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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

DAVID GORAN,

Plaintiff and Appellant,

v.

MICHAEL BARTHALAMEW STREET,

Defendant and Respondent.

G050078

(Super. Ct. No. CIVDS1009466)

O P I N I O N

Appeal from a judgment of the Superior Court of San Bernardino County,
Donna G. Garza, Judge. Affirmed in part, reversed in part, and remanded.

Michael V. Hesse for Plaintiff and Appellant.

Glenn A. Williams for Defendant and Respondent.

* * *

INTRODUCTION

David Goran (Goran) gave Michael Barthalamew Street (Street) a deed of trust on a piece of real property owned by Goran in exchange for a loan. In 2002, Street recorded a notice of default under the deed of trust and a promissory note. Goran's attorney demanded Street rescind the notice of default because Goran claimed the promissory note was forged; Street complied.

In 2006, Goran sued Street to quiet title to the property, but later dismissed the complaint in 2009 without prejudice. In 2010, Street recorded a new notice of default, and scheduled a trustee's sale of the property. Street cancelled the trustee's sale when Goran filed the present lawsuit. In a bifurcated trial, the court found that all of Goran's claims were barred by the applicable statutes of limitations because they accrued as early as 2002, and no later than 2006.

We affirm in part, reverse in part, and remand. All of Goran's claims in the present litigation are identical to the claims raised in the 2006 complaint, and all are based on alleged alterations to the deed of trust and the alleged forgery of the promissory note by Street. Goran was aware of all of those claims in 2002. Under well-established California law, however, the statute of limitations does not run on an action to quiet title to property while the plaintiff is in possession of the property. There is no substantial evidence in the record to support the trial court's finding of laches. Therefore, neither the statutes of limitations nor the doctrine of laches bars Goran's cause of action to quiet title, or the related equitable causes of action for cancellation of certain documents, for specific performance, and for declaratory and injunctive relief. The relevant statutes of limitations do, however, bar Goran's legal causes of action for fraud, slander of title, and breach of contract. Substantial evidence supports the trial court's findings in favor of Street on those causes of action.

STATEMENT OF FACTS AND PROCEDURAL HISTORY

Since 1996, Goran has owned a piece of residential real property in San Bernardino (the property). On November 11, 1999, Goran borrowed \$7,713.43 from Street, and in exchange gave Street a deed of trust with assignment of rents to the property. Goran claimed he repaid the loan within a year.

According to Goran, Street altered the deed of trust to reflect that the amount of the loan secured by the deed was \$17,713.43, and then recorded the altered deed of trust in the San Bernardino County Recorder's Office in July 2000. Goran also claimed Street forged a universal promissory note from Goran to Street in the amount of \$17,713.43.

On May 28, 2002, Street recorded a notice of default and election to sell the property under the deed of trust. By letter dated August 9, 2002, Goran's attorney demanded that the notice of default be rescinded. Street recorded a notice of rescission of the notice of default.

On March 16, 2006, Goran filed a complaint to quiet title to the property (the 2006 complaint). The 2006 complaint alleged causes of action for quiet title; injunction; declaratory relief; cancellation of written instrument; breach of contract; fraud; specific performance; and slander of title. Goran failed to appear at a trial readiness conference, and the court issued an order to show cause regarding dismissal. Goran dismissed the 2006 complaint without prejudice in 2009.

On March 5, 2010, Street recorded with the San Bernardino County Recorder's Office a second notice of default and election to sell the property. On June 16, 2010, Street recorded a notice of trustee's sale, scheduling a sale of the property on Monday, July 12, 2010.

Goran filed the present action on July 9, 2010 (the 2010 complaint). The 2010 complaint asserted causes of action for fraud; cancellation of the deed of trust, promissory note, notice of default, and notice of trustee's sale; quiet title; slander of title; breach of contract; specific performance; declaratory relief; and injunction. Goran also recorded a notice of lis pendens regarding the property. Street cancelled the scheduled trustee's sale of the property.

