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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION TWO

HOUSING AUTHORITY OF THE CITY
OF LOS ANGELES,

Plaintiff and Appellant,

v.

DWAYNE E. WILLIAMS,

Defendant and Respondent.

B199852

(Los Angeles County
Super. Ct. No. BC361111)

APPEAL from an order of the Superior Court of Los Angeles County. Michael L. Stern, Judge. Reversed and remanded.

Morris Polich & Purdy, Douglas C. Purdy, Charles E. Slyngstad and David L. Brandon, for Plaintiff and Appellant.

Hughes & Dunstan, Sharon Coverly Hughes and Simon J. Dunstan, for Defendant and Respondent.

* * * * *

The Housing Authority of the City of Los Angeles (HACLA) appeals from an order dismissing its complaint against independent contractor Dwayne E. Williams, formerly doing business as D.E. Williams and Associates (Williams), following the sustaining of a general demurrer without leave to amend. HACLA sued Williams and two former HACLA officers, Donald Smith and Lucille Loyce,¹ on numerous causes of action, essentially alleging that they had misappropriated funds from HACLA. Williams demurred to the complaint on the ground that the claims were barred by the applicable statutes of limitations. At his request, the trial court took judicial notice of a complaint filed against him and HACLA six years earlier in another action alleging similar acts of wrongdoing. The trial court found that the earlier allegations put HACLA on notice of any potential causes of action it may have had against Williams.

We agree with HACLA that the trial court erred in taking judicial notice of the meaning and effect of the allegations in the earlier complaint and other pleadings. In the absence of such notice, there was no basis for sustaining the general demurrer. Nevertheless, to the extent HACLA wished to do so, we also agree that it should have been given leave to amend its complaint to assert allegations of adverse domination and fraudulent concealment to toll the limitations periods. We therefore reverse and remand.

FACTUAL AND PROCEDURAL BACKGROUND

The Complaint

On appeal from a judgment of dismissal following a demurrer sustained without leave to amend, we assume the truth of all well-pleaded facts, as well as those that are judicially noticeable, but not contentions, deductions or conclusions of fact or law.

(Howard Jarvis Taxpayers Assn. v. City of La Habra (2001) 25 Cal.4th 809, 814; *Blank v. Kirwan* (1985) 39 Cal.3d 311, 318.)

¹ According to HACLA and Williams, the lawsuit is proceeding against Loyce and Smith, who are not parties to this appeal.

The complaint alleged the following:

HACLA is a state-chartered public housing agency that provides affordable housing and related services to lower income residents in the City of Los Angeles. HACLA receives the bulk of its funding from the Federal Department of Housing and Urban Development (HUD), and its operations are governed by HUD rules and regulations. Each housing development operated by a housing authority, such as HACLA, is permitted to form a nonprofit “Resident Management Corporation” (RMC) to represent that development’s interests with respect to the housing authority.

HACLA’s chief executive officer is called the “executive director” and reports to a seven-member board of commissioners appointed by the Mayor of the City of Los Angeles. In 1994 Smith was appointed as HACLA’s executive director. Loyce had been hired by HACLA in 1992, and in late 1999 or early 2000 Smith promoted her to the position of assistant executive director, reporting directly to him. Prior to her employment with HACLA, Loyce worked for the Milwaukee Housing Authority (MHA) and Williams provided services to MHA. In 1988 Loyce was forced to resign from her position at MHA based on suspicions that she was improperly providing MHA funds to Williams. The following year, Loyce, Williams and his wife moved to San Diego and opened a restaurant together. They eventually purchased condominiums in the same complex.

In 1994 at Loyce’s suggestion, Williams sought and obtained consulting work from HACLA. Thereafter, Williams provided contractual consulting services to HACLA and to various RMCs without complying with the open and competitive bidding process required by HUD regulations. From 1995 to 2004, Williams’s company had no clients other than HACLA and the RMCs, and received more than \$2 million in alleged consulting fees from HACLA. The majority of these fees were derived from undocumented or inappropriate transactions and at least two RMCs paid Williams annual bonuses from HACLA funds. Loyce compelled RMCs to retain Williams or provide him a payoff as a condition to receiving HACLA contracts. When an RMC refused to do so, Loyce and Williams would engage in a pattern of harassment and intimidation.

