NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF
THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

LEEDS MATTRESS STORES, INC., et al., Plaintiffs and Appellants, v. HANMI BANK, Defendant and Respondent.	B294238 Los Angeles County Super. Ct. No. BC685311 (Filed Oct. 27, 2020)

APPEAL from a judgment of the Superior Court of Los Angeles County, Patricia D. Nieto, Judge. Affirmed.

Neil Leeds, in pro. per., for Plaintiff and Appellant.

LimNexus, Lisa Y. Yang, Mark T. Hansen, and Alexander Su for Defendant and Respondent.

INTRODUCTION

Neil Leeds (Leeds) appeals from a judgment of dismissal after the trial court sustained without leave to amend Hanmi Bank's (Hanmi) demurrer to the second amended complaint. Leeds and Leeds Mattress Stores, Inc. (LMS) sued Hanmi for failing to provide LMS with a promised increase in its line of credit, causing LMS to fail and Leeds to file for bankruptcy. The operative pleading asserts claims for violation of the Unruh Civil Rights Act (Civ. Code, §§ 51, 51.5) (Unruh Act) and unfair business practices (Bus. & Prof. Code, § 17200 et seq.). Leeds alleges that Hanmi never followed through on its promise because it favored Korean customers and customers of Korean descent over non-Koreans like Leeds. The court sustained the demurrer to both causes of action because the Unruh Act claim was, among other things, time-barred and the unfair business practices claim was derivative of the Unruh Act claim. We affirm.

BACKGROUND

Leeds and LMS filed this action against Hanmi on November 30, 2017. Leeds was an officer, owner, and shareholder of LMS. In 2008, LMS and Leeds had a $1,000,000 line of credit with Hanmi and the bank promised to support LMS's expansion by increasing its line of credit. As of September 2008, Hanmi was in the process of restructuring the line of credit to accommodate LMS's business growth. When the time came to

increase the line of credit, however, Hanmi did not keep its promise.

The operative second amended complaint, filed in June 2018, asserts two causes of action. The first cause of action alleges Hanmi violated the Unruh Act by failing to offer LMS the same services and accommodations—increases in lines of credit—that the bank offered its less credit-worthy customers of Korean descent. According to Leeds and LMS, Hanmi discriminated against them because Leeds is Caucasian and born in the United States. The second cause of action alleges that Hanmi's preferential treatment of customers of Korean descent in violation of the Unruh Act constitutes an unfair business practice.

Because of Hanmi's alleged illegal discrimination, LMS went out of business and Leeds suffered a nervous breakdown and was forced to file for personal bankruptcy in January 2014. The pleading also alleges that Leeds and LMS did not have reason to suspect that Hanmi's illegal discrimination was the cause of their damages until August 2017, when they consulted with an attorney.

Hanmi demurred to both causes of action on various grounds including, as relevant here, that the Unruh Act claim was time-barred. The bank contended that this claim accrued no later than January 2014, when Leeds filed for bankruptcy due to Hanmi's failure to provide LMS with the promised increase in its line of credit. Because the Unruh Act claim was subject to the two-year limitations period in Code of Civil

Procedure[1] section 335.1, Leeds and LMS did not file their lawsuit until November 2017, and the pleading lacks sufficient delayed discovery allegations to overcome the statute of limitations, Hanmi argued its demurrer should be sustained without leave to amend.

In their opposition to the demurrer, Leeds and LMS acknowledged that Hanmi informed Leeds, between 2008 and 2010, that it could not provide LMS with the promised credit line due to regulatory oversight and controls. They also did not dispute the bank's contention that the Unruh Act claim was subject to a two-year statute of limitations. Instead, Leeds and LMS argued that the statute of limitations did not begin to run until August 2017, when Leeds consulted with an attorney who had some familiarity with banking discrimination.

The court sustained the demurrer without leave to amend on several grounds and entered a judgment of dismissal in favor of Hanmi. Leeds filed a timely notice of appeal.[2]

DISCUSSION

Leeds contends the court erred in sustaining the bank's demurrer to his Unruh Act claim without leave

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[1] Undesignated statutory references are to the Code of Civil Procedure.

[2] In January 2019, this court dismissed LMS's appeal. This court also denied LMS's subsequent motion to recall the remittitur and to reinstate the appeal.

to amend.[3] He argues the statute of limitations for this claim was not time-barred under the delayed discovery rule. Leeds also contends he has standing to bring an Unruh Act claim and he alleged sufficient facts to state a cause of action. Because we hold that the court properly sustained the demurrer on timeliness grounds, we do not reach Leeds's other arguments.

1. Standard of Review

"When reviewing a judgment dismissing a complaint after the granting of a demurrer without leave to amend, courts must assume the truth of the complaint's properly pleaded or implied factual allegations. (*Blank v. Kirwan* (1985) 39 Cal.3d 311, 318.) Courts must also consider judicially noticed matters. (*Ibid.*) In addition, we give the complaint a reasonable interpretation, and read it in context. (*Ibid.*) If the trial court has sustained the demurrer, we determine whether the complaint states facts sufficient to state a cause of action. If the court sustained the demurrer without leave to amend, as here, we must decide whether there is a reasonable possibility the plaintiff could cure the defect with an amendment. (*Ibid.*) If we find that an amendment could cure the defect, we conclude that the trial court abused its discretion and we reverse; if not, no abuse of discretion has occurred. (*Ibid.*) The plaintiff has the burden of proving that an

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[3] Leeds does not challenge the court's ruling that his unfair business practices claim failed because it was derivative of the Unruh Act claim.

amendment would cure the defect. (*Ibid.*)" (*Schifando v. City of Los Angeles* (2003) 31 Cal.4th 1074, 1081.)

