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CERTIFIED FOR PUBLICATION

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

THE SANTA ANITA COMPANIES, INC., Plaintiff and Respondent, v. WESTFIELD CORPORATION, INC., et al., Defendants and Appellants.	B175820 (Los Angeles County Super. Ct. No. BC274515)

APPEAL from a judgment of the Superior Court of Los Angeles County, Gregory W. Alarcon, Judge. Affirmed.

Kaye Scholer LLP, Larry R. Feldman, Robert M. Turner, Kristopher S. Davis, and Paul Gelb for Defendants and Appellants Westfield Corporation, Inc., Westfield America, Inc., Santa Anita Fashion Park LP, and Santa Anita Fashion Park LLC.

White & Case LLP, John A. Sturgeon, Gary S. Sedlik, and Maria R. Harrington for Plaintiff and Respondent The Santa Anita Companies, Inc.

INTRODUCTION

Plaintiff and respondent The Santa Anita Companies, Inc. (Santa Anita) brought an action against defendants and appellants Westfield Corporation, Inc.; Westfield America, Inc.; Santa Anita Fashion Park LP; and Santa Anita Fashion Park LLC (collectively Westfield) to reform grant deeds concerning, and to quiet title to, a 2.36 acre parcel of real property in Arcadia, California.[1] The property at issue, valued at about $3.5 million, had been part of a 391.1 acre parcel of real property owned by Meditrust. In separate transactions in December 1998, Meditrust sold part of the 391.1 acre parcel to Santa Anita and another part to Westfield. Meditrust and Santa Anita intended that the 2.36 acre parcel be conveyed to Santa Anita as part of its purchase. Instead, the 2.36 acre parcel mistakenly was conveyed to Westfield as part of its purchase.

After a court trial, the trial court found that Meditrust and Santa Anita intended to include the 2.36 acre parcel in Santa Anita's purchase, the failure to include the parcel resulted from a mutual mistake of fact, Meditrust and Westfield had not intended to include the 2.36 acre parcel in Westfield's purchase, Westfield did not pay for or know that it had acquired the parcel, Santa Anita did not discover the mistake until June 1999, and Santa Anita's May 2002 action was not barred by the three-year statute of limitations in Code of Civil Procedure section 338, subdivision (d).[2] Westfield does not contest the trial court's finding that the 2.36 acre parcel was conveyed to it by mistake and appeals solely on the ground that the trial court erred in finding that Santa Anita's action was not time-barred.

In affirming the judgment, we hold that there was substantial evidence supporting the trial court's decision that the applicable period of limitations for Santa Anita's action

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[1] Westfield Corporation, Inc. wholly owned or controlled Westfield America, Inc., which, in turn, wholly owned or controlled Santa Anita Fashion Park LLC and Santa Anita Fashion Park LP. Other defendants related to each other (collectively referred to as Meditrust) are not parties to this appeal. We do not recite other names of, or other entities related to, the parties or entities referred to in this opinion.

[2] All statutory citations are to the Code of Civil Procedure unless otherwise noted.

did not begin to run until Santa Anita discovered the mistaken conveyance in June 1999 and that Santa Anita did not fail to exercise reasonable diligence prior to that discovery. The erroneous description in the transfer documents is not necessarily a circumstance that would put a reasonable person on notice of the mistake to ascertain when the cause of action accrues for purposes of determining if that cause of action is barred by the applicable period of limitations. The three year statute of limitations applicable to causes of action for mistake—section 338, subdivision (d)—did not bar Santa Anita's action.

BACKGROUND

In November 1997, Meditrust, a healthcare real estate investment trust, acquired the fee interest in 391.1 acres in Arcadia, California. That property consisted of the Santa Anita Racetrack for horse racing (Racetrack Property); an adjacent shopping mall, the Santa Anita Fashion Park (Mall Property); and a medical office building. Included in this acquisition was a 2.36 acre parcel that was the entrance to Gate 1 of the Racetrack Property (Gate 1 Parcel). Meditrust had certain tax benefits through its ownership of this multi-use tract. Less than a year later, around September 1998, Meditrust learned of changes in federal tax laws that would result in adverse tax consequences to it unless it sold the Racetrack and Mall Properties by December 31, 1998. Meditrust undertook to sell the properties.

