IN THE SUPREME COURT OF GUAM

ROSALINDA IGNACIO M. BURKHART,
Plaintiff-Appellant,

v.

ROLAND R. MIRANDA, RITA T. MIRANDA,
Defendants-Appellees,

GUAM HOUSING CORPORATION and
UNITED STATES SMALL BUSINESS ADMINISTRATION,
Defendants.

Supreme Court Case No. CVA11-012
Superior Court Case No. CV0492-09

OPINION

Cite as: 2013 Guam 2

Appeal from the Superior Court of Guam
Argued and submitted on February 13, 2012
Hagåtña, Guam

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BEFORE: F. PHILIP CARBULLIDO, Chief Justice; ROBERT J. TORRES, Associate Justice; and KATHERINE A. MARAMAN, Associate Justice.

TORRES, J.:

[1] Plaintiff-Appellant Rosalinda Ignacio M. Burkhart appeals two separate decisions and orders of the trial court. The first decision and order denied her motion for partial summary judgment seeking dismissal of Defendants-Appellees Roland R. Miranda and Rita T. Miranda's counterclaims and granted Roland and Rita's motion for summary judgment alleging Rosalinda's claim was time barred. The second decision and order granted Roland and Rita's additional motion for summary judgment to reform a defective deed and quiet title in their names. Rosalinda argues on appeal that the trial court erred in (1) granting Roland and Rita's first motion for summary judgment dismissing her complaint; (2) denying her first motion for partial summary judgment seeking dismissal of Roland and Rita's counterclaims; and (3) granting Roland and Rita's second motion for summary judgment to reform the deed and quiet title.

[2] For the reasons set forth below, we reverse and remand for further proceedings.

I. FACTUAL AND PROCEDURAL BACKGROUND

[3] This case stems from a dispute between family members over the title to the house and lot more particularly described as Cadastral Lot Number 12, Block Number 2, Estate Number 12008, Suburban, Subdivision of Tract 85 in Piti, Guam ("the Property"). The Property is registered land and was at one time registered to Raymond C. Miranda and Jesusa L. Miranda, husband and wife, as joint tenants. In January 1980, Raymond C. Miranda quitclaimed his interest in the Property to his wife Jesusa, and shortly thereafter the couple divorced.

[4] In April 1987, Jesusa executed a general power of attorney giving her son, Raymond I. Miranda, Jr. ("Raymond Jr."), power to conduct transactions on her behalf. At trial, Jesusa

declared that she was not in Guam at the time of execution of the deed, and that while she wanted someone to handle her affairs for her, she did not intend for the power of attorney to last indefinitely. Four years later, Raymond Jr. executed a warranty deed granting the Property to Jesusa's other son, Roland R. Miranda. The deed did not provide that Raymond Jr. was acting as attorney-in-fact for Jesusa, and Jesusa claimed she never authorized Raymond Jr. to transfer ownership of the Property to Roland. Furthermore, the deed incorrectly identified Raymond Jr. as the grantor. Jesusa did acknowledge that sometime in 1991, Raymond Jr. called her to discuss the possibility of Roland using the Property as collateral for a loan, but she expressed that she did not want to sell the Property to Roland, and Raymond did not have her authority to sell the Property. Jesusa stated she only learned of the purported transfer to Roland years later.

[5] Roland argued he had an agreement with his mother Jesusa to buy the Property. Roland declared that the agreement was brokered by Raymond at his "mother's behest." He stated that pursuant to the agreement, he and Rita obtained a loan from the Guam Housing Corporation, satisfied the existing mortgage on the land,[1] and remitted approximately $15,000.00 to his mother. *Id.*

[6] For many years, Roland and Rita and their family lived on the Property. Roland claimed they made extensive improvements such as installing new plumbing and tiles, remodeling the kitchen, installing new internal and external doors, as well as painting the interior and exterior of the house.[2] Rita and Roland also paid the annual real property tax assessments. Jesusa did not dispute that Roland lived there with his family but stated that she allowed him to live in the

[1] Roland and Rita submitted documents to show that on May 8, 1991 they paid off an existing loan of $13,403.00 on the property.