"In light of these principles, the difficulties in demurring on statute of limitations grounds are clear: '(1) trial and appellate courts treat the demurrer as admitting all material facts properly pleaded and (2) resolution of the statute of limitations issue can involve questions of fact. Furthermore, when the relevant facts are not clear such that the cause of action might be, but is not necessarily, time-barred, the demurrer will be overruled. [Citation.] Thus, for a demurrer based on the statute of limitations to be sustained, the untimeliness of the lawsuit must clearly and affirmatively appear on the face of the complaint and matters judicially noticed. [Citation.]' [Citations.]" (*Austin v. Medicis* (2018) 21 Cal.App.5th 577, 585 (*Austin*).)

2. Statute of Limitations

Hanmi contends that the first cause of action for violation of the Unruh Act is subject to a two-year statute of limitations. (§ 335.1; see also *Gatto v. County of Sonoma* (2002) 98 Cal.App.4th 744, 754-760.) Leeds agrees.[4]

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[4] Apparently, however, courts are divided as to which statute of limitations governs a claim under the Unruh Act: the two-year limitations period for personal injuries (§ 335.1) or the three-year limitations period for a liability created by statute (§ 338, subd. (a)). (See *Semler v. General Electric Capital Corp.* (2011) 196 Cal.App.4th 1380, 1387.) It makes no difference here because Leeds filed the lawsuit more than three years after his cause of action accrued.

3. Accrual and the Discovery Rule

A " 'statute of limitations does not begin to run until the cause of action accrues, that is, " 'until the party owning it is entitled to begin and prosecute an action thereon.' " [Citation.]' [Citation.] Thus, to determine when the statutes of limitations ended, we must first address when they began." (*Austin, supra*, 21 Cal.App.5th at pp. 587-588.) "Generally speaking, a cause of action accrues at 'the time when the cause of action is complete with all of its elements.' [Citations.]" (*Fox v. Ethicon Endo-Surgery, Inc.* (2005) 35 Cal.4th 797, 806-807 (*Fox*).)

"An important exception to the general rule of accrual is the 'discovery rule,' which postpones accrual of a cause of action until the plaintiff discovers, or has reason to discover, the cause of action. [Citations.]" (*Fox, supra*, 35 Cal.4th at p. 807.) "A plaintiff has reason to discover a cause of action when he or she 'has reason at least to suspect a factual basis for its elements.' [Citations.] Under the discovery rule, suspicion of one or more of the elements of a cause of action, coupled with knowledge of any remaining elements, will generally trigger the statute of limitations period. [Citations.]" (*Ibid.*) "In other words, plaintiffs are required to conduct a reasonable investigation after becoming aware of an injury, and are charged with knowledge of the information that would have been revealed by such an investigation." (*Id.* at p. 808.)

"[T]o rely on the discovery rule for delayed accrual of a cause of action, la] plaintiff whose complaint shows

on its face that his claim would be barred without the benefit of the discovery rule must specifically plead facts to show (1) the time and manner of discovery *and* (2) the inability to have made earlier discovery despite reasonable diligence.' [Citation.] In assessing the sufficiency of the allegations of delayed discovery, the court places the burden on the plaintiff to 'show diligence'; 'conclusory allegations will not withstand demurrer.' [Citation.]" (*Fox, supra*, 35 Cal.4th at p. 808.)

While belated discovery is usually a question of fact, it may be decided as a matter of law when reasonable minds cannot differ. (*E-Fab, Inc. v. Accountants, Inc. Services* (2007) 153 Cal.App.4th 1308, 1320.) "Thus, when an appeal is taken from a judgment of dismissal following the sustention of a demurrer, 'the issue is whether the trial court could determine as a matter of law that failure to discover was due to failure to investigate or to act without diligence.' [Citation.]" (*Ibid.*)

4. The Unruh Act claim is untimely.

Hanmi argues that Leeds's Unruh Act cause of action accrued no later than January 2014, when the bank's refusal to increase LMS's line of credit caused the company to fail and Leeds to file for personal bankruptcy. As he did not file this action until November 30, 2017, almost four years later, Leeds's claim is time-barred.

Leeds argues that his lawsuit was timely under the discovery rule. Specifically, he asserts that he did

not know, and had no way to learn, that he had been wronged until August 2017, when he consulted with an attorney who informed him that Hanmi did not increase the promised line of credit because the bank discriminated in favor of its Korean customers and customers of Korean descent. But that issue is irrelevant. For purposes of starting, or tolling, the running of the statute of limitations, the question is not when Leeds discovered that he may have a *legal* claim for recovery against the bank based on illegal discrimination. It is the discovery of facts, not their legal significance, that starts the running of the statute of limitations. (See *Jolly v. Eli Lilly & Co.* (1988) 44 Cal.3d 1103, 1113; see also *Gutierrez v. Mofid* (1985) 39 Cal.3d 892, 898 ["It is irrelevant that the plaintiff is ignorant of his legal remedy or the legal theories underlying his cause of action."].)

Based on the allegations in the operative pleading, Leeds knew by January 2014 that Hanmi had reneged on its promise to increase LMS's line of credit, and that Leeds and LMS had been harmed by the bank's broken promise. As such, he was required to conduct a reasonable investigation of all potential causes of that injury. (*Fox, supra*, 35 Cal.4th at pp. 808–809.) And to adequately allege facts supporting a theory of delayed discovery, Leeds was required to plead that, despite diligent investigation of the circumstances of the injury, he "could not have reasonably discovered facts supporting the cause of action within the applicable statute of limitations period." (*Id.* at p. 809.) Here, the operative pleading does not allege what specific efforts,

if any, Leeds made before August 2017 to discover the potential causes of his injury, or why he waited until August 2017 to consult with an attorney. Accordingly, Leeds did not meet his burden under the delayed discovery rule.

