

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

DONAHUE L. WILDMAN,

Appellant,

Case No. B237763

v.

**CALIFORNIA COASTAL COMMISSION;
STATE COASTAL CONSERVANCY; and
DOES 1-30 ,**

Respondents.

Los Angeles County Superior Court, Case No. SC111748
The Honorable Jacqueline A. Connor, Judge

RESPONDENTS' BRIEF

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INTRODUCTION

With this lawsuit, appellant Donahue Wildman attempts to avoid the long-final condition of a coastal development permit that allowed the construction of his large home, swimming pool, and tennis court in Malibu. Wildman purchased his property knowing of the existence of a recorded offer to dedicate a parking easement on the property, intended to provide public beach parking. The State Coastal Conservancy (“Coastal Conservancy”) accepted the offer to dedicate the easement in 2003, but Wildman did not file suit challenging that acceptance until 2011. In ruling on a demurrer to the complaint, the trial court properly found that the claims alleged in the complaint were time-barred.

Moreover, the complaint fails to state a claim because the undisputed facts establish that Wildman never revoked the offer to dedicate. Thus, the Coastal Conservancy accepted the offer while it was still in effect. Even were they timely, Wildman’s claims lack merit. The Court of Appeal should affirm.

STATEMENT OF FACTS

Factual Background

The facts in this case are not in dispute: In 1984, Appellant Donahue L. Wildman purchased an expansive oceanfront residential property on Pacific Coast Highway in Malibu, California. (Appellant’s Appendix (“AA”) Exh. 5, Bates p. 58.) In 1981, the prior property owner had executed an irrevocable offer to dedicate a public parking easement as a condition of receiving a coastal development permit from the California Coastal Commission.¹ (AA Exh. 5.) The permit allowed the prior owner to

¹ The California Coastal Act of 1976, Public Resources Code section 30000 *et seq.*, created the Coastal Commission. The Coastal Act assigns
(continued...)

construct a 6,800 square foot home, pool and tennis court on the property. (AA Exh. 5, Bates p. 68.)

The prior owners recorded the irrevocable offer to dedicate on January 6, 1982, and rerecorded it on January 26, 1983. (AA Exh. 5, Bates pp. 68-82.) The offer was irrevocable for a period of 21 years from the date of recordation, but it did not include an expiration date. (AA, Exh. 5, Bates pp. 70, 78.) Wildman does not allege that he ever revoked the offer. On December 16, 2003, with the blessing of the Coastal Commission, the Coastal Conservancy² accepted the offer to dedicate. (AA Exh. 5, Bates pp. 85-86.) The Coastal Conservancy's acceptance and the Coastal Commission's acknowledgment of acceptance of the offer to dedicate were both recorded on December 23, 2003. (AA Exh. 5, Bates pp. 84-86.) Wildman has never alleged, nor can he allege, lack of notice of these recorded instruments.

Procedural Background

On March 7, 2011, Wildman filed a complaint against the Coastal Commission and Coastal Conservancy alleging causes of action for quiet title and declaratory relief. On June 20, 2011 the trial court sustained the Coastal Commission and Coastal Conservancy's demurrer on the grounds that Wildman had not brought the action within the statute of limitations.

(...continued)

chief responsibility for regulating the use and development of the coastal zone to the Coastal Commission. (Pub. Resources Code, § 30330.) The Coastal Act generally requires a coastal development permit for development in the coastal zone. (Pub. Resources Code, § 30600.)

² The Coastal Conservancy, established by Public Resources Code section 31000 et seq., has power to acquire, lease, sell or exchange land within the coastal zone for preservation or enhancement. (Pub. Resources Code, § 31104.1.)

(Respondent's Appendix ("RA") Exh. A.) Wildman filed his First Amended Complaint on July 11, 2011. (AA Exh. 5) The Coastal Commission and Coastal Conservancy demurred again both on statute of limitations grounds and based upon on Wildman's failure to state a cause of action regarding expiration of the offer to dedicate. (AA Exh. 6) On October 3, 2011, the trial court sustained the demurrer to the first amended complaint without leave to amend on the grounds that Wildman had not alleged facts sufficient to show that it was timely filed. (RA 2, 3; Reporter's Transcript ("RT") 7).

