

IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

LUIS BARBOSA,

Plaintiff

v.

BOB’S CANINE ACADEMY, INC.,
DOROTHY BALL, and H. CUBBAGE
BROWN,

Defendants.

C.A. NO. 7834-MZ

MASTER’S REPORT
(Motions for Summary Judgment)

Date Submitted: March 13, 2017

Final Report: May 19, 2017

Denise D. Nordheimer, Esquire, of The Law Office of DENISE D. NORDHEIMER, ESQUIRE, LLC, Wilmington, Delaware and Peter Moulinos, Esquire, of MOULINOS & ASSOCIATES, LLC, New York, New York; Attorneys for Plaintiff.

David L. Finger, Esquire, of FINGER & SLANINA, LLC, Wilmington, Delaware; Attorneys for Bob’s Canine Academy, Inc.

Aaron C. Baker, Esquire, of BAIRD MANDALAS BROCKSTEDT, LLC, Dover, Delaware; Attorneys for H. Cabbage Brown.

ZURN, Master

Plaintiff Luis Barbosa and his wife owned a home together. In 1992, after Barbosa began serving a long prison sentence, the couple agreed to sell the home. Documentation formalizing the sale in 1998 contained some irregularities. Barbosa's wife died in 2002, and Barbosa was released from prison in 2010. In 2012, Barbosa filed this action against the buyers and their attorney, claiming the 1998 deed was forged and seeking damages and the deed to be cancelled. The defendants moved for summary judgment on the basis of laches, and Barbosa moved for partial summary judgment on the merits of some of his claims. I conclude Barbosa had notice that his property might be conveyed or sold over a decade before he brought his claims, and that his claims are barred by laches and the applicable statute of limitations. I recommend the Court grant the defendants' motions for summary judgment and deny Barbosa's motion for summary judgment.

I. Background

A. The Parties

In July 1989, Plaintiff Luis Barbosa ("Barbosa"), together with his now-deceased wife Carmen Barbosa ("Carmen"), bought real property consisting of a home and improved land at 20484 DuPont Highway in Harrington, Delaware ("the Property"). Defendant Dorothy Ball ("Ball") and her husband Robert ("Robert") own and operate Bob's Canine Academy, Inc. ("BCA"). BCA bought the Property

from the Barbosas in 1992, and a deed purportedly conveyed the Property to BCA in 1998. In 2009, BCA conveyed the Property to Ball, who remains the owner of record today. BCA and Ball are referred to as “the BCA Defendants.” Defendant H. Cabbage Brown (“Brown”) is an attorney who represented both the Barbosas and the Balls in connection with the Property.

B. The Property And Its Paper Trail¹

Barbosa was convicted of drug-related offenses and was incarcerated in federal prison from April 1992 to December 2010. The BCA Defendants allege that in June 1992, Robert drove by the Property, which had appeared abandoned for some time, and saw Carmen and her children outside barbecuing.² The BCA Defendants allege Robert asked Carmen about the Property, she responded that she wanted to sell it, and Robert replied he was interested.³ Robert and Carmen agreed upon a price of \$65,000 and memorialized this agreement with a promissory note dated June 14, 1992.⁴ Robert paid Carmen a \$100.00 deposit.⁵

¹ The facts are drawn from the pleadings and the evidence submitted by the parties. *See* CT. CH. R. 56(c).

² BCA Defs. Op. Br., Transmittal Aff. of David L. Finger (“Finger Aff.”), Ex. 4, Deposition of Robert J. Ball Jr. (“Robert Dep.”) 20, 122. Barbosa disputes that the woman in this scenario was Carmen, alleging she did not speak English. Hrg. Tr. 40.

³ Robert Dep. 20.

⁴ Robert Dep. 21, 28; Finger Aff. Ex. 3, Compl., *Ball v. Barbosa*, C.A. 1298K, Ex. A thereto.

⁵ *Id.*

On December 1, 1992, Barbosa signed a notarized document intended to permit Carmen to sell the property to the Balls without Barbosa's further involvement.⁶ It reads:

Re: Contract Property Sale

I, Luis Barbosa, husband of Carman Barbosa, and owner of the house at RT. 13, Box 243, Farmington, Delaware. I would like to make all persons aware, that the above mentioned property is for sale. As owner and holder of the deed, I do give concent [sic] to my wife Carman Barbosa, to sell the above mentioned property. She Carman Barbosa and her three children, who are under age, are also part owners of said property.

