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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

TOM D. SOUMAS, JR.,  
Individually and as Co-Trustee,  
etc. et al.,

Plaintiffs and Appellants,

v.

WOLFE AIR AVIATION, LTD.  
et al.,

Defendants and Respondents.

B268584

(Los Angeles County  
Super. Ct. No. BC563097)

APPEAL from a judgment of the Superior Court of Los Angeles County, Suzanne G. Bruguera, Judge. Affirmed.

Frederick Barak for Plaintiffs and Appellants.

Law Office of Michael J. Coppess and Michael J. Coppess  
for Defendants and Respondents.

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Tom D. Soumas, individually, and Tom D. Soumas and Barbara L. Soumas, as co-trustees of the Soumas Family Trust, appeal from the judgment entered after the trial court sustained the demurrer of Wolfe Air Aviation, Ltd., Hugh E. McColgan and McColgan & Vanni to the complaint for damages without leave to amend.<sup>1</sup> The action is the latest incarnation of a protracted dispute over a 1995 money judgment in an action for breach of contract. We affirm the judgment.

## **FACTUAL AND PROCEDURAL BACKGROUND<sup>2</sup>**

### *1. The Action for Breach of Contract*

In July 1994, Wolfe Air filed a complaint for breach of contract against Soumas and his corporation Zephyr Aviation Services, Inc. Soumas stipulated to entry of judgment against himself and Zephyr Aviation Services, Inc. Proceedings against Zephyr Aviation Services, Inc. were subsequently stayed following the filing of an involuntary bankruptcy petition.

On March 20, 1995, the court entered the judgment against Soumas, individually. Wolfe Air assigned the judgment to its attorneys, McColgan & Vanni, who recorded the abstract of

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<sup>1</sup> For clarity, we refer to Tom D. Soumas alone as “Soumas,” Wolfe Air Aviation Ltd. as “Wolfe Air,” and Hugh E. McColgan and McColgan & Vanni collectively as “McColgan & Vanni.”

<sup>2</sup> We take the facts from Tom and Barbara Soumas’ complaint for damages and documents submitted by the parties subject to judicial notice. (*Weiss v. City of Los Angeles* (2016) 2 Cal.App.5th 194, 205; *Vitkievich v. Valverde* (2012) 202 Cal.App.4th 1306, 1311.)

judgment. At the time, Tom and Barbara Soumas owned residential property in the City of Sylmar.

In December 2001, McColgan & Vanni renewed the judgment, which they later recorded. Tom and Barbara Soumas do not dispute the validity of this renewal.

In June 2005, Tom and Barbara Soumas transferred ownership of their residence to the revocable Soumas Family Trust, designating themselves as trustees.

In February 2007, McColgan & Vanni renewed the judgment and later recorded it. Notice of the renewal of judgment was personally served on Soumas on March 1, 2007.

In May 2014, McColgan & Vanni reassigned the judgment to Wolfe Air.

## *2. The Complaint for Damages*

On November 6, 2014, Tom and Barbara Soumas filed an unverified complaint for damages against Wolfe Air and McColgan & Vanni, alleging causes of action for declaratory relief, abuse of process and slander of title. The gravamen of the complaint is the claim that the February 2007 renewal of the judgment was “void and unenforceable” because procedural violations occurring before and after the filing of the document invalidated the judgment lien.

McColgan & Vanni filed a demurrer to all causes of action, which the trial court sustained without leave to amend. In ruling on the demurrer, the trial court found the judicially noticed documents, submitted by the parties and relating to the February 2007 renewal of the judgment, either failed to support or contradicted the factual allegations of the complaint. The court also noted the three causes of action appeared to be time-barred.

Judgment was entered in favor of McColgan & Vanni. Tom and Barbara Soumas appealed.

## DISCUSSION

### 1. *Tom and Barbara Soumas' Burden as Appellants*

Before addressing any substantive issues that may have been raised in this appeal, we identify some serious procedural deficiencies existing in Tom and Barbara Soumas' opening brief, which does not satisfy their burden on appeal to show error. (See *Bell v. H.F. Cox, Inc.* (2012) 209 Cal.App.4th 62, 80.) "An appellant must affirmatively demonstrate error through reasoned argument, citation to the appellate record, and discussion of legal authority." (*Bullock v. Philip Morris USA, Inc.* (2008) 159 Cal.App.4th 655, 685; see *Bell, supra*, 209 Cal.App.4th at p. 80.)

