IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

COBB COUNTY, DEKALB COUNTY, and FULTON COUNTY, GEORGIA, Plaintiffs, v. BANK OF AMERICA CORPORATION; BANK OF AMERICA, N.A.; COUNTRYWIDE FINANCIAL CORPORATION; COUNTRYWIDE HOME LOANS, INC.; COUNTRYWIDE BANK, FSB; COUNTRYWIDE WAREHOUSE LENDING, LLC; BAC HOME LOANS SERVICING, LP; MERRILL LYNCH & CO., INC.; MERRILL LYNCH MORTGAGE CAPITAL INC.; and MERRILL LYNCH MORTGAGE LENDING, INC., Defendants.	:	CIVIL ACTION NO. 1:15-CV-04081-LMM

ORDER

This case comes before the Court on Defendants' Motion for Partial Summary Judgment, Dkt. No. [137]. After due consideration, the Court enters the following Order.

I. BACKGROUND

Plaintiffs Cobb County, DeKalb County, and Fulton County, Georgia (the "Counties") filed this case on November 20, 2015, Dkt. No. [1], and have since amended the complaint twice, see Dkt. No. [61] (2d Am. Compl.). In the second amended complaint, the Counties allege that, over approximately the last 20 years, Defendants have engaged in mortgage-lending discrimination directed at minority borrowers within the Counties' borders. Specifically, the Counties allege that Defendants engaged in, and continue to engage in, discriminatory schemes that expose borrowers to unreasonable levels of risk; needlessly inflate interest rates, penalties, and fees; generate unauthorized and inflated charges for default-related services; and lead to higher foreclosure rates among minority borrowers.

The Counties further allege that Defendants' scheme has harmed them. They contend that Defendants' actions have caused and will continue to cause (1) direct and indirect financial harm to the Counties, including the cost of county services related to the foreclosure process, the erosion of the Counties' tax base, the loss of property tax revenue, the loss of certain intangible property recording fee income, and other financial harm due to urban blight[1]; (2) a reduction in the percentage of minority homeowners in the Counties' communities and neighborhoods, increasing segregation and robbing those communities of their

[1] Plaintiffs also asserted claims for out-of-pocket costs relating to abandoned or vacant properties and loss of franchise tax revenue. Those claims have been dismissed for failure to state a plausible claim for relief. See Dkt. No. [100] at 33-35, 36-39.

integrated racial character; and (3) organizational harm to the Counties' departments and authorities because Defendants' conduct forced and continues to force reallocation of Counties' limited financial and human resources to address the harms Defendants' actions have caused. Id. ¶¶ 438-84.

In the present complaint, the Counties assert three counts under the Fair Housing Act ("FHA"), 42 U.S.C. § 3601, et seq. Id. ¶¶ 486-638. In Count I, they assert a claim for disparate impact in minority neighborhoods of an equity-stripping scheme[2] based on facially neutral loan origination, servicing, and foreclosure policies and practices. Dkt. No. [61] ¶¶ 486-514. In Count II, they assert a claim for disparate impact in minority neighborhoods of facially neutral mortgage servicing and foreclosure practices. Id. ¶¶ 516-29. In Count III, they assert a claim for intentional disparate treatment in minority neighborhoods based on Defendants' discriminatory equity-stripping scheme. Id. ¶¶ 531-638. The Counties seek compensatory and punitive damages; injunctive relief; a declaratory judgment that Defendants' conduct, policies, and practices violate

[2] Plaintiffs define "equity stripping" as "lending to minority borrowers based on the value of the real estate collateralizing the loan, not the borrower's ability to repay" and "rel[ying] on the ability of the mortgage lienholder to recoup the value of the loan and various fees charged to it—if not also further profit—from foreclosure on the underlying real estate asset securing the loan in the likely and anticipated event of borrower default." Dkt. No. [61] at 61, 86.