If you have any further questions concerning the property mentioned above, please contact me with no hesitation at:

Luis Barbosa #33736-054
P.O. Box 8000
Bradford, PA. 16701

Sincerely,
Luis Barbosa

In 1994 or 1995, the Balls took possession of the Property.⁷ Since that time, the Balls have lived on the Property, operated Bob's Canine Academy there, maintained the Property, and paid expenses such as back property taxes and utilities.⁸ In 1995, the Barbosas and Balls sought to formally transfer the Property, but the title search revealed an irregularity in the chain of title.⁹ On July 17, 1995,

⁶ *Id.* ¶¶ 15-18; *id.* Ex. C thereto.

⁷ Robert Dep. 17; Finger Aff. Ex. 5, Deposition of Dorothy Ball ("Dorothy Dep.") 118.

⁸ Robert Dep. 17, 105-07; Dorothy Dep. 27, 118; BCA Defs. Op. Br., Deposition of Luis Barbosa ("Barbosa Dep.") 55; *Barbosa v. K.S.C. Holding, Inc.*, 1998 WL 842297 at *1 (Del. Ch. Sept. 18, 1998).

⁹ *Id.*

the Property had been purportedly transferred to K.S.C. Holdings, Inc. by a deed (the “KSC Deed”) that bore the forged signatures of both Barbosa and Carmen.

On July 26, 1995, Brown initiated Court of Chancery Civil Action No. 1298-K on behalf of the Balls, suing the Barbosas for rescission of the KSC Deed and specific performance of the contract to sell the Property.¹⁰ Brown also initiated Civil Action No. 1402-K on behalf of the Barbosas, seeking cancellation of the KSC Deed as fraudulent.¹¹ In the latter action, Barbosa disavowed any involvement in the KSC Deed and stated he wanted to sell the Property to the Balls, via a signed, notarized affidavit dated June 23, 1998.¹² After a hearing on

¹⁰ Finger Aff. Ex. 3.

¹¹ Finger Aff. Ex. 2, Pet., *Barbosa v. KSC Holdings*, C.A. 1402K; *Barbosa*, 1998 WL 842297.

¹² *Barbosa* Dep. at 22-26; *id.* Ex. 5 (“That Affiant desires that the title to her [sic] land be quieted by canceling the forged deed so that Affiant and her husband [sic] may go forward with their contract to sell the property as stipulated by the attached sales agreement marked as Exhibit “D”.”).

September 11, 1998, this Court cancelled the KSC Deed as fraudulent on September 18, 1998.¹³

On September 14, 1998, Brown wrote Barbosa to confirm Barbosa's wishes for the net proceeds from the sale of the Property.¹⁴

Re: Sale of Harrington property

Dear Mr. Barbosa:

This letter will confirm your telephone conversation with Paul McNinch on Friday September 11, 1998 concerning the distribution of the net proceeds from the sale of the above referenced property. Specifically, as I understand it, you stated that it was your desire to have any cash due to you at settlement converted into a check made payable jointly to your wife, Carmen Barbosa and your attorney, Saul

¹³ *Barbosa*, 1998 WL 842297 at *3-4. The KSC Deed was discovered under circumstances that are not relevant to the issues pending before me, but that are too peculiar to omit:

[Robert] said that on July 3, 1995, someone who represented himself to be Luis Barbosa, the owner of the property, approached him. This man was a tall, skinny, older man. Mr. Ball asked for identification, and the man flashed something quickly. He said he had just gotten out of prison. Mr. Ball took his picture at that time, and asked to see the identification again. The man told him it was not necessary and refused to show it to him. This man left, but returned later and demanded money and then tried to force the Balls to leave the property. Mr. Ball went to the police with his concerns about the behavior of this man.

...

[Barbosa's daughter] examined the photograph taken by Mr. Ball and said that the man in the picture is not her father. She described her father as short, chubby, tan and bald. This is not a description of the man in the photograph, nor does it match the description Mr. Ball gave of the man he met. Miss Barbosa said the man in the photograph appears to be younger than her father. Also, her father has been institutionalized continuously since 1991, so he could not have come to Delaware in 1995 to meet Mr. Ball or to harass him in an attempt to make him leave the property.

