SUPERIOR COURT OF SAN MATEO COUNTY

400 County Center
Redwood City, CA 94063

1050 Mission Road
South San Francisco, CA 94080

800 North Humboldt Street
San Mateo, CA 94401

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Minute Order

Brian Williams vs Safelite Group, Inc.

23-CIV-00025
07/18/2024 10:30 AM
Motion to Strike
Hearing Result: Held

Judicial Officer: Greenberg, Susan
Courtroom Clerk: Alexandrina Ortega

Location: Courtroom 2B
Courtroom Reporter: Esther Chun

Parties Present

BERENS, DANIEL W.	Attorney
JUNG, GIA	Attorney
LIPSCOMB-JACKSON, TIFFANY	Attorney
MCDONELL, JASON	Attorney
MOLUMPHY, MARK C.	Attorney
REDENBARGER, TYSON	Attorney

Exhibits

Minutes

Journals

Case Events

- Matter is called at: 10:31 am

- Party appeared by audio and/or video:
Defense Columbus Associates: Olivia Worthington & Kendall Beard

- Argument Presented by Counsel. Matter Submitted:
10:33 am- 10:43 am- Matter argued by Mr. Berens.
10:43 am- 10:48 am- Ms. Jung responds.
10:49 am- 10:52 am- Mr. Berens replies.
10:52 am- Matter submitted.

- Tentative ruling adopted and becomes order:
Defendant Safelite Group, Inc.'s Motion to Strike is GRANTED in part and DENIED in part.

A. Legal standard for motion to strike

Code of Civil Procedure 436 empowers the court to, upon a party's motion or sua sponte, strike out any irrelevant, false, or improper matter inserted in any pleading, as well as all or any part of the pleading not drawn or filed in conformity with the law, rules of court, or an order of the court. Code Civ. Proc., 436. The grounds upon which the motion is based must appear on the face of the challenged pleading or from a matter judicially noticeable. Code Civ. Proc., 437, subd. (a). And courts "read allegations of a

pleading subject to a motion to strike as a whole, all parts in their context, and assume their truth." Atwell Island Water Dist. v. Atwell Island Water Dist. (2020) 45 Cal.App.5th 624, 628.

Motions to strike can be used to reach defects in or objections to pleadings that are not challengeable by demurrer. Complaints, cross-complaints, answers and demurrers are all subject to a motion to strike. Code Civ. Proc., 435(a)(2). Moreover, a motion to strike can be used to attack the entire pleading, or any part thereof-i.e., even single words or phrases, unlike demurrers. Baral v. Schnitt (2016) 1 Cal.5th 376, 393-394; Warren v. Atchison, Topeka & Santa Fe Ry. Co. (1971) 19 Cal.App.3d 24, 40; 1550 Laurel Owner's Assn., Inc. v. Appellate Div. of Superior Ct. (2018) 28 Cal.App.5th 1146, 1156-1157. The pleadings should be construed liberally, with a view to substantial justice, and the allegations in the complaint are to be considered in context and presumed to be true. Clauson v. Superior Ct. (1998) 67 Cal.App.4th 1253, 1255. However, conclusory allegations will not be stricken where the complaint contains sufficient facts to support such allegation. Perkins v. Superior Ct. (1981) 117 Cal.App.3d 1, 6.

B. Legal standard for Insurance Fraud Prevention Act ("IFPA") claim

California law holds that fraud must be pled with specific particularity, as general and conclusory allegations will not suffice. Lazar v. Superior Ct. (1996) 12 Cal.4th 631, 645 (citing Stansfield v. Starkey (1990) 220 Cal.App.3d 59, 74; Nagy v. Nagy (1989) 210 Cal.App.3d 1262, 1268). In order to plead fraud, including an Insurance Fraud Protection Act ("IFPA") cause of action, the plaintiff must plead facts showing the how, when, where, to whom, and by what means the representations were tendered. Ibid. (quoting Stansfield, supra, 220 Cal.App.3d at 73). In a case where a plaintiff is asserting fraud against a corporate employer, the plaintiff must also "allege the names of the persons who made the allegedly fraudulent representations, their authority to speak, to whom they spoke, what they said or wrote, and when it was said or written." Ibid. (quoting Tarmann v. State Farm Mutual Auto Ins. Co. (1991) 2 Cal.App.4th 153, 157).

