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SUPREME COURT
OF GUAM

IN THE SUPREME COURT OF GUAM

JOSEPH SANTIAGO TAITANO, ATTORNEY-IN-FACT FOR THE HEIRS OF DELORES TORRES FLORES, THE HEIRS OF MANUAL TORRES FLORES, AND THE HEIRS OF LUIS TORRES FLORES,
Plaintiffs-Appellants,

v.

CALVO FINANCE CORP., REMEDIOS TORRES FLORES, WILLIE TORRES FLORES, AND DAVID TORRES CRUZ,
Defendants-Appellees.

Supreme Court Case No.: CVA07-001
Superior Court Case No.: CV0365-03

OPINION

Cite as: 2008 Guam 12

Appeal from the Superior Court of Guam
Argued and submitted on October 17, 2007
Hagåtña, Guam

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00081198.

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BEFORE: F. PHILIP CARBULLIDO, Chief Justice;[1] RICHARD H. BENSON, Justice *Pro Tempore*; J. BRADLEY KLEMM, Justice *Pro Tempore*.

CARBULLIDO, C.J.:

[1] Plaintiffs-Appellants Taitano, et al. ("Torres' Heirs") are attempting to quiet title to a parcel of land that was allegedly conveyed to their ancestor by a recorded deed in 1918. The property in question was registered to Defendant-Appellee Calvo Finance Corporation in 1970. Torres' Heirs allege that all four Defendants-Appellees are guilty of fraud in colluding to deprive them of title to the disputed property. Torres' Heirs also allege that Calvo Finance Corporation had "actual or constructive notice" of their claim, and that the 1970 registration of the disputed property is void as a result. Appellants' Excerpts of Record ("ER"), at 25 (Amended Verified Compl., Nov. 30, 2005). Torres' Heirs' appeal from a dismissal of their complaint for failure to state a claim upon which relief can be granted. Specifically, the lower court found that their fraud claim was pleaded with insufficient particularity as required by Rule 9(b) of the Guam Rules of Civil Procedure, and that both the fraud and quiet title claims were untimely on their face. For the reasons set forth below, we affirm the dismissal of the fraud claim, and reverse dismissal of the quiet title claim.

I. Factual and Procedural Background

[2] In the narrative that follows, all factual statements derived from the complaint are stated as true. *First Haw. Bank v. Manley*, 2007 Guam 2 ¶ 9 (A court reviewing a Rule 12(b)(6) motion to dismiss must "construe the pleading in the light most favorable to the non-moving party, and resolve all doubts in the non-moving party's favor."). For clarity, allegations of intent or knowledge are described as alleged rather than factual. Disputes concerning facts supported by

[1] Chief Justice F. Philip Carbullido assumed the title of Associate Justice prior to the issuance of this Opinion.

judicially noticeable public records are also described. *See Lee v. City of Los Angeles*, 250 F.3d 668, 689 (9th Cir. 2001) (courts my take judicial notice of matters of public record in reviewing motions to dismiss).

[3] The gravamen of this case is the determination of who is the rightful owner of an undeveloped plot of land of approximately 15.4 hectares near Two Lovers Point (hereinafter "Estate 52"). Don Luis DeCortez Torres ("DeCortez") owned Estate 52 in the 1800's. DeCortez had five children, two of which were Eduviges Espinosa Torres ("Eduviges") and Luis Espinosa Torres ("Luis"). On May 18, 1918, DeCortez's heirs and widow conveyed Estate 52 to Eduviges. The deed was timely recorded with the Department of Land Management. On September 28, 1920, Eduviges died intestate, and her children inherited Estate 52 by operation of law. Torres' Heirs, as the rightful heirs of Eduviges' children, claim to be the fee simple owners of Estate 52 from September 28, 1920 to the present (excepting the period of condemnation by the Navy mentioned below.)

[4] On July 25, 1950 the U.S. Navy began condemnation proceedings. At the same time a Notice of Lis Pendens was filed. On October 29, 1954, judgment was entered allowing the U.S. Navy to take Estate 52 as part of 3.856 million square meter public land acquisition. Defendants-Appellees, Calvo Finance Corporation ("Calvo"); and Remedios Torres Flores, Willie Torres Flores, and David Torres Cruz ("the Floreses") dispute the fact that Estate 52 was condemned by the Navy, pointing to a decree by the Island Court on July 23, 1970 stating that "the United States Government [has] stipulated that it . . . has no interest in the land described in the petition [to register Estate 52]." Appellee's Brief, at 4 (July 23, 2007). Although an actual date is never explicitly stated in the record, Torres' Heirs suggest that the Navy returned title to

Estate 52 to the Ancestral Land Commission on or about May of 2002, at which point Torres' Heirs became aware of the actions of Calvo and the Floreses described below.

[5] In 1949, the estate of Eduviges' brother Luis was opened in probate. No notice was given to Torres' Heirs. A decree of final distribution was issued on February 9, 1951, and subsequently amended on September 18, 1953, conveying Estate 52 to Luis' seven children, one of which is Defendant-Appellee Remedios Torres Flores.

[6] In 1968 and 1969, Luis' seven children conveyed their interest in Estate 52 to third parties, who then conveyed their interests to Calvo. The Floreses participated in the purported conveyance of Estate 52 to Calvo, although their exact role in the conveyance is unclear. Torres' Heirs accuse Calvo of using the third party conveyances for the purpose of establishing a bona-fide-purchaser defense to any future claims on title to Estate 52. Calvo filed a petition to register title to Estate 52 sometime around 1970, but Torres' Heirs were never given personal notice of the petition. On June 17, 1970, the Island Court issued a decree registering Estate 52 to Calvo. Estate 52 has remained at all times essentially undeveloped, and none of its purported owners have ever constructed any improvements thereon.

[7] On April 1, 2003, Torres' Heirs filed a complaint to quiet title in real estate and for recovery for fraud against Calvo and the Floreses in the Superior Court of Guam. Calvo and the Floreses filed a motion to dismiss the complaint for failure to state a claim upon which relief can be granted. A few months later, the motion was granted and the complaint was dismissed with leave to amend. Torres' Heirs responded by filing an amended complaint. Again, Calvo and the Floreses motioned to dismiss for failure to state a claim. The court again granted the motion to dismiss, this time with prejudice, on the grounds that the amended complaint was time-barred on

its face and that Torres' Heirs had failed to plead fraud with particularity. Judgment against Torres' Heirs was entered on January 11, 2007. Torres' Heirs timely filed a notice of appeal.

II. Jurisdiction and Standard of Review

[8] This court has jurisdiction over this appeal from a final judgment. 48 U.S.C. § 1424-1(a)(2) (Westlaw through Pub. L. 110-230 (excluding Pub. L. 110-229) (2008)); Title 7 GCA §§ 3107, 3108(a), 25101, 25102(a) (2005).

[9] Dismissal for failure to state a claim pursuant to Rule 12(b)(6) of the Guam Rules of Civil Procedure is reviewed *de novo*. *First Haw. Bank*, 2007 Guam 2 ¶ 6. In reviewing such a motion, the court must "construe the pleading in the light most favorable to the non-moving party, and resolve all doubts in the non-moving party's favor." *Id.* ¶ 9. However, "conclusory allegations of law and unwarranted inferences are insufficient to defeat a motion to dismiss for failure to state a claim." *Epstein v. Washington Energy Co.*, 83 F.3d 1136, 1140 (9th Cir. 1996). "Dismissal for failure to state a claim is appropriate only 'if it appears beyond doubt that the [non-moving party] can prove no set of facts in support of his claim which would entitle him to relief.'" *Vasques v. Los Angeles County*, 487 F.3d 1246, 1249 (9th Cir. 2007) (quoting *Zimmerman v. City of Oakland*, 255 F.3d 734, 737 (9th Cir. 2001)). With regard to dismissal for failure to plead fraud with particularity pursuant to Rule 9(b), a *de novo* review must "determine whether the complaint pleaded facts with the requisite particularity." *Yourish v. California Amplifier*, 191 F.3d 983, 992 (9th Cir. 1999). Finally, if the court determines that the complaint fails to state a claim or fails to allege fraud with particularity, then "[d]enial of leave to amend is reviewed for abuse of discretion." *United States ex rel. Lee v. SmithKline Beecham, Inc.*, 245 F.3d 1048, 1051 (9th Cir. 2001). Dismissal is only proper if "'it is clear [on *de novo* review] that the complaint could not be saved by any amendment.'" *Simpson v. AOL Time Warner, Inc.*, 452

F.3d 1040, 1046 (9th Cir. 2006) (quoting *Livid Holdings Ltd. v. Salomon Smith Barney, Inc.*, 416 F.3d 940, 946 (9th Cir. 2005)).

