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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(Butte)

VALLEY OAKS VILLAGE HOMEOWNER'S
ASSOCIATION,

Plaintiff and Appellant,

v.

GEOFF LANE,

Defendant and Respondent.

C059378

(Super. Ct. No.
131158)

Plaintiff sought to amend its complaint to substitute itself as the true plaintiff in place of the entity originally purported to be the plaintiff. The trial court denied this request, but it allowed plaintiff to file an entirely new complaint using the same case number and calling it an amended complaint. Plaintiff did so, and defendant promptly demurred based on the statute of limitations. The trial court sustained the demurrer and entered judgment against plaintiff.

Plaintiff appeals, claiming the amended complaint was not time barred because it related back to the filing of the original complaint. We agree and reverse the trial court's judgment.

FACTS

We treat the demurrer "as admitting all material facts properly pleaded and all reasonable inferences which can be drawn therefrom." (*Trustees of Capital Wholesale Electric Etc. Fund v. Shearson Lehman Brothers, Inc.* (1990) 221 Cal.App.3d 617, 621.) We may also consider matters which may be judicially noticed. (*Serrano v. Priest* (1971) 5 Cal.3d 584, 591.)

The original complaint was filed in November 2003, in the name of "Valley Oaks Village, P.U.D." as "plaintiff." "Plaintiff," the complaint alleged, is a California non-profit, mutual benefit corporation. "Plaintiff" alleged it had standing to sue pursuant to Code of Civil Procedure section 374.¹

Prior to filing the complaint, "plaintiff" served on defendant a notice of commencement of legal action, as required of homeowners associations by Civil Code section 1375.

Defendant Geoff Lane, doing business as Windsong Construction (Windsong), was the general contractor on a

¹ This citation was in error. Code of Civil Procedure section 374 authorizes a minor less than 12 years of age to appear in court without counsel regarding an injunction due to harassment or violence so long as the minor is accompanied by a guardian ad litem. Prior to 1993, however, Code of Civil Procedure section 374 gave a homeowners association standing to sue for damages to commonly owned lots or individually owned lots it was obligated to maintain. (See Stats. 1985, c. 874, § 18.) From 1993 until 2004, that authority was codified at Code of Civil Procedure section 383. (Stats. 1993, ch. 151, § 3.) The authority now exists in Civil Code section 1368.3. (Stats. 2004, ch. 754, § 5.)

residential development project described as the "Valley Oaks Village P.U.D." (the project).

The original complaint asserts that Windsong entered into an agreement with "the Association" in 1996 to build the project. The complaint did not further identify the "Association." The agreement with it, however, required Windsong to maintain the property free of all construction defects, and to construct the project in a workmanlike manner.

The project as built had numerous construction defects. In particular, the roof systems were inadequately installed and they leaked. "Plaintiff" sought damages of at least \$3,000,000 under five separate causes of action against Windsong: breach of contract, negligent design and construction, breach of implied warranty, negligent misrepresentation, and strict liability.

In the implied warranty cause of action, "plaintiff" alleged Windsong impliedly warranted the project's fitness to the "individual members of plaintiff" and to "plaintiff." In the negligent misrepresentation cause of action, "plaintiff" alleged Windsong made the misrepresentations to "the individual members of plaintiff ASSOCIATION" and to the "Association."

Windsong filed an answer to the original complaint. It also filed a cross-complaint for indemnity and contribution against its subcontractors.

In October 2005, Windsong filed for Chapter 7 bankruptcy. Subsequently, Windsong stipulated in the bankruptcy action to relief from the bankruptcy stay, agreeing with "Valley Oaks

Village, PUD" that it could proceed with this action only against any applicable insurance proceeds, and that "Valley Oaks Village, PUD" waived any direct claims against Windsong beyond what it could recover from insurance proceeds. The bankruptcy case closed in August 2007.

