

2<sup>nd</sup> Civil No. B237763

**IN THE COURT OF APPEAL  
STATE OF CALIFORNIA  
SECOND APPELLATE DISTRICT  
DIVISION TWO**

DONAHUE L. WILDMAN,

Appellant

vs.

CALIFORNIA COASTAL  
COMMISSION and STATE  
COASTAL CONSERVANCY,

Respondents.

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The Honorable Jacqueline A. Connor, Judge  
Los Angeles County Superior Court Case Number SC 111748

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**APPELLANT'S OPENING BRIEF**

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## **CERTIFICATE OF INTERESTED ENTITIES OR PERSONS**

There are no interested entities or persons to list in this certificate.

DATED: April 23, 2012

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**APPELLANT’S OPENING BRIEF**

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**STATEMENT OF THE CASE**

This is an appeal from a judgment of dismissal of the Superior Court after the sustaining of a demurrer to the first amended complaint (the “amended complaint”) of plaintiff and appellant Donahue L. Wildman (“Wildman”) without leave to amend. The amended complaint was dismissed in its entirety with prejudice as to both named defendants (respondents herein), the California Coastal Commission and the State Coastal Conservancy (together, “Respondents”).

The underlying litigation was for quiet title and declaratory relief, relating to the effect of an untimely purported acceptance of an offer to

dedicate an easement for a parking lot on Wildman's coastal property, where Wildman has resided at all times since 1984.

A demurrer to Wildman's original complaint was sustained on the basis of the statute of limitations, with leave to amend, on June 20, 2011. A demurrer to Wildman's amended complaint was sustained without leave to amend, on the basis of the statute of limitations, on October 3, 2011.

On December 2, 2011, Wildman filed his Notice of Appeal herein, believing that the trial court erred in its analysis and ruling on the statute of limitations.

## **STATEMENT OF FACTS**

Wildman purchased a home at 27910 Pacific Coast Highway in Malibu ("the Property") in July 1984. Appellants' Appendix ("AA") 5, 58:17-18. The previous owners of the Property had executed an offer to dedicate an easement for a parking lot on the Property, which stated that the "offer shall run for a period of 21 years from the date of recordation". This offer was recorded on January 6, 1982. AA 5, 58:22-28. This offer was rerecorded with no new signatures on January 26, 1983. AA 5, 59:1-8. Wildman contends that the rerecorded offer did not change any of the terms of the offer to dedicate, and did not change the facts that the original offer had already been recorded and that such prior recording had started the running of the 21-year acceptance period. AA 5, 59:8-11. A purported acceptance of the offer was not recorded until December 23, 2003, which was more than 21 years after the date

of the original recordation of the offer. AA 5, 59:25-28.

Wildman contends that the offer to dedicate could no longer be accepted after January 6, 2003, the purported acceptance was untimely and therefore had no legal effect, and the original offer had expired by its express terms. Wildman accordingly filed this action for quiet title and declaratory relief, on March 7, 2011. AA 1, 1.

Wildman's original complaint did not expressly allege that he was or had been in possession of the Property, although it had been his home for the prior 27 years and still was. After the demurrer to the original complaint was sustained with leave to amend, the amended complaint (verified), at paragraph 6, added the allegation that Wildman has had exclusive and undisputed possession of the Property at all times since 1984 [AA 5, 58:20-21], and added (at paragraph 19) extensive further allegations relating to Wildman's seisen, possession, occupation, and use of the Property and payment of taxes on the Property, and the lack of any such status or conduct by Respondents at any time. AA 5, 60:27-61:12. Paragraph 19 of the amended complaint alleges in applicable part:

“Wildman is presently seized and possessed of the Property, was seized and possessed of the Property at all times for the five years before commencement of this action, and was seized and possessed of the Property at all times since his purchase of the Property on July 6, 1984. Wildman's possession and use of the Property during these time periods has been exclusive and undisputed. Neither

the Conservancy nor the Commission has been in possession of the Property, or occupied the Property, or used the Property, or paid any taxes on the Property, at any time. The Conservancy and the Commission . . . have never taken possession of any portion of the Property or disputed Wildman’s ongoing exclusive possession or use thereof . . . prior to the commencement of this action.”