III. Discussion

A. Whether Torres' Heirs Pleaded Fraud with Particularity

[10] Before applying the Rule 9(b) particularity analysis to Torres' Heirs' complaint, one needs to understand what fraud is actually being alleged. The pertinent section of the complaint is excerpted below:

> 28. In 1968 and 1969, Deeds were recorded from the seven children to several third parties, who subsequently conveyed all their interest in Estate 52 to Calvo Finance Corporation, and no notice was provided to Plaintiffs herein.
>
> 29. Defendants Calvo Finance Corporation, Remedios Torres Flores, Willie Torres Flores and David Torres Cruz's [sic] employed and used third party conveyances, in 1968 and 1969, on information and belief, for the intentional, purposeful and knowing act of concealment of their fraud and effort to insulate the title transfer behind a fictitious and vapid chain of title conveyances for the ulterior purpose of setting up defenses of bona fide purchases for value.
>
> 30. Plaintiffs received no notice of the 1968 and 1969 Deeds to Calvo Finance Corporation purporting to convey title to Estate No. 52.
>
> 31. The June 17, 1970 Decree of Land Registration from the Island Court states that "'no answer, motion or notice of appearance of any kind has been served or filed in said proceeding . . .' Land Registration Case No. 8-70, Decree of Registration; Exhibit "B" to Answer"; cited Decision and Order, October 25, 2005, at 2.
>
> 32. Plaintiffs received no notice or summons of any kind in regard to L.R. case No. 8-70.
>
> 33. Defendants Calvo Finance Corporation, among others, had actual or constructive notice of the May 18, 1918 Deed and Assignment to Eduviges Espinosa Torres, because the conveyance has always been of public record in the Department of Land Management, recorded under Document Control No. 4388, signed by Luis Espinosa Torres himself, so that the Heirs of Luis Espinosa Torres, had actual knowledge, or constructive notice from the family heirs and the public record.

. . . .

> 38. Plaintiffs are informed and believe that Mrs. Flores, Mr. Cruz, and Mr. Flores (herein the "Floreses") all knew, in 1968, that Mrs. Flores had no interest in Fafae [Estate 52] to convey to Defendant Calvo Finance Corporation, and that Plaintiffs held good title to Fafae [Estate 52] pursuant to a Deed made on May 8, 1918, the Floreses' predecessor in interest having been a grantor in said Deed.

ER, at 24-26 (Compl.). The problem with the complaint as worded is that Torres' Heirs appear to have commingled the elements of fraud with other elements that properly belong to different causes of action. The two choices embodied in the phrase "actual or constructive notice" in paragraph 33 are exclusive in the sense that either Calvo had actual knowledge of Torres' Heirs' land interest or it did not. By contrast, paragraph 29 alleges an "intentional, purposeful, and knowing act of concealment" by both Calvo and the Floreses. ER, at 24 (Compl.) This allegation of intent is only consistent with the theory that Calvo had actual knowledge of the 1918 deed.

[11] If Torres' Heirs intended the allegation of constructive notice to assist in explaining why they should have been given notice of the 1970 registration proceeding, then they should have alleged as much in their quiet title cause of action. If, on the other hand, they intended to allege constructive fraud,[2] then that allegation should have been plead as a separate cause of action. However, constructive fraud as a separate cause of action was not plead, and this court will not read causes of action into a complaint when they are not present. *Krouse v. Am. Sterilizer Co.*,

[2] Courts vary in how they describe the effect of constructive notice on the validity of registration decrees. Some cases overturning registration decrees for lack of personal notice refer specifically to the doctrine of constructive fraud. *McDonnell v. Quirk*, 491 N.E.2d 646, 649 (Mass. Ct. App. 1986); *Village of Savage v. Allen*, 95 N.W.2d 418, 423 (Minn. 1959); *Moakley v. Los Angeles Pacific Ry. Co.*, 277 P. 883, 884 (Cal. Dist. Ct. App. 1929); *see also* 18 GCA § 85307 (2005) ("Fraud is either actual or constructive."). Others analyze the lack of personal notice only in the context of due process and lack of jurisdiction. *Lobato v. Taylor*, 70 P.3d 1152, 1157-58 (Colo. 2003); *Francisco v. Look*, 537 F.2d 379, 380 (9th Cir. 1976); *Swartzbaugh v. Sargent*, 86 P.2d 895, 897 (Cal. Dist. Ct. App. 1939); *Follette v. Pacific Light and Power Corp.*, 208 P. 295, 304 (Cal. 1922). We adopt the latter approach because due process is a more comprehensible rationale for overturning land registration decrees than is the legal fiction of constructive fraud.

126 F.3d 494, 499 n.1 (3d Cir. 1997). On the other hand, pleadings must be interpreted liberally on review of a 12(b)(6) motion to dismiss. *See Simon Oil Co. v. Norman*, 789 F.2d 780, 782 (9th Cir. 1986). Therefore the allegation of constructive notice will not hinder our analysis of Torres' Heirs claim of actual fraud.

[12] "The elements of fraud are: '(1) a misrepresentation; (2) knowledge of falsity (or scienter); (3) intent to defraud to induce reliance; (4) justifiable reliance; and (5) resulting damages.'" *Hemlani v. Flaherty*, 2003 Guam 17 ¶ 9 (quoting *Transpacific Export Co. v. Oka Towers Corp.*, 2000 Guam 3 ¶ 23). To successfully plead actual fraud against Calvo and the Floreses, Torres' Heirs must plead facts with sufficient particularity to demonstrate the elements of fraud. Guam R. Civ. P. ("GRCP") 9(b) (2007). First, Torres' Heirs must show that Calvo and the Floreses claimed at various times an interest in Estate 52 but that no such interest existed because Torres' Heirs held a superior deed. Second, Torres' Heirs must show that Calvo and the Floreses knew of Torres' Heirs' superior deed. Assuming these two elements are present, one can reasonably infer that any attempt to convey, obtain by probate decree, or register the property has been done with the fraudulent intent of depriving Torres' Heirs of their interest in Estate 52.

1. The Legal Standard for Pleading Fraud with Particularity

[13] Rule 9(b) of the Guam Rules of Civil Procedure states that "[i]n all averments of fraud or mistake, the circumstances constituting fraud or mistake shall be stated with particularity. Malice, intent, knowledge, and other conditions of mind of a person may be averred generally." By contrast, Rule 8 requires only a "short and plain statement of the claim." GRCP 8(a) (2007). These rules are identical to Rules 8(a) and 9(b) of the Federal Rules of Civil Procedure. Modern courts still occasionally subscribe to the notion that these two rules must be read together.

Ouaknine v. MacFarlane, 897 F.2d 75, 79 (2d Cir. 1990). One early Ninth Circuit opinion even insisted that fraud pleadings be both sufficiently particular *and* short plain statements. *Carrigan v. Cal. State Legislature*, 263 F.2d 560, 565 (9th Cir. 1959).

[14] Under the right conditions, a short plain statement can satisfy the requirement that fraud be plead with particularity. Official Form 21 in the Appendix to the Federal Rules of Civil Procedure makes a legally sufficient pleading of fraud in only one sentence: "On *date*, defendant *name* conveyed all defendant's real and personal property *if less than all, describe it fully* to defendant *name* for the purpose of defrauding the plaintiff and hindering or delaying the collection of the debt." Fed. R. Civ. P. App. Form 21 (Complaint on a Claim for a Debt and to Set Aside a Fraudulent Conveyance Under Rule 18(b)); *see also In re Initial Pub. Offering Sec. Litig.*, 241 F.Supp.2d 281, 327 (S.D.N.Y. 2003). The short, plain pleading of Form 21 satisfies the requirement of particularity because it details the "who, what, when, where, and how" of the fraud being alleged. *Id.*; *see also Vess v. Ciba-Geigy Corp. USA*, 317 F.3d 1097, 1106 (9th Cir. 2003). As a justification for this minimum level of specificity, courts reason that the "allegations of fraud must be 'specific enough to give defendants notice of the particular [fraudulent] misconduct . . . so that they can defend against the charge and not just deny that they have done anything wrong.'" *Bly-Magee v. Cal.*, 236 F.3d 1014, 1019 (9th Cir. 2001) (quoting *Neubronner v. Milken*, 6 F.3d 666, 672 (9th Cir. 1993)).

[15] By comparison, several rules have developed over the years to help courts identify insufficient fraud pleadings. "While statements of the time, place and nature of the alleged fraudulent activities are sufficient, mere conclusory allegations of fraud are insufficient." *Moore v. Kayport Package Exp., Inc.*, 885 F.2d 531, 540 (9th Cir. 1989). For example, accusing a defendant of running a "sophisticated pyramid scheme" without explaining what makes it a

pyramid scheme or why it is fraudulent is a conclusory allegation and therefore insufficient. *Miron v. Herbalife Int'l, Inc.*, 11 Fed. Appx. 927, 930 (9th Cir. 2001) (unreported opinion). Similarly, allegations based entirely on information and beliefs do not usually satisfy the particularity requirement of Rule 9(b). *Wool v. Tandem Computers, Inc.,* 818 F.2d 1433, 1439 (9th Cir. 1987). Where "relevant facts are known only to the defendant," however, the pleading requirement is relaxed somewhat. *Concha v. London*, 62 F.3d 1493, 1503 (9th Cir. 1995). But even where allegations concern facts peculiarly within defendant's knowledge, the plaintiffs must still state a factual basis for their belief. *Neubronner*, 6 F.3d at 672.

[16] Many commentators have been critical of the way Rule 9(b) has evolved from the days when Judge Learned Hand and his fellow judges made the following observation:

> [T]he omission [of detail] is not fatal; *it is only a pleading*, and Rule 8(f) . . . demands that it "shall be so construed as to do substantial justice." Its general purport is plain enough, and if the [defendant] had really any doubt about its meaning—which plainly it had not—it had, and still has, relief under Rule 12(e); the day has passed when substantial interests stand or fall for such insubstantial reasons.

Levenson v. B. & M. Furniture Co., 120 F.2d 1009 (2d Cir. 1941) (per curiam) (emphasis in original); *see also* Richard D. Greenfield, et al., *Rule 9(B): Docket Control Device or Safeguard against Charges of Fraud?*, A.L.I. at 711 (April 23, 1992). In 1986, Richard L. Marcus pointed out that the federal courts, by too harsh an application of Rule 9(b), were reverting from notice pleading to the old system of fact pleading. *The Revival of Fact Pleading under the Federal Rules of Civil Procedure*, 86 Colum. L. Rev. 433, 435 (1986); *see also Note: Pleading Securities Fraud Claims with Particularity under Rule 9(b)*, 97 Harv. L. Rev. 1432 (1984). We share this concern and reiterate that a plaintiff need not prove his claim of fraud at the pleadings stage. Rather, what is required is that a plaintiff set forth his claim with sufficient detail to provide

notice to defendants as to what particular fraudulent action is being alleged. *Bly-Magee*, 236 F.3d at 1019.