5. The court properly sustained the demurrer without leave to amend.

Leeds's Unruh Act cause of action accrued no later than January 2014, and thus, the lawsuit filed in November 2017 was untimely. Therefore, the court properly sustained the demurrer without leave to amend on timeliness grounds. As Leeds has not identified any way in which another opportunity to amend his complaint would cure this problem, the court did not abuse its discretion by denying leave to amend.

DISPOSITION

The judgment is affirmed. Hanmi Bank shall recover its costs on appeal.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

LAVIN, J.

WE CONCUR:

EDMON, P. J.

DHANIDINA, J.

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SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF LOS ANGELES

CENTRAL DISTRICT | STANLEY MOSK COURTHOUSE

LEEDS MATTRESS STORES, INC., a California corporation; NEIL LEEDS, an individual, Plaintiffs, vs. HANMI BANK, a California corporation; and DOES 1 to 1000, inclusive, Defendants.	Case No. BC685311 *[Assigned for all purposes to Dept. 24 Hon. Patricia D. Nieto presiding]* **[~~AMENDED PROPOSED~~] JUDGMENT OF DISMISSAL WITH PREJUDICE AFTER SUSTAINING OF DEMURRER TO SECOND AMENDED COMPLAINT WITHOUT LEAVE TO AMEND** (Filed Sep. 20, 2018) Complaint Filed: November 30, 2017

DEPARTMENT 24 LAW AND MOTION RULINGS

DEPARTMENT 24 – LAW AND MOTION RULINGS
Submission Instructions

1. Please notify the courtroom staff by email not later than 4:00 p.m. the day before the hearing if you wish to submit on the tentative ruling rather than argue the motion. The email address is SMCDEPT24@lacourt.org. Please do not use any other email address.

2. If you submit on the tentative, you must immediately notify the other side that you will not appear at the hearing. You must include the other parties on the email by "cc."

3. Include the word "SUBMISSION" in all caps in the Subject line and include your name, contact information, case name and number, date of hearing and the party you represent in the body of the email. If you submit on the tentative and elect not to appear at the hearing, the opposing party may nevertheless appear at the hearing and argue the motions.

4. Include the words "SUBMISSION BUT WILL APPEAR" if you submit, but one or both parties will nevertheless appear.

5. OFF-CALENDAR should appear in all caps in the Subject line where all parties have agreed to have a motion placed off-calendar and parties are ordered to cancel the reservation on CRS.

6. If all parties submit, the tentative ruling will become the final ruling after the hearing date. The moving party shall give notice of the final ruling.

7. Tentative rulings are not invitations or opportunities to file further documents relative to the hearing before the Court. Said document(s) will not be considered by the Court.

(Posted 7/11/18)

Case Number: BC685311 **Hearing Date:** August 09, 2018 Dept: 24

Defendant's Demurrer to the Second Amended Complaint is SUSTAINED on all grounds.

Background:

On November 30,2 017, Plaintiffs Leeds Mattress Stores, Inc. ("Leeds Mattress") and Neil Leeds ("Leeds") commenced this action against Defendant Hanmi Bank ("Hanmi") alleging two causes of action for violation of Civil Code §§ 51(b) and 51.5 and unfair business practices under Bus. & Prof. C. § 17200 et seq. While a demurrer was pending, Plaintiffs timely filed a first amended complaint ("FAC") alleging the same two causes of action. On May 14, 2018, the Court sustained Hanmi's demurrer to each cause of action with leave to amend. The Court advised Plaintiffs that this would be the last opportunity to amend. On June 4, 2018, Plaintiffs filed the operative second amended complaint ("SAC") alleging the same two causes of action:

violation of Civil Code §§ 51(b) and 51.5 and unfair business practices under Bus. & Prof. C. § 17200 et seq.

The SAC alleges the following facts: In October 2006, Leeds Mattress was approached by its biggest competitor in Southern California, Sit & Sleep, to sell Leeds Mattress for $7,500,000 plus a continuing salary of $100,000 per year to Leeds as general manager and TV advertising personality ("Sit & Sleep Deal"). The deal took over a year and a half to progress to closing escrow instructions and wire instructions for payment at close of escrow. In or about November 2007, officers and employees of Hanmi (Daniel Ju, John Park, John Ju, Jung Hak Son, Wu. Young) approached Plaintiffs with an offer to support Plaintiffs' expansion of their Southern California operations by increasing Plaintiffs' lines of credit as needed to help expand Plaintiffs' business. Hanmi prepared growth projections which showed that as of the commencement of this action, Leeds Mattress would be worth in excess of $55,000,000. Relying on such promise, in approximately November 2007 Plaintiffs canceled the Sit & Sleep Deal. Shortly thereafter, in March 2008, the expansion began in earnest. Hanmi put its commitment in writing by letter dated September 12, 2008, which Plaintiff provided to prospective landlords and factories in support of its expansion efforts.

During the period between November 2007 and up through Leeds' personal bankruptcy filed on January 28, 2014, and concluded on December 30, 2014, Hanmi's employees, including Daniel Ju, John Park, John Ju, Jung Hak Son, Wu Young, never expressed

that the credit line would not be forthcoming; instead, they always reassured Plaintiffs that they could not do it now but would in the future. They always provided Plaintiffs with a legitimate business reason why they could not provide the credit increase as promised, including an FDIC audit, tightening credit markets, etc. At the time Hanmi was making its promises to Plaintiffs and counseling against the Sit & Sleep Deal, Hanmi failed to disclose facts that only it knew, including that Hanmi was bleeding millions a year in bad loans and the credit markets were collapsing. When the time came to increase Plaintiffs' credit lines Hanmi refused to keep its promises, did not increase Plaintiffs' existing $1,000,000 credit line, and caused Plaintiffs' business to fail, despite Plaintiffs' "A+" rating with Hanmi and timely payments to Hanmi for many years.

