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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

LONDON & CO., LLP

Plaintiff, Cross-Defendant and  
Respondent,

v.

ROBERTA GOVRO et al.,

Defendants, Cross-Complainants  
and Appellants;

PHILIP LONDON,

Cross-Defendant and Respondent.

B262396

(Los Angeles County  
Super. Ct. No. BC512563)

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

Law Office of Louise A. Lewis and Louise A. Lewis for Defendants, Cross-  
Complainants and Appellants.

Chapman, Glucksman, Dean, Roeb & Barger, Randall J. Dean and J. Andrew  
Wright for Plaintiff, Cross-Defendant and Respondent London & Co. and Cross-  
Defendant and Respondent Philip London.

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## INTRODUCTION

Cross-Complainants Roberta Govro and Lagnod Inc., doing business as Excello Copy Company (Excello), appeal from a judgment of dismissal following an order sustaining a demurrer by their former accountants, Cross-Defendants Philip London and London & Co., LLP (London & Co.).<sup>1</sup> The operative cross-complaint alleges that London sold Excello to Govro in June 2006, while convincing her to retain him as the company's accountant and promising her his services would be "more cost effective" than those of other accountants. After purchasing the company, Govro entrusted London with managing all financial aspects of the business, and granted him check signing privileges, which he allegedly used to pay himself excessive fees, in violation of his fiduciary duties to Excello.

London demurred to the cross-complaint on the ground that Govro's action, filed in August 2013, was barred by any conceivably applicable statute of limitations. London argued Govro's claims accrued in 2006, when Excello began making the allegedly excessive payments to London, and that Govro failed to allege sufficient facts to delay accrual under the discovery rule. The trial court sustained the demurrer without leave to amend.

Viewing the allegations of the cross-complaint in the light most favorable to Govro, and drawing all reasonable inferences in favor of the viability of her claims, we conclude the allegations are sufficient to find that a reasonable person in Govro's position would not have suspected her business had been injured by London's misconduct until September 2010, when Govro learned about a misrepresentation London made concerning the financial reporting of his fees. Her claims are therefore timely under the applicable statutes. We reverse.

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<sup>1</sup> Where appropriate in context, we sometimes collectively refer to Cross-Complainants as Govro and Cross-Defendants as London.

## FACTS AND PROCEDURAL BACKGROUND

Because this matter comes to us on demurrer, we draw our statement of facts from the operative second amended cross-complaint's allegations. (*Stevenson v. Superior Court* (1997) 16 Cal.4th 880, 885.) “[W]e treat as true all material facts properly pleaded, but not contentions, deductions or conclusions of fact or law.” (*Freeman v. San Diego Assn. of Realtors* (1999) 77 Cal.App.4th 171, 178, fn. 3.)

Cross-Defendant Philip London is a certified public accountant who does business under the name London & Co., LLP. Through London & Co., London provides tax and accounting services to various businesses and individuals.

From September 1996 to June 2006, London was the sole shareholder and president of Excello. Excello operates an on-site copy service, which contracts with a variety of businesses and public entities to supply copies of records used in workers compensation and civil litigation.

Prior to June 2006, Govro was employed as Excello's office manager, first by the company's original owner, then by London when he purchased the company in September 1996. As office manager, Govro both oversaw and performed client services for Excello.

Around the beginning of 2006, London approached Govro about purchasing Excello. He said he wanted to focus on other projects and suggested that owning the business might offer Govro flexibility in financing college for her two children.

Govro was hesitant to purchase the business because her experience was confined to running Excello's operations, and she had little familiarity with the company's finances. London told Govro she had “nothing to worry about.” He convinced her to retain him as Excello's accountant and assured her it would be “more cost effective” than hiring a new accountant since, after 20 years in that position, he “‘had it down pat.’” He also promised her that he would “‘protect [her] best interests wherever possible.’” London did not disclose his fees for accounting and tax preparation services for prior years, and he never advised Govro of the rate he would charge Excello. He assured her

only that his accounting services would be less expensive than those of an outside accountant.

