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CERTIFIED FOR PUBLICATION

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SIXTH APPELLATE DISTRICT

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| ALEXANDER VONDJIDIS,<br><br>Plaintiff and Appellant,<br><br>v.<br><br>HEWLETT PACKARD CORPORATION,<br><br>Defendant and Respondent. | H030806<br>(Santa Clara County<br>Super. Ct. No. CV815388) |

Plaintiff Alexander Vondjidis was employed by defendant Hewlett Packard Corporation (HP) at HP's Athens, Greece office in the 1970s. He purchased shares in HP through HP's employee stock purchase plan. Vondjidis left HP's employment in 1978. Although HP was aware of Vondjidis's Athens home address, which Vondjidis had provided to HP in writing when he purchased his shares, HP listed HP's Athens, Greece office as Vondjidis's shareholder address of record. After HP closed its Athens office around 1982, Vondjidis ceased receiving any shareholder mailings from HP. Vondjidis continued to maintain the same Athens home address. Vondjidis never inquired about the lack of communication.

In 1993, HP transferred Vondjidis's shares to the State of California (the State) as unclaimed property. Vondjidis learned of this transfer in 2001, recovered some money from the State, and sued HP. The superior court granted HP's summary judgment motion on the ground that HP was immune from liability under California's statutory scheme for the transfer of unclaimed property to the State.

On appeal, Vondjidis contends that HP did not establish that it was entitled to this immunity. He claims that the immunity does not apply where the transferor was actually aware of the property owner's home address when it transferred the property to the State. HP maintains that compliance with the statutory scheme is not required to claim the immunity, that it established that it had complied with the statutory scheme and therefore was entitled to the immunity, and that the superior court's ruling may be upheld on the alternative ground that Vondjidis's action was barred by the statute of limitations.

We reverse the judgment. We hold that no statutory immunity is available under Title 10 of Part 3 of the Code of Civil Procedure in the absence of compliance with Title 10's statutory scheme, that HP failed to establish that it had complied with the statutory scheme, and that HP has not demonstrated that it was entitled to summary judgment on statute of limitations grounds.

## I. Undisputed Facts

Vondjidis, a Greek citizen, was employed by HP as an engineer at HP's Athens, Greece office from March 1974 to October 1978. Vondjidis lived in Athens at the time. Vondjidis purchased 17 shares of HP stock through HP's employee stock purchase plan (SPP). When Vondjidis initiated his SPP stock purchases, he filled out an application to participate in the SPP on which he provided HP with his Athens home address.

It was HP's practice to send mailings related to stock purchased through the SPP by an employee working abroad to the foreign office at which the employee worked. If the employee left HP's employment, HP's position was that "[t]he former employee was responsible for providing a new address of record for all future mailings relating to their HP stock. If the former employee failed to provide a new address of record, shareholder mailings continued to be sent to the HP foreign office. HP's transfer agent was required to use this address of record until the former employee provided a new one in writing."

While Vondjidis was employed by HP, all communications relating to his HP shares were sent from HP's California office to Vondjidis at HP's Athens office, which HP had listed as Vondjidis's shareholder address of record. After he terminated his employment with HP, these communications continued to be sent to Vondjidis at HP's Athens office, and HP employees there forwarded these communications to Vondjidis's Athens home address. He never received any communications from HP at any address other than HP's Athens office or his Athens home address.

In December 1978, HP sent a change of address form to Vondjidis. He did not complete the change of address form. In August 1979, Vondjidis received a note from an HP employee at HP's Athens office along with his stock dividend check. The note said (in Greek): "Alex, hi. [¶] I am sending you the common stock dividend P. Alto sent to my office, and I telexed them to send them directly to your home from now on. [¶] So, you will have to go to the bank and cash the check. I (meaning HP) do not need anything else from you." Vondjidis understood that HP had been sending all his stock-related communications to the Athens HP office rather than to Vondjidis's Athens home address and that this was why his address had needed to be changed. After Vondjidis received the August 1979 note, he did not receive any stock-related communications directly from HP's California office at his Athens home address. In 1980 or 1981, someone from HP's office in Greece twice contacted Vondjidis and his wife by telephone to try to persuade them to sell his shares. They told this person that they were not interested in selling the HP shares.

