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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA  
SECOND APPELLATE DISTRICT  
DIVISION TWO

KAY EMEMAS,

Plaintiff and Appellant,

v.

SPEEDEX LOGISTICS, INC.,

Defendant and Respondent.

B279076

(Los Angeles County  
Super. Ct. No. SC126138)

APPEAL from a judgment of the Superior Court of Los Angeles County. H. Jay Ford III, Judge. Affirmed.

Kay Ememas, in pro. per. for Plaintiff and Appellant.

Lebedev, Michael & Helmi and Sam Helmi-Kabir for  
Defendant and Respondent.

Appellant Kay Ememas (Ememas) appeals from a judgment entered after the trial court sustained a demurrer to the complaint against Speedex Logistics, Inc. (Speedex) without leave to amend. The complaint alleged causes of action for breach of contract; conversion; trespass to chattels; intentional misrepresentation; negligent misrepresentation; loss of earnings; and negligence against Speedex based on an agreement between the parties that Speedex would ship Ememas's belongings from Colombia to Los Angeles.

The trial court sustained Speedex's demurrer in its entirety without leave to amend on the ground that each valid cause of action was barred by the applicable statute of limitations and laches. Finding no error, we affirm.

### **BACKGROUND**

Ememas filed his complaint against Speedex on July 15, 2016. It was alleged that on or about December 12, 2003, Ememas entered an agreement with Speedex whereby Speedex agreed to ship approximately 46 boxes of Ememas's belongings from Colombia to Los Angeles. Over the next several years, Ememas routinely inquired about the whereabouts of his belongings, and was routinely reassured by Speedex that they were on their way.

Speedex informed Ememas in 2004 that his belongings were "being held in port," but "refused to identify which port and when they would be delivered." Speedex subsequently notified Ememas that the boxes were in storage in Colombia. Sometime later, Speedex notified Ememas that the storage facility in Colombia would not release his belongings unless the storage fees were paid. Ememas told a Speedex representative that he did not have the money to pay for the storage fees. The representative said he would "see what he could do about it."

The parties exchanged emails in 2009 and 2010. Copies of the emails were attached to the complaint. In July 2010, Speedex indicated that its “assumption, based on various telephone conversations . . . [was] that the warehouse/Customs/Shipping Company in Colombia either have . . . possession of this shipment or they have auctioned it to recoup their charges.” In September 2010, Speedex was still unable to get an answer from the packing center in Bogota, Colombia.

In August 2014, Speedex forwarded information to Ememas suggesting the following: the shipment was picked up in December 2003. The customer did not have proper documentation to enter the United States as a permanent resident, so the cargo was put in storage at a packing center in Bogota, Colombia. Ememas was notified in February 2011 that the storage charges were \$9,350, which he refused to pay. The cargo was then put up to auction to cover the storage charges. The file had been considered abandoned three and a half years earlier.

Ememas alleged that this correspondence was untrue, because he was entitled to enter the United States as a permanent resident.

Ememas alleged that the lost items were of value to him. The lost items included his original degrees (MA and BA), original films created by him with an estimated value of over \$95,000, an extensive collection of films and books with an estimated value of \$7,500, and personal film equipment and electronics with an estimated value of \$15,000.

On September 20, 2016, Speedex demurred to each of the causes of action. As to the first through fifth causes of action, as well as the seventh cause of action, Speedex demurred on the ground that each cause of action was barred by the statute of limitations and the doctrine of laches. In addition, Speedex

demurred on the ground that each cause of action was ambiguous and unintelligible. As to the sixth cause of action for loss of earnings, the demurrer was made on the ground that there is no statutory authority setting out a cause of action for loss of earnings.

Ememas did not file an opposition to the demurrer.

On October 21, 2016, after hearing, the demurrer was sustained without leave to amend. As to the first through fifth and seventh causes of action, the court held that the “pleading reveals an affirmative defense” to each of these causes of action. As to the sixth cause of action for loss of earnings, the court determined this cause of action was “actually a component of [Ememas’s] potential recovery and not an independent cause of action.”

On October 31, 2016, the court entered a final judgment and dismissal of the matter.

On November 14, 2016, Ememas filed his notice of appeal.

## **DISCUSSION**

### **I. Standard of review**

When reviewing a trial court’s order sustaining a demurrer without leave to amend, we apply well-established rules of review. “A demurrer tests the legal sufficiency of the complaint. [Citation.] Therefore, we review the complaint de novo to determine whether it contains sufficient facts to state a cause of action. [Citation.] “We treat the demurrer as admitting all material facts properly pleaded, but not contentions, deductions or conclusions of fact or law.” . . . [Citations.]” (*Czajkowski v. Haskell & White, LLP* (2012) 208 Cal.App.4th 166, 173.)

