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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

LUPE GARCIA,

Plaintiff and Appellant,

v.

CECELIA LUNA DE SANCHEZ,
Individually and as Successor
Trustee, etc.,

Defendant and Respondent.

B282029

Los Angeles County
Super. Ct. No. BP168504

APPEAL from a judgment of the Superior Court of
Los Angeles County, Clifford Klein, Judge. Affirmed.

Andrew B. Cervik for Plaintiff and Appellant.

Lisa M. MacCarley; Law Office of Ann C. Schneider
and Ann C. Schneider for Defendant and Respondent.

Lupe Garcia appeals from the entry of judgment in favor of Cecelia Luna de Sanchez following the trial court's order sustaining a demurrer without leave to amend. We affirm.

BACKGROUND

Garcia is the daughter of Jose H. Sanchez (Sanchez) and his wife Catalina Iracheta de Sanchez (Catalina). During their marriage, Sanchez and Catalina acquired real property on Great Oak Circle and Roseview Avenue in Los Angeles County, which they held as joint tenants.¹ On May 23, 1984, Sanchez and Catalina executed a will (the 1984 will). Sanchez and Catalina left their real property to each other for life, and provided that upon the death of both, Garcia would inherit Great Oak Circle. The remaining real and personal property would be divided equally among Garcia and her three half-siblings (Catalina's children from a prior marriage).

After Catalina died in 1987, Sanchez married Cecelia Luna de Sanchez (Cecelia). Sanchez and Cecelia had one son, Jose H. Sanchez, Jr. (Jose Jr.). On May 15, 1990, Sanchez recorded an "Affidavit—Death of Joint Tenant" which conveyed the title of Great Oak Circle to himself and Garcia as joint tenants. On February 1, 1996, Sanchez recorded a deed conveying his interest in Great Oak Circle to himself as trustee of the Jose H. Sanchez Revocable Trust of January 26, 1996. In 1999, Sanchez revoked his 1996 trust, conveyed his interest in Great Oak Circle into the Jose H. Sanchez Living Trust (the living trust), and gave

¹ The facts are drawn from Garcia's Second Amended Petition to Establish Claim of Ownership to Property (filed October 14, 2016) and attached exhibits, and (when necessary) from other court documents in the record on appeal.

that interest to Garcia upon Sanchez's death.² But Sanchez then amended the living trust, and a second amendment gave Sanchez's half-interest in Great Oak Circle to Sanchez's son with Cecelia, Jose Jr., rather than to Garcia. A third and final amendment gave Sanchez's half-interest in Great Oak Circle, the Roseview property, and the rest of the trust estate to Cecelia. If Cecelia predeceased Sanchez, the entirety of the trust estate would be distributed to Jose Jr.³

1. *Garcia's civil case and petition to probate the 1984 will, and Cecelia's will contest*

Sanchez died on July 6, 2012. Within one year, on July 5, 2013, Garcia filed a civil Complaint for Quasi-Specific Performance of Contract to Make Will and to Impose a Constructive Trust (BC514255) against Sanchez's estate, the trustee, and others (the civil case). The civil case alleged that when Sanchez conveyed his interest in Great Oak Circle and Roseview to the living trust, he breached his contract with Catalina effectuated in the 1984 will. On the same date, Garcia petitioned for probate of Sanchez's estate under the 1984 will and for letters of administration (BP143033) (the petition to probate the 1984 will). Cecelia filed a will contest on August 19, 2013,

² The living trust, like the revocable trust, imposed conditions upon Garcia's eventual ownership of Great Oak Circle, including monthly payments to Jose Jr. until he turned 21. Garcia lived in the house on the Great Oak Circle property for 40 years. These details, and other specific conditions imposed in the various amendments to the living trust, are part of a tangled family history not relevant to the disposition of this appeal.

³ Jose Jr. died on April 14, 2013.

alleging that the 1984 will had been revoked by a will Sanchez had executed on July 9, 2010 (the 2010 will).

On November 4, 2013, Judge William Fahey ordered Garcia's civil case stayed pending resolution of her petition to probate the 1984 will. Garcia then filed a notice of related cases, listing the petition to probate the 1984 will and the civil case as related cases. On October 23, 2014, the court declined to relate the cases because the civil case had been stayed. On November 7, 2014, Judge Fahey held a hearing on an order to show cause why the civil case should not be dismissed (opposed by Garcia), and after argument, Judge Fahey dismissed the civil case without prejudice.

