IN THE SUPREME COURT OF GUAM

ANGEL MIGUEL DIAZ CRUZ,
Plaintiff-Appellant,

v.

JOSEPH M.M. CRUZ,
Defendant-Appellee.

Supreme Court Case No. CVA22-015
Superior Court Case No. CV1396-19

OPINION

Cite as: 2023 Guam 20

Appeal from the Superior Court of Guam
Argued and submitted on July 27, 2023
Hagåtña, Guam

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BEFORE: ROBERT J. TORRES, Chief Justice; F. PHILIP CARBULLIDO, Associate Justice; and KATHERINE A. MARAMAN, Associate Justice.

CARBULLIDO, J.:

[1] Plaintiff-Appellant Angel Miguel Diaz Cruz ("Angel") appeals the Superior Court's dismissal of his complaint for fraud against Defendant-Appellee Joseph M.M. Cruz ("Joseph"). On appeal, Angel argues the trial court erred in dismissing his complaint for failure to state a claim on statute of limitations grounds. He argues the court incorrectly found the statute of limitations commenced on March 24, 2014, when Joseph recorded allegedly fraudulent deeds with the Department of Land Management, because it had a flawed understanding of the statute of limitations. We agree that the Superior Court's legal conclusions were incorrect and find it was inappropriate to grant the motion to dismiss. We reverse.

I. FACTUAL AND PROCEDURAL BACKGROUND

[2] This case began on December 6, 2019, when Angel filed a complaint in the Superior Court of Guam accusing his son Joseph of abusing his position of trust by fraudulently acquiring two parcels of Angel's property in Talofofo via quitclaim deed. Record on Appeal ("RA"), tab 1 at 1-3 (V. Compl., Dec. 6, 2019). The complaint described Angel, an octogenarian, as "aged, elderly and frail." *Id.* at 1. Angel alleged he and Joseph had a confidential or fiduciary relationship. *See id.* at 2-3.

[3] On March 24, 2014, Joseph recorded two quitclaim deeds with the Department of Land Management purporting to voluntarily transfer the properties from Angel to Joseph. Angel's original complaint alleged these properties were transferred "through fraud by forging the signature of [Angel] on the deed and/or obtaining the deed by serving in a confidential relationship with an elderly person." *Id.* at 2-3. Paragraph 12 of the original complaint alleged that Angel

"only recently discovered sufficient facts to form his good faith belief that [Joseph] committed fraud." *Id.* at 3.

[4] Joseph successfully moved the trial court to dismiss the original complaint for failure to state a claim on statute of limitations grounds. The trial court found Angel did not sufficiently allege facts to demonstrate when the fraud was discovered for the purpose of tolling the applicable three-year statute of limitations. Specifically, the Superior Court found the phrase "recently discovered" too vague to establish when the statute of limitations commenced and gave Angel thirty days to amend with more precise language. RA, tab 21 at 6-7 (Dec. & Order, Apr. 15, 2022). Angel amended paragraph 12 of the complaint, asserting it was "on or about November 29, 2019," that he discovered the fraud. RA, tab 23 at 3 (First Am. V. Compl., Apr. 20, 2022). The only difference between the original and amended complaint was the allegation in paragraph 12 about discovery of the alleged fraud. *See* RA, tab 32 at 2 (Dec. & Order, Sept. 13, 2022).

[5] Joseph again moved to have the amended complaint dismissed because it failed to state a claim upon which relief could be granted. Referring to the amended language, Joseph argued it "fails to show jurisdiction with an adequate description of fact that the statute of limitations has not run and jurisdiction exists." *Id.* at 2-3. The Superior Court accepted Joseph's legal conclusion that "to avoid dismissal, Plaintiff must plead fraud and any tolling with particularity sufficient to show that the statute of limitations has not lapsed."[1] *Id.* at 3. The court found the elements of

[1] Although in the past we have declined to "split hairs" over the distinction between equitable tolling and the discovery rule, *e.g.*, *Taitano v. Calvo Fin. Corp. (Taitano I)*, 2008 Guam 12 ¶ 44 n.4, at least in the context of fraud it is helpful to note that 7 GCA § 11305 was adopted from California Code of Civil Procedure section 338. 7 GCA § 11305 (2005), SOURCE. That section "effectively codifie[d] [California's] delayed discovery rule," which delays accrual of a fraud claim until discovery of the facts constituting the fraud. *Britton v. Girardi*, 185 Cal. Rptr. 3d 509, 518 (Ct. App. 2015). "[U]nder the delayed discovery rule, a cause of action accrues and the statute of limitations begins to run when the plaintiff has reason to suspect an injury and some wrongful cause . . . ." *Fox v. Ethicon Endo-Surgery, Inc.*, 110 P.3d 914, 917 (Cal. 2005). In contrast, tolling occurs after the cause of action has accrued, temporarily suspending the running of the statute of limitations. *Rubenstein v. Doe No. 1*, 400 P.3d 372, 376 (Cal. 2017) ("Some judicial opinions loosely describe such rules as 'tolling the statute of limitations,' but again Witkin puts

fraud in the amended complaint were pleaded with sufficient particularity under the heightened pleading standard for special matters. *Id.* at 3-5. Yet the court concluded the statute of limitations began to run on March 24, 2014, the date the deeds were recorded. *Id.* at 7.

[6] The trial court relied on *Taitano v. Calvo Finance Corp.* (*Taitano II*), 2009 Guam 9, for the proposition that "a recorded deed that appears in the chain of title would almost certainly be discoverable through diligent inquiry." *Id.* (quoting *Taitano II*, 2009 Guam 9 ¶ 28). It reasoned Angel was put on constructive notice of the fraud when the deeds were recorded on March 24, 2014, because that was the "first incident" he "could have discovered the wrongful acts with reasonable diligence." *Id.* The court concluded:

> The face of the First Amended Complaint reflects that this Court lacks jurisdiction because the statute of limitations expired on or about March [2]4, 2017—three years from the date [Angel] was on constructive notice of the purported deeds and should have suspected wrongdoing. Even in viewing the First Amended Complaint in a light most favorable to [Angel] as the non-moving party, this Court lack[s] jurisdiction as the statute of limitations has expired.

