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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

RONALD HALE et al., Plaintiffs and Appellants, v. WILLIAM B. ADAMS et al., Defendants and Respondents.	B234826 (Los Angeles County Super. Ct. No. BC429806)

APPEAL from a judgment of the Superior Court of Los Angeles County, Deirdre Hill, Judge. Affirmed.

Law Office of Glenn N. Kawahara and Christopher Granville-Mathews for Plaintiffs and Appellants.

Law Offices of Fredrick H. Stern and Fredrick H. Stern for Defendants and Respondents.

INTRODUCTION

Plaintiffs and appellants Ronald and Masayo Hale (Hale) filed suit against defendants and respondents William and Jacqueline Adams (Adams) in 2010 after Adams failed to repay Hale for a $30,000 loan made in 2000. Hale appeals from the judgment after the trial court sustained a general demurrer without leave to amend as to all Hale's claims as time-barred. Hale also appeals from the court's order awarding attorney fees to Adams, contending that such an award was inequitable given that the claims were dismissed only because they were untimely, and not due to any substantive defect in Hale's claims that Adams owed him money. Finding no error, we affirm the judgment and the award of attorney fees.

FACTUAL AND PROCEDURAL BACKGROUND

According to the operative complaint, Hale loaned Adams $30,000 in April 2000. The parties executed a promissory note, dated April 12, 2000 (the first note), providing that Adams would repay the sum to Hale with interest at a rate of 10 percent per annum, with the principal and all accrued interest "payable on or before October 31, 2000." Hale alleges that at the time they entered into the note, Adams promised that he would sell his home, if necessary, to pay back the loan. The first note provides that "[a]t such time as borrowers' home, located at 711 Linda Flores Dr. closes escrow in a sale this note will be due and payable." As further consideration for the loan, Adams agreed to transfer to Hale 5,000 shares of stock at the time the note was paid in full. Adams failed to repay the loan.

On January 23, 2008, Hale lent Adams another $30,000. When that second loan was not repaid by the March 31, 2008 due date, Hale filed a separate action in superior court to recover on the second promissory note.

In that separate action, Hale filed a declaration in support of a writ of attachment. That August 23, 2010 declaration, attached as an exhibit to the

operative complaint in the instant action, describes events surrounding the first loan Hale made to Adams in 2000. At that time, Hale and Adams were social acquaintances and Hale had already invested in several unsuccessful real estate syndication ventures with Adams. Adams told Hale in early 2000 that he had reluctantly listed his home for sale due to financial problems but Adams was confident that he would soon be on "solid financial footing" and would "purchase another spectacular home." Subsequently, Hale agreed to lend Adams $30,000 to help him with a "severe short term cash shortfall" and the parties executed the first note on April 12, 2000. The declaration further states, in part: "Based on my observations and conversations with Adams, Adams' financial condition improved for he and his wife in the ensuing months, as his house was withdrawn from the market. [¶] . . . By the end of the year six months later, the First Note had not been paid. [¶] . . . From 2001 forward, both Adams and his wife Jackie would acknowledge in conversations I had with them that they owed money to me. [¶] . . . Subsequently, I noticed that Adams installed a gazebo with fire pit in their yard and a spectacular multi-thousand dollar chandelier in the entryway to the home. [¶] . . . I felt based on their expenditures on their house that they had the money to make some or all of the payment of the First Note and that Adams was acting in bad faith and dishonest. [¶] . . . *From 2001 onward*, I had conversations with Adams regarding the First Note. I asked him when he would be paying the First Note back. He responded that he would not sell his house in order to pay back the First Note and made it clear that he had no intention of paying the First Note." (Italics added.)

In 2010, more than nine years after the October 31, 2000 due date on the first note, Hale filed a complaint in the instant suit seeking to recover on that note. The operative complaint now alleges causes of action for breach of contract, money lent, promissory fraud, and promissory estoppel.

