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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

CARL JAMES SOHN,

Plaintiff and Appellant,

v.

ORIENTAL MISSION CHURCH et al.,

Defendants and Respondents.

B279950

(Los Angeles County
Super. Ct. No. BC617429)

APPEAL from a judgment of the Superior Court of Los Angeles County, Dalila Corral Lyons, Judge. Reversed and remanded with directions.

Carl James Sohn in pro. per. for Plaintiff and Appellant.

The Morrison Law Group, Edward F. Morrison, Jr. and
Larry A. Schwartz for Defendants and Respondents.

Plaintiff and appellant Carl James Sohn (Sohn), an attorney, filed the present action to recover unpaid legal fees from defendants and respondents Oriental Mission Church (Church) and its senior pastor, Hyung Jim Bob Park (Park), (collectively, Defendants). Defendants demurred, asserting that the complaint on its face disclosed the action was time-barred. The trial court sustained the demurrer without leave to amend and entered a judgment of dismissal.

We conclude the trial court erred in sustaining Defendants' demurrer on statute of limitations grounds. Sohn's causes of action for breach of written contract and breach of the implied covenant of good faith and fair dealing, governed by a four-year statute of limitations, are timely and must be reinstated. As for Sohn's other causes of action—breach of oral contract, quantum meruit, and negligent misrepresentation—Sohn adequately alleged that Defendants are equitably estopped to assert the statute of limitations defense. Therefore, the judgment of dismissal is reversed with directions to reinstate the action in its entirety.

FACTUAL AND PROCEDURAL BACKGROUND

1. Pleadings.

On April 19, 2016, Sohn, doing business as Law Offices of Carl James Sohn, filed suit against various defendants, including the Church and Park, for (1) breach of written contract, (2) breach of oral contract, (3) negligent misrepresentation, (4) breach of the implied covenant of good faith and fair dealing, and (5) quantum meruit. In the action, Sohn sought to recover \$768,358.95 for legal services rendered. A copy of the operative February 2011 retainer agreement, which superseded a prior retainer agreement, was appended to the complaint as an exhibit.

Sohn's complaint detailed the extensive work he had done on Defendants' behalf. Sohn alleged in relevant part:

The Church is a nonprofit religious corporation. Its governing body is the Church Session (Session), which is also its board of directors. On November 5, 2006, Reverend Choon Min Kang (Kang), then senior pastor, dissolved the Session and established a "steering committee/operations committee" to govern the Church. On January 5, 2007, the elders who had been ousted from the Session requested that Sohn represent them; they further asked that he wait to be paid until they could access the Church's funds. Sohn agreed, on the condition that they pay his out-of-pocket expenses and make monthly payments of \$3,000.

On February 15, 2007, Sohn filed suit in the superior court on behalf of the nine ousted elders. The matter proceeded to trial, and on July 17, 2009, the trial court entered a judgment for the elders and restored the Session, finding it was dissolved improperly and that it was the governing body of the Church.

On April 6, 2007, Sohn filed another lawsuit at the request of the ousted elders, which alleged that Kang had purchased real property for the Church without the consent of the Session.

On November 8, 2009, Kang resigned and the ousted elders became the recognized governing body of the Church. After the ousted elders regained control of the Church, Sohn requested payment of his attorney fees. He was told that there was continuing litigation over control of Church property, and that he would be paid when the lawsuits were resolved.

At the Session's request, Sohn filed another lawsuit on April 14, 2010, which sought declaratory relief to determine the

rightful members of the Session, as well as a permanent injunction.

In January 2011, the Session asked Sohn to substitute in on two cases being defended by another attorney. Sohn did so, the cases proceeded to trial, and the Church prevailed in both cases.

On January 6, 2011, an employee sued the Church for overtime and related violations, seeking \$250,000. The Session again asked Sohn to represent it, and he achieved a settlement in the summer of 2012 for \$30,000.

In July 2011, the Session asked Sohn to represent it in another labor dispute. Trial in that case was continued to enable the parties to engage in settlement negotiations.