Id. at 10. Despite the amended language stating when the deeds were discovered, the court found Angel on constructive notice prior to his discovery and dismissed the amended complaint because "[Angel] failed to provide a short and plain statement of the Court's jurisdiction as it relates to the statute of limitations for fraud."[2] *Id.* at 10-11.

[7] The following day, the trial court gave notice to the parties that a Decision and Order granting the motion to dismiss for failure to state a claim had been entered on the docket. Angel timely appealed.

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it more accurately: 'The foregoing rules of delayed *accrual* are to be distinguished from rules that, despite accrual of the cause of action, *toll or suspend* the running of the statute.'"), *as modified on denial of reh'g* (Nov. 1, 2017).

[2] We note that this seems to have been a "drive-by jurisdictional ruling." *See Castino v. G.C. Corp.*, 2010 Guam 3 ¶ 19. Whether Angel's claim was barred by the statute of limitations is not a jurisdictional question; we therefore treat the dismissal as one under Rule 12(b)(6) and not 12(b)(1). *See Supermail Cargo, Inc. v. United States*, 68 F.3d 1204, 1206 n.1 (9th Cir. 1995).

II. JURISDICTION

[8] This court has jurisdiction over appeals from final judgment. 48 U.S.C.A. § 1424-1(a)(2) (Westlaw through Pub. L. 118-22 (2023)); 7 GCA §§ 3107, 3108(a) (2005). Whether the order granting Joseph's Motion to Dismiss was a final judgment is at issue here. Joseph argues this court does not have jurisdiction, as "[n]o judgment has issued, and the dismissal was not with prejudice, therefore there is no final appealable judgment." Appellee's Br. at 6 (Feb. 23, 2023).

III. STANDARD OF REVIEW

[9] This court may review its own jurisdiction at any time and will dismiss an appeal if it finds jurisdiction to be lacking. *In re Est. of Maruyama*, 2013 Guam 23 ¶ 15. "Questions of jurisdiction involve interpretation of the applicable statutes concerning such jurisdiction." *People v. San Nicolas*, 2016 Guam 21 ¶ 9. "Issues of statutory construction and jurisdiction are reviewed *de novo*." *Id.* (quoting *People v. Quichocho*, 1997 Guam 13 ¶ 3).

[10] "Review of a dismissal for failure to state a claim is *de novo*." *Island Eye Ctr., Inc. v. Lombard*, 2020 Guam 32 ¶ 9 (quoting *Core Tech Int'l Corp. v. Hanil Eng'g & Constr. Co.*, 2010 Guam 13 ¶ 16). "In ruling on a motion to dismiss under Rule 12(b)(6), a court must accept all the well-pleaded facts as true, 'construe the pleading in the light most favorable to the non-moving party, and resolve all doubts in the non-moving party's favor.'" *Guam Police Dep't v. Guam Civ. Serv. Comm'n* (*Charfauros*), 2020 Guam 12 ¶ 8 (quoting *First Hawaiian Bank v. Manley*, 2007 Guam 2 ¶ 9). "Dismissal for failure to state a claim is appropriate only 'if it appears beyond doubt that the [non-moving party] can prove no set of facts in support of his claim which would entitle him to relief.'" *Taitano II*, 2009 Guam 9 ¶ 6 (alteration in original) (quoting *Taitano v. Calvo Fin. Corp. (Taitano I)*, 2008 Guam 12 ¶ 9, *aff'd on reh'g*, 2009 Guam 9).

[11] The trial court's determination that a claim is time-barred by a statute of limitations is a question of law reviewed *de novo*. *Gayle v. Hemlani*, 2000 Guam 25 ¶ 22. "When the statute of limitations begins to run is also [a] question of law reviewed *de novo*." *Id.* "[W]hen a complaint shows on its face or on the basis of judicially noticeable facts that the cause of action is barred by the applicable statute of limitations, the plaintiff must plead facts which show an excuse, tolling, or . . . some other basis for avoiding the statutory bar." *Amsden v. Yamon*, 1999 Guam 14 ¶ 12. It is rarely appropriate to grant a Guam Rule of Civil Procedure 12(b)(6) motion to dismiss if the question involves what a reasonable person should know (such as the discovery rule) because it presents a mixed question of law and fact that depends on matters outside the pleadings. *Taitano I*, 2008 Guam 12 ¶ 46; *Allen v. Richardson*, 2020 Guam 13 ¶ 7. Such a dismissal must be reversed if "the factual and legal issues are not sufficiently clear to permit [the court] to determine with certainty whether the [the discovery rule] could be successfully invoked." *Taitano I*, 2008 Guam 12 ¶ 46 (first alteration in original) (quoting *Supermail Cargo, Inc. v. United States*, 68 F.3d 1204, 1207 (9th Cir. 1995)).

IV. ANALYSIS

A. The Order Granting the Motion to Dismiss for Failure to State a Claim was a Final Judgment

[12] Joseph argues this court lacks jurisdiction over the present appeal because there has been "no final appealable judgment." Appellee's Br. at 6. Relying on Ninth Circuit case law, Joseph contends that because the Superior Court did not dismiss Angel's complaint "with prejudice," the dismissal is not directly appealable. *Id.* at 9. Specifically, Joseph claims that under the Guam Rules of Civil Procedure ("GRCP"), a dismissal under Rule 12(b)(6) is not a final order and therefore is not appealable unless it is explicitly "with prejudice." *Id.* at 11-12 (citing *Stanger v.*

City of Santa Cruz, 653 F.2d 1257 (9th Cir. 1980); *Scott v. Eversole Mortuary*, 522 F.2d 1110 (9th Cir. 1975); Guam R. Civ. P. 12(b)(6)).