## **ARGUMENT**

### **I. SUMMARY OF ARGUMENT**

The trial court’s holding that the statute of limitations barred Wildman’s action was erroneous for numerous different reasons.

All of the statutes of limitation cited by Respondents provide that the action must be commenced within five years from the end of seisen or possession of the property by the plaintiff. The statute of limitations does not even start to run if the plaintiff is seized or possessed of the property, and Wildman was both seized and possessed of the Property at all times.

The trial court held that the possession required to toll the statute of limitations must be exclusive and undisputed. However, title is different from possession. The Second Appellate District has recently expressly held, in finding that a statute of limitations did not run on a quiet title lawsuit, that “title does not equal possession”. A dispute as to title does not equate to a dispute as to possession. All Respondents

did here was record a document asserting title to an easement in 2003, but they never did anything relating to possession or disputing possession of the Property. They never pressed their invalid asserted claim by initiating any court proceedings, by any conduct seeking to utilize the easement, or even by notifying Wildman that they were going to undertake any activity whatsoever relating to the easement or to disturb Wildman's exclusive and undisputed possession of his property. Possession remained Wildman's exclusively with no dispute whatsoever. The trial court erroneously held that recording a document relating to title of an easement, but completely failing to dispute possession, constituted a dispute as to possession and started the running of the statute of limitations on a quiet title action.

Even if Wildman did not sufficiently have possession, which is strongly denied, the statute of limitations could not begin to run if he had seizin. As the owner of the legal title to the Property at all times, Wildman met the requirement of seizin, and the statute of limitations could not run.

The amended complaint includes express allegations that Wildman was both seized and possessed of the Property at all times since 1984. The amended complaint (and the original complaint) does not include any allegations whatsoever that Wildman was not seized and possessed of the Property, that Respondents had any seizin or possession whatsoever of the Property, or that Respondents disputed Wildman's seizin or possession of the Property. On demurrer, the proper factual allegations of the amended complaint must be deemed correct, but the trial court erroneously disregarded them and instead based its ruling

upon nonexistent purported facts which were not alleged in the amended complaint.

Alternatively, since Respondents' claim against Wildman is based solely upon an untimely recorded acceptance of an offer after it expired, such claim constitutes a cloud on Wildman's title. Other than creating the cloud on title by the mere recordation of the acceptance, Respondents have done nothing to effectuate their claim and it has remained dormant and inactive. A mere claim relating to title, even of record, is insufficient to start the statute of limitations running. Respondents' cloud on title creates a continuing cause of action, renewed daily. Although Wildman could take steps at his leisure to remove such cloud on title, the statute of limitations did not start to run while Respondents had taken no court action to enforce their claim nor any other actions to actually utilize the easement or restrict Wildman's use of this portion of his Property, subsequent to the mere recordation of the acceptance which created the wrongful cloud on title.

**II.**  
**THE STATUTES OF LIMITATION RELIED UPON BY**  
**RESPONDENTS PROVIDE THAT THE ACTION MUST**  
**BE COMMENCED WITHIN FIVE YEARS OF WHEN**  
**THE PLAINTIFF'S SEIZIN OR POSSESSION ENDED**

Respondents appear to rely primarily on the statute of limitations set forth in Code of Civil Procedure Section ("CCP §") 318. That section reads in its entirety: "No action for the recovery of real property, or for the recovery of the possession thereof, can be maintained, unless

it appear that the plaintiff, his ancestor, predecessor, or grantor, was seized or possessed of the property in question, within five years before the commencement of the action.”