3. Pleading Scienter in Fraud Complaints

[17] At one time, just before passage of the Private Securities Litigation Act of 1995, Pub. L. 104-67, 109 Stat. 737 (1995), there was a split between the Second and Ninth Circuits regarding how specifically a plaintiff needed to plead scienter, such as intent or knowledge. *See* Mitu Gulati, *Fraud by Hindsight*, 98 Nw. U. L. Rev. 773, 784 (2004). The Second Circuit held that facts needed to be pleaded that would give a strong inference of scienter. *See, e.g., Turkish v. Kasenetz*, 27 F.3d 23, 28 (2d. Cir. 1994). The Ninth Circuit, by contrast, refused to follow this rule and stated instead that "[w]herever it is material to allege malice, fraudulent intention, knowledge, or other condition of the mind of any person, it shall be sufficient to allege the same as a fact *without setting out the circumstances from which the same is to be inferred.*" *In re GlenFed, Inc. Securities Litigation*, 42 F.3d 1541, 1545 (9th Cir. 1994) (emphasis in original). In the end, Congress codified the Second Circuit approach by requiring that in private securities fraud litigation "the complaint shall, with respect to each act or omission alleged to violate this title, state with particularity facts giving rise to a strong inference that the defendant acted with the required state of mind." 15 U.S.C.A. § 78u-4(b)(2) (2007). We reject the Second Circuit interpretation that Rule 9(b) requires a plaintiff to demonstrate a strong inference of scienter. Instead, we adopt the Ninth Circuit approach as being more consistent with the plain meaning of Rule 9(b). *See* GRCP 9(b) ("Malice, intent, knowledge, and other conditions of mind of a person may be averred generally"). Although "[p]laintiffs may fairly be expected to identify with specificity the defendant's alleged misrepresentations . . . they are not expected to plead with specificity the defendant's state of mind." *Concha*, 62 F.3d at 1503.

[18] There is, however, a subtle distinction between averring a defendant's state of mind and alleging that a defendant's statement is false. At one point the Ninth Circuit gave a hypothetical example to illustrate the distinction:

> [A] plaintiff might allege that he bought a house from defendant, that defendant assured him that it was in perfect shape, and that in fact the house turned out to be built on landfill, or in a highly irradiated area; plaintiff could simply set forth these facts (presumably along with time and place), allege scienter in conclusory fashion, and be in compliance with Rule 9(b). We agree that such a pleading would satisfy the rule. Since "in perfect shape" and "built on landfill" are at least arguably inconsistent, plaintiff would have set forth the most central "circumstance constituting fraud"-namely, that what defendant said was false. Notably, the statement would have been just as false when defendant uttered it as when plaintiff discovered the truth.

Cooper v. Pickett, 137 F.3d 616, 625 (9th Cir. 1997) (*quoting GlenFed*, 42 F.3d at 1545). In alleging that a statement was false "a plaintiff must set forth *more* than the neutral facts necessary to identify the transaction. The plaintiff must set forth what is false or misleading about a statement, and why it is false." *Vess*, 317 F.3d at 1106 (quotations omitted, emphasis in original). On the other hand, knowledge that the statement was false may be averred generally. *Cooper*, 137 F.3d at 628 ("To hold that the shareholders' complaint must explain what specific information the analysts obtained to make them know that their statements were false would ignore Rule 9(b)'s simple statement that 'knowledge ... may be averred generally.'").

[19] The subtle distinction is illustrated in *Yourish v. California Amplifier*, 191 F.3d 983 (9th Cir. 1999). In *Yourish*, a pleading of fraud was found to be insufficient when plaintiffs alleged that directors of a company made false positive statements about the company's financial outlook. *Id.* at 992-98. Plaintiffs failed to plead fraud with particularity when they alleged the existence of vaguely identified documents in the company's possession contradicting those statements. *Id.* at 994-95. *Yourish* can be distinguished from the hypothetical mentioned in

Cooper in that the realtor in the hypothetical could not have been stating the truth (knowingly or otherwise) in describing the house as being "in perfect shape." It is quite possible, however, that the company directors mentioned in *Yourish*, absent any facts showing otherwise, were genuinely optimistic about the company's prospects. In summary, two separate elements of the tort of fraud have very different pleading requirements: the fact that a misrepresentation occurred must be plead with particularity, the fact that a defendant knew that the misrepresentation was false may be averred generally.

[20] Torres' Heirs' complaint contains several explicit and implicit references to scienter in connection to the fraud allegations. In paragraph 29, all four defendants are alleged to have "employed and used third party conveyances, in 1968 and 1969, on information and belief, for the *intentional, purposeful and knowing* act of concealment of their fraud and effort to insulate the title transfer behind a fictitious and vapid chain of title." ER, at 24 (Compl.) (emphasis added). This paragraph alleges, in essence, that all four defendants had knowledge that the conveyances did not convey a valid interest in Estate 52. It also alleges that the four defendants intended to create a more solid chain of title for Calvo by creating a series of deeds that would then support a bona fide purchaser defense. Later paragraphs appear to back away slightly from this "grand conspiracy" theory. Paragraph 33 alleges that both Calvo and "the Heirs of Luis Espinosa Torres" had "actual or constructive notice" of the May 18, 1918 deed. *Id.* at 25. Paragraph 38 alleges only that the Floreses "knew, in 1968, that [Remedios Torres] Flores had no interest in [Estate 52] to convey to Defendant Calvo Finance Corporation, and that Plaintiffs held good title to [Estate 52] pursuant to a Deed made on May 8, 1918 . . . ." *Id.* at 26. Interpreted in a "light most favorable" to the plaintiff," *First Haw. Bank*, 2007 Guam 2 ¶ 9, Torres' Heirs aver that all four plaintiffs had knowledge of the 1918 deed and intended that

Calvo would misrepresent its claim to title in its land registration action. Torres' Heirs do not explain how the knowledge was acquired or the intent formed, but under Rule 9(b) a simple averment is enough. *See* GRCP 9(b); *GlenFed*, 42 F.3d at 1545.

[21] However, in addition "the plaintiff must set forth an explanation as to why the statement or omission complained of was false or misleading." *Cooper*, 137 F.3d at 625. The statement complained of in the fraud complaint is the alleged false representation by Calvo of their Estate 52 title claim to the Island Court.[3] Torres' Heirs must set forth the "circumstances indicating falseness" of the claim, that is, provide a sufficiently detailed explanation as to why Calvo did not have an interest in Estate 52 in 1970. *GlenFed*, 42 F.3d at 1548. Here, at least, Torres' Heirs provide significant detail setting forth their original claim to title and why Torres' Heirs still held an interest when Calvo registered the land in 1970. They give a detailed description of Estate 52, paragraph 11, its relationship to the land registered by Calvo in 1970, paragraph 10, the origin of the deed, paragraph 13, how the deed was recorded with the Department of Land Management, paragraph 13, and how Torres' Heirs acquired their interest in the land, paragraphs 14-17. ER, at 21-22 (Compl.). They also explain how title to Estate 52 was purportedly conveyed to other parties without notice to Torres' Heirs, paragraphs 25-27. *Id.* at 23-24. Finally, Torres' Heirs allege in paragraph 22 that the U.S. Navy began land condemnation proceedings encompassing Estate 52 in 1950. *Id.* at 23. If "[a]ll allegations and reasonable inferences are taken as true," *Simpson*, 452 F.3d at 1046, and Torres' Heirs had a valid interest in 1970, then the complaint has alleged facts sufficient to support a conclusion that Calvo misrepresented its claim to title to the Island court.

[3] It is possible that one of the defendants, Remedios Torres Flores, also misrepresented her claim to the probate court in or around 1951, but since Torres' Heirs do not allege as much, it need not be addressed.

[22] All that remains, then, is to determine whether any of the events alleged in the complaint extinguish Torres' Heirs claim to title in Estate 52. We hold that they do not. The probate decrees of 1951 and 1953 would have been conclusive as to the rights of Luis' heirs, but would not have operated to affect the title held by virtue of the 1918 deed. *See* 15 GCA § 3013 (2005) (decree of final distribution is conclusive as to rights of heirs, devisees, and legatees), *see also Zahnen v. Limtiaco*, 2008 Guam 5 ¶ 17 (a probate distribution does not quiet title to property). This is true because "[a] decree of distribution distributes only such title as the deceased had at the time of his death." *Shelton v. Vance*, 234 P.2d 1012, 1014 (Cal. Dist. Ct. App. 1951).

[23] Nor would the Marketable Title Act have operated to extinguish Torres' Heirs' claim to Estate 52. Title 21 GCA § 39102 states in pertinent part:

> Any person having the legal capacity to own land in the Territory of Guam, who has an unbroken chain of title to any interest in land by himself and his immediate and remote grantors since January 1, 1935, and is in possession of such land, shall be deemed to have a marketable record title to such interests, subject only to such claims thereto and defects of title as are not extinguished or barred by the application of the provisions of this Chapter and instruments which have been recorded since January 1, 1935.

