2017 IL App (1st) 161081-U
No. 1-16-1081

THIRD DIVISION
June 21, 2017

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

REZA TOULABI,	)	Appeal from the Circuit Court
	)	of Cook County.
Plaintiff-Appellant,	)	
	)	
v.	)	No. 12 CH 28759
	)	
ROBERT YASSAN, DOROTHY YASSAN, and	)	
MY II, LLC,	)	The Honorable
	)	Anna H. Demacopoulos,
Defendants-Appellees.	)	Judge Presiding.

JUSTICE PUCINSKI delivered the judgment of the court.
Presiding Justice Fitzgerald Smith and Justice Lavin concurred in the judgment.

ORDER

¶ 1 *Held:* Trial court's dismissal of the plaintiff's claim for specific performance affirmed where the allegations of the plaintiff's amended complaint, when taken as true, allowed only one conclusion: that the defendants' breach of the unwritten agreement occurred more than seven years prior to the filing of his initial complaint, thereby rendering it barred by the five-year statute of limitations.

¶ 2 The plaintiff, Reza Toulabi, appeals from the trial court's dismissal with prejudice of his claim seeking specific performance of an oral real estate contract between the plaintiff and defendant Robert Yassan ("Robert"). Pursuant to the motion to dismiss brought by the

defendants, Robert, Dorothy Yassan ("Dorothy"), and My II, LLC ("My II"), under section 2-619(a)(5) and (a)(7) of the Code of Civil Procedure (735 ILCS 5/2-619(a)(5), (7) (West 2012)), the trial court found that the plaintiff's claim for specific performance was barred by the applicable statute of limitations. The plaintiff appealed and, for the reasons that follow, we affirm.

¶ 3 BACKGROUND

¶ 4 The plaintiff filed his initial "Complaint for Specific Performance and Damages" ("Initial Complaint") against Robert and Chicago Title Land Trust Company ("Chicago Title") on July 26, 2012. Thereafter, on January 14, 2013, the plaintiff filed his "Amended Complaint for Specific Performance and Damages" ("Amended Complaint"). Although Initial Complaint and Amended Complaint alleged the same wrongs, the plaintiff dropped Chicago Title as a defendant and instead named Dorothy and My II as defendants.

¶ 5 The facts as alleged by the plaintiff in his Amended Complaint are, in relevant part, as follows. In November 2004, the plaintiff entered into a written contract ("Agreement to Purchase") to purchase a number of condominium units ("the condominiums") in Polo Tower in Chicago. On January 18, 2005, the plaintiff assigned, in writing ("Assignment"), his interest, rights, and obligations in the Agreement to Purchase to Robert. Although not included as a provision of the written Assignment, the plaintiff agreed to procure and secure a $3,000,000.00 loan for Robert from Alexis Giannoulias. In exchange for the Assignment and procuring and securing the loan, Robert agreed to pay the plaintiff $1,000,000.00, and the plaintiff was to receive possession of and title to Condominium Unit No. 1605 and parking space P-13 in Polo

Tower ("Oral Agreement"), title to which was held by My II. Robert and Dorothy were the only members of My II.[1]

¶ 6 On January 18, 2005, using the $3,000,000.00 loan, Robert closed on the purchase of the condominiums and transferred possession of Unit 1605 and P-13 to the plaintiff.

¶ 7 On December 1, 2005, Robert gave the plaintiff a copy of a check for $1,000,000.00 pursuant to the Oral Agreement, but asked the plaintiff to wait one year for actual payment of the $1,000,000.00, and the plaintiff agreed. Robert subsequently asked for additional extensions to make the $1,000,000.00 payment in December 2006, 2007, 2008, 2009, and 2010. The plaintiff agreed to all of the requested extensions, such that payment became due on December 1, 2011. On December 9, 2011, the plaintiff's attorney sent a letter to Robert, demanding payment of the $1,000,000.00. Robert did not pay the $1,000,000.00.

