Filed 5/24/17 Versailles Investments v. First Calif. Escrow Corp. CA2/2

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION TWO

VERSAILLES INVESTMENTS, LLC et al., Plaintiffs and Appellants, v. FIRST CALIFORNIA ESCROW CORPORATION, Defendant and Respondent.	B269863 (Los Angeles County Super. Ct. No. SC121118)

APPEAL from a judgment of the Superior Court of Los Angeles County. Nancy Newman, Judge. Affirmed.

Law Offices of George P. Eshoo & Associates and George P. Eshoo for Plaintiffs and Appellants.

Garrett & Tully, Ryan C. Squire and John C. Tully for Defendant and Respondent.

Versailles Investments, LLC (Versailles) and Zia Shlaimoun (Shlaimoun) (collectively appellants) appeal from a final judgment entered after the trial court sustained a demurrer to appellants' second amended complaint (SAC) against First California Escrow Corporation (FCE or respondent) without leave to amend. The SAC alleged causes of action for negligence; breach of contract; breach of the covenant of good faith and fair dealing; breach of fiduciary duty; indemnity; and unfair business practices under Business & Professions Code section 17200, among other things. The trial court sustained respondent's demurrer on the ground that respondent had not breached any duty in contract or tort arising from the escrow instructions. Further, and as an independent basis for dismissing the SAC, the court concluded that the entire action is time-barred. Finding no error, we affirm the judgment.

FACTUAL BACKGROUND

The purchase agreement and escrow instructions

On July 1, 2010, Shlaimoun entered into a California Residential Purchase Agreement and Joint Escrow Instructions (the purchase agreement) with Jason Maynard (Maynard) for the purchase of property located on Morning View Drive, Malibu, California (the property) for a purchase price of $12,000,000. The property was owned by an entity known as Luky Lee Properties, LLC (seller), which was owned, controlled, and managed by Maynard.

Based on a recommendation from their broker, Shlaimoun and the seller engaged the services of FCE to act as the escrow company for the transaction. The purchase agreement stated that respondent would act as escrow holder, "subject to paragraph 24" of the purchase agreement.

Paragraph 24 provided joint escrow instructions and listed 14 other paragraphs in the purchase agreement, or portions of

those paragraphs, which comprised further escrow instructions. Paragraph 24 instructed respondent to use those 14 paragraphs and any other mutual instructions to close the escrow. The paragraph also stated that respondent "need not be concerned" about the other paragraphs in the purchase agreement.

Paragraph 24 states that:

> "[Shlaimoun] and [Maynard] will receive [FCE's] general provisions directly from [FCE] and will execute such provisions upon [FCE's] request. To the extent the general provisions are inconsistent or conflict with [the purchase agreement], the general provisions will control as to the duties and obligations of [FCE] only. [Shlaimoun] and [Maynard] will execute additional instructions, documents and forms provided by [FCE] that are reasonably necessary to close the escrow."

One of the instructions found in paragraph 12D states that Shlaimoun "shall receive a grant deed" and that "[t]itle shall vest as designated in [Shlaimoun's] supplemental escrow instructions."

Respondent was specifically informed that Shlaimoun would not take title in his personal name but would form a limited liability company to take title to the property.

Escrow opened on July 2, 2010. Respondent prepared additional escrow instructions that Shlaimoun and Maynard signed, which provided that title to the property was to be "vested in: Zia Shlaimoun and/or Assignee." The additional instructions also provided that Shlaimoun "reserves the right prior to close of escrow to assign his interest as Buyer to another party." The instructions further directed that "[i]f [Shlaimoun] exercises his right to assign his interest, [respondent] will insert complete vesting over the signature of [Maynard] on said grant deed, without further written instructions required."

The instructions provided that Maynard's and Shlaimoun's signatures "on any document and instructions pertaining to this escrow indicate our unconditional approval of same." Moreover, the additional instructions provided that Shlaimoun and Maynard "agree[], understand[], and acknowledge[] that [respondent] is acting as an escrow holder . . . and is not acting as a trustee or in any other fiduciary capacity."

Finally, the general provisions of the escrow instructions stated, in capital letters:

> "No action shall lie against [respondent] for any claims, loss, liability, or alleged cause of action of any kind or nature whatsoever, however caused or occurred under this escrow, or in connection with the handling or processing of this escrow, unless brought within twelve (12) months after close of escrow, a cancellation, or a termination of this escrow for any reason whatsoever."

