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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

HANG JUN LEE, Plaintiff and Appellant, v. HELEN PARK, Defendant and Respondent.	B269966 (Los Angeles County Super. Ct. No. SC122840)

APPEAL from a judgment of the Superior Court of Los Angeles County, Gerald Rosenberg, Judge. Affirmed.

Law Offices of Lawrence R. Bynum and Lawrence R. Bynum for Plaintiff and Appellant.

Ervin Cohen & Jessup and Rodney C. Lee for Defendant and Respondent.

Plaintiff and appellant Hang Jun Lee (Plaintiff) appeals a judgment dismissing his first amended complaint following an order sustaining the demurrer of defendant and respondent Helen Park (Park) without leave to amend.

The trial court properly determined the complaint on its face discloses the action is time-barred. Therefore, the judgment of dismissal is affirmed.

FACTUAL AND PROCEDURAL BACKGROUND

1. *Allegations of the complaint*.

Plaintiff filed suit against Park on July 17, 2014. The operative first amended complaint, filed in February 2015, alleged in relevant part:

Plaintiff is an equitable lienholder on certain real property located in Malibu, California, while Park holds legal title to the property.

In 1986, Plaintiff's late brother, Hyung Lee (brother), purchased the property. In 1993, brother began experiencing financial difficulties and entered into an agreement with Plaintiff that if Plaintiff made the mortgage payments and paid the real property taxes on the property, they "would jointly own the property equally." In 1993, in reliance on that promise, Plaintiff paid over $80,000 toward the loan secured by the real property and for back taxes. These payments continued consistently through 2008. In total, Plaintiff expended over $300,000 to pay off the loan encumbrance on the property as well as for real property taxes.

Unbeknownst to Plaintiff, brother had deeded the property to Park in 1991 as a gift. She paid no consideration for the transfer, did not make the loan or tax payments, and was not a bona fide purchaser for value. Despite the conveyance to Park,

the county continued to send property tax bills to Plaintiff, which he paid.

On May 25, 2007, brother died.[1] As a consequence, brother was unable to convey the promised interest in the property to Plaintiff. Park knew that Plaintiff was making the payments on the property, but she failed to advise him that brother no longer held legal title to the property. Park, although "aware of the payments made by [Plaintiff], refuses to reimburse [Plaintiff] for the expenditures. Accordingly, [Plaintiff] asserts an equitable lien against the Property."

Plaintiff alleged the action was timely because within "the last four years, in January of 2013, [Plaintiff] presented a demand for repayment of the funds advanced to benefit [Park], which account [she] has ignored."

2. *Park's demurrer to the first amended complaint.*

Park demurred, asserting the action was time-barred. Park reasoned the applicable statute of limitations was no longer than four years, and the limitations period begins to run when the injured party discovers or should have discovered the facts supporting liability. Here, the limitations period began to run no later than May 2007, when Plaintiff's brother died,[2] or

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[1] Although the complaint included the allegation of brother's death, the date of death was not pled in the complaint. However, that date was before the trial court by way of Park's request for judicial notice. (*Walgreen Co. v. City and County of San Francisco* (2010) 185 Cal.App.4th 424, 433 (*Walgreen*) [in determining sufficiency of pleading, matters judicially noticeable may be treated as having been pled].)

[2] In support of her demurrer, Park requested judicial notice of brother's death certificate, which reflected that he died in May

alternatively, in 2008, when Plaintiff admittedly ceased making payments on the property. Therefore, the instant action, commenced in 2014, was time-barred.

3. *Plaintiff's opposition to the demurrer*.

In opposition, Plaintiff contended the action was timely because the statute of limitations began to run in 2013, when he demanded payment from Park, and he filed suit the following year.

4. *Trial court's ruling*.

On August 13, 2015, the matter came on for hearing. The trial court sustained Park's demurrer without leave to amend stating: "The complaint is barred by the statute of limitations. The claim accrued in 2008 when the loan and tax payments were last made." The trial court added, "[a]lso, the complaint is uncertain (oral agreement or written agreement)."

A judgment of dismissal was entered on January 20, 2016. This timely appeal followed.