Where, as here, the trial court has sustained a demurrer without leave to amend, “we must decide whether there is a reasonable possibility the plaintiff could cure the defect with an amendment. [Citation.] If we find that an amendment could

cure the defect, we conclude that the trial court abused its discretion and we reverse; if not, no abuse of discretion has occurred. [Citation.]” (*Schifando v. City of Los Angeles* (2003) 31 Cal.4th 1074, 1081.)

## **II. The claims are barred as a matter of law**

### **A. Breach of contract**

The statute of limitations for an action for breach of written contract is four years. (Code Civ. Proc., § 337.)<sup>1</sup> The statute of limitations for breach of an oral agreement is two years. (§ 339.)

“A cause of action for breach of contract accrues at the time of breach, which then starts the limitations period running. [Citation].” (*Cochran v. Cochran* (1997) 56 Cal.App.4th 1115, 1120.) Pursuant to the discovery rule, a plaintiff’s cause of action begins to run from the time the plaintiff discovers, or through the exercise of diligence should have discovered, the injury. (*April Enterprises, Inc. v. KTTV* (1983) 147 Cal.App.3d 805, 826.)

Ememas alleges that the agreement was made in December 2003. As early as 2004, he was inquiring about his belongings and receiving unsatisfactory responses. By 2010, Ememas was aware that his belongings may have been auctioned off to pay storage fees. As a result of these communications, and because his belongings were not delivered, Ememas was aware of the breach.

The complaint was not filed until July 2016. Thus, it was untimely filed under sections 337 and 339.

### **B. Conversion**

The statute of limitations for conversion is three years from the date of the conversion. (§ 338, subd. (c).) Where an owner entrusts property to a wrongdoer, the cause of action accrues

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<sup>1</sup> All further statutory references are to the Code of Civil Procedure unless otherwise specified.

when the possessor acts in a manner inconsistent with the owner's interests. (*Naftzger v. American Numismatic Society* (1996) 42 Cal.App.4th 421, 429.) In the context of a bailment, the bailor's cause of action does not accrue until the bailee refuses a demand to surrender the property. (*Ibid.*)

Accepting the allegations as pled, Ememas was aware of the conversion as early as 2004, when he inquired about his belongings and was informed they were "being held in port." At that time, Speedex "refused to identify which port and when they would be delivered." Thus, in 2004, Speedex refused to surrender the property and acted inconsistently with Ememas's interests. Speedex's failure to deliver the cargo over the next several years, despite Ememas's inquiries, was also inconsistent with Ememas's interests. The cause of action for conversion, filed in July 2016, was untimely.

### ***C. Trespass to chattel***

The statute of limitations for a cause of action for trespass to chattel is three years from the date of trespass. (§ 338, subd. (c).) The cause of action accrues when the wrongful act is complete. (*Norgart v. Upjohn Co.* (1999) 21 Cal.4th 383, 397.)

Trespass to chattel occurs when a party dispossesses another of chattel, intermeddles with chattel in the possession of another, or bars a possessor's access to chattel. (*Jamgotchian v. Slender* (2009) 170 Cal.App.4th 1384, 1401.)

According to the allegations in the complaint, Ememas requested his property from Speedex as early as 2004. Speedex's alleged interference with such chattel occurred upon its first refusal to provide Ememas with his belongings. The cause of action for trespass to chattel, filed in July 2016, was untimely.

### ***D. Intentional and negligent misrepresentation***

The statute of limitations for an action for intentional misrepresentation is three years. (§ 338, subd. (d).) The statute

of limitations for an action for negligent misrepresentation is two years. (§ 339, subd. (1); *Butcher v. Truck Ins. Exchange* (2000) 77 Cal.App.4th 1442, 1467-1468.) A claim for intentional or negligent misrepresentation accrues when a plaintiff is on notice that the defendant has made the misrepresentation. (*E-Fab, Inc. v. Accountants, Inc. Services* (2007) 153 Cal.App.4th 1308, 1323.)

The intentional and negligent misrepresentations alleged were Speedex's representations to Ememas "on a number of occasions" that his belongings would be delivered and that Speedex would resolve the issues preventing the delivery of Ememas's belongings.