The grant deed

On July 6, 2010, respondent prepared a grant deed that read: "FOR VALUABLE CONSIDERATION, receipt of which is hereby acknowledged, Lucky [*sic*] Lee Properties LLC hereby GRANT(S) to Zia Shlaimoun" the property. Maynard signed the grant deed at the United States Consulate in Hong Kong on July 15, 2010.[1]

---

[1] Appellants complain that on the grant deed, respondent erroneously reflected the name of the seller to be "Lucky Lee Properties, LLC" when in fact the true and accurate seller was "Luky Lee Properties, LLC." However, the trial court found that "there is no indication that that error led to any of the harm complained of in the SAC (further, and in any event, [appellants] admitted in para. 50 of the FAC that they later obtained a quitclaim deed from Luky Lee Properties, LLC)." Appellants have failed to raise any legal argument suggesting the trial

Shlaimoun created an entity known as Precision Service Investments, LLC (Precision), on September 2, 2010, with the intent that it would take title to the property.

Appellants allege that Shlaimoun was unaware that the initial grant deed had been prepared or signed. However, on September 27, 2010, Maynard and Shlaimoun entered into a revised escrow modification (the Precision modification), which provided:

> "A. ASSIGNMENT OF BUYER(S): It is agreed between Lucky [*sic*] Lee Properties, LLC, as Seller, Zia Shlaimoun, as Buyer, and Precision Service Investments LLC, as Assignee, with respect to the Additional Escrow Instructions, dated July 02, 2010, as follows:
>
> "1. All interest in and to all right to acquire title to the subject property is hereby assigned to: [¶] Precision Service Investments LLC, a California Limited Liability Company
>
> "2. All funds now on deposit are to be credited to the account of Precision Service Investments, LLC . . . .
>
> "3. Seller hereby releases Buyer from all claims and demands against Buyer in respect to the Escrow Instructions and accepts Assignee in place of Buyer as the substituted party . . . .

---

court's finding was incorrect. Therefore, any argument that the misspelling of the seller's name on the grant deed was material is forfeited. (*Cahill v. San Diego Gas & Electric Co.* (2011) 194 Cal.App.4th 939, 956 [""When an appellant fails to raise a point, or asserts it but fails to support it with reasoned argument and citations to authority, we treat the point as waived""].) We do not address it further.

"[¶] . . . [¶]

"In the event the Grant Deed has been previously executed, Escrow Holder is instructed to correct same over Seller's signature."

The Precision modification was signed by both Maynard and Shlaimoun.

Shlaimoun alleges that FCE made this first alteration without his knowledge, by covering his name and inserting the name of Precision. Shlaimoun alleges that he remained unaware that the grant deed had been altered.

Shlaimoun subsequently decided to obtain title to the property in the name of Versailles. Versailles was formed on October 18, 2010, with the intent that Versailles would replace Precision as the buyer of the property. Shlaimoun informed FCE of this plan.

The parties signed a second escrow modification dated October 19, 2010 (the Versailles modification). The document was similar to the Precision modification, and provided, "The Buyer and Seller agree that the Real Estate Purchase Contract and previous escrow instructions in the above numbered escrow are hereby modified/supplemented in the following particulars only: [¶] "A. REVISED ASSIGNMENT OF BUYER(S)." Through the modification, Maynard and Shlaimoun instructed FCE that "In the event the Grant Deed has been previously executed, [FCE] is instructed to correct same over [Maynard's] signature."

Sometime after October 19, 2010, respondent, still in possession of the original grant deed signed by Maynard on July 15, 2010, "caused a white out" of the language of the grant deed granting the property to Precision and "inserted over the top thereof" the name of Versailles. Appellants allege that they were unaware of the actions of FCE as they "did not authorize or ratify

the same." Respondent continued to retain custody of the now twice altered grant deed for recording.

The close of escrow

Before escrow closed, Shlaimoun deposited $6,560,000 into escrow to be applied towards the purchase of the property. The remainder was paid by Versailles in the form of a promissory note secured by a deed of trust in favor of Lucky [*sic*] Lee Properties, LLC.

Escrow closed on October 22, 2010, when Chicago Title Company recorded the grant deed.

