TENTATIVE RULINGS FOR DECEMBER 17, 2024
Department R12 - Judge Kory Mathewson

Matthew Jordan v. Ford Motor Company, et al – CIVRS2400973

Motion(s): Demurrer
Movant(s): Defendants Ford Motor Company and Raceway Ford Inc.
Respondent(s): Plaintiff Matthew Jordan

RULING:

Petitioner to provide Order(s) and give Notice

Before a court can relieve a potential plaintiff from the Government Claims Act requirements, the plaintiff must first establish by a preponderance of evidence one of the grounds for relief set out in Government Code section 946.6, subdivision (c). (*Santee v Santa Clara County Office of Educ.* (1990) 220 Cal.App.3d 702, 708.) The burden is not met where counsel merely asserts that his clients' incapacity would be substantiated during discovery proceedings if the claim-relief petition were granted. (*Id*. at 717.) In the absence of any evidence or at least an offer of proof, the excuse is without foundation. (Ibid.)

California Government Code section 946.6, subdivision (c), provides, in pertinent part, follows:

> "The court shall relieve the petitioner from the requirements of Section 945.4 if the court finds that the application to the board under Section 911.4 was made within a reasonable time not to exceed that specified in subdivision (b) of Section 911.4 and was denied or deemed denied pursuant to Section 911.6 and that one or more of the following is applicable:
> (1) The failure to present the claim was through mistake, inadvertence, surprise, or excusable neglect unless the public entity establishes that it would be prejudiced in the defense of the claim if the court relieves the petitioner from the requirements of Section 945.4.

To succeed on a section 946.6, subdivision (c)(1), petition, the petitioner "must . . . demonstrate two essentials by a preponderance of the evidence." (*City of Fresno v. Superior Court* (1980) 104 Cal.App.3d 25, 32) (*Fresno.*) First, the petitioner must show the application was presented within a reasonable time and second, that the failure to file a timely claim was due to mistake, inadvertence, surprise or excusable neglect. (Ibid.) (Internal citations omitted.)

Merits of the Petition

Petitioner argues his failure to present a timely claim to Respondent was due to mistake, inadvertence, or excusable neglect. Petitioner agues the court should liberally construe the instant Petition in favor of the Petitioner. As set forth in the declaration of Ms. Smith, Petitioner argues he is entitled to relief as the failure to file a timely claim was due to a "calendaring error" and "significant personnel turnover" at the law firm of Petitioner's counsel.

The parties do not dispute that Petitioner presented his claim within a reasonable time. As such, the analysis turns on whether Petitioner's failure to file a timely claim was due to mistake, inadvertence,

surprise or excusable neglect. The facts of this case are comparable to *Nilsson v. City of Los Angeles* (1967) 249 Cal.App.2d 976, where a petitioner's claim was filed late due to a calendaring error by his attorney's office. The court held that while not every mistake of an attorney constitutes "excusable neglect," calendaring errors by him or a member of his staff are, under appropriate circumstances, "excusable" within the statute providing that the court shall grant leave to file a late claim if the application to file late was made within a reasonable time and denied and if failure to present the claim timely was through excusable neglect. (*Id*. at 980.)

Petitioner relies on *Renteria v. Juvenile Justice, Department of Corrections and Rehabilitation*, (2006) 135 Cal.App.4th 903, 911 in support of the position that calendaring errors by an attorney or members of his staff are, under appropriate circumstances, excusable. However, in *Renteria*, the secretary responsible for the calendaring error averred, in detail, what her duties were and how/why the error was made providing support of the calendaring error and was therefore an appropriate circumstance and not just a mere recital of mistake or excusable neglect. [T]he mere recital of mistake, inadvertence, surprise or excusable neglect is not sufficient to warrant relief. (*Renteria*, at 909-910; *Department of Water & Power v. Superior Court*, (2000) 82 Cal.App.4th 1288, 1293).