Relying on London's assurances and promises, Govro decided to purchase Excello from him in June 2006. To finance the purchase, Govro executed a promissory note in favor of London for approximately \$180,000, which was secured by a deed of trust on her home, naming London as the beneficiary. Under the terms of the note, Govro promised to make monthly payments to London of \$3,029.53 until the debt was extinguished.

After Govro assumed ownership, London suggested that she retain the same bookkeeper he had used to oversee the payment of bills and payroll for Excello. This bookkeeper was an employee of cross-defendant London & Co. and worked in its Santa Monica office. London suggested, however, that Govro pay the bookkeeper directly, rather than through his business, to avoid the " 'mark up' " she would pay if bookkeeping services were billed through London & Co. Further, to facilitate the payment of bills, London also suggested that Govro grant him check signing authority on Excello's checking accounts and payroll account. Govro agreed to all London's recommendations.

According to the cross-complaint, London took charge of "oversee[ing] the financial and corporate end of the business so [Govro] could concentrate on the day-[to-day] operation of getting medical and business records copied and sent to the clients who had ordered them." From June 2006 through November 2010, London never submitted an invoice for his accounting services to Govro. Rather, he gave his bills to the bookkeeper, who issued checks to London. London then used his signature authority to sign the checks on behalf of Excello. In doing so, London "gave his charges payment priority over [Excello's] other payables."

Around mid-2009, London and Govro met to review Excello's semi-annual financial report. During the meeting, Govro asked London where his accounting fees were reflected in the report. London said they were included in the " 'Professional Fees' " category along with other professional services, but he could not recall what portion of the total fees was attributable to accounting. Govro asked London to send her copies of his invoices when he had time. London agreed to do so, but never did.

In 2010, Excello experienced a "cash flow crisis" due to many of its clients making slower payments on their invoices. In the fall of that year, Govro learned from Excello's bookkeeper that the company owed London approximately \$27,000 in accounting fees for the first eight months of 2010. In September 2010, Govro also learned that, contrary to London's representation, the " 'Professional Fees' " category in Excello's semi-annual financial report consisted exclusively of charges for London's accounting services.

In December 2010, Govro began interviewing other accountants. The bids she received suggested London had been charging Excello significantly higher rates. After reviewing Excello's books, these accountants also advised Govro that they could find nothing in the company's financials to justify the amounts London had charged.

In 2011, Govro terminated Excello's relationship with London. The company's current accountant charges less than \$3,500 annually for the same services.

In June 2013, London sued Govro and Excello to recover the approximately \$27,000 in unpaid accounting charges. On August 7, 2013, Govro and Excello responded with an answer and cross-complaint.

Govro's initial cross-complaint asserted two causes of action for fraud and breach of fiduciary duty, both based on allegations that from June 2006 through November 2010, Excello had paid London excessive fees for accounting services in reliance on London's representation that he would " 'protect [Govro's] best interests whenever possible' " and that his accounting services would be "more cost effective" than those of another accountant. The cross-complaint sought damages of approximately \$54,000 for the alleged "overpayments."

London filed a general demurrer to the cross-complaint, asserting both causes of action were barred by the statute of limitations. The trial court sustained the demurrer with leave to amend. After London successfully demurred to the first amended cross-complaint, also on grounds that the claims were time barred, Govro filed the operative second amended cross-complaint.

London filed a general demurrer to the second amended cross-complaint, asserting again that the claims for fraud and breach of fiduciary duty were barred by every conceivably applicable statute of limitations, and Govro had failed to allege sufficient facts to invoke the delayed discovery rule. After taking the matter under submission, the trial court entered an order adopting a tentative decision overruling the demurrer.

London promptly filed a motion to correct, amend or vacate the court's order together with an ex parte application to advance the hearing date and a supporting declaration by London's attorney. The attorney declared that during the hearing on the demurrer, the court had stated its tentative decision was "incorrect," the cross-complaint failed to allege sufficient facts to toll the limitations period, and the court would issue a new order sustaining the demurrer without leave to amend. Govro opposed the motion, arguing London failed to comply with the procedural requirements for reconsideration.