It is clear that such statute does not normally apply when the plaintiff has seisen and possession of the property at the time the action is filed. “From what has been said regarding the possession of this property during the entire period of the present thirty-five-year lease it is clear that the action is not barred by the *Code of Civil Procedure, section 318*, since plaintiff not only has been seised and possessed of this property through its tenant, within five years of the commencement of this action, but still has such seisin and possession.” San Francisco Unified School District v. City and County of San Francisco, 54 Cal.App.2d 105, 112 (1942).

Respondents also rely on CCP §319. CCP §319, similar to CCP §318, precludes an action unless the party “was seized or possessed of the premises in question within five years of the act in respect to which such action is prosecuted”.

Finally, Defendants rely on CCP §322, which is an adverse possession statute that has nothing whatsoever to do with this case. Defendants are not “occupying” the Property, and they certainly do not have adverse possession of the Property. See, Safwenberg v. Marquez, 50 Cal.App.3d 301, 309 (1975).

However, Wildman has been seized and possessed of the Property at all times from 1984 to the present, which precludes the statute of limitations from even starting to run.

**III.**  
**NO STATUTE OF LIMITATIONS RUNS AGAINST A  
PLAINTIFF SEEKING TO QUIET TITLE WHILE HE IS  
IN UNDISTURBED POSSESSION OF THE PROPERTY,  
EVEN IF HE IS AWARE OF AN ADVERSE CLAIM**

Wildman has had sole ownership, seizin, and possession of the Property at all times since 1984. However, in 2003, Respondents recorded a document improperly asserting title to an easement on the Property. Wildman filed this lawsuit for quiet title and declaratory relief in 2011, related to such claim of title to an easement. Before this lawsuit was filed, Respondents never did anything to challenge Wildman's right to possession of the Property, unless the mere recording of the improper title-asserting document in 2003 without anything more constituted a disturbance to possession. The trial court sustained a statute of limitations demurrer, without leave to amend, on the basis that such recording did constitute such a disturbance. This was erroneous.

It is long been established that no statute of limitations runs against a plaintiff seeking to quiet title while the plaintiff is in possession of the property in question, even if the plaintiff is aware of an adverse recorded claim relating to title of the property.

The landmark Supreme Court case in this area is Muktarian v. Barmby, 63 Cal.2d 558 (1965). In Muktarian, plaintiff remarried in 1947. Plaintiff's son, the defendant, wanted to prevent plaintiff's second wife from acquiring certain of plaintiff's property, and asked plaintiff to deed the property to him. On December 15, 1947, plaintiff and defendant went to a law firm and plaintiff executed a deed in favor

of defendant regarding the property, which was then recorded that day. The trial court found there were no misrepresentations, duress, or undue influence involved in this, but also found that the recording of the deed was contrary to the intentions in plaintiff's mind. The next day after the deed was signed and recorded, plaintiff discovered the recording and the error. Thus, plaintiff knew about this recorded adverse claim, and the error relating to it, by December 16, 1947. Nevertheless, he did not file a quiet title lawsuit regarding this recorded adverse claim until September 1961, nearly 14 years later. During this period, plaintiff remained in possession of the property and paid the taxes on it.

The Supreme Court strongly rejected any assertion that plaintiff's quiet title action could be barred by the statute of limitations, even though plaintiff had had complete notice of the recorded adverse claim for almost 14 years. The Court stated, at page 560: "In the present case, however, it is unnecessary to determine which statute would otherwise apply, for no statute of limitations runs against a plaintiff seeking to quiet title while he is in possession of the property."

The fundamental corollary which must necessarily be derived from this holding is that a recorded adverse claim known to plaintiff does not start the statute of limitations running and is not inherently inconsistent with undisputed possession of the property by the owner.

The same principle is upheld by other Supreme Court and other authorities.