Here, the Petition is supported by a declaration from Petitioner's current counsel, Ms. Smith, who states the circumstances that led to the claim's untimely filing was due to a calendaring error and significant personnel turnover. (Smith Decl., ¶8). This was a mere recital and is conclusional without any supporting facts. Petitioner also submits, with its supplemental filing, the declaration of Jocelyn Palma that indicates she is a case manager and new to the matter of timely filings of government claims (Palma Decl., ¶2). She worked with four paralegals responsible for calendaring pertinent dates and deadlines. Each of these paralegals left at various times leaving Palma responsible with minimal training and experience, double checking of calendar inputs and the matter was mis-calendared and/or overlooked. (Palma Decl., ¶¶4-6).

Defendant argues that Petitioner failed to serve the supplemental on the defense. A review of the proof of service seems to support this as the service list only shows service on a Ryan L. Church who appears to be the Chief Legal Officer and General Counsel for Chaffey Community College and is not counsel for the defense which is Soleiman, APC. (Petitioner's Proof of Service). There are no other parties listed. Procedurely the motion is deficient. However, defendants were able to download the supplemental (presumably from the courts online file) and were able to respond. To the extent that the perceived procedural error prejudiced defendants in its reply to the supplemental, the Court is open to hearing arguments at the hearing regarding additional time to respond, if necessary. If not, it would seem, despite the error, the motion should be heard and the court would rule that the supplemental briefing has provided an appropriate circumstance beyond a mere recital of mistake similar to that in *Renteria*. Accordingly, the Petition for relief is granted.

Dated: December 17, 2024

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Judge Kory Mathewson

TENTATIVE RULINGS FOR DECEMBER 17, 2024
Department R12 - Judge Kory Mathewson

Matthew Jordan v. Ford Motor Company, et al – CIVRS2400973

Motion(s):	Demurrer
Movant(s):	Defendants Ford Motor Company and Raceway Ford Inc.
Respondent(s):	Plaintiff Matthew Jordan
RULING:	SUSTAIN the demurrer as to the first five causes of action based on the statute of limitations, with 30 days leave to amend; OVERRULE the demurrer as to the sixth causes of action.

Movant Defendants to provide Order(s) and give Notice

DEFENDANTS ARGUMENTS

1st – 3rd Causes of Action

Defendants contend the Complaint alleges Plaintiff entered into a warranty contract with Ford for the Vehicle on April 28, 2018, but Plaintiff did not file suit until September 18, 2024, more than six years later, exceeding the four-year limitation under Song Beverly Act. The Complaint is silent as to what occurred during the six years from the date of purchase.

4th Cause of Action

The statute of limitation for a claim for breach of implied warranty runs upon tender of delivery. Plaintiff's breach of implied warranty claim expired on April 28, 2022, more than two years before Plaintiff filed suit.

5th Cause of Action

For fraudulent concealment, the statute of limitation on a fraud cause of action is three years under Code of Civil Procedure section 338, subdivision (d), and it does not accrue until the discovery of the facts constituting the fraud or mistake.

Defendants concede the accrual date is when Plaintiff reasonably should have discovered the breach of warranty but maintains Plaintiff did not allege when he discovered the breach.

ANALYSIS

Plaintiff filed this action on September 18, 2024. Three years prior to that date is September 18, 2021, and four years prior is September 18, 2020. The Complaint does not allege the specific dates repairs were done. Plaintiff pleads multiple grounds for tolling or extending the statute of limitations: equitable tolling, the discovery rule, the fraudulent concealment rules, equitable estoppel, the repair rule, and/or class action tolling. (*See* Compl. ¶35.)

Delayed discovery rule. When, by the face of the complaint, it is clear a claim is time-barred, the discovery rule provides that the plaintiff must specifically plead facts to show (1) the

time and manner of discovery, and (2) the inability to have made earlier discovery despite reasonable diligence. (*CASMI IV v. Hunter Technology Corp.* (1991) 230-Cal.App.3d 1525, 1536.) The burden is on the plaintiff to show diligence, and conclusory allegations will not withstand a demurrer. (*Id.* at pp. 1536-37.)