Id. at *1, *3. The man told the Balls he was putting the property in the name of his company. Dorothy Dep. 156. The man claiming to be Barbosa was arrested and did not contact the Balls again. Robert Dep. 44-56; Dorothy Dep. 53-54, 151-58.

¹⁴ *Barbosa* Dep. Ex. 6.

Jakubowitz. If this is in fact your intention, please return this letter, signed and notarized [sic], to me in the envelope provided.

...

I, Luis Barbosa hereby authorize the law firm of BROWN, SHIELS & CHASANOV to release all proceeds owed to me as a result of the real property located at 243 Route 13, Harrington Delaware and as evidenced by the deed of Luis Barbosa and Carmen Barbosa recorded in the office of the Recorder of Deeds for Kent County, Delaware in Deed Record D, Book 134, Page 259, by check made payable to the order of Carmen Barbosa and Saul Jakubowitz, Esq.

The letter bears a signature of Luis Barbosa dated September 21, 1998, which was notarized by a prison official. The BCA Defendants allege Barbosa called the Balls collect from prison to emphasize he wanted the proceeds to go to his children. Barbosa denies signing this letter and making this call.

The Property was transferred to BCA via the BCA Deed on December 10, 1998.¹⁵ Brown represented BCA in that transaction, and Saul Jakubowitz (“Jakubowitz”) was the lawyer on the Barbosas’ side of the transaction.¹⁶ Barbosa’s signature on the BCA Deed was purportedly witnessed by a notary public, Henry C. McMahon (“McMahon”) in the Bronx, New York. That notarization is false. Barbosa was incarcerated in Minersville, Pennsylvania, at the

¹⁵ Barbosa Dep. Ex. 7.

¹⁶ Barbosa alleges Jakubowitz acted without the Barbosas’ approval or knowledge. I do not resolve this issue today. I note the record contains a letter bearing what appears to be Barbosa’s notarized signature, documenting a telephone conversation in which he agreed that the proceeds from the sale of the Property should go in part to Jakubowitz as Barbosa’s attorney. Barbosa Dep. Ex. 6. Barbosa later signed a power of attorney appointing Jakubowitz as his agent. Barbosa Dep. 83; *id.* Ex. 8.

time of the purported notarization.¹⁷ McMahon testified that McMahon's signature was forged and that he never met Barbosa.¹⁸ Barbosa claims he did not sign the BCA Deed.¹⁹ Brown presented the BCA Deed to the Recorder of Deeds in Kent County for recording on December 23, 1998.²⁰

The BCA transfer also generated a HUD-1 purportedly bearing the Barbosas' signatures, dated December 23, 1998. Barbosa alleges that when Ball signed the HUD-1, it did not bear Barbosa's signature and neither Barbosa nor Carmen was present.²¹ The Barbosas' purported signatures eventually appeared on that HUD-1.²²

The Balls paid the Barbosas for the Property in full.²³ A satisfaction piece was signed on May 4, 2001, authorizing the Recorder of Deeds to enter satisfaction of and cancel a 1998 recorded mortgage executed by "Bob's Canine Academy, Inc."²⁴ Barbosa signed the satisfaction piece, and his signature was notarized.

¹⁷ Pl. Op. Br. Ex. C.

¹⁸ Pl. Op. Br. Ex. H, Deposition of Henry C. McMahon, 14-23. McMahon further testified that he assumed Jakubowitz forged McMahon's signature. *Id.* at 16.

¹⁹ *E.g.*, Pl. Op. Br. Aff. ¶ 12.

²⁰ Pl. Op. Br. Ex. G.

²¹ Pl. Op. Br. at 5. The pages Barbosa cites from Ball's deposition do not reference the HUD-1. The BCA Defendants do not proffer a version of events in which the Barbosas and Balls signed the HUD-1 contemporaneously. Hrg. Tr. 55.

²² Pl. Op. Br. Ex. J.

²³ Dorothy Dep. 141.

²⁴ Barbosa Dep. Ex. 10.

Carmen passed away in 2002. On June 24, 2009, Ball conveyed BCA's interest in the Property to herself via the "Ball Deed." Barbosa was released from prison in December 2010. He alleges he learned about the BCA Deed in mid-2011 when he inquired as to the status of his Kent County taxes.

