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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

MELANIA KAZARYAN et al., Plaintiffs and Appellants, v. CALIFORNIA FAIR PLAN ASSOCIATION, Defendant and Respondent.	B233674 (Los Angeles County Super. Ct. No. BC448058)

APPEAL from an order of the Superior Court of Los Angeles County, Mark V. Mooney, Judge. Reversed.

Silverberg Law Corporation and Peter M. Cho for Plaintiffs and Appellants.

Berger Kahn, Craig S. Simon, Teresa R. Ponder, David B. Ezra and Christy Han for Defendant and Respondent.

Melania Kazaryan and 32 other individuals appeal from the dismissal of their claims against California FAIR Plan Association (CFP) for breach of contract, breach of the implied covenant of good faith and fair dealing and unfair business practices after the trial court sustained CFP's demurrer based on misjoinder of parties (Code Civ. Proc., §§ 378, 430.10, subd. (d)).[1] We reverse.

FACTUAL AND PROCEDURAL BACKGROUND

Kazaryan, Armine Kazanchyan and 32 other property owners filed a complaint against CFP on October 22, 2010 seeking damages for CFP's alleged bad faith denial or underpayment of insurance claims resulting from fire, soot, ash, char and wind damages sustained as a result of the Station Fire, which started in Angeles National Forest on August 26, 2009.[2] The complaint identified a total of 34 property owners who had submitted property damage claims for 34 properties located in Pasadena, Glendale, La Crescenta and five other Los Angeles County communities; the properties were covered by 33 different CFP policies. The complaint alleged CFP had "failed to properly handle and adjust plaintiffs' claims in good faith and, in fact, instituted claims practices designed to improperly deny and/or minimize valid claims" and had "unjustifiably and unreasonably failed to pay policy benefits to plaintiffs pursuant to properly made claims." Although the complaint described a generalized series of improper claims adjustment practices, it did not allege specific details of the nature, source or extent of any individual claim, nor did it allege any specific practice had been employed to the detriment of each of the named plaintiffs. (In fact, at one point the complaint alleges certain improper claims handling procedures were applied "inconsistently by treating similarly situated policyholders differently based on arbitrary or unreasonable criteria.")

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[1] Statutory references are to the Code of Civil Procedure.

[2] California FAIR Plan Association is an association of insurance companies that provides basic property insurance coverage in California as an insurer of last resort for property owners who are unable to obtain insurance in the open market.

CFP demurred on two grounds: First, it argued 34 separate insurance claims had been improperly joined in a single lawsuit although they did not "aris[e] out of the same transaction, occurrence, or series of transactions or occurrences" and did not share a common question of law or fact as required by section 378, subdivision (a)(1). (See § 430.10, subd. (d) [demurrer may be based on "defect or misjoinder of parties"].) In support of its argument CFP cited *Basurco v. 21st Century Ins. Co.* (2003) 108 Cal.App.4th 110 and *Newell v. State Farm General Ins. Co.* (2004) 118 Cal.App.4th 1094, both of which involved the community of interest requirement for certification of a class action, not the issue of permissive joinder.[3] Second, it asserted, even if properly joined, none of the plaintiffs had made the specific factual allegations necessary to state a valid cause of action. (Although CFP based this ground for demurrer on section 430.10, subdivision (e) [pleading does not state facts sufficient to constitute a cause of action], the court considered it a demurrer for uncertainty under section 430.10, subdivision (f).)

Plaintiffs opposed the demurrer, arguing joinder was proper under *State Farm Fire & Casualty Co. v. Superior Court* (1996) 45 Cal.App.4th 1093 (*State Farm Fire*) disapproved on another ground in *Cel-Tech Communications, Inc. v. Los Angeles Cellular Telephone* (1999) 20 Cal.4th 163, 184-185, which held 165 individual plaintiffs' claims against their insurers following the 1994 Northridge earthquake were properly joined under section 378. Plaintiffs also argued their complaint provided sufficient information for CFP to respond, noting "most of the facts concerning bad faith are presumptively within the knowledge of the Defendant and ascertainable by invoking discovery procedures."

In its reply in support of the demurrer CFP argued *Farmers Ins. Exchange v. Adams* (1985) 170 Cal.App.3d 712, disapproved on another ground in *Garvey v. State Farm Fire & Casualty Co.* (1989) 48 Cal.3d 395, 399 & footnote 1 (*Adams*), not *State*

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[3] CFP also moved to strike the complaint or, in the alternative, to sever the separate claims purportedly alleged in the complaint based on improper joinder, once again relying on *Basurco v. 21st Century Ins. Co., supra*, 108 Cal.App.4th 110 and *Newell v. State Farm General Ins. Co., supra*, 118 Cal.App.4th 1094.

Farm Fire, controlled. In *Adams* the court held, although a heavy storm in Northern California in January 1982 had played a role in damaging the property of the more than 300 policyholders named as defendants in the lawsuit, those defendants were not properly joined under section 379 because the insurer's right to declaratory relief did not arise "out of the same transaction or occurrence." (*Adams*, at p. 723.)

After hearing oral argument the trial court sustained the demurrer for misjoinder of parties. The court initially stated it was inclined to sustain the demurrer without leave to amend, allowing this case to proceed as to one of the plaintiffs only, with separate complaints filed on behalf of each of the other plaintiffs. (The court indicated those separate actions might be subject to coordination.) Counsel requested an opportunity to amend the complaint to attempt to keep all 34 named plaintiffs in a single action through a complex-case designation. The court agreed, sustaining the demurrer with leave "to see if you can go by that route." Plaintiffs' counsel was given 30 days to file an amended complaint.