Plaintiff alleges he did not discover Defendants' concealment until shortly before the filing of the Complaint. (Compl., ¶36.) This is insufficient to plead application of the delayed discovery rule. Plaintiff has not alleged the time and manner of discovery and why he could not have discovered the matter by and around the time he continued to have issues with the Vehicle after taking it in for repairs over the past six years.

Fraudulent concealment/Estoppel. The statute of limitations can be tolled by the defendant having by fraud or deceit concealed material facts and by misrepresentation hindered the plaintiff from bringing the action within the statutory limitation period. (*Britton v Girardi* (2015) 235 Cal.App.4th 721, 734.) To rely on this doctrine for tolling the statute of limitations, the plaintiff must show the substantive elements of the fraud and an excuse for late discovery of the facts. (*Ibid.*) As analyzed above, the allegations show Plaintiff was on inquiry notice of his fraud claim prior to the running of the applicable statute of limitations period.

The Repair Doctrine. Plaintiff does not expand on this doctrine in opposition and the Complaint, as mentioned above, details very little to nothing about the repairs. Plaintiff alleges "Defendant [Ford] and its representatives in this state have been unable to service or repair the Vehicle…" (Compl. ¶39.) Plaintiff does not allege that Defendants repaired the Vehicle or promised to do so. Thus, he may not rely on the repair doctrine.

Defendants have therefore carried their burden of demonstrating Plaintiff's first five causes of action are time barred and the Court sustains Defendant's demurrer as to the first five causes of action on these grounds.

Fifth Cause of Action: Fraudulent Inducement - Concealment

Defendants contends the fraudulent concealment claim does not meet the heightened pleading requirement of specificity to state a fraud claim. The Complaint fails to identify the purported defect that Defendants allegedly concealed in Plaintiff's car, fails to allege a duty to disclose, fails to plead a direct transactional relationship, alleges no actual specific facts establishing Defendants had exclusive knowledge of the transmission defect at the time of the sale to trigger the duty to disclose, fails to plead active concealment, fails to plead that Ford made partial representations while suppressing material facts, and does not plead facts sufficient to establish the fraudulent inducement exception to the Economic Loss Rule.

Here, Plaintiff alleges his purchase of the Vehicle came with express and implied warranties as well as a transmission defect (Compl., ¶62, 65), a series of technical service bulletins ("TSBs") issued by Ford evidences Ford's pre-sale knowledge of the defect (Compl., ¶¶25-34), and Plaintiffs would not have purchased the Vehicle had Plaintiff known about the Transmission Defect. (*Id.* at ¶¶72-72.)

Plaintiff has sufficiently pled with specificity the duty to disclose, the material defect involved, i.e. the Transmission Defect exposing owners to safety risks, Plaintiff's lack of knowledge of the defect, Plaintiff could not reasonably have been expected to learn or discover the defect until after the purchase, and Ford knew of the material defects but chose not to disclose it. Plaintiff adequately pled Ford's duty to disclose, i.e., it had the superior knowledge of the Transmission Defect issues, which would include Plaintiffs' car, but actively concealed it. Plaintiff suffered damages as a result.

Economic Loss Rule

The economic loss rule is "deceptively easy to state: in general, there is no recovery in tort for negligently inflicted 'purely economic losses,' meaning financial harm unaccompanied by physical or property damage" or as phrased in *Robinson Helicopter., Inc. v. Dana Corp* (2004) 34 Cal.4th 979, 988: "[t]he economic loss rule requires a [contractual party] to recover in contract for purely economic loss due to disappointed expectations, unless [the party] can demonstrate harm above and beyond a broken contractual promise." (*Rattagan v. Uber Technologies, Inc.* (Cal.2024) 324 Cal.Rptr.3d 433, 445 ("*Rattagan"*.)

