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6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF ARIZONA**
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9 Bryan W. Hummel and Sandra M. Dahl
10 Living Trust,

11 Plaintiff,

12 v.

13 Rushmore Loan Management LLC, et al.,

14 Defendants.

No. CV-17-08034-PCT-DGC

ORDER

15 On August 7, 2018, the Court issued an order granting partial summary judgment
16 to Defendants Rushmore Loan Management, LLC and U.S. Bank National Association
17 and denying Plaintiff's cross-motion for summary judgment. Doc. 87. Plaintiff has filed
18 a motion for reconsideration, arguing that the Court erred by (1) mischaracterizing a fact
19 and (2) not addressing certain arguments made in Plaintiff's motion. For the reasons
20 explained below, the Court will deny the motion.

21 **I. Legal Standard.**

22 Motions for reconsideration are disfavored and should be granted only in rare
23 circumstances. *See Ross v. Arpaio*, No. CV-05-4177-PHX-MHM, 2008 WL 1776502, at
24 *2 (D. Ariz. Apr. 15, 2008). A motion for reconsideration will be denied "absent a
25 showing of manifest error or a showing of new facts or legal authority that could not have
26 been brought to [the Court's] attention earlier with reasonable diligence."
27 LRCiv 7.2(g)(1); *see Carroll v. Nakatani*, 342 F.3d 934, 945 (9th Cir. 2003).
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1 **II. Mischaracterized Fact.**

2 In a footnote in the background section, the Court’s order stated:

3 Plaintiff denies that it executed the February 2008 warranty deed conveying
4 the property to the Hummels and that the Hummels were trustees of the
5 Trust in February 2008. *See* Doc. 79 at 3. These are not genuine disputes.
6 Plaintiff provides no documentary evidence regarding who was trustee of
7 the Trust at any time. Plaintiff simply submits affidavits from the
8 Hummels stating that they were not trustees as of January 1, 2008. Doc. 80
9 at 3; Doc. 81 at 3. These self-serving affidavits do not create a genuine
10 dispute where multiple documents clearly show that the Hummels held
11 themselves out as trustees of the Trust in February 2008, and Plaintiff does
12 not dispute the authenticity of these documents or the Hummels’ signatures.
13 *See F.T.C. v. Publ’g Clearing House, Inc.*, 104 F.3d 1168, 1171 (9th Cir.
14 1997) (“A conclusory, self-serving affidavit, lacking detailed facts and any
15 supporting evidence, is insufficient to create a genuine issue of material
16 fact.”). In any event, this dispute is immaterial to the issue on which the
17 Court grants summary judgment.

18 Doc. 87 at 3 n.2.

19 Plaintiff argues that it “clearly outlined who was trustee of [the trust] at various
20 times, from its initial inception until the present day.” Doc. 90 at 4 (citing Doc. 79-1
21 at 57-58). The cited document is Plaintiff’s response to an interrogatory, but the text of
22 the interrogatory is not included. Doc. 79-1 at 57-58. The response states:

23 Peter Dahl
24 5306 Barclay Ct
25 Randolph, NJ 07869
26 June 2017 – Current

27 Dana M. Dahl
28 (Please contact the undersigned for contact information for this trustee)
29 January 1, 2008 – Current

30 Sandra M. Dahl and Bryan W. Hummel
31 2876 Country Club Dr.
32 Bullhead City, AZ 86442
33 Inception of trust until January 1, 2008

34 Doc. 79-1 at 57-58.

1 Without the benefit of the interrogatory's text, the Court could not rely on this
2 evidence. Moreover, it does not change the Court's observation that "Plaintiff provides
3 no documentary evidence regarding who was trustee of the Trust at any time." Doc. 87
4 at 3 n.2. In any event, the Court did not rely on this fact in ruling on the summary
5 judgment motions. Plaintiff and Defendants will be able to present evidence on this fact
6 at trial.

7 The Court will deny reconsideration of this footnote, which had no effect on its
8 ultimate conclusions.

9 **III. Unaddressed Arguments.**

10 Plaintiff argues that the Court's order failed to address Plaintiff's argument that
11 Defendant U.S. Bank's claims for fraud, unjust enrichment, equitable lien, and
12 declaratory relief are barred by the relevant statutes of limitations. The Court declined to
13 resolve these arguments because these claims are primarily alternative theories of relief
14 and the parties failed to establish who was entitled to judgment on the parties' main
15 dispute: who holds title to the property and whether the deed of trust ("DOT") secures a
16 valid lien on the property. On reflection, the Court acknowledges that addressing these
17 arguments could narrow the issues for trial, but, having reviewed them again, the Court
18 concludes that they cannot be resolved by summary judgement.