42 U.S.C. §§ 3604 and 3605; attorneys' fees; and costs of litigation. Id. at 303-04.[3]

Defendants now move for partial summary judgment on statute-of-limitations grounds, arguing that the Counties' claims are time-barred to the extent that they are based on allegedly discriminatory conduct taking place prior to November 20, 2013. Dkt. Nos. [137, 137-1].

II. LEGAL STANDARD

Rule 56 of the Federal Rules of Civil Procedure provides that "[t]he court shall grant summary judgment if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a). A factual dispute is genuine if the evidence would allow a reasonable jury to find for the nonmoving party. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248 (1986). A fact is "material" if it is "a legal element of the claim under the applicable substantive law which might affect the outcome of the case." Allen v. Tyson Foods, Inc., 121 F.3d 642, 646 (11th Cir. 1997).

The moving party bears the initial burden of showing the Court, by reference to materials in the record, that there is no genuine dispute as to any material fact that should be decided at trial. Hickson Corp. v. N. Crossarm Co., 357 F.3d 1256, 1260 (11th Cir. 2004) (citing Celotex Corp. v. Catrett, 477 U.S. 317,

[3] Throughout this Order, where the page numbers assigned by the Court's electronic filing system conflict with original page numbering, the Court will refer to the page numbers assigned by its electronic filing system.

323 (1986)). The moving party's burden is discharged merely by "'showing'—that is, pointing out to the district court—that there is an absence of evidence to support [an essential element of] the nonmoving party's case." Celotex Corp., 477 U.S. at 325. In determining whether the moving party has met this burden, the district court must view the evidence and all factual inferences in the light most favorable to the party opposing the motion. Johnson v. Clifton, 74 F.3d 1087, 1090 (11th Cir. 1996).

Once the moving party has adequately supported its motion, the non-movant then has the burden of showing that summary judgment is improper by coming forward with specific facts showing a genuine dispute. Matsushita Elec. Indus. Co. v. Zenith Radio Corp., 475 U.S. 574, 587 (1986). There is no "genuine [dispute] for trial" when the record could not lead a rational trier of fact to find for the nonmoving party. Id. (citations omitted). All reasonable doubts, however, are resolved in the favor of the non-movant. Fitzpatrick v. City of Atlanta, 2 F.3d 1112, 1115 (11th Cir. 1993).

III. DISCUSSION

The FHA carries a two-year statute of limitations: "An aggrieved person may commence a civil action . . . not later than 2 years after the occurrence or the termination of an alleged discriminatory housing practice." 42 U.S.C. § 3613(a)(1)(A). Defendants argue that because this case was filed on November 20, 2015, the Counties' claims are facially time-barred to the extent that they are based on allegedly discriminatory acts occurring prior to November 20, 2013. See

generally Dkt. No. [137-1]. They contend that the Counties cannot salvage their claims by alleging a "continuing violation" that tolls the statute of limitations for each allegedly discriminatory act until the continuing violation ends because knowledge of a claim, or reason to have knowledge of a claim, cuts off equitable tolling of the statute of limitations for claims based on a continuing violation, and the Counties knew or should have known of their FHA claims at least as of May 2011. Id. at 6-16, 22-30. Defendants further contend that because Judge Eleanor Ross held in DeKalb County v. HSBC North America Holdings, Inc., Civ. Action No. 1:12-cv-03640-ELR, 2015 WL 8699229, at *5 (N.D. Ga. Nov. 16, 2015) (hereinafter, "HSBC" or "the HSBC opinion"), that the continuing-violation doctrine does not apply to toll the statute of limitations where the plaintiff knew or should have known of its claim, the Counties here are estopped from seeking a different ruling from this Court. Dkt. No. [137-1] at 17-21. Thus, Defendants urge the Court to grant them summary judgment of all claims based on allegedly discriminatory acts occurring prior to November 20, 2013.