21 GCA § 39102 (2005). A second statute, 21 GCA 39104, extinguishes all claims against a marketable title not recorded before August 1, 1960. 21 GCA 39104 (2005). However, the protections of the Marketable Title Act require actual possession of the property. 21 GCA § 39102. In *Aguon v. Calvo*, the Ninth Circuit rejected the notion that an owner must occupy every square inch of property for its title to be marketable. 951 F.2d 1131, 1133-34 (9th Cir. 1991) (interpreting 21 GCA § 39102). That the issue was even raised implies that at least *some* possession is necessary to secure a marketable title. Because Estate 52 is an unimproved lot, and nothing in the record indicates that it has ever been occupied or developed, no holder of title can claim the protection of the Marketable Title Act.

[24] Thus neither the probate decrees nor the Marketable Title Act would have extinguished the rights conveyed by the 1918 deed. Assuming all factual allegations are true, there is sufficient detail in the fraud complaint to allow us to conclude that Torres' Heirs held title to Estate 52 in 1970, and that Calvo's claim to title was a misrepresentation. Therefore, a conclusory allegation that Calvo and the Floreses had knowledge of the 1918 deed and intent to defraud is sufficient under Rule 9(b).

4. Providing Notice to Defendants

[25] However, Torres' Heirs must overcome one last hurdle to establish that their fraud pleading is sufficient under Rule 9(b). The allegation must include enough detail "'to give defendants notice of the particular [fraudulent] misconduct . . . so that they can defend against the charge and not just deny that they have done anything wrong.'" *Bly-Magee*, 236 F.3d at 1019 (quoting *Neubronner*, 6 F.3d at 672). The pleading must be specific enough to give defendants notice of the "'who, what, when, where, and how of the misconduct charged.'" *Vess*, 317 F.3d at 1106 (quoting *Cooper*, 137 F.3d at 627).

[26] The "who" is subject to the particular requirement that in suits involving multiple defend[a]nts, "a plaintiff must, at a minimum, 'identif[y] the role of [each] defendant[] in the alleged fraudulent scheme.'" *Swartz v. KPMG LLP*, 476 F.3d 756, 765 (9th Cir. 2007) (quoting *Moore*, 885 F.2d at 541). Here defendants Calvo and the Floreses are accused of "employ[ing] and using third party conveyances" in paragraph 29 of the complaint. ER, at 24, (Compl.). On "information and belief," the alleged purpose of the conveyances was to create a defense of bona fide purchaser. *Id.* Paragraph 28 alleges that "[i]n 1968 and 1969, Deeds were recorded from the seven children [of Luis] to several third parties, who subsequently conveyed all their interest in Estate 52 to Calvo Finance Corporation . . . ." *Id.* Unfortunately, the specific "role of each

defendant" is not entirely clear from the relevant portions of the complaint. *Swartz*, 476 F.3d at 765. Several important questions remain unanswered. Who were the third parties that conveyed title to Calvo? Is Remedios Torres Flores to be identified with the Remedios Torres Flores who purportedly inherited a partial interest in Estate 52 from Luis in paragraphs 26 and 27? *See* ER, at 24 (Compl.). Are Willie Torres Flores and David Torres Cruz then the third parties mentioned in paragraphs 28 and 29? *See id.* At a minimum, Torres' Heirs should have identified the "several third parties" of paragraph 28, so that Calvo could have identified its alleged co-conspirators. A more coherent explanation of the Floreses' role in the alleged fraud and what their relation was to the other parties would also help to establish the sufficiency of the complaint.

[27] The officers or representatives of Calvo who participated in the alleged scheme are also unidentified in the complaint. This is not a fatal defect, since that information may be entirely within the control of the defendant Calvo. *Cf. SmithKline Beecham*, 245 F.3d at 1052 (rejecting pleading for failing to identify defendant's employees who participated in fraud, but only because plaintiff was also an employee of defendant for almost 20 years). Where a complaint alleges "'collective action'" of a corporation, "'a plaintiff fulfills the particularity requirement of Rule 9(b) by pleading the misrepresentations with particularity and where possible the roles of the individual defendants in the misrepresentations.'" *Blake v. Dierdorff*, 856 F.2d 1365, 1369 (9th Cir. 1988) (quoting *Wool,* 818 F.2d at 1440). Almost forty years later it may not be possible for either Torres' Heirs *or* Calvo to determine which officers or representatives participated in the effort to register Estate 52.

[28] The "when" and the "how" of the alleged fraudulent land conveyance and registration are also lacking. As mentioned above, the exact route that the land conveyances took in moving

from Luis' seven children to Calvo is lacking in detail. Similarly, the dates of the conveyances in question are confined only insofar as they allegedly occurred in 1968 and 1969. In cases where the exact timing of specific events is critical for determining fraud, for example statements expressing optimistic corporate performance in securities fraud cases, lack of precision in alleging dates can be fatal to a pleading. *See, e.g.*, *Bartlett v. Arthur Andersen LLP*, 55 Fed. Appx. 819, 820 (9th Cir. 2003) (unreported case). Here the exact dates are not critical to the claim, but their lack of specificity weighs against a finding that the pleadings are sufficient under Rule 9(b).

[29] Only the "what," that is, the misrepresentation of Calvo's claim to title to the Island Court in 1970, is specifically pleaded. Because the other details of the fraud claim lack specific details as to how Calvo came into possession of Estate 52, the complaint fails to plead fraud with particularity as required under Rule 9(b). We believe this lack of specificity could be cured by the allegation of facts subject to discovery through additional research and investigation. However, because the fraud complaint is time barred on its face, we agree that the lower court properly dismissed the fraud claim with prejudice.

B. Whether the Fraud Claim is now Time Barred

[30] Three statutes of limitations may be pertinent in determining whether Torres' Heirs' fraud claim is time barred on its face. The first is 21 GCA § 29146, which is nearly identical to 7 GCA § 11204 and states:

> [n]o person shall commence any action at law or in equity for the recovery of land, or assert any interest or right in or lien or demand upon the same, or make entry thereon adversely to the title of interest certified in the certificate of title bringing the land under the operation of this Law after one (1) year following the first registration, providing said first registration is not void for any of the reasons set forth in 21 GCA 29139.

21 GCA § 29146 (2005), *accord* 7 GCA § 11204 (2005) (referring to "the Land Title Registration Act" rather than "this Law"). Title 21 GCA § 29139 provides only two exceptions to this one year statute of limitations, that is, "[i]f a deed or other instrument is registered, which is forged, or executed by a person under legal disability, such registration shall be void," the only exception being against a bona fide purchaser for value. 21 GCA § 29139 (2005). The second relevant statute of limitations is a three year limit on actions for fraud or mistake provided that "[t]he 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 or mistake." 7 GCA § 11305(4) (2005). Finally, no action can proceed for recovery or possession of real property "unless it appear that the plaintiff, his ancestor, predecessor, or grantor, was seized or possessed of the property in question, within five years before the commencement of the action." 7 GCA § 11205 (2005).

[31] Calvo argues that all three statutes of limitations bar Torres' Heirs from asserting any claim of either quiet title or fraud. On appeal, Torres' Heirs argue that only the fraud statute of limitations found in 7 GCA § 11305 applies, but that under the equitable tolling doctrine, the statute was tolled until May of 2002 when they first discovered Calvo's registration. They also argue that the one year statute of limitations for actions against registered land found in 21 GCA § 29146 and 7 GCA § 11204 was not intended to abrogate the equitable remedies for fraud or protect fraudulent registrations. In support of their position, Torres' Heirs point to section 29138 of the Guam Land Title Registration Act which states: "[i]n the case of fraud, any person defrauded shall have all rights and remedies that he would have had if the land were not under the provisions of this Law" except as applied to bona fide purchasers for value. 21 GCA § 29138 (2005). In the alternative, they argue that the 1970 registration falls under an exception to the statute of limitations found in 7 GCA § 29139, that is, that the registration was void due to a

"legal disability" because the Navy had already condemned the land. Torres' Heirs do not address the possible application of the five year seisin rule of 7 GCA § 11205.

[32] We agree with Torres' Heirs that their fraud claim is subject only to the statute of limitations for fraud found in 7 GCA § 11305. We disagree, however, with the assertion that the statute of limitations for fraud was equitably tolled until their discovery in 2002 of the events described in the complaint. Torres' Heirs had numerous opportunities to discover their claim through publicly available records. As a result, their fraud claim is now time barred on its face. With regard to the quiet title claim, we hold that if Torres' Heirs are correct in asserting that they should have received personal notice of the land registration proceeding, the land registration decree would be void for lack of jurisdiction. The quiet title claim therefore survives because a void judgment may be vacated at any time, regardless of any applicable statutes of limitations.

1. The Five Year Seisin Rule

[33] Of the three possible statutory bars, the requirement that a party have seized or possessed real property within five years of an action for recovery of the property seems least applicable to the facts of the complaint. *See* 7 GCA § 11205. California courts, interpreting their identical statute, have held that "[t]he requirement of seisin or possession is met when it is established that the plaintiff was possessed of legal title, and this seisin can be destroyed only by establishing the fact that a title by adverse possession was acquired by the defendant." *Tobin v. Stevens*, 251 Cal. Rptr. 587, 589 (Ct. App. 1988) (quoting *McKelvey v. Rodriquez*, 134 P.2d 870, 875 (Cal. Dist. Ct. App. 1943)). Thus, for example, a suit to recover property based on undue influence must be brought within five years. *Campbell v. Genshlea*, 180 P. 336, 339 (Cal. 1919). On the other hand, a suit to recover property based on an instrument of conveyance, such as a deed, is not barred by 7 GCA § 11205 because the holder of the instrument is assumed to possess title and is

therefore seized of the property. *See Wilkerson v. Thomas*, 263 P.2d 678, 682 (Cal. Dist. Ct. App. 1953) (existence of deed sufficient to establish seisin and possession even when defendant exclusively occupied the property).

