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THE EHRLICH LAW FIRM

Journal of Consumer Attorneys Associations for Southern California
ADVOCATE
November 2023

Appellate Reports

LEGAL MALPRACTICE COMPLAINTS AND THE STATUTE OF LIMITATIONS; ALSO, WC AS EXCLUSIVE REMEDY FOR SCHOOL VOLUNTEERS

Legal Malpractice; statute of limitations; relation-back of amended complaint; claims asserted by LLP and principal of LLP

Engel v. Pech (2023) _ Cal.App.5th _ (Second Dist., Div. 2)

Jason Engel, a forensic accountant, is the principal of Engel & Engle, LLP, a limited liability partnership (the LLP). In 2018, Engel and the LLP retained attorney Richard Pech. The retainer agreement specified that Pech was retained "solely" "for legal representation" in pending litigation with Wells Fargo (the Lawsuit). Engel signed the retainer agreement both as "client" and as a "partner" of the LLP. But only the LLP – not Engel – was a party to the Lawsuit.

In February 2022, Engel, representing himself (and not the LLP) filed a lawsuit against Pech asserting claims for professional negligence, breach of contract, and breach of fiduciary duty. The professional-negligence claims were all based on Pech's allegedly deficient litigation during the Lawsuit.

In April 2022, Engel filed a first-amended complaint, which was identical to the original except that it added the LLP as a plaintiff and corrected certain factual inaccuracies in the original complaint. Pech demurred, arguing that (1) the LLP's claims were time barred, and (2) Engel's claims were barred because only the LLP had standing to sue for malpractice arising from the Lawsuit, since Engle was not a party to the Lawsuit. The trial court sustained the demurrer without leave to amend. Affirmed.

A legal-malpractice claim has a one-year limitations period, which begins to run when the attorney is formally substituted out as counsel or completes the task for which he or she was retained. Because the LLP formally substituted Pech out as an attorney on February 25, 2021, the LLP's claims that were asserted for the first time in the first amended complaint are untimely because that amended complaint was not filed until April 21, 2022 – nearly two months *after* the one-year limitations period expired. Thus, whether the LLP's malpractice-related claims were properly dismissed as untimely depends entirely on whether those claims "relate back" to Engel's claims asserted in the timely filed complaint.

As a general rule, subsequent amendments to a pleading will "relate back" to an earlier, timely filed pleading if they (1) rest on the same general set of facts, (2) involve the same injury, and (3) refer to the same instrumentality, as the original pleading. Subsequent amendments that might relate back encompass amendments adding new causes of action between previously named, adding new defendants, and, as is pertinent here, adding new plaintiffs.

But when it comes to adding a new plaintiff, courts have refined the general rule: A new plaintiff's claims relate back to claims asserted in a previously and timely filed complaint if the new plaintiff is seeking to enforce the same right as a previously named plaintiff (because, in that case, the amendment relies on the same general set of facts, involves the same injury, and refers to the same instrumentality of the defendant's conduct).

Conversely, a new plaintiff's claims do not relate back if the new plaintiff is seeking to enforce a right independent of the right asserted by the previously named plaintiff(s). This occurs when (1) the new plaintiff's claims rest on a wholly different legal liability or obligation (that is, a distinct cause of action) from that originally alleged; (2) the new plaintiff's claims entail a distinct injury; or (3) the new plaintiff's claims impose greater liability upon the defendant than the original plaintiff's claims.

Applying this law, the Court concluded that the malpractice claims brought by the LLP do not relate back to the timely filing of the malpractice claims brought by Engel because Pech's "legal liability or obligation" to the LLP is "different" and "distinct" from his "legal liability or obligation" to Engel. In addition, the allegations in the operative complaint as well as the attached exhibits show, as a matter of law, that the only entity to have suffered damages attributable to Pech's alleged malpractice is the LLP, not Engel. Consequently, Engel cannot establish he was damaged by Pech's malpractice. As a result, Engel's malpractice claims fail as a matter of law.

Federal class-action procedure; status of party named in caption, but not discussed in body of complaint; standing of putative class members before class is certified

Halbeit v. iRhythm Technologies, Inc. (9th Cir. 2023) _ F.4th _.

