

ROOSEVELT M. GEE, et al.	*	IN THE
Plaintiffs	*	CIRCUIT COURT
	*	FOR
vs.	*	BALTIMORE CITY
LUCKY REALTY HOMES, INC. et al.	*	
Defendants	*	CASE NO. 24-C-02-000978
* * * * *		

MEMORANDUM OPINION

This case arises from seventy-one separate and independent residential real estate transactions. Plaintiff buyers allege that Defendant sellers, real estate agents, appraisers, title companies, and title attorneys jointly engaged in a pattern of purchasing distressed properties and subsequently reselling them to African-American Plaintiffs at inflated prices, often three to four times more than the actual market value, and often in dilapidated condition. This practice has come to be known as “reverse redlining.” Plaintiffs allege that each of the Defendants participated in at least one real estate transaction in which one of the named Plaintiffs was a purchaser and/or borrower of monies to finance the purchase.

PROCEDURAL HISTORY

In an effort to litigate their claims as a class action, four plaintiffs filed their original complaint on February 22, 2002. After an unsuccessful attempt at class certification, eighty-nine Plaintiffs filed an amended complaint on May 3, 2004. Shortly thereafter, five additional Plaintiffs were added to the amended complaint by way of interlineations. Plaintiffs, as a whole, filed suit against Defendants Lucky Realty

Company, Inc., Lucky Homes, LLC, LeLe Land Company, Inc., Furble Enterprises, Inc., Hussey Investments, America's Rebuilders, Inc., M. Arnold Politzer, and Sharon Politzer (also known as the "Politzer Defendants"); Cohen and Forman, LLC, David H. Cohen, Geoffrey L. Forman, and Perpetual Title Company (also known as the "Forman Defendants"); Robert C. Ness; and, Edwin R. Esbrandt. In their complaint, Plaintiffs allege all of the Defendants:

- (1) Violated the Fair Housing Act and the Racketeer Influenced and Corrupt Organizations Act (RICO);
- (2) Intentionally misrepresented material facts;
- (3) Negligently misrepresented material facts;
- (4) Obtained unjust enrichment; and
- (5) Conspired to:
 - (i) violate the Fair Housing Act, RICO Act, and Maryland Consumer Protection Act;
 - (ii) commit breach of contract;
 - (iii) obtain unjust enrichment; and,
 - (iv) make intentional and negligent misrepresentations;

Furthermore, Plaintiffs allege that:

- (1) All Defendants with the exception of Lucky Homes, Forman, Cohen, Cohen and Forman, LLC, and Ness violated the Consumer Protection Act;
- (2) Defendants Lucky Homes and Arnold Politzer committed breach of contract; and

(3) Defendant Lucky Homes was negligent.

Finally, Plaintiffs allege all of the Defendants aided and abetted each other in (1) violating the Fair Housing, RICO, and Consumer Protection Acts, (2) committing breach of contract, (3) obtaining unjust enrichment, and (4) making intentional and negligent misrepresentations.

In response, Defendants submitted separate motions to dismiss and motions for summary judgment. These motions were based primarily on the premise that Plaintiffs' claims were time barred under the relevant statutes of limitations. On October 22, 2004, the Court held a hearing to entertain these and other motions.

FACTUAL ALLEGATIONS¹

Although each of the Plaintiffs' transactions was distinct and unique, the transactions could be characterized by some common facts. As described by Plaintiffs:

[Defendants] engaged in a common scheme to target and defraud the African-American Plaintiff buyers by selling homes as completely renovated when only minor cosmetic repairs had been performed, by concealing the true condition and value of the properties, by falsely inflating the entire cost of home purchase transactions, and then by securing loan proceeds to cover the exaggerated amounts. Defendants then drained cash equaling the exaggerated value from the transaction by means of phony mortgages, delinquent taxes and myriad fees, all flowing to the same circle of associates. (Memorandum and Order, Oct. 31, 2003).

