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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

MOO YOUNG KEA et al.,

Plaintiffs, Cross-defendants, and
Appellants,

v.

LINDA HONG,

Defendant, Cross-complainant, and
Respondent.

G050853

(Super. Ct. No. 30-2011-00534180)

O P I N I O N

Appeal from a judgment of the Superior Court of Orange County, Linda S. Marks, Judge. Affirmed in part, reversed in part, and remanded.

Law Offices of Tom S. Chun and Tom S. Chun for Plaintiffs and Appellants.

Daniel E. Park Law Corporation, Daniel E. Park and Christopher C. Cianci for Defendant and Respondent.

* * *

Plaintiffs and appellants Moo Young Kea (Moo Young), James Kea (James), Joung Hee Kea (Joung Hee), and Won Beom Lee (Lee; collectively, Plaintiffs)¹ appeal from the judgment entered after the trial court granted nonsuit on their claims against defendant and respondent Linda Hong (Hong). Plaintiffs brought this action to recover on a series of loans they allegedly made to their brother Howard Kea (Howard) to help finance the construction of two large, Korean-style health spas.

Plaintiffs considered Howard, their oldest sibling, the head of their family and they followed his directives without question because they viewed his success as essential to the family's success. When he asked them for money to help with the construction of the spas or other business ventures, they provided him substantial sums without any documentation or discussion regarding the terms or conditions of the transactions. Howard died shortly after the second spa was completed and without repaying the loans. Plaintiffs sought to recover on the loans from Hong because she was Howard's wife and, according to Plaintiffs, his business partner.

Hong moved for nonsuit after the parties rested at trial, arguing Plaintiffs failed to establish they had an enforceable loan agreement with Howard or that Hong was liable as Howard's business partner. She also asserted all of Plaintiffs' claims were barred by the two-year limitations period for oral contracts. The trial court agreed with Hong and granted her motion. In doing so, the trial court allowed Joung Hee to raise an unpleaded claim based on Howard's breach of an oral agreement to pay Joung Hee \$10,000 per month in exchange for her temporarily surrendering her right to control and receive a portion of the profits from a third spa. The court concluded the statute of limitations barred that claim, and therefore denied Plaintiffs leave to amend to include that claim in their complaint.

¹ We refer to the members of the Kea family by their first names to avoid confusion.

As more fully explained below, we affirm in part and reverse in part. We conclude the trial court properly granted Hong's nonsuit motion on the claims relating to the loans based on the two-year limitations period. Plaintiffs' pleadings and the evidence conclusively establish the loans were payable on demand, and therefore the limitation period began to run at the time Plaintiffs made the loans. It is undisputed Plaintiffs made their loans more than two years before they filed this action. We do not address the other grounds the trial court identified for its ruling because we conclude all loan-based claims are time-barred.

We reverse part of the claim based on Joung Hee's oral agreement with Howard concerning the right to control and receive profits from the third spa. That agreement required Howard to make periodic payments to Joung Hee that were not dependent on any of the other payments due under the agreement, and therefore a separate cause of action accrued and a separate limitations period ran for each payment Howard missed. Accordingly, although the statute of limitations barred Joung Hee's claim on all payments that were due more than two years before she filed this action, the trial court erred in concluding the statute of limitations barred this claim in its entirety because some of the missed payments were due less than two years before Joung Hee filed this action.

Finally, we also conclude the trial court erred in granting Hong's motion on a separate trespass claim Plaintiffs alleged. The court found Plaintiffs failed to present sufficient evidence establishing the essential element of damages, but we conclude the testimony Plaintiffs presented was sufficient to submit the claim to the jury.

I

FACTS AND PROCEDURAL HISTORY

Howard was the oldest of four siblings who immigrated to the United States from Korea. Moo Young and James were his brothers and Joung Hee was his sister. As

the eldest son, Howard was the head of the Kea family and his brothers and sister did everything he asked without question. Hong was Howard's wife and Sharon was their daughter.