I. Santa Anita's Purchase of the Racetrack Property

On about October 13, 1998, Frank Stronach, chairman of the board of Santa Anita's parent company, decided that Santa Anita would purchase the Racetrack Property. On October 20, 1998, a letter of intent was signed, and, thereafter, Santa Anita began its due diligence. The law firm of O'Melveny & Myers (O'Melveny) represented Santa Anita in the transaction.

In connection with the sale, Meditrust retained EKN Engineering (EKN) to survey the Racetrack Property. EKN employee Patrick Mercado, who had worked on prior surveys of the Racetrack Property, performed the survey. In his work on an earlier

survey of the Racetrack Property in 1996, Mr. Mercado informed First American Title Company (First American) that a title report it supplied to him erroneously excluded the Gate 1 Parcel from the legal description of the Racetrack Property and included it as part of the Mall Property. At the time of the earlier survey, Mr. Mercado had asked First American to correct its error. In Mr. Mercado's experience, First American should have made the requested corrections in subsequent title reports, and he assumed, incorrectly, that First American made this requested correction.

During EKN's preparation of its draft survey in connection with the sale of the Racetrack Property, First American provided EKN with a legal description that included its uncorrected error from 1996. EKN did not discover First American's error, and Mr. Mercado erroneously certified that the depiction of the Racetrack Property on the survey accurately reflected the legal description on the survey.

Meanwhile, Frank De Marco, general counsel for the Los Angeles Turf Club, a Meditrust subsidiary, received a legal description of the Mall Property from First American that included the legal description of the Gate 1 Parcel.[3] The cover sheet for the fax stated, "Legal description for mall." Mr. De Marco believed the legal description referred only to the Mall Property, and he wrote "Fashion Park Legal" at the bottom of the description and sent it to O'Melveny.

In the course of Santa Anita's due diligence, Mr. Stronach with other Santa Anita executives toured the Racetrack Property, including the Gate 1 Parcel. The Meditrust employees who guided the tour stated that the Gate 1 Parcel was part of the Racetrack Property. O'Melveny also viewed the Racetrack Property and examined a November

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[3] By their pleadings and briefs, the parties agree that the legal description of the Gate 1 Parcel is "Parcel 4 of Parcel Map No. 4626, in the City of Arcadia, County of Los Angeles, State of California, as per map filed in book 51 page 50 of Parcel Maps, in the Office of the County Recorded of said County." The legal description faxed by First American describes a "PARCEL 4 OF PARCEL MAP NO. 4626, IN THE CITY OF ARCADIA, AS PER MAP FILED IN BOOK 51 PAGE 51 OF PARCEL MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY." Westfield admitted at trial that the Parcel 4 at Book 51, Page 51 described in the fax actually describes land in Tarzana, and thus was erroneous.

1998 draft survey and a December 1998 final survey from EKN, at least two appraisals of the Racetrack Property by Fisher Realty Services, and the Meditrust commercial development plans for the southern part of the Racetrack Property, all of which showed the Gate 1 Parcel as part of the Racetrack Property.

O'Melveny compared the *legal description* on the face of the 1998 EKN survey with the *legal description* on the face of the preliminary title report to make certain that they matched, which they did. O'Melveny reviewed the boundaries of the survey depiction of the property to ascertain that those boundaries accurately delineated what Santa Anita believed it was acquiring. The depiction on that survey included the Gate 1 Parcel even though the legal description on the face of the survey did not. O'Melveny also obtained a title insurance policy from First American that included a CLTA (California Land Title Association) 116.1 endorsement insuring that Santa Anita would have title to all of the real property represented in the EKN survey, including the Gate 1 Parcel.

