

1. 24CV01768 Sprague, Robert Eugene II v. Garnett, Pamela Ann

EVENT: Motion for Summary Judgment

Pursuant to CCP 437c(b)(3), Defendant's Motion for Summary Judgment is GRANTED. CCP 437c(b)(3) provides the Court with discretion to grant a motion for summary judgment when the opposition fails to include a separate statement. Here, the opposition to the separate statement was filed egregiously late and was filed after the reply. Per Local Rule 3.11(B) the Court is not considering the late filed opposition to the separate statement. Defendant shall prepare and submit a form of order within 2 weeks.

2-3. 25CV02896 Casarotti, Rosemary v. Watts, Mikal C et al.

EVENT: (1) Defendants Mikal C. Watts, Guy L. Watts II, Alicia D. O'Neill, Watts Guerra LLP, and Watts Guerra LLC Demurrer to all Causes of Action in Plaintiff's Second Amended Complaint

(2) Defendants Mikal C. Watts, Guy L. Watts II, Alicia D. O'Neill, Watts Guerra LLP, and Watts Guerra LLC Motion to Strike Portions of the Second Amended Complaint

Demurrer

Defendants' Request for Judicial Notice is GRANTED and unopposed.

The Second Amended Complaint (SAC) Contains Both Professional Negligence Type Allegations and an Independent Allegation of Misrepresentation of Authority to Practice Law in California

As the moving papers note, we look to the gravamen of the claim, regardless of how they are styled to determine if the claim sounds in malpractice. (See *Jackson v. Rogers & Wells* (1989) 210 Cal. App. 3d 336, 348) The Court agrees with Defendants that a significant portion of the allegations in the SAC are malpractice type allegations which implicate the one-year statute of limitations period under CCP 340.6.

Included in those allegations are allegations that Defendants improperly withheld funds including non-existent medical liens. Initially the Court was inclined to find those allegations were outside the scope of CCP 340.6. However, after further review, *Foxen*

v. Carpenter (2016) 6 Cal.App.5th 284 indicates these allegations implicate an attorney's professional obligations thereby triggering CCP 340.6.

In *Foxen* plaintiff alleged claims based on "defendants' withholding and converting additional funds from the settlement monies beyond the fees to which they were entitled under the fee agreement." (*Foxen, supra*, at p. 291) Finding these allegations implicate CCP 340.6, the Court noted "In light of the Legislature's intent that section 340.6(a) cover more than claims for legal malpractice, the term 'professional services' is best understood to include nonlegal services governed by an attorney's professional obligations." (*Id at p.291-292*)

Thus, pursuant to *Foxen*, allegations that funds were improperly withheld from settlement implicates CCP 340.6. Consequently, Plaintiff's allegations that funds, including non-existent medical liens were withheld by Defendants is governed by the CCP 340.6 limitations period.

However, if there are sufficient facts pled or that can be inferred reasonably to state a cause of action under any theory, the demurrer must be overruled. (*Lin v. Coronado* (2014) 232 Cal.App.4th 696, 700) The Court finds the allegation that Defendants misrepresented they were authorized to practice law in California does not implicate CCP 340.6. Misrepresenting that one is licensed when one is not licensed is not a "professional service" within the meaning of CCP 340.6. Rather, it is a misrepresentation which goes to whether the person or persons will be retained in the first instance.

To clarify, in reading the SAC as a whole, the Court finds all allegations implicate CCP 340.6, with the exception of the allegations that Defendants misrepresented that they were authorized to practice law in California.

The Fiduciary Duty Cause of Action is Sustained With Leave to Amend to Allege Tolling of the Statute of Limitations Period

In light of the determination that not all of the breach of fiduciary duty allegations trigger the 1 year time period under CCP 340.6, the next step is to determine the applicable statute of limitations. The applicable period for breach of fiduciary duty is governed by CCP 338 if the conduct is fraudulent and CCP 343 if nonfraudulent. (*See also American Master Lease LLC v. Idanta Partners, Ltd.* (2014) 225 Cal.App.4th 1451, 1478) The Court finds that allegations concerning the misrepresentation regarding licensing status are fraudulent in nature, therefore the three year statute applies.

Lee v. Hanley (2015) 61 Cal.4th 1225, 1232:

A demurrer based on a statute of limitations will not lie where the action may be, but is not necessarily, barred. In order for the bar ... to be raised by demurrer, the defect must clearly and affirmatively appear on the face of the complaint; it is not enough that the complaint shows that the action may be barred.

