Circuit Court for Howard County
Case No. 13-c-11-089075

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 644

September Term, 2016

FRANK LAROCCA, ET AL.

v.

THE CREIG NORTHROP
TEAM, P.C., ET AL.

Eyler, Deborah S.,
Beachley,
Shaw Geter,

JJ.

Opinion by Shaw Geter, J.

Filed: January 12, 2018

*This is an unreported opinion, and it may not be cited in any paper, brief, motion, or other document filed in this Court or any other Maryland Court as either precedent within the rule of stare decisis or as persuasive authority. Md. Rule 1-104.

This is the third appeal arising out of the purchase, sale, and financing of Plaintiffs' primary residences.[1] In December 2011, Plaintiffs filed a class action lawsuit against eight defendants alleging a mortgage fraud scheme. The defendants filed a motion for summary judgment and, following a hearing, the circuit court granted the motion. Plaintiffs appealed and we reversed, finding there existed disputed issues of material fact. The eight defendants appealed this decision, but *certiorari* was granted only as to two. The Court of Appeals reversed in part, and the case was remanded to the circuit court for further proceedings. On remand, following a hearing, the circuit court granted the remaining six defendants' renewed motion for summary judgment. Plaintiffs timely appealed and present the following issues that we have consolidated and reworded[2]:

I. Did the circuit court violate the law of the case doctrine by reinstating its original order granting summary judgment?

II. Did the circuit court err in holding that Plaintiffs' claims are not tolled by the statute of limitations?

For the reasons discussed below, we shall affirm the judgment of the circuit court.

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[1] Plaintiffs are Frank and Catherine Larocca; Kenneth and Angela Pfeifer; and Mehdi Nafisi and Forough Iranpour.

[2] Plaintiffs' questions presented, which we have reproduced verbatim, are as follows: (1) "Did the Circuit Court err by reinstating its original order granting summary judgment in favor of the Appellees despite that this Court reversed the original order and the Court of Appeals denied the Appellees' Petitions for Certiorari?"; (2) "Did the Circuit Court err in holding as a matter of law that the Appellants, who were in a fiduciary relationship with the Appellees, were presumed to have read and understood a document they signed and that the Appellees prepared?"; (3) "Did the Circuit Court err in holding as a matter of law that the statute of limitations for the Appellants' claims against the Appellees were not tolled under the fiduciary rule because the Appellants were on inquiry notice of their related claims against non-fiduciaries?"

BACKGROUND

Introduction

On December 9, 2011, Plaintiffs filed a class action lawsuit in connection with alleged fraudulent mortgage transactions against eight parties: Long and Foster Real Estate, Inc.; The Creig Northrop Team, P.C.; Creighton Edward Northrop, III; Prosperity Mortgage Corporation; Wells Fargo Bank, N.A.; Michelle Mathews; PNC Mortgage, a division of PNC Bank, N.A., formerly National City Mortgage; and Suzanne Scales Windesheim. Two defendants—PNC Mortgage and Suzanne Scales Windesheim—have been previously dismissed from the case by the Court of Appeals; accordingly, where our discussion focuses on these defendants only, we refer to them as "Former Defendants." We will refer to the other six defendants as "Remaining Defendants."

Factual and Procedural History

In 2006 and 2007, Plaintiffs contracted with Long & Foster, the Northrop Team, and Mr. Northrop in connection with the sale, purchase, and financing of their primary residences. During this time, Plaintiffs applied for two mortgage loans—a "bridge financing" home equity line of credit (HELOC) against their current homes and a primary residential mortgage for their new homes. The loans, Plaintiffs were told, would allow them to make offers to purchase new homes that were not contingent on the sale of their current homes, which would be more attractive to potential sellers. To facilitate these transactions, Plaintiffs were referred to Michelle Mathews, a loan officer with Prosperity Mortgage Company.

Although Plaintiffs did not qualify for the new primary residential mortgages without the proceeds from the sales of their current homes, Mathews sent Plaintiffs mortgage approval letters stating they were "pre-approved" for the new mortgages. To cover the difference, one or more Remaining Defendants fabricated leases between Plaintiffs and fictitious tenants and forged Plaintiffs' signatures; Mathews also enlisted a separate mortgage lender, National City Mortgage, and an additional loan officer, Suzanne Scales Windesheim, to approve the HELOCs. According to Plaintiffs, one or more Defendants surreptitiously inserted fraudulent rental income on the primary mortgage applications that they signed when they settled on their new homes and closed their primary residential mortgages. For the purpose of this appeal, Remaining Defendants do not dispute that the rental income reported on the applications was false and the accompanying residential leases were not genuine.

