**IN THE COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY**
**FIRST JUDICIAL DISTRICT OF PENNSYLVANIA**
**TRIAL DIVISION-CIVIL**

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| TIMOTHY D. BURNS, | : | October Term 2017 |
| Plaintiff, | : | |
| v. | : | No. 2349 |
| SILVERANG, DONOHOE, ROSENZWEIG & HALTZMAN, LLC, ET. AL., | : | COMMERCE PROGRAM |
| Defendants. | : | |
| | : | Control Number 18061212 |

**ORDER**

**AND NOW**, this 11th day of September, 2018, upon consideration of Defendants Silverang, Donohoe, Rosenzwig & Haltzman, LLC, Kevin Silverang, Esquire, and Catherine Sibel, Esquire's Motion for Judgment on the Pleadings, Plaintiff's response in opposition and in accord with the attached Opinion, it hereby is **ORDERED** that the Motion for Judgment on the Pleadings is **Granted** and Plaintiff's complaint is dismissed.

**BY THE COURT,**

**GLAZER, S. J.**

Burns Vs Silverang, Don-ORDOP

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| | : | Control Number 18061212 |

**OPINION**

Presently pending before this court is Defendants Silverang, Donohoe, Rosenzweig & Haltzman, LLC's., Kevin Silverang, Esquire and Catherine Sibel, Esquire's ("Silverang defendants") motion for judgment on the pleadings. For the reasons discussed below, the motion is granted and Plaintiff's amended complaint is dismissed.

Plaintiff is Timothy D. Burns ("Burns").[1] In 2011, Burns retained the law firm of Silverang and Donohoe, LLC[2] ("Silverang defendants") to represent him in the purchase of an office building located at 125 East Elm Street in Conshohocken, Pa. At the time, Burns anticipated a large influx of cash from a financial deal involving the purchase of pre-IPO shares of Facebook. Burns alleges that he fell victim to a massive fraud and the realization of the expected funds was lost. [3] Burns also alleges that he frantically informed the Silverang defendants of the fraud and that he could not close on the building as planned. Burns allegedly

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[1] Burns is a pro se plaintiff.

[2] The court infers from the pleadings and documents attached thereto that Silverang and Donohoe, LLC is the entity existing at the time the events alleged in the amended complaint occurred. The court also infers that Silverang and Donohoe, LLC is now known as Silverang, Donohoe, Rosenzweig & Haltzman. The court will refer collectively to the firm and the attorneys involved and individually identified in the amended complaint as the Silverang defendants.

[3] Amended Complaint ¶ 3.

"pleaded" with the Silverang defendants to cancel the deal even if it meant losing his funds on deposit.[4] Burns further alleges that Mr. Silverang threatened Burns with lawsuits and told him he had to close or all the parties would sue him exposing his issues.[5] According to the amended complaint, Silverang stated he would handle everything and went on to contact the bank to secure approximately a $10 Million loan package that Burns allegedly could not afford and convinced the title company that Burns had the funds needed for closing.[6] Burns alleges that as a result of the Silverang defendants' fraud he lost millions of dollars.[7]

On October 19, 2017, Burns initiated this action by writ of summons against the Silverang defendants as well as Certified Abstract Company, Inc. and First American Title Insurance Company. On November 17, 2017 and February 13, 2018 respectively, Burns filed his complaint and amended complaint. The amended complaint alleges causes of action for

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[4] Id. at ¶ 3.

[5] Id. at ¶ 5.

[6] Id.

[7] The Silverang defendant's answer to the amended complaint and new matter deny these allegations. Additionally, the documents attached thereto present a different view of the facts. For instance, On September 14, 2011, the Silverang defendants drafted a letter of intent between Burns and Bancorp, a nonparty in this action, which set forth Burn's proposal to purchase the office building. On September 19, 2011, the Silverang defendants drafted a loan purchase agreement between Bancorp and an affiliate of Burns, 125 East Elm Partners, LP, which reflected the proposed purchase of the office building. On October 4, 2011, the loan purchase agreement was executed by Bancorp and 125 East Elm Partners, LP and Burns wired a $1,130,000 deposit required under the loan purchase agreement to the title company. Prior to the closing, Burns deposited $1,705,000 towards the acquisition of the Commercial Property. Over the course of the following months, Burns sought several extensions of the closing since he was having difficulty obtaining the remaining monies needed to close on the transaction. Bancorp granted Burns the following extensions of the closing date, October 31, 2011, November 11, 2011, November 30, 2011, December 15, 2011 and December 29, 2011. Burns was directly involved in negotiating the extensions with Bancorp. At Burn's request, Bancorp extended loans to Burns in order to move forward with the purchase of the loan secured by 125 East Elm Street and the real estate and improvements located at 125 East Elm Street via deed in lieu of foreclosure. Also at his suggestion, Burns pledged property he owned in Avalon, New Jersey, as collateral for the loan from Bancorp. See Exhibits "A-H" of the Silverang defendants Answer with New Matter.