Related lawsuit against Versailles

In October 2011, a company called Mining Technologies International (MTI) filed a lawsuit against Versailles captioned *Mining Technologies International, Inc. v. Versailles Investments, LLC*, Los Angeles Superior Court case No. SC114519 (MTI action). At Versailles's request, the trial court deemed the MTI action to be related to the present matter on September 6, 2013.

In its lawsuit, MTI alleged that Shlaimoun made false and fraudulent representations to induce MTI to invest $2,000,000 in a fund that Shlaimoun controlled "to obtain access to superior equipment lease financing programs." MTI alleged that Shlaimoun absconded with $2,000,000 and millions of dollars received from other investors. MTI further alleged that Shlaimoun used these ill-gotten funds to finance the purchase of the property, and that the transfer of funds to Versailles and purchase of property was "to hinder, delay, or defraud" his creditors. A lis pendens was recorded against the property.

Versailles moved to expunge the lis pendens in December 2011. Versailles argued that Shlaimoun never held title to the property and that a recordable interest is necessary to recognize a voidable interest.

MTI asserted that Shlaimoun had been the original buyer of the property, then assigned his interest to Precision then Versailles in an effort to avoid MTI's claims against him. MTI asserted that Shlaimoun's "transfer of his interest in the Property constitutes a fraudulent conveyance and, if avoided, would affect title to the Property."

On August 10, 2012, the trial court denied Versailles's motion to expunge the lis pendens. The court found:

> "In fact, the property was sold from Lucky Lee to Mr. Shlaimoun directly at which point it looks to me like he altered or forged documents because we have the same notary signature on all three deeds, one to principal, one to Versailles, and one to him. It's unmistakable, and there's no question in my mind that it was only notarized once in July in spite of the three transfers. It's such a poor attempt at fabrication that my naked eye can see it in the copies."

On August 30, 2012, Versailles filed a verified petition for writ of review and/or mandate in this court. (*Versailles Investments v. Superior Court of Los Angeles County*, B243590.) Versailles argued that the trial court had erroneously denied the motion to expunge the lis pendens. In the writ petition, Versailles acknowledged that Shlaimoun signed the two escrow modifications, that the two modifications "result[ed] in alteration of the executed Grant Deed held in escrow" and that "the alterations and modification to the Grant Deed were done by [FCE] with consent of the seller, buyer and buyer's assignors."

Versailles settled the MTI action for over $4,000,000. Versailles alleges that it was forced to settle because the errors of respondent made it impossible to remove the lis pendens on the property.

PROCEDURAL HISTORY

Versailles filed this action against respondent on August 5, 2013, nearly three years after the close of escrow. The complaint alleged negligence, breach of contract, breach of the implied covenant of good faith and fair dealing, express contractual indemnity, total indemnity, equitable indemnity, implied indemnity, contribution, and violation of California Business and Professions Code section 17200. Versailles's complaint was based on its assertion that it neither consented to nor was aware of the modifications to the grant deed until the time of the trial court's ruling on the motion to expunge the lis pendens.

Respondent demurred to Versailles's complaint. Instead of opposing the demurrer, Versailles filed a first amended complaint in September 2014. The first amended complaint was nearly identical to the original complaint but added a cause of action for "breach of implied in fact and written contract" and for breach of fiduciary duty. In addition, Shlaimoun joined the action as a plaintiff.

FCE demurred to all 11 causes of action in the first amended complaint. Appellants opposed the demurrer. The superior court sustained the demurrer in its entirety, but granted Versailles and Shlaimoun leave to amend, stating: "I'm very skeptical about your ability to amend in any way that will create a viable claim on this. I'm going to give you the opportunity."

Appellants filed the SAC in December 2014. Respondent again demurred to the 11 causes of action.

The trial court sustained respondent's demurrer without leave to amend. The trial court cited law that an escrow holder's agency is limited to the obligation to complete the escrow in strict accordance with the instructions of the parties. (*Summit Financial Holdings, Ltd. v. Continental Lawyers Title Co.* (2002) 27 Cal.4th 705, 711 (*Summit*); *Lee v. Title Ins. & Trust Co.* (1968)

264 Cal.App.2d 160, 162.) Because an escrow holder's duties are limited by the escrow instructions, and the two escrow modifications instructed the respondent to make the subject changes to the grant deed, appellants had not pled a breach of any duty arising out of contract or tort. In the alternative, the trial court found the SAC was independently subject to dismissal based on the one-year limitations period set forth in the escrow instructions.