In 2010 and 2011, Plaintiffs were contacted by their counsel about a possible mortgage fraud scheme. Plaintiffs allege that they were not aware of the fabricated leases and false rental income until this time. In December 2011, Plaintiffs filed a class action lawsuit against Defendants, alleging that the mortgage fraud caused them to incur unnecessary commissions, fees, interest, expenses, taxes, and penalties associated with the mortgage transactions; to sell their old homes below market value; and to pay above-market rates for their new homes without reasonable home-sale contingencies. At the close of discovery, Defendants moved for summary judgment. As pertinent here, the circuit court

denied the motion for class certification and granted Defendants' motion for summary judgment, finding that Plaintiffs' complaint was barred by the statute of limitations.[3]

On June 20, 2013, Plaintiffs filed their first appeal before this Court. *See Larocca v. Creig Northrop Team, P.C. (Larocca I)*, 217 Md. App. 536 (2014), *rev'd in part sub nom. Windesheim v. Larocca*, 443 Md. 312 (2015). Plaintiffs asserted that there were disputed issues of material fact as to the time from which the statute of limitations should run; the circuit court improperly applied the signature doctrine, which presumes that one who signs a document is bound to its terms; and, although Plaintiffs received a copy of the mortgage applications, one reference to fraudulent "gross rental income" in hundreds of documents did not constitute notice. *Id.* at 548–49. Defendants, by contrast, noted there was no dispute that Plaintiffs received the applications and maintained that the contents of the documents placed Plaintiffs on notice of any alleged fraudulent activity. *Id.*

We observed that the parties disputed whether there were acts sufficient to trigger notice in a reasonable person; there was a dispute about whether the leases had been forged; and that Plaintiffs never affirmatively recalled seeing gross rental income on the applications. *Id.* at 556. Because we found that the determination of whether the false rental income should have placed Plaintiffs on notice involved the credibility of their

[3] In light of its finding that Plaintiffs' claims were barred by the statute of limitations, the circuit court dismissed their secondary mortgage loan claim as moot.

testimony, and the question of credibility is to be decided by the finder of fact, we held that the circuit court erred in granting summary judgment.[4] *Id.*

All eight defendants appealed to the Court of Appeals, but *certiorari* was granted only as to Former Defendants, who provided the HELOCs against Plaintiffs' homes. *See Windesheim v. Larocca (Larocca II)*, 443 Md. 312 (2015). As pertinent here, Former Defendants argued that Plaintiffs' claims were barred by the statute of limitations and summary judgment was appropriate because Plaintiffs failed to show the existence of any disputed material facts. *Id.* at 325. Plaintiffs responded by arguing that they were not on inquiry notice as a matter of law; the contents of the documents would not induce a reasonable person to investigate a potential fraud; and the statute of limitations should be tolled because Former Defendants both concealed the fraud and were in a fiduciary relationship that prevented them from discovering the fraud. *Id.* at 327–28.

Larocca II began by finding that Plaintiffs signed the mortgage applications and, accordingly, were presumed as a matter of law to have read the documents and understood their contents. *Id.* at 330. Next, the Court reviewed the documents to determine whether the contents were sufficient to place them on inquiry notice of a potential fraud. *Id.* The Court explained that there were two sets of documents that signaled the loan transactions were not proceeding as Plaintiffs expected: first, the "HELOC Applications suggested that

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[4] We also held that the secondary mortgage loan claim did not provide a basis for summary judgment; and we affirmed the circuit court's grant of a protective order and its denial of class certification. *Id.* at 566–576, 581. We declined to review the grant of Defendants' motion to strike the second amended complaint. *Id.* at 577.

a bank other than Prosperity and a loan officer other than Mathews were providing the HELOCs"; second, the "Primary Mortgage Applications suggested that Prosperity was approving [Plaintiffs'] new mortgages based on false rental income that [Plaintiffs] never provided to Mathews." *Id.* at 333. Further, while Plaintiffs contended they were deceived when Prosperity approved their primary residential mortgages based on false rental income, the "Primary Mortgage Applications expressly identified 'gross rental income.'" *Id.* at 334. Since Plaintiffs signed the applications and the applications identified false gross rental income, the Court held that "they were on inquiry notice that something was amiss." *Id.*

