UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1656

September Term, 2015

THERESA L. SPEAR

v.

STONEGATE TITLE COMPANY, ET AL.

Meredith,
Friedman,
Zarnoch, Robert A.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Meredith, J.

Filed: November 3, 2016

This appeal arises out of a land installment contract that Theresa Spear ("Spear"), appellant, and her late husband entered into on February 17, 2010. Spear's claims stem from the settlement that was conducted by Stonegate Title Company, Robert Brendel, and Cynthia Brendel, appellees, at the time Spear and her husband entered into the land installment contract. Spear brought suit against appellees on November 6, 2013, nearly three years after she received in the mail a notice that her seller was in default relative to a prior lien on the property the Spears purchased pursuant to the land installment contact. Because the suit against appellees was not filed within three years after the date appellees conducted closing, the Circuit Court for Baltimore County ruled that Spear had failed to file her claims within the three year statute of limitations, and the court granted appellees' motion for summary judgment on August 25, 2015, disposing of all claims asserted. The circuit court denied Spear's motion to alter or amend the grant of summary judgment. This appeal followed.

QUESTIONS PRESENTED

Appellant presents three questions for our review:

> I. Is a purchaser under a Land Installment Contract put on inquiry notice at Closing of the material terms of an existing mortgage when the settlement agent, who examined title:
>
> (a) undertakes to explain the important parts of the Land Installment Contract and transaction to purchaser;
> (b) fails to disclose any of the material mortgage terms; and
> (c) purchaser has no actual notice of those terms?
>
> II. Is there evidence on the record from which the trier of fact could find that knowledge of Appellant's cause of action was kept from her by fraudulent concealment of [appellees]?

III. Is a purchaser under a Land Installment Contract put on inquiry notice at Closing of a second trust which the settlement agent prepared on the Closing date and recorded without purchaser's knowledge?

We answer "yes" to Questions I and III, "no" to Question II, and affirm the judgment of the Circuit Court for Baltimore County.

FACTUAL & PROCEDURAL BACKGROUND

Theresa Spear and her late husband entered into a land installment contract (the "Contract") with Mid-Atlantic Acquisitions, LLC ("Mid-Atlantic" or "Seller"), a Maryland limited liability company, on February 17, 2010. The transaction had been promoted to the Spears as a "rent-to-own" opportunity. The Contract was signed and a closing upon the Contract took place on February 17, 2010, at the offices of Stonegate Title Company ("Stonegate"). Robert C. Brendel and Stonegate were hired by the Seller to conduct a settlement for the transaction. Robert Brendel's wife, Cynthia Brendel, also worked at Stonegate.

Pursuant to the Contract, the Spears agreed to purchase the residential property located at 47 Henry Avenue, Nottingham, Baltimore County, Maryland 21236. The Spears would have possession, but Mid-Atlantic would retain legal title to the property until the Spears tendered the unpaid purchase money, at which point Mid-Atlantic would execute a deed conveying good and merchantable title to the Spears. The Contract stated that Mid-Atlantic "shall have the right, at all times, to mortgage the Property," so long as the principal balance was no greater than the principal due from the Spears, and the periodic payments were no greater.

At the time of the closing on February 17, 2010, 47 Henry Avenue was subject to an existing mortgage that had been executed on October 16, 2007. The existing mortgage listed Mid-Atlantic and two individuals --- Andrew Mogol and Jonathan Mogol --- as mortgagors. At the time the Spears executed the Contract, the 2007 mortgage was, on its face, past due, and the principal balance owed was approximately $230,000. The principal balance of the Contract the Spears executed with Mid-Atlantic was $224,650.00, with monthly payments of $1,557.94. The 2007 mortgage contained a "due on sale" clause, which gave the prior lender the option to accelerate the outstanding balance on the principal if the property was "conveyed or encumbered, in any manner, without the Mortgagee's . . . consent in writing."

Further, at the closing on February 17, 2010, Mid-Atlantic executed a second deed of trust on 47 Henry Avenue, to secure payment of fees in the amount of $4,000 owed to the brokers on the Spears' transaction. That deed of trust was prepared by Brendel, who is a licensed attorney. Spear asserts that she did not have any notice or knowledge of the $4,000 deed of trust executed on February 17, 2010. Brendel, however, testified at his deposition that the Spears were present when the $4,000 deed of trust was executed.

