Filed 6/28/18 Doe v. The Roman Catholic Archbishop of Los Angeles CA2/2

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION TWO

JUAN HJ DOE et al., Plaintiffs and Appellants, v. THE ROMAN CATHOLIC ARCHBISHOP OF LOS ANGELES, Defendant and Respondent.	B283155 (Los Angeles County Super. Ct. No. BC561238)

APPEAL from a judgment of the Superior Court of Los Angeles County. Rafael A. Ongkeko, Judge. Affirmed.

Anthony M. De Marco for Plaintiffs and Appellants.

McKool Smith Hennigan, J. Michael Hennigan and Lee W. Potts for Defendant and Respondent.

* * * * * *

In *Doe v. Roman Catholic Archbishop of Los Angeles* (2016) 247 Cal.App.4th 953 (*Doe I*), we held that a lawsuit brought by two men in 2014 for molestation they suffered at the hands of a priest in the late 1970's and early 1980's was untimely, but remanded to give the men an opportunity to amend their complaint to invoke the tolling provisions of Insurance Code section 11583.[1] They amended their complaint, but the trial court held that their new allegations still did not qualify for tolling under section 11583. Because this ruling was correct, we affirm.

FACTS AND PROCEDURAL BACKGROUND

I. Alleged Facts

Plaintiff Juan HJ Doe (J. Doe) was born in 1962 or 1963, and plaintiff Juan HL Doe (L. Doe) was born in 1964. Monsignor Benjamin Hawkes, a high ranking priest within defendant, the Roman Catholic Archbishop of Los Angeles (the Church), sexually abused J. Doe between 1976 (when he was 13 or 14 years old) and 1981 (when he was 18 or 19), and sexually abused L. Doe between 1978 (when he was 14) and 1984 or 1985 (when he was 20 or 21). Hawkes died in 1985.

II. Procedural Background

In 2014, J. Doe and L. Doe (collectively, plaintiffs) sued the Church for (1) sexual abuse, and (2) negligence. Recognizing that their lawsuit was filed some 30 years after the alleged sexual abuse ended, plaintiffs sought to invoke the tolling provisions of section 11583. Toward that end, plaintiffs alleged in the first amended complaint (FAC) that, "shortly after . . . [Hawkes] began

---

[1] All further statutory references are to the Insurance Code unless otherwise indicated.

grooming and molesting" them, Hawkes "[p]aid for lavish meals, clothes and entertainment" for both young men; "[p]aid for [them] to go on trips"; "paid for the private school education of [J. Doe]"; and gave each thousands of dollars in cash. Plaintiffs alleged that these payments had two purposes: (1) they constituted "advance partial compensation" for the "sexual abuse [against] them"; and (2) they were designed "to coerce [plaintiffs] into the abuse, and to keep them silent after the abuse."

When the Church demurred to the FAC, the trial court dismissed the lawsuit as untimely. Plaintiffs appealed, and we affirmed the dismissal in *Doe I*. (*Doe I*, *supra*, 247 Cal.App.4th 953.) We noted that if a defendant makes an "advance payment or partial payment of damages," section 11583 tolls the statute of limitations for child molestation from the time the first payment is made until the earlier of when the recipient is given written notice of the applicable statute of limitations or retains an attorney. (*Id.* at p. 963, citing § 11583.) We held that a payment qualifies as an "advance payment or partial payment of damages" only if its purpose is "solely to compensate for past sexual abuse." (*Id.* at p. 958.) Section 11583 did not apply here, we concluded, because plaintiffs in the FAC alleged that Hawkes's payments served two purposes—one to compensate, and another "to facilitate criminal conduct such as 'grooming' the [plaintiffs] for further sexual abuse or encouraging [them] not to report the past abuse they suffered." (*Ibid.*) We nevertheless remanded the case back to the trial court to allow plaintiffs "the opportunity to amend their complaint to allege whether there were any solely compensatory payments made while the statute of limitations period had yet to expire." (*Ibid.*)

On remand, plaintiffs filed the second amended complaint (SAC). The SAC retained the FAC's allegations regarding Hawkes's payments to plaintiffs as well as the allegation that those payments were "partial compensation [for] sexual abuse" and "to coerce [plaintiffs] into the abuse, and to keep them silent after the abuse." Plaintiffs added one new allegation pertaining to the applicability of section 11583—namely, that "[t]he payments of compensation to each plaintiff continued after the last act of [Hawkes's sexual] abuse" because J. Doe "continued to" receive money for his "university education" and cash and because L. Doe continued to receive "payments."