In Smith v. Matthews, 81 Cal. 120 (1889), a mistake in a deed purported to grant more land than was intended, but the holder of the deed never took possession of this land, which "remained in the actual

possession of the plaintiffs”. The Supreme Court held that plaintiffs’ quiet title action brought “many years” later was not barred by the statute of limitations, stating: “The right of the plaintiffs to have their title to the land quieted, as against a claim asserted by the defendant under this deed, was not barred, and could not be, while the plaintiffs and their grantors remained in the actual possession of the land . . .” Thus, once again, an adverse claim as to title did not disturb or dispute possession and was insufficient to start the statute of limitations running.

In Tannhauser v. Adams, 21 Cal.2d 169 (1947), the Supreme Court stated at page 175:

“Other instances of the general principle that a limitation statute will not run against one in possession of land are found in 34 American Jurisprudence, where it is said (p. 29), ‘A person in the possession of property cannot be required under penalty of forfeiture to bring an action against one claiming an adverse interest or title to such property . . . [p. 296] [A] statute cannot be sustained as one of limitation where it requires one in possession of property to bring an action within a given time or forfeit it, and it is laid down in a number of cases that as a general rule, the statute of limitations does not run against one in possession of land.’” (Emphasis added.)

In San Francisco Unified School District, supra, there were various challenges to title, but it was never suggested that such title

challenges constituted a dispute or disturbance to possession. Such possession, notwithstanding those title disputes, mandated the Court's holding that the action was not barred by the statute of limitations (page 112).

43 California Jurisprudence 3d (21<sup>st</sup> Century Edition), Limitation of Actions §106 states: "However, no statute of limitations runs against a plaintiff seeking to quiet title while he or she is in possession of the property . . ."

Thus, it has long been clear under California law that no statute of limitations runs against a plaintiff's quiet title action while the plaintiff is in possession of the property, and even known recorded adverse claims regarding title do not undercut or disturb such possession. Respondents try to escape the effect of this established law by claiming there are applicable exceptions, but their attempted exceptions are all meritless.

#### IV.

#### **THE ANKOANDA AND CRESTMAR CASES DO NOT CHANGE THE LAW SO AS TO MAKE A DISPUTE AS TO TITLE EQUAL TO A DISPUTE AS TO POSSESSION**

Citing Ankoanda v. Walker-Smith, 44 Cal.App.4th 610 (1996), and Crestmar Owners Association v. Stapakis, 157 Cal.App.4th 1223 (2007), Respondents asserted that the statute of limitations began to run in 2003 because Wildman purportedly did not have exclusive and undisputed possession of the Property after that date. However, such argument is based upon a total lack of understanding of what

“possession” means, as clearly set forth in Crestmar’s analysis distinguishing Ankoanda. Title absolutely is not equated with possession, but that is the essence of Respondents’ argument on this issue; the error of this approach is demonstrated by the previous discussion relating to Muktarian and Smith, as well as by the analysis of Ankoanda in the recent Crestmar opinion.

In Ankoanda, plaintiff owned a building which she rented to defendant. Defendant therefore was in actual possession of the building and plaintiff was not. Years after a dispute arose, plaintiff filed a quiet title action relating to the building, and defendant claimed the statute of limitations was applicable. The Court held the statute of limitations had started and then run because plaintiff had not had “exclusive and undisputed” possession of the building, inasmuch as defendant was the tenant in actual possession.

In Crestmar, the defendant therein tried to extend Ankoanda to a situation where the defendant had purported title but not actual possession (similar to the situation in our case). The Second Appellate District in Crestmar rejected this argument (the same as Respondents’ argument herein), stating at page 1229:

“We find Ankoanda inapt. The Ankoanda court’s gloss of ‘exclusive and undisputed’ possession distinguished the unusual facts before it from the very different circumstances in Muktarian, where the father neither moved off his property nor gave up its control after granting title to his son. . . . The Ankoanda court held

*Muktarian* did not cover Ankoanda against her cousin, who physically occupied the building and was ostensibly a joint owner. Thus, Ankoanda did not have exclusive possession of the building. . . .