Preliminarily, the August 25, 2023 date associated with Plaintiff's lawsuit against Defendants in Shasta County would not render the claim untimely because the filing of

this action was within 3 years of that date. (However, with respect to the allegation that Defendants represented Plaintiff until September 2024, that allegation is contradicted by the judicially noticeable fact that Plaintiff sued Defendants in Shasta County in 2023 alleging similar facts to the instant case. Plaintiff cannot legitimately allege she was represented by Defendants until September 2024 under these circumstances. Allegations cannot contradict judicially noticeable facts, see *Genis v. Schainbaum* (2021) 66 Cal.App.5th 1007, 1015)

The demurrer contends the accrual date was as early as April 2022 when the Zogg Fire case was settled without authority or July 14, 2022 when the settlement agreement was signed. Theoretically both of those dates are more than 3 years before the filing of the instant case.

As those dates appear in the SAC, the fiduciary duty claim would be time barred in its entirety if either of those dates were the accrual dates. Thus, the burden shifts to Plaintiff to plead tolling with respect to those dates, and tolling must be pled with specificity. (See *Ventura29 LLC v. City of San Buenaventura* (2023) 1028, 1044) Accordingly, the demurrer to the breach of fiduciary duty cause of action is sustained with leave to amend.

As an aside, the Court finds the malpractice-related allegations are time barred under CCP 340.6. (Which, as noted, constitutes the remaining allegations in the SAC) The filing of the Shasta County action on August 25, 2023 is the latest possible accrual date. Unlike the 3 year limitations period, the one year period expired prior to the filing of this action in relation to the August 25, 2023 date.

The Demurrer to the Fraud Cause of Action is Sustained With Leave to Amend

With respect to the statute of limitations issue, the analysis is essentially the same as the fiduciary duty cause of action. Because there is an allegation independent of CCP 340.6 claims, the 3 year statute applies to some of that claim. Consistent with the previous discussion, the pleading must be amended to allege tolling of the April 2022 and July 14, 2022 dates.

Regarding the issue of whether fraud has been sufficiently pled, the Court is focusing on the allegation of misrepresentation that Defendants were authorized to practice law in California. (Analyzing whether malpractice based fraud claims are sufficiently pled would be futile in light of the Court's finding that those claims would necessarily be time barred)

With respect to the allegations Defendants misrepresented that they were authorized to practice law in California, the Court finds the SAC adequately alleges the who, how, and when. However, it does not sufficiently allege damages. Although the pleading mentions disgorgement, the pleading does not identify the law authorizing disgorgement.

Thus, the fraud cause of action is sustained with leave to amend on both statute of limitations and pleading grounds.

Business and Professions Code 17200

The Court re-incorporates by reference its discussion concerning CCP 340.6 and the allegations Defendants misrepresented they were authorized to practice law in California. Regarding the 1 year statute of limitations and unfair business practices, the Court agrees with Defendant that *Foxen* stands for the proposition that claims rooted in an attorney's professional obligations trigger the 1 year statute even if the claim is labelled as an unfair business practice.

However, the Court disagrees that misrepresenting one is licensed to practice in California falls under the category arising out of an "attorney's professional obligations." *Foxen* did not involve misrepresentation concerning licensing status. The Court is unaware of any published decision standing for the proposition that one who misrepresented their licensing status and was not in fact licensed or authorized to practice law in California at the time of the misrepresentation can apply the 1 year statute under CCP 340.6.

CCP 340.6 applies to attorneys. It would be a bridge too far, in this Court's view, to hold that persons who are not authorized to practice law in this state at the time they misrepresent their status qualify as an "attorney" for purposes of CCP 340.6. The Court's interpretation of the word "attorney" as used in CCP 340.6 is an attorney licensed to practice law in this state at the time of the alleged wrongful conduct.

Despite how broadly the Legislature has applied CCP 340.6, the Court struggles to see how someone who was (allegedly) not authorized to practice law at the time of the alleged wrongdoing can claim the benefit of this statute.

Based on the finding that CCP 340.6 does not apply to those allegations, the 4 year time period under B & P Code 17208 applies. Even assuming the earliest accrual date posited by Defendants applies, which is April 2022, the Complaint would be timely. As a result, the demurrer on statute of limitations grounds is overruled.