In September 2007, "plaintiff" moved to amend its complaint to substitute the Valley Oaks Village Homeowner's Association (Homeowner's Association) for "Valley Oaks Village, PUD." Counsel for plaintiff declared that during the course of the litigation, he came to understand that "while Valley Oaks Village P.U.D. is the correct designation for the physical development in question, the proper party name for [plaintiff] is Valley Oaks Village Homeowner[']s Association, Inc." There is no legal entity named "Valley Oaks Village, PUD." Counsel sought to amend the complaint by changing the plaintiff's name and references to it in the general allegations to the Homeowner's Association. The proposed amended complaint continued to allege the five causes of action alleged in the original complaint.

Windsong opposed the motion to amend. It claimed the Homeowner's Association was a suspended corporation and thus lacked the ability to sue. It also argued that substitution of a different plaintiff four years into the litigation and less than seven weeks before the scheduled trial date would prejudice it.

"Plaintiff" withdrew the motion due to the recently discovered fact of the Homeowner's Association's suspension.

About two weeks later, "plaintiff" filed a new motion for leave to amend its complaint to name the Homeowner's Association as plaintiff. The president of the Homeowner's Association declared there were two corporations with the name of Valley Oaks Village. The first was Valley Oaks Village, a corporation, which was the entity that developed the project. (We refer to it here as the developer corporation.) It purchased the land and contracted with Windsong. It ultimately transferred its title to the individual owners of the units and to the Homeowner's Association, the second corporation with the name Valley Oaks Village. At that point, the developer corporation ceased to function. However, the president had discovered that the Secretary of State had been filing the Homeowner's Association's filings under the name of the defunct developer corporation. The president had taken all necessary steps to revive the Homeowner's Association. The Homeowner's Association was officially revived as of November 1, 2007.

Windsong again opposed the motion to amend. It claimed the Homeowner's Association was not the entity that was granted relief from its bankruptcy stay to pursue this action. It also argued it would be prejudiced having to defend against a new plaintiff so soon before trial.

A cross-defendant who is not a party to this appeal also opposed the motion. That party, Hardesty & Sons, Inc., argued the true plaintiff in the original complaint was the developer corporation, Valley Oaks Village. Because it was the party that contracted with Windsong to build the project, and because it

could not sue on behalf of the current individual owners and the Homeowner's Association, substituting the Homeowner's Association for the developer corporation would allegedly result in new theories of liability which the developer corporation could not have brought, and it would continue causes of action which the Homeowner's Association would not have standing to bring.

After argument, the trial court denied the motion to amend, but it allowed the Homeowner's Association to file a new complaint using the same case number. The court announced its ruling as follows:

"THE COURT: Well, you know, of course the Court has to put a little bit of what is just and fair in getting the right pleadings before the Court. [¶] And so the Court is going to allow you to file a brand new complaint but without prejudice to any and all defenses that might be alleged including, but not limited to, a statute of limitations and a statute of repose.

"MR. FRENZNICK [Plaintiff's counsel]: So we're allowed to amend the complaint to --

"THE COURT: No. I want you to file a new complaint. [¶] I want you to file exactly who is the Plaintiff and exactly [what] your causes of action are, because we've got a mess on our hands, is what we have. [¶] And to allow just you to substitute a name in is crazy. [¶] Because even you would concede that the homeowners association does not have a contract. [¶] It wasn't formed until after the contracts were signed.

"MR. FRENZNICK: But there could be an assignment.

"THE COURT: All right.

"MR. FRENZNICK: By operation of law.

"THE COURT: Then we'll deal with that when it happens.

[¶] So the Court is going to allow you to file a new complaint in this case with the same number, but without prejudice to any and all defenses that the Defendants might raise by demurrer, motions to strike, or whatever it is they are going to do."

Confused by the trial court's ruling, and specifically by the directive to file a new complaint but under the same case number, the Homeowner's Association asked the court for clarification. Following a hearing, the court ruled as follows: "The plaintiff's motion to file an amended complaint substituting the Valley Oaks Village Homeowner[']s Association as the plaintiff in place of the Valley Oaks PUD is DENIED. The plaintiff's motion to file an amended complaint asserting any cause of action Valley Oaks Village Homeowner['s] Association may have is GRANTED; however, leave to amend is without prejudice to any and all defenses which the defendants may assert by way of attack on the pleadings or otherwise. In granting the motion to amend, the court makes no findings as to statute of limitations issues, including but not limited to relation back issues. The plaintiff is instructed that the new pleading is to be in the form of an amended complaint."