[2] Roland stated in his deposition that he did most of the work himself and did not have any records of the improvements. He stated, however, that a "substantial amount of money" was invested in materials over the years. RA, tab 41, Ex. 9 at 1-3 (Not. Mot. & Mot. Summ. J., Oct. 27, 2009).

house rent-free because he is her son. She added, however, that she never told him he could take ownership of the home, and that he never told her that he regarded himself as the owner. She also stated that she never took any action to remove Roland from the house because he was there with her permission, but not under any claim of ownership. Roland differed and asserted that from April of 1991 to March of 2009, Jesusa visited them at the Property over 100 times, and during this period, she referred to the Property as "your place." RA, tab 40 at 2 (Decl. Roland R. Miranda, Oct. 22, 2009).

[7] In August 2007, Jesusa executed a deed of gift for the Property in favor of her daughter, Rosalinda. Jesusa stated that this was the only transfer she ever made of the property. Rosalinda later filed a complaint in the trial court against Roland and Rita for: (1) ejectment for unlawful withholding of property; (2) rent in the amount of $2,500.00 per month from February 2008 onwards, for the duration of the detention;[3] (3) quiet title; and (4) damages for removal of clouds on title. RA, tab 3 (Compl., Mar. 20, 2009).

[8] Roland and Rita answered the complaint and raised numerous affirmative defenses. Roland and Rita also filed a counterclaim arguing that as a result of Rosalinda's fraud, Rosalinda should be deemed an involuntary trustee holding the property in trust for Roland and Rita. Roland and Rita's counterclaim also requested the court to reform the 1991 warranty deed to express the true intended conveyance of "Jesusa I. Miranda" as grantor instead of "Raymond I. Miranda, Jr." Rosalinda moved for partial summary judgment regarding counts 1 and 2 of the counterclaim because count 1 failed to allege fraud with sufficient particularity, and because count 2's request for reformation was barred by the statute of limitations set forth in 7 GCA §

[3] The Deed of Gift was granted on August 15, 2007. It is unclear why the complaint only asks for rent from February 2008 onwards. RA, tab 6, ex A at 1 (Deed of Gift, Feb. 13, 2008).

11305(d). According to Rosalinda, that claim was barred because the alleged mistake, which formed the basis for reformation, was made when the deed was signed more than three years earlier. Roland and Rita also filed a motion for summary judgment arguing that Rosalinda's actions were time-barred under 7 GCA § 11205 because she was not seized or possessed of the Property within five years before the commencement of her complaint.

[9] The trial court denied Rosalinda's motion for partial summary judgment on count 1, concluding that Roland and Rita's counterclaim contained sufficient detail to satisfy Guam Rules of Civil Procedure Rule 9(b)'s requirements that the circumstances constituting fraud be pleaded with particularity. The court also denied Rosalinda's motion on count 2, finding that genuine issues of material fact existed which precluded summary judgment. The court determined that while Raymond "admits he knew what he was signing, it is questionable that he knew [the deed] was a mistake," and if Roland and Rita did not have a reasonable belief the house was conveyed to them they would have had no reason to pay property taxes, take out mortgages, and make improvements and repairs.

[10] The trial court granted Roland and Rita's separate summary judgment motion, finding that Rosalinda's right to file a claim stems from her mother's right, and therefore was barred by the five-year statute of limitations found in 7 GCA § 11205. The court also found Rosalinda could not point to any prejudice resulting from Roland and Rita raising their time limitation defense in a motion for summary judgment rather than as an affirmative defense, and Roland and Rita had a superior claim to the property because they received their deed in 1991 whereas Rosalinda received hers in 2008.

[11] Thereafter, Roland and Rita filed a second motion for summary judgment requesting the court to quiet title in their name and to reform the deed. The trial court granted the motion and

reiterated that the time for anyone to claim an interest in the property adverse to Roland and Rita had already expired. A judgment was entered, and Rosalinda timely filed an appeal.[4]

II. JURISDICTION

[12] This court has jurisdiction over appeals from a final judgment. 48 U.S.C.A. § 1424-1(a)(2) (Westlaw through Pub. L. 112-207 (2012)); 7 GCA §§ 3107, 3108(a) (2005).

III. STANDARD OF REVIEW

[13] We review the grant of a summary judgment motion *de novo*. *Wasson v. Berg*, 2007 Guam 16 ¶ 9 (citing *Nat'l Union Fire Ins. Co. v. Guam Hous. & Urban Renewal Auth.*, 2003 Guam 19 ¶ 12).