In 1982, an HP employee in Greece forwarded to Vondjidis's Athens home address correspondence sent from HP's California office to HP's Athens office. The note said (in Greek): "Alex, please send us your correct address so this is sent directly to you." Change of address forms were enclosed with the note. Vondjidis believed that his wife responded to this note: "You've got my address. Do not bother me any more with selling my stock or whatever." Vondjidis did not fill out a change of address form

because "[m]y address was known." HP's shareholder records continued to reflect that Vondjidis's address was HP's Athens office.

Vondjidis moved to Canada in 1981, but he continued to maintain the same home address in Athens and continued to receive mail that was sent to his Athens home address.[1] HP closed its Athens office sometime between 1982 and 1984. Vondjidis received no communications from HP after 1982. He did not receive annual reports, account statements, or dividend checks. Vondjidis did not contact HP between 1982 and 2001, and he did not hear anything from HP about his stock. After HP's Athens office closed, HP's mail to Vondjidis at the Athens office address was returned to HP as undeliverable.

Vondjidis did not cash the few dividend checks he received from HP prior to 1983, because "currency regulations" made it "cumbersome" to cash the checks in Greece. These dividend checks were for very small amounts, such as $1.20. "[I]t was easier to put the $1.20 in the garbage than to go through the pain of [cashing] it." When he failed to receive further dividend checks after 1982, Vondjidis assumed that "they had worked something more clever out and they would reinvest my money." Between 1983 and 1992, 39 HP dividend checks for Vondjidis's shares, totaling $265.86, were never cashed. By 1992, due to a number of stock splits, Vondjidis owned 136 shares of HP stock.

HP considered a shareholder to be "lost" if "multiple mailings went out and returned with unknown address on it." HP utilized an outside "escheatment vendor" to transfer shares belonging to "lost" shareholders to the State. Before HP transferred stock belonging to a "lost shareholder" to the State, its outside escheatment vendor would ask HP to verify any foreign addresses, and "HP would look up those addresses on . . . [its]

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[1] His mother-in-law lived in his Athens home until 1989, and Vondjidis continued to use that home as a mailing address. Subsequently, Vondjidis's friends and neighbors in Athens would regularly retrieve his mail for him.

system and . . . would forward" any address from HP's system, including its personnel system, that HP had for that person to the escheatment vendor "to do that final mailing." It was the escheatment vendor's responsibility to send a letter to each of the lost shareholders.

In 1993, HP transferred Vondjidis's shares to the State as unclaimed property. Vondjidis received no actual notice prior to the transfer, and there was no evidence that any notice was sent or attempted to be sent to him prior to the transfer.

Vondjidis learned in 2001 that his stock had been transferred to the State. He eventually recovered about $22,000 from the State.

## II. Procedural Background

In March 2003, Vondjidis filed this action against HP. He alleged 10 causes of action including breach of contract, breach of fiduciary duty, negligence, conversion, and fraud. Vondjidis alleged that HP had transferred his shares to the State without notice to him or his consent on the mistaken ground that Vondjidis had abandoned them. Vondjidis alleged that HP had known his identity and address, but it had failed to exercise due diligence before transferring the shares. Vondjidis sought reissuance of his shares, general, special and punitive damages, and injunctive and other relief.

HP filed an answer in which it raised as an affirmative defense that Vondjidis's complaint was barred by the statutes of limitations and by Code of Civil Procedure section 1560, a provision of California's Unclaimed Property Law (UPL).

In December 2004, HP moved for summary judgment on immunity and statute of limitations grounds. In August 2006, the superior court granted HP's summary judgment motion on the ground that HP was indisputably immune under Code of Civil Procedure section 1321. The court rejected Vondjidis's claim that the immunity provision was applicable only if HP established that it had "complied with the UPL." "This would render Section 1321 nugatory since a holder would be entitled to immunity only after it

had successfully defended itself from an action asserting that it improperly transferred money or property to the Controller." Further, the court found that HP had established by undisputed facts that it had complied with the UPL.

The superior court rejected HP's claim that Vondjidis's action was barred by the statute of limitations. The court concluded that there were triable issues of fact as to (1) "Plaintiff's state of mind between 1982, when he ceased receiving communications about his stock, and 2003 when he filed his action" and (2) "whether a reasonable person would have been on notice that their stock had escheated if they had not received any information that their stock had escheated."