2. *The first 850 petition*

On November 10, 2014, Garcia filed a petition under Probate Code section 850, subdivisions (a)(2) and (a)(3) (the first 850 petition), to establish her claim of ownership to the property, an order directing its transfer to her, and for quasi-specific performance of a contract to make a will and to impose a constructive trust, based on the 1984 will.

3. *Trial of Cecelia's will contest and hearing on the first 850 petition*

From April 28, 2015 to May 8, 2015, Judge Maria Stratton held a court trial on Cecelia's will contest and Garcia's petition to probate the 1984 will ("[t]he [first] 850 petition trails these petitions"). In a comprehensive ruling filed July 2, 2015, Judge Stratton concluded that the 1984 will was a joint and mutual will that Jose revoked when he executed the 2010 will. Judge Stratton also stated that as a disinherited beneficiary of the revoked mutual will, Garcia had a remedy in equity in the form of a constructive trust, as the 1984 will was made pursuant

to a contract to make a mutual will. “Revocation by one of the testators does not deprive the other testator or the beneficiaries of their contractual rights since equity will enforce the contract even though the will has been revoked.” “The issue of what properties are properly included in Jose’s estate is not addressed by this decision as the only matter currently before the court is Cecelia’s will contest. However, it is important to note that, in light of these other issues, [Sanchez’s] revocation of this 1984 will may not conclusively resolve how the property shall ultimately be distributed.”

Judge Stratton granted Cecelia’s will contest, and denied Garcia’s petition to probate the 1984 will.

Judge Stratton also ordered Garcia to show cause why the first 850 petition should not be dismissed, as Garcia had not been appointed the personal representative of Sanchez’s estate.

On November 12, 2015, Judge Stratton held a hearing on the order to show cause. Judge Stratton noted that Garcia had amended the first 850 petition by filing “what you’ve called a supplemental petition which completely changes your legal theory. . . . [I]t needs to be filed under a different case number. You need to refile it as a petition, 850 petition, in a trust matter, which I’m happy to give you an opportunity to do. But I don’t think it’s appropriate to be tagged onto this case.” Garcia’s counsel stated there was a statute of limitations issue. The court responded that the supplemental petition requested “completely different relief” and so needed to be refiled as a separate trust action. “I’m going to go ahead and dismiss the 850 petition that’s presently on file. If you want to refile it under a separate case number as a trust matter, you’re more than welcome to do that.”

The court dismissed the first 850 petition without prejudice, effective November 17, 2015.

4. *The second 850 petition and the demurrer sustained without leave to amend*

On November 13, 2015, Garcia filed a petition under Probate Code section 850, subdivision (a)(3)(A) (BP168504) in the trust department. After the trial court twice sustained demurrers with leave to amend on statute of limitations grounds, she filed her second amended petition (the second 850 petition) on October 14, 2016. Garcia's second 850 petition alleged that the 1984 will evidenced an agreement between Catalina and Sanchez that the survivor would not alter the property distributions made in that will. Sanchez had breached the agreement when he made a contrary distribution in the living trust. The petition requested that Cecilia, as trustee of the living trust, transfer Cecelia's interest in Great Oak Circle, and one-fourth of the proceeds from the sale of Roseview (which the petition alleged Cecelia sold in April 2016), to Garcia. The petition also alleged: "The statute of limitations applicable to Petitioner's cause of action was met on July 5, 2013 with the filings of the Petitioner's complaint in the [civil action] and her [petition to probate the 1984 will]." The petition alleged that equitable tolling (based on Judge Stratton's comments in the November 12, 2015 hearing), and equitable estoppel (based on the comments of Cecelia's counsel before Judge Stratton), barred any defense based on the statute of limitations. "The Respondent Trust and [Cecelia] received timely notice of Petitioner's claim within the applicable statute of limitations period and there was no prejudice."

Cecelia filed a demurrer to the second 850 petition on November 4, 2016, arguing that all Garcia's claims were time-barred by the one-year statute of limitations in Code of Civil Procedure section 366.2 (section 366.2). Sanchez died on July 6, 2012, and Garcia's civil case, filed July 5, 2013 (within one year of his death) had been dismissed. The second 850 petition (the operative pleading) was filed more than three years after Sanchez's death, the statute of limitations in section 366.2 could not be tolled, equitable estoppel did not apply, and the demurrer should be sustained without leave to amend. Garcia opposed the demurrer, and Cecelia replied.