In response, the Counties first argue that the Court should deny summary judgment because their claims are timely under the plain language of the FHA, and they therefore are not relying on the common-law continuing-violation theory to toll an otherwise expired limitations period. Dkt. No. [148] at 7-8, 12-17. They further contend that the FHA's statutory-limitations provision does not include a discovery or notice rule that would nullify what they argue are their

otherwise timely claims, and they aver that as government entities, they are not estopped by Judge Ross's HSBC opinion. Id. at 8-9, 17-22. Finally, they contend that summary judgment would not be appropriate even if there were a discovery or notice rule capable of barring an FHA claim because there is a genuine issue of material fact as to when the Counties learned or should have learned of the factual and legal bases underlying their claims against these particular defendants. Id. at 9-10, 22-31.

A. Issue Preclusion

Defendants argue that the HSBC opinion directly supports their position and bars the Counties from seeking a different ruling from the Court under the doctrine of defensive nonmutual collateral estoppel. Dkt. No. [137-1] at 17-21. Under the doctrine of collateral estoppel, or issue preclusion, "a court is precluded from relitigating an issue when the identical issue has been litigated between the same parties and the particular matter was fully litigated and determined in a contest that results in a final decision of a court of competent jurisdiction." Aldana v. Del Monte Fresh Produce N.A., Inc., 578 F.3d 1283, 1291 (11th Cir. 2009) (quotation marks omitted). For the doctrine to apply, (1) the issue at stake must be identical to the issue involved in the prior proceeding; (2) "the determination of the issue in the prior litigation must have been 'a critical and necessary part' of the judgment in the first action"; (3) the issue must have actually been litigated in the prior proceeding; and (4) "the party against whom the collateral estoppel is asserted must have had a full and fair opportunity

to litigate the issue in the prior proceeding." Dailide v. U.S. Atty Gen., 387 F.3d 1335, 1342 (11th Cir. 2004). "A defendant who was not a party to the original action may [also] invoke collateral estoppel." Hart v. Yamaha-Parts Distributors, Inc., 787 F.2d 1468 (11th Cir. 1986). It is left to the Court's discretion whether collateral estoppel should be applied. Parkland Hosiery Co. v. Shore, 439 U.S. 322, 331 (1979); Dailide, 387 F.3d at 1341.

While the construction of the FHA's limitation period was a critical issue that was well-litigated by the Counties in HSBC, the Court declines to apply collateral estoppel here. In that case, the court first adopted the Counties' position, DeKalb Cnty. v. HSBC N. Am. Holdings, Inc., Civ. Action No. 1:12-CV-03640-ELR, 2015 WL 1608094, at *2 (N.D. Ga. Mar. 3, 2015), then granted a motion for reconsideration and reversed its decision, HSBC, 2015 WL 8699229 at *3-7, and subsequently denied a second motion for reconsideration and alternative motion for interlocutory appeal, DeKalb Cnty. v. HSBC N. Am. Holdings, Inc., Civ. Action No. 1:12-CV-03640-ELR, 2016 WL 3958730 (N.D. Ga. Feb. 25, 2016). At that point, the matter, which had been pending for approximately three and one-half years, was assigned to another judge and administratively closed. DeKalb Cnty. v. HSBC N. Am. Holdings, Inc., Civ. Action No. 1:12-CV-03640-AT (N.D. Ga.), ECF No. 132 (May 11, 2016), ECF No. 138 (June 9, 2016). A few weeks later, the case and discovery were reopened, id. at ECF No. 146 (June 29, 2016), and approximately a month after that, the case was

again administratively closed pending a Supreme Court ruling and subsequent Eleventh Circuit rulings on controlling issues, id. at ECF No. 152 (July 28, 2016), ECF No. 159 (Mar. 12, 2018). The case was eventually reopened about seven years after it had been filed, see id. at Dkt. Entry dated Oct. 24, 2019, and settled a few months later, see id. at ECF No. 178 (Jan. 10, 2020).