In 1997 a HACLA employee, Margaret Gardenhire, sued Loyce and HACLA, alleging retaliation for exposing fraud in connection with Williams's consulting operations. In 1999 a jury found in Gardenhire's favor and the judgment was affirmed on appeal.

In November 2001 HUD's Office of Inspector General (OIG) began investigating alleged improprieties relating to Williams and Loyce. HUD also suspected that Smith had misappropriated \$60-\$70 million in federal funds. In early 2004 HUD threatened to take over HACLA due to the financial improprieties by Smith and Loyce. Smith agreed to retire in early 2004 and Loyce's employment was terminated on April 29, 2004. It was at this time that HACLA "began to become aware of the conduct and improprieties of Smith, Loyce and Williams." However, the "key" OIG audit report that "began to reveal and uncover the misconduct of the Defendants" was not issued until January 21, 2005. The report concluded, among other things, that improper payments had been made to Williams, that he had double- or triple-billed on at least 78 instances and that he had not provided services for which he had billed. The complaint further alleged at paragraph No. 55 that at all relevant times "Loyce, Smith, and their confederates dominated and controlled HACLA and prevented the discovery of their misconduct by other management personnel of HACLA," and that "Loyce and Smith acted affirmatively to conceal their conduct and the consequences of that conduct from all other employees of HACLA."

On October 30, 2006, HACLA filed the complaint against Smith, Loyce and Williams. The causes of action alleged against Williams included breach of contract, breach of the covenant of good faith and fair dealing, fraud, violation of the California False Claims Act (Gov. Code, § 12650 et seq.), conversion, unjust enrichment and civil conspiracy to defraud.

The Demurrer and First Request for Judicial Notice

Williams filed a general demurrer to the complaint on the ground that it failed to state facts sufficient to constitute a cause of action because each of the claims against him

was time-barred.² He argued that the causes of action accrued against him six years earlier, or no later than October 2000, when HACLA appeared as a named defendant in a prior class action which contained “identical” allegations of wrongdoing, *Ochoa v. HACLA, Smith, Loyce, Williams, et al.*, BC237783, filed in the Superior Court of Los Angeles County on October 2, 2000 (*Ochoa*). He requested the trial court to take judicial notice of the *Ochoa* complaint and of the notice of removal to federal court filed on behalf of HACLA in that case on October 23, 2000. Williams attached to his demurrer a summary of the allegations in the *Ochoa* complaint and the instant complaint.³

The Opposition

In opposition to the demurrer, HACLA argued that the limitations periods were tolled until 2005 due to the defendants’ “adverse domination” of HACLA as alleged in paragraph No. 55 of the complaint, and their fraudulent concealment of the underlying facts. HACLA further argued that the *Ochoa* records could not be used to establish HACLA’s notice or knowledge of its potential claims against him because the court could not properly interpret the meaning and effect of those documents on a request for judicial notice. Finally, HACLA requested leave to amend its complaint in the event the demurrer was sustained, but did not set forth any proposed amendments.

² Neither below nor on appeal has Williams identified the applicable statutes of limitations, stating only that the longest statute of limitation for any claim in the complaint is four years for breach of written contract. (Code Civ. Proc., § 337.)

³ Williams also filed special demurrers to all causes of action (except the seventh cause of action for violation of California’s False Claims Act) on the grounds that the breach of contract claims were uncertain, failed to specify whether the contracts were oral or written, and failed to join RMC parties, and that these defects were incorporated into all remaining claims but the seventh cause of action. He also filed a general demurrer to the seventh cause of action on the ground that it failed to identify the misappropriated state funds. The trial court did not rule on any of these demurrers.