Larocca II then examined whether there was evidence that Former Defendants concealed the fraud or that Plaintiffs and Former Defendants were in a fiduciary relationship, as either could toll the statute of limitations. *Id.* On the fraud issue, the Court found there was no evidence that Former Defendants concealed the contents of the applications by discouraging Plaintiffs from reading them. *Id.* at 337. As a result, there was no basis to find that Plaintiffs were "kept in ignorance of the[ir] cause[s] of action by the fraud of [Former Defendants]," and the Court held that the fraudulent conduct did not provide a basis to toll the statute of limitations. *Id.* at 337–38. Additionally, the Court noted that, absent special circumstances, Maryland law is cautious in creating fiduciary obligations between banks and borrowers, and it found there was no evidence that Plaintiffs and Former Defendants were in a fiduciary relationship. *Id.* at 338–39. As a result, since Plaintiffs filed their claims more than three years after they were on inquiry notice of their

causes of action, the Court held that Former Defendants were entitled to judgment as a matter of law.[5] *Id.* at 339. The Court issued the following mandate:

> [J]udgment of the Court of Special Appeals reversed as to [Former Defendants]. Case remanded to that Court with instructions to affirm the judgment of the Circuit Court for Howard County as to [Former Defendants] and to conduct such further proceedings as are necessary and not inconsistent with this opinion.

Id. at 351. Following the Court of Appeals' decision, Plaintiffs filed a motion for additional briefing and oral argument with this Court, arguing that reversal of the circuit court's judgment was still appropriate for Remaining Defendants due to their status as fiduciaries. On November 5, 2015, this Court denied the motion and issued the following mandate:

> [J]udgment of the Circuit Court for Howard County is reversed and the case is remanded to that Court for further proceedings as are necessary and not inconsistent with the opinion of the Court of Appeals.

Remaining Defendants subsequently filed a motion to reinstate the previous order granting summary judgment, and the circuit court held a hearing on April 1, 2016. Remaining Defendants argued that the existence of a fiduciary relationship only tolls the statute of limitations where a party is not on inquiry notice. Because the content of the mortgage applications was sufficient to place Plaintiffs on notice of a potential fraud, and Plaintiffs signed the applications, Remaining Defendants argued that Plaintiffs' claims are barred by the statute of limitations. On the other hand, Plaintiffs argued that the revised mandate from this Court—specifically the language "the judgment of the Circuit Court for Howard

[5] The Court of Appeals also held that Former Defendants were entitled to judgment as a matter of law on the secondary mortgage loan claim. *Id.* at 350–51. That issue, however, is not before this Court.

County is reversed"—precluded the circuit court from reinstating summary judgment. Further, even if the court was not restricted by our mandate, Remaining Defendants are not entitled to summary judgment because they are fiduciaries, and either the signature doctrine does not apply to claims against fiduciaries, or the fiduciary rule creates a question of fact as to whether Plaintiffs were placed on inquiry notice.

The circuit court issued a memorandum opinion and order on May 9, 2016.[6] The court noted that *Larocca I* did not address the issue of what, if any, impact the existence of a fiduciary relationship would have on the determination of inquiry notice. Further, because *Larocca II* found that a fiduciary relationship did not exist between Plaintiffs and Former Defendants, the Court of Appeals did not address the issue as to Remaining Defendants. The circuit court thus found that *Larocca II* constitutes the law of the case, and it was not precluded from addressing the fiduciary issue on remand.

Next, the circuit court, relying on *Frederick Rd. Ltd. P'ship v. Brown & Sturm*, 360 Md. 76 (2000), found that a fiduciary relationship does not toll the statute of limitations where a plaintiff is in possession of facts that would put her on inquiry notice. Because the Court of Appeals held as a matter of law that the contents of the applications were sufficient to place Plaintiffs on notice of a potential fraud, and there was no evidence that Remaining Defendants engaged in some form of conduct designed to conceal the fraud, the circuit

[6] The circuit court issued an amended memorandum opinion on June 1, 2016. That opinion, however, was issued to correct scrivener errors; no change was of substance.

court granted Remaining Defendants' motions to reinstate summary judgment. This appeal followed.

