DIVISION ONE
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RUTH A. WILLINGHAM, CLERK
BY: DLL

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE

ELISA SERRANO, an individual, Plaintiff/Appellant, v. MARTHA SERRANO, an individual; MARTIN CHACON, an individual; SHELLY T. BERRY, LLC, an Arizona limited liability company, dba RMA-UPTOWN aka REMAX UPTOWN; SAUL G. ENRIQUEZ and JANE DOE ENRIQUEZ, husband and wife, Defendants/Appellees.	No. 1 CA-CV 10-0649 DEPARTMENT C **MEMORANDUM DECISION** (Not for Publication - Rule 28, Arizona Rules of Civil Appellate Procedure)

Appeal from the Superior Court in Maricopa County

Cause No. CV2008-015451

The Honorable Douglas L. Rayes, Judge

AFFIRMED

Law Office of Sylvia L. Thomas L.L.C. — Phoenix
By Sylvia L. Thomas
Attorney for Plaintiff/Appellant

Dominguez Law Firm — Phoenix
By Antonio Dominguez
Attorney for Defendants/Appellees Serrano and Chacon

Saul Enriquez — Scottsdale
Defendant/Appellee *In Propria Persona*

B R O W N, Judge

¶1 Elisa Serrano ("Appellant") appeals the dismissal of her second amended complaint against several defendants.[1] She argues the trial court erred in ruling that the statutes of limitation were not tolled by the discovery rule. She also asserts that the statutes should have been equitably tolled because the defendants concealed facts from her that would have revealed the claims she alleges against them. For reasons that follow, we affirm the dismissal of plaintiffs' claims.

BACKGROUND[2]

¶2 Appellant and her then-husband, Mario Vasquez ("Mario"), purchased a home on Virginia Avenue ("the Virginia Avenue Home") in January 1991. In April 2000, Mario was arrested and pled guilty to the attempted sexual abuse of two neighborhood children. Neighbors placed a large sign in the front yard identifying Mario as a sexual predator. For several months, windows were broken and threats were spray painted on the home and the fence around it using expletives to describe

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[1] Although Appellant's claims against her brother, Armando Serrano ("Armando"), and his girlfriend, Maria Rodriguez ("Maria"), were initially dismissed, the trial court granted Appellant's motion for reconsideration reinstating the claims against Armando and Maria.

[2] In reviewing the grant of a motion to dismiss, we assume the truth of facts alleged in the complaint. *Logan v. Forever Living Prods. Int'l, Inc.*, 203 Ariz. 191, 192, ¶2, 52 P.3d 760, 761 (2002).

Mario as a child molester. Mario was placed on probation, but violated his terms of probation in April 2001, was incarcerated for six months, and upon his release in October 2001 was deported to Mexico. Appellant remained in the country with their four children and obtained a default divorce in 2002.

¶3 Unable to make ends meet, Appellant turned to her family for help. Appellant's sister, defendant Martha Serrano ("Martha"), and her brother-in-law, defendant Martin Chacon ("Martin"), offered Appellant a job as a manager and bartender at Kahlua's, a restaurant and bar they owned. Between October 2001 and December 2002, Appellant worked sixteen-hour shifts, seven days a week. During this time, Martha sporadically paid her between $400 and $800 per month, despite Appellant's demands to be paid her full wages.

¶4 In November 2001, Martha convinced Appellant that she should leave the Virginia Avenue Home and move to a different neighborhood where her family would not be subjected to threats and vandalism. Martha and defendant Saul Enriquez ("Saul"), an agent for defendants Shelley Berry and Re/Max Uptown,[3] offered her $20,000 toward the purchase of a home they selected on Sherman Street ("the Sherman Street Home") in exchange for

[3] We hereafter refer to Saul Enriquez, Shelley Berry, and Re/Max Uptown collectively as "Enriquez."

Appellant signing a deed conveying the Virginia Avenue Home to Martha.

¶5 In November 2001, Martha and Enriquez had Appellant sign a blank quit claim deed without a notary present. Mario had been deported by this time and was therefore not available to sign the deed. In December 2001, Enriquez completed a different deed, listing the mail-to information as "WHEN RECORDED MAIL TO: Martha Serrano, c/o Saul Enriquez, Re/Max Uptown 5225 N. Central Ave, Ste. #102 Phoenix, AZ 85012." Martha and Enriquez forged Appellant's and Mario's signatures on the deed rather than on the blank deed that Appellant had previously signed. Theresa Boorsma ("Boorsma") notarized the allegedly forged signatures sometime in December 2001.[4] Martha and Enriquez recorded the completed, notarized quit claim deed on January 3, 2002.