In Spear's affidavit opposing summary judgment, she acknowledged: "Mr. Brendel may have told us there was an existing mortgage on the home." But Spear also asserted that Brendel had provided no details about the existing mortgage. In her supplemental affidavit, Spear revised the statement she had made in her earlier affidavit and asserted: "Nothing Mr. Brendel did or said on February 17, 2010, or thereafter, gave me reason to

know, suspect or inquire about the principal balance or terms of existing liens until I became aware of a Notice of Intent to Foreclose, dated November 8, 2010, which was sent to the Home." The November 2010 notice listed Mid-Atlantic, Jonathan Mogol, and Andrew Mogol as borrowers under the mortgage, and "Pearl J. Pomerantz Revocable Trust & Elizabeth C. Dye" as secured parties.

Spear filed an initial complaint against Mid-Atlantic, Stonegate, Robert Brendel, and Cynthia Brendel, on November 6, 2013. This complaint was dismissed without prejudice pursuant to a tolling agreement entered into on January 31, 2014.

After resolving her claim against Mid-Atlantic, Spear filed her first complaint in the instant action on June 24, 2014, against Stonegate, Robert Brendel, and Cynthia Brendel. In her complaint, Spear asserted claims of fraud and negligence in connection with the closing appellees handled on February 17, 2010. Spear's complaint was amended several times. Spear's fourth amended complaint alleged fraud, fraudulent concealment, negligence, and violations of the Maryland Consumer Protection Act.

Appellees moved for summary judgment on June 16, 2015, arguing that they did not owe Spear a duty, that they did not intend to defraud her, and that they are exempt from the Maryland Consumer Protection Act. Appellees also argued that Spear's claims were all barred by the statute of limitations.

A motion hearing was held on August 18, 2015. At the conclusion of the hearing, the Circuit Court for Baltimore County granted appellees' motion for summary judgment based on the statute of limitations. The circuit court held that Spear filed her complaint

approximately "nine months after limitations had expired on February 16th of 2013," citing the three-year statute of limitations codified in Maryland Code (1973, 2013 Repl.Vol.), Courts and Judicial Proceedings Article ("CJP"), § 5–101 ("A civil action at law shall be filed within three years from the date it accrues unless another provision of the Code provides a different period of time within which an action shall be commenced."). The circuit court explained: "[Spear's] contention that the Statute of Limitations is tolled until she first became aware of a problem is not borne out by the undisputed facts and prevailing law." The circuit court further explained that Spear

> had actual notice of the encumbrance on the date of the settlement, February 17, 2010, and at a minimum had inquiry notice that there was this encumbrance on the property. She did not have to go through with the settlement if she had any reservations about it, and even after she had, she could have done further inquiry into the public records as to the existence of the mortgage, the terms, be that as it may.

The circuit court noted that there were two places in the closing documents where the "mortgage was quite prominently identified, and while the terms are not described, [Spear was] on, at least, inquiry notice that if she had any reservations about the fact that this was encumbered by a pre-existing mortgage, she should have or could have made further inquiry." The circuit court's order was docketed August 25, 2015.

Within ten days, Spear moved to alter or amend the circuit court's grant of summary judgment; that motion was denied on September 14, 2015. This appeal followed.

STANDARD OF REVIEW

"The question of whether the trial court properly granted summary judgment is a question of law and is subject to *de novo* review on appeal." *Standard Fire Ins. Co. v.*

Berrett, 395 Md. 439, 450 (2006). However, "[b]efore considering the questions of law, we must 'make the threshold determination as to whether a genuine dispute of material fact exists, and only where such dispute is absent will we proceed to review determinations of law.'" *120 W. Fayette St., LLLP v. Mayor & City Council of Baltimore City*, 413 Md. 309, 328–29 (2010) (quoting *O'Connor v. Baltimore County*, 382 Md. 102, 110 (2004)).

