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17 SUPERIOR COURT OF THE STATE OF CALIFORNIA
18 WEST DISTRICT
19 COUNTY OF LOS ANGELES
20

21 DONAHUE L. WILDMAN,

22 Plaintiff,

23 vs.

24 CALIFORNIA COASTAL COMMISSION
25 AND STATE COASTAL CONSERVANCY,

26 Defendants.

Case No. SC111748

**MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
REPLY TO PLAINTIFF'S OPPOSITION
TO DEFENDANTS' DEMURRER TO
COMPLAINT FOR QUIET TITLE AND
DECLARATORY RELIEF**

27 Date: June 20, 2011
28 Time: 8:30 a.m.
Dept: I
Judge: Hon. Jacqueline A. Connor

Action Filed: March 7, 2011

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **INTRODUCTION**

3 Defendants California Coastal Commission and the State Coastal Conservancy demurred
4 to plaintiff's complaint due to plaintiff's failure to timely file his complaint and on grounds of
5 laches. Plaintiff's opposition to defendants' demurrer is insufficient to cure the defects on the
6 face of plaintiff's complaint, and defendants' demurrer should therefore be sustained.

7 **ARGUMENT**

8 **I. DEFENDANTS' DEMURRER MUST BE SUSTAINED BECAUSE PLAINTIFF**
9 **DID NOT PLEAD FACTS IN HIS COMPLAINT SUFFICIENT TO ESTABLISH**
10 **AN EXCEPTION TO THE STATUTES OF LIMITATIONS APPLICABLE TO**
11 **HIS CAUSE OF ACTION FOR QUIET TITLE**

12 A plaintiff pleading an exception to the statute of limitations must state facts in his
13 complaint sufficient to establish the exception. (*G.D. Searle & Co. v. Superior Court* (1975) 49
14 Cal.App.3d 22, 26; *County of Alameda v. Superior Court* (1987) 195 Cal.App.3d 1283, 1286.)
15 Such facts cannot simply be implied or raised in the first instance in opposition to a demurrer:
16 "Where a complaint shows on its face that the cause of action is apparently barred, plaintiff must
17 plead facts showing a ground for suspension, delayed accrual, or application of another theory for
18 avoidance of the statute." (*County of Alameda, supra*, at p. 1286.) Thus, where the face of the
19 complaint demonstrates that the cause of action is time-barred, and plaintiff has not pled facts
20 showing an exception, the court must sustain a general demurrer. (*Id.* at p. 1287.)

21 **a. Plaintiff Has Not Pled Facts Sufficient to Establish the Elements of An Exception**
22 **to the Statute of Limitations Available for Property Owners in Possession of**
23 **Property in Actions for Quiet Title**

24 Plaintiff claims an exemption from the statute of limitations on the recognized theory that,
25 in an action for quiet title, the statute of limitations cannot run against an owner in undisturbed
26 possession of the property. (*Mayer v. L & B Real Estate* (2008) 43 Cal.4th 1231, 1238;
27 *Muktarian v. Barmby* (1965) 63 Cal.2d 558, 560; *Tannhauser v. Adams* (1947) 21 Cal.2d 169,
28 175.) This exception requires the property owner to have had "exclusive and undisputed"
possession of the property. (*Crestmar Owners' Assn. v. Stapakis* (2007) 157 Cal.App.4th 1223,

1 1229-30; *Ankoanda v. Walker-Smith* (1996) 44 Cal.App.4th 610, 616.) Consequently, plaintiff
2 must have pled facts sufficient to establish that he has had exclusive and undisputed possession of
3 the portion of his property in dispute, in order for his complaint to be valid on its face.

4 Plaintiff's complaint not only lacks alleged facts sufficient to establish his exclusive and
5 undisputed possession of the disputed portions of his property, plaintiff has failed to plead any
6 facts relating to the property's possession. Plaintiff cannot, therefore, avail himself of this
7 exemption from the statutes of limitations applicable to actions to quiet title. His complaint is
8 fatally defective. (*County of Alameda, supra*, at p. 1286; *see also G.D. Searle & Co., supra*, at p.
9 26.)

