Filed 2/20/20 Marriage of Liu CA1/1

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION ONE

In re the Marriage of PEIQI LIU and CHENG LIU.	
PEIQI LIU, Appellant, v. CHENG LIU, Respondent.	A155732 (Alameda County Super. Ct. No. AF14738937) ORDER MODIFYING OPINION AND DENYING REHEARING NO CHANGE IN JUDGMENT

BY THE COURT:

Appellant Peiqi Liu's petition for rehearing is denied. The opinion expressly did *not* decide the issue she claims was not briefed—whether the integration clause superseded the representations respondent Cheng Liu made in his preliminary disclosures. Instead, the opinion addressed an issue that was briefed—whether the request to set aside the judgment was barred by the statute of limitations. Nor is there any ambiguity in the disposition, which affirms the underlying order in full.

It is ordered that the opinion filed herein on January 28, 2020, be modified as follows:

The first sentence of the first paragraph on page 1 should read: "Appellant Peiqi Liu appeals from an order granting a motion to dismiss her request to set aside the judgment, which adopted a marital settlement agreement (MSA) she entered into with her former husband, respondent Cheng Liu."

The second sentence of the second paragraph on page 5 should read: "We presume the correctness of a trial court's order and indulge all intendments and presumptions to support it on matters as to which the record is silent."

There is no change in the judgment.

Dated:

_____

Humes, P.J.

Liu v. Liu, A155732

Filed 1/28/20 Marriage of Liu CA1/1 (unmodified opinion)

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION ONE

In re the Marriage of PEIQI LIU and CHENG LIU.	
PEIQI LIU, Appellant, v. CHENG LIU, Respondent.	A155732 (Alameda County Super. Ct. No. AF14738937)

Appellant Peiqi Liu appeals from an order denying her request to set aside a judgment adopting a marital settlement agreement (MSA) she entered into with her former husband, respondent Cheng Liu.[1] We affirm.

I.
FACTUAL AND PROCEDURAL BACKGROUND

Peiqi and Cheng were married in 1991, and they separated in 2014. On December 5, 2014, they entered into an MSA, which was prepared by Peiqi's counsel. At the time, Cheng was not represented by counsel. In the property-distribution portion of the agreement, Peiqi received the parties' real property, and Cheng received "[a]ll

[1] As is customary, we will refer to the parties by their first names since they have the same surname.

shares and stock options the parties currently have an interest in for Eureka Therapeutics [hereafter "Eureka"], current value unknown." Peiqi promised to "make no claim nor [to] obtain any benefits under Cheng's business [Eureka], including stocks and stock options."

The parties further agreed that they were both "fully satisfied with the nature and extent of disclosure made," and they both "knowingly, intelligently, and voluntarily" waived any final disclosure of their financial assets. They also agreed that they were not "induced and caused to enter into [the MSA] by any stipulations, promises and agreements made by the other party not set forth [in the MSA]." And they agreed that "[n]o oral statements, promises, guarantees, representations or assurances [had] been made to either of the parties . . . by the other or by their respective attorneys or by the other attorney." Based on the MSA, the trial court entered a stipulated judgment of dissolution on January 26, 2015.

On September 28, 2015, Peiqi filed a request to set aside the judgment and MSA (the "initial set-aside request"). Even though the MSA had expressly referenced and awarded Cheng "[a]ll shares and stock options the parties currently have an interest in for Eureka," Peiqi alleged that "[a]t no point in the dissolution proceeding did [Cheng] disclose the existence of *any* stock options in Eureka." In a supplemental declaration, she alleged more specifically that Cheng had not disclosed 315,000 Eureka stock options and had understated the value of Eureka stock. She stated that because the parties had not "listed any stock options in [Eureka] in [their] disclosures," she "was unaware that any [such stock options] existed."

At a hearing on December 10, 2015, Peiqi's counsel told the trial court Peiqi wanted to amend the pleadings to include a new claim that Cheng failed to disclose the value of the stock options. The court ordered that "[a]ny amendments or motions [had to] be filed within 30 days." No amendment or request for an extension of time was filed within that time frame.