STANDARD OF REVIEW

Under Maryland Rule 2-501(f), a "court shall enter judgment in favor of or against the moving party if the motion and response show that there is no genuine dispute as to any material fact and that the party in whose favor judgment is entered is entitled to judgment as a matter of law." When reviewing a grant of summary judgment, "the standard of review is *de novo*, and whether the trial court was legally correct." *Livesay v. Baltimore County*, 384 Md. 1, 9 (2004). "We review the record in the light most favorable to the nonmoving party and construe any reasonable inferences that may be drawn from the facts against the moving party." *Myers v. Kayhoe*, 391 Md. 188, 203 (2006) (citation omitted).

DISCUSSION

I. Law of the Case

As a general rule, the law of the case doctrine "prevents trial courts from dismissing appellate judgment and re-litigating matters already resolved by the appellate court." *Stokes v. American Airlines, Inc.*, 142 Md. App. 440, 446 (2002). "[O]nce a decision is established as the controlling legal rule of decision between the same parties in the same case it continues to be the law of the case. Specifically, a ruling by an appellate court upon a question becomes the law of the case and is binding on the courts and litigants in further proceedings in the same matter." *Kline v. Kline*, 93 Md. App. 696, 700 (1992) (citation omitted). The purpose of the doctrine is to prevent piecemeal litigation and successive

appeals that involve the same questions that were decided or could have been decided in a previous appeal. *Fid.-Balt. Nat'l Bank & Tr. Co. v. John Hancock Mut. Life Ins. Co.*, 217 Md. 367, 371–72 (1958).

Plaintiffs argue that the circuit court erred by reinstating its prior order granting summary judgment because this Court's reversal of that order as to Remaining Defendants is undisturbed by the Court of Appeals. By the same token, Plaintiffs argue, the circuit court could not have issued a new order finding as a matter of law that limitations bar their claims against Remaining Defendants because this Court previously found that the issue was a question of fact for the jury. Conversely, Remaining Defendants argue that Plaintiffs' contention ignores the Court of Appeals' instruction "to conduct such further proceedings as are necessary and not inconsistent with [its] opinion." Further, Remaining Defendants assert that *Larocca I's* conclusion that there were genuine disputes of material fact about the running of the statute of limitations was overruled by *Larocca II's* holding that Plaintiffs were charged with inquiry notice of the contents of the mortgage applications, which included the false statements of gross rental income. Remaining Defendants also argue that *Larocca II's* holding on factual matters is the law of the case.

In the first appeal, "the question was whether [Plaintiffs] were on inquiry notice that the Bridge Loan Program did not exist and that [Defendants] were fraudulently representing that it did." *Larocca I*, 217 Md. App. at 556. That question, we held, involved a mixed question of law and fact because the "the parties dispute[d] if there were acts that were sufficient to trigger notice in a reasonable person," there appeared "to be some dispute

regarding whether the [application] was fraudulent in some way because of [Plaintiffs'] discovery that other leases had been forged," and Plaintiffs "never affirmatively recalled seeing the gross rental income on the [application]." *Id.* As a result, *Larocca I* never addressed the issue of what, if any, impact the existence of a fiduciary relationship had on the determination of inquiry notice. In *Larocca II*, however, the Court of Appeals found that Plaintiffs "are presumed as a matter of law to have read these documents and understood their contents." 443 Md. at 330. *Larocca II* then held—as a matter of law—that because Plaintiffs "signed the Applications and the Applications identified false gross rental income, *they were on inquiry notice* that something was amiss." *Id.* at 334 (emphasis added).

Given these holdings, we cannot say that a controlling legal rule has been established barring court action between Plaintiffs and Remaining Defendants. *Kline*, 93 Md. App. at 700. While it is true that this Court's November 5, 2015 mandate said that the judgment of the Circuit Court for Howard County was reversed, *Larocca I* did not address the issue of fiduciary relationships, and as the Court of Appeals explained in *Larocca II*, evidence that Remaining Defendants were in a fiduciary relationship with Plaintiffs could toll the statute of limitations. Therefore, we agree with the circuit court that *Larocca II* constitutes the law of the case and, as a threshold matter, we hold that the circuit court was not precluded from ruling on Remaining Defendants' renewed motion for summary judgment. We turn to the merits of that ruling next.

