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BY ERIN L. LENNON  
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WA Supreme Court No:

100563-6

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No. 55066-1-II

DIVISION II, COURT OF APPEALS  
OF THE STATE OF WASHINGTON

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DANIEL G. SZMANIA  
Plaintiff/Appellant,

Vs.

CHAD GILLINGHAM  
Defendant /Respondent.

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ON APPEAL FROM THE SUPERIOR COURT  
OF WASHINGTON FOR CLARK COUNTY  
The Honorable Daniel L. Stahnke  
No. 19-2-03218-06

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**APPELLANT'S PETITION FOR REVIEW**

**ORAL ARGUMENTS REQUESTED**

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Daniel G. Szmania, Plaintiff/Appellant, Pro Se'  
HM1 USNR Retired,  
U.S. Supreme Court No. 21-473  
U.S. Supreme Court No. 11-6137  
U.S. Supreme Court No. 18-734  
PO Box 757, Brush Prairie, WA 98606-0757  
360-718-1402, Email: [dszmania@quixnet.net](mailto:dszmania@quixnet.net)

**Title Page RAP 17.3 (b) (1)**

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### **State Statutes**

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- 4) RCW 19.144.080 Unlawful actions-Fraud, misrepresentation, deceptive practices. Page 2.
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### **Other Sources Cited**

- 1)

### **Clerk Papers Cited**

1. CP 2 Summons. Dated October 24, 2019. Pages: 3, 4, 5, 6.
2. CP 3 Complaint for Fraud, Tort of Outrage, Damages &  
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6. CP 21 Defendant’s Motion to Dismiss with Prejudice and for  
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7. CP 23 Plaintiff’s Declaration of Daniel G. Szmania in Support  
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10. CP 34 Order Denying Plaintiff's Motion for Reconsideration of Order Granting Defendant's Motion to Dismiss. Dated: September 18, 2020. Pages: 4, 6, 7.
11. CP 35 Plaintiff's Notice of Appeal. Dated: October 8, 2020. Pages: 4, 6, 7.
12. December 14, 2021 Opinion by Court of Appeals of the State of Washington, Division II, No. 55066-1-II, (Opinion). Pages: 1, 3, 4, 6, 7, 8, 9.
- 13.

**RAP 17.3 (a) (1) & (b) (2)**

- 1. Identity of Petitioner and Moving Party:** Daniel G. Szmania, (Szmania) who is the Plaintiff/Appellant, in the instant case. Szmania seeks the relief designated in Part 2.

**RAP 17.3 (a) (2) & (b) (3)**

- 2. Statement of Relief Sought/ Decision Below:** Szmania respectfully request a Discretionary Review by the Supreme Court of the State of Washington to review de novo the December 14<sup>th</sup>, 2021 Unpublished Opinion by the Court of Appeals of the State of Washington, Division II, .No. 55066-1-II. (Opinion) There have been no other Motions or Orders filed after the above noted decision.

**RAP 17.3 (a) (3) & (b) (4)**

- 3. Reference to parts of the record relevant to the motion/Issues Presented for Review:**
  - (a) Statute of Limitations on Claims:** Szmania plead the following claims in his Compliant; CP 3 FRAUD at page 2 at 5, the **Statute of Limitations is 3 years** found in RCW 4.16.080 (4) CP 3 page 3 at 6-8. *See* Szmania Brief's.

See <https://apps.leg.wa.gov/rcw/default.aspx?cite=4.16.080>

And RCW 19.86 UNFAIR BUSINESS PRACTICES—  
CONSUMER PROTECTION ACT, CP 3 pages 3 at 24 and 8 at  
18-24, the **Statute of Limitations is 4 years** found in

RCW 19.86.120. See <https://app.leg.wa.gov/RCW/default.aspx?cite=19.86.120>

*“We find that by its plain language, RCW 19.86.120 does not apply to .080 claims. “ State v. LG Elecs., Inc. Supreme Court of the State of Washington, No. 91263-7, 2016.*

And RCW 19.144.080 Unlawful actions-Fraud,  
misrepresentation, deceptive practices, CP 3 page 8 at 24 to  
page 9 at 1, the **Statute of Limitations is 5 years** found in  
RCW 19.144.090 Criminal penalties—Dates of limitation—  
Venue—Civil penalties and damages—Correction of public  
record. See <https://app.leg.wa.gov/RCW/default.aspx?cite=19.144.090>

*“Where, as here, multiple statutes of limitations may govern, the court must apply the longer.” ADCI Corp. v. Bao Nguyen, 16 Wn. App. 2d 77, 479 P.3d 1175, 2021 Wash. App. LEXIS 178.*

The Superior Court of Washington for Clark County  
(Superior Court), ruled solely on the Statute of Limitations  
argument.