Instead, on March 10, 2016, Peiqi filed another request to set aside the MSA (the "second set-aside request"). In it, she asserted that Cheng "either omitted an asset, or

substantially misrepresented the value of some items." According to her, Cheng's "misrepresentation as to the value of the stock was, at best, a mutual mistake of the parties. At worst, it was a breach of his fiduciary duty and fraudulent inducement for [her] to enter into the MSA." Peiqi explained that the filing "include[d] a new request to set-aside the [j]udgment for fraud, perjury, mistake, and/or failure to comply with the disclosure requirements."[2]

Cheng vigorously opposed the second set-aside request. He asserted that "[i]t was Peiqi's informed choice to assign to [him] the community's interest in the company that [he] had devoted [his] career to, and to take the secure assets, real estate and cash that she wanted, in exchange." He pointed out that in the MSA, which "Peiqi wanted and proposed to [him] and that [her counsel's] firm wrote, [he] was awarded . . . all of the community's interest in [Eureka], the closely-held, private biomedical research company [he] had founded, whereas Peiqi received the interests in her employer's company . . . , a public[ly] traded biomedical research company. Peiqi took the assets that she wanted, i.e., the safer investments. . . . These included three pieces of Bay Area real estate, over $600,000 in cash, her stock in [her employer's company], as well as . . . (her company) retirement assets, and [the couple's] two luxury cars (a Mercedes and a BMW)."

Litigation on various issues ensued, and the parties were unable to resolve all of their differences. At a case management conference in May 2018, they agreed on a schedule to brief a "statute of limitations issue" regarding Peiqi's effort to set aside the MSA. Cheng then filed a standard "Request for Order" form in which he challenged Peiqi's second set-aside request as "time-barred." Along with the form, he also submitted a declaration, a brief, and 17 exhibits. Peiqi filed a response claiming the second set-aside request was timely because it amended the initial one.

---

[2] In the new request, Peiqi also mentioned that her initial request had "addressed a concern regarding management of the BJLS, LLC," which was an entity the couple had formed "as a way to transfer a portion of the [Eureka] shares to their children." She stated this issue was "being resolved, so [she was] omitting it from this new/amended motion."

A hearing was held on August 9, 2018, to consider Cheng's challenge. At the outset, the trial court sought to confirm how the hearing was to proceed:

> "THE COURT: Good morning, everybody. By stipulation of counsel—well, we have two requests for order on calendar this morning. One to dismiss the motion filed by petitioner based on statute of limitations, and the other to amend pleadings and impose certain restraining orders. [¶] By stipulation of counsel, prior to today you had agreed that no testimony would be taken today, but this would simply be argument from counsel.
>
> "[Peiqi's counsel]: Offers of proof.
>
> "THE COURT: Okay. Is that correct?
>
> "[Cheng's counsel]: Yes, Your Honor."

During the hearing, Peiqi's counsel made an offer of proof that Peiqi would testify, if given the opportunity, that before she entered into the MSA Cheng told her all the Eureka stock options had been sold and the ones remaining were worthless, and that it was pointless for her to pursue the stocks and options in the property settlement because he would drive down the value of the stock.

The trial court ruled in Cheng's favor, concluding that Peiqi's second set-aside request was "time-barred." It found that "[t]o the extent that [Peiqi] was uncertain about the valuation used for [Eureka] or the number of shares, she had every opportunity to ask for more information through her own counsel" before entering the MSA. The court also found that Peiqi "knew at the time she prepared [Cheng's] preliminary declaration of disclosure that [Eureka] was difficult to value; she had every opportunity at the time to pursue a professional valuation of the company and elected for her own reasons not to do so. She admitted in her deposition she was comfortable with the valuations used for an asset that was difficult to value[;] she had every opportunity at the time to seek further disclosures or formal discovery; and she knowingly took all of the tangible assets with recognizable value in exchange for [Cheng's] taking the business enterprise that was uncertain."

Thus, the trial court ruled that the second set-aside request was time-barred regardless of Peiqi's offer of proof that she could present testimony that Cheng had misrepresented the number of Eureka stock options and the value of Eureka stocks. After the statement of decision was amended, the order was entered on October 1, 2018.