The court entered judgment for HP and dismissed the action. On September 7, 2006, Vondjidis filed a motion for reconsideration. As new evidence, Vondjidis attached a declaration by a former employee of the State regarding the State's shoddy performance in locating the owners of unclaimed property, and the bad practices of audit agents. The superior court denied his motion. Vondjidis filed a timely notice of appeal from the judgment.

## III. Discussion

### A. Standard of Review

"Appellate review of a ruling on a summary judgment or summary adjudication motion is de novo." (*Brassinga v. City of Mountain View* (1998) 66 Cal.App.4th 195, 210.) The party moving for summary judgment bears "the burden of persuasion" that there are no triable issues of material fact and that the moving party is entitled to judgment as a matter of law. (*Aguilar v. Atlantic Richfield Co.* (2001) 25 Cal.4th 826, 850 (*Aguilar*).) The moving party also "bears an initial burden of production to make a prima facie showing of the nonexistence of any triable issue of material fact; if he carries his burden of production, he causes a shift, and the opposing party is then subjected to a burden of production of his own to make a prima facie showing of the existence of a

triable issue of material fact." (*Aguilar*, at p. 850.) "A prima facie showing is one that is sufficient to support the position of the party in question." (*Aguilar*, at p. 851.)

## B. Immunity

### 1. Scope of Immunity

Title 10 of Part 3 of the Code of Civil Procedure[2] (Title 10) governs the transfer of unclaimed property of various types to the State. "It is the purpose of this title to provide for the receipt, custody, investment, management, disposal, escheat and permanent escheat of various classes of unclaimed property, to the possession of which the State is, or may become, entitled under the provisions of this title or under other provision of law."[3] (§ 1305.) "'Unclaimed property'" is defined in Title 10 as "all property (1) which is unclaimed, abandoned, escheated, permanently escheated, or distributed to the state, or (2) which, under any provision of law, will become unclaimed, abandoned, escheated, permanently escheated, or distributed to the state, or (3) to the possession of which the state is or will become entitled, if not claimed by the person or persons entitled thereto within the time allowed by law, whether or not there has been a judicial determination that such property is unclaimed, abandoned, escheated, permanently escheated, or distributed to the state." (§ 1300, subd. (b).)

Title 10 contains a general immunity provision. "Any person delivering money or other property to the Treasurer or Controller *under the provisions of this title* shall, upon such delivery, be relieved and held harmless by the State from all or any claim or claims

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[2] Subsequent statutory references are to the Code of Civil Procedure unless otherwise specified.

[3] The deposit of unclaimed property with the State does not necessarily mean that the owner may not reclaim it, if the owner does so promptly. "Unless otherwise provided in this title, all money or other property deposited in the State Treasury under the provisions of this title, if not claimed by the person entitled thereto within five years from the date of such deposit, shall become the property of the State by escheat." (§ 1351.)

which exist at that time with reference to such money or other property, or which may thereafter be made, or which may come into existence, on account of, or in respect to, such money or other property. [¶] No action shall be maintained against any person who is the holder of such money or other property, nor against any officer as agent thereof, for: [¶] (a) The recovery of such money or other property delivered to the Treasurer or Controller pursuant to this title, or for interest thereon subsequent to the date of the report thereof, if any, to the Controller; or [¶] (b) Damages alleged to have resulted from such delivery to the Treasurer or Controller." (§ 1321, italics added.)

The UPL is contained in chapter 7 of Title 10.[4] (§ 1500.) This chapter contains another immunity provision that is specifically applicable to transfers of stock. "The holder of any interest under subdivision (b) of Section 1516 shall deliver a duplicate certificate to the Controller or shall register the securities in uncertificated form in the name of the Controller. Upon delivering a duplicate certificate or providing evidence of registration of the securities in uncertificated form to the Controller, the holder, any transfer agent, registrar, or other person acting for or on behalf of the holder in executing or delivering the duplicate certificate or registering the uncertificated securities, shall be relieved from all liability of every kind to any person including, but not limited to, any person acquiring the original certificate or the duplicate of the certificate issued to the Controller for any losses or damages resulting to that person by the issuance and delivery to the Controller of the duplicate certificate or the registration of the uncertificated securities to the Controller." (§ 1532, subd. (d).)