After receiving Govro's opposition, the court entered an order vacating its prior order. The order stated, "The Court's Notice of Entry of Order . . . and corresponding minutes erroneously stat[ed] that the Court adopted its Tentative Ruling after the . . . hearing regarding [London's] Demurrers." The new order sustained London's demurrer to the second amended cross-complaint without leave to amend. A judgment of dismissal followed, from which Govro appeals.

## DISCUSSION

### 1. *Legal Principles - The Statute of Limitations and Delayed Discovery Rule*

When a demurrer is sustained on the ground that a claim is time barred, application of the statute of limitations is a purely legal question; accordingly, we review the lower court's ruling de novo.<sup>2</sup> (*Aryeh v. Canon Business Solutions, Inc.* (2013) 55 Cal.4th 1185, 1191 (*Aryeh*)). We must take the allegations of the operative cross-complaint as true and consider whether, on the facts alleged, the claim is barred as a matter of law. (*Ibid.*; see also *Fox v. Ethicon Endo-Surgery, Inc.* (2005) 35 Cal.4th 797, 810-811 (*Fox*)).

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<sup>2</sup> At oral argument, London's attorney advised this court that the State Bar suspended Govro's attorney's license four days before Govro filed her appellant's opening brief. The suspension was effective for 30 days, the license was reinstated, and Govro's attorney was authorized to practice law in California when the case was argued. We invited the parties to submit supplemental letter briefs addressing the legal implications of the suspension.

In his letter brief, London argues we should strike Govro's opening brief because it was filed during the term of her attorney's suspension. The authorities he cites do not compel that measure. (See, e.g., *Russell v. Dopp* (1995) 36 Cal.App.4th 765, 778 [voiding judgment where legal representation by unlicensed lay person constituted fraud on the client and the court, but observing "there is no need to reverse a judgment in such a situation when the fact that an attorney was unlicensed clearly did not affect the integrity of the litigation process"]; see also *Gomes v. Roney* (1979) 88 Cal.App.3d 274, 275 [observing, "Defendant, the party to be protected, received the benefit of a defense judgment[;] [t]he ineligibility of one of his attorneys is a collateral matter having nothing to do with the merits of the action between the parties"].) Here, the party to be protected by the licensure requirement is Govro, and she would decidedly *not* benefit from the relief requested by London. Further, in this case the integrity of the litigation process is not compromised by allowing the opening brief to stand, notwithstanding the licensure status of Govro's attorney. We review the record and the judgment de novo on an appeal after an order sustaining a demurrer without leave to amend, and the integrity of our independent review of the legal issues raised in this appeal has not been affected by the fact that Govro's attorney was subject to a 30-day suspension when the opening brief was filed.

“[T]he statute of limitations exists to promote the diligent assertion of claims, ensure defendants the opportunity to collect evidence while still fresh, and provide repose and protection from dilatory suits once excess time has passed. [Citations.] The duration of the limitations period marks the legislatively selected point at which, for a given claim, these considerations surmount the otherwise compelling interest in adjudicating [valid claims] on their merits.” (*Aryeh, supra*, 55 Cal.4th at p. 1191.)

“The limitations period, the period in which a plaintiff must bring suit or be barred, runs from the moment a claim accrues. [Citations.] Traditionally at common law, a ‘cause of action accrues “when [it] is complete with all of its elements”—those elements being wrongdoing, harm, and causation.’ [Citations.] This is the ‘last element’ accrual rule: ordinarily, the statute of limitations runs from ‘the occurrence of the last element essential to the cause of action.’ ” (*Aryeh, supra*, 55 Cal.4th at p. 1191.)

“To align the actual application of the limitations defense more closely with the policy goals animating it, the courts and the Legislature have over time developed a handful of equitable exceptions to and modifications of the usual rules governing limitations periods. . . . The ‘ “most important” ’ of these doctrines, the discovery rule, . . . ‘postpones accrual of a cause of action until the plaintiff discovers, or has reason to discover, the cause of action.’ ” (*Aryeh, supra*, 55 Cal.4th at p. 1192.) Plaintiffs are deemed to have discovered a cause of action when they “have reason to at least suspect that a type of wrongdoing has injured them.” (*Fox, supra*, 35 Cal.4th at p. 807.)

