

UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF
CALIFORNIA

Cole-Kelly v. Yee

Cole-Kelly · No. 22-cv-02841-HSG · Decided March 13, 2023

SUMMARY

The United States District Court for the Northern District of California granted defendants’ motions to dismiss three related putative class actions challenging the constitutionality of California’s Unclaimed Property Law. The court held that claims seeking interest accrued on unclaimed property were barred by sovereign immunity and that the constitutional claims were foreclosed by controlling Ninth Circuit precedent. The court denied a request for a three-judge panel, dismissed the cases without leave to amend, terminated the pending class-certification and related motions as moot, and directed entry of judgment for defendants.

CASE DETAILS

COURT	United States District Court for the Northern District of California
WRITING FOR THE COURT	Haywood S. Gilliam, Jr.
JURISDICTION	United States District Court for the Northern District of California
DECIDED	March 13, 2023
DOCKET	22-cv-02841-HSG
DISPOSITION	dismissed
PROCEDURAL POSTURE	Putative class action challenging the constitutionality of California's Unclaimed Property Law. The district court considered defendants' Rule 12(b)(6) motions to dismiss and plaintiffs' motions for partial summary judgment, class certification, and consolidation.
STANDARD OF REVIEW	The court reviewed the complaints under Federal Rule of Civil Procedure 12(b)(6), accepting well-pleaded factual allegations as true and construing the pleadings in the light most favorable to plaintiffs, but disregarding conclusory allegations, unwarranted deductions, and unreasonable inferences.
PRECEDENTIAL VALUE	Unpublished district court order; persuasive value only.
PARTIES	Alison Cole-Kelly v. Betty T. Yee, Defendants

TOPICS

motions to dismiss

eleventh amendment immunity

takings clause

due process

civil procedure

PRACTICE AREAS

constitutional law

civil procedure

civil rights

remedies

QUESTIONS PRESENTED

1. Whether the actions required a three-judge district court under 28 U.S.C. § 2284.
2. Whether the Eleventh Amendment barred claims seeking payment of interest or other additional compensation for unclaimed property held by California.
3. Whether California's Unclaimed Property Law violates the Fifth Amendment Takings Clause by failing to pay owners interest earned on unclaimed property.
4. Whether the derivative due process and equal protection claims stated viable claims.
5. Whether the complaints could be cured by amendment.

HOLDINGS

1. The action did not require a three-judge district court because it did not concern apportionment of congressional districts or a statewide legislative body, and the former statutory requirement for a three-judge court in constitutional challenges to state statutes had been repealed.
2. Claims against California and its agencies seeking payment of interest or other additional compensation earned on unclaimed property while held by the State were barred by the Eleventh Amendment.
3. The plaintiffs failed to state a viable Fifth Amendment Takings Clause claim because Ninth Circuit precedent squarely rejected a compensable right to interest earned on unclaimed property that escheats to California and held the current version of the Unclaimed Property Law facially constitutional.
4. The plaintiffs' due process and equal protection claims failed because they were derivative of the rejected Takings Clause theory and therefore failed for the same reason.
5. Dismissal without leave to amend was proper because the pleading could not possibly be cured by alleging additional facts.

KEY QUOTATIONS

“The Ninth Circuit could not be more clear: Plaintiffs’ claims are not legally viable.” (at 6)

“Because the “pleading[s] could not possibly be cured by the allegation of other facts,”” (at 7)

FACTUAL BACKGROUND

The three related putative class actions challenge California's Unclaimed Property Law, which requires holders such as banks, insurers, corporations, and utilities to report and transfer certain inactive property to the State's custody. Plaintiffs alleged that California retains and uses interest, dividends, investment returns, and other benefits earned on the property while in state custody, without paying those amounts to property owners. They

characterized the State's failure to pay the property's alleged time value as a taking and as a violation of due process and equal protection.

PROCEDURAL HISTORY

Cole-Kelly, Coté, and Sykes filed related putative class actions alleging that California's Unclaimed Property Law unconstitutionally deprives property owners of interest or other time-value benefits earned while unclaimed property is held by the State. Defendants moved to dismiss. The court denied the request for a three-judge panel, granted the motions to dismiss without leave to amend, terminated the Cole-Kelly plaintiffs' other motions as moot, directed entry of judgment for defendants, and closed the three cases.

DISPOSITION

dismissed

CASES CITED

- *Mendiondo v. Centinela Hospital Medical Center*, 521 F.3d 1097, 1104 (9th Cir. 2008)
- *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 570 (2007)
- *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009)
- *Manzarek v. St. Paul Fire & Marine Insurance Co.*, 519 F.3d 1025, 1031 (9th Cir. 2008)
- *In re Gilead Sciences Securities Litigation*, 536 F.3d 1049, 1055 (9th Cir. 2008)
- *Sprewell v. Golden State Warriors*, 266 F.3d 979, 988 (9th Cir. 2001)
- *Fla. Lime & Avocado Growers, Inc. v. Jacobsen*, 362 U.S. 73, 79-80 (1960)
- *Tedards v. Ducey*, 951 F.3d 1041, 1060 n.37 (9th Cir. 2020)
- *Larry P. By Lucille P. v. Riles*, 793 F.2d 969, 978 n.4 (9th Cir. 1986)
- *Suever v. Connell (Suever II)*, 579 F.3d 1047, 1056-59 (9th Cir. 2009)
- *Turnacliff v. Westly*, 546 F.3d 1113, 1115, 1119 n.3 (9th Cir. 2008)
- *Schneider v. California Department of Corrections*, 151 F.3d 1194, 1201 (9th Cir. 1998)
- *Liu v. Securities and Exchange Commission*, 140 S. Ct. 1936, 1940, 1946 (2020)
- *Miller v. Gammie*, 335 F.3d 889, 899-900 (9th Cir. 2003) (en banc)
- *Lopez v. Smith*, 203 F.3d 1122, 1127 (9th Cir. 2000) (en banc)
- *San Remo Hotel L.P. v. City and County of San Francisco*, 27 Cal. 4th 643, 664 (2002)