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[4] Chapter 7 does not apply to property received by the State under chapters 1 through 6 of Title 10. "None of the provisions of this chapter applies to any type of property received by the state under the provisions of Chapter 1 (commencing with Section 1300) to Chapter 6 (commencing with Section 1440), inclusive, of this title." (§ 1502.) Vondjidis's shares were received by the State under chapter 7.

This second immunity provision applies only to "[t]he holder of any interest under subdivision (b) of Section 1516." Subdivision (b) of section 1516 provides: "Subject to Section 1510[5], any intangible interest in a business association, as evidenced by the stock records or membership records of the association, escheats to this state if (1) the interest in the association is owned by a person who for more than three years has neither claimed a dividend or other sum referred to in subdivision (a) nor corresponded in writing with the association or otherwise indicated an interest as evidenced by a memorandum or other record on file with the association, and (2) *the association does not know the location of the owner* at the end of the three-year period. With respect to the interest, the business association shall be deemed the holder."[6] (§ 1516, subd. (b), italics added.)

Vondjidis's argument is that HP's conduct did not fall within either of these immunity provisions. In his view, HP did not transfer his stock "under the provisions of" Title 10, which is the premise for the application of section 1321. The provisions of Title 10 apply only to unclaimed property, and, Vondjidis argues, HP was always aware of his identity and home address, thereby negating any assertion that his stock was unclaimed property within the meaning of Title 10. Vondjidis maintains that HP did not hold his stock "under subdivision (b) of Section 1516," as required by section 1532,

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5 "Unless otherwise provided by statute of this state, intangible personal property escheats to this state under this chapter if the conditions for escheat stated in Sections 1513 through 1521 exist, and if: [¶] . . . [¶] (d) The last known address, as shown on the records of the holder, of the apparent owner is in a foreign nation and the holder is (1) domiciled in this state or (2) a government or governmental subdivision or agency of this state." (§ 1510.) Vondjidis's last known address was in Greece, and HP is apparently domiciled in California.

6 There have been various additions and amendments to these statutes since HP transferred Vondjidis's stock to the State in 1993, including changes to the length of time that the property must go unclaimed, and new notice provisions. None of these changes affects the issue that we resolve, so we need not consider the precise nature of each of these changes. (See *Harris v. Verizon Communications* (2006) 141 Cal App.4th 573, 578, fn. 9 (*Harris*).)

because HP could not claim that it "d[id] not know the location of the owner," as required by section 1516, subdivision (b). HP asserts that these immunities apply notwithstanding its alleged awareness of Vondjidis's address.

The scope of the immunity granted by section 1321 and section 1532, subdivision (d) is, of course, a question of statutory construction. "'As in any case involving statutory interpretation, our fundamental task here is to determine the Legislature's intent so as to effectuate the law's purpose. We begin by examining the statute's words, giving them a plain and commonsense meaning. We do not, however, consider the statutory language "in isolation." Rather, we look to the entire substance of the statute . . . in order to determine the scope and purpose of the provision. . . . That is, we construe the words in question in context, keeping in mind the nature and obvious purpose of the statute. . . . We must harmonize the various parts of a statutory enactment . . . by considering the particular clause or section in the context of the statutory framework as a whole.'" (*Authority for California Cities Excess Liability v. City of Los Altos* (2006) 136 Cal.App.4th 1207, 1213.)

The plain language of section 1321 restricts the immunity to those who transfer property "under the provisions of" Title 10. This language would be surplusage if, as HP argues, any transfer to the State, whether in accordance with Title 10 or in violation of Title 10, confers immunity on the transferor. We can conceive of no rational reason why the Legislature would wish to shield from liability those who violated the statutory scheme in derogation of the property owner's interests. "The objectives of the [unclaimed property] act are to protect unknown owners by locating them and restoring their property to them and to give the state rather than the holders of unclaimed property the benefit of the use of it, most of which experience shows will never be claimed." (*Douglas Aircraft Co. v. Cranston* (1962) 58 Cal.2d 462, 463.) Since Title 10 is intended to serve the interests of the property owners and the State, rather than those who are

holding the property of another, we agree with Vondjidis that section 1321's immunity does not apply unless the transfer complied with the provisions of Title 10.