The Reply and Second Request for Judicial Notice

Williams argued in his reply brief that the adverse domination and fraudulent concealment theories were inapplicable because there were no allegations in the complaint that the governing board of HACLA, i.e., its board of commissioners, had no notice of his alleged wrongdoing. In a second request for judicial notice, which he called “Part II,” Williams requested that the court take judicial notice of additional documents filed in another lawsuit, including the complaint in *Gardenhire v. HACLA and Loyce*, BC181673 filed in the Superior Court of Los Angeles County on November 21, 1997, and articles appearing in the Los Angeles Times in 1998 and 2002, alleging wrongdoing at HACLA.

The Ruling

The trial court sustained the general demurrer without leave to amend on the ground that the complaint failed to state a cause of action because it showed both on its face and by documents of which the court may take judicial notice that the claims were time-barred. The court found no basis for tolling the limitations periods because there was “sufficient indicia” in 2000 to put HACLA on notice of Williams’s alleged participation in the “scheme.” The court stated that the adverse domination theory had not taken hold in California, then later stated that the complaint’s allegations of domination were conclusory. It is not clear from the court’s comments whether it took judicial notice of all of the documents requested in Part II. The court stated that it “went through” all of the documents, but did not read them all. The complaint against Williams was dismissed with prejudice and this appeal followed.

DISCUSSION

I. Standard of Review.

We review the trial court’s sustaining of a demurrer de novo, exercising our independent judgment as to whether a cause of action has been stated as a matter of law. (*People ex rel. Lungren v. Superior Court* (1996) 14 Cal.4th 294, 300; *Moore v. Regents*

of *University of California* (1990) 51 Cal.3d 120, 125.) We assume the truth of properly pleaded allegations in the complaint and give the complaint a reasonable interpretation, reading it as a whole and with all its parts in their context. (*Stop Youth Addiction, Inc. v. Lucky Stores, Inc.* (1998) 17 Cal.4th 553, 558; *People ex rel. Lungren, supra*, at p. 300.) However, we may disregard allegations which are contrary to law or to a fact of which judicial notice may be taken. (*Wolfe v. State Farm Fire & Casualty Ins. Co.* (1996) 46 Cal.App.4th 554, 559–560.) A demurrer on statute of limitations grounds will not lie where the action may be, but is not necessarily, time-barred. The defect must clearly and affirmatively appear on the face of the complaint; it is not enough that the complaint shows that the action may be barred. (*Marshall v. Gibson, Dunn & Crutcher* (1995) 37 Cal.App.4th 1397, 1403; *Lockley v. Law Office of Cantrell, Green, Pekich, Cruz & McCort* (2001) 91 Cal.App.4th 875, 881.)

We apply the abuse of discretion standard in reviewing the trial court’s denial of leave to amend. (*Blank v. Kirwan, supra*, 39 Cal.3d at p. 318; *Hernandez v. City of Pomona* (1996) 49 Cal.App.4th 1492, 1497–1498.) The plaintiff bears the burden of proving the trial court abused its discretion in denying leave to amend. (*Blank v. Kirwan, supra*, at p. 318; *Coutin v. Lucas* (1990) 220 Cal.App.3d 1016, 1020.) The plaintiff may make this showing for the first time on appeal. (*Rakestraw v. California Physicians’ Service* (2000) 81 Cal.App.4th 39, 43.) This is so even when the plaintiff failed to request leave to amend in the trial court. (*Kolani v. Gluska* (1998) 64 Cal.App.4th 402, 412; Code Civ. Proc., § 472c, subd. (a).)

II. Judicial Notice.

Williams never asserted in his demurrer to HACLA’s complaint that the face of the complaint showed that it was time-barred as a matter of law. Rather, his statute of limitations argument required the trial court to take judicial notice of the 2000 Ochoa complaint and HACLA’s notice of removal to federal court in that case, and to interpret the effects of those pleadings on HACLA. HACLA contends the trial court erred in

concluding that these documents demonstrated that it had notice or knowledge of its potential claims against Williams in 2000. We agree.