The trial court noted that appellants "*inextricably and unreasonably ignore the initial escrow instructions' . . . shortened, one-year limitations period discussed at length in the moving brief; that omission bolsters [respondent's] argument that [appellants] failed to attach the initial escrow instructions to the first two iterations of the complaint in order to improperly avoid a contractual limitation period demurrer*."

Judgment was entered in favor of respondent on November 25, 2015. Notice of entry of judgment was served on December 11, 2015.

On January 26, 2016, appellants filed their notice of appeal.

DISCUSSION

I. Standards 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." [Citation.]'" (*Czajkowski v. Haskell & White, LLP* (2012) 208 Cal.App.4th 166, 173.)

"We assume the truth of the properly pleaded factual allegations, facts that reasonably can be inferred from those expressly pleaded, and matters of which judicial notice has been taken. [Citation.]" (*Fremont Indemnity Co. v. Fremont General Corp.* (2007) 148 Cal.App.4th 97, 111.) "We construe the pleading in a reasonable manner and read the allegations in context. [Citation.]" (*Ibid.*) "We can also consider the facts appearing in exhibits attached to the complaint. [Citation.]" (*Picton v. Anderson Union High School Dist.* (1996) 50 Cal.App.4th 726, 733.)

> "In addition to the facts pleaded in the complaint, trial and appellate courts ruling on a demurrer also 'may properly take judicial notice of a party's earlier pleadings and positions as well as established facts from both the same case and other cases. [Citations.] The complaint should be read as containing the judicially noticeable facts, "even when the pleadings contains an express allegation to the contrary." [Citation.] A plaintiff may not avoid a demurrer by pleading facts or positions in an amended complaint that contradict the facts pleaded in the original complaint or by suppressing facts which prove the pleaded facts false. [Citation.]' [Citations.]"

(*McKell v. Washington Mutual, Inc.* (2006) 142 Cal.App.4th 1457, 1491.)

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. Respondent's duties were limited by the escrow instructions

A. Respondent's obligation was to comply strictly with instructions

Appellants take issue with the trial court's finding that respondent's liability is limited to the four corners of the instructions. Without citation to authority, appellants claim that the trial court's position is unacceptable. Appellants argue they could not have authorized a written instruction to back-date a document. Appellants cite no authority for their argument, nor is it relevant.

The Supreme Court discussed the obligations of an escrow holder in *Summit*. "The agency created by the escrow is limited -- limited to the obligation of the escrow holder to carry out the instructions of each of the parties to the escrow. [Citations.]" (*Summit, supra*, 27 Cal.4th at p. 711.) While an escrow holder is obligated to "'comply strictly with the instructions of the parties,'" it "'has no general duty to police the affairs of its depositors.'" (*Ibid.*) "Absent clear evidence of fraud, an escrow holder's obligations are limited to compliance with the parties' instructions. [Citations.]" (*Ibid.*)

In *Summit*, the escrow holder incurred no liability by following the escrow instructions and disbursing loan proceeds to the named creditor, despite its knowledge that the creditor had assigned its rights to another party. (*Summit, supra,* 27 Cal.4th at p. 711.) The high court rejected the argument that the escrow company breached any duty, thus there was no merit to the appellant's claims of negligence or breach of fiduciary duty against the escrow company. (*Id.* at pp. 715-716.) The high court noted the general rule that "'an escrow holder incurs no liability for failing to do something not required by the terms of the

escrow or for a loss caused by following the escrow instructions [citation].'" (*Id.* at p. 715.)

B. The allegations and attached documents show that respondent complied strictly with the parties' instructions

Here, the allegations and attached documents show that respondent followed the instructions of the parties precisely. Respondent received escrow instructions which provided that title to the property was to be "vested in: Zia Shlaimoun and/or Assignee," but that Shlaimoun "reserve[d] the right prior to close of escrow to assign his interest as Buyer to another party. If [Shlaimoun] exercises his right to assign his interest, [respondent] will insert complete vesting over the signature of the Seller on said grant deed, without further written instructions required." Both the Precision modification and the Versailles modification provided that: "In the event the Grant Deed has been previously executed, [respondent] is instructed to correct same over Seller's signature."