STANDARD OF REVIEW

This Court reviews a ruling sustaining a demurrer without leave to amend de novo. It exercises its independent judgment to determine whether a cause of action has been stated as a matter of law. (*Desai v. Farmers Ins. Exchange* (1996) 47 Cal.App.4th 1110, 1115.) In its de novo review, the Court considers the allegations in the complaint as well as all relevant documents attached as exhibits to the complaint. The court may disregard the allegations in the complaint that are inconsistent with those documents. (See *Hoffman v. Smithwoods RV Park, LLC* (2009) 179 Cal.App.4th 390, 400.)

ARGUMENT

I. WILDMAN'S ACTION IS UNTIMELY.

A. The statute of limitations in a quiet title action depends upon the underlying basis for the quiet title claim.

The applicable limitations period in a quiet title action depends on the underlying theory of recovery. (*Muktarian v. Barmby* (1965) 63 Cal.2d 558, 560.) The parties have posited several potentially applicable limitations statutes in this case, including Code of Civil Procedure sections

318, 319, and 322.³ All of these sections require a plaintiff to commence the action within five years from the end of plaintiff's, or plaintiff's predecessor-in-interest's, possession of the property. (Code Civ. Proc., §§ 318, 319, 322; *Leeper v. Beltrami* (1959) 53 Cal.2d 195, 212.) If any of these statutes had run, the court must affirm dismissal. (*Lee v. Bank of America* (1990) 218 Cal.App.3d 914, 919-20.) Regardless which limitations period applies here, Wildman waited too long by bringing this action more than seven years after the Coastal Conservancy recorded its acceptance of the offer to dedicate.

B. The statute of limitations begins to run when the cause of action accrues.

Code of Civil Procedure section 312 provides that a statute of limitations begins to run when a cause of action accrues. In general, a cause of action accrues “‘when, under the substantive law, the wrongful act is done,’ or the wrongful result occurs, and the consequent ‘liability arises....’” In other words, it sets the date as the time when the cause of action is complete with all of its elements.” *Norgart v. Upjohn Co.* (1999) 21 Cal.4th 383, 397, citations omitted; see also *Arcadia Development Co. v. City of Morgan Hill* (2008) 169 Cal.App.4th 253, 262.) To determine the appropriate accrual date, the court must then determine when the cause of action arose.

³ Code of Civil Procedure Section 318 applies to actions to recover real property; section 319 applies to actions arising out of the title to real property; and section 322 applies to actions challenging the occupation under claim of title founded upon a written instrument. In addition, the four-year statute of Code of Civil Procedure section 337 for actions to invalidate a written agreement might be the proper limitations period in this case. (See *Crestmar Owners' Assn. v. Stapakis* (2007) 157 Cal.App.4th 1223.)

C. Wildman filed his action more than seven years after his cause of action accrued.

In an action for quiet title, the cause of action accrues — and thus the statute of limitations begins to run — when a party presses an adverse claim against the property. (*Crestmar Owners' Assn. v. Stapakis*, *supra*, 157 Cal.App.4th at p. 1228.) Here, Wildman is seeking to quiet title and obtain declaratory relief based upon his claim that the Coastal Conservancy's acceptance of the irrevocable offer to dedicate was untimely. In particular, the First Amended Complaint asserts: "Wildman seeks to quiet title as of January 7, 2003." (AA 5, p. 60.) Both of Wildman's causes of action are premised upon his claim that the Coastal Conservancy's acceptance of the offer to dedicate, which occurred on December 16, 2003, and which the Conservancy recorded on December 23, 2003, is invalid. Despite having actual and constructive notice of the easement arising from acceptance of the offer to dedicate, Wildman did not file this lawsuit until March 7, 2011, more than seven years after the allegedly untimely acceptance. (AA Exh. 1.) Therefore, the face of the complaint demonstrates any possible statute had run by the time Wildman filed the instant suit. His only escape from this limitation would be to find an applicable exception to usual rules regarding statutes of limitation.

D. This case does not present an exception to the usual rules for accrual of the statute of limitations.

Wildman seeks to avail himself of such an exception to the usual rules of statutes of limitation in actions to maintain possession. He claims that, in an action for quiet title, the statute of limitations does not run against an owner in undisputed possession of the property. (*Mayer v. L & B Real Estate* (2008) 43 Cal.4th 1231, 1238; *Tannhauser v. Adams* (1947) 21 Cal.2d 169, 175.) Wildman bases his argument on language in *Muktarian* that a recorded adverse claim does not start the statute of limitations against

a plaintiff in possession of the property. But the exception to the statute of limitations upon which Wildman relies requires that the property owner have both “exclusive and undisputed” possession of the property.

