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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SIX

JONATHAN MCKEE,

Plaintiff and Appellant,

v.

BERNARD JONES et al.,

Defendants and Respondents.

2d Civil No. B279070
(Super. Ct. No. 1467044)
(Santa Barbara County)

Jonathan McKee appeals from an order declaring him a vexatious litigant and enjoining him from filing a new lawsuit in propria persona without first obtaining leave of court. (Code Civ. Proc., §§ 391, 391.7, subd. (a)¹; see *Luckett v. Panos* (2008) 161 Cal.App.4th 77, 90 [vexatious litigant order appealable under § 904.1, subd. (a)(6).) We affirm.

¹ All statutory references are to the Code of Civil Procedure unless otherwise stated.

Facts and Procedural History

In 2015, appellant sued his landlord/respondents, Bernard Jones and Judith Jones (Jones), and Jones' attorney, Gary Bright and Bright & Powell (Bright). It was a preemptive action, filed a month before Jones commenced an unlawful detainer action to evict appellant.² The complaint alleged that Bright conspired with Jones to evict appellant after he complained about bedbugs in his rental unit, and improperly used a 30-day notice to terminate his tenancy. The complaint alleged causes of action for promissory estoppel, infliction of emotional distress, civil conspiracy, breach of implied warranty of habitability, and injunctive relief.

On July 14, 2014, the trial court sustained, without leave to amend, respondents' demurrer to the conspiracy cause of action on the ground that appellant had not obtained a pre-filing order to sue for civil conspiracy. (See Civ. Code, § 1714.10, subd. (b) [failure to obtain such an order may be raised by demurrer or motion to strike]; *Berg & Berg Enterprises, LLC v. Sherwood Partners, Inc.* (2005) 131 Cal.App.4th 802, 816.)

Appellant thereafter filed a first amended complaint for breach of contract, intentional infliction of emotional distress, and breach of implied warranty of habitability. On August 4, 2014, the trial court granted Bright's special motion to strike

² The unlawful detainer action (Santa Barbara County Super. Ct., Case No. 1467510), was filed on June 12, 2014 and dismissed on July 21, 2014 after appellant vacated the property.

(§ 425.16) on the ground the first amended complaint was barred by the litigation privilege. (Civ. Code § 47, subd. (b).) The entire action was dismissed, with prejudice, as to Bright.

A few months later, appellant petitioned to amend his complaint to reinstate the conspiracy cause of action previously dismissed on demurrer. The trial court denied the petition on the same ground: the civil conspiracy claim was barred by the litigation privilege. Appellant appealed and we affirmed the judgment in an unpublished opinion. (B261901.)

On remand, appellant filed yet another motion to amend his complaint to allege additional causes of action against Jones and Bright for deceit, negligence, negligent infliction of emotional distress, and retaliatory eviction. On April 28, 2016, the trial court denied the motion on the ground that the proposed causes of action against Bright were barred by the litigation privilege. The motion to add another cause of action against Jones was denied because of the long unexplained delay in bringing the motion. Trial had already been set for August 22, 2016.

New Case - Case No. 16CV02103:

On the eve of trial, appellant filed a new complaint (Santa Barbara County Super. Court, Case No 16CV02103) alleging the same causes of action previously dismissed or denied in Case No. 1467044, i.e., deceit, negligence per se, negligent infliction of emotional distress, and retaliatory eviction. Jones and Bright demurred. The trial court sustained Jones' demurrer and abated the action on the ground that another action was pending against the same parties and arose from the same transaction. The court sustained, without leave to amend,

Bright's demurrer on the ground that the action was barred by the litigation privilege.

Fearful that appellant would file yet another complaint, Bright and Jones brought a motion in Case No. 16CV02103 to declare appellant a vexatious litigant. The motion was scheduled for a September 14, 2016 hearing but ordered off calendar when appellant filed a notice of appeal the day before the hearing.³

Case No. 1467044:

To thwart appellant from filing another frivolous lawsuit, Jones brought a motion in Case No. 1467044 to declare appellant a vexatious litigant. The motion was granted on November 7, 2016.

