

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

D57687  
L/htr

\_\_\_\_\_AD3d\_\_\_\_\_

Submitted - September 6, 2018

REINALDO E. RIVERA, J.P.  
JOHN M. LEVENTHAL  
SYLVIA O. HINDS-RADIX  
VALERIE BRATHWAITE NELSON, JJ.

---

2016-06410

DECISION & ORDER

David Newman, respondent, v Greystone & Co., Inc.,  
appellant.

(Index No. 34478/15)

---

Greenberg Traurig, LLP, New York, NY (Steven Sinatra and Daniel R. Milstein of  
counsel), for appellant.

In an action, inter alia, to recover damages for breach of contract, the defendant appeals from an order of the Supreme Court, Rockland County (William A. Kelly, J.), dated May 4, 2016. The order denied the defendant's motion for summary judgment dismissing the complaint.

ORDERED that the order is reversed, on the law, with costs, and the defendant's motion for summary judgment dismissing the complaint is granted.

The plaintiff commenced this action against the defendant, asserting causes of action to recover damages for breach of contract, unjust enrichment, and fraud, and to impose a constructive trust. This action arises out of two joint venture agreements pertaining to certain real estate investments entered into by the parties in 1998 and 1999. The defendant moved for summary judgment dismissing the complaint, arguing, inter alia, that the causes of action were barred by the statute of limitations. The Supreme Court denied the motion, determining that there was a triable issue of fact as to whether the defendant should be estopped from asserting the statute of limitations as a defense. The defendant appeals.


“Equitable estoppel is appropriate where the plaintiff is prevented from filing an action within the applicable statute of limitations due to his or her reasonable reliance on deception, fraud or misrepresentations by the defendant” (*Putter v North Shore Univ. Hosp.*, 7 NY3d 548, 552-553). However, there can be no reasonable reliance where, as here, the plaintiff had the means to

ascertain the facts from available public records, but failed to do so (*see Picard v Fish*, 139 AD3d 1331, 1333-1334; *Arfa v Zamir*, 76 AD3d 56, 59, *affd* 17 NY3d 737). Since the defendant demonstrated, *prima facie*, that the causes of action are time-barred, and the plaintiff failed to raise a triable issue of fact in opposition, the Supreme Court should have granted the defendant's motion for summary judgment dismissing the complaint (*see CPLR 213[2], [8]*; *Chi Kee Pang v Synlyco, Ltd.*, 89 AD3d 976, 977; *Tornheim v Tornheim*, 67 AD3d 775, 776).

In light of our determination, we need not reach the defendant's remaining contention.

RIVERA, J.P., LEVENTHAL, HINDS-RADIX and BRATHWAITE NELSON, JJ., concur.

ENTER:

  
Aprilanne Agostino  
Clerk of the Court