With respect to the issue of inquiry notice, the Court of Appeals has said: "Like any other issue that is fact-dependent, if there is any genuine dispute of material fact as to when the plaintiffs possessed [a] degree of knowledge, the issue is one for the trier of fact to resolve; summary judgment is inappropriate." *Bank of New York v. Sheff*, 382 Md. 235, 244 (2004). "If there is no such genuine dispute, however, and the question of whether the plaintiffs were on inquiry notice more than three years before their suit was filed can be determined as a matter of law, summary judgment on that issue is, indeed, appropriate." *Id*.

DISCUSSION

I. The Land Installment Contract, Prior Mortgage, and Inquiry Notice

Spear contends that circuit court erred in granting summary judgment on the ground that the three year statute of limitations had lapsed by the time she filed her complaint. We agree with the circuit court's conclusion that Spear was on inquiry notice, as of February 17, 2010, of any claims concerning the 2007 mortgage on 47 Henry Avenue. Therefore, the circuit court correctly held that her claims pertaining to that mortgage were filed beyond the three year statute of limitations provided by CJP § 5–101.

A. Material Undisputed Facts

In reviewing the circuit court's grant of summary judgment, we must first "make the threshold determination as to whether a genuine dispute of material fact exists." *O'Connor*, *supra*, 382 Md. at. 110. The following facts concerning the closing and the documentation signed by Spear are undisputed.

Two of the documents Spear signed at the closing on February 17, 2010, made express references to a prior mortgage on the property. The land installment contract makes reference to an outstanding mortgage on the final signature page of the Contract, where the document states: "The undersigned, being the incumbent lender securing a first lien against the property known as 47 Henry Ave., Nottingham, MD 21236 acknowledges the transfer of equitable interest to the Buyers named herein." This page then provides lines for the signature of Alvin Pomerantz and a witness, although Pomerantz never signed the document. The second document referencing the prior mortgage is a Department of Housing and Urban Development Settlement Statement, *i.e.*, the "HUD-1." Line "F" at the top of the settlement statement states: "Land Installment Contract Subject to Existing Mtg." As noted, the HUD-1 was signed by Spear at the closing on February 17, 2010.

Despite acknowledging at her deposition that she received copies of the Contract and HUD-1 at closing, Spear testified at her deposition on April 24, 2015, that she and her husband "would not have went ahead and signed all these paperworks and put all the money in the house that we did knowing there was an existing mortgage." Appellees do not dispute that Spear was not given a copy of the 2007 mortgage on the property, nor was

anything regarding the current status of the 2007 mortgage disclosed to the Spears by Mid-Atlantic, Stonegate, or Robert Brendel at the closing.

Additional facts concerning Stonegate and Robert Brendel's role at the closing also appear not to be in dispute. Spear testified at her deposition that she had not spoken to anyone at Stonegate, nor Robert Brendel, prior to the closing on February 17, 2010. Spear testified as follows on deposition:

> Q. [BY COUNSEL FOR APPELLEES:] Did Mr. Brendel tell you he did not represent you?
>
> A. [BY MS. SPEAR:] Yes.
>
> Q. Did he recommend that if you needed legal advice that you would need to seek the advice of an independent lawyer?
>
> A. I believe so.
>
> Q. With that being said did you seek the advice of an independent lawyer as to anything involved in this transaction?
>
> A. No, we trusted everything he told us.

But Ms. Spear further said in an affidavit: "Mr. Brendel affirmatively said that he would explain the transaction to my husband and me." And in another affidavit, she said: "He told us he would explain the important parts of the Installment Contract and the transaction."

B. *De Novo* Review

The sole ground upon which the circuit court granted summary judgment was the statute of limitations. The court explained that the undisputed facts compelled the court to conclude that the Spears were on inquiry notice of facts supporting their claim against the

appellees more than three years before suit was filed. We will generally affirm a grant of summary judgment only on the grounds relied upon by the circuit court. *Law Offices of Taiwo Agbaje v. JLH Props., II, LLC*, 169 Md. App. 355, 368 (2006). Because there is no genuine dispute as to the material facts that played a role in the court's ruling, as outlined above, we review the circuit court's grant of summary judgment in favor of appellees *de novo*. *Berrett*, *supra*, 395 Md. at. 450.

