

NOT TO BE PUBLISHED

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
THIRD APPELLATE DISTRICT
(Calaveras)

BILLY W. FRENCH,

Plaintiff and Appellant,

v.

COUNTY OF CALAVERAS,

Defendant and Respondent.

C069360

(Super. Ct. No. 11CV37510)

Billy W. French sued Calaveras County (County) in 2011 on a theory of inverse condemnation to recover compensation for a 50-foot wide roadway easement across his property. The County successfully demurred to the first amended complaint on the grounds French failed to state a cause of action and his claims are barred by the statutes of limitation.

French brings this pro se appeal from the subsequent judgment of dismissal. He argues that the trial court erred by concluding that the first amended complaint does not state facts sufficient to state a cause of action for inverse condemnation. He also argues that, in sustaining the demurrer, the trial court erred in finding his claim time-barred

because the County first asserted a fee interest to the disputed property in a memorandum dated April 21, 2008, and he timely filed his complaint on April 7, 2011.

We find the trial court did not err in concluding there were insufficient facts to constitute a cause of action for inverse condemnation and defendant's 2011 complaint was untimely. We affirm the judgment.

BACKGROUND

Because this is an appeal following a successful demurrer, we accept as true all facts properly pled in French's complaint, and also incorporate any facts of which we may take judicial notice. (*Gu v. BMW of North America, LLC* (2005) 132 Cal.App.4th 195, 200.)

In 1975, as part of a realignment and relocation of New Hogan Dam Road and "to obtain the underlying fee on certain portions of said Road," the County acquired from the Bank of Stockton, via property exchange, a 50-foot wide strip of land along the existing Hogan Dam Road. To accomplish the exchange, the Bank of Stockton executed a quitclaim deed of "[a]ll [r]ight, [t]itle & [i]nterest" to a strip of land on either side of Hogan Dam Road, and not less than 50 feet wide.

In 1977, French¹ and others (co-owners) purchased a parcel of property on the west side of Hogan Dam Road from the Bank of Stockton. The grant deed transferred parcels 9 and 13 as they appeared on the 1975 parcel map "save and excepting therefrom all that fractional portion of said parcel 13 as was conveyed to the County" by the 1975 quitclaim deed. Following litigation with the Bank of Stockton over the property's boundary, the co-owners executed a grant deed in favor of French to the "adjusted parcel 13."

¹ Our reference to French in connection with ownership of the subject property includes his wife, Anita Diane French.

French later sought to subdivide and develop his properties. His tentative parcel map was approved by the County Planning Department in April 2008, but with conditions (among others) requiring French to delineate and dedicate access control rights to the County along Hogan Dam Road (described as “a County maintained minor collector road”), and requiring that he dedicate an additional seven feet for a right of way for the improvement of that portion of Hogan Dam Road on his property. In May 2008, French appealed this conditional approval. Arguing for the removal of the conditions at the hearing on his appeal, French asserted he “feels the County does not own anything and [he] wants the road to stay in the present location.” The appeal was denied. French did not challenge the denial of his appeal by writ.

French filed the original “Complaint in Inverse Condemnation” on April 7, 2011, claiming damages to his property of \$560,772. French alleged the County’s 2008 imposition of conditions on its approval of his proposed development constituted a taking of his property for public use because the County (1) “claimed [f]ee [t]itle” to the disputed 50-foot wide strip along Hogan Dam Road (25 feet of which falls on French’s parcel) and (2) demanded dedication of seven additional feet.

The County demurred to the original complaint primarily on the ground French’s complaint was time-barred and should be dismissed with prejudice, and alternatively on the ground that the complaint does not state facts sufficient to state any cause of action. The County argued the complaint constituted a challenge to the final approval of French’s subdivision map, which must be brought within 90 days, as required by Government Code section 66499.37.² The County also argued that the complaint does not state facts sufficient to state any adverse claim to the property.