[13] We have jurisdiction over "appeals arising from . . . final orders of the Superior Court." 7 GCA § 3107(b). However, "[w]hile 7 GCA § 3107(b) confers jurisdiction over 'final orders,' such jurisdiction must be viewed in light of 7 GCA § 3108(a), which creates the availability of appellate review only 'upon the rendition of final judgment in the Superior Court from which appeal or application for review is taken.'" *Duenas v. George & Matilda Kallingal, P.C.*, 2013 Guam 28 ¶ 15 (citations omitted). "Section 3108(a) is a codification of the final judgment rule, which mandates 'that a party must ordinarily raise all claims of error in a single appeal following final judgment on the merits.'" *Id.* (quoting *Flanagan v. United States*, 465 U.S. 259, 263 (1984)).

[14] "Guam law defines a final judgment as 'the final determination of the rights of the parties in an action or proceeding.'" *Hawaiian Rock Prods. Corp. v. Ocean Hous., Inc.*, 2016 Guam 4 ¶ 16 (quoting *Duenas*, 2013 Guam 28 ¶ 15). "In other words, to appeal an order as a final judgment, the order must have the effect of disposing of the case and must be reduced to a final judgment." *People v. Angoco*, 2006 Guam 18 ¶ 10. In determining whether an order is a final judgment, we have looked to whether "[t]he trial court . . . issued a notice of entry on the docket, consistent with the requirements of a final judgment." *Hawaiian Rock*, 2016 Guam 4 ¶ 17; *see also Sky Enter. v. Kobayashi*, 2002 Guam 24 ¶ 16 ("[A] judgment . . . is entered within the meaning of [Guam Rule of Appellate Procedure 4(a)] when it is entered in the civil or criminal docket and notice is given to the parties." (quoting Guam R. App. P. 4(a) (2002))); Guam R. Civ. P. 77(d).

[15] "Ordinarily, an order . . . granting a motion to dismiss for failure to state a claim amounts to a final judgment." *Portis Int'l, LLC v. Marquardt*, 2018 Guam 22 ¶ 6. This principle is underscored by the fact that we have stated GRCP 58, which governs entry of judgment, applies

to "an order [granting] a motion to dismiss under GRCP 12(b)(6)" and must comply with the "separate document rule."[3] *Id.* ¶ 9.

[16] It is troubling that both parties seem to default to federal case law when there is relevant controlling precedent from this court.[4] *See Sumitomo Constr., Co. v. Gov't of Guam*, 2001 Guam 23 ¶ 4 n.1 ("In our view, the complete lack of citation to precedent established by this court tends to indicate that the parties either were extremely careless in preparing for this appeal or simply refuse to recognize this court's case law as controlling legal authority in this jurisdiction. Either implication is disconcerting."); *In re Est. of Perez*, 2005 Guam 27 ¶ 31 n.11 ("In the *absence of* binding precedent . . . , this court has held California case law to be persuasive authority . . . ." (emphasis added)); *Sumitomo Constr. Co. v. Zhong Ye, Inc.*, 1997 Guam 8 ¶ 5 ("[W]hen *needed*, this Court will appropriately consider federal authorities as persuasive sources of interpretation." (emphasis added)).

[17] Joseph's invocation of federal precedent does nothing to displace the general principle that granting the motion to dismiss for failure to state a claim "amount[ed] to a final judgment." *See Portis Int'l*, 2018 Guam 22 ¶ 6. Notice was given of entry on the docket, strengthening the conclusion this was a final judgment. *See Hawaiian Rock*, 2016 Guam 4 ¶ 17. Further, Angel had

[3] It is true that after issuing its Decision and Order granting the 12(b)(6) motion, the Superior Court never issued a separate document captioned as a "Judgment." *See* Certified Docket Sheet at 2 (Nov. 14, 2022). Nevertheless, the separate document rule does not preclude our resolution of this appeal. *See In re Dep't of Health & Soc. Servs.*, 2017 Guam 15 ¶ 28; *In re Registration of Title to Est. No. 2959*, 2023 Guam 6 ¶ 9. Angel filed a notice of appeal within 30 days of the clerk issuing a notice of entry on the docket, and 150 days have passed since the order was issued. *See* Guam R. Civ. P. 58(b)(2). As such, we need not determine whether a notice of entry under GRCP 77(d) should be treated as a separate document under GRCP 58. *See Brown v. Fifth Third Bank*, 730 F.3d 698, 701 (7th Cir. 2013) ("We should not allow a Rule 77(d) notification to do service for a Rule 58 judgment. Our cases that allow that should be overruled.").

[4] Our concerns are not eased by Joseph's bald citation to *Ukau v. Wang*, 2016 Guam 26, for the dubious proposition that it is unclear whether our jurisdiction is dependent on the Superior Court's use of the magic words "with prejudice." *See* Appellee's Br. at 11; *accord Butler v. Adams*, 397 F.3d 1181, 1183 (9th Cir. 2005) ("The district court in dismissing the complaint did not use the magic words "with prejudice" . . . . Nonetheless, we construe the court's action as a final judgment . . . .").

been granted leave to amend once, and because the court did not allow leave to amend a second time, it must have determined that the action would not be saved by amendment. *Accord Martinez v. Gomez*, 137 F.3d 1124, 1125 (9th Cir. 1998) (per curiam) ("[I]t is clear that there is nothing further [the plaintiff] can do and the district court must have intended this order to end the case. Therefore, we treat the dismissal as a final order."); *see also* Guam R. Civ. P. 15(a) (providing that even where amendment is not a matter of right, the court should grant leave to amend "when justice so requires").