The same is true as to section 1532, subdivision (d). This immunity provision is explicitly limited to "[t]he holder of any interest under subdivision (b) of Section 1516." A corporation is the holder of an interest under section 1516, subdivision (b) only if the corporation "does not know the location of the owner" of that interest. Again, the plain language of the statute precludes immunity for a corporation that transfers property to the State even though the corporation is aware of the owner's location. The plain language of the statute is also consistent with the Legislature's intent "to protect unknown owners by locating them and restoring their property to them." (*Douglas Aircraft Co. v. Cranston*, *supra*, 58 Cal.2d at p. 463.)

We must presume that the Legislature acts rationally and in accordance with the overall purpose of the statutory scheme. No rational Legislature, acting with the intent to protect unknown property owners by locating them and reuniting them with their property, would grant immunity to a corporation that, notwithstanding its knowledge of the owner's location, chose to deprive the owner of his or her property by transferring it to the State. The immunity provided to corporations by section 1532, subdivision (d) does not extend to a corporation that transfers property to the State even though it knows the location of the property owner.[7]

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[7] HP also relies on the immunity provided for in section 1560, subdivision (a). "Any person who pays or delivers escheated property to the State Controller *under this chapter* is relieved of all liability to the extent of the value of the property so paid or delivered for any claim which then exists or which thereafter may arise or be made in respect to the property." (§ 1560, subd. (a), italics added.) Section 1560 appears in chapter 7 of Title 10, the same chapter in which section 1532 and section 1516 appear. As HP does not contend that there was any provision other than section 1516 that authorized its transfer of Vondjidis's property to the State, the immunity provided for in section 1560, like the immunity provided for in section 1532, depended on whether HP complied with section 1516.

HP contends that restricting these statutory immunities to those who comply with the statutory scheme "would lead to an absurd result that is directly counter to the purpose of the UPL." In HP's view, our interpretation of the scope of the statutory immunity would "provid[e] immunity only where it is unnecessary." (See *Olney v. Sacramento County Bar Assn.* (1989) 212 Cal.App.3d 807, 813 (*Olney*) [immunity for arbitrator in arbitration conducted "pursuant to" statutes and rules of procedure applies even where arbitrator made an error of law under those statutes and rules].)

HP's vision is skewed. The immunity provided by section 1321 extends to "any claim or claims which exist at that time with reference to such money or other property, or which may thereafter be made, or which may come into existence, on account of, or in respect to, such money or other property" as long as the transferor complies with the statutory scheme. This immunity is not without value where the transferor has complied with the statutory scheme; section 1321 shields a transferor from *all* claims regarding the property, not simply claims based on the transferor's failure to comply with the statutory scheme. A transferor who complies with the statutory scheme will be shielded from any claims regarding the property that are *unrelated* to the transfer of the property under the UPL and any claims for *consequential damages* arising from the transfer of the property. For example, the owner of stock will not be able to hold the transferor liable for the owner's loss of any increased value that the stock acquired after its transfer. The virtually unlimited immunity that a transferor can acquire by compliance with the statutory scheme far outstrips claims that the transferor has failed to comply with the statutory scheme.

Similarly, the immunity provided by section 1532, subdivision (d) is not restricted to claims that the transferor did not comply with the statutory scheme. Section 1532, subdivision (d) shields the transferor "from *all liability of every kind* to any person . . . ." (Italics added.) This extensive immunity, like section 1321's immunity, ranges well beyond claims that the transferor has failed to comply with the statutory scheme.

Furthermore, our construction of the statute must be consistent with the Legislature's intent, and the statutory scheme, which was intended to benefit the owners of property and the State, does not favor immunizing those who wrongfully deprive owners of their property in violation of the express requirements of the statutory scheme. The purpose of Title 10's statutory scheme distinguishes it from the arbitration immunity statute and the child abuse reporting immunity statute that were found to grant absolute immunity in *Olney* and *Storch v. Silverman* (1986) 186 Cal.App.3d 671 (*Storch*). The public interest in encouraging arbitration (*Olney*) and child abuse reporting (*Storch*) favor immunizing the arbitrator and the reporter, but the public interest in reuniting owners with their property does not favor immunizing a corporation that wrongfully wrests property away from its owner. In addition, the arbitrator immunity is limited to the arbitration, and the child abuse reporter immunity extends only to the report, while the immunity in question here, when it applies, is, as we have already noted, far more extensive.

