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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS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

JUDY BERGLUND, Plaintiff and Appellant, v. ULARA ROGERS, Defendant and Respondent.	B282175 (Los Angeles County Super. Ct. No. BC628309)

APPEAL from a judgment of the Superior Court of Los Angeles County, David Sotelo, Judge. Affirmed.

Law Office of Steven D. Wegner and David Wegner for Plaintiff and Appellant.

Cliff Dean Schneider for Defendant and Respondent.

INTRODUCTION

Plaintiff Judy Berglund appeals the dismissal of her complaint against Ulara Rogers, alleging tort claims for extortion, intentional infliction of emotional distress, and interference with economic advantage. Berglund is married to Rogers's former husband. Berglund alleged that Rogers sent her a letter threatening to pursue criminal charges against her in South Korea, under a Korean adultery statute, unless Berglund paid Rogers $700,000.

The trial court sustained the demurrer filed by Rogers without leave to amend. The court found that Berglund's claims were barred by the applicable statute of limitations. On appeal, Berglund contends that she adequately alleged a continuing course of conduct and therefore that her lawsuit was timely. Alternatively, she argues the trial court erred in denying her leave to amend. We conclude that Berglund has not demonstrated that the continuing tort doctrine applies to her claims; further, she has not suggested any amendment that would cure this defect. We therefore affirm.

FACTUAL AND PROCEDURAL HISTORY

I. *Complaint*

Berglund filed her complaint on July 25, 2016, alleging four causes of action against Rogers: (1) civil extortion; (2) sending a threatening letter with intent to extort in violation of Penal Code, section 523; (3) intentional infliction of emotional distress; and (4) tortious interference with prospective economic advantage.

All of Berglund's claims arise from an alleged "vicious and criminal scheme" by Rogers to extort money from her. Berglund is a resident of California and a citizen of South Korea; she is

married to Keith Berglund.[1] KB and Rogers were married from 2005 until they divorced in 2012.

On April 17, 2013, Berglund received a letter from a law firm in South Korea purporting to represent Rogers regarding "notification of the initiation of legal action with the regard [*sic*] to the act of adultery." Berglund attached to her complaint a copy of the letter in Korean, as well as a certified English translation.

The letter accused Berglund of committing adultery with KB while KB and Rogers were married. The letter further stated that Berglund's conduct was punishable under Korean law, citing a Korean criminal statute punishing an act of adultery with up to two years of imprisonment. According to the letter, on February 28, 2013, the law firm filed a complaint with the local prosecutorial office on behalf of Rogers against Berglund "for the crime of adultery," and "we notify you that at this time the criminal process against you is taking place at Seocho Police Station." Further, the letter revealed that Rogers planned "to inform the United States Citizenship and Immigration Services . . . of your act of violation of the South Korean law." However, Rogers was "willing to close this case with reasonable agreement with you even now," and offered to withdraw "all the claims for the compensation for the damages and the entire future legal actions (including this criminal complaint) resulting from your act of adultery, as benefits in return for the payment of US$700,000." The letter warned that if Berglund "refuse[d] friendly dialog[ue]," Rogers "shall have no choice but to respond

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[1] We refer to Keith Berglund herein as "KB," the name used in the complaint.

with all possible legal actions. . . . We request your cooperation so that such disgraceful things may not take place continually."

Berglund engaged an attorney, who sent a response letter on Berglund's behalf directly to Rogers on May 9, 2013. A copy of that letter is attached as an exhibit to the complaint. The response letter advised Rogers that her letter constituted extortion. Further, Berglund's attorney said that unless the criminal action in Korea was withdrawn by May 22, 2013, Berglund "reserve[d] all rights to take all actions appropriate and necessary to redress the egregious wrongs specified in the Letter." Rogers did not respond to Berglund's letter.

Berglund further alleged that she was advised by her attorney "that she and KB could be arrested if they traveled to South Korea" based on the pending criminal charges. As a result, Berglund was unable to travel to South Korea to visit her family or pursue job opportunities until the adultery statute was repealed in the spring of 2015. Berglund alleged she lost "considerable sums of monies" and suffered "much duress and harm" because of Rogers's conduct.

II. *Demurrer*

Rogers demurred to the complaint; neither the demurrer nor the reply is in the record on appeal. Berglund opposed, arguing that her complaint was not time-barred because she alleged continuing torts and therefore the statute of limitations did not begin to run until the Korean statute was repealed in 2015.

The court held a hearing on February 27, 2017 and sustained the demurrer, finding Berglund failed to adequately plead a continuing violation. As such, all of Berglund's claims accrued in April 2013, when Berglund received the threatening

letter from Rogers. Because Berglund did not file her lawsuit until July 2016, more than three years later, her claims were untimely under the two-year statute of limitations. In addition, the court found that Berglund had not suggested how she could amend her complaint "with facts to cure this defect." Accordingly, the court sustained the demurrer without leave to amend. The court entered judgment of dismissal, from which Berglund timely appealed.