Howard was an ambitious businessman who started in the construction business before purchasing and operating restaurants and nightclubs. In the early 2000's, he decided to build and operate large Korean-style health spas. He opened the first Imperial Health Spa in Garden Grove, California, in 2002. Within two years, he sold a 50 percent interest in that spa to Joung Hee and her husband, Lee, for \$1.25 million. Joung Hee agreed to operate the spa and split the profits with Howard. Based on the Garden Grove spa's success, Howard decided to construct additional spas in Las Vegas, Nevada, and Fullerton, California, which opened in April 2008 and January 2010.

Howard often obtained money from his siblings and their spouses to finance his businesses. Howard and his siblings never signed any promissory notes or written agreements to document these transactions, nor did they expressly agree upon any terms and conditions, such as whether Howard would pay any interest, the amount of any interest, or when or how Howard would repay the money. Rather, Howard simply would ask his siblings to give him money because as the head of the family they viewed his success as critical to the family's success.

Moo Young testified he loaned Howard a total of \$350,000 to help him with the Las Vegas and Fullerton spas. In 2007, Moo Young made two separate \$50,000 loans so Howard could purchase supplies for the Las Vegas spa. In June 2008, he loaned Howard \$200,000 and the next month he loaned Howard an additional \$50,000. There is no written documentation of these loans other than two checks Moo Young wrote to provide Howard the funds. Moo Young testified Howard promised to repay the loans at Moo Young's request. Near the end of 2009, Moo Young asked Howard to "resolve" the loans, but Howard did not do so.

James testified he made numerous loans to Howard starting in 2006. Although Howard and James never entered into any written agreement for the loans, James kept a ledger recording each loan he made to Howard. In 2006, James loaned Howard a pickup truck he valued at \$14,000 and also loaned him \$200,000. In 2007, James paid nearly \$6,000 in property taxes for Howard and also made two separate loans totaling \$360,000. In 2008, James made three separate loans to Howard totaling \$30,000, and in 2009, he made three more loans totaling \$63,000. The ledger showed Howard reimbursed James for the property taxes and paid James \$300,000 toward the loans in 2008. James also testified Howard gave him a check for \$550,000 in December 2007 to repay the then-outstanding loans, but James never cashed the check because Howard instructed him to wait until Howard had sufficient funds to cover the check. Howard never told him there were sufficient funds. When James asked if Howard was going to repay him, Howard responded, “after the construction is completed if he come [sic] across with money then he would pay.”

Lee, Joung Hee’s husband, testified he also provided Howard a total of \$250,000. First, in November 2007, Lee loaned Howard \$200,000 to purchase vacant land in Korea that Howard intended to develop. As with Howard’s siblings, Lee provided the money upon Howard’s oral request and without any written agreement or other documentation. Howard told Lee he was going to develop the land immediately and would repay Lee “if the land generates profit while developing the land.” Howard, however, did not develop the land. During November 2007, Lee also sent Howard \$50,000 in supplies from Korea that Howard needed to construct the Las Vegas spa. Lee testified he prepared and sent Howard an invoice for these supplies.² When Lee later asked Howard to pay for the loan and the supplies Howard told Lee to wait, explaining he

² A copy of the invoice was marked for identification at trial, but the court refused to admit it into evidence. Plaintiffs do not address the trial court’s refusal to admit the invoice and a copy is not included in the appellate record.

did not have the money because everything was tied up in the construction of the Las Vegas spa.

Joung Hee did not loan Howard any money, but she temporarily surrendered her right to control and receive half of the profits from the Garden Grove spa. Specifically, in October 2008, Howard explained to Joung Hee that he was experiencing financial difficulties in building the Fullerton spa, and therefore he needed to become the sole operator of the Garden Grove spa and keep all of the profits while he completed the construction. He orally agreed to pay Joung Hee \$10,000 per month to cover her living expenses and to later return control of the Garden Grove spa to her. Howard made the first two monthly payments under this agreement, but starting in January 2009 made no further payments. When Joung Hee later asked about the payments, Howard told her he was having financial difficulties with the construction and would pay her later.

