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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SIX

ROSA MENDEZ,

Plaintiff and Appellant,

v.

COTTAGE HEALTH SYSTEM,

Defendant and Respondent.

2d Civil No. B256632
(Super. Ct. No. 1438855)
(Santa Barbara County)

Rosa Mendez, acting as her own attorney, appeals the judgment of dismissal entered in favor of Cottage Health System (Cottage) following the sustaining of a demurrer to her first amended complaint without leave to amend. Mendez contends the trial court erred in finding the action was barred by the statute of limitations. We affirm.

FACTS AND PROCEDURAL HISTORY

On November 19, 2013, Mendez filed an in pro per complaint against Cottage, the parent organization of Santa Barbara Cottage Hospital (Cottage Hospital). The factual allegations were contained in an undated letter addressed to the staff at Santa Barbara City College (SBCC), a copy of which was attached to the complaint. The letter stated that on October 28, 2010, Mendez was exposed to dangerous levels of radiation while assisting an x-ray technician at Cottage Hospital. Mendez was working at the hospital that day as part of her coursework in the x-ray technician program at SBCC. Mendez immediately complained to the technician and the chairperson of SBCC's

Department of Radiologic and Imaging Sciences, both of whom deemed the complaints unfounded. After the exposure, Mendez "began to experience severe chest pain and dizziness and blurred vision." Although the letter does not refer to the date when these symptoms purportedly began, another attachment indicates that Mendez sought treatment for blurred vision in March 2011. The letter also states that Mendez has "been suffering mentally and emotionally since [she] was exposed to unnecessary radiation." No amount of damages was specified.

Cottage demurred to the complaint, contending among other things, that the action was barred by the statute of limitations. Mendez did not oppose the demurrer. In sustaining the demurrer, the court noted that "[t]he complaint itself alleges that [Mendez] was aware of the incident when it occurred" on October 28, 2010, yet did not file her action until November 19, 2013. The court concluded that Mendez had thus filed her action beyond the two-year statute of limitations for personal injury claims (Code Civ. Proc.,¹ § 335.1) and claims for injury or illness caused by exposure to a hazardous material (§ 340.8), and the three-year limitations period for claims of fraud (§ 338) and professional negligence (§ 340.5). The court nevertheless granted Mendez leave to amend "because there may exist some set [of] facts which could potentially act to bring the action within some tolling provision[.]"

Mendez then filed a first amended complaint seeking \$1.4 million in compensatory damages, unspecified punitive damages, and "life time medical insurance" for herself and her two children. Mendez once again stated she was immediately concerned about the radiation exposure and added that she began experiencing symptoms of the exposure the following month. Mendez also alleged that the chairperson of SBCC's Department of Radiologic and Imaging Sciences, the attorney who represented Mendez in proceedings before the Workers' Compensation Appeals Board (WCAB), and the judge who presided over those proceedings all fraudulently induced Mendez to refrain from filing suit until after the limitations period had expired.

¹ All further statutory references are to the Code of Civil Procedure.

Cottage demurred to the first amended complaint, again asserting that the action was time-barred. Mendez opposed the demurrer, claiming inter alia that the doctrine of equitable tolling applied. The trial court sustained the demurrer without leave to amend, reasoning that the first amended complaint only alleged a claim of negligence and was filed beyond the two-year statute of limitations that applies to such claims. In rejecting Mendez's claim of equitable tolling, the court noted that Mendez's allegations and supporting documentation "conclusively show that she was aware of her claim on the date of the incident." The court further noted that Mendez had not alleged that she was misled by Cottage or its employees to refrain from pursuing her claim. Judgment was entered in favor of Cottage, and Mendez appealed.

DISCUSSION

Mendez contends the court erred in sustaining Cottage's demurrer to her first amended complaint without leave to amend on the ground that the action was barred by the two-year statute of limitations set forth in section 335.1. She argues that she sufficiently alleged the statute of limitations was equitably tolled and that the delayed discovery rule applies. We are not persuaded.

"In reviewing a judgment following the sustaining of a demurrer without leave to amend, we decide de novo whether the complaint states facts sufficient to state a cause of action. [Citation.]" (*Holland v. Jones* (2012) 210 Cal.App.4th 378, 381.) ""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 . . . 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.)

"A complaint showing on its face the cause of action is barred by the statute of limitations is subject to general demurrer. [Citation.]" (*Iverson, Yoakum, Papiano & Hatch v. Berwald* (1999) 76 Cal.App.4th 990, 995.) The statute of limitations for claims of personal injury is two years. (§ 335.1.) Mendez's first amended complaint alleges that her injuries incurred on October 28, 2010, yet her complaint was not filed until November 19, 2013. Mendez also alleges that she was immediately aware of her injuries, conveyed her concerns to her supervisor the very next day, and began suffering symptoms in November 2010. Because any claim arising from Mendez's alleged exposure to excessive radiation accrued as soon as she knew or reasonably should have known of her injuries and their cause, her claim for personal injury had to be filed within two years of the date of her injury. Mendez did not file her complaint until November 2013, so the court properly found it was time-barred. Even if Mendez had sufficiently alleged a claim for fraud or professional negligence, her complaint was also filed beyond the three-year limitations period that applies to such claims. (§§ 338, 340.5.)

Mendez also failed to sufficiently allege that the statute of limitations was equitably tolled or that she was entitled to the delayed discovery rule. "The policy concern underscoring the application of the doctrine of equitable tolling is that the defendant's fraudulent concealment of his wrongdoing has resulted in the plaintiff being ignorant of his cause of action, despite the exercise of reasonable diligence. [Citation.]" (*Sagehorn v. Engle* (2006) 141 Cal.App.4th 452, 461.) Similarly, the delayed discovery rule merely "postpones accrual of a cause of action until the plaintiff discovers, or has reason to discover, the cause of action. [Citations.]" (*Norgart v. Upjohn Co.* (1999) 21 Cal.4th 383, 397.) As the trial court noted, Mendez failed to allege that anyone employed by or associated with Cottage acted in such a manner that caused her to be unaware of her claim. Moreover, Mendez's allegations and supporting documents unequivocally demonstrate that she was aware of her claim no later than November 2010.

For the first time on appeal, Mendez asserts that the statute of limitations tolled during the period of time she pursued a workers' compensation claim against Cottage for her alleged injuries. (See *Elkins v. Derby* (1974) 12 Cal.3d 410, 414-420

[one-year limitations period for personal injury action was tolled while plaintiff, acting in good faith, pursued workers' compensation remedy against defendant].) Assuming that this assertion is not forfeited, Mendez's workers' compensation claim against Cottage was only pending from August 28, 2012, until November 5, 2012. Tolling the statute of limitations for this 69-day period would not have aided Mendez, who filed her complaint over three years after she discovered her claim.

The judgment is affirmed. Cottage shall recover its costs on appeal.

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PERREN, J.

We concur:

GILBERT, P. J.

YEGAN, J.

Donna Geck, Judge
Superior Court County of Santa Barbara

Rosa Mendez, in pro. per., for Appellant.

Clinkenbeard, Ramsey, Spackman & Clark, Maureen E. Clark for
Respondent.