

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

NOV 14 2022

FOR THE NINTH CIRCUIT

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

621 TWO, LLC, as successor in interest to
621, LLC,

Plaintiff-Appellant,

v.

LEGGETT & PLATT INCORPORATED,

Defendant-Appellee,

and

DOES, 1-50, inclusive,

Defendants.

No. 21-55871

D.C. No.

2:20-cv-04883-PSG-E

MEMORANDUM*

Appeal from the United States District Court
for the Central District of California
Philip S. Gutierrez, Chief District Judge, Presiding

Argued and Submitted October 20, 2022
Pasadena, California

Before: O'SCANNLAIN, WATFORD, and HURWITZ, Circuit Judges.

Plaintiff-Appellant 621 Two, LLC ("621 Two") appeals from the district court's grant of summary judgment to Defendant-Appellee Leggett & Platt

* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

Incorporated (“Leggett”). The district court held that 621 Two’s suit was time-barred because 1) 621 Two lacked capacity to sue during the limitations period and 2) 621 Two was not entitled to equitable tolling. As the facts are known to the parties, we repeat them only as necessary to explain our decision. We affirm.

I

First, the district court did not err in concluding that 621 Two lacked capacity to sue during the applicable statutory limitations period—which, at the latest, finished running in June 2020. *See, e.g.*, E.R. 8–9. Under applicable California law, a suspended corporation lacks capacity to file suit, revival does not retroactively toll the statute of limitations, and an assignee “stands in the shoes” of the assignor when suing on assignment-predicated claims (and is subject to the same defenses that could have been asserted against the assignor). *Cal-Western Bus. Servs., Inc. v. Corning Cap. Grp.*, 221 Cal. App. 4th 304, 310–12 (2013) (cleaned up); *see Casiopea Bovet, LLC v. Chiang*, 12 Cal. App. 5th 656, 663–64 (2017). Here, 621 Two brought suit against Leggett based on rights assigned to it by 621 LLC (“621 One”). But 621 One (the assignor) lacked capacity to sue (and did not have such capacity restored) until after the statutory limitations period had run. Accordingly, 621 Two (the assignee) lacked capacity to sue on the assignment-predicated claims

during the statutory limitations period.¹ 621 Two’s claims were therefore time-barred unless equitable tolling applied.

II

Second, the district court did not err in concluding that 621 Two was not entitled to equitable tolling. Under California law, a party is only entitled to equitable tolling if it can demonstrate that, among other things, its conduct was both “objectively reasonable” and “subjectively in good faith.” *Saint Francis Mem’l Hosp. v. State Dep’t of Pub. Health*, 9 Cal. 5th 710, 729 (2020). The sole material support that 621 Two supplied to show that it acted reasonably and in good faith was a declaration from Peter Starflinger (who was, *inter alia*, a member of both 621 One and 621 Two), which states that Starflinger “had no idea or reason to believe that [621 One’s] corporate status had been suspended until [Leggett’s] attorney raised the issue,” and “[a]s soon as [he] learned of [621 One’s] suspension, [he] took immediate steps to restore [621 One’s] corporate status.” E.R. 94. Even if this statement raises a genuine issue of material fact as to 621 Two’s good faith, it does not affect the reasonableness of 621 Two’s actions. The statement fails to provide

¹ 621 Two argues that the district court conflated 621 One and 621 Two and mistakenly held that the assignment from 621 One to 621 Two was void rather than voidable. But the district court did not commit these errors—and we emphasize that even if the assignment from 621 One to 621 Two were valid and effective, 621 Two lacked capacity to sue on the assignment-predicated claims during the applicable statutory limitations period.

any material evidence supporting the conclusion that 621 Two's lack of knowledge and course of conduct were "objectively reasonable" under the circumstances because, *inter alia*, it does not indicate how it would be reasonable for 621 Two not to know that its closely related assignor had been suspended.²

AFFIRMED.

² 621 Two's motion for judicial notice, Dkt. No. 31, is **GRANTED**.