Plaintiffs further allege that within the past year, they were informed that during the time Hanmi was breaking its promises to Plaintiffs to increase their credit line, Hanmi was extending, issuing, and maintaining lines of credit to less credit-worthy customers of Korean descent on higher risk loans. In fact, during the entire banking relationship, and continuing to the date of the filing of this complaint, Hanmi has engaged in a pattern of practice of preferring customers of Korean descent and national origin over its customers of other races and national origins.

As a consequence of Hanmi's illegal discrimination, Leeds suffered a nervous breakdown and personal bankruptcy in 2014, For a period of time, Leeds was so

debilitated by his condition that he was unable to carry out the normal affairs of life.

As of about four months before commencing this action (at his initial meeting with counsel in August 2017), and only after consulting with counsel about return of banking records from Hanmi, Plaintiffs began to suspect or had reason to suspect that illegal discrimination was the cause of their damages. Prior to that date, Plaintiffs had no reason to suspect illegal discrimination and wrongful conduct towards Plaintiffs, including preferring Korean customers over other customers of different races and/or national origins. The type of illegal discrimination alleged by Hanmi is covert rather than overt, not the type amenable to discovery by ordinary means, not the type that has ever been publicized or reported. But for their counsel's research into Korean banking discrimination (not something that is common knowledge), Plaintiffs would never have known or even had reason to suspect that illegal discrimination was the cause of their damages or that any wrongdoing had even occurred. On information and belief, Hanmi's refusal to provide documents voluntarily prior to the lawsuit is an attempt to conceal its illegal discrimination practices. Plaintiffs were so unaware of Hanmi's illegal conduct toward them that Leeds did not list any claims for wrongful conduct in his personal bankruptcy.

Analysis

1. Statute of Limitations and the Delayed Discovery Rule

The statute of limitations for a claim Unruh Act is 2 years. (CCP § 335.1; *Gatto v. County of Sonoma* (2002) 98 Cal.App.4th 744, 754-760 The statute of limitations for a violation of the Unfair Competition Law (17200) is 4 years. (Bus. & Prof. § 17208.) The wrongful acts alleged in the SAC occurred in 2008, i.e., Hanmi's failure to extend Leeds Mattress' credit limit due to discrimination. This is well beyond the statute of limitations for both causes of action.

Plaintiffs attempt to plead around the statute of limitations issue by pleading delayed discovery. "Under the discovery rule, the statute of limitations begins to run when the plaintiff suspects or should suspect that her injury was caused by wrongdoing, that someone has done something wrong' to her . . . [The limitations period begins once the plaintiff has notice or information of circumstances to put a reasonable person *on inquiry*." (*Jolly v. Eli Lilly & Co.* (1988) 44 Cal.3d 1103, 1110–1111 [internal quotation marks, footnote and citations omitted; emphasis in original].) To properly plead delayed discovery the plaintiff "must specifically plead facts to show (1) the time and manner of discovery *and* (2) the inability to have made earlier discovery despite reasonable diligence." *Fox v. Ethicon Endo-Surgery, Inc.* (2005) 35 Cal.4th 797, 808 (emphasis in original). In-other words, "[i]n order-to adequately-allege facts supporting a theory of delayed discovery, the

plaintiff must plead that, despite diligent investigation of the circumstances of the injury, he or she could not have reasonably discovered facts supporting the cause of action within the applicable statute of limitations period." *Id.* at 809.

"When a plaintiff reasonably should have discovered facts for purposes of the accrual of a case of action or application of the delayed discovery rule is generally a question of fact, properly decided as a matter of law only if the evidence (or, in this case, the allegations in the complaint and fact properly subject to judicial notice) can support only one reasonable conclusion." (*Broberg v. The Guardian Life Ins. Co. of America* (2009) 171 Cal.App.4th 912, 921.)

Hanmi correctly argues that Plaintiffs have failed to plead facts sufficient to establish delayed discovery. Plaintiffs have failed to allege the specific manner of delayed discovery other than to vaguely assert that four months before commencing this action they learned of the wrongful acts after consultation with counsel in August 2017 regarding the return of Plaintiffs' banking records from Hanmi. Plaintiffs fail to allege how the consultation lead to the discovery of facts to support discrimination, what facts existed to lead to the suspicion that Hanmi discriminated against Plaintiffs, and when Plaintiffs' counsel learned of these facts.

Further, Plaintiffs have not alleged any facts showing their inability to have made an earlier discovery despite their reasonable diligence. According to the SAC, Plaintiffs allege Hanmi falsely

promised to increase Leeds Mattress's credit lines ten years ago in 2008. When Hanmi subsequently refused to do so, Plaintiffs were put on notice that Leeds Mattress had been harmed by Hanmi in some way. Plaintiffs have not alleged any facts showing reasonable diligence at that point to discover any potential wrongdoing on Hanmi's part, such as hiring an attorney as they did in 2017, or that they could not discover such wrongdoing through reasonable diligence. Since it only took consultation with counsel four months before commencing this action to discover Hanmi's wrongful conduct, Plaintiffs fail to explain why they could not do so within the limitations period. Accordingly, Plaintiffs have failed to allege delayed discovery and both causes of action are time barred. The demurrer to the first and second causes of action is SUSTAINED based on the applicable statute of limitations.