[18] Joseph misinterprets Ninth Circuit case law. *See* Appellee's Br. at 10-11. In *Stanger v. City of Santa Cruz*, 653 F.2d 1257 (9th Cir. 1980), the Ninth Circuit cited *Scott v. Eversole Mortuary*, 522 F.2d 1110 (9th Cir. 1975), and noted "[d]ismissal of a complaint 'with prejudice' for failure to state a claim upon which relief can be granted is a dismissal of the action and is appealable." *Stanger*, 653 F.2d at 1257. *Eversole Mortuary* stands for the proposition that an order is final and appealable if it is "clear that a court determined that the action could not be saved by any amendment of the complaint which the plaintiff could reasonably be expected to make." 522 F.2d at 1112 (quoting *Jackson v. Nelson*, 405 F.2d 872, 873 (9th Cir. 1968) (per curiam)). The *Eversole Mortuary* court determined that because the judge did not allow leave to amend, "he must have determined that the action would not be saved by amendment." *Id.* Contrary to Joseph's contentions, neither case adopts a requirement that "with prejudice" be included in a dismissal for it to be appealable.

[19] Rather, the Ninth Circuit is consistent in holding "dismissal without leave to amend is a final, appealable order." *Iten v. Cnty. of Los Angeles*, 81 F.4th 979, 983 (9th Cir. 2023); *Broam v. Bogan*, 320 F.3d 1023, 1026 n.1 (9th Cir. 2003)) (noting that although order of dismissal did not state dismissal was "with prejudice," it would "consider a dismissal of a complaint without

granting leave to amend a final and appealable order '[i]f it appears that the district court intended the dismissal to dispose of the action'" (alteration in original) (quoting *Hoohuli v. Ariyoshi*, 741 F.2d 1169, 1172 n.1 (9th Cir. 1984))). Even under federal case law, the order would be considered final. *See, e.g.*, *Plaut v. Spendthrift Farm, Inc.*, 514 U.S. 211, 228 (1995) ("The rules of finality, both statutory and judge made, treat a dismissal on statute-of-limitations grounds the same way they treat a dismissal for failure to state a claim[:] . . . as a judgment on the merits.").

[20] The order was a final judgment on the merits because the Superior Court found the statute of limitations had run on Angel's claim. The case was fully disposed of, and the rights of the parties were determined with finality. *See Hawaiian Rock*, 2016 Guam 4 ¶ 16; *Angoco*, 2006 Guam 18 ¶ 10. We have jurisdiction.

B. The Superior Court Erred in Concluding the Statute of Limitations Began on March 24, 2014

[21] Angel argues the Superior Court erred in finding the statute of limitations commenced on the date Joseph recorded the quitclaim deeds. He correctly observes that the trial court conflated the constructive notice given to subsequent purchasers under Guam's recording statute (21 GCA § 37101) with the inquiry notice that starts the statute of limitations in a fraud case (1 GCA § 719).[5]

[5] We note that this confusion was perhaps imported into Guam law when the legislature modeled both sections on the California Civil Code. *Compare* 21 GCA § 37101 (2005), *and* 1 GCA § 719 (2005), *with* Cal. Civ. Code § 19 (West), *and* Cal. Civ. Code § 1213 (West). We find the following explanation by the California Court of Appeals helpful in explaining the distinction:

> "Actual notice is defined as 'express information of a fact,' while constructive notice is that 'which is imputed by law.'"
>
> . . . .
>
> Constructive notice of a lien or other interest in property arises from the proper recording of that interest. . . .
>
> A purchaser may also have constructive notice of a fact affecting his or her property rights where the purchaser "has knowledge of circumstances which, upon reasonable inquiry, would lead to that particular fact." . . . . This type of constructive notice is often described as inquiry notice.

Vasquez v. LBS Fin. Credit Union, 265 Cal. Rptr. 3d 78, 86-87 (Ct. App. 2020) (internal citations omitted), *as modified* (July 14, 2020). For clarity, in this opinion we use "constructive notice" to refer to the notice imputed by 21 GCA §

Appellant's Br. at 8 (Jan. 10, 2023). We agree. Angel was neither given constructive notice under the recording statute nor was he on inquiry notice under Guam law.

1. Angel was not on constructive notice under 21 GCA § 37101 because the statute does not apply to him

[22] "In cases involving statutory construction, the plain language of a statute must be the starting point." *In re Guardianship of McDonald*, 2023 Guam 3 ¶ 14 (per curiam) (quoting *Pangelinan v. Gutierrez*, 2000 Guam 11 ¶ 23). Under 21 GCA § 37101, a conveyance of real property that is properly recorded with the Department of Land Management is "constructive notice of the contents thereof to *subsequent purchasers and mortgagees*." 21 GCA § 37101 (2005) (emphasis added). Based on the express language of the statute, 21 GCA § 37101 has no application here because the primary purpose of any recording law is the protection of subsequent mortgagees and purchasers—which Angel was not. *See Manvil Corp. v. E.C. Gozum & Co.*, 1998 Guam 20 ¶ 9 ("Recording statutes serve to protect intending purchasers and encumbrancers against the evils of secret grants and secret liens and the subsequent frauds attendant upon them.").

