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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION TWO

WILLIAM ATKINS et al., Plaintiffs and Appellants, v. ALAN MORELLI, Defendant and Respondent.	B271329 (Los Angeles County Super. Ct. No. BC516798)

APPEAL from an order of the Superior Court of Los Angeles County. Terry A. Green, Judge. Affirmed.

Law Offices of Joel W. Baruch and Joel W. Baruch for Plaintiffs and Appellants.

Ogloza Fortney, Darius Ogloza, David C. Fortney and Josephine Y. Lee for Defendant and Respondent.

Plaintiffs and appellants William Atkins (Atkins), Gregory K. Smith (Smith), and John Waite (Waite) (collectively appellants) appeal from the order granting summary adjudication on their fourth cause of action for intentional interference with existing contractual relations in favor of defendant and respondent Alan Morelli (Morelli).[1] Morelli's motion was made on the ground that the fourth cause of action was barred by the affirmative defense of collateral estoppel, based on a ruling by a Delaware court. We affirm.

FACTUAL AND PROCEDURAL BACKGROUND

The First Amended Complaint (FAC)

The operative FAC was brought by appellants against Morelli and Rancho Physical Therapy, Inc. (Rancho). It alleges that on June 29, 2007, appellants, who are licensed physical therapists, sold their interests in Rancho to third party OptimisCorp (Optimis), of which Morelli was a principal. As a result, Optimis became the parent company of Rancho. Also on June 29, 2007, appellants entered into written employment contracts with Rancho, for a base salary of $150,000 plus performance-based incentives. The employment contracts provided that appellants could only be fired for cause. The employment contracts were for an initial four-year term and provided for successive one-year extensions (also called addendums) by mutual written agreement. Written extensions to

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[1] Because Morelli was the only defendant named in the fourth cause of action and because he was not named in any other cause of action, the court's summary adjudication order leaves no issue remaining to be determined as to him and is therefore final and appealable as to him. (*Ram v. OneWest Bank, FSB* (2015) 234 Cal.App.4th 1, 9; Eisenberg et al., Cal. Practice Guide: Civil Appeals and Writs (The Rutter Group 2016) ¶ 2:91, p. 2-66.)

the employment contracts were executed on or about April 28, 2011, April 27, 2012, and March 19, 2013.

The FAC further alleges that in June 2013, Morelli, who was a licensed attorney but not a licensed physical therapist, caused all of the shares of Rancho to be transferred to a licensed physical therapist named Edward Tinico (Tinico). Acting at Morelli's direction, Tinico, as chief executive officer of Rancho, sent termination letters to appellants, dated July 5, 2013, stating that their respective employment contracts were ended for unspecified reasons related to cause.[2]

In the fourth cause of action against Morelli, appellants alleged that Morelli "set in motion the events which culminated in the termination of each Plaintiff's employment agreement"; Morelli's conduct was intentional, malicious, and in retaliation for appellants having previously filed (and then dismissed) a public policy lawsuit filed against Morelli and Optimis; and Morelli's conduct caused appellants to sustain damages.

The Delaware Action

In November 2012, Morelli filed an action in the Delaware Court of Chancery against appellant Waite and other nonparties. The action was filed pursuant to Title 8 of the Delaware General Corporation Code, section 225 (the section 225 action), and sought a determination as to the persons rightfully entitled to hold office and to sit on the board of directors of Optimis, a Delaware corporation.

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[2] Copies of the termination letters were not attached to the FAC. They were attached to each appellant's declaration in opposition to the motion for summary adjudication. The letters stated that termination was effective July 3, 2013.

On December 27, 2012, the Court of Chancery issued a status quo order in the section 225 action stating, in part:

"Unless and until otherwise ordered by the Court . . . Defendants [including Waite] and all persons acting in concert or participation with any of them . . . are hereby restrained and enjoined from, directly or indirectly: (i) committing to a transaction involving transferring, encumbering, pledging, loaning, selling, leasing or otherwise disposing of, directly or indirectly, any assets of the Company or any interest therein with a value in excess of $50,000.00, other than (a) satisfying normal payroll and related compensation obligations, (b) other normal transactions in the ordinary course of business consistent with past practice . . . (iv) causing or committing the Company to incur any debt or otherwise to become liable to any party for any reason, other than for reasonable legal fees and expenses of the Company and the Interim Administrative Officer, . . . [and] (xiv) agreeing or committing to take any action restrained and enjoined pursuant hereto."