i. The Statute of Limitations and the Discovery Rule

Pursuant to CJP § 5–101, civil actions are generally subject to a three year statute of limitation, and must be filed within three years after the date the action accrues. The Court of Appeals has outlined the guiding principles of the "discovery rule," which governs when an action accrues, as follows:

> Notice is critical to the discovery rule. Before an action can accrue under the discovery rule, "a plaintiff must have notice of the nature and cause of his or her injury." *Frederick Rd.*, 360 Md. at 96, 756 A.2d at 973. There are two types of notice: actual and constructive. *Poffenberger*, 290 Md. at 636–37, 431 A.2d at 680. **Actual notice is either express or implied**. *Id*. at 636, 431 A.2d at 680. As the name suggests, express notice "is established by direct evidence" and "embraces not only knowledge, but also that which is communicated by direct information, either written or oral, from those who are cognizant of the fact communicated." *Id*. at 636–37, 431 A.2d at 680 (citation and internal quotation marks omitted). **Implied notice, also known as "inquiry notice," is notice implied from "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 637, 431 A.2d at 681 (citation and internal quotation marks omitted). Stated simply, inquiry notice is "circumstantial evidence from which notice may be inferred." *Id*. at 637, 431 A.2d at 680 (citation and internal quotation marks omitted). Constructive notice is notice presumed as a matter of law. *Id*. at 636, 431 A.2d at 680. Unlike inquiry

> notice, constructive notice does not trigger the running of the statute of limitations under the discovery rule. *Id*. at 637, 431 A.2d at 681.

Windesheim v. Larocca, 443 Md. 312, 327 (2015) (emphasis added).

Furthermore, regarding the subcategory of *actual* notice known as inquiry notice, the Court of Appeals has stated that a plaintiff "cannot fail to investigate when the propriety of the investigation is naturally suggested by circumstances known to him; and if he neglects to make such inquiry, he will be held guilty of bad faith and must suffer from his neglect." *Poffenberger v. Risser*, 290 Md. 631, 637 (1981) (internal quotations omitted). **The limitations period will "begin to run when a plaintiff gains knowledge sufficient to prompt a reasonable person to inquire further."** *Pennwalt Corp. v. Nasios*, 314 Md. 433, 447 (1988) (emphasis added).

ii. Information Available to Spear on February 17, 2010

Spear contends that her cause of action did not accrue on February 17, 2010, when the Contract was executed and the closing was conducted. Spear argues that she did not have any notice of her claims against appellees until November 8, 2010, when she received in the mail the notice of intent to foreclose on the 2007 mortgage. In her January 8, 2015, affidavit, Spear affirmed the following:

> 16. I am certain that Mr. Brendel did not provide a copy of any Mortgage to us, did not allow us to read or review a Mortgage, did not tell us the principle balance of an existing Mortgage, or that an existing Mortgage was past its due date, or that the Mortgage payments that Mid Atlantic Acquisition had to pay on an existing Mortgage were more than the monthly payments we were required to make to Mid Atlantic.

> 17. Mr. Brendel also did not tell us that he had been unable to contact the mortgage holder and had not obtained the mortgage holder's consent to the Land Installment Contract.

Appellees counter that, regardless of these allegations, Spear was provided documents referring to the prior mortgage on 47 Henry Avenue on February 17, 2010, which should have prompted her to investigate any cause for legal action within three years of that date. Those documents referring to an existing mortgage would have put a person of ordinary prudence on inquiry.

Appellees' position finds support in numerous cases that have refused to excuse people from the consequences of failing to read contracts that they sign. The Court of Appeals has stated that, under "long-settled law," a person who signs a document is "presumed to have read and understood those documents as a matter of law." *Windesheim*, *supra*, 443 Md. at 328 (plaintiffs had signed multiple mortgage applications); *see also Holloman v. Circuit City Stores,* 391 Md. 580, 595 (2006) ("under Maryland law, a party who signs a contract is presumed to have read and understood its terms and as such will be bound by its execution"); *Merit Music Service, Inc. v. Sonneborn*, 245 Md. 213, 221–22 (1967) ("[T]he law presumes that a person knows the contents of a document that he executes and understands at least the literal meaning of its terms."). It is undisputed that Spear and her husband signed the land installment contract and the HUD-1 Settlement Statement, both of which included a reference to the existing mortgage on 47 Henry Avenue. Therefore, as a matter of law, Spear is charged with knowledge that a prior

mortgage existed on the property, regardless of whether she subjectively recognized the significance of the mortgage. *See Windesheim*, *supra*, 443 Md. at 328.