On November 13, 1998, Meditrust and Santa Anita entered into an agreement for the purchase of the Racetrack Property (Purchase Agreement). Under Schedule 2.1(a) of the Purchase Agreement, Santa Anita purchased all of the assets used by Meditrust in its horse racing operations except "Excluded Assets." The assets Santa Anita acquired included the real property described on Appendix A ("Legal Description of Real Property Being Acquired"), which consisted of a full page single-space metes and bounds description.

Under Schedule 2.1(b) of the Purchase Agreement, certain real property was excluded from the sale. The excluded real property consisted of Meditrust's "interest in the real property and related improvements and adjacent parking lot constituting the regional shopping mall as described on Appendix B hereto." Appendix B ("Legal Description of Regional Mall Real Property Not Being Acquired") was a copy of the legal description First American faxed to Mr. De Marco that purported to be the legal description solely of the Mall Property but, instead, erroneously included the legal description of the Gate 1 Parcel ("Parcel B"). An O'Melveny attorney testified at trial

that he believed that he read each of the legal descriptions in Appendix B. The sale of the Racetrack Property closed on December 11, 1998.

An expert witness for Westfield testified that by failing to trace the legal description on the first page of EKN's November 1998 survey against the boundaries of the Racetrack Property shown on the survey, O'Melveny did not fulfill its legal duty to Santa Anita. Santa Anita's expert testified that major law firms in Los Angeles do not trace legal descriptions on surveys against the delineations on those surveys. The expert testified that O'Melveny performed its work competently and in accordance with the applicable standard of care. The trial court found that "O'Melveny & Myer's conduct was consistent with the standard of care exercised by major law firms in the Los Angeles area, and did not constitute neglect of a legal duty within the meaning of Civil Code section 1577."

The trial court found "by clear and convincing evidence that both Meditrust and Santa Anita intended that the Gate 1 Parcel be included as part of the Racetrack Property conveyed to Santa Anita. The conduct of the parties and the contractual provisions of the Racetrack Agreement (Ex. 18), excluding the two real property legal descriptions, are inconsistent with any intention to exclude the Gate 1 Parcel from the sale of the Racetrack Property to Santa Anita. Santa Anita's intention to acquire the Gate 1 Parcel is further supported by the fact that it paid the real property taxes on the Gate 1 Parcel through 2001. The failure to include the Gate 1 Parcel in the sale of the Racetrack Property was the result of a mutual mistake of fact."

II. Westfield's Purchase of the Mall Property

In October 1998, Westfield purchased the leasehold interest in the Mall Property. Recorded leases of the Mall Property showed that the Gate 1 Parcel was excluded from the Mall Property. Westfield commissioned a survey of the Mall Property that showed that the Gate 1 Parcel was not a part of the Mall Property. That survey had the words "NOT A PART" within the borders of the Gate 1 parcel.

Effective December 16, 1998, Westfield entered into a purchase and sale agreement with Meditrust to purchase the Mall Property. On December 24, 1998, pursuant to that agreement, Westfield acquired the Mall Property and the Gate 1 Parcel. The trial court found that Meditrust and Westfield intended that their transaction convey to Westfield only the fee underlying the Mall Property. The only real estate that Meditrust's board of directors authorized it to sell to Westfield was the real estate under the mall. Westfield's board of directors authorized it to purchase Meditrust's fee interest in the land on which the mall was located. The legal description that Meditrust and Westfield used for the Mall Property was taken directly from the mistaken files of First American.