However, in situations where the allegations indicate that "the facts lie more in the knowledge of the opposite party," the specificity requirement is relaxed accordingly. Tarmann v. State Farm Mutual Auto Ins. Co. (1991) 2 Cal.App.4th 153, 158 (quoting Turner v. Milstein (1951) 103 Cal.App.2d 651, 658). In Tarmann, the court declined to apply this exception because the defendant "ha[d] no more reason to know who made the allegedly false representations to [plaintiff] than [plaintiff]." Ibid. The implication of that conclusion is that should this Court find that defendant did have a reason to know the details of the allegedly false representations more than the plaintiff had, then this Court ought to apply the relaxed standard.

The IFPA was enacted to prevent automobile insurance fraud in order to, among other things, "significantly reduce the incidence of severity and automobile insurance claim payments and ... therefore produce a commensurate reduction in automobile insurance premiums." Ins. Code, 1871, subd. (c). To permit "the full utilization of the expertise of the [insurance] commissioner and the department [of insurance] so that they may more effectively investigate and discover insurance frauds," id. at 1871, subd. (a), the IFPA contains a qui tam provision that allows any interested person to bring an action for damages and penalties for fraudulent insurance claims on behalf of the individual and the State of California. Id. at 1871.7, subd. (e)(1). The person bringing the qui tam action, referred to as the "relator," stands in the shoes of the State of California, which is deemed to be the real party in interest. State ex rel. Aetna Health of California, Inc. v. Pain Management Specialist Medical Group (2020) 58 Cal.App.5th 1064, 1069-1070; People ex rel. Strathmann v. Acacia Research Corp. (2012) 210 Cal.App.4th 487, 500. The relator in an Insurance Code 1871.7 qui tam action does not personally recover damages, but if successful receives a substantial percentage of the recovery as a bounty. Ins. Code, 1871.7, subd. (g); State ex rel. Aetna Health of California, Inc. v. Pain Management Specialist Medical Group, supra, 58 Cal.App.5th at 1070; People ex rel. Strathmann v. Acacia Research Corp., supra, 210 Cal.App.4th at 500.

Williams asserts a cause of action pursuant to Insurance Code 1871.7(b). That section prescribes civil

penalties for violations of Penal Code 549, 550, or 551, which target insurance fraud. Penal Code 550 prohibits knowingly preparing, presenting, or causing to be presented (1) "any false or fraudulent claim for the payment of a loss or injury, including payment of a loss or injury under a contract of insurance," or (2) "any writing, with the intent to ... allow it to be presented ... in support of any false or fraudulent claim." Pen. Code, 550, subd. (a)(1), (5).

A claim need not contain an express misstatement of fact to be actionable under Penal Code 550 and Insurance Code 1871.7(b). State ex rel. Wilson v. Superior Ct. (2014) 227 Cal.App.4th 579, 601; People ex rel. Allstate Ins. Co. v. Suh (2019) 37 Cal.App.5th 253, 260. But rather, these sections require only that a person knowingly, and with intent to defraud, "(1) present a claim that is false or fraudulent in some respect, (2) present, prepare, or make a statement containing false or misleading information about a material fact, or (3) conceal an event that affects a person's right or entitlement to insurance benefits." People ex rel. Allstate Ins. Co. v. Suh, supra, 37 Cal.App.5th at 260. In other words, "[a]n insurance claim is fraudulent under [Penal Code 550 and Insurance Code 1871.7(b)], when it is 'characterized in any way by deceit,'" ibid., or "result[s] from deceit or conduct that is done with an intention to gain unfair or dishonest advantage." State ex rel. Wilson v. Superior Ct., supra, 227 Cal.App.4th at 602.

C. No false or improper allegations on face of pleadings or judicially noticeable matters

Both parties cite People ex rel. Allstate Ins. Co. v. Discovery Radiology Physicians, P.C. (2023) 94 Cal.App.5th 521 extensively in their briefs. In that case, Allstate Insurance Company ("Allstate") alleged that three medical corporations founded by a non-physician to broker radiology services solicited patients, sent patients to magnetic resonance imaging ("MRI") facilities with whom the non-physician and three medical corporations had contracted, and then billed Allstate for the MRIs. Id. at 527-528. The resulting bills, Allstate alleged, falsely identified the technical and professional services as having been performed by the three medical corporations, as well as inflated the fees for the services provided. Id. at 528. The Court of Appeal addressed four questions, including: (1) whether a business model as alleged could be unlawful; (2) if it were found to be unlawful, whether it gave rise to an IFPA cause of action; and (3) whether fraud was pled with sufficient particularity. Id. at 532. After ruling that the business model violated the Medical Practice Act, id. at 539-541, the Court of Appeal also held that the complaints were pled with the requisite specificity. Id. at 549. Safelite points out to the fact that Allstate in this case had furnished the court with each allegedly false insurance claim by claim number and other claim-specific data, see id. at 550, to contend that Williams must also plead his ECTC scheme claim with the same level of specificity. Williams contends that the specificity requirement should be relaxed because Safelite is more likely to possess the requisite information than Williams.