[34] We have before us a case involving two competing instruments—a 1918 deed and a 1970 certificate of title to registered land. To successfully assert a statute of limitations defense under 7 GCA § 11205, Calvo and the Floreses must demonstrate the superiority of Calvo's certificate of title to Estate 52. That issue, however, is central to the instant case and must be tried on the merits. Although we recognize that title to registered land is afforded greater protection under the law than title conveyed by a recorded deed, see *Pelowski v. Taitano*, 2000 Guam 34 ¶ 30, we are not prepared to declare categorically that a certificate of title to registered land automatically renders all pre-existing deeds null and void. Thus, a statute of limitations defense under 7 GCA § 11205 cannot be invoked against a plaintiff who holds an instrument purporting to grant title to a disputed property unless such title does not exist as a matter of law. Because one cannot say as a matter of law that Torres' Heirs' deed does not convey title to Estate 52, 7 GCA § 11205 does not apply to the present case. Perhaps for this reason, the applicability of 7 GCA § 11205 was never raised as an issue in *Taitano v. Lujan*, a case with facts very similar to the instant case. 2005 Guam 26 (a controversy over competing deeds to a tract of land recently repatriated from the government).

2. The One Year Statute of Limitations for Registered Land Actions

[35] The one year statute of limitations on actions to recover registered land presents a more interesting case of statutory interpretation. Section 29146 of the Guam Land Title Registration Act clearly allows for only two exceptions to the one year statute of limitations—forgery and legal disability. 21 GCA § 29146; 21 GCA § 29139 ("If a deed or other instrument is registered,

which is forged, or executed by a person under legal disability, such registration shall be void . . .") A statute of limitations identical to section 29146 also appears in Title 7 under the chapter heading "Time for Commencing Actions." 7 GCA § 11204. The fundamental question, however, is to determine the operation of 21 GCA § 29138, which reads in its entirety:

> In case of fraud, *any person defrauded shall have all rights and remedies that he would have had if the land were not under the provision of this Law*: provided, that nothing contained in this section shall affect the title of a registered owner who has taken bona fide for a valuable consideration or of any person bona fide claiming through or under him.

21 GCA § 29138 (emphasis added). If section 29138 does indeed restore the less restrictive statute of limitations found in 7 GCA § 11305, then Torres' Heirs may be correct in asserting that section 29138 does not bar their action for fraud.

[36] "This court conducts de novo review of statutory interpretation issues." *People v. Angoco*, 2007 Guam 1 ¶ 49. "'[O]ur duty is to interpret statutes in light of their terms and legislative intent.'" *People v. Flores*, 2004 Guam 18 ¶ 8 (quoting *Carlson v. Guam Tel. Auth.*, 2002 Guam 15 ¶ 46 n.7). "'Absent clear legislative intent to the contrary, the plain meaning prevails.'" *Id.* (quoting *Sumitomo Constr. Co. v. Gov't of Guam*, 2001 Guam 23 ¶ 17). In this case, the question is whether the legislature intended actions for fraud to be an additional exception to the one year statute of limitations for actions to recover registered land despite having referred specifically to only two exceptions—forgery and legal disability—in 21 GCA § 29139.

[37] A plain reading of 21 GCA § 29138 suggests that the legislature intended to keep actions for fraud available to plaintiffs with claims to registered land, even after the one year statute of limitations has expired. Thus a fraudulent registration by an initial registrant would not be protected by the one year statute of limitations or any other protection afforded to registered land

owners under the Guam Land Title Registration Act. One minor complication to this interpretation is the fact that the legislature created an identical statute of limitations in Title 7, perhaps in an attempt to take it outside the "provision" of the Guam Land Title Registration Act of Title 21. Normally, we assume that the Legislature intends to create all legal effects caused by its statutory amendments. *See Connecticut Nat'l Bank v. Germain*, 503 U.S. 249, 253-54 (1992) ("courts must presume that a legislature says in a statute what it means and means in a statute what it says there"). However, if the Legislature really intended to take the one year statute of limitations outside "the provisions of this [Guam Land Title Registration] Law" by copying it verbatim to Title 7, it certainly could have taken a more direct approach. 21 GCA § 29138; *cf. Whitman v. Am. Trucking Ass'ns*, 531 U.S. 457, 468 (2001) ("Congress . . . does not alter the fundamental details of a regulatory scheme in vague terms or ancillary provisions—it does not . . . hide elephants in mouseholes."). The more likely explanation for the duplication of 21 GCA § 29146 is that the legislature wanted to assemble all statutes of limitations under a single Title. Although adding a third exception to the one year statute of limitations in a separate statutory section is an unusual approach, it must be remembered that "[s]tatutory construction . . . is a holistic endeavor." *United Savings Ass'n v. Timbers of Inwood Forest Assocs.*, 484 U.S. 365, 371 (1988).

[38] We find support for our conclusion that fraud is an exception to the one year statute of limitation in the California case of *Headley v. Van Ginkel*. 257 P. 117, 118 (Cal. Dist. Ct. App. 1927). Because Guam adopted a statute "substantially identical" to the California Land Registration Act in 1933, the *Headly* interpretation of what is now 7 GCA § 29138 must "be accorded particular significance." *Wells v. Lizama*, 396 F.2d 877, 881 n.3 (9th Cir. 1968). In *Headley* the appeals court upheld a lower court order overturning a registration decree seventeen

months after it had been first registered. *Headley*, 257 P. at 117. The court specifically described how, in cases of fraud, the one year statute of limitations for recovery of registered land does not apply. *Id.* at 118. Neither of the parties objected to this interpretation. *Id.* In fact, the real issue was whether or not the trial court had made a sufficient finding of fraud. *Id.* Thus, adopting the California court's construction of the Guam Title Registration Act, an initial registrant is not protected by the one year statute of limitations in cases where the registration was fraudulent. *Id.*

[39] A more recent, unpublished Ninth Circuit opinion alluded to the same result, but correctly concluded that relief from the one year statute of limitations is not available to bona fide purchasers for value:

> Taitague and Blas argue that the one-year statute of limitations set forth in the Act does not apply because the failure of defendants' predecessor in interest to serve notice on Baldovino Taitague in the original registration proceeding rendered the registration void. . . . . *One provision of the Act preserves the rights and remedies of a defrauded party,* but even that provision also notes that an action for fraud cannot "affect the title of a registered owner who has taken bona fide for a valuable consideration or of any person bona fide claiming through or under him." Guam Civ. Code § 1157.36 [21 GCA § 29138].

Taitague v. First Island Indus., Inc., 942 F.2d 794, 1991 WL 169097 *3 (9th Cir.) (emphasis added). Because Calvo is alleged to be the initial registrant and current owner of Estate 52, the bona fide purchaser exception of 21 GCA § 29138 would not apply.

3. The Meaning of "Legal Disability" in 21 GCA § 29139

[40] In addition to fraud, the only two other exceptions to the one year statute of limitations for actions to overturn land registration decrees are forgery and legal disability. 21 GCA § 29139 ("If a deed or other instrument is registered, which is forged, or executed by a person under a legal disability, such registration shall be void . . . ."). Torres' Heirs' argue that their

claims fall under the "legal disability" exception because they "were without notice and lacked due process with respect to any prior Land Registration process." Appellants' Brief, at 16. They also contended that "the transfer of [Estate 52] in 1970 to Appellee Calvo Finance was void because [Estate 52] was taken by the Government . . . ." *Id.* They point out that only the government had authority to transfer Estate 52 to Calvo in 1970 and that the "third parties" were, as a result, "legally disabled to execute such transfers." *Id.* at 20; ER, at 24 (Compl.). These definitions of "legal disability" refer to a defect in the land registration process rather than a legal incapacity in one's ability to sue. We do not agree that "legal disability" can be so broadly construed.

[41] Because "[a] term appearing in several places in a statutory text is generally read the same way each time it appears," *Ratzlaf v. United States*, 510 U.S. 135, 143 (1994), a review of other instances of "legal disability" or "disability" in the Guam Code Annotated may help to determine its meaning. Surrounding language in phrases such as "minors or others under any legal disability to sue," 15 GCA § 2329 (tolling statute of limitations in actions to recover property sold by personal representative), "when a legal disability to sue exists by reason of minority or otherwise," 15 GCA § 4210 (actions to recover property sold by guardian), and "under any legal disability to sue," 15 GCA § 4008 (actions against sureties on a bond given by a guardian), suggest that "legal disability" is an incapacity to bring a lawsuit. Under 18 GCA § 25403, a "deceased partner or partner under legal disability" has the right to demand information about the partnership through a representative. 18 GCA § 25403 (2005). Actions for recovery of real property are tolled for persons suffering the "disability" of being under the age of majority or insane. 7 GCA § 11215 (2005); *see also*, *Custodio v. Boonprakong*, 1999 Guam 5 (discussing insanity as a disability that tolls the statute of limitations for malpractice claims). Note also that

gravely disabled persons, another group often incapable of bringing suit on their own, can also be categorized as legally disabled. *See* 10 GCA § 82711 (2005) (discussing Attorney general's power to create regulations for determining the legal disabilities of gravely disabled persons who are conservatees). Finally, chapter 82 of title 9 uses the term "disability" to describe the inability of those serving sentences for felonies to vote, serve on a jury, or hold public office. *See* 9 GCA §§ 82.10, 82.15, 82.20 (2005).