negligence, legal malpractice, breach of fiduciary duty/aiding and abetting breach of fiduciary duty, breach of contract/aiding and abetting breach of contract, fraud/aiding and abetting fraud, civil conspiracy, negligent infliction of emotional distress, negligent misrepresentation, punitive damages, unjust enrichment/aiding and abetting unjust enrichment, violation of Uniform Contribution Among Tortfeasers Act ("UCATA"), 42 Pa. C. S. § 8321, and violation of the Uniform Trade Practices Consumer Protection Law ("UTPCPL"), 73 P. C. S. § 201 *et. seq.* On April 13, 2018 and May 1, 2018, the court dismissed the claims for negligence, legal malpractice, breach of fiduciary duty/aiding and abetting breach of fiduciary duty and breach of contract/aiding and abetting breach of contract against the Silverang defendants since a certificate of merit was not filed by Burns.[8] The Silverang defendants now move for judgment on the pleadings on the remaining claims.

## DISCUSSION [9]

### I. The claims for Fraud/Aiding and Abetting Fraud, Civil Conspiracy, Negligent Infliction of Emotional Distress, Negligent Misrepresentation, and Unjust Enrichment/Aiding and Abetting Unjust Enrichment are barred by the applicable statute of limitations.

In Pennsylvania, the statute of limitations begins to run "as soon as the right to institute and maintain a suit arises; lack of knowledge, mistake or misunderstanding do not toll the

[8] On April 19, 2018, defendants Certified Abstract Company and First American Title Insurance Company were dismissed from the action with prejudice.

[9] After the relevant pleadings are closed, but within such time as not to unreasonably delay the trial, any party may move for judgment on the pleadings. Pa. R. Civ. P. 1034 (a). Judgement on the pleadings may be entered where there are no disputed issues of fact and the moving party is entitled to judgment as a matter of law. *Pocono Summit Realty, LLC v. Ahmad Amer, LLC*, 52 A.3d 261 (2012). All averments of fact properly pleaded in the adverse party's pleadings, and every reasonable inference that the Court can draw therefrom, must be taken as true, or as admitted, unless their falsity is apparent from the record. *Id.*

running of the statute of limitations."[10] A person asserting a claim "is under a duty to use all reasonable diligence to be properly informed of the facts and circumstances upon which a potential right of recovery is based and to institute suit within the prescribed statutory period."[11] The statute of limitations requires "aggrieved individuals to bring their claims within a certain time of the injury, so that the passage of time does not damage the defendant's ability to adequately defend against claims made ... the statute of limitations supplies the place of evidence lost or impaired by lapse of time, by raising a presumption which renders proof unnecessary." [12] Statutes of limitations "are designed to effectuate three purposes: (1) preservation of evidence; (2) the right of potential defendants to repose; and (3) administrative efficiency and convenience."[13]

The discovery rule is an exception that acts to toll the running of the statute of limitations. The discovery rule may toll the statute of limitations where an injury or its cause is not known or reasonably knowable.[14] However, the discovery rule will only toll the statute of limitations "until a plaintiff could reasonably discover the cause of his injury in cases where the connection between the injury and the conduct of another is not apparent."[15]

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[10] *Pocono Int'l Raceway, Inc. v. Pocono Produce, Inc.*, 503 Pa. 80, 468 A.2d 468, 471 (1983).

[11] *Id.*

[12] *Dalrymple v. Brown,* 549 Pa. 217, 701 A.2d 164, 167 (1997).

[13] *Kingston Coal Company v. Felton Min. Co., Inc.*, 456 Pa.Super. 270, 690 A.2d 284, 288 (1997).

[14] *See Nicolaou v. Martin*, 153 A.3d 383, 389 (Pa. Super. 2016), appeal granted 153 A.3d 383 (2016).