It is important to evaluate the procedural history of People ex rel. Allstate Ins. Co. v. Discovery Radiology Physicians, P.C. (2023) 94 Cal.App.5th 521 in determining what level of specificity is required in terms of pleading. The trial court sustained demurrers to the two original complaints on the basis that Allstate did not plead fraud with sufficient specificity, requiring Allstate to allege specific facts as to how each of the 2,300 billing statements submitted by defendants was fraudulent, and also requiring defendants to attach as an exhibit a spreadsheet containing itemized details. Id. at 528. The amended complaints contained spreadsheets as the trial court requested. Id. at 529, 531. However, the trial court again sustained the demurrers on the basis that the amended complaints lacked sufficient specificity. It is these amended complaints that the appellate court reviewed and deemed to be found sufficient. Id. at 549. First, the case does not stand for the point that all subsequent IFPA cases must be pled with same level of specificity as Allstate's amended complaint to make a sufficient IFPA or similar fraud claim. The appellate court was overturning the trial court's finding that Allstate needed to plead their IFPA claim with further specificity and holding that Allstate had pleaded fraud to meet California pleading standards, not holding that future cases need that same level of specificity to survive demurrer. Second, a substantial issue in that case that does not apply to this case is the question of whether unlicensed practice of medicine can serve as a basis for an IFPA claim. Id. at 543-545. That was an important factor in the trial court sustaining demurrer and a significant question of law for the appellate court in that

case that does not apply to this case. It is hard to separate the legal basis for making an IFPA claim from the determination of what constitutes a viable claim pled with the requisite specificity.

The Court of Appeal in State of California ex rel. McCann v. Bank of America, N.A. (2011) 191 Cal.App.4th 897 explains that qui tam actions "are meant to encourage private whistleblowers, uniquely armed with information about false claims, to come forward," and therefore these insiders "should have adequate knowledge of the fraudulent acts to comply with the pleading requirements." Id. at 907. This heightened pleading standard is necessary to, among other reasons, "deter the filing of complaints as a pretext for the discovery of unknown wrongs." Ibid. In State ex rel. Edelweiss Fund, LLC v. JPMorgan Chase & Company (2023) 90 Cal.App.5th 1119, the Court of Appeal found, using the standard espoused in City of Pomona v. Superior Court (2001) 89 Cal.App.4th 793, the plaintiff had adequately pled fraud with the requisite specificity. State ex rel. Edelweiss Fund, LLC v. JPMorgan Chase & Company, supra, 90 Cal.App.5th at 1137 (quoting City of Pomona v. Superior Ct., supra, 89 Cal.App.4th at 803). Specifically, the court found that plaintiff had alleged that "between 2009 and 2013, defendants submitted false claims for payment, and that those claims were false because defendants' robo-resetting practices caused them to violate their express contractual obligations to reset the interest rate for California VRDOs at the lowest possible rate that would enable them to sell the series at par. These allegations satisfy the dual purposes of the particularity requirement: to put defendants on notice of the alleged fraudulent conduct and deter fishing expeditions for unknown wrongs." Id. at 1137-1138. In doing so, the Court of Appeal found that the trial court's finding that plaintiff required more particularized allegations was erroneous. Id. at 1126, 1137.

Williams was employed at Safelite and Belron as a product development and strategy manager and strategic products procurement manager, respectively. FAC, 14. It does not appear from the face of any pleading or other judicially noticeable facts that Williams would have detailed knowledge of Safelite's insurance billing claims. This can be readily distinguished from the plaintiff in People ex rel. Allstate Ins. Co. v. Discovery Radiology Physicians, P.C. (2023) 94 Cal.App.5th 521, as Allstate was the insurance company allegedly being defrauded. The knowledge base that Allstate had would be the itemized insurance bills, but not necessarily knowledge of the defendant's business practices. Here, the reverse is true: Williams would have more knowledge of defendant's business practices and either Safelite or the plethora of automobile insurance companies alleged in the FAC to have been defrauded. FAC, 1. State of California ex rel. McCann v. Bank of America, N.A. (2011) 191 Cal.App.4th 897 can also be distinguished because the plaintiff in that case could not show that the money should escheat to the state, or any amount of money that was knowingly incorporated into defendant's profits wrongfully. Id. at 907.