On this history, the Court is unwilling to find that collateral estoppel applies. It appears that the law at the time was not well-settled and that there may have been outside factors in the parties' decision to settle the case rather than litigate to judgment and the opportunity to seek Eleventh Circuit review of the adverse statute-of-limitations decision. Accordingly, the Court finds that the Counties should not be bound by collateral estoppel.

B. Application of the Continuing-Violation Theory

The Counties argue that they are not relying on a common-law continuing-violation theory to toll the statute of limitations and that their claims are instead timely under the plain language of the FHA. See Dkt. No. [148] at 12-17 & n.8. The Court already explained in Orders on prior motions to dismiss that it disagrees with the Counties' arguments on this issue. See Cobb Cnty. v. Bank of Am. Corp., 183 F. Supp. 3d 1332, 1342 (N.D. Ga. 2016)[4]; Dkt. No. [100] at 42-43, n.11 (Sept. 18, 2020).

[4] This Order also appears on the docket at ECF No. 29 (May 2, 2016).

As the Court explained, review of the relevant case law shows that "termination" was intended to codify the continuing-violation doctrine discussed in Havens Realty Corp. v. Coleman, 455 U.S. 363, 380-81 (1982). Cobb Cnty., id. (citing Cnty. of Cook v. Bank of Am. Corp., 181 F. Supp. 3d 513, 520 (N.D. Ill. 2015) ("[The termination] language was added to the FHA in 1988 to codify the continuing violation doctrine recognized in Havens."); Moseke v. Miller and Smith, Inc., 202 F. Supp. 2d 492, 504 (E.D. Va. 2002) ("It is this latter phrase, that is 'the termination of a discriminatory housing practice,' that supports the continuing violation doctrine."); H.R. Rep. No. 100-711, at 33 (1988)).

In Havens, the Supreme Court found that the continuing-violation doctrine applies when a plaintiff "challenges not just one incident of conduct violative of the [FHA], but an unlawful practice that continues into the limitations period." Havens, 455 U.S. at 380-81; Cobb Cnty., 183 F. Supp. 3d at 1342. It held that a claim is deemed timely, even when it arises from conduct occurring outside the limitations period, so long as "the last asserted occurrence of that practice" falls within the limitations period. Havens, 455 U.S. at 381 (holding that because the last incident of race steering occurred within the limitations period, the claim asserting a pattern and practice of unlawful race steering was timely under the continuing-violation doctrine); Porter v. Ray, 461 F.3d 1315, 1323 (11th Cir. 2006) ("[T]he critical distinction in the continuing violation analysis is whether the plaintiff complains of the present consequence of a one-time violation, which

does not extend the limitations period, or the continuation of that violation into the present, which does." (quotation marks omitted)); Moseke, 202 F. Supp. 2d at 504-07 (distinguishing continued effects of a violation from a pattern of incidents of violation).

At the time of the Havens decision, the FHA did not include "termination" in its statute-of-limitations provision. However, after the Havens decision, Congress amended the Act to include the phrase specifically to allow continuing-violation theories. See Cnty. of Cook, 181 F. Supp. 3d at 520; Moseke, 202 F. Supp. 2d at 503; H.R. Rep. No. 100-711 at 33 ("A complaint must be filed within one year[5] from the time the alleged discrimination occurred or terminated. The latter term is intended to reaffirm the concept of continuing violations, under which the statute of limitations is measured from the date of the asserted occurrence of the unlawful practice." (citing Havens, 455 U.S. at 380-81)). The continuing-violation doctrine does not prevent the limitations period from commencing; instead, it merely tolls the statute of limitations for a claim "that otherwise would be time-barred." Nat'l Parks & Conservation Ass'n v. Tenn. Valley Auth., 502 F.3d 1316, 1322 (11th Cir. 2007) (citing Havens, 455 U.S. at 380-81); Cobb Cnty., 183 F. Supp. 3d at 1342.

5 Congress has since amended the limitations period from one year to two years. 42 U.S.C. § 3613(a)(1)(A).

For this reason, the Court remains persuaded that the limitations period has begun to run on any and all prohibited actions that occurred before the start of this suit and that those arising from conduct occurring before November 20, 2013, may be considered timely only under the application of the continuing-violation doctrine.