Discussion

The trial court's determination that a person is a vexatious litigant is reviewed for abuse of discretion and will be upheld if supported by substantial evidence. (*Fink v. Shemtov* (2010) 180 Cal.App.4th 1160, 1169; *Holcomb v. U.S. Bank Nat. Assn.* (2005) 129 Cal.App.4th 1494, 1495.) Section 391, subdivision (b) provides that "Vexatious litigant' means a person who does any of the following: [¶] . . . (3) In any litigation while acting in propria persona, repeatedly files unmeritorious motions, pleadings, or other papers, . . . or engages in other tactics that are frivolous or solely intended to cause unnecessary delay."

Appellant denies that he filed meritless motions and pleadings or is a vexatious litigant. The record tells a very different story. In Case No. 1467044, the trial court sustained a

³ That appeal, B277617, is pending and has not been fully briefed.

demurrer, struck an amendment to the complaint, and denied appellant's petition to add a conspiracy cause of action that was barred by the litigation privilege. Appellant appealed. (B261901.) We affirmed the order and, in an unpublished opinion, warned that "[s]omewhere along the line, litigation must cease." (*In re Marriage of Crook* (1992) 2 Cal.App.4th 1606, 1613.)

Undaunted, appellant filed a new action against Jones and Bright alleging similar tort claims. (Case No. 16CV02103.) The trial court sustained a demurrer without leave to amend and ruled that appellant "has repeatedly filed unmeritorious motions, pleadings, and other papers."

Appellant claims that his motions were not intended to harass an opposing party within the meaning of *In re Marriage of Flaherty* (1982) 31 Cal.3d 637. We disagree. After the anti-SLAPP motion was granted, appellant attempted to do an end run around the ruling and filed a petition to amend his complaint and reallege the same conspiracy cause of action. The petition was denied and the subject of a meritless appeal. (B261901.)

When that did not work, appellant filed a new action on the eve of trial. The trial court found that appellant's "tactics here, in Case No. 16CV02103, and in the court of appeal of are frivolous and have served no purpose other than to cause unnecessary delay in the resolution of claims against Jones and their lawyers." We concur.

"The purpose of the vexatious litigant statutes 'is to address the problem created by the persistent and obsessive litigant who constantly has pending a number of groundless actions and whose conduct causes serious financial results to the unfortunate objects of his or her attacks and places an

unreasonable burden on the courts.’ [Citations.] “The constant suer . . . becomes a serious problem to others than the defendant he dogs. By clogging court calendars, he causes real detriment to those who have legitimate controversies to be determined and to the taxpayers who must provide the courts. . . .’ [Citations.]” (*In re Kinney* (2011) 201 Cal.App.4th 951, 957-958.)

The trial court reasonably concluded that the motions were brought to abuse the court process and to harass Jones and retained counsel. (See, e.g., *Morton v. Wagner* (2007) 156 Cal.App.4th 963, 972.) Although “[t]he vexatious litigant statutes do not define ‘frivolous’ . . . we note that under section 128.5, subdivision (b)(2), the term is defined as ‘(A) totally and completely without merit or (B) for the sole purpose of harassing an opposing party.’” (*Golin v. Allenby* (2010) 190 Cal.App.4th 616, 639, fn. 29.) Appellant meets all the criteria of a vexatious litigant.

Disposition

The judgment (order declaring appellant a vexatious litigant) is affirmed. Respondents are awarded costs on appeal.

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YEGAN, J.

We concur:

GILBERT, P. J.

PERREN, J.

Colleen K. Sterne, Judge

Superior Court County of Santa Barbara

Jonathan McKee, in propria persona, for Plaintiff and
Appellant.

Bright & Powell, Gary M. Bright and Kevin Mauseth,
for Defendants and Respondents.