In May 2010, Howard passed away without repaying these debts. Plaintiffs asked Hong to repay the debts because they considered her to be Howard's business partner and he had placed the Fullerton spa in her name and the Las Vegas spa in Sharon's name. Although Hong paid other obligations Howard incurred for the spas and his various businesses, she refused to pay these debts because she knew nothing about them and Plaintiffs had no documents to substantiate the debts.

Plaintiffs filed this action against Hong in December 2011.³ The operative second amended complaint alleged claims for breach of written contract, breach of the implied covenant of good faith and fair dealing, common count for money had and received, conversion, accounting, and constructive trust. All of these claims were based on the foregoing oral loans, but the second amended complaint alleged they were based on a written contract because several months before his death Howard allegedly dictated

³ Plaintiffs also named Sharon as a defendant, but the trial court dismissed the claims against her and Plaintiffs do not challenge that ruling.

notes to his close friend and personal secretary listing all of the debts and obligations he owed, including the loans to Plaintiffs. Howard did not write or sign these notes. Plaintiffs alleged Hong was liable for the loans because she was Howard's general partner on all of his business ventures. Plaintiffs, however, did not allege a claim based on the oral agreement for Joung Hee to temporarily surrender control of and the right to profits from the Garden Grove spa.

The second amended complaint also included a trespass claim, alleging (1) Hong filed false documents with the California Secretary of State and County of Orange identifying her as the owner of the Garden Grove spa after Howard died, and (2) based on those documents, Hong temporarily seized physical control of the Garden Grove spa and removed documents and a security camera system.⁴

After both sides presented their evidence, Hong made a nonsuit motion as to Plaintiffs' claims.⁵ On the claims based on the loans, Hong argued (1) Plaintiffs failed to present sufficient evidence to establish a written contract with Howard or any other enforceable loan agreement; (2) Plaintiffs did not present sufficient evidence to show Hong was liable for any loan as Howard's business partner or on any other theory; and (3) the two-year statute of limitations period barred any claim based on an oral agreement. As for the trespass claim, Hong argued it failed as a matter of law because Plaintiffs did not present sufficient evidence establishing they suffered any damages caused by the trespass.

⁴ The complaint also alleged a second conversion claim based on the same facts as the trespass claim and a claim for equitable indemnification, but Plaintiffs dismissed those two claims and they are not at issue in this appeal.

⁵ Hong also filed a cross-complaint against Plaintiffs that was tried at the same time as Plaintiffs' second amended complaint. The trial court granted Plaintiffs' nonsuit motion on the cross-complaint at the same time it granted Hong's motion. Hong's appeal from that ruling is the subject of a separate appeal.

After considering lengthy argument by the parties, the trial court granted the motion as to all of Plaintiffs' claims. The court explained the claims failed as alleged in the second amended complaint because Plaintiffs did not present evidence establishing any written agreement. Although the court stated it would allow Plaintiffs to amend their complaint according to proof to allege the claims were based on oral agreements, Plaintiffs failed to present sufficient evidence to establish any of the oral agreements were enforceable. According to the court, Plaintiffs did not present sufficient evidence showing the funds they provided to Howard were loans, rather than gratuitous gifts or investments, because Plaintiffs presented no evidence establishing the terms of any loan. The court also explained that even if Plaintiffs could establish the existence of a legally enforceable loan, they still failed to present sufficient evidence to establish a partnership between Howard and Hong relating to the three spas that would make Hong liable for the loans.

The court nonetheless explained Plaintiffs presented evidence of two transactions that would survive the foregoing challenges because Hong was aware of them, but Plaintiffs failed to allege those transactions in their complaint. The transactions concerned a \$30,000 loan James made to Howard and Hong in November 2009, and the October 2008 oral agreement for Joung Hee to temporarily surrender control of the Garden Grove spa in exchange for \$10,000 monthly payments. The court, however, denied Plaintiffs leave to amend to allege a new claim for breach of these two oral agreements because Plaintiffs' evidence showed these and all other contract-based claims were barred by the two-year limitations period governing oral contracts.