DISCUSSION

I. *Standard of Review*

A demurrer tests the legal sufficiency of factual allegations in a complaint. (*Title Ins. Co. v. Comerica Bank–California* (1994) 27 Cal.App.4th 800, 807.) We review de novo the dismissal of a civil action after a demurrer is sustained without leave to amend. (*Cantu v. Resolution Trust Corp*. (1992) 4 Cal.App.4th 857, 879.) In doing so, "we determine whether the complaint states facts sufficient to constitute a cause of action." (*Blank v. Kirwan* (1985) 39 Cal.3d 311, 318.) "'We treat the demurrer as admitting all material facts properly pleaded, but not contentions, deductions or conclusions of fact or law.'" (*Ibid*.) We similarly accept as true the contents of exhibits attached to the complaint. (See, e.g., *Barnett v. Fireman's Fund Ins. Co*. (2001) 90 Cal.App.4th 500, 505; *Frantz v. Blackwell* (1987) 189 Cal.App.3d 91, 94 ["[E]videntiary facts found in recitals of exhibits attached to a complaint or superseded complaint . . . can be considered on demurrer."].) "Further, we give the complaint a reasonable interpretation, reading it as a whole and its parts in their context." (*Blank v. Kirwan, supra,* 39 Cal.3d at p. 318.)

A defendant may demur on statute of limitations grounds where the "'complaint shows on its face that the statute bars the

action.'" (*E-Fab, Inc. v. Accountants, Inc. Services* (2007) 153 Cal.App.4th 1308, 1315.) The application of the statute of limitations on undisputed facts is a purely legal question; accordingly, we review the trial court's ruling de novo. (See *Aryeh v. Canon Business Solutions, Inc.* (2013) 55 Cal.4th 1185, 1191 (*Aryeh*).)

II. *Accrual of Berglund's Claims*

Berglund contends that her claims alleged continuing torts and therefore the statute of limitations did not begin to run until either 2014, when Rogers ceased her alleged extortionate conduct, or March 2015, when the Korean statute criminalizing adultery was repealed. The trial court disagreed, finding that Berglund's causes of action accrued when she received the threatening letter in April 2013. Because she did not file her complaint until July 2016, the two-year statute of limitations applied to bar her claims. We agree with the trial court.

"The limitations period, the period in which a plaintiff must bring suit or be barred, runs from the moment a claim accrues." (*Aryeh, supra,* 55 Cal.4th at p.1191, citing Code Civ. Proc., § 312[2] [an action must "be commenced within the periods prescribed in this title, after the cause of action shall have accrued"].) "Civil statutes of limitations protect defendants from the necessity of defending stale claims and require plaintiffs to pursue their claims diligently. [Citations.] They are "'designed to promote justice by preventing surprises through the revival of claims that have been allowed to slumber until evidence has been lost, memories have faded, and witnesses have disappeared. The theory is that even if one has a just claim it is unjust not to put

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[2] All further statutory references are to the Code of Civil Procedure unless otherwise stated.

the adversary on notice to defend within the period of limitation and that the right to be free of stale claims in time comes to prevail over the right to prosecute them.'"' (*Romano v. Rockwell Internat., Inc.* (1996) 14 Cal.4th 479, 488 (*Romano*).)

The statute of limitations for tort claims begins to run when the "'plaintiff possesses a true cause of action, by which we mean that events have developed to a point where plaintiff is entitled to a legal remedy. . . .' (*Davies v. Krasna* [1975] 14 Cal.3d [502,] 513; see also 3 Witkin, Cal. Procedure, *supra*, Actions, § 351, p. 380 ['The cause of action ordinarily accrues when, under the substantive law, the wrongful act is done and the obligation or liability arises, i.e., when a suit may be brought.' (Italics omitted.)].)" (*Romano, supra,* 14 Cal.4th at pp. 500–501.) In other words, "[a] cause of action accrues 'when [it] is complete with all of its elements'—those elements being wrongdoing, harm, and causation." (*Pooshs v. Philip Morris USA, Inc.* (2011) 51 Cal.4th 788, 797.)