¶6 In September 2002, Martha and Martin entered into a verbal agreement with Armando for the conveyance of the Virginia Avenue Home to him for $126,000. Armando transferred the title to his 1999 Ford truck to Martha as an earnest money deposit on the home. On December 4, 2002, Armando executed a deed of trust for $88,200 for the Virginia Avenue Home. On December 6, 2002,

[4] The notary acknowledgement provides only the month and year.

Martha and Martin executed a warranty deed conveying the home to Armando.

¶7 In December 2002, Martha and Saul approached Appellant to open a restaurant and bar in Appellant's name. Martha promised Appellant an initial 50/50 profit share in exchange for Appellant operating Mariscos El Caribe and agreed to give the business to Appellant once it was "going well." Appellant managed the restaurant from December 2002 to June 2003, but Martha did not split the profits with her or pay her an hourly wage, stating that the business was not making any money.

¶8 According to Appellant, it was not until February 2008, when she discovered that Armando had transferred his truck to Martha as a down payment on the Virginia Avenue Home, that she became suspicious of the actions of the various defendants. Appellant hired legal counsel, and in May 2008, she learned the Virginia Avenue Home had more equity in it than the $20,000 Martha and Martin gave her for it and that they had made a substantial amount of money when they sold it to Armando. Appellant also discovered at this time that Mario could not have signed the December 7, 2001 quit claim deed. In June 2009, she learned through a forensic expert that both her and Mario's signatures were forged on the recorded deed.

¶9 Appellant's initial complaint, filed on July 1, 2008, alleged nine counts against thirteen defendants. The court

granted Plaintiff's motion for leave to amend on September 17, 2008. Appellant's first amended complaint, filed on September 19, 2008, was dismissed without prejudice on August 14, 2009, because the claims were barred by the statute of limitations. The trial court directed Appellant to "file her Second Amended Complaint by no later than September 4, 2009" and to "state specifically any basis for tolling the statute of limitations the date or time frames of the alleged discovery." Appellant filed her second amended complaint on August 27, 2009.[5] Martha, Martin, Armando, and Maria filed motions to dismiss the complaint based on the statutes of limitations, and Enriquez later joined in Armando's and Maria's motions. Following a comprehensive discussion with counsel at oral argument, the trial court could not "find any factual allegations in the complaint that are sufficient to support any theory that avoids the statute of limitations defense" and accordingly dismissed Appellant's claims against all the defendants named in the complaint.

[5] Appellant's forty-seven page second amended complaint alleged thirteen claims, including breach of contract, breach of the covenant of good faith and fair dealing, conversion, unpaid wages, unjust enrichment, fraudulent conveyance, fraudulent concealment, common law fraud, statutory fraud, fraudulent misrepresentation, aiding and abetting fraud, negligent misrepresentation, and breach of fiduciary duty. For convenience, we refer to the second amended complaint hereafter as "the complaint."

¶10 In March 2010, Appellant filed a motion for partial reconsideration regarding Armando's and Maria's motions to dismiss and a motion for a new trial. The court granted Appellant's motions as to Armando and Maria, holding that Appellant alleged sufficient facts to toll the statute of limitations as to Armando and Maria on counts 1-3, 5-8, and 10-11. Appellant then filed a motion for new trial and a motion for partial reconsideration regarding the trial court's ruling on Martha and Martin's motion to dismiss. The court denied both motions. Appellant timely appealed the dismissal of her complaint as to Martha, Martin, Enriquez, and the Boorsmas.[6]

DISCUSSION

¶11 We review the trial court's dismissal of a complaint based on statutes of limitation or other questions of law de novo. *Andrews v. Eddie's Place, Inc.*, 199 Ariz. 240, 241, ¶ 1, 16 P.3d 801, 802 (App. 2000). A court should not dismiss a complaint under Rule 12(b)(6)[7] "unless it appears certain that

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[6] Pursuant to a stipulation of the parties filed in this court in June 2011, the Boorsmas are no longer a party to this appeal.