[42] A rule of statutory construction, *ejusdem generis*, suggests that "where general words follow an enumeration of specific items, the general words are read as applying only to other items akin to those specifically enumerated." *Harrison v. PPG Industries, Inc.*, 446 U.S. 578, 588 (1980). Applying this rule, the general term "legal disability" must include *only* types of disabilities similar to the legal incapacity of being a minor, imprisoned, insane, gravely disabled, or deceased. For all of the above reasons, and to maintain the internal consistency of the Guam statutes, we hold that "legal disability" means simply a legal incapacity to sue.

[43] Nothing in the complaint alleges that any of the parties to this suit suffered any of the legal disabilities mentioned above. Moreover, the assertion that the third parties were "legally disabled to execute such transfers" is incorrect in light of this courts recent ruling in *Taitano v. Lujan*, 2005 Guam 26. In *Taitano*, this court determined that private deeds to publicly condemned property can still be used to convey an "alienable contingent future interest" in the property. *Taitano*, 2005 Guam 26 ¶ 41. The fact that the land was condemned during the conveyance meant only that title failed to transfer—the future interest was still conveyed. *Id.* That interest, as both this case and *Taitano* make clear, has now become quite valuable due to various laws to repatriate lands formerly condemned by the federal government. *See Id.* ¶ 5 (discussing legislative attempts to repatriate land in Guam).

4. Equitable Tolling of the Statute of Limitations for Fraud

[44] From the analysis above, we conclude that Torres' Heirs' fraud claim is subject only to the statute of limitations for fraud found in 7 GCA § 11305. The relevant statute is reproduced below:

> **§ 11305. Within Three Years --.**
>
> . . . .
>
> (4) An action for relief on the ground of fraud or mistake. 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 or mistake.

7 GCA § 11305 (2005). Because so many decades have passed since the alleged fraud took place, Torres' Heirs invoke the discovery rule or equitable tolling[4] to argue that the statute of limitations was tolled until their discovery of the fraud in 2002.

[45] In interpreting the language of 7 GCA § 11305, this court has held that "the statute of limitations will begin to run when the plaintiff suspects or should suspect that his injury was caused by wrongdoing or that someone has done something wrong to him." *Gayle v. Hemlani*, 2000 Guam 25 ¶ 24. "'[O]nce the plaintiff has a suspicion of wrongdoing, and therefore an incentive to sue, he must decide whether to file suit or sit on his rights.'" *Custodio v. Boonprakong*, 1999 Guam 5, ¶ 27 (quoting *Jolly v. Eli Lilly & Co.*, 751 P.2d 923, 928 (Cal. 1988)). As this court also noted:

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[4] Equitable tolling and the discovery rule are related or perhaps identical doctrines. Some courts speak of equitable tolling as a synonym for the discovery rule. *See Smith-Haynie v. Dist. of Columbia*, 155 F.3d 575, 579 (D.C. Cir. 1998) (noting that the "'discovery rule' and 'equitable tolling' are often treated as the same doctrine"). However, the Third Circuit distinguish between the two doctrines as follows: (1) the discovery rule runs the statute of limitations from the time the actual injury first becomes inherently knowable, while (2) equitable tolling runs the statute of limitations from the time a reasonable plaintiff becomes aware of the facts supporting an action. *Forbes v. Eagleson*, 228 F.3d 471, 486 (3d Cir. 2000). This court has adopted the doctrine of equitable tolling in the narrow context of insurance claims. *Guam Hous. and Urban Renewal Auth. (GHURA) v. Dongbu Ins. Co.*, 2001 Guam 24 ¶ 14. Rather than split hairs over definitions, the equitable tolling doctrine that Torres' Heirs seek to invoke should be presumed synonymous with the discovery rule described in *Gayle v. Hemlani*, 2000 Guam 25, ¶¶ 23-25.

> [D]iscovery does not mean actual knowledge. Discovery occurs when a plaintiff could have discovered the wrongful acts with reasonable diligence. Reasonable diligence is tested by an objective standard, and when the uncontroverted evidence irrefutably demonstrates that the plaintiff discovered or should have discovered the fraudulent conduct, the issue may be resolved by summary judgment.

Gayle, 2000 Guam 25 ¶ 25 (citations omitted).

[46] "Generally, the applicability of equitable tolling depends on matters outside the pleadings, so it is rarely appropriate to grant a Rule 12(b)(6) motion to dismiss (where review is limited to the complaint) if equitable tolling is at issue." *Huynh v. Chase Manhattan Bank*, 465 F.3d 992, 1003-04 (9th Cir. 2006) (citing *Supermail Cargo Inc. v. United States*, 68 F.3d 1204, 1206 (9th Cir. 1995)). A dismissal must be reversed if "the factual and legal issues are not sufficiently clear to permit [the court] to determine with certainty whether the doctrine could be successfully invoked." *Supermail*, 68 F.3d at 1207. However, dismissal of untimely claims where equitable tolling is plead may be affirmed where "some fact, evident from the face of the complaint, support[s] the conclusion that the plaintiff could not prevail, as a matter of law, on the equitable tolling issue." *Cervantes v. City of San Diego*, 5 F.3d 1273, 1276 (9th Cir. 1993) (interpreting the California discovery rule).

[47] The only knowledge that Torres' Heirs specifically disavow is notice of the probate proceeding in 1949, the probate decrees of 1951 and 1953, and the land registration in 1970. The complaint gives no indication of whether or not they had knowledge of *their* claim to Estate 52 at any point before May of 2002, although one can reasonably infer that they did not. It is quite possible that Eduviges, for whatever reason, failed to inform her children of the deed, and as a result, the deed has been collecting dust in the Department of Land Management for ninety years. The allegation that Eduviges' children "inherited and by operation of law received title to

Estate 52" through intestacy supports this conclusion. ER, at 22 (Compl.). In addition, nowhere do Torres' Heirs allege that any of them ever attempted to record themselves as title-holders on the 1918 deed. Thus Torres' Heirs may have been unaware until recently that they even had a potential claim. The question is how to apply the discovery rule in cases where the plaintiffs have no indication that a potential claim even exists.

[48] A recent case from the Ninth Circuit is instructive. In *Orkin v. Taylor*, the court found that plaintiffs with alleged Nazi-era claims to a van Gogh painting were time barred in their attempt to recover it from actress Elizabeth Taylor. 487 F.3d 734, 742 (9th Cir. 2007). The plaintiffs did not discover their possible claim until Congress passed several acts in 1998 designed to help victims of Nazi persecution. *Id.* at 738. Until they investigated, the plaintiffs were unaware that their ancestor had once owned the painting or that it had eventually ended up in Taylor's collection. *Id.* The court applied the discovery rule under California law[5] and determined that "the latest possible accrual date of the Orkins' cause of action was the date on which they first reasonably could have discovered, through investigation of sources open to them, their claim to and the whereabouts of the van Gogh painting." *Id.* at 741. The complaint itself alleged three possible events that put plaintiffs on constructive notice of their claim—a 1963 publicized auction, a *catalogue raisonné* listing the painting in 1970, and a public offer of sale in 1990. *Id.* at 742. The court affirmed the Rule 12(b)(6) motion to dismiss for failure to state a claim. *Id.*

[49] The present case, like *Orkin*, involves a significant number of publicly available documents. In 1949, the probate of Luis' estate would have been announced to the public

[5] 7 GCA § 11305(4) is derived from, and identical to, section 338(d) of the California Code of Civil Procedure. *See* 7 GCA § 11305, SOURCE. *Compare* Cal. Civ. Proc. Code § 338(d) (Westlaw 2008), *with* 7 GCA § 11305(4).

through either (1) publication in a newspaper, if one existed at the time, or (2) posting on three public bulletin boards for 20 days, the location of the bulletin boards being at the discretion of the chief clerk of courts. Guam Prob. Code § 327 (1947), *accord* Guam Prob. Code § 327 (1970) (identical, enacted 1953). The notice would also have included "[t]he character and estimated value of the property of the estate." Guam Prob. Code § 326 (1947), *accord* Guam Prob. Code § 326 (1970) (identical, enacted 1953). One can also assume that the notice would have included something along the lines of "Estate of Luis Espinosa Torres" since the document was required to include "[t]he jurisdictional facts." *Id.* Whether the notice included a reference to Estate 52 or even whether such notice was published at all is not in the record on appeal. However, the probate decrees have been matters of public record since at least 1953.

[50] With regard to the petition to register Estate 52 in 1970, notice of the petition would have included a description of the property and would have been published (1) in a Guam newspaper for four successive weeks, and (2) in Agana and three additional places within Dededo. *See* 21 GCA § 29112. Indeed Calvo provided a copy of the newspaper posting as part of its supplemental excerpts of record. More importantly, the fact that title to Estate 52 is registered to Calvo has been on file at the Department of Land Management since 1970. Even the judgment in the condemnation proceeding, which we must assume encompassed Estate 52, has been a matter of public record since 1954. Thus, Torres' Heirs would have been able to discover through numerous public records and notices that Estate 52 had been registered by Calvo in 1970, and that Luis' heirs had obtained title through probate in 1951 and 1953. By analogy to *Orkin*, their cause of action accrued at the latest in 1970, and in all likelihood, much earlier.

[51] The court of *Orkin* does not discuss a plaintiff's duty to discover the existence of his or her property interest, such as a deed or title to a painting. However, knowledge of the property

interest is a prerequisite to knowledge of the injury in the present case, so one can assume that the discovery rule also applies to the property interest itself. Torres' Heirs' property interest has been on record with the Department of Land Management since 1918 in the form of a recorded deed. Even though the injury complained of did not occur until 1970, the deed—an essential element of their claim—has been a matter of public record for the last ninety years. We must therefore examine whether Torres' Heirs failed to act with reasonable diligence in discovering the deed as late as 2002. *See Gayle*, 2000 Guam 25 ¶ 25.