The section 225 action settled on March 7, 2013, and a final judgment was entered on March 21, 2013. Subsequently, Morelli brought a motion to reopen the case and for an order to show cause re contempt for violation of the status quo order. Following responsive briefing and oral argument, on September 25, 2013, the Chancery Court issued a contempt order, finding appellant Waite, acting in concert with coappellants Atkins and Smith, in contempt for executing the extensions to their employment contracts with Rancho in March 2013:[3]

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[3] The most recent employment contract extensions in the record state they were executed on March 19, 2013.

"Defendant John Waite ('Waite') is found in contempt because he (i) had notice of the *Status Quo* Order (Dkt. 31) entered by the Court on December 27, 2012, (ii) was bound by the terms of the *Status Quo* Order, and (iii) violated paragraph 4(i), (iv) and (xiv) of the *Status Quo* Order, in a meaningful way when he, acting in concert with William Atkins ('Atkins') and Gregory Smith ('Smith'), purporting to act as a majority of the board of directors of Rancho Physical Therapy, Inc. ('Rancho'), authorized Rancho to renew the putative employment agreements with Waite, Atkins and Smith on February 26, 2013, and thereafter executed addendums to the putative employment agreements. . . . [¶] The Court awards sanctions and remedies as set forth below. [¶] (a) *The addendums to the employment agreements executed by Messrs. Waite, Smith, Atkins and Rancho, are void,* and Messrs. Waite, Smith and Atkins are precluded from receiving any benefits thereunder or related thereto after July 5, 2013 . . . [and] are not required to return any base salary earned or received from Rancho on or before July 5, 2013. This ruling is without prejudice to any other rights Messrs. Waite, Smith and Atkins may claim independently of the void addendums, which claims may be subject to litigation in any other action or jurisdiction."[4] (Italics added.)

Morelli's Motion for Summary Adjudication

As part of the motion for summary judgment and/or summary adjudication filed by Rancho and Morelli directed to the FAC, Morelli sought adjudication of the fourth cause of action against him on the ground that it was barred by the defense of collateral estoppel. Morelli argued that in light of the Delaware

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[4] The FAC was filed on January 10, 2014, nearly three months after the contempt order was issued.

Court of Chancery's contempt order finding the employment contract extensions void, there was no existing contractual relation with which he could interfere. Appellants opposed the motion and the parties submitted numerous declarations, exhibits, and evidentiary objections. The trial court granted summary adjudication on the fourth cause of action, as well as the first three causes of action for breach of employment contract. This appeal followed.

DISCUSSION

I. Standard of Review

We review a grant of summary judgment or summary adjudication de novo, considering "'all of the evidence set forth in the [supporting and opposition] papers, except that to which objections have been made and sustained by the court, and all [uncontradicted] inferences reasonably deducible from the evidence.'" (*Artiglio v. Corning Inc.* (1998) 18 Cal.4th 604, 612.) "In independently reviewing a motion for summary judgment, we apply the same three-step analysis used by the superior court. We identify the issues framed by the pleadings, determine whether the moving party has negated the opponent's claims, and determine whether the opposition has demonstrated the existence of a triable, material factual issue." (*Silva v. Lucky Stores, Inc.* (1998) 65 Cal.App.4th 256, 261.) A defendant moving for summary judgment or adjudication must show that one or more elements of a cause of action cannot be established or that there is a complete defense thereto. (Code Civ. Proc., § 437c, subd. (o)(2).) Once the defendant makes that showing, the burden shifts to the plaintiff to demonstrate the existence of a triable issue of material fact as to the cause of action or defense. (Code Civ. Proc., § 437c, subd. (o)(2).)

II. The Motion for Summary Adjudication Was Properly Granted

The elements which a plaintiff must plead and prove to state a cause of action for intentional interference with contractual relations are: "(1) the existence of a valid contract between the plaintiff and a third party; (2) the defendant's knowledge of that contract; (3) the defendant's intentional acts designed to induce a breach or disruption of the contractual relationship; (4) actual breach or disruption of the contractual relationship; and (5) resulting damage." (*Reeves v. Hanlon* (2004) 33 Cal.4th 1140, 1148.)

In his summary adjudication motion, Morelli argued that appellants were collaterally estopped from proving their fourth cause of action for intentional interference with contractual relations because the sole contracts upon which they relied had been declared void by the Delaware Chancery Court. Accordingly, appellants could not relitigate the validity of those contracts.

Appellants contend the trial court erred in granting summary adjudication because Morelli failed to meet his burden of proving each element of collateral estoppel. Collateral estoppel precludes the relitigation of an issue """"if (1) the issue necessarily decided at the previous [proceeding] is identical to the one which is sought to be relitigated; (2) the previous [proceeding] resulted in a final judgment on the merits; and (3) the party against whom collateral estoppel is asserted was a party or in privity with a party at the prior [proceeding].' . . ." [Citations.]' [Citations]." (*Rodgers v. Sargent Controls & Aerospace* (2006) 136 Cal.App.4th 82, 90; *Zevnik v. Superior Court* (2008) 159 Cal.App.4th 76, 82.)