[7] Although Appellant attached a substantial number of documents to her response to defendants' motions to dismiss, we are not obligated to convert the motions to dismiss to motions for summary judgment. *See Brosie v. Stockton*, 105 Ariz. 574, 576, 468 P.2d 933, 935 (1970) ("The element that triggers the conversion (from a motion to dismiss to one for summary judgment) is a challenge to the sufficiency of the pleader's claim supported by extra-pleading material."). Here, even

the plaintiff would not be entitled to relief under any state of facts susceptible of proof under the claim stated." *Universal Mktg. and Entm't, Inc. v. Bank One of Ariz., N.A.*, 203 Ariz. 266, 267-68, ¶ 2, 53 P.3d 191, 192-93 (App. 2002) (citation omitted). The court must look only to the complaint, assuming the truth of all well-plead factual allegations and indulging all reasonable inferences. *Cullen v. Auto-Owners Ins. Co.*, 218 Ariz. 417, 419, ¶ 7, 189 P.3d 344, 346 (2008).

¶12 In her complaint, Appellant alleges that the discovery rule operates to toll the applicable statute of limitations on eleven of her thirteen claims. On appeal, Appellant argues that the statutes should have been tolled based on the existence of a confidential relationship between Martha and Appellant which entitled Appellant to rely on Martha's representations without investigating their truth. Because Appellant raises this argument for the first time on appeal, it is waived. *Odom v. Farmers Ins. Co. of Ariz.*, 216 Ariz. 530, 535, ¶ 18, 169 P.3d 120, 125 (App. 2007).

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assuming the trial court considered material outside the complaint, that material was not submitted by the moving parties and therefore Appellant was not deprived of the opportunity to respond. Moreover, Appellant never requested that the trial court treat the motions to dismiss as motions for summary judgment, nor did she assert in her opening brief that we should examine the motions as if they are governed by Rule 56. Thus, our review is limited to the allegations of the amended complaint.

¶13 Under the discovery rule, a cause of action does not accrue and the statute of limitations does not begin to run until the plaintiff knows or should with reasonable diligence know the facts underlying the defendant's wrongful conduct that caused an injury. *Cannon v. Hirsch Law Office, P.C.*, 222 Ariz. 171, 181-82, ¶ 34, 213 P.3d 320, 330-31 (App. 2009). Most cases applying the discovery rule have a "common thread": requiring "[t]he injury or the act causing the injury, or both, have been difficult for the plaintiff to detect." *Gust, Rosenfeld & Henderson v. Prudential Ins. Co.*, 182 Ariz. 586, 589, 898 P.2d 964, 967 (1995). "The discovery rule, however, does not permit a party to hide behind its ignorance when reasonable investigation would have alerted it to the claim." *ELM Ret. Ctr., LP v. Callaway*, 226 Ariz. 287, 290, ¶ 12, 246 P.3d 938, 941 (App. 2010).

¶14 Because the statute of limitations and the facts relevant to the applicability of the discovery rule differ on Appellant's various claims, we address each in turn.

A. Fraud-Related Claims

¶15 Appellant asserts a number of claims of fraud against Martha, Martin, Enriquez, and the Boorsmas. Under Arizona law, the statute of limitations for fraudulent conveyance, fraudulent concealment, fraudulent misrepresentation, and aiding and abetting fraud is three years. Ariz. Rev. Stat. ("A.R.S.")

section 12-543(3) (2003). The statute of limitations for statutory fraud is one year. A.R.S. § 12-541(5) (2003).

¶16 Appellant alleges that Martha and Enriquez coerced her into signing a blank quit claim deed to the Virginia Avenue Home. But elsewhere in her complaint, Appellant states that she signed the deed "with the intent to lawfully convey the Virginia Avenue Home to [Martha]." She further alleges Martha and Enriquez later filled in a different quit claim deed, listing Enriquez in the "WHEN RECORDED MAIL TO:" section, and forged both her and Mario's signatures. Appellant alleges that Boorsma notarized the second quit claim deed without identification, and Martha and Enriquez recorded it. Appellant asserts that she did not become suspicious of this transaction until she learned in February 2008 that Armando had transferred his pickup truck to Martha in 2002 as a deposit on the Virginia Avenue Home. Appellant argues that the statute of limitations was tolled until she consulted an attorney following this discovery.

¶17 Under the doctrine of equitable tolling, "a defendant whose affirmative acts of fraud or concealment have misled a person from either recognizing a legal wrong or seeking timely legal redress may not be entitled to assert the protection of a statute of limitations." *Porter v. Spader*, 225 Ariz. 424, 428, ¶ 11, 239 P.3d 743, 747 (App. 2010). If fraudulent concealment is established, "the statute of limitations is tolled until such

concealment is discovered or reasonably should have been discovered." *Walk v. Ring*, 202 Ariz. 310, 319, ¶ 35, 44 P.3d 990, 999 (2002) (quotation and citation omitted); *see also Grimmett v. Brown*, 75 F.3d 506, 514 (9th Cir. 1996) (noting fraudulent concealment tolls statute of limitations only if plaintiff proves defendant actively misled her and she had neither actual nor constructive notice of the facts constituting her cause of action despite exercising due diligence).