(*Crestmar Owners’ Assn. v. Stapakis, supra*, 157 Cal.App.4th at pp. 1229-30; *Ankoanda v. Walker-Smith* (1996) 44 Cal.App.4th 610, 616.) Here, Wildman’s cause of action accrued when he had notice of the Coastal Conservancy’s acceptance of the offer to dedicate the easement. Wildman no longer held exclusive and undisputed possession of his property at that time because the Coastal Conservancy’s easement encumbered it. No exception to the statute of limitations applies here and the trial court properly determined that this action was untimely.

1. The exception Wildman urges requires the plaintiff to be in “exclusive and undisputed” possession of the property.

Muktarian applied statutes of limitation in a quiet title action based upon an invalid deed. In that case, a father deeded land to his son but kept a life estate and continued to live on the property, with the implied understanding that he retained control over it. When the father at a later time tried to sell some of the property, the son would not sign the grant deed. The father therefore sued the son to quiet title. (*Muktarian v. Barmby, supra*, 63 Cal.2d at p. 560.) At the time the father sued, the son did not have any current right to possession of the property. Holding the father's complaint was timely, the Supreme Court stated, “no statute of limitations runs against a plaintiff seeking to quiet title while he is in possession of the property.” (*Id.* at p. 560.) This exception to the normal operation of statutes of limitations exists to protect property owners from long-dormant claims against title and from the expense and inconvenience of litigation prior to presentation of an adverse claim. (*Id.* at pp. 560-561.)

Subsequently, in *Ankoanda*, the court of appeal had occasion to clarify the holding of *Muktarian*. In *Ankoanda*, the building owner (Ankoanda) mistakenly believed her tenant cousin needed an interest in the building in order to qualify for certain government funds. (*Ankoanda v. Walker-Smith, supra*, 44 Cal.App.4th at p. 613.) Ankoanda therefore granted a deed to herself and her cousin as joint tenants. (*Id.* at pp. 613-614.) Ankoanda believed her cousin, who remained her tenant in the building, would reconvey the building to her when the public subsidy ended. (*Id.* at p. 613.) Instead, the cousin considered herself a property owner. (*Id.* at p. 614.) After being added to the grant deed, the cousin wrote to Ankoanda proclaiming the cousin's ownership interest in the building. Ankoanda then waited four years after the date of that letter to take legal action against her cousin to quiet title.

As does Wildman, Ankoanda asserted her complaint was timely because *Muktarian* established that the statute of limitations to quiet title did not begin to run while the plaintiff seeking to quiet title possessed the property. (*Id.* at pp. 615-616.) As a landlord renting the building to her cousin, Ankoanda noted the law deemed her to be in "possession" of the building and that her cousin, despite being named on the deed, remained a tenant. (*Id.* at p. 618.) The court nevertheless held that the statute of limitations barred Ankoanda's complaint to quiet title because *Muktarian* applied only when a plaintiff's possession of property was both "exclusive and undisputed." (*Id.* at p. 617.) Finding Ankoanda's possession satisfied neither criterion, the court held that the statute of limitations began to run when Ankoanda received her cousin's letter. Accordingly, Ankoanda's complaint was one year too late when she filed it four years after receiving the letter.

The rule of *Muktarian* was further refined in *Crestmar*, which clarified that undisputed possession was required in order to excuse

inaction. In that case, the Crestmar Homeowner's Association (Crestmar) brought an action to quiet title against a management corporation and its president (collectively, Hartford) regarding two parking spaces. (*Id.* at p.1226.) Hartford failed to convey the parking spaces to Crestmar although CC&Rs governing the property obligated it to do so. Only Crestmar occupied and possessed the spaces. Hartford never used them and did not even stake a claim to the parking spaces until 2004. Crestmar refused Hartford's 2004 claim and filed suit to quiet title in 2005. Hartford argued that Crestmar's lawsuit was barred because Crestmar filed it more than two decades after Hartford failed to convey the parking spaces to Crestmar in accordance with the CC&Rs. The court disagreed, holding that Crestmar's cause of action was timely and that it accrued when Crestmar first demanded Hartford's performance — i.e., when it filed the complaint. The court took pains to point out that, “[i]n addition to Crestmar's possession being exclusive, it was also undisputed.” (*Id.* at p. 1230.) Such is not the case here.