However, as our Supreme Court has explained, "[t]o align the actual application of the limitations defense more closely with the policy goals animating it, the courts and the Legislature have over time developed a handful of equitable exceptions to and modifications of the usual rules governing limitations periods." (*Aryeh, supra*, 55 Cal.4th at p. 1192.) This includes the continuing violation doctrine, which "aggregates a series of wrongs or injuries for purposes of the statute of limitations, treating the limitations period as accruing for all of them upon commission or sufferance of the last of them." (*Ibid.*)

Rogers bears the initial burden of proof as to her statute of limitations defense, demonstrating that Berglund's claims are barred by the statutory limitations period. (See *Aryeh, supra*, 55

Cal.4th at p. 1197.) Thereafter, the burden shifts to Berglund to "demonstrate [her] claims survive based on one or more nonstatutory exceptions to the basic limitations period. [Citation.] That burden may be imposed even at the pleading stage." (*Ibid.*)

There is no dispute that Rogers met her initial burden. Berglund asserted four tort claims against Rogers. In general, claims for tortious conduct must be brought "within two years." (Code Civ. Proc., § 335.1.) All of Berglund's claims arise from the letter she received on April 17, 2013, threatening various consequences unless she paid Rogers $700,000. As of that date, Berglund's alleged claims for extortion, intentional infliction of emotional distress, and interference with prospective economic advantage were complete[3] and the statute of limitations began to run. She did not file her complaint until July 2016, more than three years later. Thus, her claims are time-barred.[4]

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[3] "'Extortion is the obtaining of property from another, with his consent . . . induced by a wrongful use of force or fear. . . .' (Pen. Code, § 518.) Fear, for purposes of extortion 'may be induced by a threat, either: [¶] . . . [¶] 2. To accuse the individual threatened . . . of any crime; or, [¶] 3. To expose, or impute to him . . . any deformity, disgrace or crime[.]' (Pen. Code, § 519.) 'Every person who, with intent to extort any money or other property from another, sends or delivers to any person any letter . . . expressing or implying ... any threat such as is specified in Section 519, is punishable in the same manner as if such money or property were actually obtained by means of such threat.' (Pen. Code, § 523.)" (*Flatley v. Mauro* (2006) 39 Cal.4th 299, 326.)

[4] Berglund claims, without citation, that extortion claims are governed by the three-year statute of limitations period under section 338, instead of the two-year period under section 335.1.

However, Berglund contends that the continuing violation doctrine applies to her claims because Rogers's wrongful acts were "ongoing in nature." (*Pugliese v. Superior Court* (2007) 146 Cal.App.4th 1444, 1449 (*Pugliese*).) "Allegations of a pattern of reasonably frequent and similar acts may, in a given case, justify treating the acts as an indivisible course of conduct actionable in its entirety, notwithstanding that the conduct occurred partially outside and partially inside the limitations period." (*Aryeh, supra*, 55 Cal.4th at p. 1198; see also, e.g., *Yanowitz v. L'Oreal USA, Inc.* (2005) 36 Cal.4th 1028, 1058 [applying the doctrine where "some or all of the component acts might not be individually actionable" and the plaintiff "may not yet recognize" the acts "as part of a pattern"]; *Komarova v. National Credit Acceptance, Inc.* (2009) 175 Cal.App.4th 324, 345 [applying the doctrine to repeated harassing debt collection activities].) Here, Berglund has alleged a single act of extortion rather than any repeated or ongoing misconduct by Rogers. Thus, the continuing tort doctrine is inapplicable.

Berglund relies on *Pugliese, supra*, 146 Cal.App.4th 1444, but we find that court's analysis inapplicable here. In *Pugliese*, the court applied the continuing tort doctrine to allegations of domestic violence. (*Pugliese, supra*, 146 Cal.App.4th at pp. 1454-1456.) In doing so, the court relied upon the unique nature of domestic violence and a statute providing that "domestic violence lawsuits must be commenced within three years 'from the date of the last act of domestic violence.' " (*Id.* at pp. 1451, 1454–1456.) Accordingly, the court concluded that "domestic violence

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Whether subject to a two- or three-year limitations period, unless Berglund can demonstrate some basis justifying delay of the accrual date, her claims are untimely.

encompasses a series of acts, including assault, battery and intentional infliction of emotional distress, and that when these acts are coupled with an oppressive atmosphere of control, the continuing tort of domestic violence results." (*Id*. at p. 1455.)

The allegations of Berglund's complaint bear little resemblance to the series of violent acts which delayed accrual of the cause of action in *Pugliese*. In fact, Berglund has alleged no misconduct by Rogers other than the threat made in 2013. Moreover, in contrast to the overarching atmosphere of fear and ongoing violence alleged by the plaintiff in *Pugliese*, Berglund's complaint alleges receipt of a single threatening letter, to which she responded by retaining counsel and threatening legal action of her own.