¶ 8 With respect to Unit 1605 and P-13, the plaintiff alleged that "[a]lthough [the plaintiff] received possession of Units No. 1605 and P-13 in the Polo Tower Condominium, as aforesaid, at the time of the Closing on January 18, 2005, as aforesaid, [the plaintiff] did not receive title to Units 1605 and P-13, in violation of the agreement between [the plaintiff] and [Robert]." In the December 9, 2011, letter from the plaintiff's attorney to Robert, the plaintiff's attorney noted that although the plaintiff received possession of the condominium and parking space, he had not received title to them. In February 2011, Dorothy changed the locks on Unit 1605, thereby depriving the plaintiff of possession without notice and without the appropriate court order.

[1] We note that the plaintiff's allegation that he was to receive possession and title to Unit 1605 and P-13 was drafted in the passive voice, making it unclear who agreed to transfer possession and title to the plaintiff. Because the allegations of the Amended Complaint suggest that all of the plaintiff's dealings were with Robert, we presume the agreement to transfer possession and title was made by Robert, although we cannot be certain. In any case, the precise identity of the promisor has no bearing on our decision, so we note this fact only to explain the vagueness in our statement of the complaint's allegations.

¶ 9 In Count I of the Amended Complaint, the plaintiff alleged that he was entitled to specific performance, in that he was entitled to an order directing the defendants to convey title to Unit 1605 and P-13 to him. In Count II of the Amended Complaint, the plaintiff alleged that he was entitled to judgment against Robert in the amount of $1,000,000.00 plus interest.

¶ 10 The defendants filed a motion to dismiss the plaintiff's complaint pursuant to sections 2-619(a)(5) and (a)(7) of the Code of Civil Procedure (735 ILCS 5/2-619(a)(5), (7)). With respect to Count I, the defendants argued that it should be dismissed on the basis that the Statute of Frauds barred the plaintiff's claim, as there was no allegation that Robert agreed in writing to convey possession and title of Unit 1605 and P-13 to the plaintiff, and on the basis that the plaintiff did not file the Initial Complaint until after the five-year statute of limitations had expired. As for Count II, the defendants argued that it should be dismissed on the basis that the plaintiff did not file the Initial Complaint until after the five-year statute of limitations had expired.

¶ 11 On November 15, 2013, the trial court granted the defendants' motion to dismiss Count I with prejudice, but denied their motion to dismiss Count II. On March 17, 2016, the plaintiff voluntarily dismissed Count II, judgment was entered to that effect, and the trial court made a finding, pursuant to Illinois Supreme Court Rule 304(a) (eff. Mar. 8, 2016) that there was no just reason to delay enforcement or appeal of the trial court's November 15, 2013, order dismissing Count I.

¶ 12 The plaintiff then instituted this timely appeal, seeking review of the trial court's dismissal of Count I.

¶ 13 ANALYSIS

¶ 14 On appeal, the plaintiff argues that the trial court erred in holding that the statute of limitations had expired by the time that he filed his Initial Complaint in July 2012, because the statute of limitations did not begin to run until the plaintiff was deprived of possession of Unit 1605 in February 2011. We disagree.

¶ 15 A motion to dismiss brought pursuant to section 2-619 of the Code of Civil Procedure is designed to allow for the disposition of issues of law and easily proved issues of fact. *O'Hare Truck Service, Inc. v. Illinois State Police*, 284 Ill. App. 3d 941, 945 (1996). Under such motions, the legal sufficiency of the complaint is admitted, as are all well-pleaded facts. *Brock v. Anderson Road Association*, 287 Ill. App. 3d 16, 21 (1997).

¶ 16 The defendants' motion to dismiss Count I was specifically based on section 2-619(a)(5), which allows for the involuntary dismissal of a complaint on the basis that the claim "was not commenced within the time limited by law," and section 2-619(a)(7), allowing for the involuntary dismissal of a claim on the basis that it is "unenforceable under the provisions of the Statute of Frauds." Our review of the trial court's grant of the motion to dismiss is *de novo*, and we must assess whether there existed a genuine issue of material fact that precluded the dismissal of Count I or, in the absence of such an issue of fact, whether the dismissal of Count I was proper as a matter of law. *Brock*, 287 Ill. App. 3d at 21.