C. Procedural History

In February 2012, Barbosa filed an action in the United States District Court for the Southern District of New York, the venue where the BCA Deed was executed, seeking cancellation of the BCA Deed and other relief.²⁵ Barbosa asserts that Court directed the action to be filed in Delaware, and it was so filed on September 5, 2012.²⁶ The Complaint names BCA, Ball, and Brown as defendants. Barbosa seeks damages in an amount to be determined at trial and cancellation of the BCA Deed and the Ball Deed so that the Property reverts back to him as the complete and sole owner.

Count I, for fraud, asserts the defendants intentionally concealed the BCA Deed from Barbosa and knowingly recorded that forged deed. Count II asserts Brown owes Barbosa fiduciary duties from representing Barbosa in cancelling the KSC Deed, and that Brown breached those duties when he "intentionally and

²⁵ Barbosa Ans. Br. Aff. ¶ 6, Ex. B.

²⁶ Barbosa Ans. Br. Aff. ¶6, Ex. C. I do not read Ex. C as a directive to file in Delaware, but rather, a directive for the parties to confer on *in personam* jurisdiction in New York.

knowingly permitted the fraudulent execution and filing of the BCA Deed.”²⁷

Barbosa also contends Brown had a conflict of interest when he represented both the Barbosas and BCA/the Balls in connection with the Property. Barbosa seeks damages under Counts I and II.

In Count III, Barbosa seeks a constructive trust over the Property, alleging it was transferred to BCA without proper consideration. Count IV claims the BCA Defendants were unjustly enriched when they knowingly purchased the Property via a forged deed, and Count V is a claim of conversion against the BCA Defendants; these two counts seek damages. Count VII requests a declaratory judgment that quiets title to the Property and declares the BCA and Ball Deeds void, making Barbosa the true and sole owner of the Property. Finally, Count VIII asks that the Court cancel and set aside the BCA and Ball Deeds.²⁸

On October 31, 2012, the BCA Defendants moved to dismiss the Complaint on the ground that Barbosa’s claims are barred by the statute of limitations and the doctrine of laches. Then-Master LeGrow recommended this Court deny that motion in a May 23, 2013, final report. She concluded that based on the pleadings, the period for Barbosa to bring his claims might be tolled under the doctrine of inherently unknowable injury, because the pleadings provided no basis to conclude

²⁷ Compl. ¶ 25.

²⁸ The Complaint does not contain a Count VI.

that there was a specific trigger for inquiry such that Barbosa could have or should have known of the existence of the BCA Deed before he allegedly discovered it in 2011. Then-Master LeGrow noted that the defendants could raise the statute of limitations or laches as affirmative defenses if the factual record developed during discovery supported those defenses.

On July 29, 2016, Barbosa filed a motion for summary judgment on counts IV, VII, and VIII, on the basis that he has proven the BCA Deed was forged. On September 1, 2016, the BCA Defendants and Brown filed cross-motions seeking summary judgment on all of Barbosa's counts on the grounds that they are untimely. The parties briefed their motions and participated in oral argument on November 7, 2016.

Thereafter, Barbosa's former Delaware counsel's law practice was placed in receivership. On January 31, 2017, the action was stayed pursuant to a request from the receiver. Barbosa obtained new local counsel and the stay was lifted March 13, 2017. This is my final report on the motions for summary judgment.

II. Analysis

A. Barbosa's Claims Are Untimely.

The BCA Defendants and Brown seek summary judgment on the basis that Barbosa's claims are untimely, as the BCA Deed was executed in December 1998 and Barbosa did not file this action until 2012. The parties agree that if no tolling

exception applies, Barbosa's claims would be untimely. Barbosa contends that while he intended to sell the Property to BCA as late as June 1998, he changed his mind thereafter; and that while he knew about the KSC Deed, his concerns for the security of the Property's title were put to rest when the KSC Deed was set aside in September 1998. He argues that because he changed his mind about selling the property and was satisfied the Property's title was secure, his claims based on the December 1998 BCA Deed were inherently unknowable. He concludes the limitations or laches periods for his claims were therefore tolled until he discovered the BCA Deed in 2011.

Defendants assert the inherently unknowable tolling exception does not save Barbosa's claims because Barbosa had notice that the Property's title might be conveyed to BCA or otherwise threatened. Defendants contend Barbosa intended and knew about the conveyance to BCA, as evidenced by his documented participation. Defendants also assert the KSC Deed proceedings put Barbosa on notice that the Property might have title issues.

