

CALIFORNIA COURT OF APPEAL, SECOND DISTRICT, EIGHTH DIVISION

Barkett v. Malcoun

Barkett v. Malcoun, B318270 (Cal. App. Nov 13, 2023) · No. B318270

SUMMARY

Barkett v. Malcoun, B318270 (Cal. App. Nov 13, 2023) – A cross-complainant sister sued her sibling and brother-in-law for breach of contract, breach of fiduciary duty, aiding and abetting, and accounting related to a family trust and caregiving agreement. The Court of Appeal affirmed the trial court's sustaining of demurrers without leave to amend, holding that (1) the breach of contract claim failed because the allegations of an oral agreement were directly contradicted by the written mediation agreement attached to the complaint, which takes precedence under the "exhibits control" rule; (2) the breach of fiduciary duty claim failed because Margaret's written ratification of the trustee's acts in probate court records was final and conclusive on beneficiaries per the trust terms, and the claim was time-barred under Probate Code § 16460's three-year statute of limitations; (3) the aiding and abetting claim failed due to no underlying breach; and (4) no accounting was owed because the defendant was no longer trustee and no fiduciary relationship existed with the plaintiff. Key legal topics include judicial notice of court records, the effect of contradictory exhibits on pleading allegations, limitations periods for trust and fiduciary claims, and the standard for demurrer review.

CASE DETAILS

COURT	California Court of Appeal, Second District, Eighth Division
WRITING FOR THE COURT	GRIMES, J.; STRATTON, P. J.; WILEY, J.
JURISDICTION	California
DOCKET	B318270
DISPOSITION	affirmed
PROCEDURAL POSTURE	Appeal from a judgment of the Superior Court of Los Angeles County sustaining demurrers without leave to amend and dismissing cross-complaint.
STANDARD OF REVIEW	A demurrer tests the legal sufficiency of the complaint. We review the complaint de novo to determine whether it alleges facts sufficient to state a cause of action. For purposes of review, we accept as true all material facts alleged in the complaint, but not contentions, deductions or conclusions of fact or law. We also consider matters that may be judicially noticed. When a demurrer is sustained without leave to amend, we decide whether there is a reasonable possibility that the

defect can be cured by amendment; if it can be, the trial court abused its discretion and we reverse; if not, there has been no abuse of discretion and we affirm. Plaintiff has the burden to show a reasonable possibility the complaint can be amended to state a cause of action.

PRECEDENTIAL VALUE

unpublished

PARTIES

Lisa Ann Barkett v. Diane Malcoun, Steven Malcoun

TOPICS

probate trusts breach of fiduciary duty statute of limitations civil procedure motions to dismiss contracts breach of contract appellate procedure

PRACTICE AREAS

Trusts and Estates Civil Procedure Appellate Practice

QUESTIONS PRESENTED

1. Whether the breach of contract claim was properly dismissed because the allegations of an oral agreement were directly contrary to the written mediation agreement attached to the complaint.
2. Whether the breach of fiduciary duty claim was properly dismissed for failure to allege facts showing a fiduciary duty owed by Diane to Lisa, and whether the claim was barred by Margaret's ratification and the three-year statute of limitations under Probate Code section 16460.
3. Whether the claim for an accounting was properly dismissed because no relationship requiring an accounting existed between Lisa and Diane.
4. Whether the aiding and abetting claim against Steven was properly dismissed because no primary violation by Diane was stated.
5. Whether the trial court abused its discretion in denying leave to amend.

HOLDINGS

1. The breach of contract claim fails because the allegations of an oral agreement are directly contrary to the terms of the written mediation agreement, which takes precedence over inconsistent allegations.
2. The breach of fiduciary duty claim fails because plaintiff did not allege facts showing a fiduciary duty owed by Diane to Lisa, and the claim is barred by Margaret's ratification and the three-year statute of limitations under Probate Code section 16460.
3. The accounting claim fails because no relationship requiring an accounting exists between plaintiff and Diane; Diane is no longer trustee and has no duty to account for nontrust assets.
4. The aiding and abetting claim fails because plaintiff has not stated a claim against Diane for breach of fiduciary duty, so there is no primary violation for Steven to have aided and abetted.

5. The trial court did not abuse its discretion because plaintiff failed to show a reasonable possibility the complaint could be amended to state a cause of action.

KEY QUOTATIONS

“While the allegations of a complaint must be accepted as true for purposes of demurrer, the facts appearing in exhibits attached to the complaint will also be accepted as true and, if contrary to the allegations in the pleading, will be given precedence.” (at 10)

“all of the material terms of the settlement are set forth herein” (at 11)

“A defendant is liable for aiding and abetting another in the commission of an intentional tort, including a breach of fiduciary duty, if the defendant knows the other's conduct constitutes a breach of duty and gives substantial assistance or encouragement to the other to so act.” (at 18)

FACTUAL BACKGROUND

Three sisters, Lisa Barkett, Diane Malcoun, and Debra Stephan, are beneficiaries of a trust created by their parents, Sylvester and Margaret Denton. Diane was named successor trustee. After Sylvester's death in 2013, Diane filed a first accounting in 2014. Lisa objected, alleging missing assets and misuse of trust funds. Margaret consented to Diane's accounting and rejected Lisa's objections. The probate court approved the accounting and discharged Diane as trustee in 2015 after a final accounting. In 2015, Margaret and the three sisters entered into a mediation agreement regarding Margaret's care and living arrangements, which stated all material terms were set forth in writing. Margaret died in 2019. In 2020, Lisa filed a cross-complaint against Diane and Steven, alleging breach of contract (based on an alleged oral agreement supplementing the mediation agreement), breach of fiduciary duty, accounting, and aiding and abetting.

PROCEDURAL HISTORY

Plaintiff Lisa Barkett filed a cross-complaint against her sister Diane Malcoun and brother-in-law Steven Malcoun alleging breach of contract, breach of fiduciary duty, accounting, and aiding and abetting. The trial court sustained demurrers without leave to amend, concluding the breach of contract claim was contradicted by the written mediation agreement, the breach of fiduciary duty claim was barred by ratification and statute of limitations, the accounting claim failed for lack of relationship, and the aiding and abetting claim failed because no primary violation existed. The court entered judgment of dismissal, and plaintiff appealed.

DISPOSITION

affirmed

CASES CITED

- Blank v. Kirwan, 39 Cal.3d 311 (1985)
- Moran v. Prime Healthcare Management, Inc., 3 Cal.App.5th 1131 (2016)
- Alphonzo E. Bell Corp. v. Bell View Oil Syndicate, 46 Cal.App.2d 684 (1941)
- Pellegrini v. Weiss, 165 Cal.App.4th 515 (2008)

- City of Hope National Medical Center v. Genentech, Inc., 43 Cal.4th 375 (2008)
- Zumbrun v. University of Southern California, 25 Cal.App.3d 1 (1972)
- Harnedy v. Whitty, 110 Cal.App.4th 1333 (2003)
- Estate of Giralдин, 55 Cal.4th 1058 (2012)
- ZF Micro Devices, Inc. v. TAT Capital Partners, Ltd., 5 Cal.App.5th 69 (2016)
- Nasrawi v. Buck Consultants LLC, 231 Cal.App.4th 328 (2014)
- Teselle v. McLoughlin, 173 Cal.App.4th 156 (2009)

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