C. Application of "Notice" Rule

The Eleventh Circuit has "limited the application of the continuing violation doctrine to situations in which a reasonably prudent plaintiff would have been unable to determine that a violation had occurred." Ctr. for Biological Diversity v. Hamilton, 453 F.3d 1331, 1335 (11th Cir. 2006). "If an event or series of events should have alerted a reasonable person to act to assert his or her rights at the time of the violation, the victim cannot later rely on the continuing violation doctrine." Hipp v. Liberty Nat'l Life Ins. Co., 252 F.3d 1208, 1222 (11th Cir. 2001) (internal quotation marks omitted; alteration adopted); see id. (noting further that " '[a] claim arising out of an injury which is 'continuing' only because a putative plaintiff knowingly fails to seek relief' " is the sort of claim that is barred under the statute of limitations); accord Roberts v. Gadsden Mem'l Hosp., 850 F.2d 1549, 1550 (11th Cir. 1988). The Court therefore turns to the question of whether a genuine issue of fact remains as to whether a reasonably prudent plaintiff would have been aware of the Counties' claims prior to the two-year statutory period that began on November 20, 2013.

"The statute of limitations is an affirmative defense." Boyd v. Warden, Holman Corr. Facility, 856 F.3d 853, 872 (11th Cir. 2017). Thus, a court should not grant summary judgment to a defendant unless the evidence shows that no reasonable jury could find in the plaintiffs' favor on the issue. See Newcomb v. Spring Creek Cooler Inc., 926 F.3d 709, 716 (11th Cir. 2019) (explaining that affirmative defense of assumption of the risk constitutes a jury question "except in plain, palpable and undisputed cases where reasonable minds cannot differ as to the conclusions to be reached" (alterations adopted; internal quotation marks omitted)); Morton's Mkt., Inc. v. Gustafson's Dairy, Inc., 198 F.3d 823, 832 (11th Cir. 1999) ("[A]s a general rule, the issue of when a plaintiff in the exercise of due diligence should have known of the basis for his claims is not an appropriate question for summary judgment."); cf. Hipp, 252 F.3d at 1222 (finding that if a continuing violation existed, the plaintiff could not leverage it because he admitted that he suspected age discrimination prior to the statutory period); Schwindler v. Owens, Civ. Action No. 1:11-CV-1276-TCB-LTW, 2011 WL 13157127, at *4-5 (N.D. Ga. Dec. 30, 2011) (R&R) (finding that the continuing-violation doctrine did not toll the statute of limitations because the plaintiff admitted that he knew of his claims prior to the limitations period), adopted in relevant part, 2012 WL 12925713, at *3 (N.D. Ga. Mar. 6, 2012).

After careful consideration of the undisputed evidence, viewed in the light most favorable to the Counties, the Court concludes that this is one of the rare

cases where no reasonable jury could find in the plaintiffs' favor on the statute-of-limitations issue. The record contains no direct evidence that the Counties knew of the claims they assert in this lawsuit prior to the commencement of the statutory period on November 20, 2013. Instead, Defendants present circumstantial evidence suggesting that the Counties had actual or constructive knowledge of their claims well before the commencement of the statutory period: other local governments' 2008 and 2009 FHA suits against other large mortgage lenders alleging that the local governments had been injured through the defendants' racially discriminatory lending practices, (D ¶ 45)[6]; the Fulton-DeKalb Commissioners' Committee on Housing's 2009 proposal to amend state law to make fraud/predatory lending a felony, (D ¶ 46); the Counties' general knowledge by 2010 that the high rate of foreclosures within their borders may be connected to subprime mortgage lending and Cobb County's knowledge that its minority residents were being offered less favorable loan terms, (D ¶¶ 1, 13, 26, 41-44); reports publicly available in 2010 and 2011—and cited the in the Counties' complaint filed in this case—that explain the connection between subprime loans, discriminatory lending, and the foreclosure crisis, (D ¶¶ 47, 48), Dkt. No. [61] ¶¶ 86-87, 97-100, 102, 103, 122, 123; the Counties' retention of