² Government Code section 66499.37 provides that any action to set aside a decision “concerning a subdivision . . . including, but not limited to, the approval of a tentative map or final map, shall not be maintained by any person unless the action or proceeding

The trial court sustained the County's demurrer with leave to amend. The court found that French "concedes he is not challenging the final determination on his subdivision application," so the 90-day limitation period (Gov. Code, § 66499.37) does not apply. To the extent the complaint asserts an irreconcilable conflict between the 1975 deed by which the County acquired the 50-foot wide strip along Hogan Dam Road and his grant deed, French was granted leave to "file an amended pleading to assert the applicable facts and documents."

French then filed the operative "First Amended Complaint in Inverse Condemnation," which alleged that the County does not own the disputed 50-foot wide strip. French alleged that the 1975 quitclaim deed by which the Bank of Stockton purported to transfer property to the County did not actually transfer fee title in the strip because the record does not show the Bank of Stockton acquired the requisite official approvals of an exchange of property acquired by foreclosure. French also alleged the grant deed *he* received in 1977 referred to a 1975 parcel map, which itself referred only to "easements" of 30 feet for a roadway, not ownership by the County of a 50-foot strip. Finally, French alleged, the 1975 parcel map offers a dedication of a public right for road purposes, an acceptance of which was never recorded.

The County demurred to the first amended complaint on the grounds its claims are barred by the three-year statute of limitations set forth in Code of Civil Procedure section 338,³ and the amended complaint failed to state a claim upon which relief may be granted. The County argued that, because French's first amended complaint essentially asserted that he (not the County) owns the 50-foot strip ostensibly conveyed to the

is commenced and service of summons effected within 90 days after the date of the decision."

³ An "action for trespass upon or injury to real property" must be brought within three years. (Code Civ. Proc., § 338, subd. (b).)

County in 1975, any cause of action is time-barred. The County also argued there are no facts describing a legal taking, and thus no cause of action for inverse condemnation.

At the hearing on the County's demurrer to the first amended complaint, French argued that the amended complaint "has nothing to do with the deed." Rather it concerns "the taking of real property by the County of Calaveras, and the first notification we had of that was in April the 11 of 2008." Thereafter, the trial court sustained the demurrer without leave to amend. The court found that French failed to state sufficient facts to constitute a cause of action for inverse condemnation, the only cause of action identified in the pleading, and any claims are time barred by Code of Civil Procedure section 338.

DISCUSSION

I

Standards of Review

A demurrer may be sustained without leave to amend where the facts are not in dispute and the nature of the plaintiff's claim is clear but, under substantive law, no liability exists. (*Seidler v. Municipal Court* (1993) 12 Cal.App.4th 1229, 1233.) On appeal from a judgment of dismissal after an order sustaining a demurrer without leave to amend, we examine the complaint de novo to determine whether it alleges facts sufficient to state a cause of action under any legal theory. (*McCall v. PacifiCare of California, Inc.* (2001) 25 Cal.4th 412, 415.) We give the complaint a reasonable interpretation and treat the demurrer as admitting all material facts properly pleaded, but we do not assume the truth of contentions, deductions, or conclusions of law. (*Aubry v. Tri-City Hospital Dist.* (1992) 2 Cal.4th 962, 966-967.) It is the plaintiff's burden to show either that the demurrer was sustained erroneously or that the trial court's denial of leave to amend was an abuse of discretion. (*Keyes v. Bowen* (2010) 189 Cal.App.4th 647, 655; *Savage v. Trammell Crow Co.* (1990) 223 Cal.App.3d 1562, 1576; *Bush v. California Conservation Corps* (1982) 136 Cal.App.3d 194, 200.)

The general rules of appellate practice also apply to our review of a dismissal following a demurrer sustained without leave to amend. (See *Keyes v. Bowen, supra*, 189 Cal.App.4th at p. 655.) Lack of legal counsel does not entitle an appellant to special treatment. (*Wantuch v. Davis* (1995) 32 Cal.App.4th 786, 795; *Harding v. Collazo* (1986) 177 Cal.App.3d 1044, 1055; *Doran v. Dreyer* (1956) 143 Cal.App.2d 289, 290.) A pro se litigant is held to the same restrictive rules of procedure as an attorney. (*Nelson v. Gaunt* (1981) 125 Cal.App.3d 623, 638-639.) “A doctrine generally requiring or permitting exceptional treatment of parties who represent themselves would lead to a quagmire in the trial courts, and would be unfair to the other parties to litigation.” (*Rapplelea v. Campbell* (1994) 8 Cal.4th 975, 985.)