Trial on the 2010 complaint began on May 1, 2012. The trial court granted Street's motion to bifurcate, and tried the issue of the statute of limitations first. After the first stage of the bifurcated trial, the court concluded that the 2010 complaint was barred by the statute of limitations. On the record, the court explained its conclusion, as follows: "So what I find before me is not so much whether there was or there wasn't fraud, but what I find is that those elements were alleged in the original Complaint that was filed in 2002 in this matter. And the statute of limitations for those to be brought forward was from the time of discovery by Mr. Goran in this matter, either based upon the letter that is in evidence from his lawyer, or from the time he filed the Complaint, that he was on notice of the defects that gave rise to the . . . quiet title action. [¶] I will also note the period of time that has proceeded since the original discovery of the cloudy title. So [Goran]'s claims in this matter should have been brought within that period of time, the statute of limitations. And by delaying that period of time, there is an issue with laches in that all parties are required to seek a determination and not in an unreasonable time, but to assert their claim as soon as—taken together, so it does not prejudice the other party. [¶] As the Court states, based upon all the evidence presented before it, based upon the testimony of Mr. Goran, who was very truthful and honest in his testimony in this matter, indicating he first discovered or first suspected there was a problem with respect to the loan documents as he's alleged, or with respect to anything else, that put him on notice that a claim to his title of fraud needed to proceed in this matter. I think he also claimed breach of contract. Those were all elements that he came to know at that period of time,

slander to his title. So for those reasons, and because of laches, I do find that the statute of limitations is a bar to proceeding in this matter. It does not have anything to do with the prior case being dismissed and res judicata. What . . . the Court’s finding is, because of the notice that was given to [Goran] in this matter, he was under a duty based upon the underlying causes of action to bring it within the statutory period. [¶] So for those reasons, the Court is going to find that the first amended Complaint is barred by the statute of limitations.”

The court entered judgment in favor of Street, and Goran timely appealed.

DISCUSSION

I.

STANDARD OF REVIEW AND GENERAL RULE ON THE STATUTES OF LIMITATIONS

We review the evidence in the light most favorable to Street to determine whether substantial evidence supports the trial court’s judgment. (*Jameson v. Five Feet Restaurant, Inc.* (2003) 107 Cal.App.4th 138, 143.)¹

In general, a statute of limitations on a cause of action begins to run when a plaintiff’s right is violated, and there is a remedy for that right. (*Ovando v. County of Los Angeles* (2008) 159 Cal.App.4th 42, 66.) “[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*

¹ Goran contends that the appropriate standard of review is de novo because the evidence is uncontradicted, citing *Rare Coin Galleries, Inc. v. A-Mark Coin Co., Inc.* (1988) 202 Cal.App.3d 330, 334.) That case, however, involved an appeal from an order granting summary judgment, not from a judgment entered after a court trial. Even if we were applying the de novo standard of review, it would not affect the outcome of this appeal.

until a later date” (Italics added.)’ [Citation.]” (*Spellis v. Lawn* (1988) 200 Cal.App.3d 1075, 1080-1081.)

II.

STATUTES OF LIMITATIONS ON CAUSE OF ACTION FOR QUIET TITLE AND RELATED CLAIMS

An important exception to the general rule on statutes of limitations applies to actions to quiet title. As our Supreme Court has explained: “[N]o statute of limitations runs against a plaintiff seeking to quiet title while he is in possession of the property. [Citations.] In many instances one in possession would not know of dormant adverse claims of persons not in possession. [Citation.] Moreover, even if, as here, the party in possession knows of such a potential claimant, there is no reason to put him to the expense and inconvenience of litigation until such a claim is pressed against him. [Citation.] Of course, the party in possession runs the risk that the doctrine of laches will bar his action to quiet title if his delay in bringing action has prejudiced the claimant. [Citations.]” (*Muktarian v. Barmby* (1965) 63 Cal.2d 558, 560-561, fn. omitted; see *Mayer v. L&B Real Estate* (2008) 43 Cal.4th 1231, 1237-1240.)

It is undisputed that Goran was at all times in possession of the property. Although Street’s 2002 notice of default might be considered a claim against the property, such claim ceased being made when Street rescinded the notice of default. The statute of limitations did not begin to run on Goran’s cause of action to quiet title in 2002. Goran’s filing of the 2006 complaint was not an adverse claim against the property by a third party, and did not trigger the statute of limitations.

The same rationale applies to Goran’s other claims for equitable relief, including his claims for injunctive relief, declaratory relief, specific performance, and for cancellation of the deed of trust, promissory note, notice of default, and notice of trustee’s sale.

As explained in *Muktarian v. Barmby*, *supra*, 63 Cal.2d at page 561, even if the statute of limitations never begins to run on an action to quiet title, the claim may nevertheless be barred by the equitable defense of laches. “‘The defense of laches requires unreasonable delay plus either acquiescence in the act about which plaintiff complains or prejudice to the defendant resulting from the delay.’ [Citation.] “[L]aches is defined as an unreasonable delay in asserting an equitable right, causing prejudice to an adverse party such as to render the granting of relief to the other party inequitable. [Citation.] Thus, if a trial court finds (1) unreasonable delay; and (2) prejudice, and if its findings are not palpable abuses of discretion, a finding of laches will be upheld on appeal.” [Citation.] [¶] ‘Prejudice is never presumed; rather it must be affirmatively demonstrated by the defendant in order to sustain his burdens of proof and the production of evidence on the issue.’ [Citation.]” (*California School Employees Assn., Tustin Chapter No. 450 v. Tustin Unified School Dist.* (2007) 148 Cal.App.4th 510, 521.) The trial court’s finding that laches applied in this case was not supported by substantial evidence. No evidence of prejudice was offered at the bifurcated trial.