On January 21, 2011, Adams demurred to the operative complaint on the ground that all the claims were barred by the statute of limitations and thus failed to state facts sufficient to constitute causes of action against him. The trial court sustained the demurrer without leave to amend, finding that facts alleged in Hale's August 23, 2010 declaration, which was incorporated into the complaint, demonstrated as a matter of law that the statute of limitations had run on Hale's claims and that he could not demonstrate justifiable reliance necessary to support a promissory estoppel claim. The court also granted attorney fees to Adams in the amount of $25,675, under Civil Code section 1717, based on the fee provision in the first note. Hale separately appealed from the order granting the demurrer and the order granting attorney fees, and the appeals were consolidated.

DISCUSSION

I. *The Trial Court Properly Sustained the Demurrer*

A. *Standard of Review*

In reviewing an order sustaining a demurrer, we examine the complaint de novo to determine whether it alleges facts sufficient to state a cause of action under any legal theory. (*Committee for Green Foothills v. Santa Clara County Bd. of Supervisors* (2010) 48 Cal.4th 32, 42 (*Committee for Green Foothills*).) We assume the truth of all facts properly pleaded by the plaintiff, and also accept as true "'all facts that may be implied or reasonably inferred from those expressly alleged. [Citation.]' [Citation.] Further, we give the complaint a reasonable interpretation, and read it in context." (*Trinity Park, L.P. v. City of Sunnyvale* (2011) 193 Cal.App.4th 1014, 1026 (*Trinity*).)

In determining whether to grant a demurrer, courts may also consider matters that have been judicially noticed (*Trinity*, *supra*, 193 Cal.App.4th at p. 1026), as well as any exhibits to the complaint. (*Glen Oaks Estates Homeowners*

Assn. v. Re/Max Premier Properties, Inc. (2012) 203 Cal.App.4th 913, 919; *Hoffman v. Smithwoods RV Park, LLC* (2009) 179 Cal.App.4th 390, 400 (*Hoffman*).) Courts "'will not close their eyes to situations where a complaint contains allegations of fact inconsistent with attached documents, or allegations contrary to facts that are judicially noticed.' [Citation.] 'False allegations of fact, inconsistent with annexed documentary exhibits [citation] or contrary to facts judicially noticed [citation], may be disregarded . . . .' [Citations.]" (*Hoffman, supra*, 179 Cal.App.4th at p. 400; see also *Duncan v. McCaffrey Group, Inc.* (2011) 200 Cal.App.4th 346, 360 ["For purposes of a demurrer, we accept as true both facts alleged in the text of the complaint and facts appearing in exhibits attached to it. If the facts appearing in the attached exhibit contradict those expressly pleaded, those in the exhibit are given precedence. [Citation.]"].)

""""A demurrer based on a statute of limitations will not lie where the action may be, but is not necessarily, barred. [Citation.] In order for the bar . . . to be raised by demurrer, the defect must clearly and affirmatively appear on the face of the complaint; it is not enough that the complaint shows that the action may be barred. [Citation.]" [Citation.]' [Citation.]" (*Committee for Green Foothills, supra*, 48 Cal.4th at p. 42; see also *Holiday Matinee, Inc. v. Rambus, Inc.* (2004) 118 Cal.App.4th 1413, 1421 [although a general demurrer does not ordinarily reach affirmative defenses, it "'will lie where the complaint "has included allegations that *clearly* disclose some defense or bar to recovery"'"].) It follows that where exhibits attached to the complaint clearly demonstrate that the statute of limitations has run, the trial court may grant a demurrer raising this affirmative defense. (See *Hoffman, supra,* 179 Cal.App.4th at p. 400.)

B. *Causes of Action for Breach of Contract and Money Lent*

Both parties assume that the applicable statute of limitations for the claims for breach of the promissory note and money lent is four years after accrual of the causes of action. (Code Civ. Proc., § 337, subd. (1).) However, subject to limited exceptions that do not apply here, "an action to enforce the obligation of a party to pay a note payable at a definite time shall be commenced within six years after the due date or dates stated in the note . . . ." (Cal. U. Com. Code, § 3118, subd. (a).) In any event, whether a four- or six-year limitation period applies, we conclude that the claims for breach of contract and money lent are time-barred.

