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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

EELK TALLINNA JAANI  
KOGUDUS,

Petitioner and Appellant,

v.

PEET R. JURGENSTEIN et al.,

Respondents.

B283536

(Los Angeles County  
Super. Ct. No. 16STPB00770)

APPEAL from a Judgment of the Superior Court of Los Angeles County. Clifford Klein, Judge. Reversed.

Law Offices of H. Michael Soroy, H. Michael Soroy and Katherine Hofmann for Petitioner and Appellant.

Wright Kim Douglas, J. Andrew Douglas and Max Yueh for Respondents.

Appellant Eelk Tallinna Jaani Kogudus (Jaani) was the sole beneficiary under the Will and Trust of Aime Amalie Henriette Nii (Nii), who bequeathed Jaani real estate Nii owned in Los Angeles. Respondents, who were Nii's caretakers, allegedly procured changes to the Will and Trust in their favor through undue influence in 2000. Nii died in 2003. In 2004 Jaani received a cash distribution from the estate, yet Jaani claims it did not learn of changes made to the Will and Trust until 2012. The probate court sustained respondents' demurrer on statute of limitations grounds to Jaani's petition stating claims for declaratory relief, breach of fiduciary duty, conversion, and cancellation of deed. We reverse.

## **FACTUAL BACKGROUND AND PROCEDURAL HISTORY**

Jaani (the Jaani Congregation of the Estonian Evangelical Lutheran Church) is an ecclesiastical entity organized and existing under the laws of Estonia and is located in the city of Tallinn, Estonia. Jaani was the beneficiary under both the Will and Trust of Aime Amalie Henriette Nii (Nii), a resident of Los Angeles. Nii, who was unmarried and had no children, owned a four-unit residential building located on Sycamore Avenue in Los Angeles.

In April 1998, Nii conveyed her interest in the Sycamore Avenue property to the Aime Amalie Henriette Nii Trust dated January 22, 1998 (Trust). Nii was the trustee of the Trust. The Trust provided that upon Nii's death, all of Nii's property was to be distributed to Jaani except for the Sycamore Avenue property. The Sycamore Avenue property was to be held by the Trust for a period of five years after Nii's

death, at which time the property would be sold and the proceeds distributed to Jaani. Peet Jurgenstein was named as successor trustee of the Trust. Nii's contemporaneously executed Will contained substantially the same terms, nominating Peet Jurgenstein as executor, and providing that the Sycamore Avenue property would be administered pursuant to the terms of the Trust.

Sometime in 1998, Nii was diagnosed with dementia. Respondents, who are husband and wife, cared for Nii, and resided at the Sycamore Avenue property. On June 15, 2000, Nii changed the terms of her Will (Amended Will) and Trust (Amended Trust) to provide for distribution of the Sycamore Avenue property to Peet Jurgenstein instead of Jaani. The residue of the estate was bequeathed to Jaani.

Nii died on August 26, 2003. On December 29, 2003, Peet Jurgenstein as successor trustee of the Amended Trust conveyed to himself the Sycamore Avenue property. On December 3, 2004, Peet Jurgenstein by letter notified Jaani of a bequest to it of \$124,942.45 from Nii's estate. Jaani accepted the funds. On June 14, 2005, Jaani received a copy of the Amended Will.

Jaani alleged that it did not become aware that it was a beneficiary under the Amended Trust until 2004, when Peet Jurgenstein notified it of the \$124,942.45 due Jaani. However, Jaani claimed that it did not learn of the changes to the original Trust until October 2012, when it received a copy of the Amended Trust and had been informed in July 2012 by a member of the local church about the Sycamore Avenue property bequest.

Jaani filed its initial complaint in civil court for declaratory relief, breach of fiduciary duty, conversion, and cancellation of deed on December 2, 2013. Jaani's first amended complaint alleged that Nii executed the amendment to the trust under the undue influence of the Jurgensteins; the Jurgensteins converted approximately \$800,000 that was on deposit in Nii's bank accounts; and Peet Jurgenstein conveyed the Sycamore Avenue property to himself and Laine Jurgenstein. Jaani claimed that Peet Jurgenstein failed to notify it of the amendment to the Trust as required by Probate Code section 16061.7, subdivision (a), and failed to notify it of Nii's death.