“The discovery rule only delays accrual until the plaintiff has, or should have, inquiry notice of the cause of action. The discovery rule does not encourage dilatory tactics because plaintiffs are charged with presumptive knowledge of an injury if they have ‘ “information of circumstances to put [them] *on inquiry*’ ” ’ or if they have ‘ “*the opportunity to obtain knowledge* from sources open to [their] investigation.’ ” ’ [Citations.] In other words, plaintiffs are required to conduct a reasonable investigation after becoming aware of an injury, and are charged with knowledge of the information that would have been revealed by such an investigation.” (*Fox, supra*, 35 Cal.4th at pp. 807-808, fn. omitted.)

“In order to rely on the discovery rule for delayed accrual of a cause of action, ‘[a] plaintiff whose complaint shows on its face that his claim would be barred without the benefit of the discovery rule must specifically plead facts to show (1) the time and manner of discovery *and* (2) the inability to have made earlier discovery despite reasonable diligence.’ [Citation.] In assessing the sufficiency of the allegations of delayed discovery, the court places the burden on the plaintiff to ‘show diligence’; ‘conclusory allegations will not withstand demurrer.’ ” (*Fox, supra*, 35 Cal.4th at p. 808.)

With these principles in mind, we turn to the allegations of the operative cross-complaint.

2. *The Cross-Complaint Alleges Sufficient Facts to Support a Finding That Govro Had No Reason to Suspect Wrongdoing Until She Learned London Concealed the True Extent of His Fees*

Govro’s fraud and breach of fiduciary duty claims are subject to a three- and four-year limitations period, respectively. (See Code Civ. Proc., § 338, subd. (d) [prescribing three-year limitations period for “[a]n action for relief on the ground of fraud or mistake”]; *William L. Lyon & Associates, Inc. v. Superior Court* (2012) 204 Cal.App.4th 1294, 1312 [“[b]reach of fiduciary duty not amounting to fraud or constructive fraud is subject to the four-year ‘catch-all statute’ of Code of Civil Procedure section 343”].) The predicate allegations for both claims are essentially the same. While those allegations show that Govro suffered the claimed injury in 2006, the allegations also are sufficient to support a finding that Govro had no reason to believe she was injured, or to suspect the injury was caused by London’s alleged wrongdoing, until September 2010—less than three years before she filed her cross-complaint in August 2013.

For both Govro’s fraud and breach of fiduciary duty claims, the operative cross-complaint alleges injury occurred in 2006, when Excello began paying fees to London that vastly exceeded the fees charged by other accountants, in reliance on London’s representations that his services would be “more cost effective” than those of an outside accountant and that he would “ ‘protect [Govro’s] best interests whenever possible.’ ”

With Excello's first payment in 2006, both causes of action were complete with all their elements (misrepresentation, reliance/causation, and damage), such that the limitations periods on both claims would begin to run under the "last element" accrual rule. (*Aryeh, supra*, 55 Cal.4th at p. 1191.)