2. First Cause of Action: Violation of Civil Code §§ 51(b) and 51.5

   a. *Leeds – Standing*

   "The prerequisites for standing to assert statutorily based causes of action are determined from the statutory language, as well as the underlying legislative intent and the purpose of the statute." (*Osborne v. Yasmeh* (2016) 1 Cal.App.5th 1118, 1125–1126.)

   The Unruh Civil Rights Act states, "All persons within the jurisdiction of this state are free and equal, and no matter what their sex, race, color, religion, ancestry, national origin, disability, medical condition, genetic

information, marital status, sexual orientation, citizenship, primary language, or immigration status are entitled to the full and equal accommodations advantages, facilities, privileges, or services in all business establishments of every kind whatsoever." (Civ. Cod. § 51(b).) The primary purpose of the Act "is to compel recognition of the equality of all persons in the right to the particular service offered by an organization or entity covered by the act." (*Curran v. Mount Diablo Council of the Boy Scouts* (1983) 147 Cal.App.3d 712, 733.)

Civil Code section 51.5(a) provides:

No business establishment of any kind whatsoever shall discriminate against, boycott or blacklist, or refuse to buy from, contract with, sell to, or trade with any person in this state on account of any characteristic listed or defined in subdivision (b) or (e) of Section 51, or of the persons' partners, members, stockholders, directors, officers, managers, superintendents, agents, employees, business associates, suppliers, customers, because the person is perceived to have one or more of those characteristics, or because the person is associated with a person who has, or is perceived to have, any of those characteristics. Standing under the Act is broad. (*Osborne v. Yeshmeh* (2016) 1 Cal.App.5th 1118, 1127.) "[A]n individual plaintiff has standing under the Act if he or she has been the victim of the defendant's discriminatory act." (*Angelucci v. Century Supper Club* (2007) 41 Cal.4th 160, 175 (*Angelucci*).)

The protection afforded by the Act applies to "all persons," and is not confined to a limited category of "protected classes." (*Marina Point, Ltd. v. Wolfson* (1982) 30 Cal.3d 721, 730.) "The focus of the standing inquiry is on the plaintiff, not on the issues he or she seeks to have determined; he or she must have a special interest that is greater than the interest of the public at large and that is concrete and actual rather than conjectural or hypothetical." (*Osborne*, supra, 1 Cal.App.5th at 1127.) Thus, based on the language of the Act and the case law interpreting it, the question is whether Leeds himself was denied "full and equal accommodations, advantages, facilities, privileges, or services" from Hanmi. (See, e.g., *Osborne*, supra, 1 Cal.App.5th at 1127; *Evans v. Fong Poy* (1941) 42 Cal.App.2d 320, 321 [court affirmed judgment in favor of African-American couple against café for violation of the Act where café refused to serve the couple because of their race favor].)

Hanmi argues that Leeds lacks standing to bring a claim under the Act because he fails to plead any personal injury to himself and Hanmi's failure to honor the promise to extend lines of credit to expand Leeds Mattress does not alone confer standing to Leeds individually. Plaintiffs argue and allege in the SAC that Leeds has separate standing to sue individually as an "associated person" as provided in the Act since it was his characteristics or perceived characteristics that were the basis of Hanmi's discrimination and as the sole owner Leeds lost millions of dollars.

Leeds relies on the decision in *Osborne* to support his contention that he has standing as an "associated person." His reliance on *Osborne* his misplaced. In *Osborne*, the Second District Court of Appeal considered a disabled man, his wife, and two stepsons' case against a hotel. (*Osborne*, supra, 1 Cal.App.5th at 1122.) The hotel refused to rent a room to the disabled man unless he paid a nonrefundable cleaning fee related to his service dog. (*Id.*) The man's wife and stepsons were also denied a room-based-on-the marts refusal to pay the fee. (*Id.*) After analyzing the language and history of the Unruh Act and cases interpreting it, the court stated "that when a person presents himself or herself at a business establishment, and is personally discriminated against based on one of the characteristics articulated in section 51, he or she has suffered a discriminatory act and therefore has standing under the Unruh Act. And when such discrimination occurs, a person has standing under section 51.5 if he or she is `associated with' the disabled person *and has also personally experienced the discrimination.*" (*Id.* at 1134 [emphasis added].) The court found that because the man had standing to sue, his wife and stepsons also had standing to sue under Civil Code § 51.5 since they were associated with him and had directly experienced the hotel's discriminatory conduct. (*Id.* at 1122.)

Here, the SAC does not allege that Hanmi denied Leeds himself a separate individual credit line extension. It only alleges that

Hanmi denied Leeds Mattress credit extensions. Thus, Leeds did not personally experience such discrimination. The fact that he did not realize the $55,000,000 increase in valuation of Leeds Mattress as its sole owner is irrelevant. In any event, an individual may not recover for an injury to his corporation. (*Kruse v. Bank of America* (1988) 201 Cal.App.3d 354, 65.) Additionally, unlike the disabled man in *Osborne*, Leeds Mattress does not have a protectable characteristic. Accordingly, Leeds lacks standing to bring a claim under the Unruh Act. The demurrer to the first cause of action is SUSTAINED as to Leeds because he lacks standing to sue.

b. Hanmi – Failure to State a Claim

To state a cause of action under Civil Code § 51, a claim must state (1) that the defendant denied full and equal services to the plaintiff; (2) that a substantial motivating reason for the defendant's conduct was [a] its perception of the protectable characteristic(s) of the plaintiff or [b] its perception of the protectable characteristic(s) of the plaintiff's partners, members, stockholders, directors, officers, managers, superintendents, agents, employees, business associates, suppliers, customers, or [c] its perception of the protectable characteristic(s) of a person with whom the plaintiff was associated; (3) that the plaintiff was harmed; and (4) that the defendant's conduct was a substantial cause of the harm. (See *Harris v. City of Santa Monica* (2013) 56

Cal.4th 203, 232 [in FEHA case "substantial motivating reason" has been held to be the appropriate standard under the FEHA to address the possibility of both discriminatory and nondiscriminatory motives]; CACI Nos. 2507, 3060.)