After several rounds of demurrers in civil court to Jaani's complaint, amended complaint, second amended complaint and third amended complaint, at Jaani's request, on April 28, 2016, the matter was transferred to probate court. On May 25, 2016, Jaani filed a "Proposed Petition" in probate court setting forth the same four causes of action as it had in the civil action. The proposed petition was amended, and respondents demurred to Jaani's operative first "Supplemental" petition on statute of limitations ground, arguing that Jaani's claims accrued in 2004 when it received the Amended Trust, and the initial complaint was barred by applicable three- and four-year statutes of limitations (Code Civ. Proc., § 338, subds. (c), (d) (declaratory relief, breach of fiduciary duty, and conversion) and section 343 (cancellation of deed)). Respondents argued that Jaani failed to plead around the statute of limitations with specific allegations. In opposition, Jaani continued to assert that in spite of the 2004 distribution from Nii's estate, the delayed discovery rule applied as it

only discovered the existence of the changes to the Trust in 2012 when informed by members of the local church.<sup>1</sup>

The probate court sustained the first amended petition without leave to amend, finding “Jaani fails to meet the requirement in pleading facts showing the time and manner of discovery. Here, the Petition merely states that in July of 2012, the President of the Los Angeles Estonian Church met with counsel for Jaani to provide undescribed ‘information’ that he had received from a ‘concerned friend of decedent’ and, that ‘[u]pon further inquiry,’ where who was inquiring or inquired of is not described, Jaani received from an undescribed source a copy of the Trust. (Petition at 5, ¶ 9.) . . . . The decedent died in 2003. The petitioner learned it was a beneficiary entitled to a sum of money in 2004. Accordingly, the Petition fails to establish the applicability of the discovery rule and the Demurrer should be sustained. Here, Jaani has been given numerous opportunities to provide sufficient facts but has seemingly chosen not to despite demurrers being sustained to its pleadings on the same grounds repeatedly. The pleading regarding the circumstances of discovery is virtually identical to the text of the pleading in the civil case, in which a demurrer was sustained.”

Judgment was entered on April 25, 2017.

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<sup>1</sup> In support of this assertion, Jaani attached two declarations from members of the Estonian Church in Los Angeles explaining that Jaani had no knowledge of the changes to the Trust until 2012.

## DISCUSSION

Jaani contends that it adequately pleaded the time and manner of discovery of respondents' allegedly wrongful actions.

### I. *Standard of Review*

A demurrer tests the sufficiency of the facts pleaded in a complaint. (*Schifando v. City of Los Angeles* (2003) 31 Cal.4th 1074, 1081.) We therefore assume the truth of the allegations in the complaint. (*California Logistics, Inc. v. State of California* (2008) 161 Cal.App.4th 242, 247 (*California Logistics*).) A complaint "is sufficient if it alleges ultimate rather than evidentiary facts," but the plaintiff must set forth the essential facts of his or her case ""with reasonable precision and with particularity sufficient to acquaint [the] defendant with the nature, source, and extent"" of the plaintiff's claim. (*Doe v. City of Los Angeles* (2007) 42 Cal.4th 531, 550.) In reviewing the complaint, we consider judicially noticed matters, give the complaint a reasonable interpretation, and read it in context. (*Schifando v. City of Los Angeles, supra*, 31 Cal.4th at p. 1081.) The trial court errs in sustaining a demurrer "if the plaintiff has stated a cause of action under any possible legal theory, and it is an abuse of discretion for the court to sustain a demurrer without leave to amend if the plaintiff has shown there is a reasonable possibility a defect can be cured by amendment." (*California Logistics, supra*, 161 Cal.App.4th at p. 247.)

A demurrer on statute of limitations grounds may be asserted if the complaint on its face shows that a statute of limitations bars the

action. (*E-Fab, Inc. v. Accountants, Inc. Services* (2007) 153 Cal.App.4th 1308, 1315.) A plaintiff invoking the discovery rule of delayed accrual of a statute of limitations 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. (*Ibid.* at p. 1324.)

## II. *Jaani's Causes of Action Accrued in 2012 When Jaani Had Actual Notice of the Amendments to the Trust*

The limitations period for each of the causes of action asserted in the first supplemental petition is either three years or four years. (See *Naftzger v. American Numismatic Society* (1996) 42 Cal.App.4th 421, 428–429 [conversion claim has three-year statute of limitations under Code Civ. Proc., § 338, subd. (c)(1) ]; *Fuller v. First Franklin Financial Corp.* (2013) 216 Cal.App.4th 955, 963 [three-year statute of limitations period applies to cause of action for breach of fiduciary duty where the gravamen of the claim is deceit]; *Salazar v. Thomas* (2015) 236 Cal.App.4th 467, 476 [three- or four-year statute of limitations applies to claim for cancellation of instrument, depending upon underlying theory of recovery]; *Ginsberg v. Gamson* (2012) 205 Cal.App.4th 873, 883 [statute of limitations for declaratory relief action founded on writing is four years].)