CONTENTIONS

Plaintiff contends the trial court erred in dismissing his complaint because his equitable lien claim was timely filed, less than one year after he demanded payment from Park.

DISCUSSION

1. *Standard of appellate review*.

Our review of the trial court's order sustaining the demurrer without leave to amend is governed by settled principles. " '[O]ur standard of review is de novo, "i.e., we

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2007. It appears the trial court granted Park's request for judicial notice, because the judgment states the court considered the demurrer as well as "supporting documentation."

exercise our independent judgment about whether the complaint states a cause of action as a matter of law." [Citation.]' [Citation.] ' " 'We treat the demurrer as admitting all material facts properly pleaded, but not contentions, deductions or conclusions of fact or law. [Citation.] We also consider matters which may be judicially noticed.' [Citation.]" ' [Citation.] 'We affirm if any ground offered in support of the demurrer was well taken but find error if the plaintiff has stated a cause of action under any possible legal theory. [Citations.] We are not bound by the trial court's stated reasons, if any, supporting its ruling; we review the ruling, not its rationale. [Citation.]' [Citation.]" (*Walgreen*, *supra,* 185 Cal.App.4th at p. 433.)

2. *The pleading on its face discloses the action is time-barred; the cause of action accrued no later than May 2007, when brother died without performing his promise to convey a joint interest in the property to Plaintiff.*

a. *Action on alleged agreement is time-barred.*

The gravamen of the complaint is as follows: Beginning in 1993, Plaintiff allegedly paid off an $80,000 encumbrance and regularly paid the real property taxes as well as loan payments, in "reliance upon [brother's] promise" that Plaintiff and brother "would jointly own the property equally." Brother died in May 2007. Despite brother's failure during his lifetime to convey a joint interest in the property to Plaintiff, Plaintiff "consistently continued" to make tax and loan payments on the property "through 2008." Plaintiff demanded payment from Park more than four years later, in January 2013.

Generally speaking, a cause of action accrues at the time the cause of action is complete with all of its elements. (*Fox v. Ethicon Endo-Surgery, Inc.* (2005) 35 Cal.4th 797, 806.) "An

important exception to the general rule of accrual is the 'discovery rule,' which postpones accrual of a cause of action until the plaintiff discovers, or has reason to discover, the cause of action. [Citations.]" (*Id*. at p. 807.)

Here, as of May 2007, when brother died, Plaintiff either knew or should have known that brother had not performed his promise to provide Plaintiff with a "joint interest" in the property. Assuming arguendo that the alleged agreement between Plaintiff and brother was written rather than oral, the four-year period to sue upon brother's promise expired no later than May 2011. (Code Civ. Proc., § 337, subd. (1).)

Notwithstanding the expiration of the time to enforce brother's promise that they would jointly own the property, Plaintiff contends he has a viable cause of action against Park based on an equitable lien and/or an account stated to recover his alleged $300,000 in expenditures. We disagree.

b. *Equitable lien extinguished*.

Plaintiff contends that, having greatly benefitted Park's property, he has a timely equitable lien claim against her. The argument fails.

By way of background, "[a]n equitable lien is a right to subject property not in the possession of the lienor to the payment of a debt as a charge against that property. [Citation.] It may arise from a contract which reveals an intent to charge particular property with a debt or 'out of general considerations of right and justice as applied to the relations of the parties and the circumstances of their dealings.' [Citation.] 'The basis of equitable liens is variously placed on the doctrines of estoppel, or unjust enrichment, or on the principle that a person having obtained an estate of another ought not in conscience to keep it as

between them; and frequently it is based on the equitable maxim that equity will deem as done that which ought to be done, or that he who seeks the aid of equity must himself do equity.' (53 C.J.S. Liens, § 5, pp. 462–463, fns. omitted.)" (*Farmers Ins. Exchange v. Zerin* (1997) 53 Cal.App.4th 445, 453.)