Tom and Barbara Soumas' "argument" in their opening brief consists of four paragraphs of conclusory statements followed by references to Code of Civil Procedure and Family Law Code provisions and no citations to the record. Such conclusory allegations unsupported by a detailed showing or citation to the record "are wholly inadequate to tender a basis for relief on appeal." (*Osgood v. Landon* (2005) 127 Cal.App.4th 425, 435; see Cal. Rules of Court, rules 8.204(a)(1)(B) & 8.204(a)(1)(C).) While Tom and Barbara Soumas cite certain statutes and one Ninth Circuit case, they provide no reasoned analysis of the authorities cited or develop any coherent discussion as to why they are applicable here. As such, although it is clear that Tom and Barbara Soumas are challenging the trial court's ruling on the demurrer, their arguments in support of that challenge are unclear. We are not tasked with searching the record to

ascertain whether it contains support for their contentions. (*Mansell v. Board of Administration* (1994) 30 Cal.App.4th 539, 545.) Nor is it our role to develop their legal theories or arguments on appeal. (*People v. Stanley* (1995) 10 Cal.4th 764, 793; *In re Marriage of Falcone & Fyke* (2008) 164 Cal.App.4th 814, 830.)

In the absence of intelligible legal arguments, we consider three of the four contentions forfeited on appeal.<sup>3</sup> (*Mansell v. Board of Administration, supra*, 30 Cal.App.4th at p. 545; *People v. Stanley, supra*, 10 Cal.4th at p. 793; *Landry v. Berryessa Union School Dist.* (1995) 39 Cal.App.4th 691, 699-700 [“When an issue is unsupported by pertinent or cognizable legal argument it may be deemed abandoned and discussion by the reviewing court is unnecessary”]; *In re Marriage of Falcone & Fyke, supra*, 164 Cal.App.4th at p. 830 [“The absence of cogent legal argument . . . allows this court to treat the contentions as waived”].)

## 2. *The Demurrer Was Properly Sustained Without Leave To Amend*

### a. *Standard of review for demurrer*

We independently review the trial court’s ruling on a demurrer and determine de novo whether the complaint alleges facts sufficient to state a cause of action or discloses a complete defense. (*C.A. v. William S. Hart Union High School Dist.* (2012) 53 Cal.4th 861, 866.) We assume the truth of the properly

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<sup>3</sup> The issues we are deeming abandoned are the expiration and voidness of the judgment and Barbara Soumas’ separate property interest. We address below the merits of the fourth contention, McColgan & Vanni’s standing to renew the judgment, as adequately developed in the reply brief.

pleaded factual allegations, facts that reasonably can be inferred from those expressly pleaded and matters of which judicial notice has been taken. (*Aryeh v. Canon Business Solutions, Inc.* (2013) 55 Cal.4th 1185, 1189, fn. 1.) Although we independently review the trial court's sustaining of a demurrer without leave to amend, we apply the abuse of discretion standard in reviewing the trial court's denial of leave to amend. (*Glen Oaks Estates Homeowners Assn. v. Re/Max Premier Properties, Inc.* (2012) 203 Cal.App.4th 913, 919.)

b. *McColgan & Vanni Had Standing To Renew the Judgment*

Tom and Barbara Soumas argue the trial court abused its discretion in sustaining the demurrer because McColgan & Vanni had no standing as judgment creditors to enforce the 1995 money judgment or to renew it. They assert McColgan & Vanni failed to become assignees of record pursuant to sections 673 and 681.020.

The judicially noticed assignment by Wolfe Air perfected the transfer of the debt upon which the 1995 money judgment was based to McColgan & Vanni, making them assignees of right. (See Civ. Code, § 954.5, subd. (a); *Great Western Bank v. Kong* (2001) 90 Cal.App.4th 28, 31-32.) To become assignees of record, and entitled to enforce the judgment, McColgan & Vanni were required either to file or record the assignment in accordance with sections 673 and 681.020.<sup>4</sup> (§§ 673, subds. (a), (c) & (d), 681.020; *California Coastal Com. v. Allen* (2008) 167 Cal.App.4th 322, 327.)