II. Remaining Defendants' Motion for Summary Judgment

Under § 5-101 of the Courts and Judicial Proceedings Article, a "civil action at law shall be filed within three years from the date it accrues unless another provision of the Code provides a different period of time within which an action shall be commenced." Md. Code Ann., Cts. & Jud. Proc. § 5-101 (West 2011). Here, the alleged fraudulent mortgage transactions occurred in 2006 and 2007, and Plaintiffs did not file their complaint until 2011. Therefore, in order for Plaintiffs' case to survive, their claims must fall within the discovery rule, which "tolls the accrual of the limitations period until the time the plaintiff discovers, or through the exercise of due diligence, should have discovered, the injury." *Frederick Rd.*, 360 Md. at 95–96.

Notice, as the Court of Appeals explained in *Larocca II*, is critical to the discovery rule. 443 Md. at 327. "Before an action can accrue under the discovery rule, 'a plaintiff must have notice of the nature and cause of his or her injury.'" *Id.* (quoting *Frederick Rd.*, 360 Md. at 96). Constructive notice, which is presumed as a matter of law, does not trigger the running of the statute of limitations under the discovery rule. *Id.* Inquiry notice "is notice implied from 'knowledge of circumstances which ought to have put a person of ordinary prudence on inquiry (thus, charging the individual) with notice of all facts which such an investigation would in all probability have disclosed if it had been properly pursued.'" *Id.* Unlike constructive notice, inquiry notice is sufficient to trigger the running of the statute of limitations. *Larocca II* held that Plaintiffs had inquiry notice for the following reasons:

> [T]here were two sets of documents that suggested that the loan transactions were not proceeding as [Plaintiffs] expected. The HELOC Applications suggested that a bank other than Prosperity and a loan officer other than Mathews were providing the HELOCs. And the Primary Mortgage Applications suggested that Prosperity was approving [Plaintiffs'] new mortgages based on false rental income that [Plaintiffs] never provided to Mathews.
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> [T]he Primary Mortgage Applications expressly identified "gross rental income." Because [Plaintiffs] signed the Applications and the Applications identified false gross rental income, they were on inquiry notice that something was amiss.

Id. at 333. This does not end the limitations inquiry, however. *Id.* at 335. As the Court of Appeals explained in *Larocca II*, if there is evidence that Remaining Defendants concealed the fraud or were in a fiduciary relationship, this could also toll the statute of limitations. *Id.* Our analysis will focus on the latter issue, as *Larocca II* held that there was "no evidence Defendants concealed the contents of the Applications," and it did not reach the issue of fiduciary relationships. *Id.* at 337.

A fiduciary relationship, "by its nature, gives the confiding party the right to relax his or her vigilance to a certain extent and rely on both the good faith of the other party and that party's duty to disclose all material facts and, as a result, the confiding party has no duty to make inquiries until something occurs to make him or her suspicious." *Frederick Rd.,* 360 Md. at 99. But the result is different "if the confiding party acquires actual knowledge during the existence of the confidential relationship that the confidential relationship has been abused, or comes into possession of facts which put him or her upon inquiry notice, which, if pursued, would have disclosed the abuse." *Id.* at 99–100. Therefore, when a fiduciary relationship exists, "failure to discover the facts constituting

fraud may toll the statute of limitations, if: (1) the relationship continues unrepudiated, (2) there is nothing to put the injured party on inquiry, and (3) the injured party cannot be said to have failed to use due diligence in detecting the fraud." *Id.* at 99.

Plaintiffs raise three arguments as to why a jury should decide whether the existence of a fiduciary relationship tolls the statute of limitations. First, the signature doctrine does not apply in the context of fiduciary relationships, and thus it is for the jury to determine whether signing without reading the contents of the mortgage applications satisfies the relaxed standard of diligence. Second, even if the signature doctrine does apply, there is always some greater quantum of evidence necessary to find as a matter of law that a confiding party is on notice, and this creates a question of fact over whether the same evidence that placed Plaintiffs on notice as to Former Defendants was also sufficient as to Remaining Defendants. Third, as fiduciaries, Remaining Defendants had a duty to disclose that the mortgage applications were fraudulent, and the failure to do so is sufficient to establish a question of fact as to whether Plaintiffs were on inquiry notice.