¶18 Under A.R.S. § 12-543(3), a cause of action in fraud accrues when the aggrieved party discovers facts constituting the fraud. "The discovery dates from the time that [the party], by exercise of reasonable diligence, *might have discovered* the fraud." *Transamerica Ins. Co. v. Trout*, 145 Ariz. 355, 358, 701 P.2d 851, 854 (App. 1985) (emphasis added). Recordation of a deed constitutes constructive notice of its contents. *See* A.R.S. § 33-416 (2007) ("The record of a grant, deed or instrument in writing authorized or required to be recorded, which has been duly acknowledged and recorded in the proper county, shall be notice to all persons of the existence of such grant, deed or instrument[.]"). "The statutory period may begin to run on the date of recording if the recorded deed sets forth facts from which the aggrieved party should have realized it had a cause of action." *Transamerica*, 145 Ariz. at 358, 701 P.2d at 854.

¶19 The recorded quit claim deed to the Virginia Avenue Home, which was signed more than a month after Mario was deported to Mexico, contains Mario's signature. This fact alone should have alerted Appellant that the deed had been altered after she signed it. Additionally, Appellant knew that she had signed a blank quit claim deed, which should have made her aware of the possibility the deed could be improperly manipulated. Had Appellant conducted any reasonable investigation about the status of the title of the Virginia Avenue Home she could have discovered the fraudulent conduct she now alleges against Martha, Enriquez, and the Boorsmas in connection with this transaction.

¶20 In addition, other facts existed which would have put a reasonable person on notice to investigate the fairness of the transaction within the limitations period. Martha's failure to pay Appellant's wages or share the profits of their restaurant despite repeated requests from Appellant cast doubt on Martha's trustworthiness. In addition, Appellant had owned the home for ten years when she signed the quit claim deed and had made significant improvements to the home during that period, which should have caused her to question whether the home had only $20,000 in equity. Appellant also had extensive experience managing two restaurants, suggesting she had at least some knowledge of general business transactions. And Appellant had

at least as much access to information that could have alerted her to the home's value as Martha did. *See Sorrells v. Clifford*, 23 Ariz. 448, 459, 204 P. 1013, 1017 (1922) (finding no right to rely upon representations as to value where parties had equal means of knowledge and appellant had opportunity to undertake investigation); *Bianconi v. Smith*, 3 Ariz. 320, 324-25, 28 P. 880, 880-81 (1892) (holding appellant who failed to avail himself of knowledge readily within his reach could not claim the right to rely upon representations which he could have discovered to be false by the use of such knowledge). Moreover, Appellant could have looked at her mortgage statements and property tax assessments, or she could have had the home appraised.

¶21 In sum, Appellant's complaint does not allege facts establishing that she exercised reasonable diligence in discovering the alleged fraud in conjunction with the conveyance of the Virginia Avenue Home, nor does the complaint offer any explanation for Appellant's failure to do so until six years after the deed was recorded. The complaint's conclusory assertion, without any supporting facts, that "[t]he discovery rule operates to toll any applicable statute of limitations" is insufficient as a matter of law to satisfy the discovery rule. *See Cullen*, 218 Ariz. at 419, ¶ 7, 189 P.3d at 346 (stating "a complaint that states only legal conclusions, without any

supporting factual allegations, does not satisfy Arizona's notice pleading standard"). Because the deed contains evidence on its face from which Appellant should have realized the existence of the alleged fraudulent conduct, and there were other circumstances that would have alerted a reasonable person to investigate the transaction, we conclude the statute of limitations began to run when the deed was recorded on January 3, 2002. Appellant's fraud-related claims pertaining to the Virginia Avenue Home transaction are therefore time-barred.

