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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION TWO

DONAHUE L. WILDMAN,

Plaintiff and Appellant,

v.

CALIFORNIA COASTAL COMMISSION
et al.,

Defendants and Respondents.

B237763

(Los Angeles County
Super. Ct. No. SC111748)

APPEAL from a judgment of the Superior Court of Los Angeles County.

Jacqueline A. Connor, Judge. Affirmed.

The Dodell Law Corporation, Herbert Dodell; Law Office of Burton Mark Senkfor and Burton Mark Senkfor for Plaintiff and Appellant.

Kamala D. Harris, Attorney General, John A. Saurenman, Assistant Attorney General, Christina Bull Arndt, and Jennifer W. Rosenfeld, Deputy Attorneys General, for Defendants and Respondents.

Plaintiff and appellant Donahue L. Wildman appeals from a judgment entered following the trial court's order sustaining without leave to amend the demurrer filed by defendants and respondents California Coastal Commission and State Coastal Conservancy.

We affirm.

FACTUAL¹ AND PROCEDURAL BACKGROUND

Original Complaint and Demurrer

On March 7, 2011, plaintiff filed his original complaint in this action. Defendants demurred on the grounds that the action was untimely, and the trial court sustained the demurrer with leave to amend.

First Amended Complaint (FAC)

On July 11, 2011, plaintiff filed his verified FAC. According to the pleading, on July 6, 1984, plaintiff purchased certain real property in Malibu. Previously, on December 11, 1981, the sellers of the property had executed an irrevocable offer to dedicate an easement for public parking on the property. The offer provided, in relevant part, that it "shall be irrevocable for a period of twenty-one (21) years, measured forward from the date of recordation, and shall be binding upon the owners, their heirs, assigns, or successors in interest to the subject property." In December 2003,² defendants accepted the offer. According to the FAC, defendants' acceptance was untimely as the offer could not be accepted after January 6, 2003.

Based on the foregoing, plaintiff asserted claims for quiet title and declaratory relief. In an effort to defeat defendants' statute of limitations argument, plaintiff averred

¹ "Because this matter comes to us on demurrer, we take the facts from plaintiff's complaint, the allegations of which are deemed true for the limited purpose of determining whether plaintiff has stated a viable cause of action. [Citation.]" (*Stevenson v. Superior Court* (1997) 16 Cal.4th 880, 885.)

² The FAC alleges that defendants accepted the offer on December 23, 2003. The certificate of acceptance attached to the FAC indicates that defendants accepted the offer on December 16, 2003.

that he was “seized and possessed of the [p]roperty, was seized and possessed of the [p]roperty at all times for the five years before commencement of this action, and was seized and possessed of the [p]roperty at all times since his purchase of the [p]roperty on July 6, 1984. [Plaintiff’s] possession and use of the [p]roperty during these time periods has been exclusive and undisputed. Neither [defendant] has been in possession of the [p]roperty, or used the property, or paid any taxes on the [p]roperty, at any time. [Defendants] have a mere meritless claim of title to a portion of the [p]roperty, based upon an invalid recording derived from a purported acceptance of an expired offer, not constituting a bona fide or valid dedication, and amounting only to a cloud upon title, but have never taken possession of any portion of the [p]roperty or disputed [plaintiff’s] ongoing exclusive possession or use thereof, or ever asserted any claim in any proceeding or obtained any Court holding adverse to [plaintiff], prior to the commencement of this action.”

Demurrer; Trial Court Order; Appeal

Defendants again demurred. Citing Code of Civil Procedure sections 318, 319, and 322, they argued that plaintiff’s lawsuit, which was filed in March 2011, was time-barred because it was filed more than five years after defendants accepted the offer to dedicate an easement. Moreover, no exception to the five-year statute applied as plaintiff did not allege any facts to support his assertion that he had exclusive and undisputed possession of the property since 1984. And, as for plaintiff’s allegation that defendants’ acceptance was untimely, defendants pointed out that while the offer to dedicate was irrevocable for 21 years, it did not automatically expire after 21 years.

Plaintiff opposed defendants’ demurrer, arguing that the statute of limitations cannot run against a plaintiff seeking to quiet title while he is in possession of the property. Furthermore, plaintiff had exclusive and undisputed possession of the property; defendants’ disputed title does not equate with disputed possession.

Following oral argument, the trial court sustained defendants’ demurrer without leave to amend. Judgment was entered, and plaintiff’s timely appeal ensued.

