2015 IL App (2d) 140950-U
No. 2-14-0950
Order filed June 23, 2015

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

GEORGE T. KARKAZIS,	)	Appeal from the Circuit Court
	)	of Lake County.
Plaintiff-Appellant,	)	
	)	
v.	)	No. 11-CH-5499
	)	
KARKAZIS ENTERPRISES, LLC,	)	
GEORGENE K. SHANLEY, as Agent of	)	
Karkazis Enterprises, LLC and Individually,	)	
THE LAMBROS A. KARKAZIS	)	
DECLARATION OF TRUST NO. 10769.01,	)	
FRANK KARKAZIS, as Trustee and	)	
Individually, ANTHONY KARKAZIS,	)	
and UNKNOWN OWNERS,	)	Honorable
	)	Luis A. Berrones,
Defendants-Appellees.	)	Judge, Presiding.

JUSTICE HUTCHINSON delivered the judgment of the court.
Justices Zenoff and Spence concurred in the judgment.

ORDER

¶ 1 *Held*: Because the allegations in plaintiff's complaint can support more than one conclusion as to when plaintiff knew or should have known that the 1998 quit claim deed he executed transferred his ownership interest in the property, and because determining when the statute of limitations begins to run under the Illinois discovery rule is generally a question of fact, the trial court erred in dismissing counts 1 through 4 of plaintiff's complaint. Thus, we reversed and remanded for further proceedings.

¶ 2 In 1974, plaintiff, George T. Karkazis, and his brother Lambros purchased undeveloped property in Long Grove. The brothers acted as equal partners in the property until Lambros's death in 1999, at which point defendant, Karkazis Enterprises, LLC (defendant), assumed Lambros's ownership interest. In 2011, the parties desired to sell the property and, in the course of reviewing documents, discovered a quit claim deed dated in 1998 and recorded in 1999. That deed purportedly transferred plaintiff's ownership interest to a trust Lambros used for estate planning.

¶ 3 In 2011, plaintiff brought the current action, seeking relief under theories of unjust enrichment, constructive trust, mutual mistake, an equitable lien for the purchase price, and an equitable lien based on property taxes and miscellaneous expenses. The trial court dismissed plaintiff's complaint pursuant to sections 2-615 and 2-619 of the Code of Civil Procedure (the Code) (735 ILCS 5/2-615, 2-619 (West 2010)) with respect to each theory, except for the theory of an equitable lien based on taxes and expenses; the parties entered into an agreed order with respect to the final theory. Plaintiff now appeals, contending that (1) his complaint alleged sufficient facts to toll the statute of limitations based on the Illinois discovery rule; (2) his complaint alleged sufficient facts to toll the statute of limitations based on the doctrine of equitable estoppel; and (3) his complaint alleged sufficient facts to state a claim for mutual mistake. We reverse and remand.

¶ 4 I. BACKGROUND

¶ 5 The pleadings reflect that plaintiff and his brother Lambros regularly partnered as real estate investors. In 1972, they, along with a third partner, purchased real estate in Chicago. The three partners owned and managed the property for 20 years, until it was sold in 1992.

¶ 6 In 1974, plaintiff and Lambros purchased three parcels of undeveloped land in Long Grove. The land included the north, middle, and south parcels, and constituted approximately 15 total acres. The north parcel (the property) is the subject of this controversy. Plaintiff and Lambros owned the property equally as partners and as tenants in common until Lambros's death in January 1999. After Lambros's passing, plaintiff and defendant, an entity consisting of Lambros's children, continued to conduct themselves as co-owners by, for example, sharing the property's tax liability.

¶ 7 On August 20, 1998, plaintiff and Lambros signed a quit claim deed. The words "QUIT CLAIM DEED" appeared at the top of the deed. The deed specified that, "in consideration of [t]en ($10.00) DOLLARS, in hand paid[,]" plaintiff "convey[ed] and quit claim to an undivided one-half interest to [Lambros]" as trustee of the Lambros Trust, which was Lambros's estate planning vehicle. The deed specified the property's permanent real estate index number. As a result, Lambros and the Lambros Trust each had a 50% interest in the property. Plaintiff does not recall signing the deed, but acknowledged that the deed contained his signature. According to plaintiff, he never intended to deed his title and interest in the property to the Lambros Trust. He did not receive a copy of the deed and was never compensated for transferring his 50% interest. Plaintiff unknowingly signed the deed, believing that it was a document necessary for the property's management.