10 This exemption from the statutes of limitations exists to protect property owners from
11 long-dormant claims against title or from the expense and inconvenience of litigation prior to
12 presentation of an adverse claim. (*Muktarian, supra*, at pp. 560-61.) But defendants' adverse
13 claim is not long-dormant: the fact that defendant State Coastal Conservancy accepted the offer to
14 dedicate in 2003 belies any such argument. Further, this exemption does not protect plaintiff
15 from the expense and inconvenience of litigation prior to another party pressing an adverse claim:
16 Plaintiff has sought a judicial remedy prior to any attempt by defendants to enforce the easement.
17 Thus, plaintiff has also failed to establish that his situation falls within the policy aims of this
18 exemption from the statute of limitations. The exemption plainly does not apply.

19
20 **b. Plaintiff Has Not Pled Facts Sufficient to Establish that a Continuing Cause of
Action Exists**

21 Plaintiff also claims that any statute of limitations is inapplicable because he seeks to
22 remove a cloud upon his property title and a cloud on title creates a continuing cause of action.
23 Plaintiff has not only failed to plead facts sufficient to establish this theory, but by his own
24 admission the theory is inapplicable to this case.

25 The purpose of an action to remove a cloud on title is to destroy an instrument that would
26 be adverse to the plaintiff's interests, *regardless of who possesses the instrument*. (*Castro v.*
27 *Barry* (1889) 79 Cal. 443, 446.) This remedy is not useful to plaintiff, because the instruments in
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1 question—the Offer to Dedicate and the Acceptance of the Offer to Dedicate—are not harmful to
2 plaintiff in the hands of any individual. Rather, these instruments only harm plaintiff when acted
3 upon by the People of the State of California through an organization acceptable to the California
4 Coastal Commission, such as the State Coastal Conservancy. (Exhibit B to Plaintiff’s Complaint,
5 at p. 3.)

6 Instead, as is evident from the title of plaintiff’s first cause of action, Plaintiff seeks the
7 remedy more useful to him: an action for quiet title. Such an action is one that seeks to “quiet the
8 mouth” of a particular entity holding an adverse claim to plaintiff’s property and is aimed at the
9 particular actions of an individual, as opposed to a particular instrument. (*Castro, supra*, at p.
10 446.) Plaintiff seeks to quiet the mouth of the State Coastal Conservancy for only it, or another
11 entity explicitly designated by the California Coastal Commission, can cause harm to plaintiff’s
12 property interest.

13 Because defendants as individuals hold an adverse claim to plaintiff’s title, rather than
14 simply holding an instrument that creates a cloud on plaintiff’s title in the hands of any entity,
15 their claim rises above a mere cloud of title and no continuing cause of action exists. Therefore,
16 the theory of recovery determines the statute of limitations applicable to plaintiff’s cause of
17 action. (*Muktarian, supra*, at p. 560.)

18 Plaintiff’s theory of recovery hinges upon the timeliness of the State Coastal
19 Conservancy’s acceptance of the Offer to Dedicate, and the point at which the Offer to Dedicate
20 became operative.¹ As such, the applicable statutes of limitations are set out in sections 318, 319,
21 and 322 of the Code of Civil Procedure. Section 318 applies to actions to recover real property,
22 section 319 applies to actions arising out of the title to real property, and section 322 applies to
23 actions challenging the occupation under claim of title founded upon a written instrument. All of
24 these sections provide that a plaintiff must bring his action within five years from the end of
25 possession of the property by plaintiff or his or her predecessor in interest. (Code Civ. Proc.,

26 ¹ Plaintiff also misstates the nature of the Offer to Dedicate. Though the Offer to Dedicate
27 was irrevocable for a period of 21 years, it does not expire. (Exhibit B to Plaintiff’s Complaint, at
28 p. 3.) Plaintiff’s complaint is therefore meritless, absent pleading facts sufficient to establish that
Plaintiff validly revoked the Offer to Dedicate prior to the Conservancy’s acceptance.