The trial court found that Westfield neither negotiated for the Gate 1 Parcel nor paid anything for it, Westfield knew before it acquired the Mall Property that the Gate 1 Parcel was not part of the Mall Property, Westfield's actions after its acquisition of the Mall Property showed that it had not intended to acquire the Gate 1 Parcel, and Westfield did not know it had acquired the Gate 1 Parcel for several years after the purchase. This latter finding was based on the evidence that in March 1999, three months after the sale, Westfield submitted a proposed joint venture plan to Santa Anita that highlighted boundaries, showing that Westfield believed that Santa Anita owned the Gate 1 Parcel; in December 1999, a year after the sale, Westfield asked Santa Anita's permission to use the Gate 1 Parcel for overflow parking; from 2000 through 2002, Westfield submitted redevelopment proposals for the Mall Property to the City of Arcadia that either reflected that the Gate 1 Parcel was "NOT A PART" of the Mall Property or showed that Westfield did not intend to use the Gate 1 Parcel for any purpose, including parking; and Westfield did not pay taxes on the Gate 1 Parcel for several years following its acquisition of the Mall Property.

III. Discovery of the Mistaken Conveyance and Proceedings

In 1999, Santa Anita entered into negotiations with Wells Fargo Bank (Wells Fargo) for a loan. Santa Anita offered the Racetrack Property, including the Gate 1

Parcel, as security for the loan. Gibson, Dunn & Crutcher LLP (Gibson Dunn) represented Wells Fargo on the transaction. A Gibson Dunn paralegal reviewed the November 1998 EKN survey that Santa Anita had reviewed prior to its purchase of the Racetrack Property and other documents and determined that the property Santa Anita purchased did not include the Gate 1 Parcel.

On June 9, 1999, Wells Fargo notified Mr. De Marco that Santa Anita did not have title to the Gate 1 Parcel. Mr. De Marco testified that this was Santa Anita's first knowledge about the mistake in its deed. In September 1999, Mr. De Marco informed William Baker, Meditrust's Chief Executive Officer, of the mistake in the deed, and Mr. Baker responded emphatically that the land belongs to Santa Anita.

On May 24, 2002, Santa Anita filed a complaint alleging causes of action for reformation of grant deeds and quiet title. Santa Anita claimed ownership of the Gate 1 Parcel, asserting that there was a mistake in its agreement with Meditrust and in Meditrust's agreement with Westfield in that Meditrust conveyed the Gate 1 Parcel to Westfield instead of to Santa Anita.

Prior to trial, Westfield moved in limine to exclude all evidence on the ground that the action was barred by section 338, subdivision (d) – the applicable statute of limitations. The trial court denied the motion. Following trial, in its statement of decision, the trial court concluded that the statute of limitations did not bar the action and issued a judgment granting reformation of the deeds. Following Westfield's motion to set aside and vacate the judgment, the trial court acknowledged that it had relied upon an incorrect period of limitations in its earlier decision but maintained its conclusion on the basis that the correct period of limitations did not bar the action. Westfield filed a timely notice of appeal. Westfield appeals only as to the statute of limitations issue.

DISCUSSION

I. Standard of Review

Resolution of a statute of limitations issue is normally a question of fact. (*Jolly v. Eli Lilly & Co.* (1988) 44 Cal.3d 1103, 1112 (*Jolly*); *Institoris v. City of Los Angeles*

(1989) 210 Cal.App.3d 10, 17.) "The trial court's finding on the accrual of a cause of action for statute of limitations is upheld on appeal if supported by substantial evidence." (*Institoris v. City of Los Angeles, supra,* 210 Cal.App.3d at p. 17; *Enfield v. Hunt* (1984) 162 Cal.App.3d 302, 310.) When, however, a statute of limitations is applied to undisputed facts, review is de novo. (*Martino v. Workers' Comp. Appeals Bd.* (2002) 103 Cal.App.4th 485, 489; *Goodstein v. Superior Court* (1996) 42 Cal.App.4th 1635, 1641.)

Westfield argues that the trial court decided its statute of limitations defense based on undisputed facts, and that therefore our review is de novo. Relying on *Engebrecht v. Shelton* (1945) 69 Cal.App.2d 151, 154-155 (*Engebrecht*) and *Western Title Guar. Co. v. Sacramento & San Joaquin Drainage Dist.* (1965) 235 Cal.App.2d 815, 825 (*Western Title Guar. Co.*), Santa Anita contends that substantial evidence review is appropriate because the determination of whether the statute of limitations bars its claims depends on whether it exercised diligence in discovering the mistake.