“We hold *Ankoanda*’s refinement of *Muktarian* does not apply here because, when the concepts are properly understood, Crestmar had exclusive and undisputed possession of the parking spots. In the quarter century before Crestmar filed its lawsuit to quiet title, only Crestmar (and possibly unidentified designees) occupied and possessed the spaces, using them to store a waste bin and perhaps for temporary parking. Appellants never used the spaces during that time. Indeed, appellants did not even stake a claim to the spaces until 2004. **Appellants contend they nonetheless ‘possessed’ the parking spaces because they had kept title to them since the 1980’s.** *Muktarian* illuminates, however, that title does not equal possession. In *Muktarian*, the son had title but the statute of limitations on the father’s quiet title action did not run because the father retained possession by remaining on the property.

“In addition to Crestmar’s possession being exclusive, we find it was also undisputed. Appellants contend possession was disputed, and that they were doing the disputing. Their contention is unavailing, however, because ‘undisputed’ can only sensibly mean the absence

of a dispute before the present controversy and attendant lawsuit arose.” (Emphasis added. )

Respondents’ argument here is even weaker than the argument which lost in Crestmar. The only basis on which Respondents claim that Wildman’s possession was not “exclusive and undisputed” is because defendants recorded a document relating to title in 2003. But it is established by Muktarian and Crestmar that a dispute as to title does not constitute a dispute to possession, or negate possession. All that defendants can assert is a claim affecting title, but that argument unquestionably loses, and is legally insufficient as a matter of law to refute otherwise exclusive and undisputed possession.

As alleged in paragraph 19 of the amended complaint, and which cannot be denied by Respondents:

“ . . . Neither the Conservancy nor the Commission has been in possession of the Property, or occupied the Property, or used the Property, or paid any taxes on the Property, at any time. The Conservancy and the Commission . . . have never taken possession of any portion of the Property or disputed Wildman’s ongoing exclusive possession or use thereof . . . prior to the commencement of this action.”

Respondents recorded the invalid title document relating to the easement, and then did absolutely nothing. An adverse recorded claim,

without more (such as court proceedings), does not start the statute of limitations running. “Quiet title actions, forerunners of declaratory actions, may be maintained when an adverse claim to property is asserted, but the period of limitations does not commence to run at that date. (Newport v. Hatton, 195 Cal. 132 [231 P. 987]; Secret Valley Land Co. v. Perry, 187 Cal. 420 [202 P. 449].)” Maguire v. Hibernia Savings & Loan Society, 23 Cal.2d 719, 734 (1944); Martin v. Henderson, 40 Cal.2d 583, 593 (1953). Here, Respondents did not initiate court proceedings to attempt to enforce their easement, or even notify Wildman that they were going to take one iota of action relating to the easement or which could disturb Wildman’s exclusive and undisputed possession of his property, let alone actually do any conduct whatsoever beyond the mere recording of the invalid adverse claim. Such invalid adverse recorded claim was never pressed against Wildman, and never affected his undisturbed possession. “It has long been the law that whether a statute of limitations bars an action to quiet title may turn on whether the plaintiff is in undisturbed possession of the land.” Mayer v. L&B Real Estate, 208 Cal.4th 1231, 1237 (2008), citing for this point Tannhauser, supra, Smith, supra, and Muktarian, supra. Here, Wildman’s possession of his property remained exclusive, undisputed, and undisturbed.

Accordingly, pursuant to Crestmar and the numerous other authorities cited regarding this point, Respondents’ invalid recorded claim may have created a dispute as to title, but did not create a dispute as to possession and did not start the running of the statute of limitations.