¶ 8 On February 19, 1999, one month after Lambros's death, the deed was recorded without plaintiff's knowledge or consent. On December 28, 1999, a separate deed transferred the Lambros Trust's 50% interest to defendant. In December 2002, plaintiff executed a quit claim deed that attempted to transfer his 50% interest in the property to GTK Family Limited

Partnerships, plaintiff's family estate planning entity. An attorney prepared that deed for plaintiff.

¶ 9 In 2011, the parties entered into a property management agreement stating that plaintiff and defendant owned the property equally. Later that year, the parties desired to sell the property. In reviewing the title documentation, defendant's attorney contacted plaintiff to advise that he discovered the August 1998 deed. Defendant believed that it was the sole owner of the property.

¶ 10 On December 9, 2011, plaintiff filed his complaint. As amended, plaintiff alleged five theories of relief. Count 1 alleged unjust enrichment; count 2 alleged a constructive trust; count 3 alleged mutual mistake; count 4 alleged an equitable lien for the property's purchase price; and count 5 alleged an equitable lien for the real estate taxes and other expenses. On December 7, 2012, the trial court dismissed counts 1 and 2 as being barred by the statute of limitations pursuant to section 2-619 of the Code. In dismissing the counts, the trial court opined:

> "[I]f we start where we're supposed to at the beginning and that is at the time the deed was signed *** there's really no excuse for him not knowing what it is. It's clear on its face that he signed the deed. The fact that he trusted his brother *** doesn't excuse him from being aware of what he's doing. He knows it's a deed. It's at the very top of the page. It's clear that it's a [quit claim] deed and I think at that point if, in fact, that's not what he intended to do, that's when the statute of limitations started to run."

The trial court also dismissed count 3 pursuant to section 2-615 of the Code. On February 28, 2014, the trial court dismissed count 4 as being barred by the statute of limitations pursuant to section 2-619 of the Code. On August 22, 2014, the trial court entered an agreed order that entered a judgment against defendant in the amount of $58,303.84. The agreed order further

provided that plaintiff voluntarily dismissed count 5 with prejudice, but "the voluntary dismissal of [count 5] ha[d] no effect on the allegations contained within the [second amended complaint] other than those in [count 5]." Plaintiff timely appealed.

¶ 11 II. ANALYSIS

¶ 12 The only issue in this appeal is whether the trial court erred in dismissing plaintiff's complaint. With respect to counts 1 (unjust enrichment), 2 (constructive trust), and 4 (equitable lien for the property's purchase price), plaintiff argues that he alleged sufficient facts to toll the statute of limitations pursuant to the Illinois discovery rule, and that the statute of limitations should be tolled pursuant to the doctrine of equitable estoppel. Therefore, the trial court erred in dismissing his complaint pursuant to section 2-619 of the Code. With respect to count 3 (mutual mistake), plaintiff argues that he alleged sufficient facts to state a cause of action.

¶ 13 A motion to dismiss pursuant to section 2-615 of the Code tests the legal sufficiency of the complaint, whereas a motion to dismiss under section 2-619 admits the legal sufficiency of the complaint but asserts an affirmative defense that defeats the claim. *Solaia Technology LLS v. Specialty Publishing Co.*, 221 Ill. 2d 558, 578-79 (2006). Under either section, we accept all well-pleaded facts in the complaint as true, drawing all reasonable inferences from those facts in favor of the nonmoving party. See *Morris v. Harvey Cycle & Camper, Inc.*, 392 Ill. App. 3d 399, 402 (2009). When reviewing a decision to grant a motion pursuant to section 2-615, our inquiry is whether the allegations of the complaint, construed in the light most favorable to the nonmoving party, are sufficient to establish a cause of action upon which relief may be granted. *Weidner v. Karlin*, 402 Ill. App. 3d 1084, 1086 (2010). Under section 2-619, our inquiry is whether an affirmative matter, *i.e.*, "some kind of defense 'other than a negation of the essential elements of the plaintiff's cause of action' " defeats the claim. See *Smith v. Waukegan Park*

District, 231 Ill. 2d 111, 120-21 (2008) (quoting *Kedzie & 103rd Currency Exchange, Inc. v. Hodge*, 156 Ill. 2d 112, 115 (1993)). Our review under both sections is *de novo*. *King v. First Capital Financial Services Corp.* 215 Ill. 2d 1, 12 (2005).