Nevertheless, when viewed in the light most favorable to Govro, the allegations concerning London's fiduciary status support a reasonable inference that Govro did not have sufficient "information of circumstances to put a reasonable person *on inquiry*" that her business had potentially been injured by London's alleged wrongdoing. (*Gutierrez v. Mofid* (1985) 39 Cal.3d 892, 896; see also *Fox, supra*, 35 Cal.4th at pp. 807-808.) Critically, the cross-complaint alleges that London did not function merely as Excello's accountant, but rather assumed control of "the financial and corporate end of the business," leaving Govro to focus exclusively on the company's day-to-day operations. Moreover, London convinced Govro to use a bookkeeper who, though paid directly by Excello, worked with London and remote from Govro. The cross-complaint also alleges that London interfaced directly with the bookkeeper, without submitting invoices to Govro, and obtained checks directly from the bookkeeper to pay his own accounting fees and other expenses on behalf of Excello. And, using the check signing authority he convinced Govro to grant him, London allegedly paid himself excessive fees, while giving his charges "payment priority over other payables," in violation of his fiduciary duties of loyalty and honesty to Excello. Finally, the cross-complaint alleges Govro did not suspect that London abused his authority until she learned he concealed the true extent of his fees. That revelation came in September 2010, when Govro learned, contrary to London's representation, that his fees accounted for the total amount of the Professional Fees category in Excello's semi-annual financial report. Taken together, these allegations support a reasonable inference that Govro did not have sufficient information to suspect wrongdoing until less than three years before she filed her cross-complaint.

London contends the cross-complaint's allegations foreclose a finding that Govro had no reason to suspect any alleged misconduct until the September 2010 discovery. Specifically, London points to the meeting he had with Govro in mid-2009, at which Govro asked him where his fees were recorded in Excello's financial report. London responded that the fees were included in the Professional Fees category, "along with other professional services," prompting Govro to request his invoices for the charges, which he never provided. London insists Govro's request for invoices demonstrates that the amount listed for Professional Fees was sufficient to put a reasonable person on inquiry notice concerning his alleged overcharges. We disagree.

Absent some indication that Govro could not have reasonably attributed a meaningful portion of the Professional Fees category to charges for other outside professional services, we cannot find, as a matter of law, that the amount listed in the category was so large as to put a reasonable person on inquiry notice that London had been overcharging Excello. Indeed, whether a conclusive finding could be made based on the amount listed in the report is cast into greater doubt by London's fiduciary relationship to Excello, which entitled Govro to trust, without further investigation, the representation that his fees constituted only a portion of the total category. As our Supreme Court explained in *Hobart v. Hobart Estate Co.* (1945) 26 Cal.2d 412, "in cases involving [a fiduciary] relationship[,] facts which would ordinarily require investigation may not excite suspicion, and [thus] the same degree of diligence is not required." (*Id.* at p. 440 [on account of director's fiduciary status, shareholder was entitled to rely on director's representation about share price without further duty to investigate prior to completing stock sale transaction].) While "notice or knowledge of facts sufficient to put a reasonable man on inquiry" will still give rise to a duty to investigate, even in cases involving a fiduciary relationship (*id.* at p. 442), viewing the allegations of the cross-complaint in the light most favorable to Govro, we cannot conclusively find that such facts were available to her prior to learning, in September 2010, that London misrepresented "other professional services" were included in the Professional Fees category. (See *Bennett v. Hibernia Bank* (1956) 47 Cal.2d 540, 559-560, 563 [because "a

fiduciary has a duty to make a full and fair disclosure of all facts which materially affect the rights and interest of the parties,” plaintiff need only show “he made an actual discovery of hitherto unknown information within the statutory period before filing the action”]; *Electronic Equipment Express, Inc. v. Donald H. Seiler & Co.* (1981) 122 Cal.App.3d 834, 856 [approving jury instruction stating that “in a fiduciary relationship a plaintiff is not charged with constructive notice as to those facts concealed from him by the fiduciary”].)

Because the cross-complaint’s allegations support a reasonable inference that Govro was not aware of facts sufficient to put a reasonable person on inquiry notice of London’s alleged wrongdoing until September 2010, Govro pled sufficient facts to delay accrual under the discovery rule. (See *Fox, supra*, 35 Cal.4th at p. 808.) The demurrer should have been overruled.<sup>3</sup>

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<sup>3</sup> Because we conclude the demurrer should have been overruled, we need not address Govro’s other claim of error concerning the court vacating its prior order without a noticed hearing.

**DISPOSITION**

The judgment is reversed and the order sustaining the demurrer is vacated. Cross-Complainants Roberta Govro and Lagnod Inc. are entitled to their costs on appeal.

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HOGUE, J.\*

We concur:

EDMON, P. J.

ALDRICH, 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.