DISCUSSION

I. *Standard of review*

“Our Supreme Court has set forth the standard of review for ruling on a demurrer dismissal as follows: ‘On appeal from a judgment dismissing an action after sustaining a demurrer without leave to amend, the standard of review is well settled. The reviewing court gives the complaint a reasonable interpretation, and treats the demurrer as admitting all material facts properly pleaded. [Citations.] The court does not, however, assume the truth of contentions, deductions or conclusions of law. [Citation.] The judgment must be affirmed “if any one of the several grounds of demurrer is well taken. [Citations.]” [Citation.] However, it is error for a trial court to sustain a demurrer when the plaintiff has stated a cause of action under any possible legal theory. [Citation.] And it is an abuse of discretion to sustain a demurrer without leave to amend if the plaintiff shows there is a reasonable possibility any defect identified by the defendant can be cured by amendment. [Citation.]’ [Citations.]” (*Payne v. National Collection Systems, Inc.* (2001) 91 Cal.App.4th 1037, 1043–1044.)

Although courts generally assume the truth of factual allegations of a complaint, the contents of documents submitted in support of a pleading take precedence over inconsistent allegations in the pleading itself. (*Building Permit Consultants, Inc. v. Mazur* (2004) 122 Cal.App.4th 1400, 1409; *Mead v. Sanwa Bank California* (1998) 61 Cal.App.4th 561, 567–568.)

II. *The trial court did not err*

The parties do not dispute that the five-year statute of limitations applies to plaintiff’s claims against defendants. Rather, they dispute when the statute began to run, if ever. According to plaintiff, the statute has yet to begin running; according to defendants, the statute expired five years after they accepted the offer to dedicate. We agree with defendants.

Code of Civil Procedure section 318 provides, in relevant part, “No action for the recovery of real property, or for the recovery of the possession thereof, can be maintained, unless it appear that the plaintiff . . . was seized or possessed of the property

in question, within five years before the commencement of the action.” (See also Code Civ. Proc., §§ 319 [“No cause of action . . . arising out of the title to real property . . . can be effectual, unless it appear that the person prosecuting the action . . . was seized or possessed of the premises in question within five years before the commencement of the act in respect to which such action is prosecuted”], 322.) According to the plain language of the FAC, plaintiff is seeking to quiet title as of January 7, 2003. Because his lawsuit was filed more than five years later, his action is time-barred.

Citing *Muktarian v. Barmby* (1965) 63 Cal.2d 558 (*Muktarian*), plaintiff claims that the statute of limitations cannot run against a plaintiff seeking to quiet title while he is in possession of the property.³ While plaintiff is correct, his statement is incomplete. “The ‘possession’ required to toll the statute of limitations must be ‘exclusive and undisputed.’” (*Ankoanda v. Walker-Smith* (1996) 44 Cal.App.4th 610, 616.) Thus, the statute of limitations begins to run when an adverse claim is pressed against the person holding the property. (*Muktarian, supra*, 63 Cal.2d at pp. 560–561; *Crestmar Owners Assn. v. Stapakis* (2007) 157 Cal.App.4th 1223, 1228.)

Applying the foregoing legal principles, we readily conclude that plaintiff’s action is time-barred. Once the acceptance of the offer to dedicate was recorded, plaintiff no longer had exclusive and undisputed possession of the property.⁴ From that point, he had five years to file his action to quiet title against defendants. Because he delayed more than five years in bringing this lawsuit, his claims are untimely.

Plaintiff further contends that defendants’ claim to title via their acceptance of the offer to dedicate does not equate with possession; thus, plaintiff’s possession was at all

³ Plaintiff similarly argues that because he had seisin of the property at all times, the statute of limitations could not have begun to run. According to the legal authority cited by plaintiff, the requirement of seisin is met when legal title is established. (*Tobin v. Stevens* (1988) 204 Cal.App.3d 945, 949.) Applying that definition, seisin here was held by both plaintiff and defendants.

⁴ Plaintiff’s allegation that he held “exclusive and undisputed” possession of the property is contradicted by the exhibits attached to the complaint. As set forth above, the contents of the exhibits take precedence over conflicting allegations in the pleading.

times undisputed. We are not convinced. Plaintiff offers no legal authority to support his contention that defendants had to use the property in order to effect the dedication. In fact, legal authority holds otherwise: When a dedication is complete, the property becomes public property and the owner loses control over it. (*Archer v. Salinas City* (1892) 93 Cal. 43, 51.)

Next, plaintiff claims that defendants' acceptance of the offer to dedicate was untimely. Because the offer expired 21 years after it was made, defendants' purported acceptance failed, rendering any title claim by defendants invalid. The plain language of the offer negates this argument. The offer to dedicate was irrevocable for 21 years. But nothing in the offer indicates that it expired in 21 years.

Finally, plaintiff argues that his claim actually is to clear a cloud on title. As pointed out by defendants, plaintiff did not plead a cause of action to remove a cloud from title. Leave to amend should not have been granted to add this cause of action as it would have been based upon the same facts that render the quiet title and declaratory relief causes of action untimely. And, plaintiff offers no legal authority to support his implicit assertion that a claim to remove a cloud from title would be timely.

DISPOSITION

The judgment is affirmed. Defendants are entitled to costs on appeal.

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_____, J.
ASHMANN-GERST

We concur:

_____, P. J.
BOREN

_____, J.
DOI TODD