A matter ordinarily is subject to judicial notice only if it is reasonably beyond dispute. (See *Fremont Indemnity Co. v. Fremont General Corp.* (2007) 148 Cal.App.4th 97, 114–115 (*Fremont*.) Evidence Code section 452, subdivision (d) permits a court to take judicial notice of court records. While a court may take judicial notice of the *existence* of documents in a court file, it “cannot take judicial notice of the truth of hearsay statements simply because the statements are part of a court record.” (*Magnolia Square Homeowners Assn v. Safeco Ins. Co.* (1990) 221 Cal.App.3d 1049, 1056 (*Magnolia*.) A court can only take judicial notice of the truth of facts contained in orders, findings of fact and conclusions of law, and judgments. (*Id.* at p. 1057.)

Contrary to Williams’s suggestion, *Magnolia* does not support his position that the trial court properly took judicial notice of the allegations of the *Ochoa* complaint to show that HACLA had notice of its potential claims against Williams in 2000. In *Magnolia*, the plaintiff homeowners association filed a construction defect case and three years later filed an amended complaint alleging specific structural defects. More than 12 months after the amended complaint was filed, the plaintiff sought indemnity from its insurer. The insurer then filed an action for declaratory relief seeking a determination that it had no duty to indemnify because the claim was barred by the policy’s 12-month limitation period. (*Magnolia, supra*, 221 Cal.App.3d at p. 1055.) The trial court took judicial notice of the amended complaint in the prior action and granted summary judgment. On appeal, the plaintiff argued that the trial court erred in taking judicial notice of the amended complaint because it constituted hearsay. (*Id.* at p. 1056.) The appellate court rejected this argument, concluding that the allegations of structural defects in the amended complaint were not being offered to prove the truth of the matter stated, but to prove that the plaintiff, by asserting the earlier claim, had “*notice or knowledge*” of structural defects. (*Id.* at pp. 1056, 1057.) The trial court’s decision to take judicial notice of the allegations of the amended complaint was therefore not error. (*Id.* at p. 1057.)

Williams argues that he was not asking the trial court to take judicial notice of the truth of the allegations in the *Ochoa* complaint; rather, he was asking the court to take judicial notice of the allegations for the purpose of showing that the allegations gave HACLA “notice or knowledge” of potential claims against Williams. But unlike *Magnolia*, the *Ochoa* complaint was filed not by HACLA but by third parties *against* HACLA and Williams. Because HACLA was not the party making the earlier allegations, as in *Magnolia*, the trial court here had to determine what effect the allegations had upon HACLA. The trial court necessarily would have had to conclude that HACLA had determined that the allegations against Williams had merit and were not frivolous. But such a determination necessarily required a resolution of disputed facts and could not be done on demurrer.

Fremont, supra, 148 Cal.App.4th 97 is instructive. In *Fremont*, the complaint alleged the existence of a letter between the parties which memorialized an agreement, and that the defendants violated the terms of that agreement. (*Fremont, supra*, 148 Cal.App.4th at p. 112.) The letter was not attached to the complaint and the plaintiff did not rely on the letter to support a cause of action. (*Id.* at p. 118.) On demurrer, the trial court granted the defendants’ request to take judicial notice of the letter, which was part of the court record in another action; the defendants argued they were released from liability under the terms of the letter. (*Id.* at p. 113.) The appellate court held it was error for the trial court to take judicial notice of the letter: “For a court to take judicial notice of the meaning of a document submitted by a demurring party based on the document alone, without allowing the parties an opportunity to present extrinsic evidence of the meaning of the document, would be improper. A court ruling on a demurrer therefore cannot take judicial notice of the proper interpretation of a document submitted in support of the demurrer. [Citations.] In short, a court cannot by means of judicial notice convert a demurrer into an incomplete evidentiary hearing in which the demurring party can present documentary evidence and the opposing party is bound by what that evidence appears to show.” (*Id.* at pp. 114–115.)

