

CALIFORNIA SUPREME COURT

Perry v. Bakewell Hawthorne, LLC

213 Cal. Rptr. 3d 764 (Cal. 2017) · No. S233096 · Decided February 23, 2017

SUMMARY

The California Supreme Court held that the exclusionary rule for undisclosed expert witnesses applies at the summary judgment stage. The court overruled *Mann v. Cracchiolo* and disapproved *Kennedy v. Modesto City Hospital*, concluding that declarations containing inadmissible expert opinion must be excluded from consideration on summary judgment if an objection is raised. The court affirmed the Court of Appeal's judgment in favor of the defendant.

CASE DETAILS

COURT	California Supreme Court
WRITING FOR THE COURT	Corrigan; Cantil-Sakauye; Werdegarr; Chin; Liu; Cuéllar; Kruger
JURISDICTION	California
DECIDED	February 23, 2017
DOCKET	S233096
DISPOSITION	affirmed
PROCEDURAL POSTURE	Appeal from a Court of Appeal judgment affirming a grant of summary judgment in favor of defendant.
STANDARD OF REVIEW	De novo review of summary judgment.
PRECEDENTIAL VALUE	Published
PARTIES	Wilson Dante Perry v. Bakewell Hawthorne, LLC

TOPICS

- summary judgment
- expert testimony
- evidence
- civil procedure
- statutory interpretation
- discovery dispute

PRACTICE AREAS

- Civil Procedure
- Evidence
- Expert Witnesses
- Summary Judgment

QUESTIONS PRESENTED

1. Whether the exclusionary rule for undisclosed expert witnesses applies at the summary judgment stage.

HOLDINGS

1. When a party fails to comply with expert witness disclosure requirements and an objection is raised, the expert opinion must be excluded from consideration at summary judgment because section 437c, subdivision (d) requires declarations to set forth admissible evidence.

KEY QUOTATIONS

“Therefore, we hold that when the court determines an expert opinion is inadmissible because disclosure requirements were not met, the opinion must be excluded from consideration at summary judgment if an objection is raised.” (764)

“A party may not raise a triable issue of fact at summary judgment by relying on evidence that will not be admissible at trial.” (764)

FACTUAL BACKGROUND

Perry sued Bakewell Hawthorne, LLC and JP Morgan Chase Bank, NA for injuries sustained in a fall on property owned by Bakewell and leased by Chase. Chase demanded an exchange of expert witness information, but Perry made no disclosure. In opposition to Bakewell's motion for summary judgment, Perry submitted declarations from two experts opining that the stairs were in disrepair and did not comply with building code and industry standards. The trial court sustained Bakewell's objection to the declarations because Perry had failed to disclose the experts, and granted summary judgment.

PROCEDURAL HISTORY

Perry sued Bakewell and Chase for injuries from a fall. Chase demanded expert witness exchange; Perry failed to disclose. Bakewell moved for summary judgment; Perry submitted expert declarations. The trial court sustained Bakewell's objection to the declarations due to non-disclosure and granted summary judgment. Perry's motion for reconsideration was not heard because his counsel's license was suspended. After judgment, Perry substituted counsel and unsuccessfully moved for permission to designate experts. The Court of Appeal affirmed. The California Supreme Court granted review.

DISPOSITION

affirmed

CASES CITED

- Kennedy v. Modesto City Hospital, 221 Cal. App. 3d 575 (1990)
- Mann v. Cracchiolo, 38 Cal. 3d 18 (1985)
- Bozzi v. Nordstrom, Inc., 186 Cal. App. 4th 755 (2010)
- Towns v. Davidson, 147 Cal. App. 4th 461 (2007)
- Aguilar v. Atlantic Richfield Co., 25 Cal. 4th 826 (2001)

- *Caldwell v. Paramount Unified School Dist.*, 41 Cal. App. 4th 189 (1995)
- *City of Monterey v. Carrnshimba*, 215 Cal. App. 4th 1068 (2013)
- *Reid v. Google, Inc.*, 50 Cal. 4th 512 (2010)
- *Molko v. Holy Spirit Assn.*, 46 Cal. 3d 1092 (1988)

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