Finally, HP asserts that absolute immunity furthers the purpose of the statutory scheme to encourage the delivery of unclaimed property to the State by "alleviating the holder's concerns about potential claims by the owners of such property." But this assertion begs the question. The State has no proper interest in encouraging corporations to deliver property to the State that does not qualify as "unclaimed property." Indeed, the Legislature's intent to reunite unclaimed property with its owner would be subverted if corporations were encouraged to deliver an owner's property to the State rather than to allow the owner to retain it.

Only one published case has addressed this issue, and it presented a sharp conflict between the majority opinion and the dissent.[8] HP relies on the majority opinion in

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[8] The California Supreme Court recently granted review of the Fourth District's decision in *Azure Limited v. I-Flow Corporation* (2008) 163 Cal.App.4th 303, review

*Harris*, *supra*, 141 Cal.App.4th 573. In *Harris*, the Second District Court of Appeal majority held that Title 10's immunity provisions applied even if the transfer was in violation of Title 10. (*Harris*, at pp. 577-578.) The plaintiffs in *Harris* had been GTE employees who had acquired stock in GTE as a fringe benefit of their employment. GTE was aware of the identities and locations of the plaintiffs but nevertheless transferred the stock to the State as unclaimed property. The Second District majority concluded that the immunity provided by Title 10 was "absolute." "Harris's interpretation—that the immunity is conditional and vanishes if the escheatment was wrongful—would render the immunity meaningless because immunity comes into play when, and *only* when, the defendant is charged with wrongdoing." (*Harris*, at p. 578.)

The majority in *Harris* concluded that the Legislature had granted corporations "absolute immunity." "[T]he Legislature's adoption of a rule of absolute immunity is consistent with the purpose of the UPL, which is to give the state rather than the holders of unclaimed property the benefit of its use. [Citation.] Without this protection, holders of unclaimed property concerned about lawsuits such as this class action would likely err on the side of retaining rather than delivering unclaimed property to the Controller, thereby depriving the State of the benefit of its use. The Legislature, faced with a choice between absolute immunity (which promotes delivery of unclaimed property to the Controller but provides only limited redress to the owners of the property) and conditional immunity (which would have discouraged delivery but allowed redress), plainly and unambiguously opted for absolute immunity." (*Harris*, *supra*, 141 Cal.App.4th at p. 579.)

Justice Mallano's dissent in *Harris* took the opposite view. He noted that the purpose of the UPL is not limited to affording the State the use of unclaimed property.

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granted August 28, 2008, S164884, in which the Fourth District disagreed with the *Harris* majority and endorsed the *Harris* dissent.

Instead, the UPL is intended both to protect property owners and to give the State, rather than the holder, the benefit of holding unclaimed property. (*Harris*, *supra*, 141 Cal.App.4th at p. 581 (dis. opn. of Mallano, J.).) "But the first purpose of the UPL—to reunite the plaintiffs with their unclaimed property—can only be furthered by permitting the plaintiffs to pursue their claims against GTE. Affording GTE immunity for the alleged breaches of fiduciary duty here would provide no incentive to GTE *ever* to honor its duties to its minority shareholders in connection with their stock ownership and attendant rights, an absurd result that cannot be imputed as the Legislature's intention." (*Harris*, at p. 586 (dis. opn. of Mallano, J.).)

Our construction of Title 10's immunity provisions comports with the conclusion reached by Justice Mallano in his dissent in *Harris*. Title 10's immunity provisions do not shield a corporation that transfers property to the State in violation of Title 10.

**2. Compliance With UPL**

HP claims that the superior court correctly concluded that it had complied with the UPL and therefore was immune.

HP bore the burden of demonstrating that it had complied with Title 10 in transferring Vondjidis's stock to the State. HP's compliance depended on its claim that it was not aware of Vondjidis's address when it transferred the stock in 1993. However, the undisputed evidence established that Vondjidis's Athens home address, which he had provided to HP in writing when he enrolled in the SPP, remained valid at the time HP transferred Vondjidis's stock to the State. HP claims that this fact is irrelevant because the address for Vondjidis that it chose to list in its shareholder records was the address of HP's long-shuttered Athens office, which was clearly no longer Vondjidis's location. HP's claim cannot pass muster. HP's *personnel* records have always contained Vondjidis's Athens home address. The fact that HP had established a corporate practice of placing an employee's HP work address, rather than his or her home address, in its *shareholder* records hardly establishes that HP *lacked knowledge* of Vondjidis's home

address. A corporation cannot shield itself from knowledge of its own records by establishing a practice that sacrifices its shareholders' interests to the corporation's convenience.