*“THE COURT: I am going to dismiss this complaint and I’m going to dismiss specifically because of a violation of the statute of limitations.” [ 3 Year.] See RP page 17 at 12 to 14. (See Szmania Reply Brief page 1.)*

**RAP 17.3 (a) (4) & (b) (5)**

**4. A statement of the grounds for the relief sought, with supporting argument. / Statement of the Case:**

Szmania respectfully ask the Supreme Court of the State of Washington to Reverse the December 14, 2021 Opinion by Division II. Based on the material record on appeal and apply the above three (3) Statue of Limitations: **3 years** found in RCW 4.16.080 (4), **4 years** found in RCW 19.86.120 and **5 years** found in RCW 19.144.090, these all surpass the last action of the Respondent on October, 28, 2016 when he auctioned off Szmania's home and the filing of the Summons CP 2 and Compliant CP 3 on October 24, 2019. The date of: October 28, 2016 is the date Szmania "Discovered" the action and fraud by legal definition per RCW 4.16.080 (4) and RCW 62A.1-202 (c). See CP 3 pages 2 at 10-12, page 5 at 15-20, and See Szmania's Briefs.

*"RCW 4.16.080 (4) An action for relief upon the ground of fraud, the cause of action in such case not to be deemed to have accrued until the **discovery by the aggrieved party** of the facts constituting the fraud; "AND  
"RCW 62A.1-202 Notice; knowledge(c) "**Discover,**" "**learn,**" or words of similar import refer to knowledge rather than to reason to know."*



See <https://app.leg.wa.gov/RCW/default.aspx?cite=62A.1-202>

Thus the DISCOVER date of October 28, 2016 (“*damage was no longer speculative*” Opinion at page 7) and the filing of the Summons CP 2 and the Compliant CP 3 on October 24, 2019 is well within the 3, 4 and 5 year Statue of Limitations.

Thus based on the Material Evidence on Appeal, this Court must Reverse the Opinion by Division II and they must Reverse the Respondent’s Orders found in CP 28 Order Granting Defendant’s Motion to Dismiss with Prejudice. Dated: August 21, 2020, and CP 34 Order Denying Plaintiff’s Motion for Reconsideration of Order Granting Defendant’s Motion to Dismiss. Dated: September 18, 2020, both listed in Szmania’s Notice of Appeal, CP 35, Dated: October 8, 2020.

**RAP 17.3 (b) (6) and RAP 13.4 (b) (4)**

- 5. Argument/ The petition involves an issue of substantial public interest that should be determined by the Supreme Court:** The Argument of the Statue of Limitations is throughout this case. Szmania properly Plead in his Compliant, CP 3 page 3 at 6 to 8 and as noted above. Szmania preserved

that argument in his Opposition to Respondent's Motion to Dismiss, CP 24 pages 11 at 6-14; page 14, at 17-18. Szmania further preserved the Statute of Limitations argument in his Opening Brief Dated: January 25, 2021 on pages: 2, 3, 6, 8, 13, 17, 20, 21, 27, 28, 34 and 35. And in Szmania's Reply Brief Dated: April 26, 2021 on pages: 1, 2, 3, 9, 10, 18, 20, 21, & 23.

**Parties Dates of Tolling:**

**Szmania:** October 28, 2016 is the date Szmania "Discovered" the last fraudulent action by Respondent Auctioning off Szmania's Home. *See* Compliant CP 3 page 2 at 10-12 & page 5 at 15-20.

**Respondent:** June 27, 2016, this is an irrelevant date regarding Respondents actions. *See* CP 21 Respondent/Defendant's Motion to Dismiss page 5 at 3-4.