[23] Our plain reading of the statute is confirmed by California jurisprudence regarding the statute from which section 37101 was derived. 21 GCA § 37101, SOURCE; *see also Fenwick v. Watabe Guam, Inc.*, 2009 Guam 1 ¶ 38 ("We must therefore be guided first and foremost by the plain language of our own statute, informed by California case law construing the statute from which [it] was derived . . . ."). California recognizes that recording a deed may impart constructive notice in certain contexts, but a properly recorded document "only gives notice to subsequent

37101 and "inquiry notice" to refer to the notice imputed by 1 GCA § 719. *See Alfaro v. Cmty. Hous. Improvement Sys. & Plan. Ass'n, Inc.*, 124 Cal. Rptr. 3d 271, 300 (Ct. App. 2009) (noting prior cases "differentiated constructive notice from actual knowledge and from inquiry notice"), *as modified on denial of reh'g* (Mar. 18, 2009). But we note that many courts, including our own, have used these terms interchangeably in the past. It is understandable how these two standards could be confused, but this error emphasizes the importance of looking first to Guam case law and then to persuasive authority interpreting similar statutes. *See Fenwick v. Watabe Guam, Inc.*, 2009 Guam 1 ¶ 38 ("We must therefore be guided first and foremost by the plain language of our own statute, informed by California case law construing the statute from which [it] was derived . . . .").

prospective purchasers or encumbrancers. [Recordation] does not give notice to the parties to the recorded document, or to persons who acquired a prior recorded interest. Recordation also does not give notice that the document is forged . . . ." Harry D. Miller & Marvin B. Starr, Cal. Real Est. § 10:60 (4th ed. (Dec. 2023 Update)) (emphases and citations omitted). Constructive notice through the recordation of a deed has the purpose of "protect[ing] innocent purchasers and encumbrancers of property by giving notice of potential limitations on title." *Id.* § 10:75 (citation omitted). "An invalid document does not become valid and enforceable merely because it is recorded." *Id.* Despite the recording statute, because "[a] forged instrument is totally void and does not pass title," even when a forged document is recorded in the chain of title, "the true owner of the property conveyed by the forgery can assert his or her interest against a subsequent bona fide purchaser." *Id.* (citations omitted).

[24] In *Arthur v. Davis*, a California Court of Appeal noted that the constructive notice imparted because of the recording statutes has no applicability outside of informing prospective purchasers and mortgagees of the property's title status. 178 Cal. Rptr. 920, 923 n.4 (Ct. App. 1981). "Were the rule otherwise, an owner and possessor of real property would be required to periodically check the official records for wild deeds to [e]nsure that the statute of limitations on a slander of title action had not run." *Id.* In *Berendsen v. McIver*, a California District Court of Appeal rejected the argument that a plaintiff had constructive notice of the contents of a deed simply because it was recorded:

> Section 1213 does not apply to a grantee of the particular deed recorded. The section provides for constructive notice to "subsequent purchasers and mortgagees" only. . . . "The mere recording of an instrument is not notice of a mistake therein: for otherwise, as has been observed, no contract could be reformed after the lapse of three years from that date."

272 P.2d 76, 80 (Cal. Dist. Ct. App. 1954) (citations omitted).

[25] The trial court erred in finding constructive notice under 21 GCA § 37101 in this case. The statute does not require a landowner to periodically check for wild deeds or risk being defrauded.

2. Constructive notice from a public record is no defense to fraud

[26] Angel also argues the trial court was wrong because "[p]ublic records cannot be used to defend fraud." Appellant's Br. at 12. We agree.

[27] Jurisdictions are uniform in finding that "notice is obviously irrelevant in a fraud action" and "the fact that the victim had constructive notice of the truth from public records is no defense to fraud." *Bishop Creek Lodge v. Scira*, 54 Cal. Rptr. 2d 745, 752 (Ct. App. 1996). Case law continually recognizes that "[w]here fraud is involved, public records are not constructive notice of the true facts to the defrauded party." *Regus v. Schartkoff*, 319 P.2d 721, 726 (Cal. Dist. Ct. App. 1957).

[28] In the context of a recording statute, this concept is especially developed. Because "the purpose of the recording acts is to protect bona fide purchasers for value and not those who indulge in fraud," jurisdictions refuse to protect the perpetrators of fraud by charging the defrauded party with constructive notice of facts appearing in the records. *Grange Co. v. Simmons*, 21 Cal. Rptr. 757, 763 (Dist. Ct. App. 1962); *see also Seeger v. Odell*, 115 P.2d 977, 980 (Cal. 1941); *Moseley v. All Things Possible, Inc.*, 719 S.E.2d 656, 659 (S.C. 2011); *Kotzman v. Papish*, 219 P.2d 425, 427-28 (Kan. 1950).

[29] Guam law does not protect perpetrators of fraud by charging defrauded parties with constructive notice of facts appearing in public records. Constructive notice from Joseph's recordation of the deeds with the Department of Land Management is not a defense to any alleged fraudulent conduct, absent circumstances that are not present here.

3. Angel had no duty to examine Department of Land Management records, and reasonable diligence would not have put him on inquiry notice

[30] Although the Superior Court failed to distinguish between constructive notice under the recording statute and the inquiry notice that begins the statute of limitations in all fraud claims, its decision partly relied on an independent finding of inquiry notice. *Compare* 21 GCA § 37101, *with* 1 GCA § 719 ("Every person who has actual notice of circumstances sufficient to put a prudent man upon inquiry as to a particular fact, has constructive notice of that fact itself in all cases in which, by prosecuting such inquiry, he might have learned such fact."); *see also Roche v. Hyde*, 265 Cal. Rptr. 3d 301, 350-51 (Ct. App. 2020) ("[T]hough defrauded buyers will not be deemed to have constructive notice of public records, this does not insulate them from evidence of their actual knowledge of the contents of documents presented to them or from being charged with inquiry notice based on those documents." (alteration in original) (quoting *Alfaro v. Cmty. Hous. Improvement Sys. & Plan. Ass'n, Inc.*, 124 Cal. Rptr. 3d 271, 300-01 (Ct. App. 2009))), *as modified on denial of reh'g* (July 29, 2020). The court found the three-year statute of limitations commenced on the date Joseph recorded the quitclaim deeds because "it was at that moment" that Angel "first . . . could have discovered the wrongful acts with reasonable diligence." RA, tab 32 at 7 (Dec. & Order). This was also error.

[31] Title 7 GCA § 11305(d) provides a three-year statute of limitations on fraud actions. Such a cause of action does not accrue "until the *discovery* by the aggrieved party of the facts constituting the fraud . . . ." 7 GCA § 11305(d) (2005) (emphasis added).

