

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

LARCHMONT VILLAGE
PARTNERS ONE, LLC.,

Plaintiff and Appellant,

v.

CITY OF LOS ANGELES,

Defendant and Respondent.

B265969

(Los Angeles County
Super. Ct. No. BS125092)

APPEAL from a judgment of the Superior Court of Los Angeles County, Stephanie M. Bowick, Judge. Reversed.

BerkeHakimi, Jeff Berke and Helga Hakimi for Plaintiff and Appellant.

Michael N. Feuer, City Attorney, Terry Kaufmann Macias, Assistant City Attorney, and Jennifer K. Tobkin, Deputy City Attorney, for Defendant and Respondent.

Plaintiff, Larchmont Village Partners One LLC, appeals from a June 25, 2015 judgment of dismissal entered pursuant to Code of Civil Procedure¹ sections 583.310 and 583.360, subdivision (a). Plaintiff contends Judge Stephanie M. Bowick erred in granting the dismissal motion of defendant, City of Los Angeles, because the case was not tried within five years after it was filed. Plaintiff argues the five-year provision of section 583.310 is inapplicable because Judge Soussan G. Bruguera granted defendant's judgment on the pleadings motion without leave to amend on January 30, 2013. We agree.

Plaintiff's mandate petition and complaint was filed on February 26, 2010. The mandate petition and complaint consisted of claims: to set aside a revocation of a building permit and occupancy certificate for a restaurant; to cancel an instrument because of a cloud on the title; for violation of equal protection; and for violations of civil rights pursuant to title 42 United States Code section 1983. On December 30, 2011, Judge Bruguera denied plaintiff's mandate petition, the first cause of action. Judge Bruguera's order denying the mandate petition claim was denominated a judgment. On August 28, 2012, defendant filed a judgment on the pleadings motion as to the second through fourth causes of action. On January 31, 2013, Judge Bruguera granted defendant's judgment on the pleadings motion without leave to amend as to plaintiff's remaining claims in a lengthy written order. Judgment was entered against plaintiff on March 4, 2013. On April 9, 2013, plaintiff filed a new

¹ Further statutory references are to the Code of Civil Procedure unless otherwise indicated.

trial motion. On May 2, 2013, Judge Bruguera denied the new trial motion. At the same time, on her own initiative, Judge Bruguera reconsidered her ruling on the judgment on the pleadings motion. She then granted plaintiff leave to amend. Amended pleadings were filed and related litigation ensued. The operative second amended complaint consists of a single claim for violation of equal protection of the laws.

On December 23, 2014, the case was reassigned to Judge Bowick. On April 27, 2015, defendant moved to dismiss the second amended complaint because the case was not tried within five years. On June 1, 2015, Judge Bowick granted defendant's dismissal motion and plaintiff timely appealed.

We agree with plaintiff that the lawsuit was brought to trial within five years of its February 26, 2010 filing. All causes of action were resolved by Judge Bruguera when she signed the January 30, 2013 order granting judgment on the pleadings without leave to amend. The sustaining of a demurrer or granting of a judgment on the pleadings motion without leave to amend constitutes a trial for purposes of the involuntary dismissal statutes. (*McDonough Power Equipment Co. v. Superior Court* (1972) 8 Cal.3d 527, 532 [“*The essential thing is that the action be brought to a stage where final disposition is to be made of it.*”]; *Berri v. Superior Court* (1955) 43 Cal.2d 856, 858-860 [same]; see *Eliceche v. Federal Land Bank Assn.* (2002) 103 Cal.App.4th 1349, 1353; *In re Marriage of Dunmore* (1996) 45 Cal.App.4th 1372-1377; *Finnie v. District No. 1 - Pacific Coast Dist, etc. Assn.* (1992) 9 Cal.App.4th 1311, 1317-1318; 6 Witkin, Cal. Procedure (5th ed. 2008) § 379, pp. 823-224.) The fact that

Judge Bruguera later set aside her order denying leave to amend is irrelevant. The point is that there was a trial which brought the case to a final disposition and, thus, the five-year rule does not require dismissal. (*McDonough Power Equipment Co. v. Superior Court, supra*, 8 Cal.3d at p. 533 [“since the action has been brought to trial, the five year provision of such section has no application.”]; Weil & Brown, Cal. Practice Guide: Civil Procedure Before Trial (The Rutter Group 2016) ¶ 11:198, p. 11-82.)

The parties have raised other contentions. These include the effect of Judge Bruguera’s determination on her own initiative to set aside the order granting the judgment on the pleadings motion. The issue before us is whether dismissal was appropriate pursuant section 583.310. We need not address the parties’ other contentions which are collateral to the dismissal issue.

The judgment of dismissal is reversed. Plaintiff, Larchmont Village Partners One LLC, is to recover its costs incurred on appeal from defendant, City of Los Angeles.

NOT TO BE PUBLISHED IN THE
OFFICIAL REPORTS

TURNER, P.J.

We concur:

BAKER, J.

KIN, J.*

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