As the California Supreme Court recently concluded, "under the economic loss rule, tort recovery for breach of a contract duty is generally barred … unless two conditions are satisfied. A plaintiff must first demonstrate the defendant's injury-causing conduct violated a duty that is independent of the duties and rights assumed by the parties when they entered the contract. Second, the defendant's conduct must have caused injury to persons or property that was not reasonably contemplated by the parties when the contract was formed. A review of the cases in which the doctrine has evolved provides context." (*Rattagan, supra,* 324 Cal.Rptr.3d at 445-446.)

Here, Plaintiff alleged that Ford committed fraud in connection with the inception of the warranty contract. Thus, Plaintiff has demonstrated "injury-causing conduct [that] violated a duty that is independent of the duties and rights assumed by the parties when they entered the contract." (*Rattagan, supra,* 324 Cal.Rptr.3d at 445-446.)

As for whether Defendants' conduct caused injury to persons or property that "was not reasonably contemplated by the parties when the contract was formed" as indicated above those damages can consist of "out-of-pocket" damages in addition to the benefit of the bargain damages normally associated with breach of contract claims. (*Rattagan, supra,* 324 Cal.Rptr.3d at 456-457.) Here, it is alleged that Plaintiff would not have purchased the vehicle at all had he known about the fraud and therefore they have suffered actual damages. (Compl., at ¶¶71-72.)

Thus, Plaintiff is alleging out-of-pocket damages, the purchase costs, not just benefit of the bargain damages, which are normally calculated as the difference between the value of the goods as promised versus the value of the goods as received. (*Dagher v. Ford Motor Co.* (2015) 238 Cal.App.4th 905, 928 [An express warranty "is a contractual promise from the seller that the goods conform to the promise. If they do not the buyer is entitled to recover the difference between the value of the goods accepted by the buyer and the value of the goods had they been as warranted"].) Defendants' arguments based on the economic loss rule accordingly fail and the

Court overrules Defendant's demurrer as to the fraudulent concealment cause of action on these grounds.

6th Cause of Action - Negligent Repair Claim and the Economic Loss Rule against Raceway

As for the negligent repair claim, the contract was between Ford and Plaintiff, not Raceway and Plaintiff. This is significant because the doctrine of economic loss "involves parties who are in contractual privity," which is why the doctrine is sometimes referred to as "the 'contractual economic loss rule,' 'contractual rule,' or 'consensual paradigm.'" (*Sheen v. Wells Fargo Bank, N.A.,* 12 Cal.5th 905, 923.) *Sheen,* "recognized [an] exception to the economic loss rule for consumers who contract for certain kinds of professional services. In that context, as in the insurance setting, a cause of action for negligence ensures that the consumer receives the services the professional agreed to provide. In such settings, professionals generally agree to provide 'careful efforts' in rendering contracted-for services, but 'most clients do not know enough to protect themselves by inspecting the professional's work or by other independent means.' [Citations.] Given this disparity, a claim for professional negligence can serve the important purpose of ensuring that professionals render the 'careful efforts' they have contracted to provide." (*Sheen, supra,* 12 Cal.5th at 933, *reh'g denied (June 1, 2022)*)

In this case, the Complaint alleges Raceway undertook the repairs on Plaintiff's vehicle, but failed to properly store, prepare and repair the Vehicle in accordance with industry standards and proximately caused Plaintiff's damages. (Compl. at ¶¶74-77.) Though there is no direct contractual relationship alleged between Plaintiff and Raceway, the allegations suggest that Raceway was acting on behalf of Ford. The repairs also arguably fall within the professional services exception to the economic loss rule. Therefore, the demurrer as to the sixth cause of action for negligent repairs is overruled.

Dated: December 17, 2024

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Judge Kory Mathewson

TENTATIVE RULINGS FOR DECEMBER 17, 2024
Department R12 - Judge Kory Mathewson

PMN Investments, LLC v. Grabowski, et al. – CIVDS1939271

Motion: **Summary Judgment/Adjudication**
Movant: Defendant Patrick F. Grabowski, Jr. as personal representative of the Estate of Patrick F. Grabowski, Sr.
Respondent: Plaintiff PMN Investments, LLC

RULING: Request for Judicial Notice is DENIED.