Remaining Defendants, on the other hand, maintain that Plaintiffs waived their argument about the applicability of the signature doctrine when they stated the following to the circuit court at the hearing on remand: "[t]he signature doctrine is done. It's baked into the case now. It's part of our fabric." Even if not waived, Remaining Defendants argue that Plaintiffs offer no supporting case law for the proposition that the signature doctrine should be relaxed due to the existence of a fiduciary relationship. Finally, *Larocca II* held that Plaintiffs' knowledge of the contents of the HELOC and primary mortgage

applications were sufficient to place them on inquiry notice of their claims in 2006 and 2007. Because equitable tolling does not apply where there is evidence to put an injured party on inquiry, Remaining Defendants argue that Plaintiffs' claims are barred by the statute of limitations.

The circuit court issued a memorandum opinion and order following a hearing on remand. The court found that Defendants Long and Foster Real Estate, Inc.; The Creig Northrop Team, P.C.; and Creighton Edward Northrop, III, had a fiduciary relationship under § 17-532 of the Business Occupations and Professions Article and COMAR 09.11.02.02, which was established when they agreed to represent Plaintiffs. Further, Defendants Prosperity Mortgage Corporation; Wells Fargo Bank, N.A.; and Michelle Mathews performed a number of tasks that are ordinarily performed by real estate professionals, including: deciding when to list the homes and when to remove the listings; coordinating placement of "for sale" signs; and arranging for appraisals. Since all Remaining Defendants publicized that a "partnership" existed between them, and all shared office space, the court found that each Remaining Defendant had a fiduciary relationship with Plaintiffs. The court then noted that a fiduciary relationship does not toll the statute of limitations where a plaintiff is in possession of facts that would put her on inquiry notice, and it found the facts that placed Plaintiffs on inquiry notice as to Former Defendants were equally applicable to Remaining Defendants. As a result, the circuit court granted Remaining Defendants' motions to reinstate summary judgment.

In this case, as an initial matter, we are not persuaded by Plaintiffs' argument that the signature doctrine does not apply in the context of fiduciary relationships, which, in effect, would create a per se jury issue. The two cases cited by Plaintiffs are *Bollack v. Bollack*, 169 Md. 407 (1936) and S*ard v. Hardy*, 34 Md. App. 217 (1976), *rev'd*, 281 Md. 432 (1977). In *Bollack*, the Court of Appeals mentioned the presumption that a deed, will, or other instrument is entered into freely, intentionally, and voluntarily "has no application where a beneficiary under the instrument stands in a confidential relation to the donor." 169 Md. at 410–11. This language is dicta, and the Court went on to find that when the confiding party "executed the signature cards he understood the nature, meaning, and consequences of his acts and intended to give them effect." *Id.* at 413. Additionally, unlike this case, there were numerous concerns about the confiding party's mental capacity: his education had stopped at the second or third grade; he could "write his name, and possibly read"; he was "blind in one eye"; and his "hearing was not altogether good." *Id.* at 408–09.

Sard is a case involving a negligence action against a physician whose sterilization operation was unsuccessful in preventing a future pregnancy. 34 Md. App. at 218–19. The dissenting opinion cited by Plaintiffs, which is not binding on this Court, proposed that "where there is a fiducial relationship between the parties, the presumption of knowledge of the contents of a written document does not apply." *Id.* at 246 (Davidson, J., dissenting). The majority opinion, however, did not discuss the issue of the signature doctrine. Nor was the theory endorsed by the Court of Appeals when the case was subsequently appealed,

though the issue of informed consent was discussed in detail. Finally, and critically, neither *Bollack* nor *Sard* involved a challenge to the statute of limitations—which is the core issue for us to decide in this case. Accordingly, even if preserved, we hold that the signature doctrine applies in the context of fiduciary relationships.

We next turn to the Plaintiffs' remaining arguments, that there is always some greater quantum of evidence necessary to find as a matter of law that a confiding party is on notice, and, as fiduciaries, Remaining Defendants had a duty to disclose that the mortgage applications were fraudulent. Plaintiffs point to the following cases in support of these positions. In *Herring v. Offutt*, the Court held that a confidential relationship "gives the confiding party the right to relax his vigilance to a certain extent and rely on the good faith of the other party and his duty to disclose all material facts, and therefore the confiding party has no duty to make inquiries until something occurs to make him suspicious." 266 Md. 593, 600–01 (1972). In *Merchants Mortg. Co. v. Lubow*, the Court held that the failure to use ordinary diligence to discover fraud "may be excused where there exists some relation of trust and confidence . . . between the party committing the fraud and the party who is affected by it, rendering it the duty of the former to disclose to the latter the true state of the transaction[.]" 275 Md. 208, 215 (1975) (citation omitted).