Finally, the court granted Hong's motion on the trespass claims because Plaintiffs failed to present sufficient evidence to establish Hong's trespass caused Plaintiffs any damages. Although the Garden Grove spa's manager testified it cost about \$2,000 to replace the security camera system and she received an estimate from an attorney that it would cost about \$2,000 in legal fees to correct the false filings Hong

made, the court concluded that testimony was insufficient because it was not supported by any documentation. The court explained the manager's testimony was mere speculation and could not support an award of damages.

The court then entered judgment against Plaintiffs and this appeal followed.

II

DISCUSSION

A. *Plaintiffs Timely Appealed*

Hong contends we must dismiss the appeal because Plaintiffs did not timely file their notice of appeal. According to Hong, the trial court "electronically served" the judgment on the same date it filed the judgment, and Plaintiffs failed to file their notice of appeal within 60 days of that date. The record does not support Hong's contention.

An appellant must file a notice of appeal on or before the earliest of (1) 60 days after either a party or the superior court clerk serves notice of entry of judgment or a file-stamped copy of the judgment accompanied by proof of service, or (2) 180 days after entry of judgment. (Cal. Rules of Court, rule 8.104(a).) "Compliance with the time for filing a notice of appeal is mandatory and jurisdictional. [Citations.] If a notice of appeal is not timely, the appellate court must dismiss the appeal." (*Ellis v. Ellis* (2015) 235 Cal.App.4th 837, 842.)

Here, the trial court entered judgment on July 17, 2014, and Plaintiffs filed their notice of appeal nearly 90 days later, on October 14, 2014. Contrary to Hong's contention, however, there is no proof of service or other evidence in the record showing the trial court electronically served the judgment on the same day the court entered it. The copy of the judgment in the record does not include a proof of service and nothing on the register of action shows the judgment was served on anyone after the court entered it. Without a proof of service showing when notice of entry of judgment or a file-stamped copy of the judgment was served, the 180-day time period for filing a notice of appeal

governs. (*Annette F. v. Sharon S.* (2005) 130 Cal.App.4th 1448, 1455-1456.) Plaintiffs filed their notice of appeal less than 180 days after the court entered judgment, and therefore the appeal is timely.

B. *The Standards for a Directed Verdict Govern This Appeal*

Although Hong referred to her motion as a nonsuit motion, it was actually a motion for directed verdict because it was made after the parties had presented their evidence and rested. Code of Civil Procedure section 581c authorizes a defendant to move for nonsuit either after the plaintiff has completed its opening statement or after the plaintiff has presented its evidence to the jury.⁶ (§ 581c, subd. (a).) If the motion is denied, the defendant may proceed to present its evidence to the jury. (*Ibid.*) Section 630 authorizes either a plaintiff or a defendant to “move for an order directing entry of a verdict in its favor” “after all parties have completed the presentation of all of their evidence in a trial by jury.” (§ 630, subd. (a).)

The distinction between the two motions often is irrelevant because both operate as a ““demurrer to the evidence,”” conceding the truth of the facts proved and contending they are insufficient as a matter of law to support the plaintiff’s case. (*Haley v. Casa Del Rey Homeowners Assn.* (2007) 153 Cal.App.4th 863, 876 [nonsuit]; see *Pacific Corporate Group Holdings, LLC v. Keck* (2014) 232 Cal.App.4th 294, 309 [directed verdict].) In ruling on either motion, the trial court must accept as true the evidence most favorable to the nonmoving party, disregarding conflicting evidence and indulging every legitimate inference in the nonmoving party’s favor; the court may not weigh the evidence or consider the credibility of witnesses. (See *Wilson v. Merritt* (2006) 142 Cal.App.4th 1125, 1133 [nonsuit]; *Howard v. Owens Corning* (1999) 72 Cal.App.4th 621, 629-630 [directed verdict]; see *Quinn v. City of Los Angeles* (2000) 84 Cal.App.4th

⁶ All statutory references are to the Code of Civil Procedure.

