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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

NELS RASMUSSEN et al.,

Plaintiffs and Appellants,

v.

CITY OF LOS ANGELES,

Defendant and Respondent.

B234731

(Los Angeles County  
Super. Ct. No. BC442329)

APPEAL from a judgment of the Superior Court of Los Angeles County.  
Elizabeth Allen White, Judge. Affirmed.

Taylor & Ring and John C. Taylor; Esner, Chang & Boyer, for Plaintiffs and Appellants.

Carmen A. Trutanich, City Attorney, Amy Jo Field, Supervising City Attorney and Blithe S. Bock, Deputy City Attorney, for Defendant and Respondent.

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The statute of limitations serves the salutary policy of preventing the revival of stale claims at a time when evidence may have become lost and witnesses unavailable or forgetful. On the other hand, as our colleagues in the Fourth District recently wrote, “Its operation in particular cases, however, can be sadly inequitable.” (*Estate of Ziegler* (2010) 187 Cal.App.4th 1357, 1359.) If the alleged facts are true, they call out for redress on the merits, subject to the other affirmative defenses raised by respondents. We nevertheless are constrained by law to uphold the trial court’s decision to dismiss this case because of the statute of limitations. We thus affirm.

## **FACTUAL AND PROCEDURAL BACKGROUND**

### **A. Introduction**

Plaintiffs and appellants Nels and Loretta Rasmussen (the Rasmussens) brought this action against the City of Los Angeles (the city) for violation of Civil Code section 52.1, subdivision (b) (§ 52.1(b)), and other torts.<sup>1</sup> The gravamen of the action is that Los Angeles Police Department (LAPD) detectives conspired for some 25 years to conceal that the Rasmussens’ daughter, Sherri, was murdered by an LAPD officer in 1986.<sup>2</sup>

The city filed a demurrer to the operative first amended complaint, which the trial court sustained without leave to amend. The Rasmussens appeal from the ensuing judgment of dismissal.

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<sup>1</sup> Although named as a defendant, the LAPD is not a separate entity from the city and cannot be sued separately. References to the city include generally the LAPD.

<sup>2</sup> On March 8, 2012, a jury convicted LAPD officer Stephanie Lazarus of Sherri’s murder. We take judicial notice of the judgment of the Los Angeles Superior Court in *People v. Stephanie Ilene Lazarus*, case No. BA357423. (Evid. Code, § 452, subd. (d).) The conviction is currently on appeal, and we express no opinion on any of the trial court proceedings in that case.

## B. *Factual Summary*

In accord with the usual rules of appeal from a judgment of dismissal following the sustaining of a demurrer without leave to amend, we assume as true the facts as alleged in the complaint. (*R.S. v. PacifiCare Life & Health Ins. Co.* (2011) 194 Cal.App.4th 192, 195.)

Sherri was 29 years old when she was murdered on February 24, 1986, by her husband's ex-girlfriend, LAPD officer Stephanie Lazarus. The next day, the Rasmussens met with LAPD detectives about their daughter's death. They told the investigating officers of their suspicions that the former girlfriend of their daughter's husband (whose name they did not then know) had killed their daughter. They told detectives that the girlfriend had been stalking Sherri for several months and had confronted Sherri more than once. Sherri's husband, John Ruetten, told LAPD officers that Lazarus was his ex-girlfriend and that she was an LAPD officer. Disregarding the Rasmussens' suspicions of Lazarus, the LAPD identified Sherri's killers as two unknown male Hispanics who were suspected of several burglaries in the area. Over the next several years, the Rasmussens were repeatedly rebuffed in their efforts to have the LAPD investigate Lazarus. By 1998, the conduct of the investigating officers had dissuaded the Rasmussens from further communication with the LAPD about their daughter's murder. But the "unknown male Hispanics" theory was discredited in 2005 after DNA obtained from a bite mark on Sherri's body was tested and found to have been left by a woman. In June 2009, after Lazarus's DNA was matched to that on the bite mark, Lazarus was arrested and charged with Sherri's murder. At the time she was an LAPD detective. When this lawsuit was filed in July 2010, Lazarus was still awaiting trial.