The operative complaint alleges that the first note was due and payable on October 31, 2000. Thus, the statute of limitations began to run when Adams failed to pay by this date.[1] Because Hale did not bring his claims for breach of contract and money lent until nine years later, they are time-barred, and were appropriately dismissed.

C. *Fraud Claim*

Hale's third cause of action for fraud alleges that "[a]t or about the time Plaintiffs and Defendants entered into the PROMISSORY NOTE, and thereafter on a continuing basis, including through and until, and after, January 23, 2008, Defendants represented to Plaintiff, inter alia, that . . . Defendants and each of them

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[1] The "relaxed discovery rule," under which a cause of action accrues and the statute of limitations begins to run only when the plaintiff has reason to suspect an injury and some wrongful cause, is generally inapplicable to claims for breach of contract unless there was a breach of fiduciary duty (*Alfaro v. Community Housing Improvement System & Planning Assn., Inc.* (2009) 171 Cal.App.4th 1356, 1394) or the breach was committed in secret. (*William L. Lyon & Associates, Inc. v. Superior Court* (2012) 204 Cal.App.4th 1294, 1309.) The discovery rule does not apply to Hale's claims for breach of contract and money lent and thus the causes of action accrued as soon as Adams failed to pay off the loan by the due date.

would perform and continue to perform according to each material term, condition and covenant of the PROMISSORY NOTE" when all along they knew these promises were false and had no intention of complying with the representations. Hale alleges that he was unaware of the falsity of the representations.

The limitations period for a fraud cause of action is three years from accrual. (Code Civ. Proc., § 338, subd. (d).) Because the discovery rule applies to fraud claims (*Ibid.*; *E-Fab, Inc. v. Accountants, Inc. Services* (2007) 153 Cal.App.4th 1308, 1318 (*E-Fab*)), Hale's claim did not accrue until he discovered "'facts that would lead a reasonably prudent person to suspect fraud.'" (*Doe v. Roman Catholic Bishop of Sacramento* (2010) 189 Cal.App.4th 1423, 1430 (*Doe*); see *Fox v. Ethicon Endo-Surgery, Inc.* (2005) 35 Cal.4th 797, 807 (*Fox*) [in actions where the discovery rule applies, the limitations period does not accrue until the aggrieved party has notice of the facts constituting the injury].)

"The discovery rule only delays accrual until the plaintiff has, or should have, inquiry notice of the cause of action. The discovery rule does not encourage dilatory tactics because plaintiffs are charged with presumptive knowledge of an injury if they have ""'information of circumstances to put [them] *on inquiry*'"" or if they have ""'*the opportunity to obtain knowledge* from sources open to [their] investigation.'"" [Citations.] In other words, plaintiffs are required to conduct a reasonable investigation after becoming aware of an injury, and are charged with knowledge of the information that would have been revealed by such an investigation." (*Fox, supra*, 35 Cal.4th at pp. 807-808, fn. omitted; see *Doe, supra*, 189 Cal.App.4th at p. 1431.) Whether a plaintiff should be chargeable with knowledge of the potential fraud is generally a question of fact, but the issue may

be decided as a matter of law where reasonable minds could draw only one conclusion. (*E-Fab, supra,* 153 Cal.App.4th at p. 1320.)

In this case, Hale became aware of his injury when Adams failed to pay him back by October 31, 2000, the due date specified in the first note. At this time, Hale also should have been on notice that Adams might never have intended to pay him back and he reasonably should have begun to question the verity of any continued assertions by Adams that he planned to repay the loan. Moreover, Hale's declaration attached to his complaint, which the trial court correctly considered in ruling on the demurrer, describes circumstances and events that also should have raised Hale's suspicions. First, Hale's declaration describes how he learned in the months after the first note was signed that Adams had taken his home off the market, even though Adams allegedly had promised to sell his home if that was necessary to pay back Hale. Second, Hale's declaration states that "[f]rom 2001 onward, I had conversations with Adams regarding the First Note. I asked him when he would be paying the First Note back. He responded that he would not sell his house in order to pay back the First Note and made it clear that he had no intention of paying the First Note." The trial court correctly credited these statements in the declaration attached to the complaint over the contradictory allegation in the complaint that Hale was unaware of the falsity of Adams' representations that he would repay the loan. (*Hoffman, supra,* 179 Cal.App.4th at p. 400.) Because Hale's pleadings "clearly and affirmatively" demonstrate that he was on inquiry notice no later than 2001 of the fraudulent promises made by Adams, the trial court correctly determined that the cause of action for fraud was barred by the statute of limitations. (*Committee For Green Foothills, supra,* 48 Cal.4th at p. 42.)