II.
DISCUSSION

A. The Standard of Review.

The denial of a motion to set aside a judgment and marital settlement agreement is reviewed for an abuse of discretion. (*In re Marriage of Brewer & Federici* (2001) 93 Cal.App.4th 1334, 1346.) We presume the correctness of a trial court's order and indulge all intendments and presumptions to support i on matters as to which the record is silent. (*Denham v. Superior Court* (1970) 2 Cal.3d 557, 564; see also *In re Marriage of Arceneaux* (1990) 51 Cal.3d 1130, 1133.) The party appealing from an order has the burden to affirmatively show error, and we do not reverse " 'unless a clear case of abuse is shown and unless there has been a miscarriage of justice.' " (*Blank v. Kirwan* (1985) 39 Cal.3d 311, 331; *Denham*, at p. 566.) To the extent the parties argue "pure questions of law, such as procedural matters or interpretations of rules or statutes, we exercise our independent judgment." (*Gordon's Cabinet Shop v. State Comp. Ins. Fund* (1999) 74 Cal.App.4th 33, 38.)[3]

B. The Trial Court Properly Decided the Timeliness Issues Without Live Testimony.

In their briefing, the parties dispute the nature of the August 9 hearing. Their dispute stems from Family Code[4] section 217, subdivision (a), which requires a family

---

[3] Based on her characterization of Cheng's challenge to the second set-aside request as the equivalent of a demurrer, Peiqi argues we cannot affirm the trial court's order unless we find that his Request for Order showed on its face that her action was barred as a matter of law. We reject this proposed standard of review because, as we explain in section II.B. below, the parties stipulated that Cheng's challenge would not be treated as the equivalent of a demurrer.

[4] All further statutory references are to the Family Code unless otherwise noted.

court to "receive any live, competent testimony that is relevant," "absent a stipulation of the parties or a finding of good cause."[5] Although the parties agree they entered into a stipulation about the hearing, they disagree about the stipulation's terms. Cheng contends they stipulated to an "evidentiary hearing" in which the trial court would determine the timeliness issue "on the papers and argument." In contrast, Peiqi contends they stipulated to a hearing that would proceed as "a demurrer[], at which no testimony or other evidence would be taken." She maintains that the "the only question for the trial court (and for this court) is whether [her second set-aside request] 'clearly and affirmatively' ' "showed *on its face* that the action was barred by a statute of limitations." ' "[6] (Original italics.)

In our view, the parties' stipulation reflected an agreement between these two extremes. The only reasonable interpretation of the record is that the parties agreed that the hearing would proceed without live testimony, with Peiqi reserving the right to make offers of proof as to facts she disputed. While we accept that Peiqi did not stipulate to having the trial court resolve disputed facts, we reject her contention on appeal that the court could consider only the face of the second set-aside request. This contention is manifestly inconsistent with her trial counsel's agreement at the hearing to proceed without testimony but with "[o]ffers of proof." Counsel had no reason to so agree if Peiqi's position was that the court could consider only the face of the second set-aside request. We conclude that the parties' stipulation allowed the court to resolve, if it could, the timeliness issue on the basis of undisputed facts, including those presented through declarations and exhibits. Because this procedural approach was stipulated to, we do not resolve the parties' lengthy dispute over whether, absent such a stipulation, a family court violates section 217, subdivision (a), or denies a fair trial by deciding challenges to set-aside requests without receiving live testimony.

---

[5] California Rules of Court, rule 5.113 allows a court to refuse to receive live testimony without a stipulation only if the court makes certain findings supporting a determination that good cause exists to refuse such testimony.

[6] At oral argument, Peiqi abandoned her position that her set-aside request should be treated as a demurrer.

C. The Trial Court Properly Ruled that Peiqi's Second Set-aside Request Was Time-barred.

1. Additional facts.

Other than Peiqi's claim that Cheng concealed the existence of Eureka stock options and misrepresented the value of Eureka stock, the facts are largely undisputed. They establish that Peiqi was aware of Eureka stock and stock options before she entered into the MSA. In August 2014, she "signed a written consent of the shareholders of [Eureka] to reserve up to 222,800 shares of common stock for an incentive stock option plan." Peiqi herself "prepared [Cheng's] schedule of assets and debts," and she wrote the following statement in an attachment: "[Eureka] is a private company and its stock has no public market [value]. Its most recent employee stock options in September 2014 were priced at $1.6/share." At her deposition, Peiqi testified that the $1.60/share valuation seemed low to her because she was aware "the company had just gotten $8 a share in the summer of 2014 for the investor stock."