19 Defendant's fraud claim is subject to a three-year limitations period. A.R.S.
20 § 12-543(3). Defendant's claim for reformation of the DOT predicated on mistake or
21 fraud is subject to the same limitations period. *See Long v. City of Glendale*, 93 P.3d
22 519, 526 (Ariz. Ct. App. 2004) (quoting *Gust, Rosenfeld & Henderson v. Prudential Ins.*
23 *Co. of Am.*, 898 P.2d 964, 969 (Ariz. 1995)). Defendant's claims for unjust enrichment
24 and equitable lien are subject to either a three- or four-year limitations period. *See* A.R.S.
25 § 12-550 ("Actions other than for recovery of real property for which no limitation is
26 otherwise prescribed shall be brought within four years after the cause of action accrues,
27 and not afterward."); *San Manuel Copper Corp. v. Redmond*, 445 P.2d 162, 166 (Ariz.
28 App. 1968) ("In the instant case where it is not clear which statute [applies], A.R.S. s

1 12-543, 3 years for oral debt and fraud and mistake, or A.R.S. s 12-550, 4-year general
2 limitation, we would have no difficulty in finding that a suit for unjust enrichment . . . is
3 controlled by A.R.S. s 12-550, the four-year statute[.]”).

4 The discovery rule, under which “a plaintiff’s cause of action does not accrue until
5 the plaintiff knows or, in the exercise of reasonable diligence, should know the facts
6 underlying the cause[.]” may apply to Defendant’s unjust enrichment and equitable lien
7 claims. *See Gust, Rosenfeld & Henderson*, 898 P.2d at 966-68 (declining to adopt a
8 bright-line rule regarding when the discovery rule applies, and explaining that the
9 important inquiry is “whether the plaintiff’s injury or the conduct causing the injury is
10 difficult for plaintiff to detect”). The discovery rule applies to Defendant’s claims for
11 fraud and reformation based on fraud or mistake. *See* A.R.S. § 12-543(3) (claim accrues
12 upon “the discovery by the aggrieved party of the facts constituting the fraud or
13 mistake.”).¹

14 There is a triable issue as to when Defendant discovered, or with reasonable
15 diligence should have discovered, the facts underlying each claim. Plaintiff argues that
16 Defendant was put on notice of the relevant facts in 2007 when the Hummels sold the
17 property to the trust by properly recorded deed and informed Defendant’s predecessor of
18 the trust’s interest in the property. Doc. 78 at 10. But even assuming Defendant had
19 knowledge of the transfer, it is not clear that this knowledge was sufficient to put
20 Defendant on notice that there was a mistake or fraud involved in the execution of the
21 DOT or that the DOT might be invalid. The 2007 transfer was executed by the Hummels
22 purporting to act as trustees of a family trust in their names. Defendant asserts, and
23 Plaintiff does not dispute, that this is a common practice that would not alert a lender to
24 wrongdoing or a potential flaw in its security interest. Doc. 82 at 10; *see* Doc. 83 at 7-11.

25 Moreover, after the 2007 transfer, the Hummels acted in a manner consistent with
26 the validity of the loan and DOT by making payments under the loan and seeking

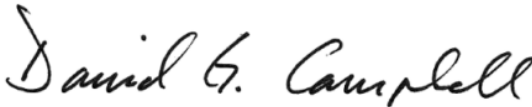
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28 ¹ Defendants brought the claims on August 18, 2017. Doc. 37. The claims are asserted against Plaintiff and the Hummels individually. *Id.* at 10-16.

1 modification when they could no longer make payments. At least one of the mistakes
2 underlying Defendant's reformation claim did not occur until the deeds were rerecorded
3 in Mohave County in January 2015, within the three-year limitations period. *See*
4 Docs. 73 at 5; 82 at 6-7 (arguing that the two warranty deeds and DOT were mistakenly
5 recorded in the wrong order in Mohave County on January 30, 2015). And Plaintiff
6 points to no facts that would have put Defendant on notice that the Hummels were not
7 trustees of the trust in 2008 when the DOT was executed, as Plaintiff asserts.

8 These disputed circumstances preclude summary judgment on the question of
9 when Defendant discovered, or should have discovered, the facts underlying its
10 counterclaims and third-party claims. *See Long v. City of Glendale*, 93 P.3d 519, 526
11 (Ariz. Ct. App. 2004) (When "discovery occurs and a cause of action accrues are usually
12 and necessarily questions of fact for the jury.") (quoting *Doe v. Roe*, 955 P.2d 951, 961
13 (Ariz. 1998)); *Braxton-Secret v. A.H. Robins Co.*, 769 F.2d 528, 531 (9th Cir. 1985)
14 ("[W]hether a party knew or should have known of a particular condition, [is] generally
15 [a] factual issue[] inappropriate for resolution by summary judgment."). The Court
16 therefore will not reconsider its denial of summary judgment on these claims.

17 **IT IS ORDERED** that Plaintiff's motion for reconsideration (Doc. 90) is **denied**.

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19 Dated this 28th day of August, 2018.

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22 David G. Campbell
23 Senior United States District Judge
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