To state a valid cause of action under Civil Code § 51.5, a claim must state (1) that the defendant discriminated against the plaintiff; (2) that a substantial motivating reason for the discrimination was its perception of either the plaintiffs protectable characteristic or its association with a person possessing the protectable characteristic; (3) that the plaintiff was harmed; and (4) that the defendant's conduct was a substantial factor in causing the harm. (See *Harris*, supra, 56 Cal.4th at 232; CACI Nos. 2507, 3061.)

Here, the SAC alleges that Leeds is a non-Korean and an officer, owner, and shareholder of Leeds Mattress. The SAC alleges that Hanmi discriminated against Leeds Mattress because Leeds, the owner and shareholder and only natural person to conduct business on behalf of Leeds Mattress, was a Caucasian born in the U S Hanmi discriminated against Leeds Mattress by failing to offer the same accommodations and services as those offered to Hanmi's Korean customers, who were given preferred accommodations and services over all others of all other national origins. Plaintiffs believe Hanmi has made it their business practice to prefer certain customers over

others based on race and national origin and provide services and accommodations, such as issuance, maintenance, and extension of lines of credit which are not available to non-Korean customers in direct violation of the Unruh Act. As a direct result, Plaintiffs have been damaged in an amount of no less than $55,000,000, i.e. the amount Hanmi estimated Leeds Mattress would be worth after the expansion.

Plaintiffs base their Unruh claim on Hanmi's perception of Leeds' nationality as a non-Korean officer, owner, and shareholder of Leeds Mattress. However, the SAC fails to allege that Leeds' nationality was a *substantial* factor for Hanmi's conduct rather than simply *a* motivating factor. (See *Harris*, supra, 56 Cal.4th at 232 ["Requiring the plaintiff to show that discrimination was a *substantial* motivating factor, rather than simply *a* motivating factor, more effectively ensures that liability will not be imposed based on evidence of mere thoughts or passing statements unrelated to the disputed employment decision."].) Accordingly, Plaintiffs have not plead facts sufficient to constitute a cause of action against Hanmi. The demurrer to the first cause of action is SUSTAINED as against Hanmi for failure to state a claim.

3. 2nd C/A: Violation of the UCL (Bus. & Prof. C. § 17200, et seq.)

   Because the second cause of action is derivative of the first cause of action, it fails for the same reasons. Therefore, the demurrer to the second cause of action. is SUSTAINED for failure to state a claim.

Moving party is ordered to give notice.

Court of Appeal, Second Appellate District, Division Three – No. B294238

S265982

IN THE SUPREME COURT OF CALIFORNIA

En Banc

LEEDS MATTRESS STORES, INC., et al.,
Plaintiffs and Appellants,

v.

HANMI BANK, Defendant and Respondent.

(Filed Feb. 10, 2021)

The petition for review is denied.

CANTIL-SAKAUYE
Chief Justice

COURT OF APPEAL OF THE
STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

LEEDS MATTRESS STORES, INC., Plaintiff and Appellant, v. HANMI BANK, Defendant and Respondent.	No. B294238 Los Angeles County Superior Court No. BC685311

MOTION TO RECALL THE REMITTITUR AND REINSTATE THE APPEAL RELATED TO LEEDS MATTRESS STORES, INC. OR IN THE ALTERNATIVE, PERMIT APPELLANT TO AMEND THE NOVEMBER 30, 2018 NOTICE OF APPEAL TO INCLUDE LEEDS MATTRESS STORES, INC. AS A PARTY

TO THE PRESIDING JUSTICE, AND TO THE ASSOCIATE JUSTICES OF THE COURT OF APPEAL, SECOND DISTRICT:

The Appellant, Neil Leeds, respectfully moves this Court for an order recalling the remittitur and permitting the reinstatement of his appeal in this case as it pertains to Leeds Mattress Stores, Inc.

This motion is based upon the following points and authorities and the attached declaration.

DATED: May 30, 2019

Respectfully submitted,

/s/ Corey Evan Parker

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INTRODUCTION

This is a unique case where Appellant filed a notice of appeal on behalf of himself and his corporation, but due to a financial hardship, he could not afford to hire appellant counsel to represent his corporation. Unlike a criminal case, where an indigent person can obtain appointed counsel, Appellant was on his own to prosecute his appeal due to his indigent status.

As a pro per litigant on appeal, he diligently filed a timely notice of appeal on behalf of himself and his corporation, he was granted a fee waiver, he filed a proper case information statement, and he filed a proper notice designating record. He attempted to have his appeal remain in compliance while he aggressively pursued hiring an attorney to represent him and his corporation. He was instructed by this Court to provide

a letter evidencing his intent to hire an attorney to represent his corporation and he did so within the time allowed.

Appellant was reasonably confused when he did in fact file a fee waiver, a case information statement and a notice designating record, but his appeal related to the corporation was dismissed for failure to file the aforementioned. He reasonably believed, as a pro per litigant, that the case information statement and notice designating record would apply to both himself and his corporation. He also had previously filed evidence that the fee waiver was granted as it pertains to his corporation.

After numerous attempts to find an attorney, Appellant finally spoke with his current counsel who provided him a significant discount of his fees in order to help him move to remedy this appeal and to represent both him and his corporation on appeal. The same day his attorney entered his substitution of counsel, he is filing this motion to recall the remittitur or in the alternative, to amend the notice of appeal filed on November 30, 2018 to include the corporation.