¶22 Appellant additionally asserts that on or around November 5, 2003, Martha and Enriquez forged Appellant's signature on the Business Asset Purchase and Sale Agreement, Bill of Sale, and other conveyance documents related to the sale of Mariscos El Caribe. Appellant further alleges that Martha and Enriquez concealed from Appellant the fraudulent conveyance of Mariscos El Caribe on November 30, 2003 and failed to pay Appellant her share of the business profits. But despite her conclusory allegations that Martha and Enriquez fraudulently conveyed the restaurant and that the discovery rule should operate to toll the statute of limitations as to her fraud claims against them in connection with the transfer, Appellant fails to point to any specific facts showing what prevented her from knowing of the alleged 2003 sale of her restaurant until 2008. In her complaint, she alleges that she worked twelve to

fourteen-hour shifts, seven days a week managing the restaurant in 2002 and 2003. Appellant makes no mention, however, of what arrangements she made for the management of her restaurant, or for the filing and payment of any taxes owed, when she moved out of state for two years beginning in June 2003. Nor does she indicate what prevented her from discovering upon her return to Arizona in 2005 that her restaurant had been sold. *See ELM*, 226 Ariz. at 290, ¶ 12, 246 P.3d at 941 (noting the discovery rule "does not permit a party to hide behind its ignorance when reasonable investigation would have alerted it to the claim"); *Gust, Rosenfeld & Henderson*, 182 Ariz. at 589, 898 P.2d at 967 (stating discovery rule applies only when "[t]he injury or the act causing the injury, or both, have been difficult for the plaintiff to detect"). Because Appellant failed to exercise reasonable diligence in discovering that her restaurant had been sold, we conclude that the discovery rule does not toll the statute of limitations on Appellant's fraud claims relating to the Mariscos El Caribe sale.

B. Negligent Misrepresentation and Breach of Fiduciary Duty

¶23 Appellant alleges that Enriquez and Boorsma provided false information to or withheld material information from Appellant in connection with the Virginia Avenue Home transaction. Appellant also asserts that Boorsma knowingly

notarized the quit claim deed to the Virginia Avenue Home without proper identification. Appellant further asserts that Enriquez had a conflicting pecuniary interest in the Virginia Avenue Home and Sherman Street Home transactions because he represented Martha in purchasing the Virginia Avenue Home and Appellant in purchasing the Sherman Street Home. The statute of limitations is two years for breach of fiduciary duty and negligent misrepresentation. A.R.S. § 12-542(3) (2003).

¶24 Despite Appellant's conclusory statement that the discovery rule operates to toll the statutes of limitations on these two claims, Appellant should have been aware of the need to investigate the conduct of which she now complains based on the quit claim deed recorded in January 2003 containing Mario's signature more than two months after he was deported. *See Transamerica*, 145 Ariz. at 358, 701 P.2d at 854 ("The statutory period may begin to run on the date of recording if the recorded deed sets forth facts from which the aggrieved party should have realized it had a cause of action."). In addition, Appellant was aware in 2001 and 2002 that Enriquez represented Martha in the Virginia Avenue Home transaction and Appellant in the Sherman Street Home transaction. *See Cannon,* 222 Ariz. at 181-82, ¶ 34, 213 P.3d at 330-31 (stating statute of limitations begins to run when the plaintiff knows the facts underlying defendant's wrongful conduct that caused her injury).

Therefore, the discovery rule cannot operate to toll the statute of limitations as to Appellant's negligent misrepresentation and breach of fiduciary duty claims.

C. Breach of Contract

¶25 Appellant alleges that Martha breached her partnership agreement with Appellant as to the Mariscos El Caribe restaurant by failing to make profit-share disbursements to Appellant in 2002 and 2003, making unauthorized payments to herself, and conveying the restaurant to a third-party without Appellant's knowledge in 2003. The statute of limitations for breach of an oral contract is three years. A.R.S. § 12-543(1). Because Appellant was aware in 2002 and 2003 of Martha's failure to pay profit-share disbursements, the discovery rule does not operate to toll the statute of limitations as to Appellant's breach of contract claim. That claim is therefore time-barred, and the trial court properly dismissed it.

D. Breach of Covenant of Good Faith and Fair Dealing

¶26 Appellant further alleges that Martha breached the covenant of good faith and fair dealing by deliberately depriving Appellant of the benefits of the Mariscos El Caribe partnership in 2002 and 2003. The statute of limitations for breach of the covenant of good faith and fair dealing is two years. A.R.S. § 12-542(3). Appellant's claim for breach of the implied covenant of good faith and fair dealing is necessarily

tied to her breach of contract claim. *See Maleki v. Desert Palms Prof'l Props., L.L.C.*, 222 Ariz. 327, 333, ¶ 28, 214 P.3d 415, 421 (App. 2009) (noting that all contracts include an implied covenant of good faith and fair dealing). Thus, because Appellant was aware in 2002 and 2003 of the conduct which forms the basis for this claim, the discovery rule does not toll the statute of limitations, and the claim is time-barred.