## C. *Summary of Pleadings*

### 1. **The Original Complaint**

The original complaint had three causes of action, only the first and second of which named the city as a defendant. The gist of the first cause of action for violation of

section 52.1(b) was that LAPD detectives engaged in a conspiracy to divert attention away from Lazarus as a suspect in the murder in order to avoid embarrassing the LAPD; as a result, the Rasmussens were denied their constitutional right of access to the courts to prosecute a civil wrongful death action against Lazarus.<sup>3</sup> The second cause of action alleged that the same conduct violated 42 United States Code section 1983. The third cause of action for wrongful death was alleged against Lazarus only, not the city.

Based on the 42 U.S.C. section 1983 civil rights claim, the city caused the case to be removed to federal court. In the federal court, the Rasmussens stipulated to dismiss with prejudice the second cause of action so that the case could be returned to the state court.

Upon remand to the state court, the city demurred to the first cause of action on grounds of immunity under Government Code sections 821.6, 845, 846 and *County of Los Angeles v. Superior Court* (2009) 181 Cal.App.4th 218, 229. The Rasmussens countered that, under *Bell v. Milwaukee* (7th Cir. 1984) 746 F.2d 1205, 1261, overruled on other grounds in *Russ v. Watts* (7th Cir. 2005) 414 F.3d 783, the city was not immune from liability for violation of section 52.1(b). The trial court sustained the demurrer with leave to amend. It reasoned that a failure to investigate a crime does not constitute the threats, intimidation or coercion required by section 52.1(b). The Rasmussens were given until January 28, 2011, to file an amended complaint.

## **2. The First Amended Complaint**

In the operative first amended complaint (the complaint) filed on January 28, 2011, the wrongful death cause of action against Lazarus became the second cause of action. The Rasmussens also added a third cause of action for intentional infliction of emotional distress and a fourth cause of action for fraudulent concealment, both of which

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<sup>3</sup> Subdivisions (a) and (b) of Civil Code section 52.1 authorize civil actions by the government and individuals, respectively, against anyone who interferes or attempts to interfere “by threats, intimidation, or coercion . . . with the exercise or enjoyment by any individual or individuals of rights secured by the Constitution or laws of the United States, or of the rights secured by the Constitution or laws of this state. . . .” (§ 52.1(a).)

named only the city as a defendant. In a section entitled “Facts Common to All Claims,” the complaint alleged the following coercive and threatening conduct by LAPD officers. At the Rasmussens’ first meeting with the LAPD, the lead detective “ ‘got into [Nels’] face,’ acted aggressively toward [Nels] and physically bumped Nels and put his hands on Nels, interposing himself as a barrier between Nels and his son-in-law, John Ruetten . . . .” At each meeting with the Rasmussens, LAPD detectives “acted impatiently, were critical of, and sarcastic and openly hostile towards the [Rasmussens] . . . . In various meetings, the LAPD detectives would angrily throw papers around the meeting room table when pushed about whether Lazarus had been interviewed; make statements to [the Rasmussens] that ‘If you think you’re so good, you can take over the investigation!’; ‘You’re no help to this case!’ and ‘You’ve been watching too much television!’ These statements were made in a confrontational and threatening voice and manner intended to prevent [the Rasmussens] from pursuing any action against Lazarus or the LAPD. This conduct did, in fact, intimidate [the Rasmussens] and stifle [their] inquiry.” During one meeting in which the Rasmussens questioned whether the detectives were investigating Lazarus, two detectives stood over Nels and one said, “ ‘You’d better watch yourself in going any farther with this!’ ” The Rasmussens “reasonably interpreted this as a threat meant to prevent [them] from pursuing any action against Lazarus or the LAPD. This conduct did, in fact, intimidate [the Rasmussens] and stifle [their] inquiry.” The Rasmussens “were indeed scared, and frightened for themselves and their family; that if they were to continue their attempts to question LAPD detectives, that they would be harmed in some unforeseeable fashion. Because of the threatening conduct and statements of the LAPD detectives, [the Rasmussens] were coerced into stopping their investigation and ceased all contact with [the LAPD] in 1998, believing their daughter’s murderer would never be apprehended.”

The First Cause of Action alleged that by such conduct the LAPD denied the Rasmussens their First Amendment rights, as well as their due process rights under the Fifth and Fourteenth Amendments of the United States Constitution, and their rights “under similar clauses in the California Constitution,” including the right to have a fair

investigation of their daughter's murder, to know who killed their daughter, and to obtain civil redress for her wrongful death.

The new Third Cause of Action for Intentional Infliction of Emotional Distress alleged that the conduct complained of was intended to and did cause the Rasmussens to suffer severe emotional distress.