The Church again demurred. After full briefing, the trial court sustained the demurrer to the SAC without leave to amend. The court recognized that the new allegation clarified that Hawkes's payments to plaintiffs continued *after* the sexual abuse ended, but ruled that this did not render those payments solely compensatory because they were "one and the same" with the payments (that is, cash and education tuition) that *Doe I* had held (and that the SAC elsewhere alleged) to be both compensatory *and* for the purpose of grooming or keeping plaintiffs from reporting the abuse after it stopped.

After the trial court entered judgment, plaintiffs filed this timely appeal.

DISCUSSION

In reviewing a trial court's order sustaining a demurrer without leave to amend, we ask (1) whether the demurrer was properly sustained, and (2) whether leave to amend was properly denied. (*Schep v. Capital One, N.A.* (2017) 12 Cal.App.5th 1331, 1335.) We independently assess whether the demurrer was properly sustained, accepting as true all "well-pleaded facts" in

the operative complaint but disregarding allegations containing "legal conclusions." (*Ellis v. Calaveras* (2016) 245 Cal.App.4th 64, 70; *Aryeh v. Canon Business Solutions, Inc.* (2013) 55 Cal.4th 1185, 1191.) A demurrer is appropriate on statute of limitations grounds if the time bar """clearly and affirmatively appear[s] on the face of the complaint."""" (*Lee v. Hanley* (2015) 61 Cal.4th 1225, 1232, quoting *Committee for Green Foothills v. Santa Clara County Bd. of Supervisors* (2010) 48 Cal.4th 32, 42.) We assess whether leave to amend was properly denied for an abuse of discretion, and that discretion is abused if "'there is a reasonable possibility that the defect can be cured by amendment.'" (*Zelig v. County of Los Angeles* (2002) 27 Cal.4th 1112, 1126.)

I. Was the Demurrer Properly Sustained?

The question whether the demurrer to the SAC was appropriately sustained turns on whether section 11583's tolling provision applies, which under *Doe I*, turns on whether the payments to plaintiffs alleged in the SAC were "solely compensatory." The trial court found those payments, as alleged in the SAC, had a dual purpose—(1) to compensate *and* (2) to groom plaintiffs before and during the molestation and to hush them afterwards. We agree. Like the FAC, the SAC continued to allege that Hawkes's payments were *both* in "partial compensation [for] sexual abuse" and "to coerce [plaintiffs] into the abuse, and to keep them silent after the abuse." The new allegation in the SAC that Hawkes continued to pay plaintiffs *after* the abuse stopped must be read in conjunction with the allegation that Hawkes was paying "to keep them silent *after the abuse*" at least where, as here, the payments are not for items traditionally considered to be compensatory (such as the payment

of medical expenses, for property damage, or for psychological counseling). (*Doe I*, *supra*, 247 Cal.App.4th at p. 965.)

Plaintiffs make three arguments in response.

First, they assert that *Doe I* draws a line between payments made "contemporaneous with the [sexual] abuse" and payments made *after* the abuse, such that payments made *after* the abuse ends are solely compensatory. This assertion misreads *Doe I*. *Doe I* nowhere held that the *timing* of a payment was dispositive as to its purpose(s). To the contrary, we noted that payments made to child abuse victims "not to report the sexual abuse" were just as criminal—and thus, just as incapable of triggering section 11583's tolling provisions even if mixed with a compensatory purpose—as payments made "to seduce and keep [those] victims open to future abuse," even though the former necessarily happens *after* the abuse. (*Doe I*, *supra*, 247 Cal.App.4th at p. 966.)