Two weeks later, on February 8, 2008, the Homeowner's Association filed its "first amended complaint." The first amended complaint repeated the allegations of the original

complaint with two major exceptions. First, it substituted the Homeowner's Association in as the plaintiff. Second, it omitted the causes of action for breach of contract, breach of implied warranty, and negligent misrepresentation. The causes of action for negligent design and construction and strict liability remained and were otherwise unchanged.

Windsong filed a demurrer to the first amended complaint. It claimed, among other arguments, that the amended complaint was barred by the four-year statute of limitations for patent construction defects (Code Civ. Proc., § 337.1), and by the 10-year statute of limitations for latent construction defects. (Code Civ. Proc., § 337.15.) Windsong argued that the first amended complaint did not relate back to the filing of the original complaint for purposes of determining whether the statutes of limitations barred the action from proceeding because the trial court had denied the Homeowner's Association's motion to amend and was treating the first amended complaint as a new complaint.

Windsong also filed a special demurrer to the strict liability cause of action, asserting a general contractor cannot be held strictly liable for the services it sells. In addition, it moved to strike portions of the first amended complaint's prayer for damages.

The Homeowner's Association opposed, claiming the first amended complaint was not barred by either statute of limitations because it related back to the filing of the original complaint.

The trial court sustained the demurrer. Its ruling reads in full: "The new complaint alleges an entirely new plaintiff as well as different claims and damages. Therefore, the court will find there is no relation back to the date the original complaint was filed. The demurrer will be sustained on the basis of both statutes of limitation without leave to amend. Given the foregoing, the motion to strike and the other arguments in support of the demurrer are moot and will not be ruled upon."

DISCUSSION

This appeal hinges on whether the first amended complaint relates back to the filing of the original complaint. If it does, demurrer was improperly granted on the basis of the statutes of limitations.

"An amended complaint relates back to the original complaint, and thus avoids the statute of limitations as a bar, if it (1) rests on the same general set of facts as the original complaint and (2) refers to the same accident and the same injuries as the original complaint. (*Norgart v. Upjohn Co.* (1999) 21 Cal.4th 383, 408-409.) The relation-back doctrine typically applies where an amendment identifies a defendant previously named as a Doe defendant (*Smeltzley v. Nicholson Mfg. Co.* (1977) 18 Cal.3d 932, 935) or adds a new cause of action asserted by the same plaintiff on the same general set of facts. (*Grudt v. City of Los Angeles* (1970) 2 Cal.3d 575, 584-585; *Rowland v. Superior Court* (1985) 171 Cal.App.3d 1214, 1218.) An amended pleading will also relate back if it makes a mere

technical change in the capacity in which the plaintiff sues on the same cause of action (*Cloud v. Northrop Grumman Corp.* (1998) 67 Cal.App.4th 995, 1008; *Pasadena Hospital Assn., Ltd. v. Superior Court* (1988) 204 Cal.App.3d 1031, 1037) or substitutes a plaintiff with standing in place of a plaintiff who lacks standing. (*Branick v. Downey Savings & Loan Assn.* (2006) 39 Cal.4th 235, 243; *Klopstock v. Superior Court* (1941) 17 Cal.2d 13, 21; *Garrison v. Board of Directors* (1995) 36 Cal.App.4th 1670, 1678; *Mayo v. White* (1986) 178 Cal.App.3d 1083, 1091-1092.)