HACLA argues that extrinsic evidence is necessary to show what effect the *Ochoa* allegations had on HACLA. For example, HACLA asserts that the evidence would show that at the time of the *Ochoa* action Smith and Loyce controlled HACLA and dominated the board of commissioners; that Smith and Loyce sought to divert any allegations of fraud away from themselves and Williams rather than inquiring further into them; that they retained the lawyers to defend the *Ochoa* action and the lawyers were beholden to them; that the lawyers adopted their view that the allegations were frivolous and reported as such to the board; and that the *Ochoa* complaint was eventually dismissed, the dismissal was affirmed on appeal, and attorney fees were awarded against the plaintiffs and their attorneys for bringing frivolous claims. Thus, HACLA disputes the effect of the *Ochoa* allegations.

“[A] court ruling on a demurrer cannot decide a question that may depend on disputed facts by means of judicial notice.” (*Fremont, supra*, 148 Cal.App.4th at p. 115.) ““On a demurrer a court’s function is limited to testing the legal sufficiency of the complaint. [Citation.] “A demurrer is simply not the appropriate procedure for determining the truth of disputed facts.” [Citation.] The hearing on demurrer may not be turned into a contested evidentiary hearing through the guise of having the court take judicial notice of documents whose truthfulness or proper interpretation are disputable. [Citation.]’ . . . “judicial notice of matters upon demurrer will be dispositive only in those instances where there is not or cannot be a factual dispute concerning that which is sought to be judicially noticed.” [Citation.]” (*Id.* at pp. 113–114.)

Thus, while the trial court could take judicial notice of the existence of the *Ochoa* pleadings, it was error for the trial court to take judicial notice of the meaning and effect of those documents on HACLA.⁴ A determination of the notice and knowledge with which HACLA could be charged based on the prior pleadings could not be made at the

⁴ As such, to the extent it did so, the trial court also erred in taking judicial notice of the meaning and effect on HACLA of the earlier Gardenhire pleadings and newspaper articles in Williams’s second request for judicial notice.

demurrer stage. Because the demurrer did not argue that the time-bar was revealed within the four corners of the complaint, there was no basis for sustaining the general demurrer on the statutes of limitations ground.

III. Amendment of Complaint.

The court's written order sustaining the general demurrer without leave to amend stated that the complaint showed both on its face and by matters of which the court could take judicial notice that it was time-barred. As noted, Williams's demurrer did not argue that the complaint revealed on its face that it was barred by the statutes of limitations. Where a complaint does not show on its face that it is time-barred, a plaintiff is not required to plead facts supporting a basis for tolling the limitations period. (*Union Carbide Corp. v. Superior Court* (1984) 36 Cal.3d 15, 25–26.) But even assuming an argument could be made that the complaint showed on its face that it was time-barred, HACLA should have been granted leave to amend its complaint to assert allegations supporting application of the doctrines of adverse domination and fraudulent concealment to toll the limitations periods.

A. Adverse Domination

Contrary to the trial court's assertion that the doctrine of adverse domination has not taken hold in California, California law recognizes the doctrine, which provides that domination of a corporation by defendant wrongdoers may toll the statutes of limitations on actions by the corporation until the wrongdoers are no longer in control. (See *Beal v. Smith* (1920) 46 Cal.App. 271, 279 [where "the corporation and its board of directors were wholly under the domination of those who committed the original fraud the corporation is deemed to be in the same position as an incompetent person or a minor without legal capacity either to know or to act in relation to the fraud so committed, and during such period of incapacity the statute of limitations does not run"]; *San Leandro Canning Co., Inc. v. Perillo* (1931) 211 Cal. 482, 487 [it is "a well-settled principle of law, that the statute of limitations does not commence to run against unlawful acts and

expenditures made by or under the direction of the directors of the corporation while they were in full control of its affairs and of the expenditure of its funds”]; *Smith v. Superior Court* (1990) 217 Cal.App.3d 950, 954 [“A statute of limitations tolls when a claim arises from a director’s or employee’s defalcation and the wrongdoers’ control makes discovery impossible”]; *Admiralty Fund v. Peerless Ins. Co.* (1983) 143 Cal.App.3d 379, 387–391 [same]; *Burt v. Irvine Co.* (1965) 237 Cal.App.2d 828, 866-867 [same].) The doctrine applies whether the entity is a private enterprise or a public entity. (*City of Oakland v. Carpentier* (1859) 13 Cal. 540, 543, 552 [municipal corporation sought to set aside contract in earliest California formulation of doctrine].)