To accomplish this plan, Plaintiffs allege three corporations wholly owned by Arnold Politzer - Lucky Realty Homes, Inc., Torrey Pines Realty, Inc., and LeLe Land Company, Inc. - purchased properties in predominantly African-American neighborhoods throughout Baltimore City and recorded first and second mortgages on those properties in

¹ Information included in the Factual Allegations is derived from the original and amended complaints, discovery documents, previously released orders of this Court, and the October 22, 2004 motions hearing.

the name of the purchasing company, or in the name of America's Rebuilders, Inc., another corporation wholly owned by Arnold Politzer. The first and second mortgages recorded by Defendant Politzer or one of his corporations were, according to Plaintiffs, "for amounts in excess of 200% of the original purchase price." (Memorandum and Order, Oct. 31, 2003). Plaintiffs further allege, "These fake mortgages then were reflected on subsequent buyers' settlement sheets as 'mortgage loan payoffs' from the buyers' loan proceeds in amounts greater than face value." *Id.* In some cases, according to Plaintiffs, Defendants Arnold and Sharon Politzer personally guaranteed loan money to America's Rebuilders, Inc. and recorded those loans as a second mortgage.

Lucky Homes, Inc. marketed the properties as "guttled and rebuilt," with a "30 day walkthrough" guarantee. (Memorandum and Order, Oct. 31, 2003). Plaintiffs allege the properties "in reality ...ranged from marginal to fair condition." *Id.* In fact, many Plaintiffs reported serious structural and mechanical damage within thirty days of settlement. Sold "at significantly inflated prices, as much as 30% higher than assessed values and other properties in the neighborhood, the sale prices of the properties were substantiated by appraisals relying in part on the sales of other properties sold by Defendants in the same scheme." *Id.*

In addition, Plaintiffs allege that Defendants elaborated on their scheme by (a) asking Plaintiffs and their family and friends to execute phony gift letters, (b) inaccurately accounting for cash brought by Plaintiffs to settlement, and (c) offering to pay Plaintiffs' outstanding bills. *See infra* pp. 11-17.

Plaintiffs allege that all of these conditions created an atmosphere of fraud. Plaintiffs allege that because all of the transactions occurred within a closed universe of

misrepresentation perpetrated by the Defendants and because nearly all of the Plaintiffs were first time homebuyers, the levels of deceit employed by the Defendants were so strategically layered that the Plaintiffs did not know and had no reason to suspect that they were victims in a predatory scheme. (Motions Hearing, Plaintiffs' Argument, Oct. 22, 2004).

DISCUSSION

Summary Judgment Standard

According to Maryland Rule 2-501, summary judgment is appropriate where there is no genuine dispute of any material facts and the moving party is entitled to judgment as a matter of law. A party may file a motion for summary judgment at any time.

The purpose of the summary judgment procedure is not to determine factual disputes, but rather to determine whether any real dispute exists as to any material fact. *Robertson v. Shell Oil Co.*, 34 Md. App. 399 (1977), *DiGrazia v. County Executive*, 288 Md. 437 (1980), *Russo v. Ascher*, 76 Md. App. 465 (1988). When ruling on a motion for summary judgment, the Court must address two issues: (1) whether the pleadings, depositions, answers to interrogatories, admission, and affidavits show that there is no genuine dispute as to any material fact; and, (2) whether the movant is entitled to judgment as a matter of law. *Syme v. Marks Rentals, Inc.*, 70 Md. App. 235 (1987).

Credibility is not an issue to be decided on summary judgment. *Berkey v. Delia*, 287 Md. 302 (1980), *Coffey v. Derby Steel Co.*, 291 Md. 241 (1981). The Court does not attempt to decide any issue of fact or of credibility; rather, the Court decides whether such issues exist. If the affidavits or other evidence show a genuine conflict, the court

must deny the motion. *White v. Friel*, 210 Md. 274 (1956). Thus, the procedure is not a substitute for a trial, but a hearing to decide whether a trial is necessary. *Id.* The function of the judge in ruling on a motion for summary judgment is similar to the role that he or she performs at the close of all the evidence in a jury trial when motions for directed verdict or requests for peremptory instructions require him to determine whether an issue requires resolution by a jury, or is to be decided by the court as a matter of law. *Knisley v. Keller*, 11 Md. App. 269 (1971), *Lynx, Inc. v. Ordnance Prods., Inc.*, 273 Md. 1 (1974).

In resolving a motion for summary judgment, it is not for the trial judge to decide disputed facts. *Kiley v. First National Bank*, 102 Md. App. 317 (1994). All facts susceptible to more than one interpretation and the materiality of that arguable factual dispute must be judged by looking to the party against whom the motion is made and in a light least favorable to the movant. *Brewer v. Mele*, 267 Md. 437 (1972).