Judge Clifford Klein heard the demurrer to Garcia's second 850 petition on January 19, 2017. Garcia argued that her rights arose only after Sanchez died. Garcia also argued that Judge Stratton had tolled the statute of limitations when she told Garcia to refile in the trust department. Counsel for Cecelia pointed out that Sanchez had transferred the property to the living trust, and therefore had breached the contract to make a will during his lifetime. Garcia had "started a whole new case but they started this one untimely."

The trial court sustained the demurrer to the second 850 petition without leave to amend in an order on February 17, 2017, and signed a formal order on March 8, 2017. The court concluded that the one-year statute of limitations in section 366.2 applied to bar the second 850 petition, which Garcia originally filed on November 13, 2015, more than three years after Sanchez's death on July 6, 2012. Garcia had not pleaded facts demonstrating that Cecelia should be estopped from asserting

the statute of limitations. The trial court entered judgment in favor of Cecelia on June 2, 2017. Garcia filed this appeal.⁴

DISCUSSION

We review de novo the legal issue whether the demurrer was properly sustained without leave to amend because the statute of limitations barred Garcia's second 850 petition. (*Embree v. Embree* (2004) 125 Cal.App.4th 487, 491.)

It is undisputed that Sanchez died on July 6, 2012, and Garcia filed her second 850 petition on November 13, 2015, more than three years later. If section 366.2 applies, the second 850 petition is more than two years too late.

Section 366.2, subdivision (a) states: "If a person against whom an action may be brought on a liability of the person, whether arising in contract, tort, or otherwise, and whether accrued or not accrued, dies before the expiration of the applicable limitations period, and the cause of action survives, an action may be commenced *within one year after the date of death*, and the limitations period that would have been applicable does not apply." (Italics added.) Subdivision (b) states that the one-year limitations period "shall not be tolled or extended for any reason except as provided" in subparts (1)-(4) (none of which is relevant to the facts of this case).

⁴ We agree with Cecelia's respondent's brief that Garcia's appellate briefs are substandard and at times incoherent, often failing to support an argument with reasoned discussion. The record on appeal, as originally filed, was inadequate. Garcia's subsequent augmentation of the record is disorganized and confusing. Nevertheless, we decide the appeal on the merits in the hope of ending this sadly protracted litigation.

Section 366.2 applies to a cause of action (as here) alleging a contract to make a will. (*Battuello v. Battuello* (1998) 64 Cal.App.4th 842, 846 (*Battuello*)). Although “as a general rule, such a cause of action does not come into existence until after the promisor has died [¶] . . . an exception exists where the promisor has made an inter vivos transfer of property specifically covered by the contract. [Citations.] In that situation, the promisee may seek equitable relief against the promisor during the promisor’s lifetime.” (*Ibid.*) In 2010, Sanchez made an inter vivos transfer of Great Oak Circle and the other property to the living trust, and amended the living trust to leave all the property to Cecelia. Garcia had an equitable cause of action while Sanchez was alive, and Sanchez died before expiration of the four-year statute of limitations for filing an action for breach of contract. (Code Civ. Proc., § 337.) Sanchez was “a person against whom an action may be brought on a liability of the person . . . arising in contract,” and so Garcia had one year after Sanchez’s death to file her action. (§ 366.2, subd. (a); *Battuello*, at pp. 846-847.)

Garcia filed her civil action and a petition to probate the 1984 will on July 5, 2013, within a year after Sanchez’s death. But Judge Fahey dismissed the civil case without prejudice on November 7, 2014, and Judge Stratton denied the petition to probate the 1984 will on July 2, 2015, after granting Cecelia’s will contest and declaring the 1984 will was revoked. Neither of Garcia’s timely actions is before us on this appeal from the sustaining of the demurrer to the second 850 petition, which Garcia filed more than three years after Sanchez’s death. Despite that late filing, Garcia argues that equitable estoppel

should prevent Cecelia from asserting a statute of limitations defense.⁵

“While section 366.2 clearly states that the one-year statute of limitations set forth therein may not be ‘tolled’ or ‘extended,’ it says nothing about equitable estoppel.” (*Battuello, supra*, 64 Cal.App.4th at p. 847.) Unlike tolling, which is concerned with when the statute of limitations begins to run, and with circumstances justifying suspending the running of the limitations period, equitable estoppel “ ‘is not concerned with the running and suspension of the limitations period, but rather comes into play only after the limitations period has run and addresses itself to the circumstances in which a party will be estopped from asserting the statute of limitations as a defense to an admittedly untimely action because his conduct has induced another into forbearing suit within the applicable limitations period. Its application is wholly independent of the limitations period itself and takes its life, not from the language of the statute, but from the equitable principle that no man will be