Appellants argue that Morelli did not establish all three of these elements. First, appellants assert in their opening brief that "the issues in the Section 225 action were not identical to the issues before the trial court." Appellants do not cite to the record or otherwise explain their conclusion. Nor do appellants explain their next conclusion (also made in a single sentence) that the Delaware Chancery Court exceeded its jurisdiction in making the contempt order, or otherwise explain why this argument can be entertained in California rather than before the issuing court in Delaware. We recognize that we are obligated to review the record de novo to determine whether the moving party met its burden. However, as with any appeal, our review is limited to issues which have been adequately raised and briefed. (*Lewis v. County of Sacramento* (2001) 93 Cal.App.4th 107, 116.)

In any event, while all of the issues in the two actions were not identical, the specific issue of the validity of the employment contract extensions (or addendums) was *the same issue*. The Delaware Chancery Court's findings that appellants did not have authority to enter into these extensions while the status quo order was pending and that therefore the extensions are void precludes appellants from establishing the existence of a valid employment contract in this action.

Second, appellants assert that "the section 225 action was not a final judgment on the merits of any claim in the operative Complaint in this case." Again, appellants make this conclusion without any support. They do not explain why the contempt order and its findings are not final. Nor do they make any showing of what further legal actions could be taken in the section 225 action. Moreover, the defense of collateral estoppel deals with issue preclusion, not claim preclusion, and therefore

the section 225 action did not need to address the entire cause of action for intentional interference with contractual relations.

Third, appellants argue that Smith and Atkins were not parties to nor in privity with Waite in the contempt proceeding in the section 225 action. There is no merit to this argument. The status quo order in the section 225 action covered "Defendants [including Waite] . . . and all persons acting in concert or participation with any of them." The contempt order specifically found that Waite violated the status quo order "in a meaningful way when he, acting in concert with William Atkins ('Atkins') and Gregory Smith ('Smith'), purporting to act as a majority of the board of directors of Rancho Physical Therapy, Inc. ('Rancho'), authorized Rancho to renew the putative employment agreements with Waite, Atkins and Smith" and therefore "The addendums to the employment agreements executed by Messrs. Waite, Smith, Atkins and Rancho, are void." Given this plain language, there can be no reasonable basis for finding that Smith and Atkins were not acting in privity with Waite. Nor is there any other basis for finding appellants were not in privity with each other. "'The concept of privity for the purposes of . . . collateral estoppel refers "to a mutual or successive relationship to the same rights of property, or to such an identification in interest of one person with another as to represent the same legal rights [citations] and, more recently, to a relationship between the party to be estopped and the unsuccessful party in the prior litigation which is 'sufficiently close' so as to justify application of the doctrine of collateral estoppel. [Citations.]" [Citations.]'" (*Rodgers v. Sargent Controls & Aerospace, supra*, 136 Cal.App.4th at pp. 90–91.) Appellants make no argument or showing that Atkins and Smith had

dissimilar interests, rights or relationships from Waite in the contempt proceeding.

Appellants argue that even if the elements of collateral estoppel are met, the defense still does not bar the fourth cause of action because this cause of action does not depend on the validity of the written contract employment extensions. This is so, appellants argue, because if the written extensions are void then appellants' employment by Rancho would be "at will," and California law provides that an at-will employment relationship may be tortuously interfered with. (See *Reeves v. Hanlon, supra,* 33 Cal.4th at p. 1148.)

While appellants' argument may have some superficial appeal, it is inapplicable. As noted previously, the pleadings frame the issues, in this case the FAC. (See *Gafcon, Inc. v. Ponsor & Associates* (2002) 98 Cal.App.4th 1388, 1424 [trial court properly limited scope of summary judgment to allegations in the operative complaint]. The FAC does not plead the terms of any "at will" employment agreement or any oral employment agreement. As pleaded, the fourth cause of action is predicated entirely on the written employment contracts and one-year extensions. Moreover, each appellant's declaration in opposition to the summary adjudication motion relies on the written employment contracts and extensions and states, "At the time I was terminated, effective July 3, 2015, I believed I was operating under the written employment agreement attached hereto . . ." None of the declarations mentions any putative terms of employment apart from the written employment contracts.

DISPOSITION

The order granting the motion for summary adjudication as to the fourth cause of action is affirmed. Morelli is entitled to recover his costs on appeal.

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_____, Acting P. J.
ASHMANN-GERST

We concur:

_____, J.
CHAVEZ

_____, J.
HOFFSTADT