The demurrer is sustained with leave to amend for failure to allege sufficient facts. Specifically, the SAC fails to allege sufficient facts concerning damages and fails to cite legal authority authorizing disgorgement.

Breach of Contract

Defendants persuasively argue that the SAC fails to reasonably specify the terms of the contract that were breached. Regardless, the breach of contract has a fatal defect with respect to the statute of limitations.

By its very nature, it is limited in scope to the retainer agreement. The Court fails to see how any obligation arising out of the retainer agreement would not implicate the CCP 340.6 1 year statute. Under the broad definition prescribed in *Foxen* that 340.6 covers more claims than malpractice and includes non-legal services, all obligations contained in the agreement would necessarily be implicated. Thus, the Court concludes that 340.6 would apply to any allegation with respect to breach of contract.

As previously discussed, claims covered by 340.6 are time barred because, at the latest, the statute accrued when Plaintiff filed her Shasta County action in August 2023. Consequently, the breach of contract cause of action is time barred in its entirety. Accordingly, the demurrer is sustained without leave amend.

Motion to Strike

The motion is granted regarding the reference to the allegation of a November 21, 2021 pro hac vice application. Judicially noticeable court records clearly indicate the application was filed November 21, 2022.

The motion is granted with leave to amend concerning the references to B&P 17206 and 17208. As Defendants correctly noted, neither of those sections relate to remedies for unfair competition violations.

The motion is denied in all other respects.

To the extent leave to amend has been granted, Plaintiff shall amend within 20 days' notice of this order. Defendants shall prepare the form of order.

4. 25CV03376 Li, Yi v. AMCAL Chico LLC

EVENT: Defendants' AMCAL Chico LLC and Asset Living Corporation's Demurrer to Plaintiff's Complaint

Preliminarily, although it appears based on the reply filed by Defendant that Defendant received notice of both the opposition and the First Amended Complaint, there were no proofs of service accompanying those documents. Plaintiff is admonished that all filings must be served on opposing counsel and include a proof of service which complies with the requirements of the Code of Civil Procedure.

In light of the filing of the First Amended Complaint, which was filed in compliance with CCP 472, the demurrer to the complaint is moot.

5. **26CV00263 In re: Strizel, Makaila Ashley Katelyn**

EVENT: Change of name (adult)

The Court is in receipt of the proof of publication and will sign the decree provided.

6. **26CV00655 In re: Conkey-Wiebelhaus, Illiana Jerene**

EVENT: Change of name (minor)

The Court will hear from Petitioner. There is no proof of publication on file. Additionally, there is no proof of service demonstrating the non-consenting parent was served with the Petition as required by CCP 1277.

7. **26CV01122 Hhayss, Incorporated v. Pello, Nick**

EVENT: Petition for Release of Property from Lien

The Petition is continued to June 24, 2026 at 9:00am for Petitioner to effectuate service.

8. **26CV01185 Steele-Pfleger, Amanda v. Brower's 25Hr Towing et al.**

EVENT: OSC re: Preliminary Injunction

The Court will conduct a hearing. The Court notes there is no indication in the file that Defendants have been served with the TRO, OSC, Ex Parte Application, and Summons and Complaint. Until that occurs, the Court lacks jurisdiction to hear the OSC re: preliminary injunction.

Further, although the order permitted Plaintiff to serve these documents in a variety of ways, including email or “any method reasonably calculated to provide actual notice”, CRC 3.1150(a) requires that when Defendant has yet to appear (as is the case here) the OSC must be served in the same manner as the summons and complaint.

The Code of Civil Procedure provides specific requirements for the service of summons. Those requirements are not as relaxed as the various means of service described in the previous order. Plaintiff will need to serve all documents in compliance with the Code of Civil Procedure requirements for service of the summons. Without compliance, the Court lacks jurisdiction to hear the preliminary injunction.

The Court is inclined to continue the OSC re: preliminary injunction one time to permit Plaintiff the opportunity to effectuate code compliant service. The continued hearing date is June 24, 2026 at 9:00am. Notice of that hearing date and time must also be served on Defendant. The TRO would remain in place during that time. However, if notice is not properly effectuated prior to the continued hearing, the Court would be inclined to deny the OSC re: preliminary injunction and dissolve the TRO.