[6] Citations that reference a paragraph number preceded by "D" refer to Defendants' statements of material fact. Dkt. No. [131-2]. All are recited here following consideration of the Counties' objections and construed in the light most favorable to the Counties. See LR 56.1(B), NDGa. Citations that reference a paragraph number preceded by "P" refer to the Counties' statements of material fact. Dkt. No. [148-2].

outside counsel—James Evangelista—in 2010 to monitor the potential viability of any future claim under the FHA, investigate and determine the factual basis for such a claim against any identifiable parties, and potentially represent them in litigation of such a claim, (D ¶¶ 2, 3, 14, 15, 24, 27-29, 35); Mr. Evangelista's overtures in 2011 to Bank of America Assistant General Counsel Brian Victor regarding "FHA litigation issues" pertaining to Mr. Evangelista's "Atlanta city and county government clients," (D ¶¶ 4-7, 16-19, 30-33); a widely publicized December 2011 settlement between Bank of America and the U.S. Department of Justice ("DOJ") resolving a DOJ lawsuit alleging that Countrywide had discriminated against African-American and Hispanic borrowers by steering them into subprime loans and charging them higher loan fees and costs, (D ¶ 49); the Counties' 2012 filing of claims of discriminatory lending and equity stripping against HSBC, via Mr. Evangelista, that rely on many of the same analyses, data, reports, and general allegations as the claims asserted in this lawsuit, (D ¶¶ 8, 11, 12, 20, 21, 25, 34, 39, 40, 53); the Counties' authorization for Mr. Evangelista to attempt to resolve claims against HSBC prior to filing suit, (D ¶¶ 9, 22, 37); and Mr. Evangelista's communications in 2012 through the summer of 2013 with Cook County, Illinois, regarding the possibility of filing an FHA claim against Defendants for damages arising from allegedly discriminatory mortgage lending and foreclosure activity and his investigation of such claims, (D ¶¶ 10, 23, 38, 50), Dkt. No. [137-11] at 6-7. Defendants also point to case law holding that a party's

offer to initiate settlement discussions establishes that the party was actually aware of its claim for the purposes of the statute of limitations and that notice to an attorney is equivalent to notice to the client employing the attorney. Dkt. No. [137-1] at 22-25.

In response, the Counties contend that the Counties acted reasonably and diligently to protect their claims; that Defendants have offered no evidence that the Counties had actual notice of their claims prior to the statutory deadline; and that Defendants have therefore, at most, established a jury question as to the statute-of-limitations issue. Dkt. No. [148] at 23-31. In support, they set forth declarations that the Counties did not know of the factual and legal bases for their claims against Defendants until Mr. Evangelista presented them with a copy of the first-draft complaint on January 3, 2014. Dkt. No. [148-5] ¶¶ 7, 8; Dkt. No. [148-6] ¶¶ 7, 8; Dkt. No. [148-7] ¶¶ 7, 8. The Counties also proffer a declaration by Mr. Evangelista in which he states that: when DeKalb County and Fulton County hired him in mid-2010 to investigate and prosecute potential cases involving improper mortgage lending, he did not believe there was any viable cause of action because the only case filed by a local government against a mortgage lender for mortgage discrimination had been twice dismissed, Dkt. No. [148-8] ¶ 3; Mr. Victor was a friend who happened to be an in-house attorney with Bank of America at the time, and during an April 2011 lunch, when the topic of the City of Baltimore's discriminatory lending lawsuit against Wells Fargo