*"Here, the trial court granted Mr. Gillingham's motion to dismiss on statute of limitations grounds, only. [ 3 Year. ] RP at 17:11-18:8. 3-25-21."* *See* Respondent's Brief page 33.

Szmania filed of the Summons CP 2 and the Compliant CP 3 on October 24, 2019 is well within the **3 years statute of limitations** found in RCW 4.16.080 (4), using Szmania Tolling Date of October 28, 2016 Using the June 27, 2016 the **4 years Statute of Limitations** found in RCW 19.86.120 and the **5 year Statute of Limitations** found in RCW 19.144.090 are good!

Even using the Respondent's date of June 27, 2016  
Szmania filing the Summons CP 2 and the Compliant CP 3 on  
October 24, 2019 is well within the **4 years Statue of  
Limitations** found in RCW 19.86.120 and the **5 year Statue of  
Limitations** found in RCW 19.144.090.

Based on the record on Appeal and the noted facts, this  
Court must REVERSE the Opinion (December 14<sup>th</sup>, 2021  
Unpublished Opinion by the Court of Appeals of the State of  
Washington, Division II, .No. 55066-1-II. ) and they must  
Reverse the Respondent's Orders found in CP 28 Order  
Granting Defendant's Motion to Dismiss with Prejudice.  
Dated: August 21, 2020, and CP 34 Order Denying Plaintiff's  
Motion for Reconsideration of Order Granting Defendant's  
Motion to Dismiss. Dated: September 18, 2020, both listed in  
Szmania's Notice of Appeal, CP 35, Dated: October 8, 2020.

**This petition involves an issue of substantial public interest  
that should be determined by the Supreme Court:**

**Question-**Should a court of law in Washington State use ALL  
the Statute of Limitation periods when adjudicating a case?

**RAP 17.3 (b) (7)**

**6. Conclusion:**

For the foregoing reasons and the well settled law as noted above, it all needs to be applied in this case. The Superior Court and the Appellant Courts have so far departed from the accepted and usual course of judicial proceedings as to call for review by the Washington Supreme Court. And the Superior court committed an obvious error which would render further proceedings useless in that Court.

Therefore as a matter of Well Settled Law all the Superior Courts below listed Orders must be REVERSED by this Supreme Court of Washington with Reversals of the: December 14<sup>th</sup>, 2021, Unpublished Opinion by the Court of Appeals of the State of Washington, Division II, .No. 55066-1-II, and they must Reverse the Respondent's Orders found in CP 28 Order Granting Defendant's Motion to Dismiss with Prejudice. Dated: August 21, 2020, and CP 34 Order Denying Plaintiff's Motion for Reconsideration of Order Granting Defendant's Motion to Dismiss. Dated: September 18, 2020, both listed in Szmania's Notice of Appeal, CP 35, and Dated: October 8, 2020.

Szmania is also available for oral arguments and request oral arguments; and. request cost payable by Respondent Chad Gillingham Per RAP 18.1 (a), and Szmania also asked under RAP 18.1 that NO attorney fees or cost be awarded to Respondent Chad Gillingham.

Thus this Court must Rule in Szmania's favor based up the material facts on appeal before this Court for no reasonable person would rule other wise.

*"Where, as here, multiple statutes of limitations may govern, the court must apply the longer." ADCI Corp. v. Bao Nguyen, 16 Wn. App. 2d 77, 479 P.3d 1175, 2021 Wash. App. LEXIS 178. (RAP 13.4 (b) (2) "If the decision of the Court of Appeals is in conflict with a published decision of the Court of Appeals ;") This applies.*

*"Szmania "discovered" the fraud in the two alleged service dates of January 12, 2016 & March 9, 2016, on August 8, 2016, date filed by Wells Fargo. See conforming stamp on top CP 4 Ex B. Ex C". See 1-25-21 Brief of Szmania, P.17.*

*"5) Gillingham had a duty to ensure that all the Legal Requirements in RCW 61.24 were ALL properly completed BEFORE he sold Szmania's fully paid off home. He did NOT! The NOTICE OF DEFUALT & the Pre Foreclosure options was NEVER properly served." See CP 24, page 14 at 1-3. See CP 23 Ex M". See 1-25-21 Szmania Brief page 36.*

This Petition for Review is within the limits found in RAP 17.4 (g) (1) not to exceed 20 pages per RAP 18.17 (c) (10) or 5,000 words. Szmania asks for any other relief this Court deems appropriate.