Defendant Estate's Motion for Summary Judgment or Adjudication is DENIED. A triable issue exists on whether the Estate is equitably estopped from relying on the claims for slander of title, cancelation of instrument, and quiet title being time-barred based upon promises by Patrick Sr. to draft and sign necessary documents to release the Memorandum of Agreement from encumbering the title in the Yorba Property [UF #2-19; and cited evidence: Neal's Declaration; Neal's Deposition; Complaint (Def's Exh. 4); Memorandum of Agreement (Def's Exh. 5); Preliminary Title Report/Policy (within Def's Exhs. 6-7); Emails (Def's Exhs. 6-10, 13-14, & 19); and Discovery Responses (Def's Exhs. 11-12)].

Respondent to provide Order(s) and give Notice

PROCEDURAL/FACTUAL BACKGROUND

On December 30, 2019, Plaintiff PMN Investments, LLC ("PMN") filed its Complaint against Defendants Patrick F. Grabowski, Jr. as personal representative of the Estate of Patrick F. Grabowski, Sr. ["Estate"], Patrick F. Grabowski, Jr. ("Patrick Jr."), and P.M.N., LLC. The Complaint pleads 3 causes of action: (1) slander of title, (2) cancellation of instruments, and (3) quiet title. Defendants Estate and Patrick Jr. answered. No answer, default, or dismissal is on file for P.M.N., LLC. Defendant Estate moves for summary judgment/adjudication of the Complaint. Plaintiff PMN opposes. Defendant Estate replies.

Judicial Notice

Plaintiff PMN requests judicial notice of the entire case file and all documents from the California Secretary of State regarding P.M.N. LLC and PMN. "Judicial notice is the recognition and acceptance by the court, for use by the trier of fact or by the court, of the existence of a matter of law or fact that is relevant to an issue in the action without requiring formal proof of the matter." (*Kilroy v. State of California* (2004) 119 Cal.App.4th 140, 145.) The request for judicial notice is denied as irrelevant.

Analysis

Defendant Estate seeks summary judgment on the ground that the causes of action are time-barred (i.e., its 6th affirmative defense). It argues each cause of action is subject to 3-year limitation period and more than 3 years have transpired from when Plaintiff PMN was on notice

of the recorded Memorandum of Agreement ("MOA") and its disparagement on the title of the at-issue property.

Slander of title is governed by 3-year limitation period. (Code Civ. Proc., §338, subd. (g).) Slander of title occurs when "there is an unprivileged publication of a false statement which disparages title to property and causes pecuniary loss." (*Stalberg v. Western Title Ins. Co.* (1994) 27 Cal.App.4th 925, 929.) The recording of an instrument facially valid but without underlying merit will give rise to an action for slander of title. (*In re Cedano* (9th Bankr. 2012)

Cancellation of Instrument's limitation period depends on whether premised on fraud or mistake, which then is governed by a 3-year limitation period [Code Civ. Proc., §338, subd. (d)], or on any other basis, which is then governed by 4-year limitation period [Code Civ. Proc., §343]. (*Robertson v. Superior Court (Brooks)* (2001) 90 Cal.App.4th 1319, 1326-27.) A written instrument may be canceled if there is a reasonable apprehension that if left outstanding it may cause serious injury to a person against whom it is void or voidable. (Civ. Code §3412.) The elements for a claim for cancellation of an instrument are (i) a written instrument, (ii) a reasonable apprehension that it may cause serious injury to someone, and (iii) as to whom it is void or voidable. (Civ. Code §3412; *Smith v. Williams* (1961) 55 Cal.2d 617, 620.)

Here, the predicated basis for canceling the MOA is that it is false and fraudulent (¶18). Thus, the basis for canceling the MOA is predicated upon fraud whereby the 3-year limitation applies.