We also note that, as with *Pugliese*, none of the other cases Berglund cites applies the continuing violations doctrine to a single threat made outside the limitations period. (See *General Service Emp. Union Local No. 73 v. N. L. R. B.* (D.C. Cir. 1978) 578 F.2d 361 [discussing threats, but not statutes of limitations]; *Tubos de Acero de Mexico, S.A. v. American Intern. Inv. Corp., Inc.* (5th Cir. 2002) 292 F.3d 471, 481-482 [applying continuing violation doctrine under Louisiana consumer protection statute where plaintiff alleged "continuous unfair or deceptive actions by [defendant] throughout the lease period"]; *Baugh v. Garl* (2006) 137 Cal.App.4th 737, 747 [discussing rule of continuing act of physical trespass onto property]; *Wyatt v. Union Mortgage Co.* (1979) 24 Cal.3d 773, 786 [analyzing statute of limitations for alleged civil conspiracy]; *Murray v. Oceanside Unified School Dist.* (2000) 79 Cal.App.4th 1338, 1363 [applying continuing violations doctrine to emotional distress claim based on allegations of a pattern of repeated sexual harassment]; *Feltmeier*

v. Feltmeier (2003) 207 Ill.2d 263, 282 [noting use of the continuing tort doctrine where "repetition of the behavior may be a critical factor in raising offensive acts to actionably outrageous ones"].)

Instead, Berglund alleges that Rogers's threats continued to injure her until 2015, because she was unable to travel and was distressed over potential criminal and immigration proceedings. It is immaterial for accrual purposes that Berglund allegedly suffered additional damages at a later date. If "continuing injury from a completed act generally extended the limitations periods, those periods would lack meaning. Parties could file suit at any time, as long as their injuries persisted. This is not the law. The time bar starts running when the plaintiff first learns of actionable injury [citation], even if the injury will linger or compound." (*Vaca v. Wachovia Mortgage Corp*. (2011) 198 Cal.App.4th 737, 744–745; see also *Spellis v. Lawn* (1988) 200 Cal.App.3d 1075, 1080–1081 ["'[W]here an injury, although slight, is sustained in consequence of the wrongful act of another, and the law affords a remedy therefor, the statute of limitations attaches at once. It is not material that all the damages resulting from the act shall have been sustained at that time, and the running of the statute is not postponed by the fact that the actual or substantial damages do not occur until a later date.'"].)

We therefore decline to apply the continuing violation doctrine to the circumstances of this case.

III. *Denial of Leave to Amend*

Berglund also asserts that the trial court erred in sustaining the demurrer without leave to amend. We disagree.

We review an order denying leave to amend for an abuse of discretion. "'Generally it is an abuse of discretion to sustain a demurrer without leave to amend if there is any reasonable possibility that the defect can be cured by amendment. [Citation.] . . . However, the burden is on the plaintiff to demonstrate that the trial court abused its discretion. [Citations.] Plaintiff must show in what manner he can amend his complaint and how that amendment will change the legal effect of his pleading.'" (*Goodman v. Kennedy* (1976) 18 Cal.3d 335, 349; see also, e.g., *Angie M. v. Superior Court* (1995) 37 Cal.App.4th 1217, 1227 [liberality in permitting a party to amend a pleading is the rule if a fair opportunity to correct the defect has not already been given and the pleading's deficiency can be easily corrected].)

In her opposition to the demurrer, Berglund neither requested leave to amend nor suggested any facts she might allege to avoid the statute of limitations bar. Accordingly, the trial court found that Berglund failed to demonstrate how her complaint could be cured by amendment.[5] On appeal, Berglund vaguely cites to "multiple and additional instances" of "bad faith conduct" by Rogers that "persevered through 2014." However, she does not identify any specific conduct or provide any explanation for how additional allegations would alter the imposition of the statute of limitations bar.

Berglund also points to a first amended complaint filed in a related case, a lawsuit by Berglund's husband KB against Rogers,

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[5] Berglund asserts that she "requested the opportunity to amend the Complaint" before the trial court. She provides no evidentiary support for this statement, nor did we find any in the record. There is no transcript of the hearing on the demurrer.

captioned *Berglund v. Rogers*, Los Angeles Superior Court Case No. BC651441.[6] She asserts that this first amended complaint shows "the existence of additional facts and elements in support of Appellant's claims" and suggests that the trial court's denial of Rogers's motion for judgment on the pleadings in that case is relevant to our review.

Berglund's brief reference, without explanation, to allegations made by her husband in another lawsuit are insufficient to sustain her burden here. She fails to detail which alleged facts from KB's complaint she could make in her own amended pleading, or how any such allegations would establish a continuing tort against her. Moreover, she provides no explanation how the trial court's ruling on the motion on the pleadings in the other case would alter our conclusions here. (Indeed, there is no copy of that motion or ruling in the record before us.) As such, we find no abuse of discretion in the trial court's denial of leave to amend Berglund's complaint.

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[6] Berglund filed an unopposed request for judicial notice of the docket and first amended complaint in the related case. We granted her request.

DISPOSITION

The judgment is affirmed. Respondent is awarded her costs on appeal.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

COLLINS, J.

We concur:

WILLHITE, ACTING P.J.

[*]MICON, J.

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