

[Cite as *Gides v. Marcus & Millichap*, 2015-Ohio-4383.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 102595

MARY T. GIDES, TRUSTEE

PLAINTIFF-APPELLANT

vs.

MARCUS & MILLICHAP, ETC., ET AL.

DEFENDANTS-APPELLEES

JUDGMENT:
AFFIRMED

Civil Appeal from the
Cuyahoga County Court of Common Pleas
Case No. CV-14-834326

BEFORE: S. Gallagher, J., McCormack, P.J., and Blackmon, J.

RELEASED AND JOURNALIZED: October 22, 2015

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SEAN C. GALLAGHER, J.:

{¶1} Appellant Mary T. Gides, Trustee, appeals the judgment of the trial court that granted a motion for judgment on the pleadings and dismissed the action with prejudice. Upon review, we affirm.

{¶2} In 2006, appellant purchased a multifamily apartment in Cleveland Heights. After appellant defaulted upon the loan, a foreclosure action was filed against her on June 9, 2009. More than five years after the foreclosure action was filed, appellant filed this lawsuit raising claims of mortgage fraud and conspiracy.

{¶3} Appellant filed the complaint on October 15, 2014, against appellees Marcus & Millichap Real Estate Services, Inc., and Michael Barron. Appellant also named as a defendant John Doe, “unidentified defendant appraiser.” Appellant alleged that in February 2006, the defendants made false representations regarding the value of property located at 14174 Superior Avenue, Cleveland Heights, Ohio, and that the statement of value was false because it contained untrue real estate tax charges. Appellant alleged that the statement was made to induce appellant to enter into a loan agreement with Imperial Bank and that appellant relied on the statement to her financial detriment. Plaintiff further alleged that the resulting loan payment schedule was unsupportable “because of the true tax charges actually levied on the property,” causing her to default on the loan, which led to foreclosure in Cuyahoga C.P. No. CV-09-698222.

{¶4} Appellees filed a joint answer in which, among other defenses, they asserted that the complaint failed to set forth a claim upon which relief could be granted and that the action was barred by the applicable statute of limitations. Appellees also filed a motion for judgment on the pleadings.

{¶5} A copy of the real estate sales contract (“the agreement”) was attached to the answer. Under paragraph 19 of the agreement, appellant acknowledged that appellees had not made any representation regarding “the financial condition or business prospects of the Property” or “the accuracy or completeness of financial information concerning the Property[.]” Also under paragraph 19 of the agreement, appellant acknowledged “that investigation and analysis of the Property” was her “sole, independent responsibility” and that she would “not hold Agent responsible therefor.” Appellant further acknowledged that she “has not relied upon any representation of Agent in connection with Buyer’s purchase of the Property.”

{¶6} Under paragraph 32 of the agreement, appellant acknowledged that she was not relying upon information delivered to her by the seller and that the seller had not made any representation as to “the truth, accuracy, or completeness of any materials, date or information[.]” Appellant further acknowledged that she would be deemed “fully familiar and satisfied with the * * * value, income, expenses, and operation” of the property.

{¶7} Appellant did not file a response to the motion for judgment on the pleadings.

On January 8, 2015, the trial court found the motion “unopposed and granted.” Further,

the court found appellant's claims to be time barred under the applicable statute of limitations and dismissed the complaint as to all the defendants with prejudice. This appeal followed.

{¶8} Appellant's sole assignment of error claims the trial court erred in dismissing the case with prejudice.

{¶9} We review a ruling on a motion for judgment on the pleadings de novo. *Thornton v. Cleveland*, 176 Ohio App.3d 122, 2008-Ohio-1709, 890 N.E.2d 353, ¶ 3 (8th Dist.). "In order to be entitled to a dismissal under Civ.R. 12(C), it must appear beyond doubt that [the nonmovant] can prove no set of facts warranting the requested relief, after construing all material factual allegations in the complaint and all reasonable inferences therefrom in [the nonmovant's] favor." *State ex rel. Toledo v. Lucas Cty. Bd. of Elections*, 95 Ohio St.3d 73, 74, 2002-Ohio-1383, 765 N.E.2d 854.

{¶10} When a party raises a statute of limitations defense in its answer, the defense is available as grounds for a motion to dismiss brought pursuant to Civ.R. 12(C). *Zhelezny v. Olesh*, 10th Dist. Franklin No. 12AP-681, 2013-Ohio-4337, ¶ 14. R.C. 2305.09(C) provides for a four-year statute of limitations for fraud, which has been interpreted to accrue when the complainant has discovered, or should have discovered in the exercise of reasonable diligence, the alleged fraud. *McDougal v. Vecchio*, 8th Dist. Cuyahoga No. 98003, 2012-Ohio-4287, ¶ 17, citing *Investors REIT One v. Jacobs*, 46 Ohio St.3d 176, 546 N.E.2d 206 (1989), paragraph 2b of the syllabus. When determining whether the alleged fraud should have been discovered in the exercise of

reasonable diligence, the relevant inquiry is whether the facts known would lead a fair and prudent person, using ordinary care and thoughtfulness, to make further inquiry. *Cundall v. U.S. Bank*, 122 Ohio St.3d 188, 2009-Ohio-2523, 909 N.E.2d 1244, ¶ 28.

{¶11} Appellant argues that she did not discover the fraud until she began researching the matter in 2012. Our review reflects that appellant acknowledged under the agreement that she had not relied upon any representations of appellees and that it was her responsibility to conduct her own investigation and analysis of the property. Real estate taxes on the property would have been a matter of public record, and appellant would have had actual knowledge of the amount of real estate taxes when she received her tax bill after becoming the owner of the property. At the latest, the default on the loan and the filing of the foreclosure lawsuit would have been sufficient to lead a fair and prudent person, using ordinary care and thoughtfulness, to make further inquiry.

{¶12} Accordingly, the action is barred by the statute of limitations and the trial court did not err in dismissing the action with prejudice as to all defendants.

{¶13} Judgment affirmed.

It is ordered that appellees recover of appellant costs herein taxed.

The court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this court directing the common pleas court to carry this judgment into execution.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

SEAN C. GALLAGHER, JUDGE

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TIM McCORMACK, P.J., and
PATRICIA ANN BLACKMON, J., CONCUR