[52] In their complaint, Torres' Heirs were required to specifically plead facts showing why they were unable to make an earlier discovery despite reasonable diligence. *Fox v. Ethicon Endo-Surgery, Inc.*, 110 P.3d 914, 920-21 (Cal. 2005). Significantly, their complaint fails to offer any specific explanation as to why the deed went unnoticed for so many years. Torres' Heirs allege that Luis signed the deed, and that his heirs had constructive notice of its existence, but the complaint does not allege that Luis or his heirs actively concealed the deed from Eduviges' children. Similarly the Floreses are alleged to have sold Estate 52 with knowledge that Torres' Heirs were the true owners, but the Floreses are not alleged to have committed any acts that would have actively discouraged a search of the records. The specifically pleaded facts of the complaint therefore fail to show why Torres' Heirs were unable to discover the deed earlier. The assumption, apparently, is that a reasonable person would not have searched for a deed he or she was unaware of.

[53] Countering this assumption are the facts of the complaint itself, which suggest that Torres' Heirs would have discovered the deed much sooner had they acted with reasonable diligence. When Eduviges died in 1920, her children would have had motive to search the records for any property that should have been in her estate. This is especially true given that

their grandfather's estate had been probated only two years earlier and that their mother was a natural heir. Of course, the children's duty to inquire would have been reduced during the period of their minority, although the complaint gives no indication of their ages at the time of Eduviges' death. In any event, all of Eduviges' surviving children would have been adults by 1949. The opening of their uncle's estate in probate that year would have provided additional motive to inquire into their mother's and grandfather's estates.[6] More importantly, the promise of government payments during the 1950 land condemnation proceedings would have motivated Eduviges' children to search for a deed, especially given the circumstances surrounding their mother's and grandfather's deaths. Indeed the same promise of undiscovered assets may have prompted Torres' Heirs to search the records in 2002, once it became clear that the government was intent on returning formerly condemned property to the original owners. By comparison, Eduviges' children would have been even more motivated to search the records in 1950 given their more recent memories of the family history.

[54] It is of no consequence that the actual plaintiffs before this court may have no memories of these distant events. The duty of inquiry imposed upon Eduviges' children must also be imputed to her now-living heirs. *Cf. Russo v. S. Developers, Inc.*, 868 N.E.2d 46, 48-49 (Ind. Ct. App. 2007) (prior owner's knowledge of a construction defect is imputed to a subsequent purchaser for purposes of running the statute of limitations); *Bradler v. Craig*, 79 Cal. Rptr. 401, 405 (Ct. App. 1969) (same holding). To hold otherwise would allow each new generation to revive stale claims, thus perpetuating controversies that have become impossible to litigate due

[6] Although Torres' Heirs allege that they had no notice of the probate proceeding, we assume that the complaint refers to "notice" in the legal and jurisdictional sense. While we are required to make all reasonable inferences in favor of Torres' Heirs, *Newcal Indus., Inc. v. Ikon Office Solution*, 513 F.3d 1038, 1043 n.2 (9th Cir. 2008), one cannot reasonably infer that Eduviges' children were unaware they had an uncle or that he eventually died. Knowledge of Luis' death, even if obtained years later, would have put them on constructive notice of the inevitable probate proceeding for purposes of the discovery rule.

to loss of historical evidence. The fact that Torres' Heirs now have no memory of why their claim was neglected is not an excuse to suspend the statute of limitations, but rather a justification for its existence.

[55[While the fact that Estate 52 was undeveloped and condemned during much of the period in question might weigh in favor of tolling the statute of limitations, the overwhelming evidence gleaned from the complaint itself indicates that Torres' Heirs consistently failed to examine the public records and discover the alleged fraud. We therefore find that Torres' Heirs' complaint fails as a matter of law to allege facts that would support a finding of equitable tolling. Even though it may seem harsh to hold a party responsible for discovering a claim they were not aware of, we believe this finding is consistent with Justice Jackson's observation that "[s]tatutes of limitation . . . in their conclusive effects are designed to promote justice by preventing surprises through the revival of claims that have been allowed to slumber until evidence has been lost, memories have faded, and witnesses have disappeared." *Order of R.R. Telegraphers v. Ry. Express Agency*, 321 U.S. 342, 348-49 (1944).

C. Actual or Constructive Notice of the 1918 Deed as an Actionable Claim

1. Due Process and the Statute of Limitation

[56] Torres' Heirs also argue that the land registration of 1970 should be vacated because their lack of personal notice constituted a denial of due process. Because they lacked due process, Torres' Heirs conclude that the land registration court never had jurisdiction over their claims and that the registration was void as a result. *Id.* at 19-20. Therefore, they argue, "no statute of limitations defense may be enforced." *Id.* at 20. Torres' Heirs point to the language of *Moakley v. Los Angeles Pacific Railway Co.*, which states in part:

> "To adopt a construction of [the Torrens statute] which would permit a petitioner thereunder to imperil or destroy the vested rights and interest of the occupants of the property by the simple process of omitting their names as parties to such proceedings . . . would be a manifest injustice and would work a departure from those constitutional principles . . . which guarantee to the owners of vested interests in property that they shall not be deprived of these without due process of law."

277 P. 883, 884-85 (Cal. Dist. Ct. App. 1929) (quoting *Follette v. Pacific Light & Power Corp.*, 208 P. 295, 299 (Cal. 1922)). The *Moakley* court also concluded that because the plaintiff was not given notice of the registrations proceeding, "the court never acquired jurisdiction to bind them by the decree." *Id.* at 884. Perhaps because due process is such a fundamental principle, the court of *Swartzbaugh v. Sargent* simply ignored the relevant statutes of limitations in overturning a registration decree seventeen years after it issued. 86 P.2d 895 (Cal. Dist. Ct. App. 1939); *see also Follette*, 208 P. at 299 (right not to be deprived of property without due process of law is a constitutional principle as old as the Magna Carta).

[57] The Colorado Supreme Court, in a land registration case of "Dickensian proportions," took a similar approach and simply ignored the relevant statutes of limitations in overturning a registration decree. *Lobato v. Taylor*, 70 P.3d 1152, 1175-76 (Colo. 2003) (Kourlis, J., dissenting) (reminding the court, in dissent, of the statute of limitations); *see also Rael v. Taylor*, 876 P.2d 1210, 1229 (Colo. 1994) (remanding the issue of the applicability of the statute of limitations); *Lobato v. Taylor*, 71 P.3d 938 (Colo. 2002) (no mention of statute of limitations). In *Lobato*, hundreds of plaintiffs successfully asserted their land-use rights decades after a 1960 registration decree was issued. 70 P.3d at 1156-57. The court found that some of the plaintiffs should have been notified personally and therefore had been denied due process. *Id.* at 1160-61. Two dissenting justices thought that because the ninety day statute of limitations for actions to

overturn land registration decrees had long since passed, damages were now the plaintiffs' only remedy. *Id.* at 1175 (Kourlis, J., dissenting).

[58] From the cases mentioned above, there appears to be support for the notion that courts have broad, equitable powers to declare void a land registration proceeding where one of the parties was not given due process. We do not believe, however, that this court has the power to simply ignore an applicable statute of limitations in the interest of justice or fairness. Nor do we accept the proposition that a constitutional or organic claim cannot be subject to a statute of limitations if the Legislature so chooses. *See Block v. North Dakota*, 461 U.S. 273, 292 (1983) ("A constitutional claim can become time-barred just as any other claim can. Nothing in the Constitution requires otherwise."). On the other hand, the judicial power of the courts of Guam only extends to those cases and controversies that are properly within the courts' jurisdiction. If a court has not acquired jurisdiction over a matter, then its judgment in regard to that matter is void and of no effect. *State v. United States Currency in the Amount of $3,743.00*, 956 P.2d 1351, 1355 (Kan. Ct. App. 1998) ("A void judgment is a nullity and may be vacated at any time." (quotations omitted)). Moreover, a statute of limitations cannot operate to grant jurisdiction where none is to be found simply because a sufficient amount of time has passed. *Id.*; *Morey Fish Co. v. Rymer Foods, Inc.*, 632 N.E.2d 1020, 1024 (Ill. 1994) (judgment of court without jurisdiction may be vacated at any time); *Cohen v. Cohen*, 674 A.2d 869, 871 (Conn. Ct. App. 1996) ("If a judgment is rendered without jurisdiction to do so, it may be opened and modified at any time." (quotations omitted)); *see also* 20 GCA § 15131 ("Time does not confirm a void act.").

