UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF CALIFORNIA

Friend v. Google LLC

Friend · No. 24-cv-03571-SVK · Decided March 3, 2025

SUMMARY

The United States District Court for the Northern District of California denies Donald Friend’s motion under Federal Rule of Civil Procedure 59(e) to alter or amend judgment in his action against Google LLC. The court upholds dismissal without leave to amend based on prudential and Article III standing deficiencies and admonishes Plaintiff for apparently fabricating quotations from cited authorities.

CASE DETAILS

COURT	United States District Court for the Northern District of California
WRITING FOR THE COURT	Susan van Keulen
JURISDICTION	United States District Court for the Northern District of California
DECIDED	March 3, 2025
DOCKET	24-cv-03571-SVK
DISPOSITION	other
PROCEDURAL POSTURE	Plaintiff moved under Federal Rule of Civil Procedure 59(e) to alter or amend the judgment dismissing his Third Amended Complaint without leave to amend.
STANDARD OF REVIEW	A Rule 59(e) motion may be granted only in limited circumstances, including to correct manifest errors of law or fact, consider newly discovered or previously unavailable evidence, prevent manifest injustice, or account for an intervening change in controlling law. Granting or denying the motion is within the district court's considerable discretion, and the remedy is extraordinary and to be used sparingly.
PRECEDENTIAL VALUE	unpublished
PARTIES	Donald Friend v. Google LLC

TOPICS

motion for reconsideration · standing · motion to amend · civil procedure · breach of contract

PRACTICE AREAS

civil procedure | commercial litigation | contracts

QUESTIONS PRESENTED

1. Whether the court should alter or amend the judgment under Federal Rule of Civil Procedure 59(e).
2. Whether the court committed a manifest error by determining that Friend's alleged injury was derivative of an injury to Dumpsters Direct and therefore deprived him of prudential standing.
3. Whether Friend's characterization as a creditor or independent contractor, rather than an investor, altered the prudential-standing analysis.
4. Whether an error in the court's Article III standing analysis would require amendment of the judgment.
5. Whether the court erred in denying leave to amend.

HOLDINGS

1. The motion to alter or amend the judgment was properly denied because Friend identified no manifest error of law or fact, newly discovered evidence, manifest injustice, or intervening change in controlling law.
2. Friend lacked prudential standing because his alleged injury was derivative of an injury to Dumpsters Direct and necessarily depended on a prior injury to that entity.
3. NAF Holdings did not support Friend's claims because Friend did not sue Google to enforce his own contractual rights; he sued in connection with a contract between Google and Dumpsters Direct to which he was not a party.
4. Even assuming the court erred in its Article III standing analysis, that error would not warrant altering the judgment because the dismissal independently rested on Friend's lack of prudential standing.
5. The court did not err in denying leave to amend because Friend could not cure the prudential-standing deficiency through amendment without fundamentally changing his allegations.

KEY QUOTATIONS

> *"In general, the Court may grant a Rule 59(e) motion under four circumstances:"* (at 1-2)

> *"Ultimately, granting the motion "is an extraordinary remedy which should be used sparingly," and "the district court enjoys considerable discretion in granting or denying the motion.""* (at 2)

> *"There, the Supreme Court of Delaware held "that a suit by a party to a commercial contract to enforce its own contractual rights is not a derivative action under Delaware law.""* (at 4)

> *"While Plaintiff could provide more allegations in an amended pleading to plausibly tie his injury to Google's fraudulent business listings, no allegations could change the conclusion that the injury is impermissibly derivative."* (at 5)

FACTUAL BACKGROUND

Friend alleged that Google permitted fraudulent business listings to remain on its platform, harming a contractual arrangement between Friend and Dumpsters Direct LLC. His alleged injury was derivative of an injury to Dumpsters Direct, and he sued Google for breach of a contract between Google and Dumpsters Direct to which he was not a party. The court concluded that he lacked prudential standing and Article III standing and that amendment could not cure the prudential-standing defect without fundamentally changing his allegations.

PROCEDURAL HISTORY

Donald Friend sued Google over allegedly fraudulent business listings that allegedly impaired a contractual arrangement between Friend and Dumpsters Direct LLC. The court dismissed the Third Amended Complaint without leave to amend and entered judgment because Friend lacked prudential standing and Article III standing. Friend then moved to alter or amend the judgment, arguing that the court erred in dismissing the action without leave to amend. The court denied the motion.