III.

STATUTES OF LIMITATIONS ON LEGAL CLAIMS

As to Goran’s legal claims, however, no rule of law prohibited the commencement of the running of the statute of limitations while Goran was in possession of the property. All of Goran’s claims in the 2010 complaint arose from the allegedly forged promissory note and altered deed of trust. It is undisputed that Goran was aware of those claims no later than March 16, 2006, when he filed the 2006 complaint, raising the same causes of action and based on the same underlying facts, although the alleged triggering event for the filing of the 2010 complaint was a different notice of default. In addition, substantial evidence supported the trial court’s finding that Goran was aware of

the facts underlying the 2010 complaint no later than August 9, 2002, when his attorney demanded the first notice of default be rescinded.

Even using the later date of March 16, 2006, all of Goran's legal claims are barred by the applicable statutes of limitations. The statute of limitations for breach of an oral agreement is two years. (Code Civ. Proc., § 339, subd. 1.) Claims for fraud or slander of title to real property are subject to a three-year statute of limitations. (Code Civ. Proc., § 338, subds. (d), (g).)

Goran's first cause of action for fraud alleged Street made material misrepresentations at the time the deed of trust was signed in 1999, and when he allegedly forged the promissory note and altered the deed of trust. All of these claims were raised in the 2006 complaint. Goran had a reason to at least suspect he had been injured no later than 2006. (*Fox v. Ethicon Endo-Surgery, Inc.* (2005) 35 Cal.4th 797, 807.) Goran also alleged Street made material misrepresentations when he prepared, signed, and recorded the 2010 notice of default and the notice of trustee's sale because Street knew Goran did not owe Street any money on the deed of trust. Such an allegation could not have been raised in the 2006 complaint. However, the claim underlying the allegation is that Street misrepresented what Goran owed him, a fact undisputedly known to Goran since 2002.

Goran's fifth cause of action for breach of oral contract alleged that Street promised Goran he would destroy the deed of trust after Goran repaid the loan, but Street failed to do so. This cause of action accrued when Street failed to destroy or return the deed of trust. Goran was aware of Street's failure to do so in 2002 when Street recorded a notice of default based on the deed of trust, and in no event later than 2006 when Goran filed the 2006 complaint raising the identical claim.

Goran's fourth cause of action for slander of title to real property alleged that Street's alteration of the deed of trust, forgery of the promissory note, and recording of the notice of default and notice of trustee's sale impaired title to and marketability of

the property, and Goran's right to possession of the property. Again, this claim is identical to the claim for slander to title alleged in the 2006 complaint, meaning that at the latest, Goran's claim had accrued as of 2006.

IV.

CONCLUSION

Goran's claims for breach of contract, fraud, and slander of title to real property are barred by the applicable statutes of limitations. Goran's claims to quiet title, for cancellation of documents, for specific performance, and for injunctive and declaratory relief are not barred by the applicable statutes of limitations. On remand, these claims may be subject to the equitable defense of laches. Although the trial court made certain findings regarding laches at the conclusion of the trial on the statutes of limitations, laches and the statutes of limitations were alleged as separate affirmative defenses to the 2010 complaint, and the parties' agreement at the outset of trial was only to try the statute of limitations defense. Nothing in the appellate record shows the issue of the affirmative defense of laches was before the trial court in the bifurcated trial proceeding.

Further, on remand, while Goran's claims for fraud and breach of contract are barred, evidence relating to those claims may be admissible to establish Goran's claim to quiet title, inter alia. For example, Street's allegedly fraudulent conduct may be offered as evidence to establish the basis for the remaining claims, although Goran may not recover damages for the alleged fraud.

DISPOSITION

The judgment is affirmed in part, reversed in part, and remanded. Judgment shall be entered in favor of Street and against Goran on the following causes of action only: first cause of action for fraud; fourth cause of action for slander of title; and

fifth cause of action for breach of contract. Because both parties prevailed in part, neither party shall recover costs on appeal.

FYBEL, J.

WE CONCUR:

O'LEARY, P. J.

MOORE, J.