Hale suggests that because the exhibits attached to the complaint demonstrate that he continued to have a business and personal relationship with

Adams after 2001, and even lent him another $30,000 in 2008, the trial court should have inferred that he did not know that Adams had no intention of paying him back for the first loan. Whether Hale continued to place his faith in Adams, in spite of the troubling circumstances described above, is irrelevant to determining when the limitations period was triggered. The cause of action accrued when a "reasonably prudent person" first would have suspected that Adams had no intention of paying back the loan, and as discussed above, the circumstances in late 2000 and 2001 should have triggered such a suspicion. (*Doe, supra*, 189 Cal.App.4th at p. 1430.)

D. *Promissory Estoppel*

In support of the final cause of action for promissory estoppel, Hale's complaint alleges that "[a]t or about the time Plaintiffs and Defendants entered into the PROMISSORY NOTE, and thereafter on a continuing basis, including through and until and after January 23, 2008, Defendants represented to Plaintiff, inter alia, that: [¶] (a) Defendants and each of them would perform and continue to perform according to each material term, condition and covenant of the PROMISSORY NOTE; [¶] (b) Defendants would place their real property on the market for sale, as necessary, in order to satisfy their obligations under the terms, conditions and covenants of the PROMISSORY NOTE." Hale alleges that Adams knew these promises were false when he made them, and that Hale was unaware of their falsity and justifiably "acted in reliance upon the truth" of the representations.

The elements of a claim for promissory estoppel are: (1) a promise that is clear and unambiguous in its terms; (2) reliance by the party to whom the promise is made; (3) reliance that is both reasonable and foreseeable; and (4) the party asserting the estoppel must be injured by his reliance. (*Joffe v. City of Huntington Park* (2011) 201 Cal.App.4th 492, 513.) "[P]romissory estoppel is an equitable

doctrine to allow enforcement of a promise that would otherwise be unenforceable" due to a lack of consideration for the promise. (*US Ecology, Inc. v. State of California* (2005) 129 Cal.App.4th 887, 902.)

In order to properly analyze Hale's promissory estoppel claim, it is necessary to break down the particular representations that are alleged to support it. To the extent Hale's cause of action is based on the initial promise by Adams in 2000 to pay Hale $30,000 with interest, that promise was supported by consideration on Hale's part, namely his agreement to loan Adams $30,000. Given the consideration that was provided, the doctrine of promissory estoppel is inapplicable as to that initial promise. (*San Diego City Firefighters, Local 145 v. Board of Administration etc.* (2012) 206 Cal.App.4th 594, 619 ["'[A] plaintiff cannot state a claim for promissory estoppel when the promise was given in return for proper consideration. The claim instead must be pleaded as one for breach of the bargained-for contract.' [Citation.]"].)

We are left with two categories of allegations to support the promissory estoppel claim: (1) alleged promises at the time the parties signed the 2000 promissory note, and continuing through January 23, 2008, that Adams would sell his home, if necessary, in order to pay Hale[2]; and (2) alleged promises by Adams *subsequent* to the execution of the first note, through January 23, 2008, that he would "perform and continue to perform according to each material term, condition and covenant" of the first note. Depending on the timing of these particular representations alleged to support the promissory estoppel claim, they fail either for a lack of reasonable reliance or by operation of the statute of limitations.

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[2] Adams' promise to sell his home if necessary to pay back the loan is not one of the terms of the first note, and thus may support a claim of promissory estoppel.