iii Spear Was On Inquiry Notice on February 17, 2010

Spear urges us to focus on two cases that have applied the discovery rule in a manner that she believes supports her argument that the circuit court erred in concluding, as a matter of law, that she was on inquiry notice of her claims against the appellees more than three years before November 6, 2013, namely, *Poffenberger v. Risser*, 290 Md. 631 (1981), and *Rounds v. Maryland-Nat'l Capital Park and Planning Comm'n*, 441 Md. 621 (2015). The key guidance provided by those cases, she contends, is that "'constructive notice from the land records, in and of itself, does not constitute the requisite knowledge of circumstances which ought to have put the plaintiff on inquiry.' *Poffenberger v. Risser*, 290 Md. 631, 638, 431 A.2d 677, 681 (1981) (Rodowsky, J., concurring)." *Rounds, supra*, 441 Md. at 658 n.21. In Spear's view, that language from *Rounds* (quoting from Judge Rodowsky's concurring opinion in *Poffenberger*) compels us to conclude that, even though she received documents on February 17, 2010, that made references to an existing mortgage, the receipt of that information was not sufficient to have put the Spears on inquiry. Spear asserts: "This case is analogous to *Poffenberger*, where the homeowner had constructive notice of his lot lines and setbacks, but did not discover[] the setbacks had been violated until more than four years after a house had been constructed on the lot."

Poffenberger was the owner of a residential building lot in a new section of a subdivision. Poffenberger alleged that he "contracted with builder Risser for construction

of a home that would comply with all relevant restrictions and which was to be situated in the center of the lot." 290 Md. at 633. The builder, however, did not comply with a setback requirement "enumerated on the recorded plat of the subdivision" and providing that "no portion of any building except open porches and steps shall be located within 15 feet of any other side lot line." There was no allegation that Poffenberger was aware of the improper location of the home upon the lot until the purchaser of the adjacent lot began preparing for construction four years later, and at that time, a survey revealed the setback violation. Poffenberger initiated a suit against the builder, who moved for dismissal based upon the three-year statute of limitations. The Court of Appeals held "the discovery rule to be applicable generally in all actions and *the cause of action accrues when the claimant* in fact knew or *reasonably should have known of the wrong*." *Id*. at 636 (emphasis added).

According to the Court of Appeals, the builder conceded that, "unless *constructive notice gained through the plats and deeds recorded among the land records* of Washington County precludes a finding that the wrong was inherently unknowable at the time the building of the house commenced (and thus satisfied the requisite 'known or should have known' requirement), there exists sufficient factual controversy to prevent summary judgment." *Id*. (emphasis added).

There appears to have been no argument made in that case contending that Poffenberger was ever placed on inquiry notice of the setback violation. Nevertheless, the Court of Appeals explained the distinction between mere constructive notice and inquiry notice (also known implied notice) as follows:

With respect to the acquisition of knowledge, Judge McSherry in speaking for this Court nearly a century ago said:

> Notice is of two kinds --- actual and constructive. **Actual notice may be either express or implied**. If the one, it is established by direct evidence, **if the other [*i.e.*, implied], by the proof of circumstances from which it is inferable as a fact.** Constructive notice is, on the other hand, always a presumption of law. Express notice embraces not only knowledge, but also that which is communicated by direct information, either written or oral, from those who are cognizant of the fact communicated. **Implied notice, which is equally actual notice, arises where the party to be charged is shown to have had knowledge of such facts and circumstances as would lead him, by the exercise of due diligence, to a knowledge of the principal fact. . . . It is simply circumstantial evidence from which notice may be inferred**. It differs from constructive notice, with which it is frequently confounded, and which it greatly resembles, in respect to the character of the inference upon which it rests; constructive notice being the creature of positive law, resting upon strictly legal presumptions which are not allowed to be controverted, whilst **implied notice arises from inference of *fact.*** [*Baltimore v. Whittington*, 78 Md. 231, 235-36, 27 A. 984, 985 (1893). (Authorities omitted).]