Although what occurred may not be in dispute, the conflicting expert evidence on the issue of diligence makes the resolution of the statute of limitations issue one of fact. (*Engebrecht, supra,* 69 Cal.App.2d at pp. 154-155.) Thus, we review the trial court's finding on the accrual of Santa Anita's causes of action for substantial evidence.

II. The Limitations Period Did Not Begin to Run Until Santa Anita Discovered the Mistake on June 9, 1999

A. Applicable Principles

Several policies underlie statutes of limitations. (*Fox v. Ethicon Endo-Surgery, Inc.* (2005) 35 Cal.4th 797, 806.) One is to protect parties from "'defending stale claims, where factual obscurity through the loss of time, memory or supporting documentation may present unfair handicaps.' [Citations.]" (*Ibid.*) Another is to encourage plaintiffs to pursue their claims diligently. (*Ibid.*) On the other hand, there is a policy that favors disposition of cases on the merits rather than on "procedural grounds." (*Ibid.*)

"Under the statute of limitations, a plaintiff must bring a cause of action within the limitations period applicable thereto after accrual of the cause of action. [Citations.] [¶] The general rule for defining the accrual of a cause of action sets the date as the time 'when, under the substantive law, the wrongful act is done,' or the wrongful result occurs, and the consequent 'liability arises.' [Citation.] In other words, it sets the date as the time when the cause of action is complete with all of its elements [citations] – the elements being generically referred to by sets of terms such as 'wrongdoing' or 'wrongful conduct,' 'cause' or 'causation,' and 'harm' or 'injury' [citations]." (*Norgart v. Upjohn Co.* (1999) 21 Cal.4th 383, 397 (*Norgart*).)

The "discovery rule" is an exception to the general rule for "defining the accrual of a cause of action." (*Norgart, supra,* 21 Cal.4th at p. 397.) "It postpones accrual of a cause of action until the plaintiff discovers, or has reason to discover, the cause of action." (*Ibid.*) Under the discovery rule, the limitations period begins once a party "'"'has notice or information of circumstances to put a reasonable person *on inquiry* . . . .'"' [Citations.]." (*Jolly, supra,* 44 Cal.3d at pp. 1110-1111.) The discovery rule may be expressed by the Legislature or implied by the courts. (*Norgart, supra,* 21 Cal.4th at p. 397.) The Legislature codified the delayed discovery rule for actions for fraud or mistake in section 338, subdivision (d). (See *Brandon G. v. Gray* (2003) 111 Cal.App.4th 29, 35.)

Under section 338, subdivision (d), a three-year statute of limitations applies to "[a]n action for relief on the ground of fraud or mistake. The cause of action in that case is not to be deemed to have accrued until the discovery, by the aggrieved party, of the facts constituting the fraud or mistake." When an action is brought to recover property based on an allegation of mistake, section 338, subdivision (d) governs. (*Ankoanda v. Walker-Smith* (1996) 44 Cal.App.4th 610, 615 ["The law is clear that the theory of relief underlying an action for quiet title, in this case fraud or mistake, determines which statute of limitations applies"].)

A plaintiff has "discovered" the facts constituting a mistake within the meaning of section 338, subdivision (d) when it actually discovers the facts constituting the mistake