**RAP 17.3 (b) (8)**

**(7) Appendix**

**Enclosed you'll find a Conformed Copy of:**

Opinion dated December 14<sup>th</sup>, 2021, Unpublished Opinion by the Court of Appeals of the State of Washington, Division II,

No. 55066-1-II.

**Page 8 of 9**

In the Opinion: on page 1 the first sentence of:

*“GLASGOW, J.—After Daniel G. Szmania failed to make payments on his residential mortgage, the bank proceeded with nonjudicial foreclosure. “*

Appellant asks this Court to STRIKE that sentence! Based on the Record on Appeal it is untrue! The Record on Appeal in CP 23, Ex H shows credit reporting from Bank of America the alleged loan servicer that NO late payments were on Szmania’s mortgage and that it was paid off! Justice Glasgow can NOT add to the Record on Appeal!

**Certificate of Compliance:** Appellant Certifies that this Petition for Review is within the Word Limits of 5,000 words or less with **a word count of: 1,887** and less than 20 pages with a page total of **9 pages** before title, appendix, certificate of service etc... per RAP 18.17 (b) & (c) (10).

Respectfully submitted and presented by:

*/s/ Daniel G. Szmania*

Daniel G. Szmania

**Appellant,** Daniel G. Szmania, Pro Se’ January 13, 2022

Presented: Daniel G. Szmania, Plaintiff, Pro Se’.

HM1 USNR Retired,

U.S. Supreme Court No. 21-473

U.S. Supreme Court No. 11-6137

U.S. Supreme Court No. 18-734

PO Box 757, Brush Prairie, WA 98606-0757

360-718-1402, Email: [dszmania@quixnet.net](mailto:dszmania@quixnet.net)

**CERTIFICATE OF SERVICE**

**Case No. 55066-1-II**

Pursuant to RCW 9.A.72.085, the undersigned certifies under penalty of perjury under the laws of the United States and the State of Washington, that on the 13<sup>th</sup> day of January, 2022, I served via: (Indicated by and X) to the following persons, a true and correct copy of the Foregoing:

  X   by CM/ECF          by First Class Mail

**1) APPELLANT’S PETITION FOR REVIEW**

**TO: DEFENDANT/RESPONDENT:**

Bullivant Houser PC, Attention: Ms. Leta E. Gorman,

Re: Chad Gillingham

One SW Columbia Street, Suite 800, Portland, OR 97204-4022

Direct 503-499-4634, Cell 503-939-3334, Main 503-228-6351.

Email: [leta.gorman@bullivant.com](mailto:leta.gorman@bullivant.com)   By: CM/ECF

I certify under penalty of perjury under the laws of the United States and the laws of the State of Washington that the foregoing is true and correct. **AND** Per GR 30 ELECTRONIC FILING AND SERVICE: (d) (2) (B) and (C) (ii): I ensure these electronic documents has the digital signature of the signer, myself; s/ Daniel G. Szmania.

Dated this 13<sup>th</sup> day of January 2022, at Brush Prairie, Washington.

Respectfully submitted and presented by:

/s/ Daniel G. Szmania

Daniel G. Szmania

**Appellant,** Daniel G. Szmania, Pro Se’ January 13, 2022

Presented: Daniel G. Szmania, Plaintiff, Pro Se’.

HM1 USNR Retired,

U.S. Supreme Court No. 21-473

U.S. Supreme Court No. 11-6137

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**CERTIFICATE OF SERVICE FOR:**

**APPELLANT’S PETITION FOR REVIEW: Page 1 of 1,**

**(Page 10 of 10)**

FILED  
SUPREME COURT  
STATE OF WASHINGTON  
1/13/2022 8:00 AM  
BY ERIN L. LENNON  
CLERK

Filed  
Washington State  
Court of Appeals  
Division Two  
December 14, 2021

COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

DANIEL G. SZMANIA,

Appellant,

v.

CHAD GILLINGHAM,

Respondent.