In light of the fact that Shlaimoun signed the documents referenced above, his claims of lack of knowledge are both demonstrably false and irrelevant. Shlaimoun specifically agreed that his signature "on any document and instructions pertaining to this escrow indicates [his] unconditional approval of same." The instructions and modifications that Shlaimoun signed contemplated that the grant deed had been previously created and executed with a different buyer. Shlaimoun signed several documents acknowledging that if the grant deed had been previously signed respondent was instructed to correct the deed. By doing so, Shlaimoun indicated his unconditional approval of

respondent's act of correcting a previously executed grant deed, without restriction.[2]

Such corrections to a signed and notarized deed do not render the document invalid. (*Osterberg v. Osterberg* (1945) 68 Cal.App.2d 254, 262 [alteration of deed by inserting clause reserving life estate prior to recording did not invalidate the deed].)

C. The cases cited by appellants do not change the result

The cases cited by appellants do not mandate a different result. Appellant cites *Kangarlou v. Progressive Title Co., Inc.* (2005) 128 Cal.App.4th 1174, 1179 for the proposition that escrow holders have a fiduciary duty to the parties in escrow to obtain reliable evidence that the real estate broker is regularly licensed before paying the broker a commission, and to communicate facts concerning the broker's license to the parties in escrow. As the *Kangarlou* court noted, this obligation arises out of Business and Professions Code section 10138, which makes it a misdemeanor for any person, "whether obligor, escrowholder or otherwise, to pay or deliver to anyone a compensation . . . who is not . . . a regularly licensed real estate broker at the time such compensation is earned." (Bus. & Prof. Code, § 10138.) This point is irrelevant and fails to assist appellants in this matter. The *Kangarlou* court also noted, "An escrow holder has a

---

[2] Respondent was not instructed as to the precise method of correction. To the extent that Shlaimoun argues that respondent was not instructed to white-out a name, we note that Shlaimoun failed to provide specific instructions as to the method of correction. In the absence of such specific instruction, Shlaimoun's unconditional approval of respondent's act of correcting the document includes his approval of respondent's choice of the means of correction.

fiduciary duty to the escrow parties to comply strictly with the parties' instructions. [Citation.]" (*Kangarlou*, at p. 1179.) The allegations and attached documents show that respondent did so in this matter.[3]

Next, appellant cites *Spaziani v. Millar* (1963) 215 Cal.App.2d 667 (*Spaziani*), in which escrow instructions were found to be ambiguous. Appellant argues that, similarly, the language "In the event the Grant Deed has been previously executed, Escrow Holder is instructed to correct same over Seller's signature" is equally ambiguous, thus respondent acted at its own risk.

The analogy is unpersuasive. In *Spaziani,* the escrow instructions provided that title to the subject property was to be distributed to Ben Millar subject to a "'First Deed of Trust to file: Construction loan to come,' and to a second deed of trust securing payment of the $20,000 purchase price balance." (*Spaziani, supra*, 215 Cal.App.2d at p. 681.) The first deed of trust was "without identification either as to parties, amount, or terms of payment." (*Ibid.*) Under these circumstances, there was a factual question of "whether the escrow holder, in proceeding to close the escrow without further instructions, breached its duty toward the plaintiff or failed to exercise ordinary care." (*Ibid.*) This was especially true because there was evidence the escrow

---

[3] Appellants cite Penal Code section 115, subdivision (a), which provides, "Every person who knowingly procures or offers any false or forged instrument to be filed, registered, or recorded in any public office within this state . . . is guilty of a felony." Appellants do not claim that the document was forged, and it was created and revised in accordance with appellants' instructions. Because respondent had no duty to police the activity of its depositors (*Summit, supra*, 27 Cal.4th at p. 711), any falsity would be the responsibility of the parties providing the instructions.

holder knew that the loan to be secured by the first deed of trust was a construction loan. (*Id.* at p. 682.) Under these circumstances, a motion for nonsuit in favor of the escrow company was reversed. (*Id.* at p. 684.)