On July 13, 2011, a church member, Kwi Dong Cha, filed suit against the Church and Park, its senior pastor. Sohn represented the Church and Park in that suit at their request. Sohn ultimately obtained a dismissal of that action.

On September 8, 2011, Sohn sent a letter informing the Session that he was withdrawing from representing the Church due to nonpayment of his fees. (A copy of the withdrawal letter was appended to the complaint as an exhibit.) Following the withdrawal letter, in late September 2011, Sohn was asked by Session elders to continue representing the Church in numerous pending cases, and Sohn agreed, on condition that the Church make periodic payments to him. Sohn continued to render legal services to Defendants until November 1, 2012.

Sohn pled that as of the time he filed the present action, Defendants owed him \$768,358.95, plus accrued interest, for legal services he rendered between 2007 and 2012.

With respect to the timeliness of his complaint, Sohn alleged that Session elders, including Park, repeatedly promised to pay his attorney fees and made some payments.¹ In early 2014, Session elders told him there was more than \$1.8 million in the Church bank accounts that had been blocked by the court, but that he would be paid as soon as the lawsuit was resolved. In March 2016, Sohn learned the litigation had concluded and he sent the Church a demand letter, to no avail. This lawsuit followed in April 2016.

2. Demurrer to the original complaint.

Defendants demurred to the original complaint, asserting that it was untimely on its face and could not be amended to state a timely claim. Specifically, Defendants argued that although Sohn's April 19, 2016 complaint "may be within the four year period for some of the litigated matters[], the legal representation was pursuant to the February/March 2011 Retainer Agreement which (i) could not be modified save for a writing signed by all parties (see, Article 5 of Retainer Agreement) and (ii) was terminated per a written letter dated September 8, 2011, issued by [Sohn] pursuant to Article 4.2 of Retainer Agreement. Stated differently, a review of the Complaint and the attached Retainer Agreement and [] September 8, 2011 termination letter . . . show clearly that [Sohn] has alleged that, commencing no later than September 2011, the Defendants allegedly breached the February/March 2011 Retainer Agreement and Plaintiff never obtained a Tolling

¹ In the Discussion, below, Sohn's allegations with respect to Defendants' numerous promises of payment are set forth in detail.

Agreement. The February/March 2011 Retainer Agreement could not be amended absent a signed writing by all parties (see, Article 5 of Retainer Agreement).”

Defendants further argued that Sohn could not allege delayed discovery or that the statute of limitations was equitably tolled due to alleged partial payments or alleged representations of payment. They contended that Sohn, “an attorney, was fully aware that the February/March 2011 Retainer Agreement could not be amended without a signed writing from all parties and the general allegations that some payment would be made does not pass muster.”

3. *Sohn’s opposition to the demurrer.*

In opposition, Sohn argued his action was not time-barred because his “representation did not end until late 2012,” and even after that date, Session elders approached him to represent the Church. Sohn also asserted that Defendants should be estopped from asserting the statute of limitations because during the course of his representation, various Session elders met with him and made numerous promises that the Church would pay the delinquent legal fees. Further, as a showing of good faith, the Church repeatedly sent him checks for partial payment. Finally, Sohn knew that the Church was plagued with numerous disputes and, as pled in the complaint, he agreed to wait for payment until all lawsuits were resolved. That condition did not occur until 2016, shortly before he filed suit.