A quiet title's limitation period will depend on the underlying theory. (*Muktarian v. Barmby* (1965) 63 Cal.2d 558, 560; *Ankoanda v. Walker-Smith* (1996) 44 Cal.App.4th 610, 615.") The underlying theory requires the inquiry into the nature or gravamen of the cause of action. (*Robin v. Crowell* (2020) 55 Cal.App.5th 727, 739.) Generally, if the claim is based on fraud or mistake, then 3 years; if based on cancelation of an instrument, then 4 years; if based on adverse possession, then 5 years. (*Salazar v. Thomas* (2015) 236 Cal.App.4th 467, 476-77.) A quiet title claim is an action brought to establish title against an adverse claim to real or personal property or interest thereon. (Code Civ. Proc., §760.020, subd. (a).) Judgment is rendered on a quiet title after the Court examines and determines the plaintiff's title against the claims of all the defendants. (Code Civ. Proc., §764.010.)

Here, PMN seeks to obtain quiet title by canceling the MOA recorded by the Defendants (¶¶24-25, 27). Yet it also incorporates all previous allegations (¶23), which as indicated above makes clear the MOA (i.e., instrument to be canceled) is subject to cancelation because it is fraudulent. Thus, the gravamen of obtaining quiet title is that a fraudulent interest exists on PMN's title. Therefore, the quiet title action is subject to a 3-year limitation period.

The statute of limitation commences after the cause of action accrues. (Code Civ. Proc., §312; *Brewer v. Remington* (2020) 46 Cal.App.5th 14, 23.) Accrual means "the time 'when, under the substantive law, the wrongful act is done,' or the wrongful result occurs, and the consequent 'liability arises.' In other words, it sets the date as the time when the cause of action is complete with all of its elements." (*Norgart v. Upjohn Co.* (1999) 21 Cal.4th 383, 397 [internal citations omitted]; *Brewer v. Remington, supra,* 46 Cal.App.5th at pp. 23-24.) A quiet

title action accrues when someone asserts an adverse claim against the one holding the property. (*Alfaro v. Community Housing Improvement System & Planning Assn., Inc.* (2009) 171 Cal.App.4th 1356, 1395.) Furthermore, the discovery rule may postpone the accrual until the plaintiff discovers or should have discovered the cause of action. (*E-Fab, Inc. v. Accountants, Inc. Services* (2007) 153 Cal.App.4th 1308, 1318.) This rule applies to slander of title and fraud-based causes of action. (Code Civ. Proc., §338, subd. (d); *Arthur v. Davis* (1981) 126 Cal.App.3d 684, 691-92.)

Here, in 2001, PMN acquired real property at 13401, 13405, 13425, and 13445 Yorba Ave., Chino, which is also identified as APN 1019-471-07 ["Yorba Property"]. Defendant's Separate Statement of Undisputed Facts (UF) #2 (undisputed). On September 3, 2010, a Memorandum of Agreement (MOA) was executed by PMN and Patrick F. Grabowski, Sr. ("Patrick Sr."). It was recorded against the title to the Yorba Property. UF #3 (undisputed).

On October 4, 2011, Neal's employee, Tammy Schulze, forwarded a preliminary title report for the Yorba Property. The preliminary title report listed the MOA as an exception for coverage. UF #4-5 (undisputed). On January 7, 2014, Neal forwarded a title insurance policy for the Yorba Property on behalf of PMN. The title policy identified the MOA as a recorded encumbrance. UF #6-7 (undisputed). Although these facts are undisputed, Plaintiff also references that Neal attests that he never reviewed the title report. He merely forwarded it. Thus, at these times, he was not aware of the MOA. (Neal Decl. at ¶6.)