As the knowledge imputed by the just defined constructive notice, if deemed to be sufficient to activate the running of limitations, would recreate the very inequity the discovery rule was designed to eradicate, we now hold this type of exposure does not constitute the requisite knowledge within the meaning of the rule. Affirmatively speaking, we determine **the discovery rule contemplates** actual knowledge --- that is express cognition, or **awareness implied from**

> **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**. *Baynard v. Norris*, 5 Gill. 468, 483, 46 Am.Dec. 647; *Higgins v. Lodge*, 68 Md. 229, 235, 11 A. 846, 6 Am.St.Rep. 437. In other words, **a purchaser cannot fail to investigate when the propriety of the investigation is**

> **naturally suggested by circumstances known to him**; and if he neglects to make such inquiry, he will be held guilty of bad faith and must suffer from his neglect. [*Fertitta v. Bay Shore Dev. Corp*., 252 Md. 393, 402, 250 A.2d 69, 75 (1969), quoting *Blondell v. Turover*, 195 Md. 251, 257, 72 A.2d 697, 699 (1950).]

Id. at 636-38 (emphasis added). Because there was a factual dispute as to whether "sometime prior to that survey, the petitioner [*i.e*., Poffenberger] possessed knowledge from which actual notice may be inferred," the Court reversed the grant of summary judgment. *Id*. at 638.

Similarly, in *Rounds*, the Court of Appeals focused on the absence of any facts in the record to show when the plaintiffs became aware that a plat had been placed on record. The court ruled that *the mere existence of the plat in the public land records* was insufficient to trigger the time period for filing suit. The Court stated:

> Absent from these factual allegations is the date on which Petitioners became aware of the elimination of northern access to Farm Road. Indeed, Petitioners claimed that they did not become aware of their injury or "[Respondents'] wrongful acts" until 2007. In addition, we note that the allegations do not describe how the alleged elimination of Farm Road occurred (much less whether the elimination involved any physical barrier that was in plain view of Petitioners, which might have put them on notice of their injury). Likewise, there is no allegation regarding any notice to Petitioners regarding the Commission's recording of Plat 21707. What is clear is that *the allegations contained in the Amended Complaint, to which our review is limited, do not include any facts known by Petitioners, prior to 2007, which would have put them on notice, inquiry or otherwise, of their claims relating to the elimination of northern access to Farm Road*.

441 Md. at 657-58 (emphasis added) (footnotes omitted).

Appellees contend that the language we have quoted above from the *Poffenberger* case actually supports their argument that the Spears were on inquiry notice as of the date

of closing. They point out that, unlike the defendants in *Rounds* and *Poffenberger*, they are not making a claim of constructive notice based upon public records. Instead, the appellees assert that there are undisputed facts in the present case that require a court to recognize that, in the language of *Poffenberger*, the Spears had, as of the date of closing, "knowledge of circumstances which ought to have put a person of ordinary prudence on inquiry [thus, charging the [Spears]] with notice of all facts which such an investigation would in all probability have disclosed if it had been properly pursued." 290 Md. at 637.

Moreover, appellees argue that the present case bears more similarities to two discovery rule cases in which the Court of Appeals held that claims were barred by limitations due to circumstances that put the plaintiffs on inquiry notice, namely, *Windesheim v. Larocca*, 443 Md. 312 (2015), and *Bank of New York, Trustee v. Sheff*, 382 Md. 235 (2004).

In *Sheff*, the Court of Appeals observed that, if there is no genuine dispute as to whether the plaintiff had knowledge of circumstances which would cause a reasonable person in the position of the plaintiff to investigate further, the question of whether the plaintiffs were on inquiry notice more than three years before their suit was filed can be determined as a matter of law. 382 Md. at 244. The Court held that the circumstances in that case were sufficient to find inquiry notice, where it was undisputed that a law firm representing the plaintiff in a complex commercial transaction neglected to file a UCC financing statement in the District of Columbia, and then provided the plaintiff with a binder containing copies of all transactional documents (minus any copy of the never-filed

financing statement). The Court of Appeals agreed with the circuit court that the absence of any copy of that document in the binder was a circumstance sufficient to prompt a reasonable person to investigate why no copy had been provided. "Limitations began to run when the [plaintiff] was on inquiry notice that financing statements may not have been filed, triggering a duty on its part to make an investigation that, if diligently pursued, would have revealed the sad fact." *Id*. at 247.