[14] Issues of statutory interpretation are reviewed *de novo*. *Town House Dep't Stores, Inc. v. Dep't of Educ.*, 2012 Guam 25 ¶ 11 (citing *Mendiola v. Bell*, 2009 Guam 15 ¶ 11). "'[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) (alteration in original).

IV. ANALYSIS

[15] Rosalinda argues that the trial court erred in: (1) granting Roland and Rita's first motion for summary judgment dismissing her complaint; (2) denying her first motion for summary judgment seeking dismissal of Roland and Rita's counterclaims on the first two causes of action; and (3) granting Roland and Rita's second motion for summary judgment to reform the deed and to quiet title. We will initially review the trial court's grant of summary judgment dismissing

[4] Roland and Rita filed a statement pursuant to Guam Rules of Appellate Procedure Rule 17(e)(2) indicating that they would not file a brief on appeal.

Rosalinda's complaint which relied in part on 7 GCA § 11205.[5] Then we will address Roland and Rita's counterclaims for reformation. Resolution of these issues will elucidate whether the trial court was correct in granting Roland and Rita's second summary judgment motion to reform the deed and to quiet title.

A. Dismissal of Rosalinda's complaint

[16] Roland and Rita's main argument in their motion for summary judgment seeking dismissal of Rosalinda's complaint is that it was time-barred by 7 GCA § 11205 because Jesusa (and Rosalinda as her successor in interest) had only until April 1996 to bring an action for recovery of the property.[6] Rosalinda's opposition asserted that she, or her predecessor in interest, were seized of the property because she had legal title and it was not necessary that she be in actual possession of the property in order to bring her complaint.[7] Rosalinda further cites to 21 GCA § 29136[8] to substantiate her argument that the statute of limitations found in section 11205 does not bar her case because, under section 29136, title to registered land cannot be acquired by adverse possession. She also relies on 21 GCA § 29140 to argue Roland and Rita's title cannot prevail against her title as a registered owner.[9] Therefore, she submits, section 11205 does not apply, and she is not barred from bringing her complaint.

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[5] Section 11205 provides: "No action for the recovery of real property, or for the recovery of the possession thereof, can be maintained, 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).

[6] This date is five years after the warranty deed from Raymond Jr. to Roland.

[7] The last two certificates of title for the Property issued by the Department of Land Management certified Jesusa (October 25, 1995 Certificate of Title Number 104234) and then Rosalinda (January 28, 2010 Certificate of Title Number 124897) as the registered owner. RA, tab 58, at ex. 15 (Decl. James Maher, Oct. 22, 2009).

[8] Title 21 GCA § 29136 provides: "After land has been registered, no title thereto adverse or in derogation to the title of the registered owner shall be acquired by any length of possession." 21 GCA § 29136 (2005).

[9] Title 21 GCA § 29140 provides: "No unregistered estate, interest, power, right, claim, contract, or trust shall prevail against the title of a registered owner taking bona fide for a valuable consideration or of any person bona fide claiming through or under him." 21 GCA § 29140 (2005).

[17] The trial court recognized section 11205 does not apply to registered land and title cannot be defeated based on adverse possession. Nevertheless, the court inexplicably stated that "[a]lthough the property in question is registered land, [Rosalinda]'s claim in using 21 GCA § 29136 and 21 GCA § 29140 to defeat [Roland and Rita]'s Motion for Summary Judgment is inapplicable to defeat [Roland and Rita]'s Motion for Summary Judgment." RA, tab 65 at 3 (Dec. & Order, Aug. 31, 2010). Consequently, the court agreed with Roland and Rita that any right Rosalinda has stems from her mother's rights, and this includes whether Rosalinda's right to bring her complaint is subject to a five-year limitations period under section 11205.[10] RA, tab 65 at 1 (Dec. & Order).

[18] Clearly, the statute of limitations in 7 GCA § 11205 does not apply when registered land is involved. "[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." *Taitano v. Calvo Fin. Corp.*, 2008 Guam 12 ¶ 33 (quoting *Tobin v. Stevens*, 251 Cal. Rptr. 587, 589 (Ct. App. 1988)). The right of possession—upon which Rosalinda demands for ejectment, rent, quiet title, and removal of clouds on the title—is based on her being the registered owner. This can only be defeated by adverse possession. The law is well established that one cannot adversely possess registered land. 21 GCA § 29136 (2005); *see also Flores v. Camacho*, No. 84-0064A, 1985 WL 56582, at *2 (D. Guam App. Div. July 15, 1985) (claim for adverse possession defeated because plaintiffs conceded that defendants had a certificate of title); *Hair v. Pangilinan*, No. 85-0059A, 1986 WL 68921, at *1 (D. Guam App. Div. Aug. 13, 1986) (lands subject to the Guam Land Title

[10] The court did not specifically explain why 21 GCA §§ 29136 and 29140 were inapplicable but one can presume that it believed the warranty deed from Raymond Jr. to Roland and Rita divested Jesusa of title to the Property.