In 2016, in connection with a potential sale of the Yorba Property, PMN discussed the need to release the MOA with Marilyn Price, an escrow officer. Price emailed Neal on March 21, 2016, that a quit claim from Patrick Sr. was needed because the MOA was written like Patrick Sr. was given the right of first refusal. UF #8-9 (undisputed). Then on May 9, 2016, PMN member Michael emailed Janis Grabowski (his mother) and copied Patrick Sr. In this email, he noted the title report is showing the recorded MOA that placed a cloud on the title. He noted that Patrick Jr. under PMN's Operating Agreement did not have the power to sign the MOA without another member. The next day, Michael sent another email demanding the MOA's removal. UF #10-12 (undisputed). On May 24, 2016, Price emailed Neal confirming the MOA clouded the title even though it had PMN's name wrong and was only signed by one member, and not two members. UF #13-14 (undisputed). In late May 2016, Neal contacted a real estate attorney about obtaining the removal of the MOA. UF #15 (undisputed). Ultimately, the escrow for the sale of the Yorba Property was canceled. UF #16 (undisputed). On July 9, 2016, Neal emailed Patrick Sr. and Patrick Jr. that the MOA prevented the sale of the Yorba Property. Two days later another email was sent to Patrick Sr. stating that he killed the sale based on his failure to release the MOA and imposing conditions to do so. UF #17-18 (undisputed). PMN filed its Complaint on December 30, 2019. UF #19 (undisputed).

Based on the undisputed facts above, PMN, at the latest, was aware of the MOA's existence in March 2016 when its existence became known arising from when PMN went to sell the Yorba Property. Three years from knowledge of the existence is March 2019. The Complaint was filed more than 3 years after on notice. Thus, unless tolled or another defense exists, the causes of action are time-barred.

In opposing, PMN argues that the Estate fails to address whether the limitation periods were tolled. However, unless the Complaint alleges a principal for tolling the statute of

limitation period, the Estate is under no obligation to negate any possible tolling of the limitation period. That is because the Estate is only obligated to address the facts and allegations pled within the Complaint. (*Tsemetzin v. Coast Federal Savings & Loan Assn.* (1997) 57 Cal.App.4th 1334, 1343.) Now, PMN is free to argue the limitation period is tolled to create a triable issue. But the burden lies with it. Here, the Complaint pleads no facts that any limitation period was tolled. Thus, the Estate held no burden to disprove any unpled tolling or defense.

Concerning the Quiet Title cause of action, Plaintiff argues the statute of limitation is tolled while it possesses the property. Per the Complaint allegations, PMN possessed the Yorba Property when it filed its Complaint (¶¶7, 10-12, 24). PMN's member further implicitly attests to the continuing possession of the Yorba Property.[1] (Neal Decl. at ¶¶2, 10-11.)

The Supreme Court has held that the statute of limitation for quiet title does not begin to run against one in possession of the property until dispossession is pressed against the possessor. (*Muktarian v. Barmby, supra,* 63 Cal.2d at pp. 560-61.) This holding is interpreted that "[t]he possession required to toll the statute of limitations must be 'exclusive and undisputed.'" (*Ankoanda v. Walker-Smith, supra,* 44 Cal.App.4th at p. 616.) However, a Court of Appeal held when notice existed of a fraudulent deed restriction, the owner/possessor needed to bring an action for quiet title in 3 years, and "remaining in possession of the property does not excuse their failure to file the complaint earlier." (*Alfaro v. Community Housing Improvement System & Planning Assn., supra,* 171 Cal.App.4th at p. 1395.)

Applying this case law here, the undisputed facts establish that commencing in March to May 2016, Patrick Sr. began pressing some assertions on rights related to the Yorba Property when he made demands before he would release the MOA. Furthermore, PMN knew in March 2016 that an alleged fraudulent document existed against the title that was encumbering its right to freely sell the Yorba Property. Thus, like in *Alfaro,* PMN needed to bring its action to claim all rights in Yorba Property free of the MOA within 3 years of learning of the MOA. Yet, it failed to do so.