"The function of summary judgment is the avoidance of a useless trial where there is no genuine issue as to any material fact."²⁹ Summary judgment is appropriate where the "pleadings, depositions, answers to interrogatories and admissions on file, together with the affidavits, if any, show that there is no

²⁹ *Emmert v. Prade*, 711 A.2d 1217, 1219 (Del. Ch. 1997).

genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law.”³⁰ “A fact is material if it might affect the outcome of the suit under the governing law.”³¹ A material issue of fact exists if “a rational trier of fact could find any material fact that would favor the non-moving party in a determinative way.”³²

The movant bears the initial burden of demonstrating that there is no question of material fact.³³ When the movant carries that burden, the burden shifts to the nonmoving party “to present some specific, admissible evidence that there is a genuine issue of fact for trial.”³⁴ The court must view the evidence most favorably to the non-moving party.³⁵ Even so, the non-moving party may not rely on allegations or denials in the pleadings to create a material factual dispute.³⁶

The parties do not dispute that absent tolling, Barbosa’s claims are untimely. Barbosa’s Counts I, II, IV, and V seek monetary damages through equitable claims of fraud, breach of fiduciary duty, unjust enrichment, and conversion. A three-year statute of limitations therefore applies by analogy and will bar those claims absent

³⁰ CT. CH. R. 56(c). This rule, enumerating all the sources of proof I can consider, disposes of Barbosa’s argument that the defendants’ motions must fail because the defendants did not submit affidavits.

³¹ *Deloitte LLP v. Flanagan*, 2009 WL 5200657, at *3 (Del. Ch. Dec. 29, 2009).

³² *Id.*

³³ *Id.*

³⁴ *Id.*

³⁵ CT. CH. R. 56(e); *Fike v. Ruger*, 754 A.2d 254, 260 (Del. Ch. 1999), *aff’d*, 752 A.2d 112 (Del. 2000).

³⁶ *Fike*, 754 A.2d at 260.

tolling or extraordinary circumstances.³⁷ Count III seeks the equitable relief of a constructive trust, and is governed by laches as informed by that three-year statute of limitations.³⁸ Laches also governs Counts VII and VIII, which ask for the equitable relief of cancelling the BCA and Ball Deeds so that Barbosa owns the Property.³⁹

A finding of laches generally requires the establishment of three things: first, knowledge by the claimant; second, unreasonable delay in bringing the claim; and third, prejudice to the defendant.⁴⁰ The tolling exception of inherently unknowable injury, also known as the discovery rule, applies to save a claim from laches or a statute of limitations when there are no observable or objective factors which put laymen on notice of a problem, and the claimant is “blamelessly ignorant of the wrongful act and the injury complained of.”⁴¹ Under these circumstances, title defects may be inherently unknowable.⁴² The plaintiff bears the burden of showing he was blamelessly ignorant.⁴³ If these elements are met,

³⁷ 10 *Del. C.* § 8106; *Kraft v. Wisdomtree Investments, Inc.*, 145 A.3d 969, 979-83 (Del. Ch. 2016); Cplt. ¶¶ 22, 23, 27, 39, 42.

³⁸ *Kraft*, 145 A.3d at 978, 983; *Adams v. Jankouskas*, 452 A.2d 148, 157 (1982) (noting 10 *Del. C.* § 8106 applies to an action to impose a constructive trust).

³⁹ *Kraft*, 145 A.3d at 985-87 (explaining the Court should consider what a claim for declaratory judgment actually seeks when determining if it is governed by the statute of limitations or laches).

⁴⁰ *Id.* at 974.

⁴¹ *Coleman v. Pricewaterhousecoopers, LLC*, 854 A.2d 838, 842 (Del. 2004).

⁴² *Pioneer Nat'l Title Ins. Co. v. Child*, 401 A.2d 68, 71-72 (Del. 1979).

⁴³ *In re Tyson Foods*, 919 A.2d 563, 584 (Del. Ch. 2007).

the laches period will begin to run “only upon the discovery of facts constituting the basis of the cause of action *or* the existence of facts sufficient to put a person of ordinary intelligence and prudence on inquiry which, if pursued, would lead to the discovery of such facts.”⁴⁴

The issue before me is whether there is a question of material fact that Barbosa was not blamelessly ignorant of the BCA Deed. Ordinarily, summary judgment is not granted on the defense of laches because the Court must often consider conflicting evidence regarding a person’s knowledge or state of mind.⁴⁵ But this case does not require me to resolve any such conflicting evidence to conclude Barbosa’s ignorance was not blameless.

