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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

NING YEN et al.,

Plaintiffs and Appellants,

v.

COUNTY OF ORANGE,

Defendant and Respondent.

G044893

(Super. Ct. No. 30-2010-00352632)

O P I N I O N

Appeal from a judgment of the Superior Court of Orange County, Jamoa A. Moberly, Judge. Affirmed.

Wu & Cheung, Charles C.H. Wu, Mark H. Cheung and Vikram M. Reddy, for Plaintiffs and Appellants.

Nicholas S. Chrisos, County Counsel, and Laurie A. Shade, Deputy County Counsel, for Defendant and Respondent.

Ning Yen and Yean Chhaing Yen, husband and wife, appeal from a judgment of dismissal in this action challenging a tax assessment, following an order granting judgment on the pleadings against them in this case. They filed their initial pleading – styled as a petition for writ of mandate against the Orange County Assessment Appeals Board (the Board) – on the last day of the six-month statute of limitations period. However, when the Board’s demurrer convinced them they had not only filed the wrong cause of action, but filed it against the wrong party, they elected to amend their pleading to allege a cause of action at law for damages, and to name the County of Orange (the County) as “Doe 1.” The trial court then granted the County’s subsequent motion for judgment on the pleadings, concluding the Yens’ designation of the County as a doe defendant did not “relate back” to the date the initial pleading was filed, and thus their claim against the County was barred by the statute of limitations.

We agree with the court’s conclusion. The County is a legally separate entity from the Board, and whether or not we could properly construe the Yens’ original petition for writ of mandate as stating a cause of action at law for damages, it does not change the fact they failed to assert that claim against *the County* in a timely fashion. The Yens’ attempt to identify the County as a doe defendant does not change anything, because a doe amendment relates back to the filing of the complaint only where plaintiff is “ignorant of the name of a defendant.” (Code Civ. Proc., § 474.) That was not the case here. The County’s identity, as well as the fact it (and not the Board) was the entity that actually retained the Yens’ disputed tax payment, was at all times known to them. Their failure to name the County as a defendant in their initial pleading was the result of a legal mistake, not a factual one.

FACTS

In reviewing a judgment entered on the pleadings, we assume the truth of all well-pleaded facts. (*Hopp v. City of Los Angeles* (2010) 183 Cal.App.4th 713, 717.) Thus, we take our rendition of the underlying facts primarily from the Yens' pleadings. The Yens' original pleading was styled as a petition for writ of mandamus, and sought to challenge a decision of the Board, which denied their appeal of an order reassessing the value of their property for tax purposes.

The Board issued its decision on September 11, 2009, and thus the Yens had six months from that date to pursue a cause of action in court – i.e., until March 11, 2010.¹ And it was on that very date that the Yens filed their original pleading, which was the petition for writ of mandate against the Board.

In that petition, the Yens named only the Board, plus unnamed does, as defendants. After the Board demurred, arguing the Yens' sole remedy for the alleged improper reassessment was to pay the disputed tax and then sue for a refund in a cause of action at law against the County itself, the parties agreed the Yens would voluntarily amend their pleading to allege a cause of action for refund and identify the County as Doe 1, and would dismiss the Board as a defendant, without prejudice. The parties further agreed those amendments would render moot the pending demurrer. County counsel for the County of Orange (which represented the Board in the demurrer) also agreed to accept service of the amended complaint on behalf of the County itself.

After the County answered that amended complaint, it moved for judgment on the pleadings, claiming the Yens' action against it was barred by the six-month statute of limitations. The County relied primarily on *Schoenberg v. County of Los Angeles Assessment Appeals Bd.*, *supra*, 179 Cal.App.4th 1347.

¹ *Schoenberg v. County of Los Angeles Assessment Appeals Bd.* (2009) 179 Cal.App.4th 1347; Revenue and Taxation Code section 5141.

The Yens opposed the motion, arguing both that *Schoenberg* was distinguishable, and that the County should be equitably estopped from relying upon the statute of limitations, because it never informed the Yens of its intention to rely upon the defense during negotiations to resolve the Board's demurrer to their petition for writ of mandate.²

The court found the *Schoenberg* case to be directly on point and determined there was no basis to find the County was equitably estopped from relying on the statute of limitations. It consequently entered a judgment of dismissal in favor of the County.

DISCUSSION

The Yens devote a significant portion of their argument on appeal to the assertion that the allegations of their initial pleading – which they had characterized as a petition for writ of mandate – must be liberally construed and deemed to state facts sufficient to constitute a cause of action at law for recovery of damages for a tax overpayment, and thus the trial court should have deemed *that cause of action* to have been filed within the limitations period.