Summary judgment is generally inappropriate in cases involving motive or intent. *DiGrazia v. County Executive*, 288 Md. 437 (1980). As a result, Maryland courts have recognized that “cases that primarily raise issues of fraud or intent are...generally ill-suited for summary judgment due to the need for greater than usual factual development.” *Berkey v. Delia*, 287 Md. 302 (1980). Nonetheless, summary judgment may be granted in fraud cases, provided that there is no dispute as to a material fact. *Id.*

Statutes of Limitations

Defendants have moved for summary judgment based on the relevant statutes of limitation. Generally, a two-year statute of limitations applies to Fair Housing Act claims. 42 U.S.C. § 3613 (a)(1)(a). A three-year statute of limitations applies to claims alleging civil conspiracy, aiding and abetting, intentional misrepresentation, a Consumer

Protection Act violation, breach of contract, negligence, negligent misrepresentation, and unjust enrichment. MD. CODE ANN., CTS. & JUD. PROC. § 5-101. A four-year statute of limitations applies to RICO allegations. *Agency Holding Corp. v. Malley Duff & Assoc., Inc.*, 483 U.S. 143, 156 (1987). Finally, a twelve-year statute of limitations applies to contracts under seal. MD. CODE ANN., CTS. & JUD. PROC. § 5-102.²

Though there is a preference for strictly construing statutes of limitations, the law provides for exceptions to these rules to serve the interests of equity and justice. One such exception is the discovery rule. “The discovery rule in Maryland has its origins in equity cases involving claims of fraud. The rationale was that the statute of limitations could not run until the victim became aware of the fraud.” *Lumsden v. Design Tech Builders*, 358 Md. 435, 442 (2000). The discovery rule states that, “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., CTS. & JUD. PROC. § 5-203.

In other words, under the discovery rule, a statute of limitations begins to run when a claimant gains knowledge sufficient to put him or her on inquiry notice; from that date forward, a claimant will be charged with knowledge of facts that would have been disclosed by a reasonably diligent investigation. *Lumsden v. Design Tech Builders, Inc.*, 358 Md. 435 (1999). However, the commencement of the statute of limitations is not delayed until the conclusion of a diligent investigation. *Id.* Moreover, the statute of

² In this case and at this point in the discovery process, the contract of sale and deed would be considered documents under seal, inasmuch as these documents contain the representation, “(SEAL),” next to the signature line. *Scher v. Altomare*, 278 Md. 440 (1976).

limitations generally is not delayed by any period of investigation to ascertain the precise cause of the injury. *Id.* However, the plaintiff must have knowledge that the injury resulted from a wrong. *Rockstroh v. A.H. Robins Co., Inc.*, 602 F. Supp. 1259, 1264 (D.Md. 1985).

As a result, a claimant is subject to a running of the statute of limitations 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.” *Poffenberger v. Risser*, 290 Md. 631, 637 (1981). Therefore, “[a] cause of action accrues when the plaintiff possesses sufficient facts about the harm done to him that reasonable inquiry will reveal his cause of action.” *Lumsden*, 358 Md. at 447 (citing *Nasim v. Warden, Maryland House of Correction*, 64 F.3d 951, 955 (4th Cir.1995)).

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. The Court of Appeals, in *Lumsden*, described the “inquiry notice date” as follows:

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.

Lumsden, 358 Md. at 445. 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.*, quoting *Pennwalt Corp. v. Nasios*, 314 Md. 433, 448-49 (1988). A plaintiff has the burden of showing that the failure to discover the facts was not because of a lack of diligence. *Fairfax Savings F.S.B. v. Weinberg & Green*, 112 Md. App. 587 (1996).

The discovery rule for tolling the accrual of a limitations period ordinarily applies to all causes of actions that are governed by a three-year statute of limitations period. *Frederick Road Ltd. Partnership v. Brown & Sturm*, 360 Md. 76 (1998), MD. ANN. CODE, CTS. & JUD. PRO. § 5-101. A question of the accrual of a cause of action for limitations purposes is left to judicial determination. *Frederick Road Ltd. Partnership v. Brown & Sturm*, 360 Md. 76 (1998). However, as stated in *Frederick Road Ltd. Partnership v. Brown & Sturm*:

Whether or not the plaintiff’s failure to discover his cause of action was due to failure on his part to use due diligence, or to the fact that defendant so concealed the wrong that plaintiff was unable to discover it by the exercise of due diligence, is ordinarily a question of fact for the jury.