As a general matter, the statute of limitations begins to run when the cause of action accrues. (Code Civ. Proc., § 312; *Fox v. Ethicon Endo-Surgery, Inc.* (2005) 35 Cal.4th 797, 806.) A cause of action accrues at the time when the cause of action is complete with all of its

elements. (*E-Fab, Inc. v. Accountants, Inc. Services, supra*, 153 Cal.App.4th at pp. 1317–1318.) Under the discovery rule, however, the accrual of the cause of action is postponed until the plaintiff discovers, or has reason to discover, the cause of action. (*Norgart v. Upjohn Co.* (1999) 21 Cal.4th 383, 397.) A “plaintiff discovers the cause of action when he at least suspects a factual basis, as opposed to a legal theory, for its elements, even if he lacks knowledge thereof—when, simply put, he at least ‘suspects . . . that someone has done something wrong’ to him.” (*Ibid.*) A plaintiff has reason to discover the cause of action when there is a reason at least to suspect a factual basis for its elements, i.e., information or circumstances that would put a reasonable person on inquiry notice. (*Jolly v. Eli Lilly & Co.* (1988) 44 Cal.3d 1103, 1110–1111.) “Generally speaking, the factual determination of when a reasonable person would have been aware of the substantial possibility of the elements of a claim is a [factual] question.” (*Oregon State University v. Superior Court* (2017) 16 Cal.App.5th 1180, 1188.)

In sum, plaintiffs are charged with presumptive knowledge of an injury if they have information of circumstances to put them on inquiry notice or if they have the opportunity to obtain knowledge from sources open to their investigation. (*Fox v. Ethicon Endo-Surgery, Inc., supra*, 35 Cal.4th at pp. 807-808.) The burden is on the plaintiffs to establish not only the late discovery, but also their inability to discover the relevant facts earlier. (*Czajkowski v. Haskell & White, LLP* (2012) 208 Cal.App.4th 166, 177-178.)



Here, Jaani had no reason to suspect a factual basis for its claims until it learned of the terms of the original Will and Trust. The trial court's theory underlying application of the statute of limitations is that Jaani was on notice of changes to Nii's bequest in 2004, when Jaani received the cash bequest from respondents, and at the latest in 2005, when Jaani received the Amended Will. However, in order for inquiry notice to exist under these circumstances, Jaani would have had to have known about the prior version of both the Amended Will and Amended Trust. Jaani has not pleaded that it knew about the prior versions, and the inference from the various versions of the complaint and petition is that Jaani did not know of the bequest to it of the Sycamore Avenue property.

Simply because the Will had been amended would not, without Jaani's knowledge of the original version, establish inquiry notice. The only manner in which Jaani, under the facts pleaded, could have acquired notice of the original version is if respondents had discharged their duty under Probate Code section 16061.7, subdivision (a) to notify the beneficiary of the change of trustee and change in terms. This notice was not given. Thus, Jaani was not on inquiry notice. Rather, Jaani received actual notice in July, 2012 when someone from the local church advised it that the terms of the bequest been changed.

The trial court erred in concluding that Jaani had pleaded insufficient facts to establish entitlement to the delayed discovery rule. Jaani asserted the time and manner of discovery—from members of the local church in July 2012. Specific names were not required, although Jaani provided them by way of the speaking declarations. Further, as

discussed above, the trial court erred in concluding that the bequest sent in 2004 put Jaani on notice of its bequest sufficient to trigger inquiry notice. As a result, Jaani should be permitted to amend its petition to set forth facts establishing that it had no knowledge of the terms of the original Trust (which contained Nii's bequest to it of the Sycamore Avenue property) such that it was not until July 2012 that Jaani understood that it had been unjustly deprived of its bequest.

### **DISPOSITION**

The judgment is reversed. Appellant is to recover its costs on appeal.

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WILLHITE, J.

We concur:

MANELLA, P. J.

MICON, J.\*

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\*Judge of the Los Angeles County Superior Court assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.