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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS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 EIGHT

JOSEPH DANESHRAD, Plaintiff and Appellant, v. MARLO VAN OORSCHOT, Defendant and Respondent.	B269967 (Los Angeles County Super. Ct. No. SC123758)

APPEAL from a judgment of the Superior Court of Los Angeles County, Craig D. Karlan, Judge. Affirmed.

Daneshrad Law Firm and Joseph Daneshrad for Plaintiff and Appellant.

Lewis Brisbois Bisgaard & Smith, Raul L. Martinez, Kenneth C. Feldman and Christina M. Guerin for Defendant and Respondent.

INTRODUCTION

Plaintiff Joseph Daneshrad appeals the trial court's judgment dismissing Daneshrad's case after the court sustained Defendant Marlo Van Oorschot's demurrer without leave to amend. We affirm because the statute of limitations bars Daneshrad's causes of action.

FACTS AND PROCEDURAL BACKGROUND

Because this case comes to us on demurrer, we base our recitation of the facts on the operative complaint and those facts judicially noticed by the trial court.

Both Daneshrad and Van Oorschot are attorneys. In July 2010, Daneshrad contacted Van Oorschot about a family law proceeding, in which Daneshrad was attorney of record. Van Oorschot indicated that her law firm, Van Oorschot Law Group, would be willing to represent Daneshrad's client in that action. Pending the client's actual retention of Van Oorschot Law Group, Daneshrad and Van Oorschot agreed that her firm would provide legal advice directly to Daneshrad at a $415 hourly rate as a consultant on the client's case. The parties apparently anticipated that the client would formally retain Van Oorschot Law Group at some time in the future. In the interim, the dealings were to be between the two lawyers.

On July 23, 2010, Daneshrad and Van Oorschot entered into a written agreement for the consulting services. On August 8, 2010, Van Oorschot Law Group and the client executed a separate agreement that contemplated Van Oorschot Law Group would become attorney of record in the family law case as soon as the client paid Van Oorschot Law Group a retainer. The agreement was expressly conditioned on the payment of an initial retainer of $25,000, made in three payments over a 20-day

period. Additional relevant language of that agreement is as follows:

> "This deposit [the retainer] shall be paid pursuant to the following schedule. **If any single payment is late, this firm will have no obligation to be your attorney of record in this matter** but will only act as the consulting attorney to your current attorney, Joseph Daneshrad, pursuant to a previously entered engagement agreement with Mr. Daneshrad." (Emphasis in original.)

It appears that the client paid Van Oorschot Law Group $15,000 of the $25,000 retainer and then refused to pay the balance. Van Oorschot Law Group never became attorney of record for the client.

In August 2010, pursuant to the terms of the consulting agreement between the parties, Van Oorschot Law Group sent Daneshrad a bill for $21,578.95 for services rendered on the client's case. Although Daneshrad acknowledged he owed $1,787.50 for consulting services, he objected to the remainder of the bill because he had not authorized most of the work. He apparently sent Van Oorschot Law Group a check in the undisputed amount, but the law firm refused the tender. On February 14, 2012, Van Oorschot Law Group sued Daneshrad for breach of the consulting contract. After a bench trial, judgment was entered in favor of Van Oorschot Law Group including $68,451.59 in damages, costs, and attorney fees.[1]

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[1] This first lawsuit by Van Oorschot Law Group preceded Daneshrad's present action that is the subject of the current appeal.

On February 11, 2015, Daneshrad filed the present action against Van Oorschot individually, alleging causes of action for false promise, fraudulent concealment, intentional misrepresentation, and negligent misrepresentation. Daneshrad did not name Van Oorschot Law Group as a party. Van Oorschot demurred to the complaint, and the court sustained the demurrer with leave to amend.

On October 5, 2015, Daneshrad filed his first amended complaint against Van Oorschot only, once more asserting the same causes of action. Essentially, Daneshrad alleged that Van Oorschot had acted fraudulently by concealing her intention to bill him for work Daneshrad did not authorize under the guise that it was permitted by the consulting contract.

Van Oorschot again demurred, primarily arguing that Daneshrad's claims were barred by the three-year statute of limitations and the compulsory cross-complaint rule. (Code Civ. Proc., § 426.30, subd. (a); see *Align Technology, Inc. v. Tran* (2009) 179 Cal.App.4th 949, 952 ["California's compulsory cross-complaint statute prohibits a party from asserting a claim if, at the time the party answered a complaint in prior litigation, it failed to allege in a cross-complaint any then-existing, related cause of action against the plaintiff."].) Van Oorschot asserted Daneshrad had admitted in his first amended complaint that he had had notice of the claims in September 2010. For support, Van Oorschot cited paragraph 26 of Daneshrad's pleading, which stated: "Upon receipt of [Van Oorschot Law Group]'s initial August 29, 2010 invoice, [Daneshrad] immediately objected to it and disputed the bill by sending a letter to [Van Oorschot] on September 1, 2010 noting that [Van Oorschot Law Group] was only hired as a consultant by him, and that the services on the

bill were performed without ever having consulted with him or being authorized by him." Van Oorschot further argued that Daneshrad agreed he had authorized certain items in the bill but was only willing to pay $1,787.50 because the remainder was unauthorized. Van Oorschot's ultimate point was that despite having notice of the alleged fraud in 2010, Daneshrad nonetheless waited until 2015 to bring these claims.