1 §§ 318, 319, 322; *Leeper v. Beltrami* (1959) 53 Cal.2d 195, 212.) Plaintiff has failed to plead any
2 facts in his complaint establishing that he has been in possession of the disputed portion of his
3 property within five years of the initiation of this action. Plaintiff's complaint is therefore invalid
4 on its face, and the Court should sustain defendants' demurrer.

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6 **II. NO EXCEPTION TO THE STATUTE OF LIMITATIONS IS AVAILABLE FOR
PLAINTIFF'S CAUSE OF ACTION FOR DECLARATORY RELIEF**

7 Actions for declaratory relief are governed by the same statutes of limitations restricting
8 alternative remedies available to the plaintiff: "The period of limitations applicable to ordinary
9 actions in law and suits in equity should be applied in like manner to actions for declaratory
10 relief." (*Leahey v. Dept. of Water and Power of City of Los Angeles* (1946) 76 Cal.App.2d 281,
11 285.) Where an alternative remedy is time-barred, plaintiff cannot escape the statute of
12 limitations by seeking declaratory relief. (*Ibid.*) Because the face of plaintiff's complaint shows
13 that the statute of limitations bars his alternative remedy of quiet title, plaintiff's claim for
14 declaratory relief is similarly barred. Both causes of action in plaintiff's complaint are therefore
15 facially invalid, and the Court should sustain defendants' demurrer.

16
17 **CONCLUSION**

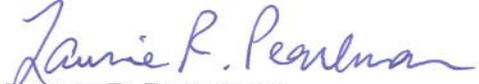
18 Plaintiff's complaint is untimely and is barred by the applicable statutes of limitations.
19 As to his cause of action for quiet title, plaintiff has failed to plead facts in his complaint
20 sufficient to establish an exception to the applicable statutes of limitations. As to his cause of
21 action for declaratory relief, no exception to the applicable statutes of limitations is available.
22 Plaintiff's complaint is therefore fatally defective, and plaintiff cannot cure these defects by
23 raising factual allegations, for the first time, in his opposition to defendants' demurrer.
24 Accordingly, this Court must sustain defendants' demurrer.

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Dated: June 13, 2011

Respectfully Submitted,

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DECLARATION OF SERVICE BY OVERNIGHT COURIER

Case Name: **DONAHUE L. WILDMAN v. CALIFORNIA COASTAL COMMISSION
AND STATE COASTAL CONSERVANCY**

No.: **SC111748**

I declare:

I am employed in the Office of the Attorney General, which is the office of a member of the California State Bar, at which member's direction this service is made. I am 18 years of age or older and not a party to this matter; my business address is: 300 South Spring Street, Suite 1702, Los Angeles, CA 90013. I am familiar with the business practice at the Office of the Attorney General for collection and processing of correspondence for overnight mail with the **[FED EX Overnight mail service]**. In accordance with that practice, correspondence placed in the internal mail collection system at the Office of the Attorney General is deposited with the overnight courier that same day in the ordinary course of business.

On **June 13, 2011**, I served the attached **MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF REPLY TO PLAINTIFF'S OPPOSITION TO DEFENDANTS' DEMURRER TO COMPLAINT FOR QUIET TITLE AND DECLARATORY RELIEF** by transmitting a true copy via electronic mail. In addition, I placed a true copy thereof enclosed in a sealed envelope, in the internal mail system of the Office of the Attorney General, for overnight delivery, addressed as follows:

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I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and that this declaration was executed on **June 13, 2011**, at Los Angeles, California.

Sharon Oliver
Declarant


Signature