In early 2021, iRhythm Technologies, Inc.'s (iRhythm) stock price fell after it received a historically low Medicare reimbursement rate for one of its products. Mark Habelt, an investor in iRhythm, filed a putative securities fraud class action against iRhythm and one of its former chief executive officers, alleging that investors were misled during the regulatory process preceding this stock price collapse. Pursuant to the procedures of the Private Securities Litigation Reform Act of 1995 (PSLRA), the district court appointed Public Employees' Retirement System of Mississippi (PERSM) as the lead plaintiff in the action. PERSM filed a first and then second amended complaint (SAC, the operative pleading) alleging securities fraud claims against iRhythm and additional corporate officers (together, Defendants). Defendants filed a motion to dismiss PERSM's SAC for failure to state a claim. PERSM did not appeal the district court's grant of this motion. Habelt filed a timely notice of appeal. Appeal dismissed for lack of jurisdiction.

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Generally, only the parties to a lawsuit, or those that properly become parties, may appeal an adverse judgment. Habelt, however, is not a party to the action. And while a non-party may appeal under exceptional circumstances, there are no extraordinary circumstances here that confer upon Habelt standing to appeal as a non-party. Dismissal is therefore required.

After Habelt filed the putative class action on behalf of himself and a putative class of persons who purchased iRhythm's common stock, pursuant to the PSLRA, three putative class members moved to be appointed lead plaintiff in the suit, including PERSM. Habelt did not make a motion for appointment as lead plaintiff and did not oppose PERSM's motion. And he did not participate in the litigation after PERSM's appointment as lead plaintiff.

As lead plaintiff, PERSM gained control over aspects of litigation such as discovery, choice of counsel, and assertion of legal theories. PERSM later filed the SAC, alleging that Defendants committed violations of the Securities Exchange Act of 1934. The caption of the SAC listed Habelt as the "Plaintiff." But the SAC otherwise made no reference to Habelt, to his alleged losses, or to his individual claims, including in a subsection titled "Parties."

Habel's filing of the original complaint and the reference to him in the caption of the SAC are not sufficient to make him a "party" to the lawsuit. The caption of an action is only the handle to identify it. For that reason, a person or entity can be named in the caption of a complaint without necessarily becoming a party to the action. Beyond an individual's mere inclusion in the caption, the more important indication of whether she is a party to the case are the allegations in the body of the complaint.

While Habelt filed the initial complaint in this matter, that complaint was extinguished when the FAC and the SAC were filed. The rule is that an amended complaint supersedes the original, the latter being treated thereafter as non-existent. And the body of the operative pleading – the SAC – makes clear that PERSM is the sole plaintiff. The SAC makes mention neither of Habelt nor of his individual claims. He was therefore not a party to the lawsuit.

Nor does Habelt's status as a putative class member give him standing to appeal. Although an unnamed member of a certified class may be considered a party for the particular purpose of appealing an adverse judgment, the definition of the term "party" does not cover an unnamed class member before the class is certified. Nor does Habelt demonstrate that there are exceptional circumstances that confer standing on him to appeal as a non-party. He did not have "significant involvement" in the district court proceedings, nor do the equities favor hearing his appeal, particularly where the Defendant conceded at oral argument that, as a non-party to the action, he was not *bound by the district court's judgment dismissing the case*.

Workers' compensation exclusive remedy; are school volunteers "employees" for purposes of workers' compensation exclusivity?

Perez v. Galt Joint Union Elementary School District (2023) _ Cal.App.5th _ (Third Dist.)

Under the Workers' Compensation Act (Lab. Code, § 3200 et seq., the Act) the right to recover workers' compensation benefits is the sole remedy of an employee against an employer for an injury arising out of and in the course of employment. Generally, a person "performing voluntary service[s] for a public agency ... who does not receive remuneration for the services" is excluded from the definition of "employee" under the Act. (Lab. Code, § 3352, subd. (a)(9).) However, under certain circumstances, usually upon the governing board's adoption of a resolution, volunteers of statutorily identified organizations can be deemed employees under the Act. (See, e.g., Lab. Code, §§ 3361.5-3364.7.)

One such exception to the exclusion of volunteers from the definition is contained in Labor Code section 3364.5, and applies "upon the adoption of a resolution of the governing board of the school district" to "person[s] authorized by the governing board of a school district or the county superintendent of schools to perform volunteer services for the school district" who are injured "while engaged in the performance of any service under the direction and control of the governing board of the school district or the county superintendent." (Lab. Code, § 3364.5.)

Here, plaintiff and appellant Anel Perez filed a personal injury action against the school district after she was seriously injured while volunteering at an elementary school event. Following a bench trial, the court entered judgment in favor of the district on the ground that a resolution passed under Labor Code section 3364.5 in 1968 by the "Governing Board of Galt Joint Union School District of Sacramento and San Joaquin Counties" for the "Galt Joint Union School District" converted plaintiff's status to that of an employee under the Act, rendering workers' compensation the sole and exclusive remedy to compensate plaintiff for her injuries. Affirmed.