In contrast, the language of the grant deed modifications is unambiguous. It instructed respondent to make the subject revisions to the grant deed, regardless of whether it had been previously executed. Appellants argue that to be a clear instruction, it would have had to disclose that respondent intended to re-use the signed deed by white-out of the grantee names. Appellants cite no authority that escrow instructions need be so specific. Instead, under the facts of this case, appellants unconditionally authorized respondent to alter the grant deed. The instruction was clear, and respondent carried it out with ordinary care.

Common Wealth Ins. Systems, Inc. v. Kersten (1974) 40 Cal.App.3d 1014, is also distinguishable. There, negligence was asserted against the escrow holder for two reasons: (1) it permitted an amendment to the escrow instructions altering the terms of the pledge without the parties' approval or consent and (2) it closed the escrow and distributed the funds without securing an affidavit of stock ownership, as required by the instructions. (*Id.* at p. 1030.) The first contention was dismissed, as there was evidence that the parties had discussed the amendment and did not object to it. The escrow holder was only negligent for the second act. "[T]he instructions called for the deposit in escrow of an affidavit of the Santa Cruz Company showing that two-thirds of its stock was owned by the Wimberlys. The court found that such affidavit was never deposited." (*Id.* at p. 1031.) Thus, because the escrow holder failed to follow the instructions, it breached its duty. Here, in contrast, respondent

followed the parties' instructions precisely, and breached no duty to appellants.

None of the cases cited by appellants undermines the basic principle that an escrow holder incurs no liability for completing escrow in accordance with the parties' instructions. Because the allegations and attachments show that respondent did just that, appellants have failed to allege a breach of duty.

III. Appellants' claims are time-barred by the contractual limitation

The escrow instructions provided for a one-year contractual limitations period from the close of escrow. Escrow closed on October 22, 2010, when Chicago Title Company recorded the grant deed. Appellants did not file this lawsuit until nearly three years later, on August 5, 2013. Thus, all of appellants' causes of action are time-barred.

Contractual shortened limitations periods are upheld as long as they are reasonable. (*Moreno v. Sanchez* (2003) 106 Cal.App.4th 1415, 1430 (*Moreno*); *William L. Lyon & Associates, Inc. v. Superior Court* (2012) 204 Cal.App.4th 1294, 1307-1308.) Whether the time limit is reasonable is a question of law. (*Capeheart v. Heady* (1962) 206 Cal.App.2d 386, 388.) "'Reasonable' in this context means the shortened period nevertheless provides sufficient time to effectively pursue a judicial remedy." (*Moreno, supra*, at p. 1430.) Shortened limitations periods are generally upheld under "straightforward commercial contracts" or "unambiguous breaches" under such contracts. (*Ibid.*) Contractual limitation periods as short as six months have been upheld. (*Id.* at p. 1431.)

The shortened contractual limitations period is reasonable in this case. Respondent's duties were limited to following the parties' instructions. (*Summit, supra,* 27 Cal.4th at p. 715 ["'an escrow holder incurs no liability for failing to do something not

required by the terms of the escrow or for a loss caused by following the escrow instructions'"].) Breach of such duty would be apparent within one year. Appellants claim that respondent should be liable for following the parties' instructions to modify the grant deed. Respondent cannot be held liable for following the parties' instructions. Shlaimoun's signature on the Precision modification and the Versailles modification show that he was not only aware of, but directed those modifications.

Appellants argue that the shortened limitations period was not reasonable here because their damages were not ascertained until the trial court refused to expunge the lis pendens on the property, finding that the deed appeared to be altered or forged. That ruling was made on August 10, 2012. Appellants filed suit on August 5, 2013, within one year of August 10, 2012.

Appellants' claim of delayed discovery is demonstrably false under the allegations of the complaint, the documents attached to the complaint, and appellants' admissions made in related pleadings. Appellants were aware that a grant deed may have been previously executed when Shlaimoun signed his name on the Precision modification acknowledging the statement "In the event the Grant Deed has been previously executed, Escrow Holder is instructed to correct same over Seller's signature." If Shlaimoun had any objection to a previously signed deed in his name being corrected to show the name of Precision, he should have raised it then and declined to sign. The same analysis applies to the Versailles modification.