472, 479 [“In ruling upon a defense motion for a directed verdict, the trial court is guided by the same standard used in evaluating a motion for a nonsuit”].) The motion may be granted only when there is no evidence to support a jury verdict in the nonmoving party’s favor. (*Ibid.*)

When reviewing a trial court’s ruling on either a nonsuit motion or a motion for directed verdict, we review the ruling de novo and apply the same standards as the trial court. (*Castaneda v. Olsher* (2007) 41 Cal.4th 1205, 1214-1215 [nonsuit]; *North Counties Engineering, Inc. v. State Farm General Ins. Co.* (2014) 224 Cal.App.4th 902, 920 [directed verdict]; *Thrifty Payless, Inc. v. Mariners Mile Gateway, LLC* (2010) 185 Cal.App.4th 1050, 1060 [nonsuit].)

C. *The Statute of Limitations Bars Plaintiffs’ Claims Based on the Loans*

Plaintiffs contend the court erred in concluding the two-year limitations period for oral contracts barred their claims based on Howard’s failure to repay the loans.⁷ They do not dispute their claims based on the loans are subject to section 339’s two-year limitations period.⁸ Instead, Plaintiffs contend their claims are not time-barred

⁷ Although Plaintiffs’ complaint alleged their loan claims were based on written agreements, they conceded at trial that they failed to present evidence establishing any of them had a written agreement with Howard. Plaintiffs therefore moved to amend their complaint according to proof to allege the loans were based on oral agreements. The trial court allowed them to amend and considered whether Plaintiffs’ claims would survive Hong’s challenges as oral contract claims.

⁸ A two-year limitations period governs a claim for breach of an oral contract, including a claim for breach of the covenant of good faith and fair dealing implied in an oral contract. (§ 339, subd. (1); *Krieger v. Nick Alexander Imports, Inc.* (1991) 234 Cal.App.3d 205, 220-221 [contract claim for breach of implied covenant governed by limitations period applicable to underlying contract].) Plaintiffs other claims relating to the loans are governed by the same two-year limitations period because “the primary purpose of the action is to recover money under the oral contract, and the nature of the right sued upon, not the form of action or the relief demanded, determines the applicability of the statute of limitations.” (*Jefferson v. J. E. French Co.* (1960)

because the claims did not accrue until Howard completed construction of the Las Vegas and Fullerton spas and he had the financial resources to repay the loans, which occurred, if at all, less than two years before Plaintiffs filed this action. We disagree.

“[A] cause of action for breach of contract generally ‘accrues at the time of breach regardless of whether any substantial damage is apparent or ascertainable.’” (*Ram’s Gate Winery, LLC v. Roche* (2015) 235 Cal.App.4th 1071, 1084.) But “‘a cause of action for money payable on demand accrues with the inception of the obligation and without the necessity for any demand.’” (*Carrasco v. Greco Canning Co.* (1943) 58 Cal.App.2d 673, 675 (*Carrasco*); see *Clunin v. First Federal Trust Co.* (1922) 189 Cal. 248, 249 (*Clunin*) [“Where a promise to pay money is payable on demand the statute of limitations begins to run thereon at the date of its execution”]; *Huynh v. Chase Manhattan Bank* (9th Cir. 2006) 465 F.3d 992, 998-999 (*Huynh*) [applying Cal. law]; Rylaarsdam and Turner, *Cal. Practice Guide: Civil Procedure Before Trial, Statute of Limitations* (The Rutter Group 2015) ¶ 4:220, p. 4-22.)

Here, the second amended complaint, and all earlier complaints, alleged the loans Plaintiffs made to Howard were payable “on demand.” These allegations constitute judicial admissions that conclusively establish the loans were payable on demand, and therefore the limitations period began to run when the loans were made. (See *Myers v. Trendwest Resorts, Inc.* (2009) 178 Cal.App.4th 735, 746 [“Facts established by pleadings as judicial admissions “‘are conclusive concessions of the truth of those matters, are effectively removed as issues from the litigation, and may not be contradicted by the party whose pleadings are used against him or her’”]; *Heater v. Southwood Psychiatric Center* (1996) 42 Cal.App.4th 1068, 1079-1080, fn. 10 [“‘A party is bound by an admission in his own pleadings’”].)