II

The Demurrer to the First Amended Complaint Was Properly Sustained

The trial court did not err in ruling that the first amended complaint fails to state a cause of action for inverse condemnation.⁴

An inverse condemnation cause of action derives from article I, section 19, of the California Constitution, which states in relevant part: “Private property may be taken or damaged for public use only when just compensation . . . has first been paid to, or into court for, the owner.” Property is “taken or damaged” within the meaning of article I, section 19, of the California Constitution, so as to give rise to a claim for inverse condemnation, when: (1) the property has been physically invaded in a tangible manner; (2) no physical invasion has occurred, but the property has been physically damaged; or

⁴ We do not consider French’s arguments that the trial court erred in sustaining the County’s demurrer to the original complaint. Because an amended complaint supersedes the original, any error in the order sustaining the demurrer to the original complaint is waived by the subsequent filing, and cannot be reviewed on a later appeal. (*Fireman’s Fund Ins. Co. v. Sparks Construction, Inc.* (2004) 114 Cal.App.4th 1135, 1144.)

(3) an intangible intrusion onto the property has occurred that has caused no damage to the property but places a burden on the property that is direct, substantial, and peculiar to the property itself. (*Dina v. People ex rel. Dept. of Transportation* (2007) 151 Cal.App.4th 1029, 1048.)

The trial court did not err in concluding that the first amended complaint failed to state facts sufficient to constitute a cause of action for inverse condemnation. Although designated the “First Amended Complaint in Inverse Condemnation,” this pleading does not allege the facts necessary to show an inverse condemnation. Rather, its allegations focus on whether the Bank of Stockton’s 1975 quitclaim deed actually and effectively transferred ownership of the disputed 50-foot wide strip along Hogan Dam Road, and whether his 1977 grant deed and the 1975 parcel map it referenced reflected a road easement, rather than a fee interest in the right of way.

Nor can French escape operation of the statute of limitations by asserting on appeal that the County’s “claim of [f]ee [t]itle to a 50-foot wide strip of [his] [p]roperty was first made in a memorandum dated April 11, 2008,” and the action was filed within three years of that date. The County first asserted a fee claim to the 50-foot wide strip in connection with its acquisition of the property in 1975, and the “exception” to French’s ownership for the strip conveyed to the County by the 1975 quitclaim deed appears on the face of French’s own 1977 grant deed. To the extent French’s argument seeks to renew his challenge to the County’s 2008 imposition of conditions on its approval of his development plans, any claims based on the County’s 2008 acts are all barred by the 90-day statute of limitations applicable to such challenges (Gov. Code, § 66499.37).

If (as French also asserts) the County’s antecedent property exchange with the Bank of Stockton was improper or legally inadequate to transfer the strip for road improvement and caused damage to his property, French could arguably have asserted an action or otherwise sought to remove the cloud from his title after he acquired his property in 1977. It is too late now to assert what purports to be an inverse condemnation

claim based on those 35-year-old transactions. (Code Civ. Proc., § 312 [“Civil actions, without exception, can only be commenced within the periods prescribed in this title, after the cause of action shall have accrued”]; *Cobb v. City of Stockton* (2011) 192 Cal.App.4th 65, 70 [five years is longest possible limitations period applicable to inverse condemnation action].)

Finally, the trial court did not abuse its discretion in sustaining the demurrer without leave to amend and French does not contend otherwise in his appeal to this court. (*Schonfeldt v. State of California* (1998) 61 Cal.App.4th 1462, 1465.)

DISPOSITION

The judgment is affirmed. Calaveras County is awarded its costs on appeal. (Cal. Rules of Court, rule 8.278(a)(2).)

HOCH, J.

We concur:

RAYE, P. J.

MAURO, J.