Appellants' claim that they did not suffer appreciable harm until the trial court ruled against them in the lis pendens motion is further undermined by the fact that respondent did exactly what appellants told it to do. Appellants' discovery when the trial court ruled against them in August 2012, is more aptly described as a discovery that appellants' instructions to

respondent were unwise. Appellants cannot blame respondent for appellants' own misdeeds.[4]

Appellants further argue that the delayed discovery rule should apply because respondent acted in a fiduciary capacity. However, appellants expressly agreed that "[respondent was] . . . not acting as a trustee or in any other fiduciary capacity." Further, an escrow holder's fiduciary obligations are "'limited to faithful compliance with [the depositors'] instructions.' [Citations.]" (*Summit, supra*, 27 Cal.4th at p. 711.) Respondent did not breach this fiduciary obligation.

Finally, equitable estoppel is inapplicable. Equitable estoppel applies where "the plaintiff was induced to refrain from bringing a timely action by the fraud, misrepresentation or deceptions of defendant. [Citations.]" (*Kleinecke v. Montecito Water Dist.* (1983) 147 Cal.App.3d 240, 245.) A plaintiff may establish equitable estoppel if the defendant was aware of the facts and intended that his conduct be acted upon. Additionally, the plaintiff must be ignorant of the true facts and rely upon the defendant's conduct to his injury. (*Id.* at pp. 245-246.) Appellants have not set forth the elements of equitable estoppel. They have alleged no wrongful conduct on the part of respondent. Further, the allegations, attachments and admissions in related pleadings show that appellants were fully aware of respondent's actions, and in fact, instructed them to carry out those actions.

---

[4] Even if we were to view the MTI lawsuit as the event triggering discovery of harm, such discovery occurred long before the trial court's ruling on the lis pendens motion. MTI had alleged from the commencement of its lawsuit in October 2011 that Shlaimoun was using Versailles to defraud his creditors. Under the circumstances, a trial court ruling confirming MTI's allegations was not necessary to trigger the discovery of harm.

Appellants have failed to present any sound argument as to why this court should not enforce the contractual limitations period. Therefore, appellants' claims are time-barred.

IV. Appellants have failed to state any viable cause of action against respondent

Appellants alleged 11 causes of action against respondent. None of them survives demurrer.

As to the negligence, breach of contract, breach of covenant of good faith and fair dealing, breach of implied in fact and written contract, breach of fiduciary duty, and express contractual indemnity causes of action, appellants have failed to allege a breach of any duty in contract or tort. Further, appellants' claims are barred by the contractual limitation period.

As to the indemnity, equitable indemnity, statutory indemnity and contribution claims, appellants have failed to allege that appellants' loss caused by the adverse judgment against them is attributable to respondent. Further, these claims are barred by the contractual limitation period.

As to the claim for unfair business practices under Business and Professions Code section 17200, appellants have failed to allege that respondent committed "unlawful, unfair or fraudulent business act or practice." (Bus. & Prof. Code, § 17200.) Further, the claim is barred by the contractual limitation period.

V. The trial court did not abuse its discretion in sustaining the demurrer without leave to amend

The trial court concluded that "[appellants] have not shown that they can validly amend the complaint to allege any of their claims." Appellant argues that the trial court abused its discretion in denying leave to amend to cure the claimed deficiencies in the complaint. Appellant argues generally, "[i]f

any additional facts were necessary, a Third Amended Complaint should have been permitted."

Appellants have the burden to 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; see also *Goodman v. Kennedy* (1976) 18 Cal.3d 335, 349 ["Plaintiff must show in what manner he can amend his complaint and how that amendment will change the legal effect of his pleading"].)

Appellants have not met their burden of showing a reasonable possibility that a third amended complaint would change the result.[5] Under the circumstances, we find that no abuse of discretion occurred.

---

[5] Appellants offer to amend the SAC to allege that the escrow instructions were illegal to the extent that they permitted the escrow company to change the grant deed after it had been executed by whiting out the names. Such an amendment would not change the result, as appellants specifically directed respondent to undertake the modifications. Thus, appellants would bear the responsibility for any such illegal actions. An escrow holder has "'no general duty to police the affairs of its depositors,'" (*Summit, supra,* 27 Cal.4th at p. 711), and "'incurs no liability for . . . a loss caused by following the escrow instructions [citation].'" (*Id.* at p. 715.)

DISPOSITION

The judgment is affirmed. Respondent is awarded its costs of appeal.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS.

_____, J.
CHAVEZ

We concur:

_____, Acting P. J.
ASHMANN-GERST

_____, J.
HOFFSTADT