E. Conversion

¶27 Appellant asserts that Martha, Martin, and Enriquez "converted [her] Virginia Avenue Home and systematically and permanently interfered with her rights of title and ownership therein." The statute of limitations for conversion is two years. A.R.S. § 12-542(5). However, real property interests cannot be converted because they are not chattels. *See Strawberry Water Co. v. Paulsen*, 220 Ariz. 401, 406, 207 P.3d 654, 659 (App. 2008) (citing 1 Dan B. Dobbs, *The Law of Torts* § 63, at 130 (2001)). Appellant therefore cannot bring a claim for conversion as to her interest in the Virginia Avenue Home.

F. Unpaid Wages

¶28 Appellant alleges that Martha failed to pay her wages for working at Cocteleria Pacifico in 2000 and 2001, at Kahlua's in 2001 and 2002, and at Mariscos El Caribe in 2002 and 2003. The statute of limitations for unpaid wage claims is one year. A.R.S. § 12-541(3); A.R.S. § 23-356(A) (Supp. 2011). Appellant

was aware in 2000 through 2003 that Martha failed to pay her wages, and even acknowledges in her complaint that she demanded at that time to be paid. The claim is therefore time-barred.

G. Unjust Enrichment

¶29 Appellant alleges that Martha, Martin, and Enriquez were unjustly enriched by Martha and Martin inducing Appellant to convey the Virginia Avenue Home to them in 2001 and by their fraudulent conveyance of the Virginia Avenue Home to Armando in 2002. The statute of limitations for unjust enrichment is three years. A.R.S. § 12-543(1). To prevail on an unjust enrichment claim, a plaintiff must prove: "(1) an enrichment; (2) an impoverishment; (3) a connection between the enrichment and the impoverishment; (4) the absence of justification for the enrichment and the impoverishment; and (5) the absence of a legal remedy." *Trustmark Ins. Co. v. Bank One, Ariz. N.A.*, 202 Ariz. 535, 541, ¶ 31, 48 P.3d 485, 491 (App. 2002). As discussed above, Appellant's constructive notice of the alleged fraudulent activity relating to the Virginia Avenue Home started when the forged quit claim deed was recorded. As a result, she could have discovered the wrongful conduct and that Martha and Martin had been unjustly enriched. Appellant did not, however, bring such a claim within three years of the recording of the quit claim deed. Dismissal of this claim was therefore proper.

H. Intentional Infliction of Emotional Distress

¶30 In her consolidated response to the motions to dismiss, Appellant sought to add a claim of intentional infliction of emotional distress ("IIED") by Martha and Martin to her complaint. However, the conduct which Appellant alleges forms the basis of the IIED claim—coercing her to sign a blank quit claim deed, forging her and Mario's signatures on a completed deed, recording the completed deed, and later conveying the home to Armando for a profit—is the same as the conduct underlying her fraud claims, which occurred in 2001 and 2002. The statute of limitations on IIED claims is two years, *see* A.R.S. § 12-542(1), shorter than the limitations period for Appellant's fraud claims which we have concluded are time-barred. Appellant has not alleged any additional facts that would permit application of the discovery rule as to the IIED claim based on Martha and Martin's conduct in connection with the Virginia Avenue Home transactions in 2001 and 2002.

I. Attorneys' Fees and Costs

¶31 Martha and Martin request an award of attorneys' fees pursuant to A.R.S. §§ 12-341.01 (2003), -349 (2003). In our discretion, we deny their request. Enriquez requests an award of attorneys' fees incurred in the trial court; however, he did not cross-appeal the trial court's decision to deny fees and has therefore waived any challenge to the court's ruling. Martha,

Martin, and Enriquez are entitled to an award of costs upon their compliance with Arizona Rule of Civil Appellate Procedure 21.

CONCLUSION

¶32 We conclude that, even viewing the facts in the light most favorable to Appellant as the non-moving party, she has failed to allege sufficient facts to toll the applicable statute of limitations for any of her claims under the discovery rule or equitable tolling. The trial court's dismissal of her claims was therefore proper. Accordingly, we affirm the dismissal of Appellant's second amended complaint.

/s/

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MICHAEL J. BROWN, Presiding Judge

CONCURRING:

/s/

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PATRICIA K. NORRIS, Judge

/s/

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PHILIP HALL, Judge