Although Wildman asserts the legal conclusion that he had “exclusive and undisputed possession of the Property” since 1984, he failed to plead facts in his First Amended Complaint sufficient to substantiate this assertion. (AA, Exh. 5, Bates p. 58.) The Coastal Commission and the Coastal Conservancy have disputed Wildman's sole, unencumbered possession of the property since December 23, 2003, when the Coastal Conservancy recorded its executed acceptance of the offer to dedicate and the Coastal Commission's acknowledgement of the Coastal Conservancy's acceptance. (AA , Exh. 5, Bates 84-86) As of December 23, 2003, Wildman knew or should have known that the Coastal Conservancy held an adverse claim to his property, as the recordation of the acceptance provided Wildman with constructive notice of the claim. (Civ. Code, § 1213.) At no point does Wildman allege that he was unaware of the Certificate of

Acceptance or its recordation. Nor has he alleged a single fact to establish that his sole possession of the property has been undisputed since December 23, 2003. The trial court properly found that Wildman failed to establish that his possession of the property has been exclusive and undisputed since December 23, 2003. Therefore, this exception does not apply and his complaint was untimely.

The cases Wildman relies upon are distinguishable. Most involve plaintiffs who were not on actual notice regarding a live controversy. Some did not involve defendants with a current right to possession. (*Muktarian v. Barmby* (1965) 63 Cal.2d 558; *Newport v. Hatton* (1924) 195 Cal. 132; *Tannhauser v. Adams* (1947) 31 Cal.2d. 169.) Some involved defendants with no notice of a dispute until plaintiff filed the lawsuit. (*Secret Valley Land Co. v. Perry* (1921) 187 Cal. 420; *Smith v. Matthews* (1889) 81 Cal. 120.) Other cases Wildman cites do not even involve real property interests. (*Maguire v. Hibernia Savings & Loan Society* (1944) 23 Cal.2d 719; *Martin v. Henderson* (1953) 40 Cal.2d 583.) In contrast, here the Coastal Conservancy actively asserted a claim on Wildman's current right of possession by recording its acceptance of the offer to dedicate the easement. This action put Wildman on notice of a live controversy, and the statute of limitations began to run.

In *Mayer v. L&B Real Estate* (2008) 43 Cal.4th 1231, the plaintiff was in undisputed possession until he received notice that the County was going to sell the property in a tax sale. *Mayer* held that possession was disturbed, and a claim accrued, when plaintiff received the tax collection letter. (*Id.* at 1240.) Likewise, here, recordation of the acceptance of the offer to dedicate disturbed Wildman's possession and started the clock on the statute of limitations.

The complaint here fails to contain allegations sufficient to establish Wildman's undisputed possession. Just as the time to file began to run

once Ankoanda received her cousin's letter disputing Ankoanda's possession of the property, and in *Mayer* receipt of a tax collection letter disturbed possession, the acceptance and recordation of the offer to dedicate start the clock running in this matter. Wildman waited too long to challenge the easement.

2. Wildman's arguments that his "seisin" of the property provides an excuse for failure to timely file his complaint are equally unpersuasive.

Wildman also asserts that the limitations periods in Code of Civil Procedure sections 318 and 319 did not begin to run because he had "seisin" of the property. These arguments provide an alternative basis for his argument that no statute of limitations has run. However, this argument is incompatible with the line of cases discussed previously that find that the statute of limitations is tolled in quiet title actions only for so long as the plaintiff is in exclusive and undisputed possession. If merely holding title were sufficient to toll running of statute of limitations then there would be no need for the "exclusive and undisputed possession" discussions in *Crestmar* and *Ankoanda*.