No. 55066-1-II

UNPUBLISHED OPINION

GLASGOW, J.—After Daniel G. Szmania failed to make payments on his residential mortgage, the bank proceeded with nonjudicial foreclosure. Szmania filed at least four lawsuits challenging the foreclosure and sale of his property, all of which were dismissed. In 2016, Chad Gillingham posted notices of default and of a trustee’s sale on Szmania’s property, and Gillingham presided over four public auctions where Szmania’s home was available for purchase.

In 2019, Szmania filed a complaint against Gillingham, primarily alleging that Gillingham committed fraud by auctioning Szmania’s home after Szmania informed Gillingham that the home was “paid off.” Clerk’s Papers (CP) at 10. The trial court granted Gillingham’s CR 12(b)(6) motion and dismissed Szmania’s action as barred by the three-year statute of limitations for fraud. The trial court denied Szmania’s motion for reconsideration.

Szmania appeals, arguing the trial court erred in concluding that the fraud claim had accrued by the date when Szmania filed a 2016 action challenging the foreclosure, rather than on the date Szmania’s home was actually sold. Fraud claims accrue when the plaintiff discovers or could have discovered with due diligence the facts giving rise to the action. Accrual is not



postponed until specific or substantial damages occur. Accepting Szmania's alleged facts as true, his claim accrued more than three years prior to his filing of the complaint. Accordingly, we affirm.

#### FACTS

On January 12, 2016, Gillingham posted a notice of default and foreclosure loss mitigation form at Szmania's residence in Brush Prairie. On March 9, 2016, Gillingham posted a notice of trustee's sale at the same address. By March 28, 2016, Szmania was aware that these documents had allegedly been served on him. Notice of the trustee's sale was also executed and recorded in the Clark County Auditor's Office on March 2, 2016, and it was published twice in a legal newspaper in Clark County prior to July 8, 2016, the date when the first auction took place. On June 27, 2016, Szmania filed a claim in superior court "to stop the illegal foreclosure," contending that his loan had been paid off. CP at 8.

Gillingham served as the auctioneer at four public auctions where Szmania's home was available for purchase. The first auction was on July 8, 2016. According to Szmania's complaint, Gillingham committed fraud because Szmania had told him by the time of the auction that Szmania's loan was paid off. Szmania contends that despite this knowledge, Gillingham failed to stop the foreclosure. Szmania's home was sold at the fourth auction, on October 28, 2016.<sup>1</sup>

About three years later, on October 24, 2019, Szmania filed a complaint against Gillingham alleging fraud. Szmania alleged Gillingham committed fraud as an auctioneer because he "knew the history of [Szmania] paying off . . . the mortgage [and] should have ceased his activities as the auctioneer" of an "illegal foreclosure." CP at 4. Szmania also alleged Gillingham committed fraud

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<sup>1</sup> Szmania was before this court in 2019 as the defendant in an unlawful detainer action after Wells Fargo Bank, N.A., purchased the property and Szmania failed to vacate it. *See Wells Fargo Bank, N.A., as Tr. for Bear Stearns Arm Tr. 2007-3 v. Szmania*, No. 50523-1-II, slip op. (Wash. Ct. App. Jan. 3, 2019) (unpublished), <https://www.courts.wa.gov/opinions/pdf/D2%2050523-1-II%20Unpublished%20Opinion.pdf>.

as a process server because he did not actually post the notices on the dates he claimed. And Szmania alleged Gillingham committed fraud because he declared, as a process server, that he was not “interested in” the foreclosure action but, as an auctioneer, Gillingham would profit from the sale of the home. CP at 5 (emphasis omitted). Szmania also alleged both intentional and negligent infliction of emotional distress.<sup>2</sup>

Szmania attached a letter to his complaint, dated September 9, 2016, warning, “Any purchasers or any auctioneers involved in the illegal sale of my home will be joined as co-defendants” in Szmania’s then-pending litigation regarding the foreclosure. CP at 38. This letter is addressed “to whom it may concern,” and it is not clear who received the letter. *Id.* (boldface and capitalization omitted).