HACLA’s complaint alleged at paragraph No. 55 that “Loyce, Smith, and their confederates dominated and controlled HACLA and prevented the discovery of their misconduct by other management personnel of HACLA,” and that “Loyce and Smith acted affirmatively to conceal their conduct and the consequences of that conduct from all other employees of HACLA.” The trial court correctly found that these allegations were conclusory. Though HACLA requested leave to amend its complaint, it did not present any proposed amendments to the trial court.

On appeal, HACLA presents numerous proposed amendments, including the following, as summarized here: Smith, Loyce and Williams wholly dominated and controlled HACLA and prevented the discovery of their misconduct or the filing of any claims against them by HACLA’s *board of commissioners*; they exercised broad authority over HACLA and usurped any authority they lacked or that the board did not delegate to them; Smith and Loyce controlled the information presented to the board, which frequently had less than seven members at any given time, including agendas and persons who could appear at board meetings (except during the public comment portion); when board members asked for an investigation of any subject, Smith and Loyce controlled the selection of the investigators and what was reported to the board; they controlled whether HACLA commenced litigation and took no steps toward causing HACLA to sue themselves or their coconspirator Williams; they directly influenced and controlled the hiring and firing of outside counsel, who embraced their conclusions about

pending litigation and reported directly to them, and they, and at times only Loyce in cooperation with Williams, controlled whether HACLA settled any litigation against it. Specifically with respect to the *Ochoa* litigation, the additional allegations include that HACLA's outside counsel was a "pawn" of Loyce's who repeated to the board her conclusions that the lawsuit was in retaliation for Williams's exposing embezzlement by the representative class plaintiffs; that the action was removed to federal court where the federal claims were dismissed, sanctions awarded against the plaintiffs' counsel for bringing frivolous claims, and attorney fees were awarded to HACLA and the defendants, including Williams, based on the plaintiffs' bringing frivolous claims; that the decision was affirmed on appeal, which enabled Smith and Loyce to continue to depict the allegations against them and Williams as the product of lies; and that the state claims were dismissed after remand of the case to state court. HACLA also proposes the allegations that since the release of the OIG audit report in 2005, a new executive director and new board of commissioners (with only one board member carrying over) have taken steps to pursue HACLA's claims against Smith, Loyce and Williams.

We reject each of Williams's arguments that the doctrine of adverse domination has no application here. First, Williams argues that HACLA has not and cannot allege specific factual allegations that Smith, Loyce and/or Williams exercised "full, complete and exclusive" control of HACLA's board of commissioners with respect to "decision making regarding pursuing claims, defending litigation, settling million dollar lawsuits, by Williams, or any other defendant." We disagree that HACLA's proposed amendments do not contain specific factual allegations of such control. We are satisfied that the proposed amendments are sufficiently specific to invoke the doctrine of adverse domination, particularly the allegations with respect to making decisions regarding litigation.

Williams also argues that the doctrine of adverse domination has no application where the alleged wrongdoers were not members of the entity's governing board, in this case the board of commissioners. But there is no such requirement for application of the doctrine. Indeed, in one of the cases cited by Williams, *Beal v. Smith, supra*, 46 Cal.App.

at page 279, the alleged wrongdoers were majority stockholders of the corporation, not directors or officers.

While the doctrine of adverse domination is typically applied where the corporate wrongdoers are officers and directors, it has also been applied to claims against outsiders who conspired with the inside wrongdoing control group. (See *In re Adelpia Communications Corp.* (Bkrtcy.S.D.N.Y. 2007) 365 B.R. 24, 58, 59 [“a corporation likewise cannot reasonably be expected to pursue a claim against those who *aided and abetted* the controlling wrongdoers, or acted in concert with them, until the controlling wrongdoers are no longer in control”].) The Ninth Circuit has also recognized that the doctrine could be applied to persons outside the control group, such as auditors, in *Moesian v. Peat, Marwick, Mitchell & Co.* (9th Cir. 1984) 727 F.2d 873, though in that case there was no admissible evidence of domination by the corporation’s allegedly complicit president. HACLA has alleged that Williams was a coconspirator with Smith and Loyce in their scheme to defraud HACLA and that he was a key participant in that scheme, and not merely an innocent third party.