[32] We have held that "discovery" under this section occurs "when the claimant, exercising reasonable diligence, obtains information that would put a reasonable person on inquiry." *Burkhart v. Miranda*, 2013 Guam 2 ¶ 26. In other words, the statute of limitations begins to run on a fraud claim when "the plaintiff suspects or should suspect that his injury was caused by

wrongdoing or that someone has done something wrong to him." *Gayle*, 2000 Guam 25 ¶ 24. This is an objective standard. *Id.* ¶ 25; *DFS Guam L.P. v. A.B. Won Pat Int'l Airport Auth.*, 2020 Guam 20 ¶ 119. "[B]ecause statute of limitations issues often depend on contested questions of fact, dismissal is appropriate only if the complaint on its face is conclusively time-barred." *Firestone v. Firestone*, 76 F.3d 1205, 1209 (D.C. Cir. 1996) (per curiam); *see also Helman v. EPL Prolong, Inc.*, 743 N.E.2d 484, 492 (Ohio Ct. App. 2000) ("To conclusively show that the action is time barred, the complaint must demonstrate both (1) the relevant statute of limitations, and (2) the absence of factors which would toll the statute, or make it inapplicable."); *Taitano I*, 2008 Guam 12 ¶ 46.

[33] In *Taitano II*, we looked to Black's Law Dictionary to shape our understanding of constructive notice to include "[n]otice arising by presumption of law from the existence of facts and circumstances that a party *had a duty* to take notice of." 2009 Guam 9 ¶ 29 (alteration in original) (emphasis added) (quoting Black's Law Dictionary 1089 (7th ed. 1999)). As discussed above, Guam's recording statute does not impose a duty on landowners to periodically search public records for wild deeds. California courts have observed: "Admittedly, in some cases, a fraud plaintiff's unreasonable failure to inquire into the truth may bar recovery. Nevertheless, a fraud plaintiff does not have the 'duty of inquiry' that a purchaser of real property does." *Scira*, 54 Cal. Rptr. 2d at 752-53. California's common-sense approach is consistent with the law of other jurisdictions. For example, the Fifth Circuit has held "the recording of a document in public records serves as constructive notice for limitations purposes only for those persons who are under an obligation to search the records." *Kansa Reinsurance Co. v. Cong. Mortg. Corp. of Tex.*, 20 F.3d 1362, 1370 (5th Cir. 1994). That court concluded that once an interest in property was

acquired, the owner "was not required to make continuous searches of the real property records for interests subsequently secured." *Id.* at 1369-70.

[34] As Angel was under no legal obligation to make continuous searches of the real property records for interests subsequently secured against him, we must then determine whether a reasonable person exercising reasonable diligence would have nonetheless been put on inquiry notice by the recordation. *See Roche*, 265 Cal. Rptr. 3d at 350-51. We conclude that they would not.

[35] Because 7 GCA § 11305 is based on California's Code of Civil Procedure, 7 GCA § 11305, SOURCE, California case law is again persuasive, *Burkhart*, 2013 Guam 2 ¶ 20. In *Tarke v. Bingham*, the California Supreme Court analyzed the running of the statute of limitations under Code of Civil Procedure section 338, holding:

> Where no duty is imposed by law upon a person to make inquiry, and where, under the circumstances, "a prudent man" would not be put upon inquiry, the mere fact that means of knowledge are open to a plaintiff, and he has not availed himself of them, does not debar him from relief when thereafter he shall make actual discovery. The circumstances must be such that the inquiry becomes a duty, and the failure to make it a negligent omission. In this case, though means of information were open to the plaintiff, it does not appear that there was any duty devolving upon him to make use of them. Nothing had occurred to excite his suspicion, or to put him upon inquiry . . . .

55 P. 759, 760 (Cal. 1898) (per curiam) (internal citations omitted). Much more recently, the California Court of Appeals has held that "[t]he existence of . . . public records may be relevant to whether the victim's [actions were reasonable], but it is not, by itself, conclusive." *Scira*, 54 Cal. Rptr. 2d at 752.

[36] The proposition put forth by the Superior Court—that as a matter of law an existing landowner, under no legal obligation to search the real property records, would have instantaneously discovered the deeds filed in this case with the exercise of reasonable diligence—

is manifestly unreasonable. The existence of the quitclaim deeds as a matter of public record is not conclusive but merely relevant to whether Angel's actions were reasonable. *See id.* at 752. His fraud action is barred only if he unreasonably failed to inquire into the truth. *See id.* at 752-53. The face of Angel's amended complaint gives no indication that he suspected or should have suspected that his son had surreptitiously recorded quitclaim deeds to his property. *See Gayle*, 2000 Guam 25 ¶ 24. Under the circumstances as alleged in the complaint, a prudent person would not be put upon inquiry because nothing had occurred to excite his suspicion. *See Tarke*, 55 P. at 760. The mere fact that the land records were open to Angel, and he had not availed himself of them, does not bar him from relief. *See id.*

[37] It seems that our decisions in *Taitano I* and *II* caused some confusion below, so we take this opportunity to clarify that neither opinion stands for the proposition that a cause of action for a fraudulent transfer of land accrues automatically when the allegedly fraudulent transfer is recorded. The "gravamen" of those cases was a dispute over a parcel of land between the heirs of a brother and the heirs of a sister. *Taitano I*, 2008 Guam 12 ¶ 3. The amended complaint in that case alleged the sister had been given title to the land in a deed that was recorded in 1918, and her children took title under intestacy. *Id.* However, the sister's children never recorded their interest in the land. *Id.* ¶ 47. But the complaint also alleged that in 1951, after the brother died, the Probate Court awarded title to the brother's children. *Id.* ¶ 5. Then in 1968 and 1969, the interests held by the brother's children were conveyed to third parties, and those deeds were recorded. *Id.* ¶ 6. Finally, interest in the property was conveyed to a corporation, which then filed an application in the Island Court to register title in 1970. *Id.* ¶ 10. The plaintiffs in *Taitano* named both the heirs of the brother and the corporation as defendants in their fraud suit. *Id.* ¶ 20. The plaintiffs claimed that the heirs defrauded them with the conveyances in 1968 and 1969, and that the corporation

defrauded them by attempting to register title in 1970. *Id.* ¶ 6. Notably, we did not hold that the statute of limitations automatically began to run when the allegedly fraudulent conveyances were registered in the late 1960s.[6] Nor did we hold that the land registration case itself, of which the plaintiffs claimed they had no personal notice, conclusively began the clock for the running of the statute of limitations. *See id.* ¶ 32.

