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**IN THE COURT OF APPEALS OF THE STATE OF NEW MEXICO**

**J. RON MARTINEZ and  
JILL MARTINEZ,**

Plaintiffs-Appellants,

v.

**NO. 32,249**

**DONNA JONES,**

Defendant-Appellee.

**APPEAL FROM THE DISTRICT COURT OF BERNALILLO COUNTY**

**Beatrice J. Brickhouse, District Judge**

Chavez Law Offices, P.A.

Gene N. Chavez

Albuquerque, NM

for Appellants

Briones Business Law Consulting, P.C.

Thomas R. Briones

Albuquerque, NM

for Appellant

**MEMORANDUM OPINION**

**VANZI, Judge.**

1 Plaintiffs appeal from an order denying their motion for relief from a previously  
2 entered judgment pursuant to Rule 1-060(B) NMRA. We issued a notice of proposed  
3 summary disposition, proposing to uphold the district court's determination. Plaintiffs  
4 have filed a memorandum in opposition. After due consideration, we remain  
5 unpersuaded that the district court erred. We therefore affirm.

6 As described at greater length in the notice of proposed summary disposition,  
7 Plaintiffs' motion appears to have been based on mistake, inadvertence, excusable  
8 neglect, newly discovered evidence, fraud, misrepresentation, and/or other misconduct  
9 of an adverse party, such that it falls within the parameters of Rule 1-060(B)(1), (2),  
10 and/or (3). Accordingly, Plaintiffs' failure to file within the applicable one-year  
11 limitations period is a fatal deficiency. *See Marinchek v. Paige*, 108 N.M. 349, 351,  
12 772 P.2d 879, 881 (1989).

13 In their memorandum in opposition, Plaintiffs continue to argue that their  
14 motion is based on fraud upon the court, such that Rule 1-060(B)(6) should apply.  
15 [MIO 1-2] "Fraud upon the court embraces only that species of fraud which does or  
16 attempts to defile the court itself or which is perpetrated by officers of the court so that  
17 the judicial system cannot perform in a usual manner." *Moya v. Catholic Archdiocese*  
18 *of N.M.*, 107 N.M. 245, 247, 755 P.2d 583, 585 (1988). "Fraud upon the court occurs  
19 where there is a deliberately planned and carefully executed scheme to defraud the  
20 court, not simply a judgment obtained with the aid of a witness whose perjury is

1 revealed by after-discovered evidence.” *Id.* Defendant’s alleged misconduct,  
2 including fabricating a preapproval letter and misrepresenting her ability or inability  
3 to obtain financing, does not fall within this narrow category. Unlike the conduct at  
4 issue in *Jemez Properties, Inc. v. Lucero*, 94 N.M. 181, 184, 608 P.2d 157, 160 (Ct.  
5 App. 1979), Defendant neither presented to the court forged documents nor tampered  
6 with public records. Moreover, there is no suggestion of “bribery of judges,  
7 employment of counsel to ‘influence’ the court, bribery of the jury, . . . the  
8 involvement of an attorney in the perpetration of the fraud[,]” or anything analogous.  
9 *Id.* at 184 n.1, 608 P.2d at 160 n.1 (describing examples of the type of egregious  
10 conduct which may be said to rise to the level of fraud upon the court). We therefore  
11 remain of the opinion that Defendant’s alleged misconduct is classifiable as “fraud  
12 between the parties,” rather than fraud upon the court. *See generally Sanders v. Estate*  
13 *of Sanders*, 1996-NMCA-102, ¶ 25, 122 N.M. 468, 927 P.2d 23 (stating that “fraud  
14 between the parties, without more, is not fraud upon the court”).

15 In their memorandum in opposition, Plaintiffs urge this Court to reverse and  
16 allow the underlying matter to proceed on grounds that Defendant will otherwise be  
17 rewarded for her misconduct. [MIO 2-4] We find this argument to be unpersuasive for  
18 a couple of reasons.

19 First, while the enforcement of the one-year limitation period associated with  
20 Rule 1-060(B)(1)-(3) may have the effect of barring legitimate claims, like any

1 limitations period it represents a balance of public policy goals. *See generally In re*  
2 *Estates of Hayes*, 1998-NMCA-136, ¶ 23, 125 N.M. 820, 965 P.2d 939 (discussing  
3 the public policy goals associated with limitations periods). We are in no position to  
4 second guess that determination. Accordingly, to the extent that Plaintiffs invite this  
5 Court to disregard the applicable limitations period, we decline to do so.

6 Second, we note that Plaintiffs' assertions with respect to Defendant's conduct  
7 remain allegations only; whether Defendant forged a preapproval letter or  
8 misrepresented her ability to obtain financing has not been definitively established.  
9 *See generally Guidry v. Petty Concrete Co.*, 77 N.M. 531, 534, 424 P.2d 806, 808  
10 (1967) ("With a dispute as to the facts, and with no findings by the trial court, we have  
11 no facts before us. As an appellate court, we will not originally determine the  
12 questions of fact."). As such, we will not presume that the application of our well-  
13 established jurisprudence is inequitable.

14 Accordingly, for the reasons stated above and in the notice of proposed  
15 summary disposition, the judgment of the district court is affirmed.

16 **IT IS SO ORDERED.**

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LINDA M. VANZI, Judge

19 **WE CONCUR:**

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2 **MICHAEL D. BUSTAMANTE, Judge**

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4 **TIMOTHY L. GARCIA, Judge**