In fact, the statutory language requiring a plaintiff be "seised or possessed" (Code Civ. Proc., § 318) or "seized or possessed" (Code Civ. Proc., § 318) of property, states the requirement for a *plaintiff* to maintain an action to recover possession of real property. It is not a limitation to be applied against a defendant. In fact, if a party has legal title, it also has seisin. (*Kasey v. Molybdenum Corp. of America* (9th Cir. 1964) 336 F.2d 560, 566.) Thus, both parties to this case have seisin, and these provisions cannot logically be the basis for allowing a plaintiff to wait indefinitely to challenge an encumbrance to his title.

Wildman attempts to rely upon *Tobin v. Stevens* (1988) 204 Cal.App.3d 945 in support of this theory. *Tobin* involved an action to quiet

title against an adverse possessor and is easily distinguishable. In that case, defendant adverse possessor sought to bar plaintiff title owner from defending his property rights on the grounds that plaintiff had not “possessed” the property within the five years the Code of Civil Procedure required. In that context, defendant sought to argue that “seisin” required actual possession of the property. The court disagreed. (*Id.* at p. 949.) The court found that the person who held record title could seek quiet title once the occupier had a ripe claim for adverse possession. (*Id.* at 955.) *Tobin* is inapplicable to the case at hand.

E. Public policy does not support an exception to the statute of limitations in this case.

Statutes of limitation are designed to promote justice by preventing surprises through the revival of claims that have been allowed to slumber until evidence has been lost, memories have faded, and witnesses have disappeared. (*Parker v. Walker* (1992) 5 Cal.App.4th 1173, 1188–1189; *In re Estate of Young* (2008) 160 Cal.App.4th 62, 76.) Among the purposes of statutes of limitations are to prevent stale claims, give stability to transactions, protect settled expectations, promote diligence, encourage the prompt enforcement of substantive law, and reduce the volume of litigation. (*Stockton Citizens for Sensible Planning et al., v. City of Stockton et al.* (2010) 48 Cal.4th 481, 500.) Thus, statutes of limitations serve important purposes to the administration of justice.

The central case Wildman relies upon, *Muktarian*, does not suggest that a property owner may indefinitely delay contesting an adverse claim once it has actually been presented. (See *Muktarian v. Barmby, supra*, 63 Cal.2d. at p. 630). *Muktarian* reasoned that the public policy supports avoiding the expense and inconvenience of unnecessary litigation before a claim has been asserted. Here, such concerns weigh in favor of finding that the Coastal Conservancy’s acceptance of the offer to dedicate in 2003

triggered the statute of limitations. Wildman was not only aware that the Coastal Conservancy disputed Wildman's exclusive possession; he was also aware that the Coastal Conservancy was actively asserting a live claim. This was not the kind of hypothetical claim that Wildman could reasonably assume might never be pursued.

Moreover, a delay in challenging the validity of the acceptance of the offer to dedicate implicates other public policy concerns by increasing the likelihood that memories have faded and evidence will be unavailable. Thus, Wildman fails to establish that his situation falls within the policy aims of an exception from the statute of limitations. To find otherwise would be to say that no statute of limitations applied to this case at all.

F. The exception Wildman urges would prevent the statute of limitations from ever running in this case.

Wildman asks the court to find that the statute of limitations has not yet begun to run in this case. As alleged in the First Amended Complaint, however, the claim on his title arose when the Conservancy accepted and recorded the offer to dedicate. This same act put Wildman's right to possession in dispute and started the statute of limitations running. Here, notice of the dispute and accrual of the cause of action came on recordation of the acceptance of the offer to dedicate.

G. The trial court also properly ruled that Wildman's cause of action for declaratory relief is time-barred.

Wildman's claim for declaratory relief rests on the same theory as his cause of action to quiet title. The declaratory relief cause of action simply represents an additional request for relief and is subject to the same limitations period as the quiet title claim. (*Embarcadero Municipal Improvement Dist. v. County of Santa Barbara* (2001) 88 Cal.App.4th 781, 793 [statute of limitations governing remedy is the same as for the

underlying substantive claim].) The trial court properly ruled that the statute of limitations also bars this cause of action.

II. WILDMAN'S FIRST AMENDED COMPLAINT DOES NOT CONTAIN A CAUSE OF ACTION TO REMOVE A CLOUD FROM TITLE, AND THEREFORE NO CONTINUING CAUSE OF ACTION EXISTS.

