NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FILED

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MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

THE MORNING STAR PACKING COMPANY, L.P.; CALIFORNIA FRUIT AND TOMATO KITCHENS, L.L.C., fna California Fruit Packing Company, L.L.C.,	)	No. 06-15110
	)	D.C. No. CV-03-06938-LJO
Plaintiffs – Appellants,	)	**MEMORANDUM**[*]
v.	)	
CROWN CORK & SEAL COMPANY (USA), INC.,	)	
Defendant – Appellee.	)	

Appeal from the United States District Court
for the Eastern District of California
Lawrence J. O'Neill, Magistrate Judge, Presiding

Argued and Submitted November 6, 2007
San Francisco, California

Before: FERNANDEZ and McKEOWN, Circuit Judges, and TRAGER,[**] District Judge.

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[*]This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

[**]The Honorable David G. Trager, Senior United States District Judge for the Eastern District of New York, sitting by designation.

Morning Star Packing Company, L.P. and California Fruit and Tomato Kitchens, L.L.C. appeal the district court's judgment in favor of Crown Cork & Seal Company (USA), Inc. We affirm.

(1) Principally, Morning Star and California Fruit assert that the district court erred when it rejected their request for reformation to add (or effectually substitute) California Fruit as a party to an agreement that tolled the statute of limitations as to Morning Star only. Under California law, there was no error. We review the district court's denial of leave to amend the agreement in dispute under an abuse of discretion standard. The district court's reliance on longstanding California law was not an abuse of discretion. In the pithy, and now sadly lost, style of earlier days, the California Supreme Court decided a case which controls the result in this one. See Mabb v. Merriam, 129 Cal. 663, 62 P. 212 (1900). In Mabb, the plaintiff, J.W. Mabb, a married woman, verbally agreed with H.H. Merriam to exchange lands. Id. at 664, 62 P. at 212. J.W. Mabb's husband, J.J. Mabb, then "attended to the drawing up of the preliminary contract." Id. Alas, the wife, J.W. Mabb, was not even mentioned; rather, the husband, J.J. Mabb, who apparently had no interest in the property, was made the party to the contract and he entered "into many covenants to perform, etc." Id. Both Mabbs sued, and J.W. Mabb sought "to have the contract reformed by having her name inserted" as the

true party in question in place of J.J. Mabb. Id. The court made short shrift of that argument and stated:

> While a court of equity will reform contracts under many varying circumstances, still it has no power to make a new contract. Its power is simply to reform a contract already made. J.W. Mabb is not a party to the contract, and a court of equity can neither add additional parties nor substitute other parties for those already appearing upon the face of the writing. J.J. Mabb acted as one of the contracting parties, and whether he did it by mistake, through ignorance of law or fact, or did it with knowledge of everything, we deem an immaterial matter.

Id.

That case controls the issue at hand because California Fruit, for all practical purposes, seeks to have itself substituted for Morning Star, the actual party to the contract, or at the very least, it seeks to have itself added as a party to the contract.[1]

(2) Morning Star and California Fruit also sought leave to add a claim for equitable estoppel in order to preclude Crown Cork from asserting a statute of limitations defense as to any California Fruit claim. However, there simply was no

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[1]Perhaps the law should now be otherwise, but the holding is both clear and applicable. We must leave it to the California Supreme Court to dispatch its own opinion to the dustbin of legal history, if it is so minded. Cf. Tenet v. Doe, 544 U.S. 1, 10–11, 125 S. Ct. 1230, 1237, 161 L. Ed. 2d 82 (2005) ("[T]he Court of Appeals should follow the case which directly controls, leaving to this Court the prerogative of overruling its own decisions." (quoting Rodriguez de Quijas v. Shearson/Am. Express, Inc., 490 U.S. 477, 484, 109 S. Ct. 1917, 1921–22, 104 L. Ed. 526 (1980))).

pleading of any false representations upon which Morning Star and California Fruit could have relied. See Lantzy v. Centex Homes, 31 Cal. 4th 363, 384, 73 P.3d 517, 533 (2003). Certainly, the fact that Crown Cork engaged in settlement negotiations with one or both of them would not suffice to constitute the kind of activity that would permit an equitable estoppel. See Jackson v. Andco Farms, Inc., 130 Cal. App. 3d 475, 479–80, 181 Cal. Rptr. 815, 818 (1982); Kunstman v. Mirizzi, 234 Cal. App. 2d 753, 757–58, 44 Cal. Rptr. 707, 710 (1965). The district court did not err when it denied leave to add that valetudinarian claim.

(3) California Fruit's assertion that it did comply with the requirement that it file within the period prescribed by the statute of limitations must also fail. True, in California the usual statute of limitations for breach of a written contract is four years. Cal. Civ. Proc. Code § 337. But a sales contract can reduce that to one year. See Cal. Com. Code § 2725. This one did. By its terms, that contractually reduced statute of limitations applied to this dispute. Moreover, the mere fact that the provision was not mutual does not serve to invalidate it. See Capehart v. Heady, 206 Cal. App. 2d 386, 390, 23 Cal. Rptr. 851, 854 (1962). Finally, it is plain that the mere sending of demand letters to Crown Cork did not serve to comply with the strictures imposed by the contractual statute of limitations; those required the actual bringing of a timely claim or action. Again, the district court

did not err.

(4) Finally, the district court correctly granted summary judgment against Morning Star. Absent damages for breach of contract, Morning Star had no actionable claim. See First Commercial Mortgage Co. v. Reece, 89 Cal. App. 4th 731, 745, 108 Cal. Rptr. 2d 23, 33 (2001); see also Fox v. Citicorp Credit Servs., Inc., 15 F.3d 1507, 1517 (9th Cir. 1994) (finding similarly under Arizona state law). But, as Morning Star admitted, it suffered no damages of its own on account of the alleged breach by Crown Cork.

AFFIRMED.