The allegations show that Ememas knew as early as 2004 that his belongings were being "held in port," although Speedex "refused" to tell him which port. At this time, nearly a year after the parties entered the agreement, Ememas was aware (or should have been aware) that Speedex had not fulfilled its promise to deliver the belongings. Ememas does not allege that Speedex reassured him at that time, but that Speedex "refused" to provide more information about the shipment. Sometime later, Ememas learned that his belongings were in storage in Colombia and that Speedex's agent in Colombia would not release the cargo without payment of storage fees. By this time, Ememas was aware that the goods would not be delivered as promised. Finally, the email exchanges that took place in 2009 and 2010 show that "[Speedex] and [its agent] Total Transportation did not know where [Ememas's] items actually were."

Based on these alleged facts, the claims for intentional and negligent misrepresentation, filed in July 2016, were untimely.

### ***E. Negligence***

The statute of limitations for negligence, as asserted in the complaint, is three years. (§ 338, subd. (c)(1).) A cause of action for negligence generally accrues at "the time when the cause of

action is complete with all of its elements.’ [Citations.]” (*Fox v. Ethicon Endo-Surgery, Inc.* (2005) 35 Cal.4th 797, 806.) Under the delayed discovery rule, a limitations period dependent on discovery of the cause of action begins to run when the plaintiff learns, or should have learned, the facts essential to his claim. (*Id.* at p. 807.)

The acts of negligence alleged in the complaint are the actions of Speedex in failing to properly track Ememas’s belongings and failing to properly investigate the whereabouts of those belongings. In addition, Ememas alleges that Speedex was negligent in failing to notify Ememas of “substantial problems and concerns” which, if addressed, would have prevented his loss.

Ememas first became aware of this alleged negligence in 2004, when he inquired about his belongings and was informed that they were being held in an unspecified port. At this point he was aware, or should have been aware, that Speedex was not properly tracking his belongings and was not properly investigating the location of his belongings. In addition, the email exchanges in 2009 and 2010 showed Speedex’s lack of diligence in tracking and investigating the location of Ememas’s belongings. The cause of action for negligence, filed in July 2016, was untimely.

#### ***F. Loss of Earnings***

In his cause of action for loss of earnings, Ememas alleges that Speedex failed to deliver his items, including documents related to his qualifications and work experience. As a result of this failure, Ememas alleges, he was denied “employment and other income opportunities.”

A cause of action consists of “a “primary right” of the plaintiff, a corresponding “primary duty” of the defendant, and a wrongful act by the defendant constituting a breach of that duty. . . .” (*Hamilton v. Asbestos Corp.* (2000) 22 Cal.4th 1127, 1145.)



The alleged cause of action for loss of earnings asserts no new primary right, or primary duty. Instead, it merely asserts additional damages resulting from Speedex's alleged actions, in the form of denial of employment and income. Ememas cites no statutory or case law in support of the existence of a cause of action for loss of earnings. Thus, the demurrer was properly sustained as to this cause of action.

### **III. Ememas's status as a party proceeding in propria persona does not change the result**

Ememas protests that the demurrer was more "important" to the trial court than his situation. He claims he was unable to hire an attorney and was unaware that he had to respond to the demurrer.

Ememas's status as a party appearing in propria persona "does not provide a basis for preferential consideration." (*First American Title Co. v. Mirzaian* (2003) 108 Cal.App.4th 956, 958, fn. 1.) "A party proceeding in propria persona 'is to be treated like any other party and is entitled to the same, but no greater consideration than other litigants and attorneys.' [Citation.]" (*Ibid.*) Ememas is therefore held to the same rules of procedure as an attorney. (*Ibid.*) Such rules include complying with the relevant statutes of limitations.

### **IV. The demurrer was properly sustained without leave to amend**

In order to establish an abuse of discretion in denying leave to amend, Ememas must show "a reasonable possibility that the defect can be cured by amendment." (*Berryman v. Merit Property Management, Inc.* (2007) 152 Cal.App.4th 1544, 1550.) Ememas sets forth no facts showing that he can cure the defects in the complaint.

In light of the judicial admissions in the complaint, showing that the statutes of limitation began to run as early as

2004, Ememas cannot plead viable claims. The trial court did not abuse its discretion in so holding.

**DISPOSITION**

The judgment is affirmed. Each party is to bear their own cost of appeal.

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\_\_\_\_\_, J.  
CHAVEZ

We concur:

\_\_\_\_\_, P. J.  
LUI

\_\_\_\_\_, J.  
ASHMANN-GERST