According to Hale's declaration attached to his complaint, in the "ensuing months" after he loaned Adams $30,000 in April 2000, he learned that Adams had withdrawn his house from the market, even though he had yet to pay back Hale. Further, "[f]rom 2001 onward," Adams expressly told Hale he would not sell his house in order to pay back the loan. *Subsequent* to these discoveries, we conclude as a matter of law that Hale was not justified in relying on any representations by Adams that he would sell his home if he needed to raise money to repay the loan. (*Grisham v. Philip Morris U.S.A., Inc.* (2007) 40 Cal.4th 623, 637-638 [question whether reliance was reasonable is generally a question of *fact* for the jury, but it may be decided as a matter of law "'if the facts permit reasonable minds to come to just one conclusion.' [Citation.]"].) With respect to any such representations *before* Hale learned that Adams had taken his home off the real estate market, the statute of limitations has clearly run: even assuming that the discovery rule applies to delay the accrual of the cause of action, when Hale learned that Adams had removed his house from the market, it should have been quite apparent to a reasonably prudent person that Adams had broken his promise to sell his home in order to pay off his debt.[3]

The same analysis applies to the second category of alleged promises by Adams (after his initial promise in April 2000 to perform under the first note) that he would continue to perform each material term of the note. As of the time he

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[3] Hale suggests that the statute of limitations for his cause of action for promissory estoppel is four years from accrual, and Adams contends that the applicable statute of limitations is either three or four years, because the nature of the right sued upon is either fraud or breach of contract. (Code Civ. Proc., §§ 337, subd. (1); 338, subd. (d); *Day v. Greene* (1963) 59 Cal.2d 404, 411.) Because the alleged promises were oral, it seems that the two-year statute of limitations applicable to oral contracts should apply. (Code Civ. Proc., § 339, subd. (1).) No matter whether the applicable limitations period is two, three, or four years, however, any claim based on alleged promises made before Adams removed his house from the real estate market is clearly time-barred.

failed to timely repay the loan by the due date of October 31, 2000, he already had broken his promise to perform each material term of the note. Moreover, Hale's declaration attached to the complaint states that "[f]rom 2001 onward," Adams made it clear he had no intention of paying back the loan. Thus, to the extent the promissory estoppel claim is based on representations that Adams would continue to perform under the note, the claim is invalid either because the exhibits to the complaint demonstrate that it is either untimely or that Hale's reliance was not reasonable as a matter of law.[4]

Hale asks us to consider statements in another declaration that he executed on March 11, 2011, in which he declared that after Adams took his house off the market, he "repeatedly through and after January 23, 2008, on multiple social occasions made a series of repeated acknowledgments of the debt and repeated unconditional promises to pay the debt evidenced by the First Note." Further, the declaration states that "[u]ltimately, after default on even the January 23, 2008 Second Note, I asked Defendant William Adams when the First Note would be paid back. He responded that he would not sell his house in order to pay back the First Note and made it clear that he had no intention of paying the First Note." Thus, Hale argues that this declaration clarifies that it was not until 2008 that Adams expressly stated that he would not sell his home or pay back the loan and that it was reasonable before then to rely on Adams' repeated acknowledgements of his debt.

There are two main problems with Adam's argument. First, the trial court could not have considered this second declaration in ruling on the demurrer

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[4] Because we affirm the trial court's decision sustaining the demurrer on the above grounds, we need not consider Adams' arguments that Hale failed to adequately plead detrimental reliance on the alleged promises.

because it was neither attached as an exhibit to the complaint nor the subject of judicial notice. Although the trial court granted the request for judicial notice of Adams' summary judgment papers in connection with an earlier iteration of the complaint, the court was not asked to take judicial notice of Hale's second declaration submitted in opposition to that summary judgment motion. Second, even assuming Hale's first declaration erroneously stated that Adams expressly repudiated his obligations to pay the loan in 2001, the complaint and the first declaration state ample facts from which to conclude as a matter of law that Hale did not reasonably rely on Adams' continued assurances.

We also find that the trial court correctly declined to consider evidence proffered by Hale demonstrating instances in which Adams allegedly defrauded other individuals. Such evidence is irrelevant to the demurrer and does not support Hale's argument that his fraud and promissory estoppel causes of action did not accrue until 2008.