**V.**  
**THE STATUTE OF LIMITATIONS NEVER STARTED  
TO RUN ALSO BECAUSE WILDMAN HAD SEIZIN  
OF THE PROPERTY AT ALL TIMES, THROUGH  
HIS LEGAL TITLE TO THE PROPERTY**

CCP §§ 318 and 319 provide that the statute of limitations runs only if the plaintiff was not seized or possessed of the property within five years before commencement of the action. The prior discussion set forth that the statute of limitations did not start to run because of Wildman's possession of the Property. Additionally, the statute of limitations did not start to run because of Wildman's seizin of the Property.

In Tobin v. Stevens, 204 Cal.App.3d 945 (1988), plaintiff filed a quiet title action, and defendant claimed it was barred by the statute of limitations in CCP §318. The Court disagreed, stating:

“. . . Defendant relies on the statute of limitations contained in Code of Code of Civil Procedure section 318. . . . He acknowledges the holding in Schoenfeld v. Pritzker (1967) 257 Cal.App.2d 117 . . . which he considers incorrect. . . .

“Defendant's argument is based upon his apparent misunderstanding of the word 'seisin' as used in section 318. He contends that seisin means actual possession of the property. He is incorrect. . . . [T]he court observed: 'Appellants state that according to the complaint

respondents had not been seised of the property since 1923. However, respondents as the owners of the legal title to the property met the requirement of seisin or possession as section 318, supra, is construed. “The requirement of seisin or possession is met when it is established that the plaintiff was possessed of legal title, and this seisin can be destroyed only by establishing the fact that a title by adverse possession was acquired by the defendant.” (Emphasis added.) (page 949)

“ . . . [In Schoenfeld v. Pritzker,] Pritzker defended on the grounds the action was barred by the statute of limitations contained in section 318 since Schoenfeld had not been in actual possession of the property within five years of commencement of the action. The court held the action was not barred because Schoenfeld held record title to the parcel during the five years prior to commencement of the action and Pritzker could not establish adverse possession since he had failed to pay taxes on the property. **The court found that a party holding record title fulfills the requirement of section 318 that a party must show ‘seisin or possession’ within five years of commencement of the action.**”

“ . . . In the case before us, the trial court correctly relied upon the holding in Schoenfeld in granting summary judgment because plaintiff proved he held record title to

the property.” (Emphasis added.) (page 951)

In our case, Wildman has held record title to the Property at all times from 1984 to the present. Accordingly, he had seizin at the appropriate times under CCP §§ 318 and 319, and the statute of limitations never started to run.

**VI.**  
**ON DEMURRER, THE ALLEGATIONS OF THE AMENDED  
COMPLAINT MUST BE DEEMED TRUE, AND THOSE  
ALLEGATIONS STATE THAT WILDMAN HAD  
UNDISPUTED SEIZIN AND POSSESSION OF THE  
PROPERTY DURING THE REQUIRED PERIOD**

The original complaint had not expressly alleged Wildman’s seizin or possession of the Property. Accordingly, when that was the operative pleading, it may not have been completely clear that the statutes of limitation contained within CCP §§ 318 and 319 were inapplicable here.

Therefore, Paragraph 6 of the amended complaint added the allegation “At all times since [July 6, 1984], Wildman has had exclusive and undisputed possession of the Property.”

Also, the amended complaint added completely new Paragraph 19, which states in part:

“Wildman is presently seized and possessed of the  
Property, was seized and possessed of the Property at all

times for the five years before commencement of this action, and was seized and possessed of the Property at all times since his purchase of the Property on July 6, 1984. Wildman's possession and use of the Property during these time periods has been exclusive and undisputed. Neither the Conservancy nor the Commission has been in possession of the Property, or occupied the Property, or used the Property, or paid any taxes on the Property, at any time. The Conservancy and the Commission . . . have never taken possession of any portion of the Property or disputed Wildman's ongoing exclusive possession or use thereof . . . prior to the commencement of this action."