Wildman claims that any statutes of limitations barring his action to quiet title are inapplicable because he seeks to remove a cloud upon his property title which creates a continuing cause of action. However, his First Amended Complaint did not contain a cause of action to remove a cloud from title. Wildman's First Amended Complaint contained only two causes of action (to quiet title and for declaratory relief). As Wildman did not allege a cause of action for cloud on title in the complaint, this argument has no merit. Moreover, Wildman cannot amend the complaint to correct this error because the cause of action for cloud on title would be based on the same facts.

Ephraim v. Metropolitan Trust Co. (1946) 28 Cal.2d 824 is instructive. There, the property owners filed three causes of action against a trust company (to quiet title, to remove a cloud from the title, and for declaratory relief). The trial court sustained the trust company's demurrers, and the appellate court affirmed. The court held that a complaint which consists of two counts (to quiet title to real property and, relatedly, to remove a cloud on title) states only one cause of action. (*Id.* at p. 833.) Because the count to quiet title was based on the same facts as the cause of action to remove a cloud, the court found that defendants' demurrer to both should have been sustained. (*Ibid.*) Additionally, in a suit to remove a cloud on title that a designated instrument allegedly created, the complaint must state facts (not mere conclusions) showing the apparent invalidity of the instrument designated. The Court should disregard mere conclusions

with respect to the legal construction of an instrument as surplus. (*Id.* at pp. 833-834).

Wildman's lawsuit only contains causes of action to quiet title and for declaratory relief, both of which are barred by the statutes of limitations as discussed above. Even if Wildman's complaint included a cause of action to remove a cloud on title, as in *Ephraim* it would merge with the cause of action to quiet title. Because Wildman bases his action to quiet title, which is clearly time-barred, on the same facts which would form the basis for a separate cause of action to remove a cloud on title, Wildman cannot plead any cause of action to remove a cloud. As *Ephraim* emphasized, in a suit to remove a cloud on title that a designated instrument allegedly created, the complaint must state facts, not mere conclusions, showing the apparent validity of the instrument designated and point out the reason for asserting that it is actually invalid. (*Ephraim*, supra, at pp. 833-834.) Wildman's complaint not only stated no such facts, it contained no such cause of action.

Moreover, even if Wildman had alleged a cause of action to remove a cloud on title, he concedes it is a continuing cause of action only for so long as the claim creating the cloud on title lies dormant. (*See* AOB at p. 22 quoting 43 Cal.Jur.3d, Limitation of Actions, § 106.) Here, by affirmatively accepting the offer to dedicate the easement, the Coastal Conservancy proactively asserted its claim to hold the easement. Because that assertion was not dormant as of date of acceptance of the offer, the statute of limitations bars Wildman's claim.

III. IN ADDITION TO BEING UNTIMELY, THE FIRST AMENDED COMPLAINT FAILED AS A MATTER OF LAW TO PLEAD FACTS SUFFICIENT TO STATE A CAUSE OF ACTION.

In addition to untimeliness, dismissal was appropriate because the complaint fails, as a matter of law, to state facts sufficient to state a cause of

action. Although the trial court did not reach this ground, respondents raised this issue on demurrer. (AA Exh. 9, Bates p. 95-96.) In ruling on a demurrer sustained without leave to amend, the court may “exercise [its] independent judgment to determine whether a cause of action has been stated as a matter of law.” (*Serra Canyon Co. Ltd v. California Coastal Com.* (2004) 120 Cal.App.4th 663, 667, citations omitted.) “It is well established that a judgment upon demurrer will be affirmed on appeal if any of the grounds stated in the demurrer are well taken.” (*A.J. Wright v. City of Morro Bay* (2007) 144 Cal.App.4th 767, 724, citations omitted.)

The First Amended Complaint alleges that the Coastal Conservancy accepted the offer to dedicate more than 21 years after it was recorded, and therefore the acceptance was invalid. Wildman’s interpretation of the offer to dedicate as automatically expiring after 21 years is incorrect as a matter of law.

The operative language of the offer to dedicate, set out in the document itself, states as follows: “This offer of dedication shall be irrevocable for a period of twenty-one (21) years, measured forward from the date of recordation, and shall be binding upon the owners, their heirs, assigns, or successors in interest to the subject property described above.” (AA 5, Exh. 5, Bates pp. 70, 78.) Wildman admits that his predecessors-in-interest validly recorded the offer to dedicate, first on January 6, 1982 and again on January 26, 1983. Thus, the earliest possible date the offer might have *become revocable* was January 6, 2003. Wildman has pled no facts in his complaint, however, alleging that he actually revoked the offer after January 6, 2003 or at any other time. In fact, he cannot plead such facts since he also admits that the Coastal Conservancy accepted the offer and recorded it on December 23, 2003. (AA, Exh. 5, Bates p. 59, and 85-86.)