¶ 17 The parties agree that a five-year statute of limitations applies to the plaintiff's claim that the defendants breached the Oral Agreement between the plaintiff and Robert by failing to convey title of Unit 1605 and P-13 to the plaintiff. See 735 ILCS 5/13-205 (West 2012). They do not agree, however, on when the five years began to run. The defendants argue that the plaintiff's cause of action accrued on January 18, 2005, at the closing, when Robert obtained

ownership of the condominiums, gave the plaintiff possession of Unit 1605 and P-13, but failed to transfer title of Unit 1605 and P-13 to the plaintiff. The plaintiff disagrees, arguing that his cause of action did not accrue until February 2011 when Dorothy changed the locks on Unit 1605, thereby depriving him of possession. We agree with the defendants.

¶ 18 Ordinarily, a cause of action for breach of contract accrues at the time of the breach, not when the suing party sustains damages. *Hermitage Corp. v. Contractors Adjustment Co.*, 166 Ill. 2d 72, 77 (1995). Put another way, "[t]he general principle is that a 'statute of limitations begins to run when the party to be barred has the right to invoke the aid of the court and to enforce his remedy.' " *Rohter v. Passarella*, 246 Ill. App. 3d 860, 869 (1993), quoting *Berg & Associates v. Nelsen Steel & Wire Co.*, 221 Ill. App. 3d 526, 532 (1991).

¶ 19 The plaintiff's sole contention on appeal is that his claim in Count I did not accrue until February 2011, because the defendants' failure to convey title to Unit 1605 and P-13 did not constitute a breach of the Oral Agreement until that time. According to the plaintiff, because the deadline for the payment of the $1,000,000.00 had been extended to December 1, 2011, it was reasonable, at least until the locks were changed, for him to anticipate that title would also be conveyed on that date. At the very least, the plaintiff argues, there exists a genuine issue of material fact as to when the breach occurred, thereby precluding dismissal.

¶ 20 Although the plaintiff is correct that the date on which a cause of action accrues is typically a question of fact for the trier of fact, where the undisputed facts lead to only one conclusion, the question becomes one for the court. *Witherell v. Weimer*, 85 Ill. 2d 146, 156 (1981); *Federal Signal Corp. v. Thorn Automated Systems, Inc.*, 295 Ill. App. 3d 762, 767 (1998). Here, the facts alleged in the plaintiff's complaint, when taken as true and when all reasonable inferences are drawn in favor of the plaintiff, lead to only one conclusion: the

defendants breached the agreement when they failed to convey title to Unit 1605 and P-13 on January 18, 2005. The plaintiff specifically pled that "[a]lthough [the plaintiff] received possession of Units No. 1605 and P-13 in the Polo Tower Condominium, as aforesaid, *at the time of the Closing on January 18, 2005*, as aforesaid, [the plaintiff] did not receive title to Units No. 1605 and P-13, *in violation of the agreement between [the plaintiff] and [Robert]*." (Emphasis added.) Moreover, although the plaintiff specifically pled that he agreed to extend the time for payment of the $1,000,000.00 until December 1, 2011, none of the allegations in the Amended Complaint suggest that he agreed to an extension of time in which the defendants were to convey title to Unit 1605 and P-13, nor do any of the allegations allow for an inference that an extension of time for the payment of the $1,000,000.00 somehow included an extension of time for conveying title. Finally, the plaintiff did not plead, directly or by implication, any belief on his part that the time for conveying title had been extended. Therefore, once Robert obtained ownership of Unit 1605 and P-13 and did not convey title of them to the plaintiff, the plaintiff had the right to invoke the aid of the court and enforce his remedy against the defendants. See *Rohter*, 246 Ill. App. 3d at 869 (holding that accountant's cause of action accrued once he billed the defendants for his services, because at that point, he "could have sought the assistance of the courts in recovering the debt owed").

¶ 21 Because the allegations of the Amended Complaint do not support the plaintiff's claim that the time for conveying title was extended to December 1, 2011, the only conclusion to be drawn from the allegations is that the defendants breached the agreement when they failed to convey title to Unit 1605 and P-13 at the closing on January 18, 2005. By the time that the plaintiff filed his Initial Complaint on July 26, 2012, more than seven years had elapsed, thereby rendering Count I barred by the statute of limitations.

¶ 22 CONCLUSION

¶ 23 For the foregoing reasons, the judgment of the Circuit Court of Cook County is affirmed.

¶ 24 Affirmed.