Id. at 96, citing *O’Hara v. Kovens*, 305 Md. 280, 294-5 (1986). Therefore, determination of the accrual of a limitations period may be based solely on law, solely on fact, or on a combination of law and fact, and is reached after careful consideration of the purpose of the statute of limitations and facts to which it is applied. *Id.*, MD. ANN. CODE, CTS. & JUD. PRO. § 5-101. Finally, Maryland courts are expected to strictly construe statutes of limitations, so as not to evade the effect of the statutes. *Decker v. Fink*, 47 Md. App. 202 (1980), *Resolution Trust Corp. v. Hecht*, 833 F. Supp. 529 (D. Md. 1993).

As with any other issue, whether the statute of limitations bars an action may be decided on a 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.

While some Plaintiffs acknowledge that they filed suit more than three years after settlement on the property, these Plaintiffs contend that there is a dispute of fact as to when Plaintiffs were put on inquiry notice. (Plaintiffs’ Argument, Motions Hearing, Oct. 22, 2004.) Defendants counter that all Plaintiffs were on inquiry notice either at the time of settlement or when the properties were discovered by the Plaintiffs to be in a state of disrepair. Defendants argue that many of the cases – if not most - should be dismissed for having been filed beyond the statute of limitations. (Defendants’ Arguments, Motions Hearing, Oct. 22, 2004). Thus, this Court must decide whether the facts alleged in the initial and amended complaints would have put an “ordinarily prudent person” on notice of a potential cause of action in the above listed transactions.

For the reasons stated below, the Court concludes that many of the 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, as it

relates to certain Defendants, 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 statutes of limitations bar a number of the Plaintiffs’ claims against certain Defendants.

In deciding which claims would warrant entry of summary judgment, the Court reviewed all of the documents and pleadings submitted by the parties and questioned whether the facts of a specific Plaintiff would unquestionably have placed a reasonably prudent person on notice of a problem in the transaction, thus triggering the running of the statute of limitations. After conducting this case specific investigation, the Court concludes that the following occurrences triggered the running of the statute:

- (1) letters suggested and/or facilitated by the Defendants to inflate the amount of cash available to the Plaintiffs (hereinafter “phony gift letters”);
- (2) inaccurate accounting of cash brought to settlement, as indicated by the HUD-1s; and/or,
- (3) a Defendant’s offer to pay a Plaintiff’s outstanding bills.³

A discussion of each of the events constituting inquiry notice is in order.

Phony Gift Letters

Plaintiffs’ Amended Complaint is littered with situations in which one or more Defendants suggested and/or facilitated the execution of a phony gift letter to improve the

³ Unlike the Plaintiffs in *Hoffman v. Stamper*, 155 Md. App. 247, where similar events provided sufficient evidence to prove fraud, conspiracy, and other claims, the Plaintiffs in the instant case, against whom summary judgment will be granted, did not file many of their claims within the times specified in the statutes of limitations.

financial status of the particular Plaintiff. Basically, Lucky Homes would fund a “gift” from a Plaintiff’s friend or relative to the Plaintiff in order to inflate the financial means of the Plaintiff, thereby facilitating the approval of the loan by the mortgagee to the Plaintiff buyer. In each case, the money was supplied by Lucky Homes, and after the gift letter was executed, the money was returned to Lucky Homes.

For example, in the case of Plaintiff Roxie Alexander, a representative of Lucky Homes “encouraged Ms. Alexander to persuade a friend or relative to execute a ‘gift letter.’ The representative explained that Lucky Homes would fund the ‘gift,” but that it should come from a person close to her.” (Amend. Compl. ¶ 142). Ms. Alexander asked her mother to execute the gift letter. Once Ms. Alexander’s mother agreed to sign the gift letter, “the Lucky Homes representative accompanied her mother to the bank, gave her funds to deposit into her account and then instructed her to withdraw it and give it to her daughter to cover closing costs.” (Amend. Compl. ¶ 143).