In *Windesheim*, the Court of Appeals concluded that the plaintiffs were on inquiry notice of being involved in a mortgage fraud scheme. Although the plaintiffs alleged that they were unaware of the false representations that were being made by the defendants in connection with a scheme to avoid making the plaintiffs' contracts to purchase new homes contingent on the sale of their existing homes, the Court of Appeals applied the "signature doctrine," and held that, if the plaintiffs had read the documents provided to them, they would have been aware that the transactions "were not proceeding as they expected." 443 Md. at 334. As a matter of law, regardless of whether the plaintiffs had in fact read and subjectively understood the loan application documents they had signed, under the signature doctrine, they were charged with knowledge of the information contained in those documents. And "knowledge of the contents of the Applications was sufficient to place them on inquiry notice of their claims against [the defendants]." *Id*.

Applying the rationale of *Sheff* and *Windesheim*, we hold that the motion court did not err in concluding that Spear was on inquiry notice of any claims she had against Stonegate, Robert Brendel, and Cynthia Brendel pertaining to the October 2007 mortgage

as of the closing on February 17, 2010. Spear has asserted that she and her husband would not have moved forward with the closing "knowing that there was an existing mortgage" on the property. But the land installment contract and HUD-1 Settlement Statement, both signed by Spear on February 17, 2010, each reference an existing mortgage on the property. Even if Spear and her husband did not read these documents in their entirety, the signature doctrine provides that they are "presumed to have read and understood those documents as a matter of law" when they signed the documents. *Windesheim*, *supra*, 443 Md. at 328.

The language in the documents indicating that a prior mortgage existed on the property would have prompted a reasonably prudent person to inquire and "make an investigation that, if diligently pursued, would have revealed" the details regarding the prior mortgage. *Sheff*, *supra*, 382 Md. at 247. The references in the Contract and HUD-1 regarding an existing mortgage were sufficient to apprise the Spears that the closing "was not proceeding consistent with [their] expectations [of no prior mortgage]," and, by signing and receiving copies of those documents, Spear was placed on inquiry notice of any claims that may have been revealed through further investigation. *Windesheim*, *supra*, 443 Md. at 331. Spear's complaint was filed November 6, 2013, roughly three years and nine months after the claim accrued. Therefore, the circuit court did not err in granting appellees' motion for summary judgment as to Spear's claims that arise from the October 16, 2007, mortgage.

II. Concealment of Spear's Causes of Action by Appellees

Spear urges us to find in the alternative that the circuit court should have held that there was sufficient evidence in the record for a finder of fact to conclude that the appellees

fraudulently concealed her causes of action from her, thereby delaying the accrual of her claims. This argument seeks to bring the claim within CJP § 5-203, which provides:

> 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.

Spear contends there is evidence in the record that, "at the very least, raise[s] a question of fact as to whether Appellant was kept in ignorance of her cause of action by fraudulent conduct of Appellee[s]." More specifically, Spear asserts that appellees "knew that the principal balance of the existing mortgage was greater than [the purchase price and the] monthly payment required by its mortgage was greater than the payment required by the Land Installment Contract. These facts were concealed by the Appellees."