54 Cal.2d 717, 718 [applying two-year limitations period to accounting claim because primary purpose of action was to recover on underlying oral contract].)

Despite this admission, Plaintiffs contend the loans were not payable on demand, but rather when Howard was able to pay them. Plaintiffs assert the parties contemplated the loans would not be payable until construction of the Las Vegas and Fullerton spas were completed and Howard had the financial resources to repay the loans. Plaintiffs reason the limitations period on their claims did not start to run during Howard's lifetime because Hong failed to present any evidence that Howard had the financial resources to repay the loans at any point before his death.⁹

Plaintiffs rely on the principle that the parties to a loan may agree to make the loan payable when the borrower is able to pay or at any other time to which they agree. (See *Fuller v. White* (1948) 33 Cal.2d 236, 238-240 [where promissory note stated it was payable “at any time [borrower's] financial condition permits,” borrower must show his financial condition permitted repayment to establish creditor's claim on note was time-barred]; *Greenfield v. Sudden Lumber Co.* (1937) 18 Cal.App.2d 709, 717 [“A contract may contemplate an indefinite delay for the repayment of money due on demand, in which case, the statute does not run until actual demand or the happening of the event designated in the contract as the extreme limit of payment”].) The evidence in this case, however, does not show Plaintiffs had any such agreement with Howard.

As explained above, Plaintiffs provided Howard the funds at issue without any discussion regarding the terms or conditions of the purported loans. According to their own testimony, Plaintiffs respected Howard as the head of their family and they did

⁹ Interestingly, this argument cuts both ways. If the loans truly were not payable until Howard had the financial resources to repay the loans and the record lacks evidence showing he had the resources, then Plaintiffs could not prevail on a cause of action for breach of the loans because the condition precedent to Howard's obligation to repay the loans was never satisfied. This same argument would defeat Plaintiffs' claims against Hong as Howard's purported partner because Plaintiffs do not cite any evidence showing Hong or her purported partnership with Howard ever had the financial resources to repay the loans.

as he asked without question. Plaintiffs cite to no evidence showing Howard promised at the time he requested the loans that he would repay them either when the Las Vegas and Fullerton spas were completed or when he had the financial resources. Instead, Plaintiffs point to statements Howard allegedly made months later when they separately asked when he would repay the loans. These later oral statements are insufficient to either restart or extend the limitations period. (§ 360; *Clunin, supra*, 189 Cal. at pp. 251-252; *Kurokawa v. Blum* (1988) 199 Cal.App.3d 976, 990 (*Kurokawa*).

Under section 360, an acknowledgement or new promise to perform an earlier oral agreement to pay money may restart or extend the statute of limitations on the original oral promise if it is in writing and signed by the party to be charged. This acknowledgement ““must be a direct, distinct, unqualified, and unconditional admission of the debt which the party is liable and willing to pay.”” (*Clunin, supra*, 189 Cal. at p. 252.) Here, the oral statements Plaintiffs cite do not satisfy these requirements.

Howard’s later statements also are not separately enforceable as independent contracts because they were not supported by consideration. (*Kurokawa, supra*, 199 Cal.App.3d at p 990.) Plaintiffs’ passing contention that the statements also equitably estopped Hong from asserting the statute of limitations as a defense similarly fails. (*Id.* at pp. 990-991.) Among other things, equitable estoppel requires Plaintiffs to show Howard intended them to refrain from filing an action based on his statements and Plaintiffs did so in reliance on Howard’s statements. (See *Hopkins v. Kedzierski* (2014) 225 Cal.App.4th 736, 756.) Plaintiffs make no such showing, nor do they explain how Howard’s statements caused them to delay filing this action for 19 months after his death.

The limitations period on all of Plaintiffs’ loan-based claims therefore began to run at the time the loans were made because they were payable on demand. (See *Clunin, supra*, 189 Cal. at p. 249; *Carrasco, supra*, 58 Cal.App.2d at p. 675; *Huynh, supra*, 465 F.3d at pp. 998-999.) Each of the loans for which Plaintiffs sought to recover was made more than two years before Plaintiffs filed this action on December 30, 2011.