4. *Trial court’s ruling.*

On September 9, 2016, the trial court sustained the demurrer to the complaint without leave to amend, stating as follows:

“Plaintiff’s claims are time barred on the face of the Complaint. Plaintiff admits that he represented Defendants pursuant to the February 2011 retainer agreement. But the Complaint also attaches the September 8, 2011 termination letter in which Plaintiff expressly withdrew as attorney for [the Church] due to the failure to make payment of past due legal fees and expressly states Plaintiff’s reasons for withdrawal are because [the Church] ‘failed to keep promises to pay [Plaintiff’s] legal fees promptly . . . [and Plaintiff] believe[s] that [the Church has] deceived Plaintiff and [has] not acted in good faith. [Plaintiff] now believe[s] that you never intended to pay my legal fees and paid just sufficient legal fees to make [Plaintiff] continue to represent [the Church]. . . . [Plaintiff] gave [the Church] the benefit of doubt and believed that [the Church] would pay [Plaintiff] when [the Church] had the financial ability to pay.’ Compl. Exh. 2. This clearly and indisputably shows Plaintiff was aware of Defendants’ failure to pay by September 8, 2011 and that Plaintiff believed he was deceived into continuing to represent [the Church] based on false promises of payment. The Complaint was not filed until April 19, 2016. The longest statute of limitations for any of Plaintiff’s causes of action is four years, meaning Plaintiff would have needed to file any action by September 8, 2015.”

The trial court further stated: “Plaintiff has not alleged any facts to show there was a tolling agreement or that equitable tolling should apply. Equitable tolling requires ‘a showing of three elements: timely notice, and lack of prejudice, to the defendant, and reasonable and good faith conduct on the part of the plaintiff.’ [Citation.] The doctrine has been used to apply when an injured person pursues another remedy for the harm

which the plaintiff suffered. [Citation.] But there is no allegation Plaintiff elected to pursue some other remedy or was lulled into not pursuing his court remedy. [Citation.] Plaintiff is an attorney and on September 8, 2011, terminated his representation of [the Church] expressly on the basis that he had not been paid, but Plaintiff waited over four years to file the action and there is no allegation Plaintiff pursued some other remedy. There are no allegations that any conduct of Defendants actually and reasonably induced Plaintiff to delay the filing of his lawsuit after the statute of limitations period ran. Plaintiff has provided no basis upon which the Complaint can be amended to state a claim.”

Sohn filed a timely notice of appeal from the judgment of dismissal.

CONTENTIONS

Sohn contends: the judgment should be reversed because he adequately pled that Defendants, as a result of their promises of payment and other inducements not to sue, were equitably estopped from asserting the statute of limitations; and even assuming the complaint was not well pled, denial of leave to amend was an abuse of discretion because the facts demonstrate he is capable of alleging equitable estoppel so as to be able to state a claim.

DISCUSSION

1. Standard of appellate review.

“In determining whether a plaintiff has properly stated a claim for relief, our standard of review is clear: ‘ “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.] Further, we give the complaint a reasonable interpretation, reading it as a whole and its parts in their context. [Citation.] When a demurrer is sustained, we determine whether the complaint states facts sufficient to constitute a cause of action. [Citation.] And when it is sustained without leave to amend, we decide whether there is a reasonable possibility that the defect can be cured by amendment: if it can be, the trial court has abused its discretion and we reverse; if not, there has been no abuse of discretion and we affirm. [Citations.] The burden of proving such reasonable possibility is squarely on the plaintiff.’ [Citations.]” (*Zelig v. County of Los Angeles* (2002) 27 Cal.4th 1112, 1126, italics added (*Zelig*).) Our review is de novo. (*Ibid.*)

2. *Trial court erred in concluding the cause of action for breach of written contract is time-barred; Sohn alleged he continued representing Defendants until November 1, 2012, and an attorney’s cause of action for compensation does not accrue until the work is completed.*

Defendants demurred to the cause of action for breach of written contract on the ground it was barred by the four-year statute of limitations. (Code Civ. Proc., 337, subd. (1)).² Defendants argued the four-year period began to run on September 8, 2011, the date of Sohn’s letter notifying Defendants of his withdrawal as attorney for their nonpayment of legal fees. The trial court agreed that Sohn’s September 8, 2011 letter terminating his representation of Defendants commenced the running of the four-year period.

² All further statutory references are to the Code of Civil Procedure, unless otherwise specified.