[59] The doctrine that a party may vacate a void judgment is codified in Rule 60(b) of the Guam Rules of Civil Procedure. GRCP 60(b) (2007). Under Rule 60(b), judgments may be

reopened within a reasonable time or at the latest within one year for reasons such as mistake, inadvertence, surprise, excusable neglect or newly discovered evidence that could not have been discovered by reasonable diligence. *Id.* No such limitation applies to the reopening of judgments that are void. *Id.* We therefore hold that if the Island Court lacked jurisdiction in 1970 to determine the property rights of Torres' Heirs, then no statute of limitations can be raised as a defense, since lack of jurisdiction would render the judgment a nullity.[7]

2. The Sufficiency of Constructive Notice

[60] A fundamental principle of Torrens land systems is that registration should function to "'render titles safe and indefeasible.'" *Pelowski v. Taitano*, 2000 Guam 34 ¶ 30 (quoting *Pioneer Abstract & Title Guar. Co. v. Feraud*, 267 P. 134, 137 (Cal. Dist. Ct. App. 1928)). In furtherance of that goal, Torrens statutes typically provide for only a short window of opportunity to correct or vacate a registration fee. *See* 21 GCA § 29146 (one year statute of limitations with only limited exceptions). Constitutional concerns that such a system could deprive claimants of their property without due process, particularly in situations where notice was lacking, prompted some courts to carve out a due process exception to the finality of a registration decree. *See Follette v. Pacific Light and Power Corp.*, 208 P. 295, 299 (Cal. 1922); *see also Lobato v. Taylor*, 70 P.3d 1152, 1160-61 (Colo. 2003). Part of the logic of *Follette* was

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[7] In *Pacific Rock Corp. v. Perez*, we considered the conceptually similar issue of whether the government of Guam could be barred by *res judicata* from asserting a claim of sovereign immunity. 2005 Guam 15 ¶ 21. We concluded that the claim was not barred:

> The policy considerations supporting the finality of judgments, weighed against the doctrine of sovereign immunity–which we have held to be a [sic] unwaivable jurisdictional issue–compel us to agree . . . that, where there exists a "collision between the desirable principle that rights may be adequately vindicated through a single trial of an issue and the sovereign right of immunity from suit, ... the doctrine of immunity should prevail."

Id. ¶ 30 (quoting *United States v. U. S. Fidelity & Guar. Co.*, 309 U.S. 506, 514-15 (1940)). Likewise, the jurisdictional doctrine that property owners be given adequate notice outweighs the policy considerations supporting the finality of land registration decrees.

that land registration was an *in rem* proceeding, and therefore the court only had jurisdiction over claimants who were personally served with notice. *Follette*, 208 P. at 297. However, not every holder of a land interest is entitled to personal service, only those who can be discovered after a diligent search by the initial registrant. 21 GCA § 29105 (2005) (initial registrant must make a "diligent inquiry"); *see also Lobato*, 70 P.3d at 1160-61 (due process requires "reasonable diligence" in the search for other claimants).

[61] For example, in *Francisco v. Look*, a Guam land registration proceeding was set aside because the petitioners had participated, through their lawyer, in a quiet title action by respondents just a year before and yet failed to give them notice of a land registration proceeding concerning the same property. 537 F.2d 379, 380 (9th Cir. 1976). The court of *Francisco* set a rule that "diligent inquiry be made by the registrant of adjoining land owners and of those who have claims against the land sought to be registered." *Id.* This conclusion was based on the fact that 21 GCA § 29105 requires petitioners to include

> a statement describing the claim of any other person who has any estate or remainder, reversion or expectancy, with the names and post office addresses, if known, of every such person, together with the names and post office addresses of all the owners of the adjoining lands, so far as the same can be ascertained with diligent inquiry.

21 GCA § 29105 (2005); *Francisco*, 537 F.2d at 380. Whether the petitioners had "imputed notice" or whether they failed in their "diligent inquiry," the court reasoned that under either theory respondents were entitled to personal service. *Id.*

[62] A common theme in *Francisco* and other cases cited by Torres' Heirs is that in each case, the adverse claims should have been fairly obvious to the initial registrant. This was the reason the lower court was able to distinguish these cases from the present one. In *Follette v. Pacific Light and Power Corp.*, a power company who was not notified in a registration proceeding

successfully voided a decree that failed to include their easement. 208 P. 295, 304 (Cal. 1922). In that case the power company's transmission lines were plainly visible crossing the property. *Id.* at 296. In *Moakley v. Los Angeles Pacific Ry. Co.*, defendants were found to have committed constructive fraud in a land registration proceeding because plaintiffs claim was plainly visible on the abstract submitted to the court. 277 P. 883, 884 (Cal. Dist. Ct. App. 1929). In *Swartzbaugh v. Sargent*, defendants overturned a Torrens decree seventeen years after it issued because they had visibly occupied the property as farmers and were given no notice of the proceedings. 86 P.2d 895 (Cal. Dist. Ct. App. 1939). In another case not cited by Torres' Heirs, a Minnesota court found that a village councilman's representation that the village had no claim to a disputed parcel of land constituted constructive fraud sufficient to overturn the registration decree. *Village of Savage v. Allen*, 95 N.W.2d 418, 422-23 (Minn. 1959). As village councilman, the defendant should have been aware of the village's conflicting claim. *Id.* at 422. In all of these cases, there was an implication that the initial registrants may have had actual knowledge of the adverse claims to the property being registered.

[63] On the other hand, the court of *Lobato v. Taylor* found a violation of due process when an initial registrant failed to notify claimants who would have taken a significant amount of research to discover. 70 P.3d 1152, 1161-65 (Colo. 2003). In *Lobato*, hundreds of plaintiffs successfully asserted their usufructuary rights decades after a 1960 Torrens decree was issued. *Id.* at 1167. The court reasoned that Taylor, the initial registrant, was on notice of those rights for the following reasons: (1) he possessed a 1863 deed putting him on notice that some county residents had usufructuary rights; (2) because he did not know which particular landowners had rights, he should have personally notified all of them; and (3) he could have obtained the addresses of all two thousand landowners by researching the public tax rolls. *Id.* at 1161-66.

Lobato demonstrates that in Colorado at least, more than a casual effort in finding adverse claimants is needed for a "diligent inquiry." *See* 21 GCA § 29105.

[64] There exists a rich body of case law addressing the conditions under which notice will be found constitutionally sufficient to grant a court jurisdiction over a person's claim to property.[8] We need not address the constitutionality of the notice provisions of the Guam Land Title Registration Act, since that issue is not before this court. We recognize, however, that the notice provisions are not mere technicalities. Rather, they exist for the purpose of providing claimants due process in the land registration proceeding, and failure to abide by those provisions will result in a deficiency of jurisdiction over such claimants. *Moakley*, 277 P. at 884-85. Any resulting judgment purporting to grant registered title will therefore be void. *Id.*

[65] Section 29106 of the Guam Land Title Registration Act requires that in making an initial petition to register property:

> Each application *must be accompanied by an abstract* of title to all land which does not appear by said petition to have been adversely held as hereinabove provided; *except that when the title to the land or any part of the land described has been previously determined by a final decree of a court of competent jurisdiction no abstract regarding the same need antedate such decree.*

21 GCA § 29106 (2005) (emphasis added). In a recent opinion, this court held that probate decrees of final distribution are not binding upon parties who were not privy to the probate proceedings. *See Zahnen v. Limtiaco*, 2008 Guam 5 ¶¶ 17-22. We therefore hold that probate courts are not "courts of competent jurisdiction" for purposes of 21 GCA § 29106. In addition, the Marketable Title Act does not apply to real property that remains undeveloped and unoccupied, and therefore there would be no statutory limit as to how far back an abstractor

[8] *See, e.g., Mullane v. Cent. Hanover Bank and Trust Co.*, 339 U.S. 306 (1950); *Mennonite Board of Missions v. Adams*, 462 U.S. 791 (1983); *Greene v. Lindsay*, 456 U.S. 444 (1982); *Tyler v. Judges of the Court of Registration*, 55 N.E. 812 (1900) (finding a substantially similar Massachusetts land registration law to have constitutional notice provisions) (Holmes, J.).

would have to research title to Estate 52. We cannot set a definitive rule as to how far back an abstract of title must go, because that determination will depend on the availability and quality of the records at the time the search was made, and what a reasonable person would have done under those circumstances. We can, however, articulate the legal standard found in our statutes. An initial registrant is required to notify the land registration court of any adverse claimant that can be ascertained through reasonable diligence. Only when the court personally serves those claimants who can be located through reasonable diligence does it acquire jurisdiction to issue a land registration decree binding as to all the world.

[66] If Torres' Heirs can prove that they held superior title in 1970 and that they were not properly notified of the land registration proceeding, then the lower court must consider the more difficult question as to whether a person exercising reasonable diligence would have discovered the 1918 deed. Although many decades have passed since the initial registration, we are confident that the question of reasonable diligence can be readily answered by evidence of the state of the records, the content of the deed, and what a reasonable abstractor of title would have done under the circumstances. The quiet title claim does not therefore suffer the same difficulties of proof as the fraud claim, which involves proof of intent or knowledge.

[67] Finally, we caution that today's opinion does not presume to eviscerate the protections afforded to bona fide purchasers for value under the Guam Land Title Registration Act. *See* 21 GCA §§ 29138, 29146 (2005). We only hold that initial registrants must make a diligent inquiry in locating adverse claimants and that failure to do so will void any land registration decree subsequently issued to the initial registrant. By thus narrowing our ruling, we give deference to the policy goals of the Land Title Registration Act, that is, to provide a guarantee of good title to innocent purchasers of registered land. *See Pelowski v. Taitano*, 2000 Guam 34 ¶ 33.

IV. Conclusion

[68] Torres' Heirs' quiet title claim makes sufficiently clear what is being alleged and does not, therefore, require amendment. While the fraud claim is untimely on its face, the claim to quiet title for lack of notice is not subject to any relevant statute of limitations. Therefore, and for the reasons set forth above, the dismissal of the quiet title claim is **REVERSED** while dismissal of the fraud claim is **AFFIRMED**. The case is remanded to the Superior Court for additional proceedings consistent with this opinion.

Original Signed By: Richard H. Benson

RICHARD H. BENSON
Justice *Pro Tempore*

Original Signed By: J. Bradley Klemm

J. BRADLEY KLEMM
Justice *Pro Tempore*

Original Signed By: F. Philip Carbullido

F. PHILIP CARBULLIDO
Chief Justice