[38] Rather, we held their cause of action accrued, at the latest, in 1970 because the plaintiffs "would have been able to discover through numerous public records and notices that [the land] had been registered by [the corporation] in 1970, and that [the brother's] heirs had obtained title through probate in 1951 and 1953." *Id.* ¶ 50. As we observed, although the plaintiffs claimed they had no "notice" in the technical legal sense, "one cannot reasonably infer that [sister's] children were unaware they had an uncle or that he eventually died. Knowledge of [brother's] death, even if obtained years later, would have put them on constructive notice of the inevitable probate proceeding for purposes of the discovery rule." *Id.* ¶ 53 n.6. Although we did not explicitly say the plaintiffs were put on "inquiry notice," we emphasized that notice of the petition in the 1970 land registration case "included a description of the property [that was] published (1) in a Guam newspaper for four successive weeks, and (2) in Agana and three additional places within Dededo," *id.* ¶ 50, because that would have been enough to put "a prudent man upon inquiry," *see* 1 GCA § 719; *Tarke*, 55 P. at 760. Our holding in *Taitano I* was that the statute of limitations on the fraud claim began to run in 1970 because the face of the amended complaint showed that was when a

[6] This was despite the fact it was implied that the plaintiffs had actual knowledge of the transfers at the time they occurred. *See Taitano I*, 2008 Guam 12 ¶ 47 ("The only knowledge that Torres' Heirs specifically disavow is notice of the probate proceeding in 1949, the probate decrees of 1951 and 1953, and the land registration in 1970."). Our statement that the cause of action likely accrued earlier than 1970 should be read in this context. *See id.* ¶ 50. Although defrauded landowners are not deemed to have constructive notice of public records, "this does not insulate them from evidence of their actual knowledge . . . ." *Roche v. Hyde*, 265 Cal. Rptr. 3d 301, 350-51 (Ct. App. 2020).

reasonable person should have suspected wrongdoing. *Taitano I*, 2008 Guam 12 ¶ 45 (quoting *Gayle*, 2000 Guam 25 ¶ 24).

[39] The trial court relied heavily on our opinion issued on rehearing in *Taitano II*, but that reliance was misplaced because that opinion dealt almost exclusively with the plaintiffs' quiet title claim—not their fraud claim. *See Taitano II*, 2009 Guam 9 ¶¶ 1-4. Contrary to the trial court's conclusions of law, the statute of limitations is an affirmative defense that must be pleaded by the *defendant*, or it is waived. *See* Guam R. Civ. P. 8(c); *Yoshida v. Guam Transp. & Warehouse, Inc.*, 2013 Guam 5 ¶ 34. This means that statutes of limitations are generally not jurisdictional in the civil context. *See Agana Beach Condo. Homeowners' Ass'n v. Mafnas*, 2013 Guam 9 ¶ 45; *Quitugua v. Flores*, 2004 Guam 19 ¶ 31; *see also State ex rel. S.O.*, 2005 UT App 393, ¶ 8, 122 P.3d 686 (per curiam).

[40] Although our statement in *Taitano II* was correct that neither *Amsden v. Yamon*, 1999 Guam 14, nor *Ponderosa Homes, Inc. v. City of San Ramon*, 29 Cal. Rptr. 2d 26 (Ct. App. 1994), "should be read as establishing a heightened pleading requirement for jurisdictional issues," *Taitano II*, 2009 Guam 9 ¶ 27, it is perhaps understandable how one could misinterpret our subsequent analysis to mean that statutes of limitations are jurisdictional.[7] But this is incorrect. Our holding was merely that when a complaint is dismissed with leave to amend on statute of limitations grounds, the amended complaint should contain a "short and plain statement . . . of why

[7] We stated that "[r]ather, *Amsden* stands for the proposition that a pleading should affirmatively indicate the source of the court's jurisdiction to hear the case. Here, the Plaintiffs have done just that. Their Complaint specifically indicates the reason that the one-year statute of limitations should not apply . . . ." *Taitano II*, 2009 Guam 9 ¶ 27. The reference to jurisdiction in this portion of our opinion should be read in the context of the unique procedural posture of that case. The plaintiffs had alleged that the statute of limitations did not apply because they failed to receive personal notification of the 1970 land registration, divesting the Island Court of jurisdiction and rendering the resulting judgment void and subject to collateral challenge at any time. *Id.* ¶ 3. Thus, our discussion of a short and plain jurisdictional statement was a reference to pleading the Island Court's lack of jurisdiction, which we found to be adequate. *Id.* ¶ 30. This was not a blanket requirement that all plaintiffs must plead avoidance of statutes of limitations in their jurisdictional statements.

the statute of limitations should not apply." *Id.* ¶ 30; *see also Zenith Radio Corp. v. Hazeltine Rsch., Inc.*, 401 U.S. 321, 334-35 (1971) ("[W]here . . . a plaintiff has no reason to anticipate that a claim of limitations will be raised against him, he need not set forth his claim of tolling until the limitations claim is raised. . . . The interests of justice thus clearly require that if [defendant's] limitations defense is to be considered on its merits, [plaintiff's] claim of tolling must be dealt with as well."). Angel's amended complaint met that requirement.