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[1] Plaintiff fails to submit any proper additional facts associated with its defense to Defendant's statute of limitation defense. The "additional facts" presented by PMN are not facts but conclusions and legal contentions. This would seem to establish no basis exists to consider the limitation defenses. (*See, e.g., United Community Church v. Garcin* (1991) 231 Cal.App.3d 327, 337 ["This is the Golden Rule of Summary Adjudication: if it is not set forth in the separate statement, *it does not exist*. Both the court and the opposing party are entitled to have all the facts upon which the moving party bases its motion plainly set forth *in the separate statement*."]; *Mills v. Forestex Co.* (2003) 108 Cal.App.4th 625, 641.) However, courts have rejected this rule finding a trial court must consider all the evidence, except the court may ignore evidence that is not disclosed in a moving party's separate statement. (*San Diego Watercrafts, Inc. v. Wells Fargo Bank, N.A.* (2002) 102 Cal.App.4th 308, 315 ["We … hold … that, in ruling on a motion for summary judgment, a trial court must consider all the evidence submitted, except the court may ignore evidence not disclosed in moving party's separate statement of undisputed facts. But we also reject the absolute prohibition against consideration of non-referenced evidence, which seems to be the substance of the 'Golden Rule' of *United Community Church.* In rejecting the 'Golden Rule,' we recognize that a large number of other courts have adopted this concept, if not the language."].) Here, within the improper additional facts is a reference to Neal's Declaration and the paragraphs referenced in this memo. (*See, e.g.,* Additional Fact #P2-P3; and Response to UF #7.) Because his declaration is cited within the Separate Statement, it is considered.

Next, associated with all causes of action, Plaintiff PMN relies on the continuing violation doctrine. Here, no facts or evidence are provided of a continuing pattern of conduct by Patrick Sr. or Patrick Jr. (See, *Komarova v. National Credit Acceptance, Inc.* (2009) 175 Cal.App.4th 324, 343.) The facts and allegations are related to a distinct act, i.e., the recording of the MOA on September 3, 2010.

Lastly, PMN relies on equitable estoppel as a defense to the running of the statute of limitations on each of its causes of action.[2] A defendant may be barred from relying on the running of the statute of limitation if by his conduct, statements, or omissions he induces the plaintiff to delay in filing an action. (*Superior Dispatch, Inc. v. Insurance Corp. of New York* (2010) 181 Cal.App.4th 175, 186 ["A defendant may be equitable estopped from asserting a … limitations period as a defense if the defendant's act or omission caused the plaintiff to refrain from filing a timely suit and the plaintiff's reliance on the defendant's conduct was reasonable."]; *Stalberg v. Western Title Ins. Co.* (1994) 27 Cal.App.4th 925, 931; *see also* Evid. Code, §623.)

PMN's member attests that Patrick Sr. promised him that he would release the MOA in 2016 and 2017. In a September 2018 discussion, Patrick Sr. again agreed to release the MOA. So Neal had PMN's attorney draft a release for Patrick Sr. to sign. However, as Patrick Sr. indicated he would draft the necessary documents, the attorney-drafted documents were not sent over to him. Yet after nothing was provided or signed, Neal told Patrick Sr. that a lawsuit would need to be filed. Patrick Sr. then re-stated that if the attorney provided something he would sign it. Neal then had his attorney provide a release of the MOA for Patrick Sr. to sign on October 25, 2019. Yet Patrick Sr. never signed it. (Neal Decl. at ¶¶10-11, Exh. 3.)

The above evidence sufficiently supports that PMN was induced to not file its Complaint earlier because of promises by Patrick Sr. to resolve the issue with the MOA and release it so it no longer hindered PMN from selling the Yorba Property. Thus, a triable issue is presented. Therefore, summary judgment is denied.

Dated: December 17, 2024

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Judge Kory Mathewson

[2] Equitable estoppel is not a tolling provision as it does not come into play until after the limitation period has run. (*Battuello v. Battuello* (1998) 64 Cal.App.4th 842, 847.) Rather, it is a doctrine that precludes a defendant from relying on the statute of limitation defense. (*Id.* at pp. 847-48.)