Moo Young made his last loan to Howard in July 2008, James made his final loan to Howard on December 19, 2009,¹⁰ and Lee made all of his loans to Howard in November 2007. Accordingly, section 339's two-year limitations period bars all of Plaintiffs' loan-based claims.

D. *The Statute of Limitations Bars Only a Portion of Joung Hee's Claim for Breach of the Oral Agreement Concerning Control of the Garden Grove Spa*

Joung Hee also argues the trial court erred in concluding the statute of limitations barred her claim Howard breached their oral agreement that required her to temporarily surrender her right to control and receive profits from the Garden Grove spa. According to Joung Hee, the agreement was an installment contract, and therefore a separate limitations period accrued for each monthly payment Howard missed. Because only some of the missed payments were due more than two years before she filed this action, Joung Hee argues the statute of limitations bars her claim on these payments only, not the payments that were due less than two years before she filed this action. We agree.

The previous section's accrual analysis does not apply to this claim because the agreement on which it is based does not concern a loan payable on demand. Under the alleged oral agreement, Joung Hee agreed to temporarily surrender her existing right to operate and receive 50 percent of the profits from the Garden Grove spa in exchange for Howard's promise to pay her \$10,000 per month to cover her living expenses. This agreement was to continue until Howard completed construction of the Fullerton spa.

"Where there is a continuing wrong . . . with periodic new injury to the plaintiff, the courts have applied what Justice Werdegar has termed a 'theory of continuous accrual.' [Citations.] [¶] Thus, where performance of contractual obligations is severed into intervals, as in installment contracts, the courts have found that an action

¹⁰ This includes the \$30,000 loan that was the subject of Plaintiffs' motion to amend the complaint according to proof.

attacking the performance for any particular interval must be brought within the period of limitations after the particular performance was due. The situations in which this rule has been applied include not only installment contracts [citation], but also such diverse contractual arrangements as leases with periodic rental payments [citation], and contracts calling for periodic, pension-like payments on an obligation with no fixed and final amount [citation].” (*Armstrong Petroleum Corp. v. Tri-Valley Oil & Gas Co.* (2004) 116 Cal.App.4th 1375, 1388 (*Armstrong*) [applying rule to oil and gas operating agreement that required monthly calculations and payments for revenue sharing]; see *White v. Moriarty* (1993) 15 Cal.App.4th 1290, 1299 [“When an instrument is payable in installments, the cause of action on each installment accrues on the day following the date the installment is due”]; see *Garver v. Brace* (1996) 47 Cal.App.4th 995, 1000.)

“Applied to contractual disputes, the rule is but an application of the doctrine of contractual severability. [¶] ‘Where a contract is divisible and, thus, breaches of its severable parts give rise to separate causes of action, the statute of limitations will generally begin to run at the time of each breach; in other words, each cause of action for breach of a divisible part may accrue at a different time for purposes of determining whether an action is timely under the applicable statute of limitations.’” (*Armstrong, supra*, 116 Cal.App.4th at pp. 1388-1389.)

Here, the agreement was essentially a month-to-month lease. Young Hee surrendered her right to control and receive profits from the Garden Grove spa in exchange for Howard paying her \$10,000 per month. The parties’ obligations each month were severable from the obligations for all other months and there was no fixed ending point. Neither side contends the agreement allowed Joung Hee to accelerate and declare all future payments due if Howard missed a payment, and neither side points to any evidence showing Joung Hee terminated the agreement after Howard began missing payments. Accordingly, the foregoing authorities compel the conclusion the agreement required periodic payments and a separate limitation period ran for each missed payment.