came up, Mr. Evangelista made an "off the cuff" proposal to Mr. Victor that Bank of America could, as a public-relations initiative, make some kind of contribution to Fulton and DeKalb to be used to help foreclosed-upon borrowers, since Countrywide, which Bank of America had recently purchased, had a reputation as a large subprime lender, id. ¶¶ 4, 5; Mr. Evangelista emphasized to Mr. Victor that it was not something that he had discussed with his clients and that he was not aware of any specific wrongdoing but that he would bring the idea to his clients if Bank of America wanted him to do so, id. ¶ 5; his subsequent e-mail to Mr. Victor was sent as follow-up on that public-relations idea, id. ¶ 6; although Mr. Evangelista referenced the DOJ settlement with Countrywide in his December 2011 e-mail, neither the settlement nor a complaint the DOJ filed simultaneously with the announcement of the settlement raised any questions of whether Countrywide had engaged in equity stripping or discriminatory foreclosure practices or that Countrywide's lending practices had caused discriminatory foreclosures anywhere, id. ¶ 7; after receiving no response to the December 2011 e-mail, he focused on other lawsuits, id. ¶ 8; after he learned of additional public information that later came to light about Bank of America's securitization practices, he initiated an investigation into Defendants' activities, which focused on the components of Defendants' equity-stripping scheme, id. ¶ 9; the investigation provided the factual and legal bases for the allegations in the initial complaint, id.; it was only upon completion of the investigation that, in

his opinion, the facts cumulatively met the requirements of Rule 11 of the Federal Rules of Civil Procedure, id.; and the draft complaint was then provided to the Counties on January 3, 2014, id. Dkt. No. [148] at 23-31.

Viewed in the light most favorable to the Counties, the Court agrees with the Counties that the evidence could allow a reasonable jury to conclude that the Counties themselves did not have actual knowledge of their claims against Defendants before January 3, 2014. However, as Defendants point out, and the Counties do not dispute, "[i]t is well settled that notice to an attorney is notice to the client employing him, and that knowledge of an attorney is knowledge of this client." Kahn v. Britt, 765 S.E.2d 446, 453 (Ga. App. 2014); accord Roylston v. Bank of Am., N.A., 660 S.E.2d 412, 417 (Ga. App. 2008). Yet *the Counties never allege—much less present evidence—that Mr. Evangelista did not know of the Counties' claims before the statutory deadline*, only six weeks before he presented the draft complaint to the Counties. See Dkt No. [148] at 23-31; Dkt. No. [148-2]; Dkt. No. [148-8].

Rather than definitively stating that Mr. Evangelista did not know of the Counties' claims until after November 20, 2013, the allegations are artfully vague: Mr. Evangelista initiated an investigation into Defendants' activities on some unspecified date, after unspecified "additional public information came to light about Bank of America's securitization practices," and "[i]t was only upon completion of this investigation [(also on an unspecified date)] that . . . the facts

cumulatively met the requirements of [Rule] 11(b)(2) and (b)(3)." (P ¶ 15); Dkt. No. [148-8] ¶ 9. Thus, in the face of copious circumstantial evidence that Mr. Evangelista knew of the claims prior to the statutory period, or would have known of the claims if he conducted himself with reasonable prudence, the Counties have not countered with a scintilla of evidence upon which a reasonable jury might find otherwise.

Accordingly, no reasonable jury could find that Mr. Evangelista did not have actual or constructive knowledge of the Counties' claims prior to the limitations period. And because Mr. Evangelista's knowledge is imputed to his clients, no reasonable jury could find in the Counties' favor on the statute-of-limitations issue. Consequently, the Counties have failed to establish that a genuine issue of material fact remains as to the statute-of-limitations defense, and Defendants' motion for partial summary judgment is due to be granted.

IV. CONCLUSION

In accordance with the foregoing, the Court **GRANTS** Defendants' Motion for Partial Summary Judgment, Dkt. No. [137]. The claims arising from conduct taking place prior to November 20, 2013, are hereby **DISMISSED**.

IT IS SO ORDERED this 17th day of March, 2022.

Leigh Martin May
United States District Judge