DISPOSITION

other

CASES CITED

- Allstate Ins. Co. v. Herron, 634 F.3d 1101, 1111 (9th Cir. 2011)
- Kona Enters., Inc. v. Est. of Bishop, 229 F.3d 877, 890 (9th Cir. 2000)
- McDowell v. Calderon, 197 F.3d 1253, 1255 n.1 (9th Cir. 1999)
- NAF Holdings, LLC v. Li & Fung (Trading) Ltd., 118 A.3d 175, 179-80, 182 (Del. 2015)
- Broam v. Bogan, 320 F.3d 1023 (9th Cir. 2003)
- United States v. NH, Inc., 124 F.3d 1198 (9th Cir. 1997)
- United States v. Rockwell International Corp., 124 F.3d 1194 (10th Cir. 1997)
- Shell Petroleum, N.V. v. Graves, 709 F.2d 593 (9th Cir. 1983)
- Pareto v. FDIC, 139 F.3d 696 (9th Cir. 1998)
- Greene v. Discover Bank, No. 23-cv-04825-SVK, 2024 WL 85872, at *2 n.1 (N.D. Cal. Jan. 8, 2024)

OPINION

1 2 3 4 UNITED STATES DISTRICT COURT 5 NORTHERN DISTRICT OF CALIFORNIA 6 7 DONALD FRIEND, Case No. 24-cv-03571-SVK 8 Plaintiff, ORDER DENYING MOTION TO 9 v. ALTER OR AMEND JUDGMENT 10 GOOGLE LLC, Re: Dkt. No. 41 11 Defendant. 12 Self-represented Plaintiff Donald Friend commenced this action to recover from Defendant 13 Google LLC ("Google") for allegedly permitting fraudulent business listings to persist on its 14 platform, thereby stifling a contractual arrangement between Plaintiff and non-party Dumpsters 15 Direct LLC ("DD").

See Third Amended Complaint (the "TAC") at Dkt. 24-1. The Court 16 dismissed the TAC without leave to amend and entered judgment because Plaintiff lacked 17 prudential standing and

Article III standing, and he could not correct those deficiencies in an 18 amended pleading without fundamentally changing his allegations. See Dkts. 39 (the "Prior 19 Order"), 40.1 Plaintiff now moves to alter or amend judgment on the basis that the Court erred in 20 dismissing his claims without leave to amend.

See Dkt. 41 (the "Motion"). The Court disagrees 21 with Plaintiff and DENIES the Motion.2 22 /// 23 /// 24 25 1 The Court assumes familiarity with the allegations of the TAC and the Court's reasoning in the Prior Order. 26 2 Plaintiff and Google have consented to the jurisdiction of a magistrate judge, and the Court has 27 determined that the Motion is suitable for resolution without oral argument.

See Dkts. 6, 9; Civil I. LEGAL STANDARD 1 Under Federal Rule of Civil Procedure 59(e), a party may request that a court "alter or 2 amend a judgment." In general, the Court may grant a Rule 59(e) motion under four 3 circumstances: 4 (1) if such motion is necessary to correct manifest errors of law or fact upon which 5 the judgment rests; (2) if such motion is necessary to present newly discovered or 6 previously unavailable evidence; (3) if such motion is necessary to prevent manifest injustice; or (4) if the amendment is justified by an intervening change in 7 controlling law.

8 See Allstate Ins. Co. v. Herron, 634 F.3d 1101, 1111 (9th Cir. 2011) (citation omitted). The 9 motion does not serve as an excuse for a party "to raise arguments or present evidence for the first 10 time when they could reasonably have been raised earlier in the litigation." See Kona Enters., Inc. 11 v. Est. of Bishop, 229 F.3d 877, 890 (9th Cir. 2000) (citation omitted).

Ultimately, granting the 12 motion "is an extraordinary remedy which should be used sparingly," and "the district court 13 enjoys considerable discretion in granting or denying the motion." See McDowell v. Calderon, 14 197 F.3d 1253, 1255 n.1 (9th Cir. 1999) (citation omitted). 15 II. DISCUSSION 16 Broadly speaking, Plaintiff asserts four justifications for granting the Motion, all of which 17 the Court rejects.