In Gillingham’s answer to Szmania’s complaint, he admitted that he posted notices at Szmania’s residence on January 12 and March 9, 2016. He further admitted that he served as an auctioneer for the sale of Szmania’s home on July 8, August 12, September 9, and October 28, 2016. The home sold on October 28, 2016. Gillingham raised the statute of limitations and estoppel as affirmative defenses. He also reserved the right to raise additional defenses “as further discovery and investigation may warrant.” CP at 91.

Gillingham then filed a CR 12(b)(6) motion to dismiss, arguing that Szmania was attempting to relitigate issues that had been fully and finally decided in earlier lawsuits and, alternatively, that Szmania’s claims were all time barred. Specifically, Gillingham argued Szmania’s claims were “predicated on his assertion that he had paid off his home,” which multiple

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<sup>2</sup> Szmania also listed multiple crimes in his complaint including battery, theft, trafficking in stolen property, leading organized crime, and unfair business practices.

courts had already considered and rejected in prior cases. CP at 146.<sup>3</sup> Alternatively, Gillingham argued Szmania's claims were time barred because the statute of limitations for fraud is three years from the date of discovery, and Szmania "should have discovered the alleged fraud" by at least June 27, 2016, when he filed an action in superior court "to 'stop the illegal foreclosure.'" *Id.*

Szmania responded that his current action was not precluded by his June 27, 2016 action because this case involves new issues, Gillingham was not a party to the previous case, and preclusion would be unjust. He contended the current action was not time barred because it was filed on October 24, 2019, and "Mr. Gillingham's illegal actions fully cumulated against Szmania when he auctioned off Szmania's home on October 28, 2016." CP at 202.

The trial court granted Gillingham's motion to dismiss with prejudice. It explained on the record that it dismissed Szmania's complaint "specifically because of a violation of the statute of limitations." Verbatim Report of Proceedings (July 31, 2020) at 17. It clarified that it was not dismissing based on issue or claim preclusion but that it would allow Gillingham to amend his answer to plead these affirmative defenses, if this court were to disagree with the trial court's statute of limitations analysis and remand.

Szmania filed a motion for reconsideration making similar arguments, which the trial court denied.

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<sup>3</sup> In *Szmania v. E-Loan, Inc.*, the United States District Court for the Western District of Washington stated, "This is the fourth case Szmania has filed in an effort to avoid his loan and to avoid foreclosure on the security he pledged for his repayment obligation." Case No. C16-5644-RBL, 2016 WL 6823612, at \*1. The district court dismissed Szmania's claims with prejudice after defendants successfully argued that Szmania had already "litigated and lost" the claim that he paid off his loan in state court. *Id.* The Ninth Circuit Court of Appeals affirmed, concluding, "The district court properly dismissed Szmania's claim that defendants lacked authority to foreclose as barred by the doctrine of res judicata." *Szmania v. E-Loan, Inc.*, 713 F. App'x 647, 648 (Mem.) (9th Cir. 2018), *cert. denied*, 139 S. Ct. 1182 (2019).

Szmania appeals the trial court's order granting Gillingham's motion to dismiss with prejudice and the trial court's order denying reconsideration.

#### ANALYSIS

A party may move to dismiss an action where the pleading fails to “state a claim upon which relief can be granted.” CR 12(b)(6), (c). When reviewing a CR 12(b)(6) motion, the plaintiff's factual allegations are presumed true, and the action is dismissed “only if the court concludes, beyond a reasonable doubt, the plaintiff cannot prove any set of facts which would justify recovery.” *FutureSelect Portfolio Mgmt., Inc. v. Tremont Grp. Holdings, Inc.*, 180 Wn.2d 954, 962, 331 P.3d 29 (2014) (internal quotation marks omitted) (quoting *Kinney v. Cook*, 159 Wn.2d 837, 842, 154 P.3d 206 (2007)). Dismissal is appropriate if the “plaintiff's claim remains legally insufficient even under [their] proffered hypothetical facts.” *Id.* at 963 (quoting *Gorman v. Garlock, Inc.*, 155 Wn.2d 198, 215, 118 P.3d 311 (2005)). We review a trial court's order dismissing a claim under CR 12(b)(6) de novo. *Alpacas of Am., LLC v. Groome*, 179 Wn. App. 391, 396, 317 P.3d 1103 (2014).<sup>4</sup>