Both of these cases are inapposite, however, because the fraudulent conduct was not apparent in the content of the documents that were provided to the confiding party. In *Herring*, the Court of Appeals upheld the trial court's finding that "examination of those records would not have disclosed the true statement of affairs and no where in the papers

that the Court is made to believe to be the true statement of affairs ever appear to be disclosed[.]" 266 Md. at 599. Similarly, in *Merchants Mortg. Co.*, the complaint alleged "secret payments" that were "fraudulently concealed" from the confiding party. 275 Md. at 224–25. In short, there was nothing to put the injured party on "inquiry notice, which, if pursued, would have disclosed the abuse." *Frederick Rd.,* 360 Md. at 99–100.[7]

As the Court of Appeals explained in *Larocca II*, "[n]otice is critical to the discovery rule." 443 Md. at 327. In the context of fiduciaries, therefore, we hold that the existence of a fiduciary relationship does not toll the statute of limitations where the confiding party is on inquiry notice, which, if pursued, would have disclosed the fraudulent conduct. Other jurisdictions have reached a similar result. *See Latson v. Plaza Home Mortg., Inc.*, 708 F.3d 324, 327 (1st Cir. 2013) ("Although the Latsons' motion to reconsider suggested that the district court should toll the limitations period under the discovery rule or the fraud exception, they invoke no basis for applying either one. . . . the interest terms and the implications of their burdens were apparent when the Latsons signed and got their money, a conclusion underscored by the Massachusetts rule that the terms of written agreements are binding whether or not their signatories actually read them."); *Newland v. Aurora Loan*

[7] To the extent Plaintiffs argue that *Frederick Rd.* is controlling, we find that case is also distinguishable. Like *Herring* and *Merchants Mortg. Co.*, *Frederick Rd.* held there was "no basis, except crediting one side over the other, thus, making a credibility determination," for uncovering the fraudulent conduct. 360 Md. at 108. Here, by contrast, the "Primary Mortgage Applications expressly identified 'gross rental income,'" and no credibility determination is involved because Plaintiffs were not "kept in ignorance of the[ir] cause[s] of action by the fraud of [Defendants]." *Larocca II*, 443 Md. at 334, 338 (quoting *Frederick Rd.*, 360 Md. at 98–99).

Servs., LLC, 806 F.Supp.2d 65, 73 (D.D.C. 2011) (internal quotations and citations omitted) ("The existence of a fiduciary relationship between a plaintiff and defendant, if one exists, does not alter the rule that the limitations period [begins] to run as soon as the [plaintiff is] on inquiry notice.").

Applying that rule to the facts of this case, we agree with the circuit court that the same facts that placed Plaintiffs on inquiry notice as to Former Defendants are equally applicable to Remaining Defendants and sufficient to place Plaintiffs on inquiry notice as to Remaining Defendants. *Larocca II* identified multiple reasons why Plaintiffs "were on inquiry notice that something was amiss." 443 Md. at 334. First, the "HELOC Applications suggested that a bank other than Prosperity and a loan officer other than Mathews were providing the HELOCs"; second, the "Primary Mortgage Applications suggested that Prosperity was approving [Plaintiffs'] new mortgages based on false rental income that [Plaintiffs] never provided to Mathews." *Id.* at 333. And third, while Plaintiffs contended they were deceived when Prosperity approved their primary residential mortgages based on false rental income, the "Primary Mortgage Applications expressly identified 'gross rental income.'" *Id.* at 334. The only other basis to toll the statute of limitations requires evidence of concealment. However, *Larocca II* held there was no evidence that the "Defendants" concealed the contents of the mortgage applications, and no new evidence was introduced at the hearing on remand. *Id.* at 337. As such, there is no

basis to toll the statute of limitations, and Plaintiffs' remaining claims are barred by the three-year statute of limitations.[8]

JUDGMENT OF THE CIRCUIT COURT FOR HOWARD COUNTY AFFIRMED. COSTS TO BE PAID BY APPELLANTS.

[8] The circuit court found that all Remaining Defendants are fiduciaries. Wells Fargo is the only party to challenge this finding on appeal. During oral argument, however, counsel for Wells Fargo asked this Court to either affirm the judgment of the circuit court in its entirety or, in the alternative, to affirm as to Wells Fargo only. In light of our holding, we shall consider this claim withdrawn.