some time, leading Plaintiffs to believe that everything was normal with the purchases for some time after settlement. Other than evidence that \$2,375 in rent was collected from Raiford’s 735 N. Kenwood property (at an unspecified date), Plaintiffs have provided no support for these assertions. There are no facts to show that Raiford was not on inquiry notice and/or that he was diligent in conducting an investigation after being put on notice.

Plaintiffs allege that they did not become aware of the fraud until they were referred to an attorney by a property manager. When the Plaintiffs became aware of the fraud is not the question. The question is whether plaintiffs possessed sufficient facts that would have put “an ordinarily prudent person on inquiry.” *DeGroot*, 72 Md. App. at 171.

CONCLUSION

For all the reasons stated above, the motions for summary judgment of Defendants Delta Funding Corporation, IndyMac Mortgage Holdings Inc., and the Network Title Defendants will be granted, and the motions for reconsideration of the Terrapin Title Defendants and the Federal Funding Defendants will be granted and their motions for summary judgment will be granted.

The Motion for Summary Judgment of Defendant Bank of America will be denied without prejudice to file a supplemental motion.

Dated: August 12, 2004

Judge Evelyn Omega Cannon

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