Registration Act are not subject to adverse possession). The provisions of Title 7, Chapter 11, Article 2 of the Guam Code Annotated, including section 11205, do not apply because the land in this case was registered under the Guam Land Title Registration Act. The trial court erred in granting summary judgment based on its determination that Rosalinda's right to bring her complaint was subject to a five-year limitations period under section 11205. We now must address the validity of the warranty deed from Raymond Jr. to Roland.

B. The Validity of the Warranty Deed

[19] Rosalinda argues Roland and Rita's claim for reformation of the deed is barred by the statute of limitations because Raymond Jr. read the deed before he signed it, and therefore he is deemed to have knowledge of the contents at that time. Appellant's Br. at 26 (Oct. 3, 2011). Rosalinda's argument is misplaced because the issue is not when Raymond Jr. had knowledge that the deed did not provide he was acting as attorney-in-fact for Jesusa, but rather when Roland, as the grantee, had knowledge of this error.

[20] Neither party argues the deed is invalid because of the error in its execution; however, the deed did not comply with Guam law on the acknowledgement for transferring an estate in real property by an attorney-in-fact. Title 21 GCA § 4105 requires that Raymond Jr., when executing the deed as attorney-in-fact, must subscribe the name of his principal, Jesusa, and his own name, as attorney-in-fact.[11] *See* 21 GCA § 4105 (2005). This was not done. RA, tab 13, Ex. 2 at 1 (Defs.' Answer & Countercl., Apr. 21, 2009). Section 4105 is adopted from California Civil Code § 1095. *See* 21 GCA § 4105, SOURCE. California case law construing the identical statute is therefore persuasive. *See Torres v. Torres*, 2005 Guam 22 ¶ 33 (stating the source of

[11] Title 21 GCA § 4105 provides: "When an attorney in fact executes an instrument transferring an estate in real property, he must subscribe the name of his principal to it, and his own name as attorney in fact."

Guam's Civil Code is the California Civil Code, and California case law which interprets code provisions that parallel Guam's is persuasive when there is no compelling reason to deviate from California's interpretation); *Sumitomo Constr. Co., Ltd. v. Zhong Ye, Inc.*, 1997 Guam 8 ¶ 7 ("Generally, when a legislature adopts a statute which is identical or similar to one in effect in another jurisdiction, it is presumed that the adopting jurisdiction applies the construction placed on the statute by the originating jurisdiction." (citation omitted)).

[21] In *Hodge v. Hodge*, under a power of attorney, a wife incorrectly signed a deed attempting to create a joint tenancy in her and her husband's name. 64 Cal. Rptr. 587, 588 (Ct. App. 1967). The wife wrote her husband's name, but she did not sign her own name. *Id.* The court held the deed was invalid under California Civil Code section 1095 (the California equivalent of 21 GCA § 4105). *Id.* at 589; *see also Azevedo v. Pimentel*, 15 P.2d 795, 797 (Cal. Dist. Ct. App. 1932) ("Evidently the deed . . . is not a valid conveyance to the defendant, especially as the attorney-in-fact did not 'subscribe the name of his principal to it, and his own name as attorney in fact[.]'" (citing Cal. Civ. Code § 1095)); *Mitchell v. Benjamin Franklin Bond & Indem. Corp.*, 57 P.2d 185, 186 (1936) ("The law is well settled that a deed in the name of an attorney-in-fact, even if to the signature is added the words, 'Atty for (a named principal),' does not pass the principal's title to the property described in such deed."); *Morrison v. Bowman*, 29 Cal. 337, 352 (1865) ("[W]hen a person having power to sell and convey real estate for another, undertakes to exercise the power, the act performed must be in the name of the principal, or it will not bind him.").