The gist of the new Fourth Cause of Action for "Fraudulent Concealment" was that having undertaken to investigate Sherri's murder, the city had a duty to disclose the killer's identity to the Rasmussens; the city breached that duty by concealing the fact that Lazarus was the killer; had the Rasmussens known Lazarus was the killer, they would have immediately "brought a civil lawsuit against her and they would have achieved some measure of peace over the loss of their daughter. This fraudulent concealment caused [the Rasmussens] to suffer more than 23 years of emotional distress, worry, anger, and frustration and other damages."<sup>4</sup>

The city demurred to the complaint on the grounds that (1) it was filed four days after the date the trial court set for the filing of an amended complaint; (2) all of the causes of action alleged against the city were barred by governmental immunity; (3) the Rasmussens had no standing to bring a claim under section 52.1(b); and (4) the city was not liable for Lazarus's actions which were not taken in the course and scope of her employment.

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<sup>4</sup> Here we must distinguish among: (1) the fraudulent concealment doctrine, (2) a cause of action for fraudulent concealment and (3) a cause of action for concealment. The fraudulent concealment doctrine applies to any cause of action and prevents the applicable statute of limitations from running while the defendant conceals the existence of the cause of action from the plaintiff. By contrast, the cause of action known as "Fraudulent Concealment" most often refers to a claim by an employee against his or her employer for damages over and above workers' compensation benefits, for aggravated injuries caused by the employer fraudulently concealing the cause of a work-related injury. (See Lab. Code, § 3602, subd. (b)(2); *Johns-Manville Products Corp. v. Superior Court of Contra Costa County* (1980) 27 Cal.3d 465.) A cause of action for "Concealment" is a "species of fraud or deceit" in which someone with a duty to disclose conceals a material fact. (*Blickman Turkus, LP v. MF Downtown Sunnyvale, LLC* (2008) 162 Cal.App.4th 858, 868].) We understand the Rasmussens' "Fraudulent Concealment" claim to be one for fraud based on concealment.

Following a hearing on April 9, 2011, the trial court sustained the city's demurrer to the first, third and fourth causes of action without leave to amend. As to the first cause of action, the trial court relied on *Bay Area Rapid Transit Dist. v. Superior Court* (1995) 38 Cal.App.4th 141, 144-145, citing *Boccatto v. City of Hermosa Beach* (1994) 29 Cal.App.4th 1797, 1809, to conclude that the Rasmussens did not have standing to bring a claim under section 52.1(b). As to the new third and fourth causes of action, the trial court found the city was immune from liability under the Government Code. Although the trial court denied leave to amend, it continued the matter to May 9 to give the city an opportunity to establish that the Rasmussens were precluded from filing a second amended complaint alleging a new cause of action for violation of their federal constitutional rights because the Rasmussens had previously dismissed their federal claim with prejudice. Two days later, while the May 9 hearing was still pending, the trial court signed and filed an "Order re: Defendant City of Los Angeles's Demurrer to Plaintiff's First Amended Complaint," which states that the city's demurrer to the first, third and fourth causes of action was sustained without leave to amend, and that the city was dismissed from those causes of action; the order did not refer to the possibility of amendment to state a federal claim.

For the May 9 hearing, the city filed a "Brief re: [The Rasmussens'] Dismissal of Their Federal Claim With Prejudice," which recounted the procedural history of the case in the federal court. The city attached the signed stipulation submitted to the federal district court which states in part: "[The Rasmussens and the city] stipulate and agree as follows: [The Rasmussens] be permitted to file a First Amended Complaint to dismiss with prejudice the Second Cause of Action under 42 U.S.C. [section] 1983 . . . ." The city also attached the unsigned Proposed Order that was submitted to the federal district court judge, which states in part: "IT IS HEREBY ORDERED: [The Rasmussens] be permitted to file a First Amended Complaint to dismiss with prejudice the Second Cause of Action under 42 U.S.C. [section] 1983." To explain why the Proposed Order was not signed, the city attached the Reporter's Transcript of the hearing in which the federal

district judge stated that he had no jurisdiction to sign the order because the Rasmussens had dropped their federal claim.