These amendments clarified that Wildman had seizin and possession of the Property at the required time. They also clearly factually alleged that Wildman's possession and use of the Property was exclusive and undisputed. They specifically, factually alleged that neither Respondent had been in possession of the Property, occupied the Property, or used the Property, nor had either Respondent taken possession of any portion of the Property or disputed Wildman's ongoing exclusive possession or use thereof before commencement of this action.

For purposes of demurrer, all material facts properly pleaded in a complaint are deemed admitted. 5 Witkin, California Procedure 5<sup>th</sup> 365 (Pleading §950). Therefore, the above facts alleged in the amended complaint relating to Wildman's exclusive and undisputed possession

and use are deemed admitted. For more than 150 years, the Supreme Court has held general allegations of possession to be sufficient in California. “The allegation that the plaintiff was in possession at the time of the ouster complained of, is a sufficient allegation of title to make the declaration good.” Hutchinson v. Perley, 4 Cal. 33 (1854). These allegations would preclude Respondents’ statute of limitations demurrer from being sustained to the amended complaint, unless there was something else alleged in such complaint which negates or trumps these allegations.

In this regard, the complaint also alleged the recording of the 2003 purported acceptance. However, such additional allegation does not negate or trump the allegations about exclusive and undisputed possession. Such 2003 purported acceptance by itself, without any allegations in the amended complaint about filing of a court proceeding or other conduct affirmatively disputing Wildman’s possession or use (none of which events ever existed, let alone were pleaded in the amended complaint), does not constitute any sort of factual or legal discrediting of the amended complaint’s allegations about Wildman’s exclusive and undisputed possession. There is nothing whatsoever in the amended complaint (or the original complaint) about Respondents ever affirmatively disputing Wildman’s possession, but only the bare allegation that the 2003 purported acceptance was recorded. And the 2003 purported acceptance by itself did not necessarily, as a matter of law, negate the allegations about exclusive and undisputed possession by Wildman.

Nevertheless, in ruling on the demurrer, the trial court improperly

disregarded the affirmative factual allegations of the amended complaint regarding Wildman's exclusive and undisputed possession, and mistakenly based its ruling sustaining the demurrer (without leave to amend) on its faulty conclusion that the 2003 purported acceptance by itself necessarily established that Wildman did not have exclusive and undisputed possession of his Property. This was error. The mere recording of the 2003 purported acceptance, pertaining to title to an easement, did not as a matter of law constitute a dispute as to Wildman's possession of the Property, let alone be determinative when ruling on a demurrer where the opposite allegations of the complaint must be regarded as true.

## VII.

**RESPONDENTS' CLAIM, WHICH IS BASED ON  
THE UNTIMELY ACCEPTANCE OF AN OFFER  
AFTER IT EXPIRED, CONSTITUTES A CLOUD ON  
TITLE WHICH CREATES A CONTINUING CAUSE  
OF ACTION THAT ARISES ANEW EVERY DAY  
WHILE THE CLAIM IS DORMANT, AND THE  
CLAIM HAS BEEN DORMANT SINCE IT WAS  
ESTABLISHED BY THE UNTIMELY ACCEPTANCE**

Respondents' present claim against Wildman is based solely on an untimely acceptance of an offer, and as such constitutes a cloud on Wildman's title (rather than a valid dedication of property, in light of the facts alleged in the complaint – that allege the offer was improperly accepted after it expired – which must be deemed true for purposes of demurrer; see Paragraphs 7, 11, 12, and 19 of the amended complaint,

among others).

Other than creating the cloud on title by merely recording their untimely acceptance, Respondents have done nothing whatsoever in the subsequent eight years to effectuate their claim – they have taken no actions to construct the parking lot on the Property during this time period, or to otherwise restrict Wildman’s use of this portion of the Property, and they have initiated no court proceedings (let alone obtained any holdings adverse to Wildman in any proceedings they initiated). Their claim has been totally dormant since its (improper) establishment, which was by a mere recording of the untimely acceptance – and, as previously discussed, a mere claim relating to title, even of record, is insufficient to start the statute of limitations running.