In response, Daneshrad argued that the causes of action for fraud were not discovered until February 2013 and thus were not barred by the statute of limitations or the compulsory counterclaim rule. Daneshrad cited a subsequent paragraph of his first amended complaint that stated: "[Van Oorschot]'s concealed intention was revealed, for the first time, by [Van Oorschot] in her declaration in opposition to Motion for Summary Judgment, signed on February 27, 2013, wherein she made the following claim: All parties to these agreements understood the intent here—that the [Van Oorschot Law Group] would be working as a consultant to Plaintiff pursuant to the terms of the Consulting Agreement until such time as all conditions precedent to the Attorney-Client Agreement were met, and then, and only then would [Van Oorschot Law Group] start billing [the client] pursuant to the terms of the Attorney-Client Agreement." The first amended complaint further stated that before "December 19, 2014, [Van Oorschot] was taking the position that the legal work performed by [Van Oorschot Law Group] was in fact authorized and specifically requested by [Daneshrad] pursuant to the terms of the Consulting Agreement."

At the hearing on the demurrer, the court pointed out that Daneshrad admitted he was aware in 2010 about the billing for unauthorized work; the trial court then suggested that

Daneshrad was on notice of the alleged fraud at that time. Daneshrad repeated the arguments from his briefs, asserting that he did not know of the fraud because Van Oorschot's reason for the billing changed from her initial assertions that Daneshrad specifically authorized the services to her 2013 assertion that the consulting agreement gave authority to bill. The court on several occasions asked Daneshrad how Van Oorschot's changed rationale impacted commencement of the statute of limitations. Daneshrad failed to provide a sound answer. The court explained to Daneshrad that Van Oorschot's "intent was clear when she sent you the bill in 2010. Her intent was abundantly clear that she expected you to pay for everything. . . . How could one read anything else into the conduct of sending you a bill for all services and not [the client]? She sent it to you. Her intent was that you pay for everything. That was in 2010. So clearly even before litigation was initiated in the underlying action, you knew her intent."

The court concluded that Daneshrad's complaint was barred both by the statute of limitations and by the compulsory cross-complaint rule. In its minute order, the court stated:

> "Daneshrad admits in his first amended complaint he was aware in September 2010 that Van Oorschot charged for services not authorized by the parties' agreement (see Complaint, 26-27). Thus, Daneshrad either knew or should have known of Van Oorschot's alleged misrepresentations in 2010. Daneshrad has not offered a cogent explanation as to why he was not placed on inquiry notice in September 2010. Thus, as Daneshrad filed the instant action on February 11, 2015, more than three years after September 2010, each of his causes of action is barred by the statute of

> limitations. As such, Daneshrad's first amended complaint is barred by the statute of limitations and the demurrer to the first amended complaint is sustained, without leave to amend."

As to the compulsory cross-complaint, the court reiterated: "Daneshrad admits that by September 1, 2010, which is prior to the March 15, 2012, filing of his answer in the first action [for breach of contract], he knew Van Oorschot charged for services allegedly not authorized by the [parties'] consulting agreement. The charging of these services when Van Oorschot allegedly represented that the [Van Oorschot Law Group] would not do so without first obtaining authorization serves as the foundation to each of Daneshrad's causes of action." Based on the foregoing, the court assessed that Daneshrad's complaint was barred by the compulsory cross-complaint rule.

Finally, the court concluded that Daneshrad's complaint sought to undermine the trial court's previous judgment in favor of Van Oorschot on the same issues. The court explained:

> "You argued that once you knew about this, you made certain arguments to the trial court [in the breach of contract action] that you lost on. Ultimately, the trial court believed Defendant; believed that you were responsible for this.
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> . . .
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> "Now, in essence what you want to do is have this court give a ruling that's completely inconsistent with the prior court; wherein the prior court found no fraud, no lying, found this is what the agreement was and found no breach of contract. If the court had found for you in the other action, you wouldn't be here

today presumably because there would be no action, no need for it.

"But the problem is [that] you lost in that case. There was a judgment entered. And now what you want to do is come to this court and have me basically undo it by saying . . . they lied in that case and before that case. . . . [I]t frankly undermines the prior case."[2]

The trial court sustained the demurrer without leave to amend and dismissed Daneshrad's complaint.