Although Szmania raised claims of outrage and emotional distress in his complaint, he appears to challenge only the dismissal of his fraud claim on appeal. Szmania argues the trial court erred when it determined his fraud claim accrued on June 27, 2016—the date Szmania filed a separate action challenging the foreclosure. He contends the “final act of fraud” occurred on October 28, 2016, when Gillingham “auction[ed] off Szmania's paid off home,” and that he

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<sup>4</sup> At one point, Gillingham advised the trial court that he should have filed this CR 12(b)(6) motion as a motion for summary judgment because he had already filed an answer to Szmania's complaint. Szmania objected to Gillingham's request to consider the motion to dismiss as a motion for summary judgment and requested that Gillingham's motion to dismiss be stricken. CR 12(c) permits a motion for judgment on the pleadings after an answer. The trial court ruled that it would consider Gillingham's motion as a CR 12 motion to dismiss.

“‘discovered’ the fraud in person at the auction on October 28, 2016.” Appellant’s Opening Br. at 12, 17. Therefore, Szmania argues, he was within the three-year statute of limitations when he filed this case on October 24, 2019. Yet, Szmania also reiterates on appeal that “on July 8, 2016, (the first auction) Gillingham was given material proof by Szmania that Szmania’s home was paid off.” *Id.* at 11.

RCW 4.16.080(4) provides that actions alleging fraud “shall be commenced within three years,” and the cause of action is “not to be deemed to have accrued until the discovery by the aggrieved party of the facts constituting the fraud.” The “discovery rule” is an “exception to the general rule of accrual” that applies where “‘injured parties do not, or cannot, know they have been injured.’” *Shepard v. Holmes*, 185 Wn. App. 730, 739, 345 P.3d 786 (2014) (quoting *In re Estates of Hibbard*, 118 Wn.2d 737, 744-45, 826 P.2d 690 (1992)). It is the plaintiff’s burden to show that the facts constituting fraud were not or could not have been discovered more than three years prior to the action’s commencement. *Douglass v. Stanger*, 101 Wn. App. 243, 256, 2 P.3d 998 (2000).

The statutory period for fraud commences when “the aggrieved party discovers, or should have discovered, the fact of fraud by due diligence and sustains some actual damage as a result therefrom.” *Browning v. Howerton*, 92 Wn. App. 644, 651, 966 P.2d 367 (1998). For example, in *Browning*, purchasers sought to challenge a real estate contract because the purchase price in the contract was based on an incorrect understanding of the property’s acreage. *Id.* at 645. The understanding was based on a 1992 property tax statement. *Id.* at 646. In 1993, the county conducted an aerial survey and sent a corrected tax statement. *Id.* This court held that the purchasers’ fraud claim accrued “as soon as they received the corrected tax statement in February 1993 and realized that they were obligated on a contract with an incorrect price.” *Id.* at 651.

“The running of the statute is not postponed by the fact that the substantial damages occur later, and is not postponed until the specific damages occur for which the plaintiff seeks recovery.” *Hudson v. Condon*, 101 Wn. App. 866, 875, 6 P.3d 615 (2000). In *Hudson*, Hudson and Condon entered into a partnership agreement to mutually own and manage a building of medical offices, and they entered into nearly identical leases. *Id.* at 869. Condon later amended his lease without notifying Hudson. *Id.* at 874. Division Three rejected an argument that Hudson’s fraud claim did not accrue until Condon actually acted upon the changed lease provisions and inflicted substantive damage. *Id.* at 876. It concluded that the claim accrued when Hudson “knew of the wrongful acts” of altering the lease and when Condon’s intent to act upon the altered lease provisions was “no longer speculative.” *Id.*

Szmania’s contention that his fraud claim did not accrue until the “final act of fraud” is contrary to *Browning* and *Hudson*. Appellant’s Opening Br. at 12. Once Szmania discovered the facts underlying his fraud claim and damage was no longer speculative, the statute of limitations began to run. RCW 4.16.080(4); *Browning*, 92 Wn. App. at 651; *Hudson*, 101 Wn. App. at 876.