Based on the principles of statutory construction, the Court concluded (1) that as long as a resolution has been passed at some point by the governing board of a district and not later rescinded, Labor Code section 3364.5 does not require that district board members and staff be aware of the statute at the time a volunteer is injured in order for it to apply; (2) district board members do not need to know about and authorize a specific volunteer's involvement in a specific activity for the exception to apply; and (3) district board members do not need to directly control and direct a volunteer's actions for the exception to apply.

Because the trial court's factual findings that the governing board of the district passed the resolution is supported by substantial evidence, the resolution was correctly relied on to have Perez deemed

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to be an "employee" and therefore subject to workers' compensation exclusivity.

University students and "fair procedure"

Requirements on federally funded private universities when investigating and disciplining students accused of sexual misconduct; scope of duty of duty to provide "fair procedure"
Boermeester v. Carry (2023) _ Cal.5th _ (Cal. Supreme Court)

In this case, respondents University of Southern California and its Vice President of Student Affairs, Ainsley Carry (collectively, USC) expelled appellant Matthew Boermeester from the private university after conducting a two-month investigation and determining that he violated USC's policy against engaging in intimate partner violence. Boermeester filed a petition for a writ of administrative mandate under Code of Civil Procedure section 1094.5, alleging that he was deprived of the "fair trial" required by that section. A divided Court of Appeal agreed, with the majority concluding that "USC's disciplinary procedures . . .were unfair because they denied Boermeester a meaningful opportunity to cross-examine critical witnesses at an in-person hearing."

Reversed. The Court held that, though private universities are required to comply with the common law doctrine of fair procedure by providing accused students with notice of the charges and a meaningful opportunity to be heard, they are not required to provide accused students the opportunity to directly or indirectly cross-examine the accuser and other witnesses at a live hearing with the accused student in attendance, either in person or virtually. Requiring private universities to conduct the sort of hearing the Court of Appeal majority envisioned would be contrary to our long-standing fair procedure admonition that courts should not attempt to fix any rigid procedures that private organizations must "invariably" adopt Instead, private organizations should "retain the initial and primary responsibility for devising a method" to ensure adequate notice and a meaningful opportunity to be heard.

ADA and websites

Does the Americans with Disabilities Act (ADA) and Unruh Act permit a claim against an entity whose website is not compatible with screen-reading software?
Martin v. THI E-Commerce, LLC (2023) __ Cal.App.5th __ (Fourth District, Div. 3)

In a 2-1 decision, the court affirmed a judgment for the defendants on demurrer, based on a finding that websites are not places of public accommodation under the ADA and the ADA applies only to physical places. All three members of the panel agreed that the complaint failed to state a claim for intentional discrimination. The dissent would have reversed, finding that the ADA applies to websites, which are a "place" on the internet where information is available about a particular subject.

Recreational immunity

Scope of recreational immunity as applied to diving off a concrete "groin" adjacent to a beach and swimming area.
Carr v. City of Newport Beach (2023) _ Cal.App.5th __ (Fourth Dist., Div. 3.)

Plaintiff Brian Carr dove off a concrete groin that was built to control erosion. The groin was essentially a long platform that extended from the beach to the portion of the water designated as a "swimming area." There was no "no diving" sign posted by the groin. Carr struck his head on the bottom and fractured his neck, suffering paralysis. The trial court granted summary judgment for the City, based on Government Code section 831.7, for "recreational immunity." In a 2-1 decision, the Court of Appeal affirmed.

Government Code section 831.7 "furnishes governmental immunity for injury sustained by 'any person who participates in a hazardous recreational activity . . . .' [Citation.] As defined by that section, 'hazardous recreational activity' includes '[a]ny form of diving into water from other than a diving board or diving platform, or at any place or from any structure where diving is prohibited and reasonable warning thereof has been given."

Carr asserted that this immunity applies only to places or structures where diving is prohibited and reasonable warning thereof has been given. The majority rejected this view, noting that the statute is written in the disjunctive, and through the use of a comma the Legislature "differentiated between diving from places that are not diving boards or diving platforms and places or structures that are." Thus, diving into water amounts to a hazardous recreational activity if it occurs in either of two ways: (1) from any location other than a diving board or diving platform; or
(2) from any place or any structure where diving is prohibited and reasonable warning thereof has been given. Here, the groin from which Carr dove is not a "diving board" or "diving platform." Hence, the statute immunized the City for claims arising from Carr's diving from the groin.

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