The evidence presented below established that HP had always been aware of Vondjidis's Athens home address, that Vondjidis had provided that address to HP when he purchased his stock, that all correspondence from HP to Vondjidis had been sent to that address after the termination of Vondjidis's employment, that Vondjidis had been assured that his home address had been conveyed to HP's corporate offices, and that HP had made no effort to contact Vondjidis at that address after the mid-1980s. This evidence demonstrated that HP was aware of Vondjidis's home address and therefore had ***not*** complied with Title 10. Hence, there was at least a triable issue of fact that precluded HP from establishing that it was entitled to summary judgment based on Title 10's immunity provisions.

### C. Statute of Limitations

HP's alternative contention is that the superior court should have granted it summary judgment on the ground that Vondjidis's action was barred by the statute of limitations.

HP concedes that the discovery rule applies to most of Vondjidis's causes of action and that many of his causes of action were subject to a four-year limitations period. "[T]he limitations period does not begin to run until the plaintiff discovers or should have discovered the cause of action. 'The discovery rule provides that the accrual date of a cause of action is delayed until the plaintiff is aware of her injury and its negligent cause. A plaintiff is held to her actual knowledge as well as knowledge that could reasonably be discovered through investigation of sources open to her.' (*Jolly v. Eli Lilly & Co.*, *supra*, 44 Cal.3d 1103, 1109, citations omitted.) 'Once the plaintiff has a suspicion of wrongdoing, and therefore an incentive to sue, she must decide whether to

file suit or sit on her rights. So long as a suspicion exists, it is clear that the plaintiff must go find the facts; she cannot wait for the facts to find her.'" (*County of Santa Clara v. Atlantic Richfield Co.* (2006) 137 Cal.App.4th 292, 317.)

HP transferred Vondjidis's stock to the State in 1993. It was not until 2001 that Vondjidis discovered that this transfer had occurred. HP does not contend that Vondjidis's action was barred because he delayed in filing it after 2001. HP claims that Vondjidis should have discovered his causes of action many years prior to 2001 when he ceased to receive any correspondence from HP regarding his stock. Vondjidis asserts that the evidence did not establish that he should have suspected, at any time prior to 2001, that anything had happened to his stock.

The evidence presented by the parties in support of and in opposition to summary judgment did not indisputably resolve whether a reasonable person in Vondjidis's position would have suspected that his stock had been disposed of prior to 2001. While Vondjidis indisputably was aware that he was not receiving annual reports or yearly dividends for his stock, the question is whether a rational jury could conclude that Vondjidis *reasonably believed* that HP, his former employer, was nevertheless properly safeguarding his stock. If a rational jury could credit Vondjidis's position, summary judgment on this ground was precluded.

HP failed to meet its burden of demonstrating the nonexistence of any triable issue of material fact. (*Aguilar*, *supra*, 25 Cal.4th at p. 850.) A reasonable jury could conclude that Vondjidis's failure to suspect misfeasance was reasonable in light of the history of his relationship with HP and the informal manner in which HP had dealt with his stock ownership. From Vondjidis's standpoint, it might have appeared that HP did not regularly correspond with those shareholders who had purchased their stock through the SPP, and his experience with repetitive telephone solicitations from HP urging him to dispose of his stock had taught him to avoid any unnecessary contact with HP. HP did not establish its entitlement to summary judgment on statute of limitations grounds.

## IV. Disposition

The judgment is reversed, and the matter is remanded to the superior court with directions to vacate its order granting HP's summary judgment motion and to enter a new order denying HP's summary judgment motion. Vondjidis shall recover his appellate costs.

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Mihara, Acting P.J.

WE CONCUR:

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McAdams, J.

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Duffy, J.

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| Trial Court: | Santa Clara County Superior Court |
| Trial Judge: | Honorable Jack Komar |
| Attorney for Appellant: | William W. Palmer<br>Law Office of William W. Palmer |
| Attorneys for Respondent: | Sheldon H. Jaffe<br>Carol Lynn Thompson<br>Heller Ehrman LLP |