(see *Welsher v. Glickman* (1969) 272 Cal.App.2d 134, 139-140) or when, by reasonable diligence, it could and should have discovered the mistake (*Laing v. Occidental Life Ins. Co.* (1966) 244 Cal.App.2d 811, 820 (*Laing*); see also *Western Title Guar. Co., supra,* 235 Cal.App.2d at p. 825 [a party must exercise diligence in discovering a mistake]; 3 Witkin, Cal. Procedure (4th ed. 1996) Actions, § 602, p. 773.) The courts have read into the statute "a duty to exercise diligence." (*Western Title Guar. Co., supra,* 235 Cal.App.2d at p. 825.) Under section 338, subdivision (d), "constructive and presumed notice or knowledge are equivalent to knowledge. So, when the plaintiff has notice or information of circumstances to put a reasonable person on inquiry, or has the opportunity to obtain knowledge from sources open to his investigation (such as public records or corporation books), the statute commences to run." (3 Witkin, Cal. Procedure, *supra,* § 602, p. 773; *Stalberg v. Western Title Ins. Co.* (1991) 230 Cal.App.3d 1223, 1231 [under certain circumstances, knowledge may be "imputed" to a plaintiff].) That a matter may be of public record does not necessarily provide constructive notice, especially in a case of alleged mistake. (*Berendsen v. McIver* (1954) 126 Cal.App.2d 347, 354 ["'The mere recording of an instrument is not notice of a mistake therein: for otherwise, as has been observed, no contract could be reformed after the lapse of three years from that date.' [Citations.]"].) So long as a party brings its action within three years of actually discovering the mistake or within three years of receiving facts putting it on inquiry or with which facts it, by reasonable diligence, could and should have discovered the mistake, the statute of limitations does not bar its claims. (§ 338, subd. (d); *Jolly, supra,* 44 Cal.3d at pp. 1110-1111; *Laing, supra,* 244 Cal.App.2d at p. 820; *Western Title Guar. Co., supra,* 235 Cal.App.2d at p. 825; *Engebrecht, supra,* 69 Cal.App.2d at pp. 154-155.)

B. Santa Anita Did Not Have Constructive or Inquiry Notice of the Mistake

Westfield contends that Santa Anita is charged with knowing the terms of the contract it entered (the Purchase Agreement) and that documents provided to Santa Anita in connection with its purchase of the Racetrack Property – including First American's

November 1998 preliminary title report, EKN's November 1998 survey, and certain recorded leases between Meditrust and the Los Angeles Turf Club governing the operation of the racetrack[4] – put Santa Anita on constructive and inquiry notice of the mistake. Thus, Westfield argues, the statute of limitations began to run on December 11, 1998, when the sale of the Racetrack Property closed.

A party to a contract is charged with knowing its terms. (See *Madden v. Kaiser Foundation Hospitals* (1976) 17 Cal.3d 699, 710 ["one who assents to a contract is bound by its provisions and cannot complain of unfamiliarity with the language of the instrument"]; *McClure v. Cerati* (1948) 86 Cal.App.2d 74, 84-85 ["[t]he plaintiff, having helped to prepare the written contract and having signed it without objection, should be charged with knowledge of its contents"].) That charge of knowledge, however, does not necessarily bar an action to reform a mistake in the contract or start the running of the statute of limitations for a reformation action. (See *Western Title Guar. Co., supra,* 235 Cal.App.2d at p. 825.) In rejecting the bar of the predecessor of section 338, subdivision (d), the court in *Western Title Guar. Co.* said that "the mere fact the respondent and his predecessor in interest knew of or read the written description would not bar reformation if the negligence was excusable. 'The fact that the party seeking relief has read the instrument and knows its contents does not prevent a court from finding that it was executed under a mistake.' [Citations.]" (*Western Title Guar. Co., supra,* 235 Cal.App.2d at p. 285.) The court in *Engebrecht, supra,* 69 Cal.App.2d at p. 154, in rejecting a statute of limitations defense, stated, "'It has been frequently decided that the mere failure of a party to read an instrument with sufficient attention to perceive an error or defect in its contents will not prevent its reformation at the instance of the party who executes it carelessly.' [Citations.]" If a party were always charged with knowledge of

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[4] Westfield also contends that the fact that neither the preliminary title report nor the EKN survey included previously recorded easements that only affected the Gate 1 Parcel should at least have raised questions as to whether Santa Anita was acquiring the Gate 1 Parcel.

the terms of a contract, it could never claim mistake, and the concept of mistake in connection with written contracts would be eliminated.