[15] *Id.*

The purpose of the discovery rule has been to exclude from the running of the statue of limitations that period of time during which a party who has not suffered an immediately ascertainable injury is reasonably unaware he has been injured, so that he has essentially the same rights as those who have suffered such an injury.[16] The discovery rule provides that where the existence of the injury is not known to the complaining party and such knowledge cannot reasonably be ascertained within the prescribed statutory period, the limitations period does not begin to run until the discovery of the injury is reasonably possible. The party seeking to invoke the discovery rule bears the burden of establishing the inability to know that he or she has been injured by the act of another despite the exercise of reasonable diligence.[17]

Here, the factual averments in the amended complaint make clear that Burns knew that he suffered an injury and that the Silverang defendants were the cause of his injuries as of January 16, 2012, the date the real estate transaction closed. Burns relies upon his "recent" discovery of the legal significance of the Silverang defendants' actions to implicate the discovery rule exception to toll the limitations period. However, Burns' reliance is misplaced since the discovery rule only tolls the statute of limitations until a plaintiff could reasonably discover the cause of his/her injury. Burns knew he was injured on January 16, 2012, the date of the closing. Burns alleges that he repeatedly pled with the Silverang defendants to cancel the closing and when the closing was not cancelled, he suffered injury. [18] Knowledge of the injury and the cause of the injury begin the clock for statute of limitations purposes.

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[16] *Fine v. Checcio*, 870 A.2d 850, 858 (Pa. 2005) (citation omitted).

[17] *Meehan v. Archdiocese of Philadelphia*, 870 A.2d 912, 919 (Pa. Super. 2005), *appeal denied*, 584 Pa. 708, 885 A.2d 43 (2005) (citations omitted).

[18] Amended Complaint ¶¶ 5, 8, 12-3, 15).

Having determined that the statute of limitations began to run on January 16, 2012, it is clear that Burns' claims for fraud, civil conspiracy, negligent infliction of emotional distress, and negligent misrepresentation are time barred. The statute of limitations for fraud, civil conspiracy, negligent infliction of emotional distress, and negligent misrepresentation is two years.[19] Hence, in order for these claims to be considered timely, Burns should have filed his lawsuit on or before January 15, 2014. Since, Burns did not file his lawsuit until October 17, 2017, the claims for fraud, civil conspiracy, and negligent infliction of emotional distress are time barred.

Similarly, Burn's claim for unjust enrichment is also barred. A claim for unjust enrichment is governed by a four year statute of limitations.[20] Hence, in order for this claim to be considered timely, Burns should have filed his lawsuit on or before January 15, 2016. Since Burns did not file this action until October 17, 2017, the claim for unjust enrichment is also time barred. Accordingly, the motion for judgment on pleadings is granted in this regard.

**II. The UTPCPL claim also fails as a matter of law.**

The amended complaint purports to state a claim for violation of the UTPCPL. In order for a private individual to bring a cause of action pursuant to the UTPCPL, that individual must first establish the following: 1) that he or she is a purchaser or lessee; 2) that the transaction is dealing with "goods or services"; 3) that the good or service was primarily for personal, family,

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[19] Statute of limitations for fraud and negligence claims is two year. See, 42 Pa. C. S. § 5524 (7). As for the civil conspiracy claim, the applicable statute of limitations is also two years since the overt cause of action which is the basis for the conspiracy is fraud. *See, Pelagatti v. Cohen*, 370 Pa.Super. 422, 536 A.2d 1337, 1342 (1987) (citation omitted); see also *McKeeman v. Corestates Bank, N.A.*, 751 A.2d 655, 660 (Pa. Super. 2000).

[20] *See* 42 Pa.C.S. § 5525(a)(4); *Cole v. Lawrence*, 701 A.2d 987, 989 (Pa.Super.Ct.1997) (stating plaintiff's claim for unjust enrichment, an action based on a contract implied at law, is subject to a four-year statute of limitations).

or household purposes; and 4) that he or she suffered damages arising from the purchase or lease of goods or services.[21] Here, the transaction giving rise to Burn's claim is not primarily for personal, family or a household purpose. Rather, the transaction involved the purchase of an office building, a commercial building. Since the transaction at issue was not primarily for personal, family or a household purpose, the UTPCPL claim fails and is dismissed. [22]

**CONCLUSION**

Based on the foregoing, Defendants motion for judgment on the pleadings is granted and Plaintiff's complaint is dismissed.

**BY THE COURT,**

**GLAZER, S. J.**

[21] *Fazio v. Guardian Life Ins. Co. of America*, 62 A.3d 396, 409 (Pa.Super. 2012).

[22] Burns also avers a violation of the Uniform Contribution Among Tortfeasors Act (UCATA), 42 Pa. C. S. § 8324 (a) & (b) as a cause of action. The UCATA is not an avenue for an alleged tort victim to obtain recovery, but rather, is a means for joint tortfeasors to obtain contribution from and between one another. See, *Pennsylvania Nat'l Mut. Casualty Ins. Co., v. Nicholson Constr. Co.*, 542 A.2d 123, 126 (Pa. Super. 1988). As such, the UCATA is not a means for Burns to obtain relief and is therefore dismissed.