When asked to execute a phony gift letter, an ordinarily prudent person would realize that the Defendants were attempting to inflate the buyer’s assets. This action would place an ordinarily prudent person, like these Plaintiffs, on notice that the Defendants were trying to obtain a mortgage amount that exceeded the value of the property. Armed with this knowledge, an ordinarily prudent person would have checked the tax records or hired an independent appraiser to determine the actual value of the property. Further investigation may have provided Plaintiffs with evidence that the inflated mortgage obtained for them was actually paying off questionable liens held by the Defendants and their associates. Upon completing this investigation, Plaintiffs would have determined whether it was in their best interests to sue the Defendants.

While the Plaintiffs may not have fully understood the layers of fraud and deceit, in all of the transactions in which a gift letter was involved, the Plaintiffs should have realized that something was wrong with their transaction. The Defendants' request for the execution of a gift letter provided actual knowledge of facts sufficient to put an ordinarily prudent person on inquiry notice.

Several Plaintiffs were offered phony gift letters. Some of these Plaintiffs filed suit within the statutes of limitations.⁴ The motions for summary judgment against those Plaintiffs who filed suit within the statutes of limitations will be denied.

Other Plaintiffs were offered phony gift letters but failed to file suit within all of the statutory limitations periods. The motions for summary judgment against those Plaintiffs who failed to file suit within all of the statutes of limitations will be granted. Summary judgment will be granted, on all counts, with respect to Defendants Cohen and Forman, LLC; David H. Cohen; Geoffrey L. Forman; Perpetual Title Company; Robert C. Ness; and Edwin R. Esbrandt, against the following Plaintiffs: Roxie Alexander, Julie Anderson, Kimberly (Haney) Downes, Lenora Johnson and James Brown, and Jerry and Brenda Reeder.

Still other Plaintiffs were offered phony gift letters but only timely filed suit with respect to the RICO claims (violation of RICO Act, aiding and abetting a RICO violation, and conspiracy to commit a RICO violation). Therefore, summary judgment will be granted, with respect to Defendants Cohen and Forman, LLC; David H. Cohen; Geoffrey

⁴ "The commencement of a class action suspends the applicable statute of limitations as to all asserted members of the class who would have been parties had the suit been permitted to continue as a class action; once the statute of limitations has been tolled, it remains tolled for all members of putative class until class certification is denied, at which point class members may choose to file their own suits or to intervene as plaintiffs in the pending action." *Crown, Cork & Seal Co., Inc. v. Parker*, 462 U.S. 345, 353-4 (1983). Therefore, all Plaintiffs are considered to have filed their suits on February 22, 2002, the date of the original filing.

L. Forman; Perpetual Title Company; Robert C. Ness; and Edwin R. Esbrandt on all but the RICO claims (violation of RICO Act, aiding and abetting a RICO violation, and conspiracy to commit a RICO violation), against the following Plaintiffs: Jacqueline Anthony, Debra Burrell, Christine Chase, Lisa Curry, David and Brenda Hemmingway, Gloria Jackson, Linda May, and Joyce and Ken Wright-El.

Inaccurate Accounting of Cash Brought to Settlement

The Amended Complaint also notes several transactions in which the HUD-1 settlement statement signed by the Plaintiffs did not correctly indicate the amount of cash brought by the Plaintiffs to settlement. For example, in the case of Plaintiffs John Cooper and Montra Womack, the HUD-1 falsely stated that Plaintiff brought \$6,149.63 to settlement. Amend. Compl. ¶ 388. “The couple brought no money to settlement; in fact, they received a \$2500.00 check from the Lucky Homes agent, and were encouraged to use that money for mortgage payments.” *Id.*

Plaintiffs had a duty to read and learn the contents of the 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). These blatantly inaccurate settlement statements, that Plaintiffs brought several thousands of dollars to settlement when they brought nothing, would have led a reasonable person to seriously question the legitimacy of these transactions. Those Plaintiffs were aware or should have been aware of this fraudulent accounting and thus charged with further investigation of any possible causes of action that could result.

Several Plaintiffs signed HUD-1 forms that inaccurately accounted for the cash brought to settlement. Some of these Plaintiffs filed suit within the statutes of limitations.

The motions for summary judgment against those Plaintiffs who filed suit within the statutes of limitations will be denied.

