

Supreme Court of the State of New York
Appellate Division: Second Judicial Department

D25570
Y/prt

_____AD3d_____

Submitted - November 2, 2009

STEVEN W. FISHER, J.P.
JOSEPH COVELLO
FRED T. SANTUCCI
RUTH C. BALKIN, JJ.

2008-11606

DECISION & ORDER

Salvatore Marasa, appellant-respondent, v John Andrews, et al., defendants-respondents, Donald Fiore, individually and as Trustee for the Susam M. Fiore Revocable Trust, f/k/a Susan M. Fiore Irrevocable Trust, et al., respondents-appellants.

(Index No. 13004/07)

Anthony M. Vittorioso, Brooklyn, N.Y., for appellant-respondent.

Richard J. Kaufman, Port Jefferson, N.Y., for respondents-appellants.

Walsh Markus McDougal & DeBellis, LLP, Garden City, N.Y. (Paul R. McDougal of counsel), for defendants-respondents.

In an action, inter alia, to recover damages for fraud, the plaintiff appeals, as limited by his brief, from so much of an order of the Supreme Court, Suffolk County (Pitts, J.), dated November 24, 2008, as granted that branch of the motion of the defendants John Andrews and Kenneth J. Lauri and that branch of the separate motion of the defendants Donald Fiore, individually and as trustee of the Susan M. Fiore Revocable Trust, and Susan M. Fiore which were for summary judgment dismissing the complaint insofar as asserted against them as time-barred, and the defendants Donald Fiore, individually and as trustee of the Susan M. Fiore Revocable Trust, and Susan M. Fiore, cross-appeals from the same order.

ORDERED that the cross appeal is dismissed as abandoned (*see* 22 NYCRR 670.8[e]); and it is further,

January 5, 2010

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ORDERED that the order is affirmed insofar as appealed from; and it is further,

ORDERED that one bill of costs is awarded to the defendants appearing separately and filing separate briefs.

An action to recover damages for fraud must be commenced within “the greater of six years from the date the cause of action accrued or two years from the time the plaintiff ... discovered the fraud, or could with reasonable diligence have discovered it” (CPLR 213[8]; *see* CPLR 203[g]). For the purposes of the discovery rule, a plaintiff’s cause of action accrues “at the time the plaintiff ‘possesses knowledge of facts from which the fraud could have been discovered with reasonable diligence’” (*Oggioni v Oggioni*, 46 AD3d 646, 648, quoting *Town of Poughkeepsie v Espie*, 41 AD3d 701, 705).

Here, the fraud allegedly occurred in June 1999, and the plaintiff possessed knowledge of facts from which he could have discovered it by November 2004. Nevertheless, he did not commence this action until May 2007. Consequently, the Supreme Court properly granted those branches of the defendants’ respective motions which were for summary judgment dismissing the complaint as time-barred.

In light of the foregoing, the defendants’ remaining contentions are academic.

FISHER, J.P., COVELLO, SANTUCCI and BALKIN, JJ., concur.

ENTER:



James Edward Pelzer
Clerk of the Court