Second, plaintiffs contend that *Doe I* was wrongly decided because it construes section 11583 as turning on what the maker of the payment "intended or hoped," thereby making it inconsistent with other cases holding that "[s]ection 11583 does not contain a scienter requirement." (*Blevin v. Coastal Surgical Institute* (2015) 232 Cal.App.4th 1321, 1328; *Doe v. Doe 1* (2012) 208 Cal.App.4th 1185, 1195 [section 11583 "says nothing about the need to show . . . intent"].) To begin, this is effectively a collateral attack on *Doe I*, which is both binding precedent and, more to the point, law of the case. (*Leider v. Lewis* (2017) 2 Cal.5th 1121, 1127 [""The decision of an appellate court . . . conclusively establishes that rule""].) Further, *Doe I* does not construe section 11583 to turn on what a payor "intend[s] or hope[s]." Instead, *Doe I* holds that section 11583 turns on the

purpose of the payments, which is adjudged by their nature and by not the payor's subjective desires. *Blevin* and *Doe v. Doe 1* followed the general rule that "'a defendant's voluntary assumption of the cost of providing treatment is the advance payment of damages under . . . section 11583'" (*Blevin*, at p. 1328, quoting *Doe v. Doe 1*, at p. 1194), and went on to hold that the payment of damages for medical expenses and for psychological counseling triggered section 11583's tolling provisions irrespective of the payor's subjective intentions. We applied the same rule in *Doe I*, acknowledging that payments the Church made to J. Doe in 1996 for psychological counseling would have triggered section 11583 had the limitations period not already expired by that time (*Doe I*, *supra*, 247 Cal.App.4th at p. 968), but that the payments for meals, clothes, entertainment, travel, and tuition did not trigger section 11583's tolling provisions because, objectively, they were not the costs of treatment and because the FAC elsewhere alleged that they were made both to compensate *and* to groom or hush plaintiffs (*ibid.*). We gave plaintiffs the opportunity to amend their complaint because we did not know if there were other payments made solely for treatment (and hence solely for compensatory purposes) during the period before the statute of limitations period ran; plaintiffs' failure to allege such payments in the SAC indicates there were not.

Lastly, plaintiffs argue that *Doe I* was wrongly decided because it is inconsistent with section 11583's purpose. Again, this collateral attack on *Doe I* is procedurally inappropriate under the law of the case doctrine. This attack lacks merit in any event. As we noted in *Doe I*, section 11583 "seeks to walk the line between two competing goals: '[E]ncourag[ing] early payments on prima facie meritorious claims while at the same time

avoid[ing] the risk that such early payments would lull a claimant into a sense of complacency about filing a lawsuit because of the apparent cooperativeness of the defendant.'" (*Doe I*, *supra*, 247 Cal.App.4th at pp. 963-964, quoting *Evans v. Dayton Hudson Corp.* (1991) 234 Cal.App.3d 49, 54.) Plaintiffs assert that this rationale—and, in particular, the goal of not lulling potential plaintiffs into complacency with early payments—logically applies to *all* payments, whether or not they are "solely compensatory." This is true, but ignores that the payments section 11583 is concerned about—as the text of the statute makes clear—are early payments "of *damages*," not just *any* early payments. (§ 11583, italics added.) In *Doe I*, we explained in detail why allowing *any* payment to toll section 11583 leads to an absurd result—chiefly, because it would allow a child molester to offset the amounts it paid to groom or hush his victims against any eventual judgment. (*Doe I*, at pp. 966-968.)

II. Was Leave to Amend Properly Denied?

Plaintiffs offer no further suggestion on how to invoke section 11583's tolling provision, and we see none in light of the allegations already present in the SAC. (See *Hendy v. Losse* (1991) 54 Cal.3d 723, 742-743 [allegations harmful to a cause of action """cannot be cured in subsequently filed pleadings by simply omitting [them] without explanation"""].)

DISPOSITION

The judgment of dismissal is affirmed. The Church is entitled to its costs on appeal.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS.

_____, J.
HOFFSTADT

We concur:

_____, P. J.
LUI

_____, J.
CHAVEZ