Before the May 9 hearing, the Rasmussens filed a request for “Clarification/Reconsideration” of the order sustaining the city’s demurrer. At the hearing, the trial court denied the Rasmussens’ request for clarification, as a defective motion for reconsideration. Based on the Rasmussens’ earlier dismissal with prejudice in the federal court, the trial court found the Rasmussens were precluded from amending the complaint to allege a violation of their federal constitutional rights. The order dismissing the city from the case was filed on May 24, 2011 (the May 24 order), and judgment of dismissal was filed on August 16, 2011.

On July 22, the Rasmussens filed a notice of appeal from the May 24 order and on September 27 they filed a notice of appeal from the judgment. We consolidated the appeals.

## **DISCUSSION**

### **A. *The City’s Motion to Dismiss the Appeal is Denied***

The city argues that the Rasmussens’ appeal should be deemed to be from the April 9 order, a file stamped copy of which the city served on the Rasmussens on April 14. Therefore, the city argues, the notices of appeal filed more than 60 days later on July 22 and September 27, 2011, were untimely. (Cal. Rules of Court, rule 8.104(a)(1)(A) [notice of appeal must be filed on or before 60 days after the party filing the notice of appeal is served with a file-stamped copy of the judgment or appealable order accompanied by a proof of service].) We do not agree that the April 9 order was an appealable final judgment. A judgment that disposes of fewer than all of the causes of action is not an appealable final judgment as to any of the parties as to whom another cause of action remains pending. (*Morehart v. County of Santa Barbara* (1994) 7 Cal.4th 725, 741; *Bank of America Nat’l Trust & Savings Assn. v. Superior Court of Los Angeles County* (1942) 20 Cal.2d 697, 701; *Potvin v. Pacific Greyhound*



*Lines, Inc.* (1933) 130 Cal.App. 510, 512.) In this case, the April 9 order was not an appealable final judgment because it left open the possibility that the Rasmussens could amend to allege a cause of action for violation of their federal civil rights against the city. It was the May 24 order that finally disposed of all matters in the litigation by denying the Rasmussens leave to amend. The Rasmussens timely appealed from that order.

B. *All of the Rasmussens' Causes of Action are Time Barred*

**1. Standard of Review**

The standard of review from an order sustaining a demurrer without leave to amend is well established: we accept as true all well-pleaded facts and those subject to judicial notice, but not deductions, contentions, or conclusions of law or fact. Whether leave should have been granted is reviewed for abuse of discretion; denial of leave to amend is an abuse of discretion if there is any reasonable probability the defect can be cured by an amendment. (*Fox v. JAMDAT Mobile, Inc.* (2010) 185 Cal.App.4th 1068, 1078–1079.)

**2. We May Consider the City's Statute of Limitations Argument Raised for the First Time on Appeal.**

In the trial court, the city did not raise as one of its grounds for demurrer that the complaint was barred by the statute of limitations. The city asserted that argument as its principal point in its Respondent's Brief on appeal. The Rasmussens addressed the statute of limitations argument in their Reply Brief.

A trial court's stated reasons for its judgment do not limit our review. “ ‘An appellate court may . . . consider new theories on appeal from the sustaining of a demurrer to challenge or justify the ruling.’ ” (*Alfaro v. Community Housing Improvement System & Planning Assn., Inc.* (2009) 171 Cal.App.4th 263, 302; *Cantu v. Resolution Trust Corp.* (1992) 4 Cal.App.4th 857, 880, fn. 10 [appellate “court will still affirm the demurrers even if the trial court relied on an improper ground, whether or not the defendants asserted the proper ground in the trial court”].) We shall affirm the

judgment if it is correct on any ground supported by the record, even if not cited by the trial court. (*In re Marriage of Mathews* (2005) 133 Cal.App.4th 624, 632; *MacGregor Yacht Corp. v. State Comp. Ins. Fund* (1998) 63 Cal.App.4th 448, 460.)

Resolution of a statute of limitations defense is normally a question of fact. However, when the uncontradicted facts are susceptible of only one legitimate inference, the matter is one of law. (*Snapp & Associates Ins. Services, Inc. v. Robertson* (2002) 96 Cal.App.4th 884, 889-890 (*Snapp*).) Accordingly when the face of the complaint reveals it is barred by the statute of limitations, a demurrer on that ground should be sustained. (*McMahon v. Republic Van & Storage Co.* (1963) 59 Cal.2d 871, 874; *Friends of Shingle Springs Interchange, Inc. v. County of El Dorado* (2011) 200 Cal.App.4th 1470, 1482.)