[41] The trial court also misapplied our holding in *Amsden*, which provides an exception to the general rule that it is difficult to successfully assert an affirmative defense in a Rule 12(b)(6) motion to dismiss. We stated that "[w]hen a complaint shows on its face or on the basis of judicially noticeable facts that the cause of action is barred by the applicable statute of limitations, the plaintiff must plead facts which show an excuse, tolling, or for some other basis for avoiding the statutory bar." *Amsden*, 1999 Guam 14 ¶ 12 (citation omitted). *Amsden* was a personal injury case where we took judicial notice of the date of the accident because it was "undisputed that the statute of limitations on the underlying claim began to run on the day of the accident." *Id.* ¶ 9. Thus, in that case, it conclusively appeared on the face of the complaint and on the basis of judicially noticeable facts that the action was time-barred.

[42] A plaintiff may plead themselves out of court if they allege facts that demonstrate their claim is time-barred. *Accord Kauthar SDN BHD v. Sternberg*, 149 F.3d 659, 670 & n.14 (7th Cir. 1998) (collecting cases), *abrogated on other grounds by Morrison v. Nat'l Austl. Bank Ltd.*, 561 U.S. 247 (2010). But "[w]here a complaint does not reveal on its face that it is barred by the statute of limitations, a plaintiff has no obligation to plead around the defense." *Accord JPMorgan Chase Bank v. Ward*, 245 Cal. Rptr. 3d 303, 312 (Ct. App. 2019). We agree with Judge Posner that "[a] plaintiff is not required to negate an affirmative defense in his or her complaint, for the painfully

obvious reason that the defendant will not have pleaded any affirmative defenses until it files its answer or a motion to dismiss." *Stuart v. Loc. 727, Int'l Bhd. of Teamsters*, 771 F.3d 1014, 1018 (7th Cir. 2014).

[43] The Superior Court erred in concluding Angel's claim was time-barred. The conclusion that the amended complaint did not establish that the statute of limitations was tolled after the deeds were recorded upends the standard, "placing the burden on the plaintiff to plead facts supporting an argument against the statute of limitations." *See Shaut v. Roberts*, 2022-Ohio-817, 186 N.E.3d 302, at ¶ 12, *appeal not allowed*, 2022-Ohio-2246, 189 N.E.3d 831. We find persuasive the analysis of the Ohio Court of Appeals on their similar version of Rule 12:

> The absence of allegations demonstrating the inapplicability of the statute of limitations defense is not a cognizable reason to dismiss the action. In asserting an affirmative defense, the defendant bears the burden of proving the existence of facts to support the claim.
>
> [Plaintiff] has maintained the same objection to the court's decision from the beginning – that the complaint satisfies the Civ.R. 8 notice pleading standard. We agree with [plaintiff]. Because the trial court shifted the burden to [plaintiff] to disprove the statute-of-limitations defense within the four corners of the first amended complaint, the trial court erred.

Id. ¶¶ 12-13. Because this case was only at the pleading stage, Angel's amended complaint must be construed in the light most favorable to him, and all doubts must be resolved in his favor. Dismissal would be appropriate only if it appeared beyond doubt that he "can prove no set of facts in support of his claim which would entitle him to relief." *See Taitano II*, 2009 Guam 9 ¶ 6 (citation omitted). Angel was not, as a matter of law, on inquiry notice of his son's allegedly fraudulent transfers.

[44] We reiterate our statements from *Taitano I* that "[g]enerally, the applicability of [the discovery rule] depends on matters outside the pleadings, so it is rarely appropriate to grant a Rule 12(b)(6) motion to dismiss (where review is limited to the complaint)," and that such a dismissal

must be reversed if "the factual and legal issues are not sufficiently clear to permit [the court] to determine with certainty whether the [discovery rule] could be successfully invoked." 2008 Guam 12 ¶ 46 (third alteration in original) (citations omitted). It was inappropriate to grant the motion to dismiss in this case, and the dismissal must be reversed because the factual and legal issues are too unclear to invoke the statute of limitations with certainty. Joseph's claim that reversal is not required is meritless.

[45] When evaluating a motion to dismiss, a court must "draw all reasonable inferences in favor of the nonmoving party." *Accord Usher v. City of Los Angeles*, 828 F.2d 556, 561 (9th Cir. 1987). Here, the reasonable inference is that the fraud was not discovered until November 19, 2019, invoking the discovery rule and delaying accrual of Angel's fraud claim. Angel's complaint contained a short and plain statement that the alleged fraud was not discovered until November 19, 2019. This was enough to survive a motion to dismiss on statute of limitations grounds.

V. CONCLUSION

[46] The Superior Court erred when it concluded the statute of limitations began on March 24, 2014. The plain language of Guam's recording statute puts only subsequent purchasers and mortgagees on constructive notice of what can be found by searching the records of the Department of Land Management. *See* 21 GCA § 37101. Recording is intended to protect innocent parties and not to aid fraudulent ones; recording a fraudulent deed does not put the defrauded party on constructive notice of their fraud claim. There are no facts alleged in Angel's amended complaint that establish he was on inquiry notice as a matter of law. No circumstances were pleaded which would compel a reasonable person to investigate the Department of Land Management records, and, as a matter of public policy, it would be unreasonable to require an owner and possessor of real property to periodically check the official records for wild deeds. *See Arthur*, 178 Cal. Rptr.

at 923 n.4. Angel's complaint contained a short and plain statement that the alleged fraud was not discovered until November 19, 2019, which is enough to survive a motion to dismiss on statute of limitations grounds. We **REVERSE** and **REMAND** for further proceedings not inconsistent with this opinion.

/s/
F. PHILIP CARBULLIDO
Associate Justice

/s/
KATHERINE A. MARAMAN
Associate Justice

/s/
ROBERT J. TORRES
Chief Justice