Peiqi "and her counsel controlled the timing of the dissolution[] and the [MSA]." And, as we have said, the MSA was "prepared by [Peiqi's] counsel," and its terms were comprehensive. It expressly awarded Cheng "[a]ll shares and stock options the parties currently have an interest in for [Eureka], current value unknown." Peiqi explicitly agreed to "make no claim nor [to] obtain any benefits under Cheng's business [Eureka], including stocks and stock options." Both parties "knowingly, intelligently, and voluntarily" waived any final disclosure of their financial assets, and they both signed a "Stipulation and Waiver of Final Declaration of Disclosure." They represented that they were both "fully satisfied with the nature and extent of disclosure made." The parties also agreed that "[n]o oral statements, promises, guarantees, representations or assurances [had] been made to either of the parties . . . by the other or by their respective attorneys or by the other attorney." And finally, they agreed they were not "induced and caused to enter into [the MSA] by any stipulations, promises and agreements made by the other party not set forth [in the MSA]."

2. Discussion.

In reviewing the trial court's ruling, we start by rejecting Peiqi's contention that her second set-aside request related back to her initial request. Under the relation-back doctrine, an amended complaint is deemed to have been filed as of the date of the original complaint when the amendment "rests on the same general set of facts and refers to the same 'offending instrumentalities,' accident and injuries as the original complaint." (*Davaloo v. State Farm Ins. Co.* (2005) 135 Cal.App.4th 409, 415.)

Even if we assume that this doctrine generally applies to amendments of post-judgment set-aside requests, it does not apply here because the trial court imposed a deadline for Peiqi to amend her initial set-aside request, and she failed to meet it. (See Code Civ. Proc., § 473, subd. (a)(1) [allowing pleadings to be amended with court's permission].) Recognizing as much, Peiqi stated in her second set-aside request that if "the timeliness of the 'amended' motion is at issue"—i.e., her failure to meet the 30-day deadline to amend—"I ask the Court to treat the motion as a new motion, which I would be permitted to file in any event." Under these circumstances, the court was not obligated to treat Peiqi's second set-aside request as an amendment of her first one, and it could deem the allegations set forth in the second set-aside request as the relevant ones in considering Cheng's timeliness challenge. (See *Bridgeman v. Allen* (2013) 219 Cal.App.4th 288, 296.)

We therefore turn to the merits of whether the second set-aside request was timely. The timeliness of a set-aside request depends in part on the grounds it sets forth. A request on the ground of mistake must be brought within one year after the entry of the judgment. (§ 2122, subd. (e).) Here, to the extent Peiqi's second set-aside request was grounded on a claim of mistake, it was time-barred since judgment was entered on January 26, 2015, and the request was filed more than a year later.

In contrast to a request based on an alleged mistake, a request to set aside a judgment on the grounds of fraud, perjury, or failure to comply with disclosure

requirements must be filed within one year of when the party discovered or should have discovered the wrongdoing. (§ 2122, subds. (a), (b), & (f).)[7] "The one-year period begins to run from the date on which the plaintiff either discovered, or should have discovered, the facts constituting the fraud or perjury" or failure to disclose. (*Rubenstein v. Rubenstein* (2000) 81 Cal.App.4th 1131, 1136.) This " 'discovery rule only delays accrual until [plaintiffs have], or should have, inquiry notice of the cause of action,' " and plaintiffs are thus " 'charged with presumptive knowledge of an injury if they have " ' "information of circumstances to put [them] on inquiry" ' " or if they have " ' "the opportunity to obtain knowledge from sources open to [their] investigation." ' " ' " (*Doe v. Roman Catholic Bishop of Sacramento* (2010) 189 Cal.App.4th 1423, 1430–1431 [discussing statute of limitations for fraud under Code of Civil Procedure section 338]; see *Rubenstein*, at p. 1149 [analogizing section 2122 to Code of Civil Procedure section 338].) The question before us, therefore, is whether Peiqi discovered or should have discovered the facts constituting the alleged fraud, perjury, or failure to disclose before March 10, 2015 (one year before she filed the second set-aside request). We conclude the trial court correctly answered this question in the affirmative.