¶ 14 With respect to the timeliness of this action, all civil actions not otherwise provided for by statute shall be commenced within five years after the cause of action has accrued, which includes actions for unjust enrichment, a constructive trust, and equitable liens. *Frederickson v. Blumethal*, 271 Ill. App. 3d 738, 742 (1995). In *Knox College v. Celotex Corp.*, 88 Ill. 2d 407, 414 (1981), our supreme court observed: "The discovery rule relating to the statute of limitations has been applied across a broad spectrum of litigation to alleviate what has been viewed as harsh results resulting from the literal application of the statute. The effect of the discovery rule is to postpone the starting of the period of limitations until the injured party knows or should have known of his injury. [Citations.] .' " Illinois law adheres to the discovery rule, which provides that the applicable statute of limitations will not commence until the plaintiff knew or reasonably should have known that he has been injured and that the injury was wrongfully caused. *Diotallevi v. Diotallevi*, 2013 IL App (2d) 111297, ¶ 27. "Courts apply the rule on a case-by-case basis, balancing the increase in difficulty of proof that accompanies the passage of time against the hardship to the plaintiff who neither knew nor should have known of the existence of his right to use." *Id.* (citing *Hermitage Corp. v. Contractors Adjustment Co.*, 166 Ill. 2d 72, 78 (1995)). Determining when the statute of limitations begins to run pursuant to the discovery rule is generally a question of fact, unless it is apparent from the undisputed facts, at which point it becomes a question for the court. *Rasgaitis v. Waterstone Financial Group, Inc.*, 2013 IL App (2d) 111112, ¶ 30.

¶ 15 In *J.P. Morgan Chase Bank v. Alecta Real Estate North Michigan Avenue, Inc.*, No. 08 C 3018, 2010 WL 375615 (N.D. Ill. Jan. 21, 2010), the United States District Court for the Northern District of Illinois discussed the discovery rule in the context of a claim to reform a written contract entered into between the parties. The parties disputed provisions in a lease executed on May 29, 1998, in connection with the sale of a building. *Id.* at *1. The plaintiff bank claimed that the lease did not require it to pay real estate taxes or certain other expenses. The defendants countered that the bank was not entitled to relief and filed a counterclaim that asked the court to reform the lease to conform to the parties' intent. *Id.* at *2.

¶ 16 While ruling on the parties' cross-motions for partial summary judgment, the district court assessed the timeliness of the defendants' reformation counterclaim. The district court noted that the statute of limitations, if any, applicable to that claim was the 10-year period for actions on written contracts. *Id.* at *11 (citing 735 ILCS 5/13-206 (West 2010)). However, the federal court noted that the Illinois Supreme Court had not yet determined when a reformation claim based on mutual mistake accrues, and further, decisions from the Illinois Appellate Court on this issue were "mixed." *Alecta Real Estate*, 2010 WL 375615, at *11 (comparing *Schons v. Monarch Insurance Co. of Ohio*, 214 Ill. App. 3d 601 (1991) (holding that a reformation claim accrued when the plaintiff learned of facts which authorized her to maintain a cause of action against defendants) with *Benyon Building Corp. v. National Guardian Life Insurance Co.*, 118 Ill. App. 3d 754 (1983) (holding that a claim to reform a mortgage accrued when the parties executed it, not when the plaintiff discovered the mistake)). The district court noted that, because it was entertaining a diversity suit involving Illinois law, it was required to "predict how the state supreme court would rule on the issue." *Alecta Real Estate*, 2010 WL 375615, at *11. The district court discussed *Hermitage Corp. v. Contractors Adjustment Co.*, 166 Ill. 2d 72

(1995), in which our supreme court held that a claim that the defendants breached a contract and a duty of care by filing a faulty mechanics lien accrued when the plaintiffs attempted to enforce the lien, not when the lien was recorded. *Hermitage*, 166 Ill. 2d at 79-80. Our supreme court noted that the discovery rule was developed to "avoid a mechanical application of a statute of limitations in situations where an individual would be barred from suit before he was aware that he was injured." *Id.* at 78. Relying on that language, the district court in *Alecta Real Estate* concluded that "[t]he same is true here," further opining:

> "Theoretically, [the] defendants could have asserted their reformation claim on the day that they executed the lease. But if they had recognized the mistake that day, they would have corrected it, obviating the need for a reformation claim. Indeed, the premise of a reformation claim is that the parties unwittingly signed an erroneous document, which is why simple negligence is not a defense." *Alecta Real Estate*, 2010 WL 375615, at *12.