### **3. The First Cause of Action Is Time Barred**

The Rasmussens' first cause of action was for violation of section 52.1(b), sometimes referred to as "The Bane Act." In part the statute reads: "Any individual whose exercise or enjoyment . . . of rights secured by the Constitution or laws of this state, has been interfered with, or attempted to be interfered with [*by threats, intimidation, or coercion, or attempts to interfere by threats, intimidation, or coercion*], may institute and prosecute in his or her own name and on his or her own behalf a civil action for damages . . . ." (§ 52.1, subd. (b), italics added.) "The essence of a Bane Act claim is that the defendant, by the specified improper means (i.e., "threats, intimidation or coercion"), tried to or did prevent the plaintiff from doing something he or she had the right to do under the law or to force the plaintiff to do something that he or she was not required to do under the law.' " (*Shoyoye v. County of Los Angeles* (2012) 203 Cal.App.4th 947, 945-946, citations omitted.)

The two-year statute of limitations for injury caused by the wrongful act of another (Code Civ. Proc., § 335.1) is applicable to actions brought pursuant to section 52.1(b). (*Gatto v. County of Sonoma* (2002) 98 Cal.App.4th 744, 760 [claim under § 52.1 alleging violation of the right to free speech was subject to the limitations

period for personal injuries].)<sup>5</sup> The two-year limitations period starts to run when the cause of action accrues, and a cause of action accrues when it “ ‘is complete with all of its elements.’ ” (*Fox v. Ethicon Endo-Surgery, Inc.* (2005) 35 Cal.4th 797, 806.) The elements of a section 52.1(b) action are: (1) threats, intimidation, or coercion by the defendant, which (2) interferes with, or attempts to interfere with, the plaintiff’s rights secured by the Constitution or laws of this state. Thus, a section 52.1(b) action accrues when the defendant engages in the proscribed conduct with the intent to interfere with the plaintiff’s civil rights.

Here, the section 52.1(b) cause of action accrued at the very latest in 1998, when the Rasmussens allege they were so intimidated by the coercive and threatening actions of the LAPD detectives that they ceased any effort to have Lazarus held accountable for Sherri’s murder – either criminally or civilly. Nothing in the record suggests that the LAPD engaged in any threatening conduct toward the Rasmussens in the two years before they filed this action such that a new violation of their civil rights had occurred. On the contrary, the complaint alleges the Rasmussens stopped communicating with the LAPD in 1998. That allegation suggests that the statute of limitations barred the Rasmussens’ claim two years later in 2000. That Lazarus was not arrested or charged with Sherri’s murder until 2009 is not legally relevant to the accrual of the section 52.1(b) cause of action. (Code of Civ. Proc., § 335.1; *Kincaid v. Kincaid* (2011) 197 Cal.App.4th 75, 80 [two year statute of limitations for wrongful death accrues on date of death].) Whether the statute of limitations had run on the Rasmussens’ civil rights claim in 1988 (after which they arguably could no longer sue Lazarus) or in 2000 (two years after the threats and intimidations stopped), the first cause of action for violation of the

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<sup>5</sup> In *Gatto*, the court explained that the two-year limitations period applies to section 52.1(b) actions that are based on denial of rights derived from common law principles, such as the right to free speech. Where the claim is based on a statutory right, such as technical requirements of the Americans with Disabilities Act, the three year limitation period of Civil Code section 338, subdivision (a) [action upon a liability created by statute] applies. In this case, access to the courts is, like free speech, derived from common law principles.

Rasmussens' civil rights is time barred.

That the Rasmussens' damages – denial of their civil rights in the case of the first cause of action –continued over the decades between their daughter's murder and Lazarus's arrest does not compel a contrary result. "The time bar starts running when the plaintiff first learns of actionable injury [citation], even if the injury will linger or compound. ' "[W]here an injury, although slight, is sustained in consequence of the wrongful act of another, and the law affords a remedy therefor, the statute of limitations attaches at once. It is not material that all the damages resulting from the act shall have been sustained at that time, and the running of the statute is not postponed by the fact that the actual or substantial damages do not occur until a later date. . . . ' " ' [Citation.]" (*Vaca v. Wachovia Mortgage Corp.* (2011) 198 Cal.App.4th 737, 745.) Here the damages alleged were far from slight even at the outset. The fact that they continued unabated, or may have been exacerbated, does not change the statute of limitations analysis.