Here, it is pleaded that at the start of the COVID-19 pandemic in March of 2020, Safelite started the ECTC program. FAC, 113. Numerous Safelite executives, including Jon Cardi, Steve Miggo, Renee Cacchillo, Tim Spencer, Cindy Elliott, Ryan Trierweiler, and Tom Feeney, were involved in designing the program. Id. at 114. However, the sanitization wipes that Safelite developed to eliminate COVID-19 from the surfaces of serviced vehicles were not sent to Safelite automobile service centers until September of 2020. Id. at 119-120, 128. On the contrary, Safelite billed insurance companies and customers for this service that it was not performing, both before and after the wipes were available as of September of 2020. Id. at 122-125; see also 132-133. Even after the wipes were made available to automobile service centers, said centers were not requesting wipes to be delivered because the service was not being performed. Id. at 129. Even if wipes were being sent, the amount sent to centers was wholly inadequate compared to the number of jobs that Safelite billed as having had the ECTC service performed. Id. at 139-141. Safelite executives knew of these problems, but did not attempt to remedy it until the latter half of January of 2021. Id. at 130, 134-137. Through the end of the program, Safelite never attempted to change the billing practice, inform the insurance companies of this problem, or refund insurance companies and customers for services not completed. Id. at 148, 153-155.

This IFPA claim adequately informs Safelite of what conduct constituted insurance fraud, when it took

place, who were the main actors involved in the fraud, and other necessary particularities. It does not constitute material that should be stricken from the complaint due to its lack of specificity. That multiple reasonable inferences can be drawn from Safelite's belated attempts to rectify the situation does not mean that Williams has entirely misconstrued the situation to warrant striking the ECTC scheme claim. But rather, this is a question that requires a factfinder to weigh the evidence, which is best done via summary judgment motion or trial, not a motion to strike.

Though Safelite argues that Williams is required to plead this cause of action identifying each corporate actor's wrongful actions, its cited case has a different factual background from the one in this case. In West v. JPMorgan Chase Bank, N.A. (2013) 214 Cal.App.4th 780, the plaintiff sued the defendant based on representations that the defendant's employees made to plaintiff about a home loan modification program. Id. at 793. The plaintiff identified the employees by job title and the nature of the misrepresentations, which the court found sufficient because it gave defendant notice of the charges. Id. at 793-794. This case is factually distinguished by the fact that it is not specific employees of the defendant that misrepresented information to an outsider plaintiff. What is required is that plaintiff plead the fraud cause of action with requisite specificity to place the defendant on notice of the wrongful conduct and to investigate as necessary. See id. at 794; compare Tarmann v. State Farm Mut. Auto. Ins. Co. (1991) 2 Cal.App.4th 153, 157-158.

Safelite also moves to strike paragraph 151 of the FAC on the basis that it contains information protected by the attorney-client privilege. This is supported by a declaration from Jonathan Vorce, the Director of Risk and Internal Audit at Belron International. See generally Declaration of Jonathan Vorce ("Vorce Decl."), filed May 3, 2024. This constitutes admissible evidence supporting a finding that investigation alleged in paragraph 151 is covered by attorney-client privilege. Given that Williams has not tendered admissible evidence showing that the attorney-client privilege was waived by Belron or Safelite sharing this information in a manner to render it non-privileged, this Court concludes that this information is in fact privileged and therefore improper. Therefore, this Court in its discretion strikes paragraph 151 from the FAC.

Plaintiff will file a Second Amended Complaint omitting paragraph 151 from its contents within 10 days of the date of this order.

If the tentative ruling is uncontested, it shall become the order of the Court. Thereafter, counsel for Plaintiff shall prepare a written order consistent with the court's ruling for the court's signature, pursuant to California Rules of Court, rule 3.1312, and provide written notice of the ruling to all parties who have appeared in the action, as required by law and the California Rules of Court. The Court alerts the parties to revised Local Rule 3.403(b)(iv) (amended effective January 1, 2024) regarding the wording of proposed orders.

Others

Comments:

Future Hearings and Vacated Hearings

July 18, 2024 10:30 AM Complex Case Management Conference
Greenberg, Susan
Ortega, Alexandrina
Courtroom 2B

December 10, 2024 9:00 AM Motion for Order
Greenberg, Susan
Courtroom 2B

December 10, 2024 9:00 AM Complex Case Management Conference
Greenberg, Susan
Courtroom 2B

September 10, 2025 9:00 AM Pretrial Conference
Greenberg, Susan
Courtroom 2B

September 29, 2025 9:00 AM Court Trial
Greenberg, Susan
Courtroom 2B