"In contrast, an amended pleading that adds a new plaintiff will not relate back to the filing of the original complaint if the new party seeks to enforce an independent right or to impose greater liability against the defendants. (*Bartalo v. Superior Court* (1975) 51 Cal.App.3d 526, 533-534 (*Bartalo*).) In *Bartalo*, a husband could not join his wife's personal injury action after the statute of limitations had expired on his loss of consortium claim because the new claim sought to enforce an independent right. The court explained that '[t]he elements of loss of society, affection and sexual companionship [were] personal to [the husband] and quite apart from a similar claim of the wife.' (*Id.* at p. 533.) Similarly, in *Diliberti v. Stage Call Corp.* (1992) 4 Cal.App.4th 1468, two sisters had been in an automobile accident, but only the passenger-sister had been injured. The passenger's attorney filed suit, naming the driver as the injured plaintiff, and after the statute of limitations expired, moved to substitute the passenger in place of the driver. (*Id.*

at pp. 1469-1470.) The appellate court concluded that leave to amend had been properly denied because the body of the complaint gave no indication that there was a passenger and did not sound as a claim for the passenger; thus, the change was not a mere misnomer in the description of the party but an entire change of parties. (*Id.* at pp. 1470-1471.)” (*San Diego Gas & Electric Co. v. Superior Court* (2007) 146 Cal.App.4th 1545, 1549-1550.)

Here, the change in plaintiffs was merely the substitution of one with standing for one who did not have standing. The Homeowner’s Association is not seeking to enforce a right independent from that alleged in the original complaint nor is it seeking to impose greater liability on Windsong than that alleged in the original complaint. It is simply seeking to enforce the claims raised in the original complaint by a plaintiff that had no standing.

Windsong argues the first amended complaint exposes it to a new plaintiff and to greater liability. It asserts the true plaintiff on the original complaint was the developer corporation, Valley Oaks Village, which could not enforce the rights the Homeowner’s Association now seeks to enforce under the first amended complaint.

It is not at all clear that the developer corporation was the plaintiff on the original complaint. That document described the plaintiff as a non-profit, mutual benefit corporation that complied with the statutory requirement imposed on homeowners associations to notify developers prior to bringing a construction defect case. It alleged the housing

units were purchased by "individual members of plaintiff" and "individual members of plaintiff ASSOCIATION," and that "[e]ach of plaintiff's members and plaintiff" relied on Windsong's skill and judgment. Even Windsong admits that typically a developer such as the developer corporation is not a plaintiff, but rather is named as a codefendant in a construction defect action brought by the property owner.

We readily acknowledge the original complaint is not a model of clarity. Nevertheless, there can be no serious dispute over who the original plaintiff was, and is.

In addition, the first amended complaint does not expose Windsong to additional liability. It rests on the same general set of facts as the original complaint, and it refers to the same incident and the same injuries as the original complaint. Indeed, except for the name change and an allegation limiting recovery to any applicable insurance proceeds, the two causes of action raised in the first amended complaint are identical to their counterparts in the original complaint. Like those alleged in the original complaint, they arose from Windsong's allegedly defective construction of the project and the damages the Homeowner's Association incurred because of Windsong's actions. Eliminating three of the original causes of action without adding any new causes of action only further reduced Windsong's exposure to liability.

Windsong asserts the Homeowner's Association was dilatory in not seeking to correct the mistake sooner. However, the Homeowner's Association sought leave to amend as soon as they

discovered the error, and Windsong suffers no prejudice from the substitution of names.

Under these circumstances, we conclude the first amended complaint relates back to the filing of the original complaint. This conclusion compels us to reverse the trial court's judgment of dismissal based upon its sustaining of Windsong's demurrer without leave to amend.

Windsong nonetheless asks us to address its statute of limitations defenses on the merits based on facts it raises outside of the allegations of the first amended complaint. A demurrer is not the forum for the resolution of factual issues, and we will not consider them here. (See *Fremont Indemnity Co. v. Fremont General Corp.* (2007) 148 Cal.App.4th 97, 113-114.)

We also decline to address Windsong's special demurrer and motion to strike, which the trial court dismissed as moot. We will allow the trial court to address those motions in the first instance should Windsong pursue them there.

DISPOSITION

The judgment is reversed. Costs on appeal are awarded to the Homeowner's Association. (Cal. Rules of Court, rule 8.278(a).)

NICHOLSON, Acting P. J.

We concur:

ROBIE, J.

CANTIL-SAKAUYE, J.