To begin with, in December 2014, Peiqi expressly agreed in the MSA that "she ha[d] not been induced and caused to enter into this Agreement by any stipulations, promises and agreements made by the other party not set forth herein. No oral statements, promises, guarantees, representations or assurances [were] made to either of the parties herein by the other or by their respective attorneys or by the other attorneys." Peiqi must have known at the time that these statements were false because, if her claims supporting her second set-aside request are true, she actually *was* relying on Cheng's representations other than those incorporated in the MSA—including that "there were no stock options outstanding" and that "the I.R.S. rules set the value [of the stock] at

[7] Peiqi alleged below that she entered into the MSA as the result of threats and duress as well, but she does not pursue these arguments on appeal.

$1.60[/share]." The one-year time limit to challenge the MSA thus began to run, at the latest, when Peiqi agreed in the MSA—falsely, according to her own theory—that she was not induced into entering the agreement by any extraneous representations. Had Peiqi not relied on such representations, the numerous references to "stock options" in Cheng's disclosures and the MSA, as well as her own knowledge of various issues involving valuation of the stock, should have prompted further inquiry.

Indeed, we agree with the trial court that Peiqi had "every opportunity" leading up to the MSA to discover more information about the Eureka stock and options but "elected for her own reasons not to do so." Her attorney advised her "of her right to do further investigation and to request further disclosure, including . . . the right to employ accountants to investigate the financial circumstances of the parties, and the right to request documentation to evidence the information contained in the financial disclosures provided." Rather than seeking more information, Peiqi waived a final disclosure of financial assets and expressed her satisfaction with the "nature and extent of disclosure made." Her attorney also advised Peiqi that by entering the MSA, she was "making a final and binding agreement with respect to those rights addressed in the [MSA]." All told, the undisputed facts leave no doubt that Peiqi could have and should have discovered any fraud, perjury, or failure to disclose by Cheng before entering into the MSA. Accordingly, we must affirm because the second set-aside request was filed more than one year after Peiqi entered into the MSA. (§ 2122, subds. (a), (b), & (f).)

At oral argument, Peiqi extensively discussed *In re Marriage of Brewer & Federici*, *supra*, 93 Cal.App.4th 1334, a decision she did not cite in her briefing. That decision affirmed the setting aside of a judgment and marital settlement agreement on the ground of mistake, where the husband thought the wife had one pension plan valued at $168,000 but it turned out that she had two pension plans worth in excess of $500,000. (*Id.* at pp. 1339–1341, 1349.) In so holding, the Court of Appeal rejected the wife's argument that there was "no mistake because she met her disclosure obligations by fully disclosing the *existence* of both pension plans, the information known to her, and information from which the assets could be valued." (*Id.* at p. 1347.) But whatever

Brewer may have to say about the scope of a spouse's duty to disclose, the decision did not involve any statute-of-limitations issues. Even if we assume that Cheng's disclosures were insufficient under *Brewer*, the case is unhelpful in determining when, under all the circumstances, Peiqi knew of or should have discovered that alleged wrongdoing.

Finally, we reject Peiqi's argument that the trial court wrongly declined to consider her second set-aside request under section 1101, which allows claims for breach of fiduciary duty to be brought against former spouses within three years from the date the claimant had actual knowledge of the breach. (§ 1101, subd. (d).) When assets, such as the Eureka stock and stock options here, are identified and distributed in a settlement of dissolution proceedings, the claimant's remedy is to file a set-aside request in compliance with section 2122. (*In re Marriage of Georgiou and Leslie* (2013) 218 Cal.App.4th 561, 574–575.) The MSA plainly identified Eureka stock and stock options, and we therefore reject Peiqi's argument that *Georgiou* is inapplicable because Cheng "entirely failed to disclose an asset."

III.
DISPOSITION

The order entered on October 1, 2018, is affirmed. Respondent is awarded his costs on appeal.

_____

Humes, P.J.

We concur:

_____

Margulies, J.

_____

Sanchez, J.