Accepting the facts Szmania alleged in his complaint as true, Szmania’s fraud claim accrued by at least July 8, 2016. Szmania represented in his complaint, in his response to Gillingham’s motion to dismiss, and on appeal that he personally informed Gillingham that the house was paid off at the first public auction on July 8, 2016. Thus, Szmania knew by this date that his house was for sale at a public auction, that Gillingham was the auctioneer, and that Gillingham’s intent to sell Szmania’s home was not speculative. Szmania had discovered the basis for his fraud claim. Although Szmania’s home was not sold until October, “[t]he running of the statute is not postponed by the fact that the substantial damages occur later.” *Hudson*, 101 Wn. App. at 875.

Szmania also suggests Gillingham fraudulently represented that he posted the notice of default and notice of trustee's sale on January 12 and March 9, 2016, respectively, and he argues Gillingham did not actually post the notices on those dates. But this claim is also barred by the statute of limitations in RCW 4.16.080(4). Szmania sent a letter acknowledging that these notices were "supposedly served upon" him on March 28, 2016. CP at 180. Moreover, Szmania admits on appeal that he discovered Gillingham's declarations of posting by August 8, 2016, when the declarations were filed with the federal district court for consideration in Szmania's then-pending litigation. Szmania discovered the facts underlying this alleged fraud more than three years before he filed the complaint in this case. So to the extent Szmania is presenting these facts as a separate fraud claim, this claim is also time barred.

Finally, Szmania also knew by July 8, 2016 that Gillingham was the person auctioning the property. Thus, any claim that Gillingham misrepresented his interest in the auction on the posted documents is barred for the same reasons.

Szmania's fraud claims "remain[] legally insufficient even under his . . . proffered hypothetical facts," so dismissal is appropriate. *FutureSelect Portfolio Mgmt.*, 180 Wn.2d at 963 (quoting *Gorman*, 155 Wn.2d at 215). When Szmania filed this complaint on October 24, 2019, his fraud claims were barred by the statute of limitations. We affirm the trial court's order granting Gillingham's motion to dismiss with prejudice.<sup>5</sup>

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<sup>5</sup> Szmania also argues Gillingham waived the affirmative defenses of res judicata and collateral estoppel because Gillingham failed to plead them in his answer to Szmania's complaint. Szmania further argues the trial court abused its discretion by "reserving defenses that were not pleaded." Appellant's Opening Br. at 5. Gillingham's answer did include the affirmative defense of "estoppel." CP at 90. Even so, we need not reach the issue of potential additional affirmative defenses because Gillingham's affirmative defense that Szmania's claims were time barred is dispositive.

Szmania also appeals the trial court's order denying his motion for reconsideration on this issue. CR 59(a)(7) allows the trial court to vacate and reconsider an order where an aggrieved party shows that the order "is contrary to law." We review a trial court's order denying reconsideration for abuse of discretion. *Alpacas of Am.*, 179 Wn. App. at 396.

Szmania argued again in his motion for reconsideration that his fraud claim did not accrue until his property was actually sold on October 28, 2016. As discussed above, the trial court properly rejected this argument. We also affirm the trial court's order denying Szmania's motion for reconsideration.

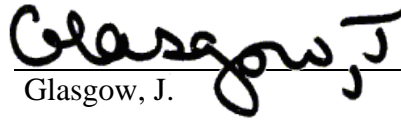
Szmania requests "cost[s], fees and time of value," Appellant's Opening Br. at 36, but he offers no authority in support of this request as required by RAP 18.1(a) and, regardless, he does not prevail on the merits. Accordingly, we decline to award Szmania costs or fees.

#### CONCLUSION

We affirm the trial court's order granting Gillingham's motion to dismiss with prejudice, and we affirm the trial court's order denying Szmania's motion for reconsideration.

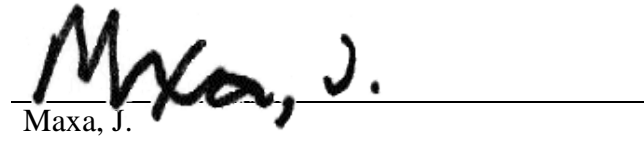


A majority of the panel having determined that this opinion will not be printed in the Washington Appellate Reports, but will be filed for public record in accordance with RCW 2.06.040, it is so ordered.

  
Glasgow, J.

We concur:

  
Lee, C.J.

  
Maxa, J.

**DANIEL SZMANIA - FILING PRO SE**

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