Wildman’s central argument depends upon his assertion that the terms “revoke” and “expire” are equivalent. Wildman asserts, as the sole basis

for the two causes of action in the complaint, that, since the offer was irrevocable for twenty-one years after recordation, after that period of time, the offer expired. He goes on to argue that if the offer had expired, then the Coastal Conservancy could not have validly accepted it. The operative language of the offer, however, simply states that the offer was irrevocable for a period of 21 years. It does not state that the offer would automatically expire at that point. Once the 21-year period had passed, the burden was on Wildman to revoke the offer if he did not want it to be accepted. He does not allege that he or his predecessors ever revoked the offer before the Coastal Conservancy accepted it, and it is too late now.

Wildman also argues that the offer expired because the recitals in the offer quote the permit condition that the Coastal Commission imposed, which referred to the offer running for a period of 21 years. The recitals, however, are not the operative provisions of the offer. The fact that Wildman's predecessor-in-interest could have recorded an offer that automatically expired after 21 years does not change the fact that the prior owner did not. The prior owner recorded an offer that became revocable after the 21st year but did not automatically expire. The Coastal Conservancy's acceptance of the offer was therefore timely as a matter of law.

A dedication of property involves a transfer of private property for public use. An offer evidencing clear intent to make the dedication followed by acceptance of that offer by the public accomplishes the dedication. (*Carstens v. California Coastal Com.* (1986) 182 Cal.App.3d 277, 285, see also 26 Cal. Jur. 3d Dedication § 14.) Once the public has unequivocally accepted an offer to dedicate, rights vest in the public. (*Western Aggregates, Inc. v. County of Yuba* (2002) 101 Cal.App.4th 278, 298.) The failure of the public to improve the dedicated land cannot support an action to quiet title against the public. (*A.J. Wright v. City of*

Morro Bay, supra, at p.772.) Whether an offer has been revoked prior to acceptance is a question of fact. (*Yuba City v. Consolidated Mausoleum Syndicate* (1929) 207 Cal. 587, 590.) Here, however, Wildman has pled no facts, nor can he, evidencing that anyone revoked the offer at issue. In fact, Wildman admits that the Coastal Conservancy accepted the offer, thus negating any possible cause of action on this basis.

At its core, the First Amended Complaint is a belated attack on a coastal development permit issued more than thirty years ago. In 1981, in exchange for approval to construct a large home and other amenities on an oceanfront bluff, Wildman's predecessor agreed to dedicate a public parking easement along Pacific Coast Highway. Wildman's predecessor recorded this offer before Wildman purchased the property. The courts should not permit Wildman, the successor purchaser, so many years later, to avoid the bargain that the prior owner struck. (See *Serra Canyon Co. Ltd v. California Coastal Com., supra, at p. 670.*) Wildman's complaint must fail as a matter of law.

CONCLUSION

This is a case where a plaintiff simply and inexcusably waited too long to file suit. Under any limitations statute that might apply to these facts, Wildman sat on his rights too long. Here, the Coastal Commission and Coastal Conservancy pressed a claim against Wildman's title when the Coastal Conservancy accepted the offer to dedicate on December 23, 2003. As of that date, Wildman's title and possession of the portion of the property subject to the easement was put in dispute, and the statute of limitations ran five years later, in December 2008.

In addition to the bar of the statute of limitations, Wildman's complaint fails to allege that either he or his predecessor ever revoked that the offer to dedicate. Wildman does not dispute that the offer was never revoked, and under its plain terms it did not expire. In fact, the complaint

alleges that the offer was accepted, thus establishing the rights of the public to this land. Wildman cannot now challenge this dedication. This Court should affirm the trial court's dismissal of this action.

Dated: August 22, 2012

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

I certify that the attached RESPONDENTS' BRIEF uses a 13 point Times New Roman font and contains 5,944 words.

Dated: August 22, 2012

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