There is substantial evidence to support the trial court's conclusion that prior to its actual knowledge in June 1999 of the mistake, Santa Anita did not have notice or information of circumstances that would have put a reasonable person on inquiry about the mistake (*Jolly, supra,* 44 Cal.3d at pp. 1110-1111) nor, with reasonable diligence, should it have discovered the mistake (*Laing, supra,* 244 Cal.App.2d at p. 820; *Western Title Guar. Co., supra,* 235 Cal.App.2d at p. 825). Evidence of Santa Anita's diligence in ensuring that the Purchase Agreement and grant deed reflected both Meditrust's intention and Santa Anita's intention that the Gate 1 Parcel be conveyed to Santa Anita as part of its purchase, included the following: Santa Anita's experienced legal counsel reviewed the two EKN surveys and at least two Fisher Realty Services appraisals, all of which included the Gate 1 Parcel in the Racetrack Property; Mr. Stronach of Santa Anita toured the Racetrack property, including the Gate 1 Parcel with Meditrust employees, who assured him that the Gate 1 Parcel was part of the Racetrack Property; Appendix B, the part of the Purchase Agreement that erroneously excluded the Gate 1 Parcel from the sale, was entitled "Legal Description of *Regional Mall Real Property* Not Being Acquired" (italics added); because the sale was not to include the Mall Property, Santa Anita did not act unreasonably in not confirming the purported description of property it was not acquiring; and an expert who was an experienced real estate attorney opined that O'Melveny acted competently and in conformity with the standards of practice. That public records, if analyzed, might have disclosed the mistake, does not, in view of the evidence, necessarily provide constructive notice in this context. (See *Berendsen v. McIver, supra,* 126 Cal.App.2d at p. 355.)

In addition, like Meditrust and Santa Anita, Westfield itself was unaware that the conveyance to it included the Gate 1 Parcel. Although Westfield may not have had available to it all of the documents available to Meditrust and Santa Anita, it did have access to the Mall Property's recorded leases that showed that the Gate 1 Parcel was not included in the Mall Property, and a survey stating that the Gate 1 Parcel was "NOT A

PART" of the Mall Property. The legal description Westfield and Meditrust used for the Mall Property was taken directly from the mistaken files of First American.

Westfield argues that the trial court erroneously ruled that only actual knowledge and not constructive or inquiry notice, results in the accrual of the cause of action in connection with the period of limitations under section 338, subdivision (d). The trial court did state that a party who possesses actual knowledge of a mistake must bring an action within three years of that knowledge, but added that recorded documents, including the Turf Club Leases and various easements, did not give Santa Anita "constructive notice" of the mistake. Thus, the trial court recognized that more than actual knowledge can cause accrual of a claim under section 338, subdivision (d). Implicit in the trial court's rulings is the finding that Santa Anita acted diligently. (*Hirshfield v. Schwartz* (2001) 91 Cal.App.4th 749, 765-766 [the judgment is presumed to be correct and we must indulge all presumptions in favor of its correctness].)

It is true that the trial court's finding that O'Melveny was not negligent was in connection with Westfield's defense under Civil Code section 1577, the mistake of fact provision. But the finding that there was no negligence is equivalent to a determination of no lack of diligence for purposes of the statute of limitations. (*Western Title Guar. Co., supra,* 235 Cal.App.2d at p. 825; *Engebrecht, supra,* 69 Cal.App.2d at pp. 154-155.)

Substantial evidence supports the trial court's finding that Santa Anita filed its action within three years of accrual of its cause of action, which accrual occurred with actual notice of the mistake because there was no lack of diligence or earlier constructive notice.

DISPOSITION

The judgment is affirmed. Santa Anita is awarded its costs on appeal.

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MOSK, J.

We concur:

TURNER, P. J.

ARMSTRONG, J.