Howard made the first two payments under the agreement in November and December 2008, but starting in January 2009 failed to make any more payments. Joung Hee resumed control of the Garden Grove spa after Howard died in May 2010. Her claim therefore seeks to recover the 17 monthly payments Howard missed between January 2009 and May 2010. Joung Hee filed this action on December 30, 2011, and therefore section 339's two-year limitation period bars her claim on each payment that was due before December 30, 2009, but not the payments that were due after that date. The trial court erred in concluding the statute of limitations barred her entire claim.¹¹

E. *The Trial Court Erred in Dismissing Plaintiffs' Trespass Claim*

Plaintiffs contend the trial court erred in dismissing their trespass claim for lack of sufficient evidence to establish the essential element of damages. According to Plaintiffs, the testimony by the Garden Grove spa's manager regarding damages was sufficient to require the court to submit the claim to the jury. We agree.

The trespass claim is based on Hong allegedly seizing physical control of the Garden Grove spa and removing documents and a security camera system. According to Plaintiffs, Hong filed false documents with the State of California and County of Orange that showed she was the spa's owner after Howard died, and those documents convinced the police to allow her to temporarily remain in control of the spa. Plaintiffs claim this trespass caused them approximately \$4,000 in damages. As evidence of these damages, the spa's manager testified that it "cost" "[a]pproximately, I believe \$2,000" to replace the security camera system and she obtained an estimate that it would

¹¹ As explained above, this claim was not alleged in any of Plaintiffs' pleadings filed before trial. Joung Hee first sought to allege it when Plaintiffs requested leave to amend according to proof after all parties had rested at trial. The parties have not addressed whether this claim relates back to the original filing of this action and we express no opinion on that issue.

cost about \$2,000 in attorney fees to correct the false filings Hong made with the State of California and County of Orange.

Despite this testimony, the trial court dismissed the trespass claim because “[t]here is no evidence provided in this case regarding damage[s] associated with the trespass that the court can give this jury without running the risk that the verdict will come back based on pure speculation, conjecture. Numbers that may not even have ever been paid in this case.” As for the cost to replace the security camera system, the court explained, “there is no documentation . . . for the jury to review to know whether or not \$2,000 was really any amount . . . that exists or is it just some speculative number that [the manager] has conjured up in her head as to what she believes the value of the security camera was.” On the attorney fee estimate, the court questioned, “Where does that number come from? How much is a lawyer hourly rate? How many hours is that lawyer going to take to do the work? Where does the number come from?”

The trial court’s questions relate to the foundation for the spa manager’s testimony, not prerequisites to submit this claim to the jury. This is not a claim on which Plaintiffs seek recovery for lost future profits or some other uncertain injury where both the fact and amount of damages is in question. Here, Plaintiffs simply seek to recover the cost to replace a security camera system and correct false filings with governmental entities. These are easily quantifiable items. Plaintiffs’ failure to offer an invoice or receipt for the replacement security camera system or a written estimate for the legal services to correct the false filings affects the weight of Plaintiffs’ evidence, not whether Plaintiffs had sufficient evidence to submit their claim to the jury.

The spa manager’s testimony it cost about \$2,000 to replace the camera system and an attorney estimated it would cost about \$2,000 to correct the false filings is not speculative. The trial court erred in reaching the opposite conclusion.¹² (See *Meister*

¹² Our conclusion the trial court erred in ruling Plaintiffs’ evidence was insufficient to establish the cost to replace the security camera system and correct the

v. Mensinger (2014) 230 Cal.App.4th 381, 396-397 [“Where the *fact* of damages is certain, the amount of damages need not be calculated with absolute certainty.’ [Citation.] ‘The law requires only that some reasonable basis of computation of damages be used, and the damages may be computed even if the result reached is an approximation’”].)

III DISPOSITION

The judgment is affirmed in part and reversed in part. The judgment is reversed on Plaintiffs’ trespass claim and that portion of Joung Hee’s breach of oral contract claim that sought to recover for the monthly payments Howard missed after December 2009. The judgment is affirmed in all of respects. The matter is remanded to the trial court for further proceedings consistent with the opinion. The parties shall bear their own costs on appeal.

ARONSON, J.

WE CONCUR:

RYLAARSDAM, ACTING P. J.

IKOLA, J.

false filings should not be construed as a holding that these damages may be recovered on a trespass claim. The only challenge Hong raised was whether the evidence was sufficient to establish the amount of these damages and that is the only issue we address.