We need not address that assertion, however, because the more significant – indeed, insurmountable – problem with the Yens' initial pleading is that it did not name the County as a defendant. Thus, as of the date that pleading was filed – which occurred on the last date of the applicable six-month limitations period – the Yens had initiated no claim *of any kind* against the County.

Schoenberg v. County of Los Angeles Assessment Appeals Bd., *supra*, 179 Cal.App.4th 1347, is on point with respect to this issue. In that case, the plaintiff had also filed an initial pleading styled as a petition for writ of mandate against the assessment appeals board, and it was only after the six-month limitations period had run, that plaintiff sought to add the County itself as a defendant on a cause of action for damages.

² The Yens do not renew this claim of equitable estoppel on appeal.

The court ruled that plaintiff's initial claim against the Board could not be viewed as an assertion of any claim against the County itself, since the County is "a separate and distinct constitutional entity" from its assessment appeals board (*id.* at p. 1355), and thus naming the Board on an action to challenge a tax assessment decision cannot be construed as the functional equivalent of initiating an action against the County itself.³

We acknowledge the Yens' claim that this case is distinguishable from *Schoenberg* because here, the County was named as a doe defendant, rather than having been first named as an *additional* defendant after the limitations period had run – which was the situation in *Schoenberg*. However, this is a distinction without a difference in the circumstances of this case, because the mere fact the Yens utilized the doe defendant procedure does not guarantee their amendment will relate back to the filing date of the original pleading.

In order for a doe amendment to qualify as relating back to the filing of the original complaint, the plaintiff "must have been genuinely ignorant of [the defendant's] identity at the time she filed her original complaint." (*Woo v. Superior Court* (1999) 75 Cal.App.4th 169, 177.) As explained in *Marasco v. Wadsworth* (1978) 21 Cal.3d 82, 88, however, the doctrine can be applied in cases where the plaintiff technically knows the defendant's name, but is unaware of the factual circumstances giving rise to defendant's liability. "The plaintiff is deemed 'ignorant of the name' [of defendant] if he knew the identity of the person but was ignorant of the facts giving him a cause of action against the person [citations]" (*Marasco v. Wadsworth, supra*, 21 Cal.3d at p. 88.)

³ The Yens rely on *Canifax v. Hercules Powder Co.* (1965) 237 Cal.App.2d 44, for the proposition that a plaintiff should be allowed to correct a misnomer in its identification of defendant, even after the statute of limitations has run, where the defendant has already answered the complaint. However, *Canifax* is not on point. In that case, the plaintiff simply made a mistake in setting forth the defendant's proper name, and sought to correct that mistake; there was no confusion about the identity of the intended defendant, and certainly no attempt to change from one existing defendant to a different one. In this case, by contrast, the Yens intentionally filed their suit against one existing defendant, and then later sought to shift the focus of their suit to *an entirely different* defendant. Thus, *Canifax* is of no assistance to the Yens.

That was not the case here. The Yens were at all times aware of the County's identity, and also of the fact it is the County, and not the Board itself, which collects and retains property tax payments. While it may be true that the Yens failed to apprehend during the limitations period, that their proper remedy in this case would be a cause of action at law against the County, that mistake is one of law, not fact, and it does not justify the application of the relation back doctrine. A plaintiff's personal ignorance of the existing law giving rise to his cause of action does not prevent the running of the statute of limitations. As long as plaintiff is aware of the *facts*, the discovery rule charges him with the additional knowledge he would obtain "““from sources open to [his] investigation.””” (Fox v. Ethicon Endo-Surgery, Inc. (2005) 35 Cal.4th 797, 808, quoting Gutierrez v. Mofid (1985) 39 Cal.3d 892, 896-897, quoting Sanchez v. South Hoover Hospital (1976) 18 Cal.3d 93, 101.) As explained in Marasco v. Wadsworth, supra, 21 Cal.3d at p. 88, the relation back doctrine applies to plaintiff's ignorance of his cause of action only where he ““discovered that right by reason of decisions rendered after the commencement of the action. [Citation.]”” (Italics added.) Here, however, the law was well-settled, prior to the Yens' initiation of this case, that their remedy for an improper tax assessment was a cause of action at law against the County. (See Schoenberg v. County of Los Angeles Assessment Appeals Bd., supra, 179 Cal.App.4th at p. 1356, and cases cited therein.)

Because the Yens' designation of the County as Doe 1 did not relate back to the filing of their original petition for writ of mandate, the claim they asserted against the County was untimely as a matter of law. Consequently, the trial court did not err in granting the motion for judgment on the pleadings without leave to amend, and dismissing this case against the County.

The judgment is affirmed. The County is to recover its costs on appeal.

BEDSWORTH, J.

WE CONCUR:

O'LEARY, P. J.

ARONSON, J.