



15TH FLOOR AT 801 TOWER
801 SOUTH FIGUEROA STREET
LOS ANGELES, CALIFORNIA 90017-3012
(213) 624-6900
WWW.MANNINGLLP.COM

November 19, 2021

LEGAL UPDATE

NEW DECISION ADDRESSES STATUTE OF LIMITATIONS IN CASES ALLEGING MULTIPLE THEORIES OF LIABILITY

by Fredric W. Trester, Esq.

Statute of Limitations

Vera v. REL-BC, LLC was a lawsuit brought by a buyer, Vera, of a property which was purchased, remodeled, and flipped by the defendants. Vera claimed that certain defects concerning the condition of the property were not disclosed by the sellers, including water intrusion, leaks from the sewer system, repairs done without permits or not in compliance with building codes. Plaintiff filed the case three years and three days following the close of escrow.

The defendants filed a Motion for Summary Judgment based on the three-year statute of limitations contained in California Code of Civil Procedure 338(d), which is the statute of limitations for fraud. Said section states essentially that an action for fraud must be brought within three years of when a plaintiff knew or should have known of the facts constituting the fraud and that plaintiff had been damaged.

Here, the Court found that the lawsuit was barred by the three-year statute of limitations. Plaintiff argued that a four-year statute of limitation should apply because she was suing for breach of the Residential Purchase Agreement which contains a provision that the seller must disclose material facts. The Court, however, found that despite that argument “in determining whether an action is on contract or in tort... it is the nature of the grievance rather than the form of the pleadings that determines the character of the action. If the complaint states a cause of action in tort, and it appears that this is the gravamen of the complaint, the nature of the action does not change by allegations in regard to the existence of or breach of a contract. In other words, it is the object of

the action rather than the theory upon which recovery is sought that is controlling...” Since the Court felt that the gravamen of the claim was a failure to disclose information about the condition of the property, it essentially sounded in tort, i.e., fraud, and the three-year statute applied.

What is interesting about this case, is that the facts which the defendant argued put Vera on notice were known to Vera before the close of escrow. The Court rejected Vera’s argument that she had to have actual knowledge of the fraud and reconfirmed that the statute of limitations “begins to run when the plaintiff has information which would put a reasonable person on inquiry...” From a factual standpoint, the Court looked at the fact that Vera received reports from her pre-close of escrow inspectors which demonstrated that she had some knowledge of the four problems she claimed existed at the property: 1. A history of water intrusion; 2. Unpermitted repairs completed by unlicensed contractors; 3. Failure of terra cotta sewer line and 4. Lack of structural framing supporting the front stairs. The Court felt because her inspectors raised issues, she had a reason to be suspicious about the fact that sellers had not disclosed the same problems. “Vera could and did hire inspectors who revealed or at least called into serious question the truth of the sellers’ misrepresentations, so those misrepresentations did not postpone accrual of her claims.” The misrepresentations alleged arose in part from the sellers’ responses in the statutorily required Transfer Disclosure Statement.

As to the permit issue, the Court noted that Vera obtained the permit history of the property which she gave to her inspector to review. The Court felt that while the permit history would not have revealed that the sellers’ contractor was unlicensed, it stated that this information in conjunction with her and her inspector’s observations of the work performed should have made her suspicious that the sellers’ representations about permits were false.

Vera argued that she did not have sufficient facts to know that the stairs were not structurally sound and therefore that claim should have survived. The Court rejected this argument, stating essentially that a separate statute of limitation does not arise based on the content of every misrepresentation. The Court stated that since Vera’s injuries stem from the fraudulent conduct by the sellers in selling a property based on misrepresentations about its conditions, “even if Vera had no knowledge to trigger a duty to inquire into one of the specific misrepresentations, her grounds for suspicion that the sellers had made several other serious misrepresentations nevertheless started the running of these limitations.”

The Court also felt that the damages occurred to Vera at the time she closed escrow because under California law, the property was worth less than she was paying which is the measure of damages. The fact that damages continued did not therefore toll the statute of limitations.

Attorney's Fees

The sellers recovered their attorney's fees from the buyer Vera. The Court rejected Vera's arguments that because the Court found the claims arose from fraud and not breach of contract, the sellers should not have been entitled to their fees. The Court in interpreting the broad nature of the attorney's fees provision of the Residential Purchase Agreement found that the attorney's fees were available whether a plaintiff sued in tort or contract. Further, the Court also allowed the seller to recover its fees in prosecuting a cross-complaint against Vera's real estate broker. The Court reasoned that since that was a defensive action, the attorney's fees incurred in pursuing that claim were also recoverable. Finally, the Court found that the seller REL-BC, LLC although it was a dissolved limited liability company, was still entitled to its attorney's fees after discussing the corporation's code provisions regarding the winding up the affairs of a limited liability company.

The takeaways from this case are as follows:

1. The Courts will look at the gravamen of the complaint in determining the statute of limitations;
2. That facts known to a buyer prior to the close of escrow can be used to trigger the statute of limitations, even if damages have not yet been fully discovered, and
3. Attorney's fees are available whether the theories are contract or tort, and attorney's fees for prosecuting a cross-complaint which is defensive by nature are also recoverable against the buyer. This might mean that attorney's fees incurred by a buyer in suing other defendants would also be recoverable against a seller. In other words, based on this case, if a buyer sues the seller, the real estate brokers, and home inspector, a buyer could argue that the buyer would be entitled to legal fees incurred in prosecuting the case against all of the defendants, not simply the seller, who would be the only party subject to an attorney's fees provision based on the Residential Purchase Agreement that contains the attorney's fees provision.

One last point is whether this case would have any impact on cases against real estate brokers from the standpoint of the statute of limitations. At least two cases in California have held that even though a real estate broker is sued for fraud or negligence, if there is also a claim for breach of fiduciary duty, arising from essentially the same facts, that the longer (four-year) statute of limitations would apply. Defendants can at least now argue that this case should support that the shorter statute of limitations should apply because the gravamen of the claim, not the theory being pursued, dictates which the statute of limitations applies.

*Reproduced by Berkley Service Professionals
with permission of the author.*