Assuming, for these purposes the truth of the allegation by Tom and Barbara Soumas, that McColgan & Vanni had not filed

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<sup>4</sup> Statutory references are to the Code of Civil Procedure.

or recorded the assignment of the 1995 money judgment at the time of the complaint, this failure did not make the assignment ineffective. First, Tom and Barbara Soumas cite no authority in support of their claim that McColgan & Vanni, as assignees of right, were precluded from renewing the judgment because they had not complied with sections 673 and 681.020. There is no specified time period within which the assignee of right must comply with sections 673 and 681.020.

Nothing in these statutes suggests that by not filing or recording the assignment as prescribed, the assignee of right renders the assignment unenforceable. However, the statutes provide that judgment creditors have no standing to obtain a writ of execution or use other enforcement mechanisms unless and until they have satisfied the statutes' filing and recording procedures to become assignees of record.<sup>5</sup> (*Great Western Bank, supra*, 90 Cal.App.4th at p. 32.) Tom and Barbara Soumas have alleged no facts in their complaint indicating McColgan & Vanni have attempted in any way to enforce the judgment lien on their residence without becoming assignees of record.

*c. The action is barred by the statutes of limitations*

A complaint fails to state a cause of action where the dates alleged establish the claim is barred by the statute of limitations. (*Anderson v. McNally* (1957) 150 Cal.App.2d 778, 783-784.)

Tom and Barbara Soumas filed their complaint for damages on November 6, 2014, alleging causes of action for declaratory relief, abuse of process and slander of title. The

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<sup>5</sup> The assignment is enforceable against third parties whether or not it has been filed or recorded. (*Fjaeran v. Board of Supervisors* (1989) 210 Cal.App.3d 434, 440.)

statute of limitations for abuse of process is two years (§ 335.1) and begins to run when the abuse occurs. (*Cantu v. Resolution Trust Corp.* (1992) 4 Cal.App.4th 857, 886-887.) For slander of title, the statute of limitations is three years (§ 338). It begins to run “when plaintiff could reasonably be expected to discover the existence of the claim.” (*Stalberg v. Western Title Ins. Co.* (1991) 230 Cal.App.3d 1223, 1230.)

The statute of limitations for declaratory relief matches that of the underlying claim. (*United Pacific-Reliance Ins. Co. v. DiDomenico* (1985) 173 Cal.App.3d 673, 676-677.) When a cause of action “is barred by the statute [of limitations], the right to declaratory relief is likewise barred.” (*Maguire v. Hibernia S. & L. Soc.* (1944) 23 Cal.2d 719, 734.) Declaratory relief is a remedy, and where the “substantive right is barred by the statute of limitations, the remedy necessarily fails,” as well. (*Embarcadero Mun. Improvement Dist. v. County of Santa Barbara* (2001) 88 Cal.App.4th 781, 793.)

Because the allegations in Tom and Barbara Soumas’ complaint relate to the February 2007 renewal of the judgment, the applicable statute of limitations for each of the alleged causes of action commenced, at the latest, on March 1, 2007 when Soumas received notice of the renewal. Thus, the statute of limitations for the abuse of process and slander of title causes of actions expired in 2009 and 2010, respectively; and the statute of limitations for the declaratory relief cause of action expired no later than 2010. The trial court properly determined the causes of action were time-barred on the face of the complaint and the judicially noticed documents.

When a complaint shows on its face or on the basis of judicially noticeable facts that a cause of action is barred by the



applicable statute of limitations, the plaintiff must plead facts that show an excuse, tolling, or some other basis for avoiding the statutory bar. (*Grange Debris Box & Wrecking Co. v. Superior Court* (1993) 16 Cal.App.4th 1349, 1359-1360, disapproved on another ground in *Lantzy v. Centex Homes* (2003) 31 Cal.4th 363, 388.)

Here, the facts alleged in the complaint and the judicially noticed documents confirmed that the statutes of limitations on the three causes of action had expired. Tom and Barbara Soumas made no effort to plead facts to show tolling or any other reason for avoiding the statutory bars. Nothing in the record suggests they sought leave from the trial court to amend the complaint. Finally, there was no indication in their briefs on appeal that the statutory bars could be overcome by additional factual allegations. Accordingly, the trial court did not abuse its discretion in sustaining the demurrer without leave to amend. (See *Campbell v. Regents of University of California* (2005) 35 Cal.4th 311, 320.)

### **DISPOSITION**

The judgment is affirmed. Respondents are to recover their costs on appeal.

ZELON, J.

We concur:

PERLUSS, P. J.

SMALL, 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.