⁵ Garcia briefly makes the argument that the one-year statute of limitations does not apply, because she did not learn about the 1984 will until after Sanchez died. This is irrelevant. Whatever the date of her discovery, Garcia filed her civil case based on the 1984 will within the statute of limitations. Garcia also argues that *Dacey v. Taraday* (2011) 196 Cal.App.4th 962, establishes that section 366.2 does not apply. In that case it was undisputed that the decedent never breached the contract while alive, and instead the administrator, acting on behalf of the estate, breached the agreement. As the breach of contract claim was not against the decedent, the one-year statute of limitations did not apply. (*Dacey*, at pp. 966, 973, 980.) Here, Sanchez, the decedent, breached the contract to make a will while alive, by making a different disposition in his living trust.

permitted to profit from his own wrongdoing in a court of justice.’” (*Id.* at pp. 847-848.) Although the legislature clearly intended that the one-year statute of limitations in section 366.2 not be tolled or extended, “the doctrine [of equitable estoppel] still applies.” (*Id.* at p. 848.)

In *Battuello*, the appellant’s parents repeatedly told him he would inherit the family vineyard when his father died, and in reliance on those promises he farmed and managed the vineyard for 25 years. His parents executed a trust providing he would receive the vineyard upon the death of both. Shortly after appellant’s father died at the end of 1995, he learned his parents had executed a second trust in 1994 stating that he would not receive the vineyard as promised. When appellant objected and began settlement negotiations with his mother and her lawyers, she promised him he would receive the vineyard by the end of 1996. Relying on his mother’s promise, he made no objection when she filed a petition to confirm that the 1994 trust had title to the vineyard, and the court so ruled at the end of 1996. His mother then repudiated the settlement agreement and took the position that he had no right to the vineyard beyond what was provided in the 1994 trust. Appellant sued his mother and his father’s estate to enforce his father’s promise to give him the vineyard. His mother demurred that the action was barred by the one-year statute of limitations in section 366.2, and the court sustained the demurrer without leave to amend. (*Battuello*, *supra*, 64 Cal.App.4th at pp. 845-846.)

The court of appeal held the facts were sufficient for equitable estoppel: within one year after the appellant’s father’s death, his mother convinced the appellant not to file a timely action by promising him he would receive the vineyard, and

by the time he learned that was a false promise, the statute of limitations had passed. (*Battuello*, *supra*, 64 Cal.App.4th at p. 848.) The court of appeal reversed the judgment. (*Ibid.*)

Garcia has not shown facts supporting a conclusion that Cecelia should be equitably estopped from asserting the statute of limitations. Unlike the son in *Battuello*, Garcia can point to no statements or actions by Cecelia during the one-year period after Sanchez's death that prevented Garcia from filing a timely 850 petition. She filed her first 850 petition in November 2014, more than a year after the one-year statute of limitations had run. Her second 850 petition, the pleading before us in this appeal, was filed more than two years after the end of the limitations period.

Garcia points to statements made by Judge Stratton and by Cecelia's counsel at the November 2015 hearing at which Judge Stratton dismissed the first 850 petition, suggesting she relied on these statements when she filed the second 850 petition. Those statements cannot support equitable estoppel. First, they occurred long after the statute of limitations had expired. Second, Judge Stratton was not a party to the litigation. Third, the first 850 petition under discussion was not timely, as Garcia filed it more than a year after Sanchez died. Even if Judge Stratton had allowed Garcia to amend the first 850 petition instead of filing another petition in the trust department, section 366.2 would apply to bar any amendment of the first 850 petition. Nothing Cecelia's counsel said at the November 2015 hearing could have prevented Garcia from filing a timely action, as the statute of limitations period had ended long ago.

In enacting section 366.2, "[t]he Legislature has determined that the one-year statute of limitations will best

effectuate the strong public policy of expeditious and final estate administration,” despite the potential for unfairness under unusual circumstances. (*Bradley v. Breen* (1999) 73 Cal.App.4th 798, 805; see *Dawes v. Rich* (1997) 60 Cal.App.4th 24, 36.) Section 366.2 applies to bar Garcia’s second 850 petition, and the trial court properly sustained the demurrer without leave to amend.

DISPOSITION

The judgment is affirmed. Each party is to bear its own costs.

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EGERTON, J.

We concur:

EDMON, P. J.

DHANIDINA, J.