Other Plaintiffs signed HUD-1 forms that inaccurately accounted for the cash brought to settlement but failed to file suit within all of the statutory limitation periods. The motions for summary judgment against those Plaintiffs who failed to file suit within all of the statutory limitation periods will be granted. Summary judgment will be granted, on all counts, with respect to Defendants Cohen and Forman, LLC; David H. Cohen; Geoffrey L. Forman; Perpetual Title Company; Robert C. Ness; and Edwin R. Esbrandt, against the following Plaintiffs: Vera Blake, John R. Johnson and Ashburn Harris, Lenora Johnson and James Brown, Eleanora Dutton; Laura Lambson Forrest and Vernon Forrest; Serena Freeman; Emily and Katisha Garey; Donald Meredith, Karen Moye, Debora Offer, Steve and Juliet Rambharose, Shirley (Leazer) Randall and Kevin Troy Randall, Jerry and Brenda Reeder, Elizabeth Sanders, William Shaw, Jacqueline Singleton, Shirley Smith, Wanda Watters, David Willett, Laverne Williams, and Iredell Wood.

Still other Plaintiffs signed HUD-1 forms that inaccurately accounted for the cash brought to settlement but only timely filed suit with respect to the RICO claims (violation of RICO Act, aiding and abetting a RICO violation, and conspiracy to commit a RICO violation). Therefore, summary judgment will be granted, with respect to Defendants Cohen and Forman, LLC; David H. Cohen; Geoffrey L. Forman; Perpetual Title Company; Robert C. Ness; and Edwin R. Esbrandt on all but the RICO claims (violation of RICO Act, aiding and abetting a RICO violation, and conspiracy to commit a RICO violation), against the following Plaintiffs: Debora Bryan; John Cooper and Montra Womack; Lisa Curry; Delores Davis, Theresa Robertson, and Deloris Brown; Kimberly

(Haney) Downes; LaTonya and Gloria Jackson; Betty Lee; Betty McCoy; Doris McDaniel and Denise Brown; Eris Smith; Betty (Dunn) Tyson; and Joyce and Ken Wright-El.

Defendants' Offers to Pay Plaintiffs' Outstanding Bills

Finally, the Amended Complaint notes several occasions when Defendants offered to pay (and usually did pay) outstanding bills of the Plaintiffs, to improve the Plaintiff's credit. For example, despite Plaintiff Roderic Gray's protests, "Lucky Homes paid a hospital bill for him." Amend. Compl. ¶ 628.

To an ordinarily prudent person, the offer to pay his or her outstanding bills would make that person pause and consider whether the offer was too good to be true. Such an offer might also cause the buyer to question whether the seller had an ulterior motive in paying the buyer's bills. Even to the most unsophisticated of buyers, an offer by the seller to pay for bills totally unrelated to the sale of the house in an effort to improve the buyer's credit should have triggered further investigation.

Several Plaintiffs were offered payment of other outstanding bills. Some of these Plaintiffs filed suit within the statutes of limitations. The motions for summary judgment against those Plaintiffs who filed suit within the statutes of limitations will be denied.

Other Plaintiffs were offered payment of other outstanding bills but failed to file suit within all of the statutes of limitations. The motions for summary judgment against those Plaintiffs who failed to file suit within all of the statutes of limitations will be granted. Summary judgment will be granted, on all counts, with respect to Defendants Cohen and Forman, LLC; David H. Cohen; Geoffrey L. Forman; Perpetual Title Company; Robert C. Ness; and Edwin R. Esbrandt, against the following Plaintiffs:

Roxie Alexander, Laura Lambson Forrest and Vernon Forrest, Emily and Katisha Garey, and Jaclyn Green Thompson.

Still other Plaintiffs were offered payment of other outstanding bills but only timely filed suit with respect to the RICO claims (violation of RICO Act, aiding and abetting a RICO violation, and conspiracy to commit a RICO violation). Therefore, summary judgment will be granted, with respect to Defendants Cohen and Forman, LLC; David H. Cohen; Geoffrey L. Forman; Perpetual Title Company; Robert C. Ness; and Edwin R. Esbrandt on all but the RICO claims (violation of RICO Act, aiding and abetting a RICO violation, and conspiracy to commit a RICO violation), against the following Plaintiffs: Debora Bryan, Debra Burrell, John Cooper and Montra Womack, Lisa Curry, Roderic Gray, Linda May, and Betty (Dunn) Tyson.