#### **4. The Third Cause of Action Is Time Barred**

The trial court sustained the city's demurrer to the third cause of action for intentional infliction of emotional distress without leave to amend on the grounds of governmental immunity. Again, while there appear to be adequate facts to support this cause of action, and without addressing the governmental immunity argument, we conclude that this cause of action is also barred by the statute of limitations.

Like section 52.1(b), an action for intentional infliction of emotional distress is subject to the two-year limitations period. (*Kiseskey v. Carpenters' Trust for So. California* (1983) 144 Cal.App.3d 222, 227.) The claim is complete and the cause of action accrues when the defendant's conduct results in plaintiff's severe emotional distress. (*Kiseskey*, at p. 227.) If the Rasmussens were able to prove that which they have alleged, we have no doubt that the detectives' conduct caused the Rasmussens severe emotional distress. But any such emotional distress began when the officers allegedly engaged in callous and unconscionable conduct against the Rasmussens. That

would have been in 1986, and according to the complaint the officer's threats and intimidations ceased around 1998. There is nothing to suggest that the Rasmussens did not begin to suffer severe emotional distress until 2008 – two years before the filing of the original complaint in July 2010. And, as with their civil rights claim, that the emotional distress continued for decades does not compel a contrary result. (*Vaca, supra*, 198 Cal.App.4th at p. 745.)

## **5. The Fourth Cause of Action Is Time Barred**

The trial court sustained the city's demurrer to the fourth cause of action for so-called "Fraudulent Concealment" without leave to amend on the grounds of governmental immunity. As a species of fraud, an action for "concealment" must be brought within three years of accrual. (Code Civ. Proc., § 338, subd. (d).) A cause of action accrues when it " 'is complete with all of its elements.' " (*Fox, supra*, 35 Cal.4th at p. 806.) The elements of a cause of action for concealment are: " '(1) the defendant must have concealed or suppressed a material fact, (2) the defendant must have been under a duty to disclose the fact to the plaintiff, (3) the defendant must have intentionally concealed or suppressed the fact with the intent to defraud the plaintiff, (4) the plaintiff must have been unaware of the fact and would not have acted as he did if he had known of the concealed or suppressed fact, and (5) as a result of the concealment or suppression of the fact, the plaintiff must have sustained damage.' [Citations.]" (*Blickman, supra*, 162 Cal.App.4th at p. 868.) The mental element of fraud by concealment is the defendant's "intent to induce conduct—action or inaction—that differs from what the plaintiff would have done if informed of the concealed fact. [Citation.]" (*Ibid.*) "A plaintiff is under a duty to reasonably investigate, and a suspicion of wrongdoing, coupled with a knowledge of the harm and its cause, commences the limitations period. [Citation.]" (*Snapp, supra*, 96 Cal.App.4th at p. 891.)

Here, the gist of the fourth cause of action is that: (1) by refusing to investigate Lazarus the city effectively suppressed the fact that Lazarus was Sherri's killer; (2) the city was under a duty to disclose this fact to the Rasmussens; (3) the city intentionally

suppressed this fact with the intent of inducing the Rasmussens not to file a civil suit against Lazarus; (4) the Rasmussens were unaware that Lazarus was the killer and if they knew she was the killer they would have filed a civil suit against her; and (5) as a result of the city's suppressing the fact that Lazarus was Sherri's killer, the Rasmussens did not file a civil suit against Lazarus. We assume for present purposes, but without deciding the issue, that all the elements were adequately plead. However, the complaint alleges that the Rasmussens suspected Lazarus almost immediately. For the first few months they regularly pressed the investigating detectives to investigate Lazarus, but were rebuffed. The Rasmussens' suspicion that Lazarus was the killer and their knowledge that the police were not investigating her commenced the running of the limitations period on the Rasmussens' concealment claim. That the police continued to deny that Lazarus was the perpetrator did not prevent the Rasmussens from bringing a civil action for wrongful death against Lazarus. While a successful criminal prosecution may have benefited the civil case, it was not a prerequisite.

#### **6. Leave to Amend Was Properly Denied**

The Rasmussens have not articulated how they might amend the complaint to avoid the statute of limitations. Accordingly, the trial court did not abuse its discretion in denying leave.

### **DISPOSITION**

The judgment is affirmed. Each side shall bear their own costs on appeal.

RUBIN, J.

WE CONCUR:

BIGELOW, P. J.

GRIMES, J.