However, as pled in the complaint, the September 8, 2011 withdrawal letter did not terminate Sohn's representation of Defendants. The complaint alleges that subsequent to the withdrawal letter, in late September 2011, Sohn was asked by Session elders to continue representing the Church in numerous pending cases, and Sohn continued to litigate on Defendants' behalf up until November 1, 2012. With respect to legal services rendered by Sohn after the date of the withdrawal letter, the complaint specifically alleges that on March 29, 2012, Sohn successfully demurred to Cha's lawsuit against the Church, and thereafter obtained a dismissal of Cha's action. For purposes of demurrer, we treat as true Sohn's allegations that at Defendants' request, he continued to render legal services to them until November 1, 2012. (*Aryeh v. Canon Business Solutions, Inc.* (2013) 55 Cal.4th 1185, 1191.)

As a matter of law, Sohn's cause of action to recover unpaid fees did not accrue until he completed his representation of Defendants. "An attorney's right to compensation accrues at the time his work has been finished and the statute of limitations begins to run as of that time. [Citations.]" (*Atchison v. Hulse* (1930) 107 Cal.App. 640, 645 (*Atchison*)). It has long been established that a cause of action based upon a breach of contract accrues at the time of the breach, and that in the case of a personal performance contract, defendant breaches his obligation to pay at the time plaintiff completes performance of the requested act. (*E.O.C. Ord, Inc. v. Kovakovich* (1988) 200 Cal.App.3d 1194, 1203 (*Kovakovich*)).

For example, in *Kovakovich*, the attorney's services were not completed until the Internal Revenue Service recomputed the clients' tax assessment in March 1980. (*Kovakovich, supra*,

200 Cal.App.3d at p. 1206.) Therefore, the attorney's lawsuit against the clients for breach of written contract, filed on January 11, 1984, was timely. (*Id.* at p. 1203.) Similarly, in *Atchison*, where the attorney was hired to prosecute an appeal, the attorney's cause of action to recover for services rendered did not accrue until the appeal was finally terminated. (*Atchison*, *supra*, 107 Cal.App. at p. 645.)

Here, notwithstanding the September 8, 2011 "withdrawal" letter, Sohn's cause of action to recover for his services did not accrue until he ceased providing legal services to Defendants on November 1, 2012. Therefore, with respect to Sohn's cause of action for breach of written contract, the complaint filed April 19, 2016 was clearly timely.

Defendants' reliance on the language of the retainer agreement to bar Sohn's complaint is unpersuasive. Defendants' theory is that the retainer agreement specifically provided that it could be modified only by a writing signed by all the parties, and that the retainer agreement was terminated by the September 8, 2011 withdrawal letter. However, as discussed, the complaint alleged that shortly after Sohn gave notice of withdrawal, he resumed working for Defendants at their request. Thus, the parties' conduct reflects that Sohn's purported withdrawal was inoperative. Further, the scope of engagement under the retainer agreement was broad, and extended to any matters as to which "Client and Lawyer may further agree including trial, post-trial motions and appeal, and advice as to [the Church's] rights with respect to other legal and non-legal matters, [and] *if such additional services are requested by Client, such additional services shall be governed by this Agreement.*" (Italics added.)

We conclude that Sohn's representation of Defendants did not cease with the September 8, 2011 "withdrawal" letter, and that Sohn's continued employment thereafter was not in conflict with the language of the retainer agreement. Accordingly, the first cause of action for breach of written contract was timely and shall be reinstated.

3. *Sohn's cause of action for breach of the implied covenant of good faith and fair dealing likewise is timely.*

Sohn's fourth cause of action for breach of the implied covenant of good faith and fair dealing in the written retainer agreement, like the first cause of action for breach of written contract, is governed by the four-year limitations period for an action arising on a written contract. (Code Civ. Proc., § 337, subd. (1); *Krieger v. Nick Alexander Imports, Inc.* (1991) 234 Cal.App.3d 205, 220; *Ladd v. Warner Bros. Entertainment, Inc.* (2010) 184 Cal.App.4th 1298, 1309, fn. 7.) Accordingly, the fourth cause of action, like the first cause of action, is timely and shall also be reinstated.