In summary, even without knowing that “HUD regulations prohibit a seller or other interested party to a transaction from playing any role in the buyer's obtaining a gift and gift letter for the closing costs, verifying a gift letter, furnishing funds for closing, and clearing credit problems for the buyer,” the affected Plaintiffs should have recognized that the Defendants were not honest businessmen. *Hoffman v. Stamper*, 155 Md. App. 247, 271 (2004). The Court finds that these actions go far beyond the pale of activities that occur during legitimate business transactions and would place even the most unsophisticated of buyers on notice to undertake further investigation.

Property Disrepair – Events Not Triggering Inquiry Notice

The Court does not find that conditions such as the disrepair of the property necessarily placed the Plaintiffs on inquiry notice, since the claims are essentially rooted in fraud. Because Plaintiffs did not, for example, sue for breach of warranty, physical defects to the property are not necessarily salient to the issue of the statute of limitations. This is so because a Plaintiff's reasonable investigation into the property's physical defects would not necessarily "have led to knowledge of the alleged [tort]." *Lumsden*, 358 Md. at 446. *Citing O'Hara*, 305 Md. at 302. At this point in the discovery process, the facts of this case are unlike the facts of *Lumsden*, in which a two-year statute of limitations on a breach of warranty claim accrued when plaintiffs first noticed peeling and scaling of their driveway. 358 Md. 435.

Because the pleadings and documents produced thus far in the case identify no clear relationship between the disrepair of the properties and the underlying fraud allegedly perpetrated by the Defendants, the physical defects on any one of the Plaintiffs' properties do not necessarily impute inquiry notice to the Plaintiffs. However, this does not preclude a later determination, after the conclusion of discovery, that a Plaintiff may have been placed on inquiry notice.

CONCLUSION

What is clear, and what this Court finds as fact, is that for those Plaintiffs who were on inquiry notice based upon one of the triggering events discussed above, the latest date on which they were on notice was the date of settlement. Therefore, starting from the date of settlement, if those Plaintiffs' complaints were filed beyond the limitations

period for all claims (i.e. four years), this Court will grant summary judgment as to all Defendants, other than the Politzer Defendants. For those Plaintiffs who filed their complaints within the four-year RICO statute of limitations, but not within the other operative statutes of limitations, summary judgment will be entered as to all Defendants, other than the Politzer Defendants, as to all counts except the RICO claims (violation of RICO Act, aiding and abetting a RICO violation, and conspiracy to commit a RICO violation).

Attachment A contains a listing of the settlement dates relevant to each Plaintiff. Those settlement dates⁵ are incorporated herein as findings of fact. The attachment also includes this Court's conclusion as to whether summary judgment will be granted or denied as to each Defendant based upon the above discussion. Those Plaintiffs who did not file claims within four years of settlement will have a judgment entered against them as to all Defendants except the Politzer Defendants. Those Plaintiffs who filed claims within three years but not four years are indicated as having summary judgment entered against them except as to the RICO claims (violation of RICO Act, aiding and abetting a RICO violation, and conspiracy to commit a RICO violation).⁶

Attachment B identifies whether a particular Plaintiff, against whom summary judgment will be entered on at least one count, was placed on inquiry notice by a specific triggering event. For purposes of these motions, Attachment B is incorporated herein as findings of fact specific as to each of the named Plaintiff's claims.

Furthermore, in each transaction, one or more of the Politzer Defendants entered into a contract with the Plaintiff. For purposes of these motions, and subject to any later

⁵ Including the contract date of Plaintiffs Joyce and Ken Wright-El.

⁶ This is marked on the spreadsheet as "granted – except RICO."

discovery and legal argument, the contracts are considered to be sealed instruments and subject to a twelve-year statute of limitations. Therefore, the Politzer Defendants' motions for summary judgment against all Plaintiffs will be denied without prejudice to any motions filed at the conclusion of discovery.

Likewise, all other grounds for summary judgment are rejected as to all Defendants, conditioned on the Defendants' ability to refile any motions following discovery.

December 10, 2004
Date

JUDGE EDWARD R.K. HARGADON