18 A. Justification One: Procedural Posture, Novelty And Stakes 19 Plaintiff's first justification concerns three general reasons for granting the Motion: (1) the 20 Court dismissed the action "at the pleading stage before discovery"; (2) it did so based on "novel 21 standing issues"; and (3) this case present "significant" stakes because "[d]ismissal without leave 22 to amend effectively immunizes [Google] from accountability for fraudulent listings that harm 23 contractors like Plaintiff." See Motion at 2-3.

None of these reasons compels granting the 24 Motion. 25 First, courts routinely dismiss cases at the pleading stage. 26 Second, there is nothing novel about dismissing a case where a plaintiff lacks: (1) 27 prudential standing as one who suffered an indirect injury; or (2) Article III standing as one whose 1 injury was not caused by the defendant. Plaintiff also does not explain why he believes the 2 standing issues here are novel.

3 Third, the Prior Order does not insulate Google from liability for allegedly fraudulent 4 listings. Rather, the Court merely held that Plaintiff is not the right plaintiff to pursue that 5 potential liability. Nothing in the Prior Order would prevent an appropriately situated plaintiff 6 from bringing claims against Google for the same alleged conduct. 7 B. Justification Two: Clear Errors Of Law And Fact 8 Plaintiff next argues that four errors of law and fact infect the prudential-standing analysis 9 in the Prior Order, but the Court again disagrees.

10 First, Plaintiff argues that the Court improperly characterized him as an investor in DD 11 even though he was actually a creditor. See id. at 3-4. Setting aside that Plaintiff expressly refers 12 to himself as an "investor" in the TAC and not as a creditor (see TAC ¶ 5), its decision to dismiss 13 the case stands regardless of whether Plaintiff is properly characterized as an investor or a creditor.

14 Under Plaintiff's allegations, "his injury occurs as a result of the injury to DD, and therefore 15 necessarily depends on the commission of a prior injury to DD," thereby rendering his claims 16 derivative and depriving him of prudential standing. See Prior Order at 6. That conclusion 17 follows even if Plaintiff was a creditor of DD. Confusingly, Plaintiff also describes himself as an 18 independent contractor of DD in the same section of the Motion in which he asserts that he is a 19 creditor.

See Motion at 4. In his view, this contractor relationship demonstrates that any harms to 20 him allegedly caused by Google "are not dependent on DD's overall profitability or financial 21 health." See id. The Court already rejected this argument in the Prior Order, and its reasoning 22 applies even if Plaintiff is properly characterized as an independent contractor.

See Prior Order at 23 6. 24 Second, Plaintiff argues that the Court misapplied Delaware law regarding whether a claim 25 is direct or derivative: 26 In NAF Holdings, LLC v. Li & Fung (Trading) Ltd., 118 A.3d 175, 179-80 (Del. 15 2015), the Delaware Supreme Court held that "Delaware courts have long 27 recognized that a plaintiff may properly bring a direct claim if the Plaintiff has a principle applies squarely to Plaintiff's situation.

His right to payment under the 1 Customer Acquisition Agreement is independent of any right held by DD. 2 See Motion at 4. As an initial matter, Plaintiff's purported quote does not appear in NAF. See 3 Section III, infra. Plaintiff also misunderstands NAF. There, the Supreme Court of Delaware held 4 "that a suit by a party to a commercial contract to enforce its own contractual rights is not a 5 derivative action under Delaware law." See NAF, 118 A.3d at 182.

Here, however, Plaintiff does 6 not sue to enforce his rights under any contract. He does sue Google for breach of contract but in 7 connection with a contract between DD and Google and not one to which he is a party. See TAC ¶¶ 69-74. And while Plaintiff is a party to a contract with DD, he does not sue for breach of that contract.

Thus, NAF does not assist Plaintiff here. Third, Plaintiff argues that the Court improperly “introduce[d] a temporal element” to the derivative analysis and that the correct inquiry “is whether the plaintiff can prevail without showing an injury to the corporation.” See Motion at 4-5 (quotation marks and citation omitted). The Court’s analysis in the Prior Order satisfies that standard, as the Court concluded that, based on Plaintiff’s allegations, his injury “depends on the commission of an injury to DD.” See Prior Order at 6.

Yes, there is a “temporal element” in that Plaintiff’s injury occurs only after DD suffers an injury, but the fact that DD’s injury occurs first does not change the determination that Plaintiff’s injury does not exist without a corresponding injury to DD. Fourth, Plaintiff argues that, under Ninth Circuit law, “a party to a contract has standing to sue for its breach, even if a company with which the plaintiff has a relationship is also harmed.” See Motion at 4-5; see also Section III, infra (questioning veracity of Plaintiff’s citations to Ninth Circuit authority).