Therefore, in light of *Hermitage*, the district court in *Alecta Real Estate* followed the holding in *Schons* and predicted that our state's supreme court would hold that an action for a reformation of a contract based upon a mutual mistake would accrue when the plaintiff has learned of the mistake. See *id.* In reaching its determination, the district court in *Alecta Real Estate* emphasized that there was no dispute that the bank paid taxes "without protest" from 1998 until early 2004 and "no evidence that the defendants discovered the mistake earlier." *Id.* Therefore, the defendants' reformation counterclaim was timely. *Id.*

¶ 17 In the present case, the question that we must answer with respect to the timeliness of plaintiff's claims is when he knew or should have known that the quit claim deed he signed in 1998 transferred his interest in the property to his brother's trust. We find the reasoning in *Alecta Real Estate* instructive in answering that question. Like the defendants' reformation

counterclaim there, plaintiff here theoretically could have asserted his rescission-based-upon-a-mutual-mistake claim and other claims on the day he executed the quit claim deed. But doing so would have obviated the need to bring those claims. Further, based on the allegations in the complaint, plaintiff and defendants continued to conduct themselves as if they co-owned the property by, for example, sharing in the property's real estate taxes. Similar to the bank in *Alecta Real Estate*, which continued to pay real estate taxes "without protest" for more than five years after the parties executed the lease, the defendants here continued to operate as if plaintiff was a co-owner of the property long after the plaintiff signed the quit claim deed.

¶ 18 In light of *Alecta Real Estate* and its discussion and application of the discovery rule in the context of reforming a contract, we believe that dismissal of plaintiff's complaint at this stage in the proceedings is unwarranted. At a minimum, there is a question of fact as to when plaintiff knew or should have known that the quit claim deed he executed in 1998 transferred his interest in the property to the Lambros Trust. In addition to the allegations that defendants continued to conduct themselves as if plaintiff was a co-owner, we further note the quit claim deed provided that the real estate was situated in "Cook County" and that plaintiff was transferring "an" undivided one-half interest to Lambros as opposed to transferring "his" undivided one-half interest. This apparent ambiguity supports our conclusion that there is, at minimum, a question of fact as to when plaintiff had sufficient information to conclude that he transferred "his" interest in the "Lake County" property to the Lambros Trust. See also *Knox College*, 88 Ill. 2d at 416 (determining the point at which an injured party becomes possessed of sufficient information to be alerted to a potential cause of action, thus triggering the commencement of the limitations period under the discovery rule, is usually a question of fact). Therefore, the trial court erred in concluding as a matter of law that the plaintiff could not invoke the discovery rule and that the

statute of limitations began to run when plaintiff executed the quit claim deed. See *Jackson Jordan, Inc. v. Leydig, Voit & Mayer*, 158 Ill. 2d 240, 250-51 (1994) (holding that the trial court erred in entering summary judgment in the defendant's favor because "the facts could support more than one conclusion" as to when the plaintiff had sufficient information under the discovery rule to conclude that his attorneys were negligent).

¶ 19 Defendants rely on *Leon v. Max E. Miller & Son, Inc.*, 23 Ill. App. 3d 694 (1974), and *Shipman v. Moseley*, 319 Ill. App. 443 (1943), to argue that Illinois applies the duty to learn or know the contents of a deed and that if the party who signed an instrument had the opportunity to read it, that party cannot allege a deception by misrepresentations. Unlike *Leon* and *Shipman*, however, the present case comes to us on the pleadings and it is not clear that, under the circumstances alleged in the complaint, the plaintiff should have known that the document he was signing transferred his interest in the property.

¶ 20 Our rationale and conclusions above also support a reversal of the trial court's section 2-615 dismissal as to count 3 (mutual mistake), since it was also based on the circumstances surrounding the quit claim deed and the applicability of the statute of limitations.

¶ 21 III. CONCLUSION

¶ 22 For the reasons stated, we reverse the judgment of the circuit court of Lake County and remand for further proceedings consistent with this order.

¶ 23 Reversed and remanded.