Barbosa acknowledges that in 1992, he attempted to create a document that would permit Carmen to sell the Property to BCA. He also acknowledges that on June 23, 1998, he affirmed to this Court that he wanted to clear the Property’s title so that he could “go forward with the[] contract to sell the property” to BCA.⁴⁶ Barbosa’s desire to sell the Property and his awareness of the KSC Deed issue put

⁴⁴ *Coleman*, 854 A.2d at 842.

⁴⁵ *Schmidt v. Schmidt*, 1994 WL 198704, at *3 (Del. Ch. May 3, 1994).

⁴⁶ Barbosa testified in his deposition that he received this affidavit in the mail in prison, read it, and signed and had it notarized in prison. Barbosa Dep. 22-23. He testified he “didn’t understand much” of the KSC Deed situation and relied on the case manager’s advice in signing the affidavit. *Id.* at 23-25. But at the hearing to set aside the KSC Deed, Barbosa’s daughter testified he was aware of the hearing and believed he still owned the Property. *Barbosa*, 1998 WL 842297, at *3. In the absence of mutual mistake or reformation, Barbosa is bound by the contents of the affidavit. *See Official Comm. Of Unsecured Creditors of Motors Liquidation Co. v. JPMorgan Chase Bank, N.A.*, 103 A.3d 1010, 1015-16 (Del. 2014).

him on notice that his ownership of the Property was in question. Objective and observable factors exist that put Barbosa on notice of title issues with the Property and a potential conveyance to BCA.

Barbosa contends that after the Court cancelled the KSC Deed in September 1998, he was assured the Property was secure and did not have any reason to fear for the Property's title. Barbosa claims he changed his mind about selling the property to BCA and had no subjective knowledge of any subsequent attempt to transfer the Property to BCA; he disavows documents dated after June 1998 that would otherwise show he continued to participate in transferring the Property to BCA.⁴⁷ He concludes that after he changed his mind about selling the Property and believed its title to be secure, his claims about the Property's title became inherently unknowable and were therefore tolled.

Even assuming Barbosa changed his mind about selling the Property and felt its title was secure, Barbosa cannot be blamelessly ignorant of his claims after he had notice of them. Tolling doctrines will not aid a claimant who turned a blind eye to a known problem. Laches is based on the maxim that "equity aids the

⁴⁷ Barbosa's verified complaint alleged that "[i]n or about 1998, Plaintiff and Carmen desired to sell the Property." Compl. ¶ 9. When asked about this allegation in deposition, Barbosa answered, "At that time, we wasn't thinking about selling the property." Pl. Ans. Br. Ex. A, Barbosa Dep. at 67. This is the only record evidence regarding any change of mind. Barbosa claims his signature on the September 1998 letter regarding the sale proceeds was forged, and that he did not understand the May 2001 satisfaction piece when he signed it.

vigilant, not those who slumber on their rights.”⁴⁸ A court of equity will not overlook staleness in a claim where it appears that plaintiff’s delay in seeking relief is sought to be excused on claimed lack of knowledge, where such lack of knowledge is actually due to culpable neglect.⁴⁹ The discovery rule’s objective standard “does not reward denial or self-induced ignorance.”⁵⁰

Once Barbosa had notice the Property had title issues and might be conveyed to BCA, he could no longer benefit from the inherently unknowable injury doctrine. Any ignorance could no longer be blameless, and any lack of knowledge was due to culpable neglect. Barbosa cannot choose to forget that his Property suffered title issues and was in the process of being sold. Barbosa and Carmen attempted to convey the Property to the Balls from 1992 to at least June 23, 1998, and engaged in two court cases to set aside the KSC Deed in order to sell it to the Balls that culminated in September 1998. Even assuming Barbosa changed his mind about selling the Property, Barbosa had a duty to ask his wife, with whom he spoke almost daily,⁵¹ about the Property’s status and whether the sale was going forward. A person of ordinary intelligence and prudence would

⁴⁸ 2 Pomeroy’s Equity Jurisprudence § 418 (5th ed. 1941).

⁴⁹ *Pomilio v. Caserta*, 206 A.2d 850, 853 (Del. Ch. 1964).