The Court of Appeals has stated that "[f]raud which satisfies [CJP § 5-203] may also be found where there is *an express, knowingly false misrepresentation*, even in the absence of a confidential relation." *Geisz v. Greater Baltimore Med. Ctr.*, 313 Md. 301, 325 (1988) (emphasis added). But the Court has further observed: "[A] simply negligent misrepresentation, honestly made, is not a § 5-203 fraud." *Id*. at 326. We have previously stated that, under CJP § 5-203, any "[c]onduct less egregious than intentional fraud will not toll the statute of limitations." *Johns Hopkins Hosp. v. Lehninger*, 48 Md. App. 549, 562 (1981). Furthermore, *non-disclosure* "has never been sufficient to establish fraud, in any context, absent some duty to disclose." *Morris v. Osmose Wood Preserving*, 340 Md. 519, 546 n.12 (1995). However, "[e]ven in the absence of a duty of disclosure, one who suppresses or conceals facts which materially qualify representations made to another may

be guilty of fraud." *Finch v. Hughes Aircraft Co.*, 57 Md. App. 190, 239, *cert. denied,* 300 Md. 88 (1984), *cert. denied,* 469 U.S. 1215 (1985).

Spear asserts that appellees engaged in fraud under CJP § 5-203 by concealing information regarding the prior mortgage on Spear's property. Although Spear contends that Stonegate made a "false misrepresentation" at closing, the allegations in the complaint focus on the non-disclosure by appellees of the details regarding the prior mortgage and newly executed deed of trust. Spear argues that the appellees had a motive to commit fraudulent concealment because Stonegate "profited from making a false misrepresentation or concealing material facts from plaintiff," and "a trier of fact could find that Stonegate and Mr. Brendel profited by their concealments of material terms of the [prior mortgage] and by concealing that a Second Trust was being placed on the home." Spear contends that appellees

> did not provide a copy of the Mortgage to us, did not allow us to read or review a Mortgage, did not tell us the principle balance of an existing Mortgage, or that an existing Mortgage was past its due date, or that the Mortgage payments that [Seller] had to pay on an existing Mortgage were more than the monthly payments we were required to make to [Seller].

However, Spear cites no authority supporting the proposition that appellees had any duty to make such disclosures at the closing.

We have previously held that a settlement agent is "not charged with a duty to compare or investigate the lenders' closing documents," *Iglesias v. Pentagon Title & Escrow, LLC*, 206 Md. App. 624, 664 (2012); and the duty of care recognized in *100 Investment Ltd. Partnership v. Columbia Town Center Title Co*., 430 Md. 197, 203 (2013),

is owed to a title company's own customer, not other parties to a transaction. The HUD-1 makes it clear that Spear did not hire appellees to protect her interests in the transaction with Mid-Atlantic; all closing fees were assessed to Mid-Atlantic. In the absence of a duty of disclosure, Spear cannot prevail on a claim of fraudulent concealment on the part of appellees.

Furthermore, as noted above, as a legal consequence of signing the closing documents, Spear is charged as a matter of law with knowledge of their contents, including the language indicating that a prior mortgage existed on the property. *See Windesheim*, *supra*, 443 Md. at 328. Because appellees did not conceal or misrepresent the fact that a prior mortgage existed on the property, as was evidenced by the closing documents, Spear was on inquiry notice of her claims as of closing on February 10, 2010, and her claims accrued on that date.

III. The Second Deed of Trust Executed on February 17, 2010

Spear argues that she was not on inquiry notice of any claims pertaining to the second deed of trust placed on the Henry Avenue property to secure payment of the fees the Seller owed the brokers who produced the deal.

There is a factual dispute in the record concerning the Spears' knowledge that the second deed of trust was being placed on the property in connection with the closing. Spear avers that "we were not told and did not know that Mr. Brendel was preparing a mortgage to go on our Home," whereas Robert Brendel testified at his deposition that the Spears were present when the second deed of trust was signed by the Sellers at closing. But,

regardless of that dispute, there is no indication that the placement of this second lien ever caused any damages to Spear.

Furthermore, any dispute regarding this additional deed of trust is not material because the Contract expressly disclosed to the Spears that the Seller retained "the right, at all times, to mortgage the Property." For the same reasons we concluded that the closing documents placed the Spears on inquiry notice of the existing mortgage, the language in the Contract that expressly acknowledged the Seller's right to mortgage the property placed the Spears on inquiry notice on February 17, 2010, that the Seller might place additional mortgages on the property. Further inquiry or investigation after closing would have disclosed the second deed of trust.

JUDGMENT OF THE CIRCUIT COURT FOR BALTIMORE COUNTY AFFIRMED. COSTS TO BE PAID BY APPELLANT.