POINTS AND AUTHORITIES IN SUPPORT OF MOTION TO RECALL REMITTITUR OR AMEND THE NOTICE OF APPEAL

This court has the power to recall a remittitur for good cause. California rule of court 8.272(c)(2) provides that "[o]n a party's own motion or on stipulation, and for good cause, the court may stay a remittitur's

issuance for a reasonable period or order its recall." . . . In this case, Appellant asks this Court to find that he has presented good cause to recall the remittitur. In the alternative, Rule 8.60(d) of the California rules of court allows a reviewing court, for good cause, to relieve a party from default from any failure to comply with the rules—"except the failure to file a timely notice of appeal." If the court does not find good cause to recall the remittitur, Appellant respectfully requests, in the alternative, for this Court to permit Appellant to amend his notice of appeal, filed November 30, 2018 to include his corporation as he reasonably believed his notice of appeal would be applicable to both parties.

Following the order and judgment entered on September 20, 2018 in Los Angeles County No. BC685311, appellant filed a notice of appeal naming himself as a party on November 30, 2018. (See COA Docket, 12/6/18). The Superior Court acknowledged his filing on December 3, 2018. At this point, Appellant believed his notice of appeal included both himself as a party and his corporation. *Leeds Decl.* at ¶ 3. After consulting with a paralegal, he discovered that he also needed to file a separate notice of appeal related to his corporation. *Id.* He filed a timely cross appeal, 20 days later, naming his corporation, Leeds Mattress Stores, Inc. as the other party to the appeal on December 24, 2018. (See COA Docket 1/3/19).

On January 3, 2018, this Court provided Appellant a letter advising that a corporation may only participate in the appeal through an attorney and ordered that Appellant file a letter within 20 days stating an

intention to continue with the appeal and describing the status of any continuing effort of retaining an attorney. (See COA Docket, 1/3/18). Appellant complied and filed a timely letter on January 18, 2019, stating his intention to continue with the appeal and representing that he was diligently making an effort to hire an attorney to represent the corporation. (See COA Docket, 1/18/19).

Appellant continued calling attorneys, but due to his financial hardship, as evidenced by the fee waiver granted on his behalf (See COA Docket 12/7/18, he was unable to find an appeals attorney that he could afford despite his diligent efforts to secure one. *Leeds Decl.* at ¶ 6, 14.

On February 27, 2018, Appellant was found to be in default for not filing a proof of service with respect to his notice of appeal. (See COA Docket, 2/27/18). He remedied this default on March 14, 2019 and on March 19, 2019, this Court provided an order stating the following:

> "Good cause appearing, Appellant is granted relief from any and all current defaults occasioned by his/her failure to perform acts required by the rules of court for procuring the record on appeal. The clerk of the Superior Court is ordered to proceed with the preparation of the record on appeal. N/A filed 11/30/18 for Neil G. Leeds."
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> (See COA Docket, 3/19/19).

Based on the aforementioned, Appellant believed he was in full compliance and his only obligation was

to find an attorney as soon as possible. Although the last line stated "N/A filed 11/30/18 for Neil G. Leeds," Appellant, as a lay person, did not understand "N/A" meant "notice of appeal." He also did not understand that this relief from default only applied to the appeal pertaining to only his personal appeal and not his corporate appeal. *Leeds Decl.* at ¶ 9, 10.

On March 20, 2019, Appellant received a default notice that the designation was not filed with respect to Leeds Mattress Stores, Inc. Appellant was reasonably confused about this notice because he had already filed his designation and the case information statement with respect to himself as a party. He did not understand that a separate one needed to be filed as to his corporation. *Leeds Decl.* at ¶ 9, 10.

During the aforementioned timeframe, Appellant travelled to court to speak with clerks at the appellate desk on numerous occasions to ensure he was in compliance and try to stay on top of the filings required. *Leeds Decl.* at ¶ 12.

On April 25, 2019, a remittitur was issued regarding Leeds Mattress Stores, Inc., much to the appellant's surprise, as he never received the dismissal order from the court. *Leeds Decl.* at ¶ 13. The dismissal and remittitur was issued because the fees were not paid, the case information statement had not been filed, and no substitution of attorney had been filed. There does not appear to be a docket entry with respect to the dismissal, but Appellant contends that he never received the dismissal order.

Appellant had already been approved for the waiver of fees as it pertained to his corporation. ***See Attachment "A," fee waiver for Leeds Mattress Stores, Inc.*** He had also filed his case information statement on January 18, 2019 and believed that it would apply to both himself and his corporation. Finally, he was still attempting to hire an attorney, but he was not able to afford the fees attorneys were quoting him. The majority of attorneys were quoting over $20,000.00 and based on his financial hardship, he could not afford any of them. He had filed bankruptcy and did not have the financial means to hire an attorney until May 30, 2019 when he hired current counsel. *Leeds Decl.* at ¶ 7. His financial circumstances were so dire at one point that he was temporarily homeless.

Appellant desperately reached out to his trial counsel, who handled the litigation in the trial court on a contingency fee to see if he could find him an attorney. After some effort, his trial attorney contacted current counsel, Corey Parker ("Attorney Parker"), explained his client's circumstances, and Attorney Parker significantly reduced his fees in order to help Appellant move to restore this appeal and represent him personally on the appeal as well as his corporation. A substitution of counsel was filed by Attorney Parker on May 30, 2019 and this motion is being filed on the same day. *Leeds Decl.* at ¶ 15

Appellant, a layperson of the law, should not be penalized for being ignorant of appellate procedures. (*People v. Davis* (1965) 62 Cal.2d 806.) Appellant sincerely believed that when he filed the case information

statement and the designation, it would apply to both himself and his corporation. It is not as though he did not file anything related to his appeal or did not diligently attempt to keep his appeal alive. He thought that he had more time to secure counsel in light of the letter he filed explaining his efforts to hire an attorney and the fact that the record was not yet filed with this Court.