Again, however, Plaintiff does not sue Google for breach of any contract to which he is a party.

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C. Justification Three: Inconsistencies Between The Prior Order And Google’s Allegations Elsewhere

In his third justification, Plaintiff argues that the Court must reverse its Article III standing analysis, which it based on Plaintiff’s speculative allegations of causation, because its conclusion “is fundamentally undermined by [Google’s] own allegations in a nearly identical case.” See id. at 6-10.

The Court need not resolve this argument because even if it agreed with Plaintiff, it would not amend or alter the judgment—the Court dismissed this action without leave to amend because Plaintiff lacked prudential standing, and a determination that the Court erred in its Article III standing analysis would not change that result. See Prior Order at 8 (“While Plaintiff could provide more allegations in an amended pleading to plausibly tie his injury to Google’s fraudulent business listings, no allegations could change the conclusion that the injury is impermissibly derivative.”).

D. Justification Four: Implicit Error In Denying Leave To Amend

Finally, Plaintiff argues that the Court erred in denying leave to amend because, as illustrated by the arguments addressed above, it erred in its analysis of prudential standing and Article III standing. See Motion at 10-13.

The Court has already rejected the arguments underlying this justification and accordingly rejects this justification. Plaintiff also argues that the Court should allow him leave to amend because “denial of leave to amend works particular hardship here,” but his arguments on this point merely rehash arguments rejected above in the Court's discussion of the first and third justifications.

See id. at 13.

III. ADMONISHMENT ON PLAINTIFF'S TRUTHFULNESS

In at least five instances throughout the Motion, Plaintiff appears to have fabricated quotes from his cited authorities (either on his own or with the assistance of technology):

On page 3 of the Motion, he cites to Broam v. Bogan, 320 F.3d 1023 (9th Cir. 2003), as an example of a case where the Ninth Circuit reversed a district court's denial of a Rule 59(e) motion in light of "the importance of the issues at stake." The cited language does not appear in Broam.

On page 3 of the Motion, he cites to "United States v. NH, Inc., 124 F.3d 1198 (9th Cir. dismissal of a case because the dismissal created "perverse incentives." However, the citation "124 F.3d 1198" leads to the middle of a different decision, United States v. Rockwell International Corporation, 124 F.3d 1194 (10th Cir. 1997). Plaintiff's cited language does not appear in Rockwell, that decision was issued by the Tenth Circuit, not the Ninth Circuit, and the defendant in that case was not "NH, Inc."

On page 4 of the Motion, Plaintiff cites to NAF for the proposition that "Delaware courts have long recognized that a plaintiff may properly bring a direct claim if the Plaintiff has a contract right that exists independently of any right of the corporation." The cited language does not appear in NAF.

On page 5 of the Motion, Plaintiff cites to Shell Petroleum, N.V. v. Graves, 709 F.2d 593 (9th Cir. 1983), for the proposition that a plaintiff may pursue a direct action if their injury does not "derive[] from harm to" a third party.

The cited language does not appear in Graves.

On page 5 of the Motion, Plaintiff cites to Pareto v. FDIC, 139 F.3d 696 (9th Cir. 1998), as an example of a case where the Ninth Circuit held that a plaintiff had standing because he experienced "an injury... distinct from any the corporation itself may have suffered." The cited language does not appear in Pareto.

In light of these apparent fabrications, the Court STRONGLY ADMONISHES Plaintiff, reminding him of his obligation to provide truthful submissions to the Court. "[A]ll parties, including those appearing pro se, must act truthfully before the Court, and the Court does not tolerate fabrications of authority or dishonest behavior." Greene v. Discover Bank, No. 23-cv-04825-SVK, 2024WL 85872, at *2 n.1 (N.D.

Cal. Jan. 8, 2024) (emphasis added). The Court also directs Plaintiff to Civil Local Rules 3-9(a) and 11-4(a)(4), which together obligate Plaintiff to "[p]ractice [before this Court] with the honesty, care, and decorum required for the fair and efficient administration of justice."

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IV. CONCLUSION

For the foregoing reasons, the Court DENIES the Motion.

SO ORDERED.

Dated: March 3, 2025

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SUSAN VAN KEULEN

United States Magistrate Judge