Finally, Williams argues that the doctrine has no application where, as here, there are no allegations that it was impossible for the board of commissioners to have discovered his alleged fraud or that the commissioners were not negligent in failing to discover the fraud earlier. But the inference can be made from HACLA’s proposed amendments that the acts by Smith, Loyce and Williams in concealing their allegedly fraudulent activity did make it impossible for HACLA’s board of commissioners to discover their fraud sooner and that the board was not negligent in failing to make an earlier discovery. Moreover, there is authority for the proposition that a board can rely on the good faith of its trusted officers. (See e.g., *Farmers & Merchants Nat. Bank v. Bryan* (10th Cir. 1990) 902 F.2d 1520, 1524 [plaintiffs produced sufficient evidence to withstand a motion for directed verdict on the question of the outside directors’ ability or willingness to bring suit on behalf of the corporation, based on testimony that the board of directors generally trusted the loan officers to properly evaluate the wisdom of any given loan those officers recommended to the board for approval and that the outside

directors exercised little, if any, independent supervision over the lending activities of the bank].) HACLA makes the persuasive argument that an entity could not function very well if every act and statement of its trusted officers had to be doubted, scrutinized and subjected to adversarial investigation by its board members. At the very least, HACLA's proposed amendments raise a factual dispute on these issues.

B. Fraudulent Concealment

HACLA also contends that the applicable limitations periods were tolled by the separate doctrine of fraudulent concealment. Under this doctrine, the defendant's fraud in concealing a cause of action against him tolls the applicable statute of limitations. (*Snapp & Associates Ins. Services, Inc. v. Robertson* (2002) 96 Cal.App.4th 884, 890.) The doctrine can apply to any cause of action, not just fraud. (*Ibid.*) Because fraud is the basis of the tolling, the plaintiff must show (a) the substantive elements of fraud, and (b) an excuse for late discovery of the facts. (*Ibid.*)

HACLA points out that the doctrines of adverse domination and fraudulent concealment are similar. Though not every case involves both doctrines, HACLA asserts that the instant case does. According to HACLA, the excuse for the late discovery alleged in the complaint was the concealment of wrongdoing by Williams and the control by Smith and Loyce over HACLA. But as we have already found, the allegations of control and domination by Smith and Loyce in paragraph No. 55 of the complaint are conclusory. It is only the proposed amendments that set forth the specific factual allegations of control and domination. Although HACLA does not request leave to amend its complaint with respect to its theory of fraudulent concealment, and HACLA was not required to plead facts supporting such a theory, to the extent that it wished to raise the theory by its complaint, it should have been granted leave to amend.

Williams counters that the theory of fraudulent concealment does not come into play because the board of commissioners had actual notice of the causes of action against him by reason of the 2000 *Ochoa* complaint. But, again, this argument depends on the trial court's taking judicial notice of the meaning and effect of the allegations of that

complaint, which we have concluded is improper. “Whether appellants should have made discovery sooner in view of the facts set forth, is not a question to be concluded as a matter of law.” (*Baker v. Beech Aircraft Corp.* (1974) 39 Cal.App.3d 315, 323 [appeal from a judgment of dismissal following sustaining of demurrer without leave to amend].) “The question here is whether sufficient facts have been alleged to make a showing that appellants were not at fault for failing to discover the purported fraud sooner.” (*Id.* at p. 324.)

DISPOSITION

The order dismissing the complaint against Williams is reversed and the matter is remanded. The trial court is ordered to enter an order overruling Williams’s general demurrer. HACLA is entitled to its costs on appeal.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS.

_____, Acting P. J.

DOI TODD

We concur:

_____, J.

ASHMANN-GERST

_____, J.

CHAVEZ