⁵⁰ 54 C.J.S. *Limitations of Actions* § 137 (2016).

⁵¹ Barbosa Dep. 62-63, 65-67.

have done so. Barbosa further neglected his claims when he signed the 2001 satisfaction piece; while he claims to not have understood that document, he understood it pertained to the Property, its title, BCA, and a mortgage.⁵² Barbosa cannot benefit from the discovery rule by burying his head in the sand after having notice of his claims.

Barbosa's claims are untimely if he cannot benefit from the inherently unknowable injury tolling doctrine. The alleged injury underlying Barbosa's

⁵² In Barbosa's deposition, Barbosa recognized the satisfaction piece and admitted that he signed the document, that it was witnessed by a prison case manager, and that it was notarized. Barbosa Dep. at 43-45. Barbosa testified about the satisfaction piece as follows:

Q. Why did you sign this document?

A. Why did I sign it?

Q. Why?

A. To stop people.

Q. I'm sorry?

A. To establish the BO CA line to having a mortgage.

Q. A mortgage?

A. A mortgage to my house.

...

Q. Well, can you state again why you signed this document ...?

A. Mr. Steele was a case manager. When I received any document, I was to go to the case manager and they direct me to what to do.

Q. And did you read it before you signed it?

A. Of course, I did.

Q. Did you understand what you were signing?

A. I do understand a little bit, and I ask question of case manager.

Q. And you understood there was – you saw there was a reference to “Bob's Canine Academy”?

A. Yes.

Q. Did you see the word “mortgage”?

A. Yes.

Id. at 45-47. In summary judgment, Barbosa submitted an affidavit stating that he did not know what he was signing when he signed the satisfaction piece, and that he thought the document stopped other parties from gaining title to the Property. Pl. Reply Br. at 9; *id.* Barbosa Aff. ¶¶ 3-4.

claims occurred on December 10, 1998, when the Property was conveyed to BCA. His 2012 claims seeking legal damages – Counts I, II, IV, and V – are barred by the three-year statute of limitations.

His remaining claims seeking equitable relief are barred by laches. Barbosa unreasonably delayed by waiting until 2012 to bring his claims based on a 1998 injury, and his delay was not excused by his incarceration.⁵³ Barbosa's delay has substantively prejudiced the BCA Defendants. Since 1994, the Balls have been living on the Property, running BCA out of it, paying its expenses (including back taxes that the Barbosas left unpaid), and improving it. They paid their agreed-upon purchase price. There is no indication Barbosa is in a position to reimburse the Balls for their years of investment into the Property.

Barbosa's delay has also prejudiced the defendants' ability to prove their case. Carmen passed away in 2002, so she cannot testify about any agreement of sale with Robert, her participation in setting aside the KSC Deed, whether she received the proceeds of the sale, or how the BCA Deed and HUD-1 were executed. Counsel has been unable to locate Jakubowitz. The phone call the Balls allege Barbosa placed from prison to discuss the sale would have been recorded at the time, but that recording no longer exists.⁵⁴

⁵³ See *Marvel v. Clay*, 1995 WL 4653222, at *4 (Del. Super. June 15, 1995), *aff'd* 676 A.2d 905 (1996).

⁵⁴ Finger Aff. Ex. 7.

In sum, the undisputed record shows Barbosa had notice that his ownership in his Property was threatened, both by the voided KSC Deed and by the pending sale to BCA, before the BCA Deed at issue was executed. The limitations and laches periods therefore began to run as of the time of injury. In light of the notice Barbosa had before the BCA Deed was executed, any subsequent ignorance is due to culpable neglect and is not blameless. He cannot avail himself of the inherently unknowable injury tolling doctrine. His claims are untimely.

B. Barbosa's Motion Is Moot.

Because Barbosa's claims are untimely, I need not reach his motion for summary judgment, which asserts he has proven the BCA Deed was forged. I recommend the Court deny Barbosa's motion as moot.

III. CONCLUSION

Because Barbosa had notice of the injury underlying his claims and therefore cannot benefit from the inherently unknowable injury tolling exception, his claims are untimely. I therefore recommend the Court grant defendants' motions for summary judgment and deny Barbosa's. This is my final report pursuant to Court of Chancery Rule 144.

Sincerely,

/s/ Morgan T. Zurn

Master in Chancery