Appellant respectfully requests this court to consider his application in light of the standards announced in *People v. Ribero* (1971) 4 Cal.3d 55, 65, that the power of appellate courts to grant relief from default " . . . is to be liberally construed to protect the right to appeal."

The crux of this case is the fact that Appellant could not afford counsel for his corporation, nor was he initially aware that he could not represent his corporation pro per despite being the only member of the corporation. Despite that fact, he managed to file all of the appropriate documents to keep his appeal going and he reasonably believed the documents he filed applied to both himself and his corporation.

He currently has appellant counsel who has been retained to represent him on his appeal at a significantly discounted rate and can assure the Court that if provided the chance to continue with his corporation as a party, he will be fully compliant.

He also will have his counsel immediately help him remedy the reasons for the default.

Appellant contends that there is good cause to recall the remittitur and that the opposing party will suffer no prejudice if the remittitur is recalled because the appeal pertaining to himself as an individual party is still pending. Either way, the opposing party will be a party to the appeal so it will not cause undue prejudice to recall the remittitur and allow the corporation's appeal to proceed. The record on appeal has not yet been filed and recalling the remittitur will not cause an unreasonable delay in the appellate proceedings.

For all of the aforementioned reasons, Appellant humbly requests that this Court recall the remittitur and reinstate Leeds Mattress Stores, Inc. as a party to this appeal. In the alternative, Appellant requests that this Court allow him to amend his appeal filed on November 30, 2018 to include Leeds Mattress Stores, Inc. as a party to the appeal.

DATED: May 30, 2019

Respectfully submitted,

/s/ Corey Evan Parker

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understanding at this point that I was in full compliance with both appeals and still was being afforded time to find an attorney while the record was being prepared.

10. I did not understand what "N/A filed 11/30/18 for Neil G. Leeds," meant at the end of the order and did not think anything of it. I came to find out after talking to my current counsel that "N/A" stood for notice of appeal and the notice was saying that I was granted relief only as it pertained to the appeal filed on November 30, 2018, not the appeal that was related to my corporation. Given that both the appeal under my name and my corporation were under the same case number, I believed that a notice received would include both parties involved.

11. On March 20, 2019, I received a default notice that the designation was not filed with respect to Leeds Mattress Stores, Inc. I was sincerely confused about this notice because I had already filed his designation and the case information statement with respect to himself as a party. I did not understand that a separate one needed to be filed as to my corporation.

12. During the aforementioned timeframe, I travelled to the Superior Court to speak with clerks at the appellate desk on numerous occasions to ensure I was in compliance, to try and clarify notices from the court, and to diligently try to stay on top of the filings required.

13. On April 25, 2019, a remittitur was issued regarding Leeds Mattress Stores, Inc., but I was not aware

that a remittitur was issued and frankly did not know what a remittur was until I spoke with my current counsel who looked at my COA docket.. The remittitur was issued because the fees were not paid, the case information statement had not been filed, and no substitution of attorney had been filed. There does not appear to be a docket entry with respect to the dismissal, but I never received the dismissal order in the mail or otherwise.

14. I do not understand why the appeal was dismissed for fees not being paid when I had filed an approved waiver of fees as it pertained to my corporation. *See Attachment "A," fee waiver for Leeds Mattress Stores, Inc.* I had also filed his case information statement on January 18, 2019 and believed that it would apply to both myself and my corporation. Finally, I was still attempting to hire an attorney, but I honestly was not able to afford the fees attorneys were quoting me. The majority of attorneys were quoting over $20,000.00 and based on my financial hardship, I could not afford any of them. I tried to explain to them my financial hardship and they said they could not work with me. My trial attorney, who represented me on a contingency fee, also tried to help me find appellate counsel.

15. After my trial attorney called around, he finally spoke with Attorney Parker, my appellate attorney, who was willing to discount his fees significantly to help me attempt to remedy this situation and to represent me and my corporation on appeal. Mr. Parker was hired on May 30, 2019, he filed a substitution on that

date, and this motion and declaration is being filed on the same day. We are attempting to be as diligent as possible.

16. I really tried hard to comply with everything this Court was asking me to do. I travelled to the courthouse to speak with the clerks, I called numerous attorneys to see if they could take my case or give me advice, and I filed everything properly with respect to the appeal as to me personally despite a couple default notices that I remedied.

17. I sincerely believed that when I filed the case information statement and the designation, it would apply to myself and my corporation. I thought that I had more time to secure counsel and I was not aware that the appeal had been dismissed and a remittitur was issued until I contacted current counsel.

18. I now finally have appellant counsel for myself and my corporation, who has been retained to represent me at a significantly discounted rate and I can assure the Court that if provided the chance to continue with my corporation as a party, I will be fully compliant.

19. I humbly ask this Court to find good cause to recall the remittitur and contend that the opposing party will suffer no prejudice if the remittitur is recalled because the appeal pertaining to myself as an individual is still pending. No additional briefing will be required, as both myself and the corporation as parties will be addressed in one singular brief. Either way, the

opposing party will be a party to the appeal so it will not cause undue prejudice to add the corporation.

20. In the alternative, if prudent, I would ask that this Court allow me to amend my notice of appeal dated November 30, 2018 to include the corporation.

Executed at Torrance, California on May 29, 2019. I declare under penalty of perjury that the foregoing is true and correct.

Neil Leeds, Appellant