[22] The deed names Raymond Jr. as the grantor; Jesusa's name does not appear on the document as the grantor. RA, tab 13, Ex. 2 at 1 (Defs.' Answer & Countercl.). This is unmistakably incorrect as Raymond Jr., when executing the deed as attorney-in-fact, should have

subscribed the name of his principal, Jesusa, and his own name as attorney-in-fact. Failure to comply with section 4105 renders the deed void.

[23] Roland and Rita's argument for reformation is now irrelevant. RA, tab 13 at 6 (Answer to Compl. & Countercl.). Void agreements cannot be reformed. *Ainsworth v. Morrill*, 160 P. 1089, 1090 (Cal. Dist. Ct. App. 1916) ("It is elementary that a void agreement has no standing in the law, and consequently it can neither be reformed nor enforced."); *Selover v. Am. Russian Commercial Co.*, 7 Cal. 266, 275 (1857) ("Defective deeds . . . cannot be reformed, even in chancery."). Equity also cannot reform a void deed. *Id.*; *see also Hedges v. Dixon Cnty.*, 150 U.S. 182, 192 (1893) ("[W]here the transaction or the contract is declared void because [it is] not in compliance with express statutory or constitutional provision[s], a court of equity cannot interpose to give validity to such transaction or contract . . . ."); *Duncan v. Jenkins*, 286 S.W. 783, 784 (Ky. 1926) ("[I]t is well settled that statutes are as binding on courts of equity as on courts of law, and, where a contract is void because [it is] not in compliance with express statutory provisions, a court of equity cannot modify it, so as to make it legal, and then enforce it."). Although the deed is void, that does not end the analysis because even though the deed from Raymond Jr. does not operate to convey an estate in real property on behalf of Jesusa, it may reflect an agreement to convey the property.

C. Deed May Provide Evidence of an Agreement

[24] While the deed executed by Raymond Jr. is void, it is not immaterial. The deed may still provide evidence of an agreement by Jesusa or her duly appointed attorney-in-fact to convey the property to Roland. *Hodge* recognizes the statute renders the deed void, but it may still be useful in ascertaining whether there was an agreement to transfer the property:

> The manner of execution of a deed by an attorney in fact for the grantor is prescribed by statute. He must subscribe the name of his principal to the instrument, and then his own as attorney in fact. If the instrument is not executed in this manner, it does not operate as a conveyance by the principal, though it may be sufficient as a memorandum of an agreement to convey the property described.

64 Cal. Rptr. at 589 (internal quotation marks omitted). Of course, in ascertaining on remand whether there was an agreement to transfer the property, both parties still may possess avenues in which to obtain the relief they seek.

D. The Statute of Limitations is no Longer an Issue

[25] The parties dispute whether the statute of limitations, specifically 7 GCA § 11305(d), bars relief to Roland and Rita.[12] Rosalinda argues Roland should be charged with knowledge of the error in the deed because he "signed the deed and read its content in 1991." Appellant's Br. at 29. In fact, Roland's signature is not on the warranty deed. RA, tab 13 Ex. 2 at 1 (Defs.' Answer & Countercl.). We disagree with Rosalinda and believe Roland cannot be charged with knowledge of the error in 1991.

[26] In interpreting the term "discovery" in this case, we start with, but are not limited to, analysis of section 11305. Under section 11305(d), we have held that the cause of action in a fraud or mistake claim accrues when the claimant, exercising reasonable diligence, obtains information that would put a reasonable person on inquiry. *See Gayle v. Hemlani*, 2000 Guam 25 ¶ 25; *Taitano*, 2008 Guam 12 ¶ 45. In *Gayle*, this court affirmed the trial court's finding that defendant's counterclaim for breach of fiduciary duty and constructive fraud, in response to plaintiff's attempt to declare an option granted in 1972, was barred in 1999 by section 11305. 2000 Guam 25 ¶ 48. "We have held that the statute of limitations will begin to run when the

[12] Section 11305 limits the time for commencing "[a]n action for relief on the ground of fraud or mistake" to three years, "[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(d) (2005).