43 California Jurisprudence 3d (21<sup>st</sup> Century Edition), Limitation of Actions §106 states:

“. . . A mere claim of title, even of record, unaccompanied by an adverse holding, will not start the statute running.

“An outstanding adverse claim amounting only to a cloud on title is a continuing cause of action, and a quiet title action is not barred by lapse of time until the hostile claim is asserted in some manner to jeopardize the superior title. So long as the adverse claim lies dormant and inactive, the owner of the superior title may not be incommoded by it and has the privilege of allowing it to stand indefinitely. Every day’s assertion of the adverse

claim gives a renewed cause of action to quiet title until the action is brought.”

The preceding is copied virtually verbatim from the Supreme Court’s holding in Secret Valley Land Company v. Perry, 187 Cal. 420 (1921), at page 426. On the page before, the Supreme Court stated:

“ . . . . . One cannot acquire title to the land of another by paying the taxes on it, nor will a claim of title under a void deed, although recorded, ripen into a fee by lapse of time, nor will limitations run against the owner of record in favor of a claimant not in possession, nor is it incumbent upon the owner to sue for cancellation of a void deed, or to take steps to remove a cloud upon his title . . . . . If he desires to have the cloud removed the law affords a remedy, but he is not compelled to go to that expense, and his failure to do so cannot be considered laches, nor will it operate as an estoppel against him. A mere claim of title even of record, unaccompanied by adverse holding, will not start the statute.” (Emphasis added.)

12 Miller & Starr, California Real Estate Third Edition §34:106 states: “An outstanding claim that amounts only to a cloud on title is a *continuing* cause of action and is not barred by lapse of time until the hostile claim is asserted in some manner so as to jeopardize the superior title. Accordingly, so long as the adverse claim lies dormant and

inactive, the owner of the superior title may allow it to stand indefinitely.” (Emphasis in italics in original.)

Respondents’ invalid claim was established by their untimely purported acceptance of the offer pertaining to the Property. As such, it is just a cloud on Wildman’s title. Such claim then remained totally dormant and inactive after it came into its purported existence. It is no more than a mere claim relating to title of record, unaccompanied by any adverse holding.

Wildman accordingly had a continuing cause of action for quiet title which was renewed daily. Wildman could allow the claim to stand indefinitely while it remained dormant (as it did at all times after its creation in 2003), and the statute of limitations did not run.

## **VIII. CONCLUSION**

For the many reasons set forth above, the trial court erred in sustaining the demurrer to the amended complaint, and the judgment against Wildman should be reversed.

DATED: April 23, 2012

Respectfully submitted,

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**CERTIFICATE BY APPELLATE COUNSEL**

Pursuant to Rule 8.204(c) of the California Rules of Court, the preceding brief contains 5,643 words, according to the word count of the computer program used to prepare the brief.

DATED: April 23, 2012

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PROOF OF SERVICE BY MAIL AND ELECTRONICALLY

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES ) ss.

I am a resident of or employed in the County of Los Angeles, over the age of eighteen years, and not a party to the within action. My business address is 9100 Wilshire Boulevard, Suite 715E, Beverly Hills, California 90212. I am readily familiar with this business' practice for collection and processing of correspondence for mailing, which is that correspondence is deposited with the United States Postal Service the same day in the ordinary course of business.

On **April 23, 2012**, I served the within **APPELLANT'S OPENING BRIEF** on the interested parties in this action, by causing a true copy thereof, enclosed in a sealed envelope with postage thereon fully prepaid, to be placed on that date, following ordinary business practice, in the United States mail at Beverly Hills, California, addressed as follows:

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On **April 23, 2012**, I served the within **APPELLANT'S OPENING BRIEF** electronically on the California Supreme Court via website [www.courts.ca.gov](http://www.courts.ca.gov).

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on **April 23, 2012**, at Beverly Hills, California.

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BURTON MARK SENKFOR