DISCUSSION

1. Standard of Review

Daneshrad contends that the court erred in sustaining the demurrer without leave to amend. "A demurrer tests the legal sufficiency of the complaint." (*Roman v. County of Los Angeles* (2000) 85 Cal.App.4th 316, 321 (*Roman*).) We review the complaint de novo to determine whether it states a cause of action. (*Id.* at p. 322.) "The properly pleaded material factual allegations, together with facts that may be properly judicially noticed, are accepted as true." (*Ibid.*) "Where a demurrer is sustained without leave to amend, the reviewing court must determine whether the trial court abused its discretion in doing

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[2] Without expressly invoking the words, the trial court appeared to find that collateral estoppel precluded all of Daneshrad's claims against Van Oorschot. (See *Lucido v. Superior Court* (1990) 51 Cal.3d 335, 341 ["Collateral estoppel precludes relitigation of issues argued and decided in prior proceedings."]). The court's collateral estoppel concerns were apt because Van Oorschot's alleged fraud was raised in the original lawsuit. Daneshrad mentioned collateral estoppel in his opening brief. Nevertheless, because the issue was not squarely before the trial court, we do not address collateral estoppel on appeal.

so. [Citation.] It is an abuse of discretion to deny leave to amend if there is a reasonable possibility that the pleading can be cured by amendment."[3] (*Ibid.*)

2. Daneshrad Claims Are Barred by the Statute of Limitations

As we have observed, the trial court based its decision to sustain the demurrer on several grounds. Because it is dispositive, we only consider the statute of limitations. " 'The defense of statute of limitations may be asserted by general demurrer if 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.) "A general demurrer based on the statute of limitations is only permissible where the dates alleged in the complaint show that the action is barred by the statute of limitations. [Citation.] The running of the statute must appear 'clearly and affirmatively' from the dates alleged." (*Roman, supra,* 85 Cal.App.4th at p. 322.)

The statute of limitations for fraud, negligent and intentional misrepresentation, and false promise causes of action is three years. (Code Civ. Proc., § 338, subd. (d); *Broberg v. The Guardian Life Ins. Co. of America* (2009) 171 Cal.App.4th 912, 920.) This three-year statute of limitations begins to run "upon the discovery by the aggrieved party of the fraud or facts that would lead a reasonably prudent person to suspect fraud." (*Debro v. Los Angeles Raiders* (2001) 92 Cal.App.4th 940, 950; Code Civ. Proc., § 338, subd. (d) [cause of action accrues upon

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[3] Daneshrad does not suggest in his appellate briefs that there is a basis on which he could amend his first amended complaint.

"the discovery, by the aggrieved party, of the facts constituting the fraud or mistake"].)

Here, Daneshrad alleged that Van Oorschot billed him for services he did not authorize and misrepresented that the billing was actually authorized under the consulting contract. In his first amended complaint, Daneshrad admitted he received a bill for the unauthorized services in August 2010 and that he objected to the bill in writing in September 2010. Thus the claimed fraud was committed, and Daneshrad had knowledge of the fraud, no later than September 2010.

We agree with the trial court that Daneshrad's claims are barred by the statute of limitations. The complaint on its face shows that Daneshrad had notice of the claimed fraudulent billing in 2010. At the very least, Daneshrad had notice of facts that would make a reasonable person suspect fraud: he had a consulting contract with Van Oorschot Law Group and he knew Van Oorschot billed Daneshrad for services that he believed were unauthorized by that contract. Despite Van Oorschot Law Group suing to enforce the consulting agreement and to obtain payment for these allegedly unauthorized services, Daneshrad neither filed a cross-complaint nor brought a separate action for fraud within the three-year period, waiting instead until February 11, 2015 to file the present action.

As he had alleged in the first amended complaint Daneshrad argues on appeal that he had no notice of the fraud until 2013. This conclusory statement is at odds with Daneshrad's admission that he objected to, and refused to pay bills for unauthorized work in 2010. Regardless of whether Van Oorschot said Daneshrad specifically authorized the services or the consulting contract authorized them, Daneshrad's potential

claims remained the same. Under either theory, Daneshrad accused Van Oorschot in 2010 of misrepresenting that the services were authorized.

Daneshrad argues the statute of limitations is a question of fact in this case; we disagree. His complaint explicitly sets forth dates showing that Daneshrad was on notice regarding the unauthorized bills. Such facts are not susceptible to opposing inferences and support only one legitimate inference regarding the date Daneshrad knew of the alleged fraud. The trial court appropriately decided this as an issue of law. (See *Saliter v. Pierce Brothers Mortuaries* (1978) 81 Cal.App.3d 292, 300 ["Where. . . as in this case, the allegations bearing upon the issue of whether plaintiff had constructive notice of allegedly undiscovered facts would support only one legitimate inference, the question becomes one of law."].)

3. Consideration of Other Theories is Unnecessary

Because we hold that the statute of limitations bars all of the claims alleged in the first amended complaint, we need not address the other grounds relied on by the trial court in sustaining the demurrer or the other arguments Daneshrad raises on appeal.

DISPOSITION

We affirm the judgment. Defendant Marlo Van Oorschot is awarded costs on appeal.

RUBIN, J.

WE CONCUR:

BIGELOW, P. J. GRIMES, J.