plaintiff suspects or should suspect that his injury was caused by wrongdoing or that someone has done something wrong to him." *Id.* ¶ 24 (citing *Custodio v. Boonprakong*, 1999 Guam 5 ¶ 27). We further cited to *Custodio* to explain why "discovery" takes place when one suspects a potential cause of action: "A plaintiff need not be aware of the specific [f]acts necessary to establish the claim . . . . [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." *Id.* (second alteration in original) (quoting *Custodio*, 1999 Guam 5 ¶ 27) (interpreting this jurisdiction's discovery statute in medical malpractice claims). On the issue of discovery, we indicated that "[d]iscovery occurs when a plaintiff could have discovered the wrongful acts with reasonable diligence." *Id.* ¶ 25 (citing *Bourland v. Salas*, No. 82–0224A, 1986 WL 68918, at *4 (D. Guam App. Div. Oct. 24, 1986)). On the basis of this interpretation of section 11305, we found that because the defendant had received the benefit of legal counsel, was not in a position to invest a great deal of trust in opposing counsel, and failed to raise the breach of fiduciary duty claim or constructive fraud arguments earlier in spite of filing suit in the past, the defendant's counterclaims were barred. *Id.* ¶¶ 36, 39, 43.

[27] Turning back to the present case, the issue of whether Roland and Rita's claim for reformation is barred under 7 GCA § 11305(d) is irrelevant because, as stated above, a void deed cannot be reformed. However, the question of when Roland and Rita "discovered" the error in the deed is important in determining the commencement of the statute of limitations period on any claim that the deed constituted an agreement to convey the property.

[28] Here, Roland, as the grantee, did not sign the deed but duly recorded it. RA, tab 13 ex. 2 at 1 (Defs.' Answer & Countercl.). Roland and Rita obtained title documents and loans from lenders experienced in real estate transactions based on the warranty deed. RA, tab 40 at 1

(Decl. of Roland R. Miranda, Oct. 22, 2009). If these trained professionals did not find any discrepancies in the deed, we cannot, with clear conscience, charge Roland and Rita with knowledge of the error.

[29] From 1991 to 2008, no events occurred to arouse the suspicions of Roland and Rita as discussed in *Custodio*. *See* 1999 Guam ¶ 27. They received mortgages from lenders, and Jesusa frequently visited the house allegedly referring to it as "your place." RA, tab 40 at 1-2 (Decl. Roland R. Miranda). Rosalinda's unidentified letter instructing Roland and Rita to vacate would likely not be sufficient to place them on notice because, without further evidence, they would have no reason to believe the anonymous letter to be credible or that they would not otherwise be legally in possession of the Property based on their seventeen years of occupancy. RA, tab 13 at 6 (Defs.' Answer & Countercl.). Therefore, the earliest stage of possible discovery occurred when Rosalinda filed suit.

[30] Yet, even at that point in time, Roland and Rita cannot be charged with knowledge of a wrongful act against them. The complaint did not specify an error in the conveyance. RA, tab 3 at 1-4 (Compl., Mar. 20, 2009). Instead, Roland and Rita first noted the mistake contained in the deed in their answer and counterclaim. RA, tab 13 at 6 (Defs.' Answer & Countercl.). The trial court, in the ruling on the parties' first motions for summary judgment and Roland and Rita's subsequent motion for summary judgment, mentioned the error in its decisions and orders but still did not discover the deed was void. *See* RA, tab 65 at 1 (Dec. & Order, Aug. 31, 2010); RA, tab 77 at 1 (Dec. & Order, May 6, 2011). Both parties and the trial court failed to recognize the deed was void despite engaging in litigation for nearly two-and-a-half years, three summary judgment motions, and two decisions by the trial court. Therefore, we hold, as a matter of law, in determining when the statute of limitations begins to run in an action for fraud or mistake and

under the facts of this case, Roland and Rita cannot be charged with discovery until the date of this opinion. Accordingly, the statute of limitations does not bar Roland and Rita from arguing on remand that there was an agreement to convey the property.

V. CONCLUSION

[31] The trial court committed reversible error when it granted summary judgment to Roland and Rita dismissing Rosalinda's complaint and when it reformed the deed in their favor. We hold that the deed is void for failure to comply with 21 GCA § 4105. Although the deed is clearly void, the trial court must still determine whether an agreement existed to transfer the property to Roland and Rita. The effective start date for the running of any statute of limitations period shall be the date of this opinion.

[32] Accordingly, the trial court's decision is **REVERSED** and **REMANDED** for further proceedings consistent with this opinion.

Original Signed By: Robert J. Torres
ROBERT J. TORRES
Associate Justice

Original Signed By: Katherine A. Maraman
KATHERINE A. MARAMAN
Associate Justice

Original Signed By: F. Philip Carbullido
F. PHILIP CARBULLIDO
Chief Justice