In sum, the trial court did not err in sustaining the general demurrer to Hale's complaint.

II. *Attorney Fees Award*

Hale also challenges the trial court's award of $25,675 in attorney fees to Adams, based on the fee provision in the first note. That provision states as follows: "In the event the Holder of this Note takes any action, judicial or otherwise to enforce this Note, the Holder of this Note shall be entitled to recover from Borrower all expenses which the holder of this Note may reasonably incur in taking such action, including, but not limited to, costs and expenses provided by statute or otherwise, and reasonable attorneys' fees determined by the court." Although the contract provides only for recovery of attorney fees by Hale, Civil

Code section 1717[5] establishes that either party to a contract may recover reasonable attorney fees if a contractual provision provides for fees as to one of the parties. (§ 1717, subd. (a); *Hsu v. Abbara* (1995) 9 Cal.4th 863, 865 (*Hsu*) ["When a contract contains a provision granting either party the right to recover attorney fees in the event of litigation on the contract, Civil Code section 1717 . . . gives the 'party prevailing on the contract' a right to recover attorney fees, whether or not that party is the party specified in the contract."].)

Hale contends that it is unjust to require him to reimburse Adams for his attorney fees when Adams prevailed on a merely "technical" defense, namely, the statute of limitations, and had no "substantive" defense to Hale's claims seeking to enforce the first note. He contends that the trial court had discretion under section 1717 to find that no party prevailed and award no fees. Hale is incorrect.

Section 1717 provides that the trial court "shall determine who is the party prevailing on the contract for purposes of this section, whether or not the suit proceeds to final judgment. . . . [T]he party prevailing on the contract shall be the party who recovered a greater relief in the action on the contract. The court may also determine that there is no party prevailing on the contract for purposes of this section." (Civ. Code, § 1717, subd. (b)(1).) Therefore, the "party prevailing" is "the party who recovered a greater relief in the action on the contract." (*Ibid.*)

As Hale does in the case, the plaintiff in *Hsu* argued that under section 1717, the trial court has "broad discretion to deny attorney fees to an ostensibly prevailing party . . . based on a wide variety of equitable considerations." (*Hsu, supra*, 9 Cal.4th at p. 871.) While the California Supreme Court agreed that section 1717 gives the trial court a "measure of discretion to find no prevailing party when the results of the litigation are mixed" (*Hsu, supra*, 9 Cal.4th at p. 876),

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5 All further section references are to the Civil Code.

it concluded that the statute does not permit any such exercise of discretion when a judgment is entered that represents a clear win for one of the parties. (*Ibid.*) The court further elaborated: "We agree that *in determining litigation success*, courts should respect substance rather than form, and to this extent should be guided by 'equitable considerations.' For example, a party who is denied direct relief on a claim may nonetheless be found to be a prevailing party if it is clear that the party has otherwise achieved its main litigation objective. [Citations.] But when one party obtains a 'simple, unqualified win' on the single contract claim presented by the action, the trial court may not invoke equitable considerations unrelated to litigation success, such as the parties' behavior during settlement negotiations or discovery proceedings, except as expressly authorized by statute." (*Id.* at p. 877.)

The Supreme Court's holding in *Hsu* forecloses Hale's argument that the trial court had the discretion to find that there was no prevailing party in Hale's action against Adams. In this case, judgment was entered in Adams' favor on all of Hale's claims, and thus Adams undoubtedly was the prevailing party. Under section 1717, it is irrelevant that the primary ground for dismissing the claims was that they were time-barred. (See *Hsu*, *supra*, 9 Cal.4th at p. 870 [It is well settled that a party is entitled to fees under section 1717 "'even when the party prevails on grounds the contract is inapplicable, invalid, unenforceable or nonexistent, if the other party would have been entitled to attorney's fees had it prevailed.'"].) Therefore, we affirm the attorney fees award in Adams' favor.

DISPOSITION

The judgment is affirmed. Respondents shall recover costs on appeal.

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WILLHITE, Acting P. J.

We concur:

MANELLA, J.

SUZUKAWA, J.