Although an equitable lien can arise " 'where a party agrees to give a mortgage or lien on property, or imperfectly attempts to execute such mortgage or lien, . . . equity will grant such relief only as incidental to the enforcement of the original obligation.' '*A lien is extinguished by the lapse of the time within which . . . an action can be brought upon the principal obligation*.' (Civ. Code, sec. 2911.)" (*Beal v. United Properties Co. of California* (1920) 46 Cal.App. 287, 297–298, italics added; accord *Filmservice Laboratories, Inc. v. Harvey Bernhard Enterprises, Inc*. (1989) 208 Cal.App.3d 1297, 1308-1309 (*Filmservice*); *Diamond Heights Village Assn., Inc. v. Financial Freedom Senior Funding* Corp. (2011) 196 Cal.App.4th 290, 302 [a lien is not a debt but acts a security for payment of a debt or other obligation].)

Here, because the "principal obligation," brother's alleged promise to convey joint ownership of the property in exchange for Plaintiff's loan and tax payments, is time-barred, Plaintiff's equitable lien claim against Park is likewise barred. (*Filmservice*, *supra*, 208 Cal.App.3d at pp. 1308-1309.)

c. *No facts showing an account stated*.

Alternatively, Plaintiff characterizes his January 2013 demand to Park for payment as an account stated. Plaintiff

contends the statute of limitations began to run with his January 2013 demand, making the 2014 lawsuit timely.[3] We disagree.

"The essential elements of an account stated are: (1) previous transactions between the parties establishing the relationship of debtor and creditor; (2) an agreement between the parties, express or implied, on the amount due from the debtor to the creditor; (3) a promise by the debtor, express or implied, to pay the amount due. [Citations.]" (*Zinn v. Fred R. Bright Co.* (1969) 271 Cal.App.2d 597, 600; accord, *Leighton v. Forster* (2017) 8 Cal.App.5th 467, 491.)

The complaint fails to allege facts to state a claim for an account stated. Absent from the complaint are any facts to show a history of prior transactions establishing a debtor/creditor relationship between Park and Plaintiff, an agreement between the parties on the amount due from Park to Plaintiff, or a promise by Park to pay the amount due. The pleading merely alleges that Park's "Property has benefited from the expenditures made by [Plaintiff]." Therefore, we reject Plaintiff's theory that his January 2013 demand to Park gave rise to a timely account stated.

Further, Plaintiff could not resuscitate the expired statute of limitations to enforce his brother's promise simply by making a belated demand to Park in January 2013, after the time for enforcing brother's promise had expired. A plaintiff "cannot . . . indefinitely suspend the running of the statute [of limitations] by delaying to make a demand. . . . Where, as here, a

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[3] An action to recover "upon an account stated based upon an account in writing" is subject to a four-year statute of limitations. (Code Civ. Proc., § 337, subd. (2).)

plaintiff has it in his power at all times to fix his right of action by making a demand on defendant, such demand must be made within a reasonable time after it can be lawfully made, and such a demand must be made within the period of the statute of limitations. [Citation.]" (*Stafford v. Oil Tool Corp*. (1955) 133 Cal.App.2d 763, 765-766; accord, *Ginther v. Tilton* (1962) 206 Cal.App.2d 284, 286; see also *Filmservice*, *supra*, 208 Cal.App.3d at p. 1308 [time-barred action to enforce oral contract could not be resurrected by device of pleading a common count for account stated in lieu of the oral contract].)

d. *No showing that complaint can be amended to state a cause of action.*

Lastly, Plaintiff contends leave to amend should have been granted because if the 2013 account statement "has any claim that occurred within four years of its rendering, the statute of limitations issue would be eliminated. The statement in 2013 could contain accrued interest or other charges claimed within the four years of the filing of the complaint."

The argument lacks merit. The inclusion of accrued interest or other charges in Plaintiff's 2013 statement would not cure the defects in the pleadings discussed above. As indicated, Plaintiff failed to plead facts showing the existence of a debtor/creditor relationship between the parties, or any of the other essential elements of an account stated.

DISPOSITION

The judgment of dismissal is affirmed. Park shall recover her costs on appeal.

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EDMON, P. J.

We concur:

LAVIN, J.

JOHNSON (MICHAEL), 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.