4. *With respect to Sohn's three other causes of action, Defendants are equitably estopped to assert the statute of limitations.*

Sohn's three remaining causes of action are breach of oral contract and quantum meruit, both governed by a two-year statute of limitations (§ 339 [oral contract]; *Iverson, Yoakum, Papiano & Hatch v. Berwald* (1999) 76 Cal.App.4th 990, 996 [quantum meruit]), and negligent misrepresentation, governed by a three-year statute of limitations. (§ 338, subd. (d)); *Broberg v. The Guardian Life Ins. Co. of America* (2009) 171 Cal.App.4th 912, 920.) With respect to these causes of action, we consider

whether Sohn adequately pled that Defendants are equitably estopped to assert a statute of limitations defense.

a. *General principles.*

It is a “venerable principle that ‘ “[o]ne cannot justly or equitably lull his adversary into a false sense of security, and thereby cause his adversary to subject his claim to the bar of the statute of limitations, and then be permitted to plead the very delay caused by his course of conduct as a defense to the action when brought.” ’ [Citation.]” (*Lantzy v. Centex Homes* (2003) 31 Cal.4th 363, 383 (*Lantzy*)). Equitable estoppel “ “comes into play only after the limitations period has run and addresses . . . the circumstances in which a party will be estopped from asserting the statute of limitations as a defense to an admittedly untimely action because his conduct has induced another into forbearing suit within the applicable limitations period.” ’ ” (*Ibid.*)

When a plaintiff “ ‘relies on an estoppel against the assertion of the statute of limitations, the sufficiency of the allegations of estoppel may be tested by a general demurrer. [Citations.] Once it is determined that the elements of an estoppel have been sufficiently pleaded, however, *the question whether the statute of limitations is tolled by the conduct of the defendant is one of fact* which should be left for resolution by a jury and not determined upon general demurrer.’ ” (*Muraoka v. Budget Rent-A-Car, Inc.* (1984) 160 Cal.App.3d 107, 117, italics added.)

“ ‘Generally speaking, four elements must be present in order to apply the doctrine of equitable estoppel: (1) the party to be estopped must be apprised of the facts; (2) he must intend that his conduct shall be acted upon, or must so act that the party

asserting the estoppel had a right to believe it was so intended; (3) the other party must be ignorant of the true state of facts; and (4) he must rely upon the conduct to his injury. [Citations.]’ (*Driscoll v. City of Los Angeles* (1967) 67 Cal.2d 297, 305.) The detrimental reliance must be reasonable. (See *Lantzy v. Centex Homes, supra*, 31 Cal.4th at p. 384; *Vu v. Prudential Property & Casualty Ins. Co.* (2001) 26 Cal.4th 1142, 1152–1153.) ‘The defendant’s statement or conduct must amount to a misrepresentation bearing on the necessity of bringing a timely suit [Citations.]’ (*Lantzy v. Centex Homes, supra*, 31 Cal.4th at p. 384, fn. 18.)” (*May v. City of Milpitas* (2013) 217 Cal.App.4th 1307, 1338 (*May*).)

By way of example, “(1) if one potentially liable for a construction defect represents, while the limitations period is still running, that all actionable damage has been or will be repaired, thus making it unnecessary to sue, (2) the plaintiff reasonably relies on this representation to refrain from bringing a timely action, (3) the representation proves false after the limitations period has expired, and (4) the plaintiff proceeds diligently once the truth is discovered [citation], the defendant may be equitably estopped to assert the statute of limitations as a defense to the action.” (*Lantzy, supra*, 31 Cal.4th at p. 384.)

b. *Sohn adequately alleged that Defendants’ conduct actually and reasonably induced him to refrain from filing suit within the limitations period.*

We conclude that Sohn’s equitable estoppel allegations are adequate to survive demurrer. Specifically, the complaint alleges that after Sohn sent the September 8, 2011 withdrawal letter, the following circumstances occurred:

In late September 2011, several Session elders called Sohn and asked him to continue to represent the Church in numerous pending matters. Elder Song Lee, the Church's treasurer and controller, promised that the Church would pay him \$5,000 every two weeks to reduce the fees owed. The Church made two payments, but failed to make subsequent payments. When the promised payments were not made, Sohn again demanded the payments be made as promised. The Session elders responded that the Church was unable to pay the fees that were owed because many members had left the Church, leaving it in financial difficulty. The elders kept reassuring Sohn that he would be paid in full when the lawsuits were concluded.

In early 2012, Sohn again threatened to stop all legal work. The elders promised a \$30,000 "good faith" payment and monthly payments of \$5,000, but said the Church needed a few months to resolve its immediate crises. On June 22, 2012, Sohn received a check for \$2,500, objected to that amount as inadequate, and then received another check for \$25,000 three days later. On June 26, 2012, Sohn received a telephone call from the Church's treasurer telling him not to deposit the checks because the Church had insufficient funds due to unexpected expenses.

Several months later, the treasurer advised Sohn he would have to wait a little longer, but promised that the Church would pay the outstanding fees as soon as it sold certain real estate it was putting up for sale.

In December 2012, Sohn met with Elder Sae Lee to plead with him to get the Church to pay some of its legal fees. The elder reiterated that the Church had put several properties on the market and that Sohn would be paid as soon as the sale was completed.

In early October 2013, Sohn received a phone call from Elder Sae Lee informing him that the Church had sold its properties and had paid off \$10 million in debt, and that Sohn would be paid shortly. Sohn waited, in the belief “that he would soon receive the money owed to him.” Later that month, Sohn met with the Session elders and he agreed to waive interest on the attorney fees if he were paid by year’s end.

In December 2013, Sohn met with Elder James Park, who apologized for the delay in payment, and a few days later, Sohn received a \$10,000 payment.

On March 31, 2014, after not receiving any further payments, Sohn sent a demand letter seeking \$976,922, including principal and interest. Thereafter, Sohn met with some of the Session elders who again promised that he would be paid. Sohn was told there was more than \$1.8 million in the Church bank accounts, but the funds had been blocked by the court, and that as soon as certain litigation was resolved the funds would be released and Sohn would be paid.

In May or June of 2014, Sohn met with Session elders and again was promised that he would be paid in full.

In October or November of 2014, Sohn again met with Session elders, who told him to be patient until resolution of the sole remaining lawsuit (L.A. Super. Ct. No. BC491914). The elders again promised that the Church would pay all legal fees due Sohn when the suit was resolved and the blocked funds released. Sohn, understanding the problems the Church had, agreed to wait until the lawsuit was completed.

On March 2, 2016, Sohn met with an elder who informed him that said lawsuit had been concluded. Sohn then confirmed

that the matter had proceeded by trial and a judgment had been rendered in that action.

On March 16, 2016, Sohn sent a demand letter for payment of the fees that had been promised to him, to no avail. Sohn initiated this lawsuit five weeks later.

Taken together, Sohn's equitable estoppel allegations are adequate to survive demurrer. As we have described, the complaint alleges that Defendants repeatedly represented to Sohn that his legal fees would be paid, and that their representations actually and reasonably induced Sohn to forbear suing within the limitations period. (*Lantzy, supra*, 31 Cal.4th at pp. 382–384.) Further, Sohn pled that he learned in March 2016 that the Defendants' representations had been false, and he proceeded promptly to file this suit.

We thus conclude that Sohn has adequately pled that Defendants are equitably estopped to assert a limitations defense. The trial court erred in concluding otherwise.

DISPOSITION

The judgment of dismissal is reversed. The matter is remanded with directions to reinstate all of Sohn's causes of action. Sohn shall recover his costs on appeal.

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EDMON, P. J.

We concur:

LAVIN, J.

EGERTON, J.