The court did not rule on the second ground for demurrer, but noted at the hearing, "Demurrers for uncertainty are generally disfavored, but because this particular complaint, you know, you really have no substantive allegations regarding the individual claims . . . . I do think you need to specify, okay, what's really the claims practice here they're talking about. But that's more of an observation as to, if you do opt to file different lawsuits, I think you need to specify as to the particular plaintiff and the claims that they are raising. But that may or may not be for another day."

The court's order sustaining the demurrer with leave to amend was entered on April 13, 2011. A first amended complaint was filed on May 13, 2011 naming only Armine Kazanchyan as plaintiff. On June 10, 2011 plaintiffs' counsel filed a premature notice of appeal on behalf of Melania Kazaryan and the other former plaintiffs (the appealing insureds). Following communications from this court concerning the absence of an appealable order, counsel for plaintiffs and CFP stipulated to the entry of an order

of dismissal and judgment against all the original plaintiffs other than Kazanchyan. The order of dismissal and entry of judgment was signed by the court on August 29, 2011.

DISCUSSION

1. *The Trial Court Erred in Finding Misjoinder of Parties Pursuant to Section 378*

Section 378 permits joinder of plaintiffs if they assert any right to relief "arising out of the same transaction, occurrence, or series of transactions or occurrences and if any question of law or fact common to all these persons will arise in the action . . . ."[4] Under this provision, "the action of each plaintiff has been joined in one case, but they remain independent actions." (*Brennan v. Superior Court* (1994) 30 Cal.App.4th 454, 461.) "'The code section [section 378] contemplates of course an action single in form, but with each "case" or demand retaining its distinctive identity as though pleaded in an independent action. No plaintiff is interested in the entire complaint. The interest of each is in his own "case" or cause of action; and the complaint as a whole is merely a series of "cases" embodied in one document. The institution of a joint action thus amounts to an election to consolidate at the outset several causes of action for trial instead of bringing several actions based on common grounds, and then having them consolidated later.'" (*Writers Guild of America, West, Inc. v. Superior Court* (1969) 273 Cal.App.2d 841, 846; accord, *Brennan*, at pp. 461-462.)

Section 378 "should be liberally construed so as to permit joinder whenever possible in furtherance of [its] purpose." (*Coleman v. Twin Coast Newspaper, Inc.* (1959) 175 Cal.App.2d 650, 653; accord, *State Farm Fire, supra*, 45 Cal.App.4th at p. 1113 [§ 378's "requirement that the right to relief arise from the 'same transaction or series of transactions' has been construed broadly so that joinder of plaintiffs is permitted

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[4] Section 378, subdivision (a), provides, "All persons may join in one action as plaintiffs if: [¶] (1) They assert any right to relief jointly, severally, or in the alternative, in respect of or arising out of the same transaction, occurrence, or series of transactions or occurrences and if any question of law or fact common to all these persons will arise in the action . . . ."

if there is *any* factual relationship between the claims alleged"]; see also *Anaya v. Superior Court* (1984) 160 Cal.App.3d 228, 232 (*Anaya*).)

In *State Farm Fire, supra,* 45 Cal.App.4th 1093, 165 individual plaintiffs alleged State Farm had engaged in a systematic practice to deceive its policyholders with respect to their purchase of earthquake insurance by issuing policies to replace endorsements to homeowner coverage without adequate notice of a reduction in the scope of coverage. (*Id*. at p. 1113.) In addition, the complaint alleged "systematic claims handling practices which invaded the rights of plaintiffs as insureds." (*Ibid*.) Applying the liberal rule permitting joinder of plaintiffs if there exists any factual relationship among the claims alleged, our colleagues in Division Three of this court held joinder was proper, explaining, "While not every plaintiff may have been victimized by the same claims handling practice, that is a matter which can be resolved in discovery; and the trial court will always retain the right to sever the claims of particular plaintiffs in order to prevent prejudice to State Farm." (*Id*. at pp. 1113-1114.)

Adams, supra, 170 Cal.App.3d 712, in contrast, involved the joinder of hundreds of insureds as defendants, not plaintiffs. Their insurer sought a declaration, based on exclusions and exceptions set forth in the property insurance policies issued to the defendant insureds, that there was no coverage for damage or losses arising out of a severe storm "because the efficient proximate cause of the damage or loss claimed was an excluded cause, notwithstanding that one or more intermediate causes may have contributed to the loss or damage." (*Id.* at pp. 715-716.) The court upheld the challenge to joinder asserted by the defendant insureds, explaining, "we find it improper to label the damage herein to innumerable types of structures, occurring at widely separated locations within the state, resulting from a myriad of causes, and under various conditions as the 'same transaction or occurrence' within the meaning of Code of Civil Procedure section 379." (*Id*. at p. 723.)

Less than a year before *Adams* the same appellate court (Division Three of the First Appellate District) decided *Anaya, supra,* 160 Cal.App.3d 228, which, like both

State Farm Fire and the case at bar, involved a defendant's challenge to the joinder of separate claims by a large number of plaintiffs. The *Anaya* court held numerous employees of Occidental Petroleum Corporation and members of their families could properly be joined as plaintiffs in two actions alleging injuries to male employees and, through those employees, to their wives and children, as a result of exposure to industrial contamination (1,2-dibromo-3-chloropropane or DBCP) over a period of 20 to 30 years. The court explained the plaintiffs were all involved in the same series of transactions and occurrences. "The fact that each employee was not exposed on every occasion any other employee was exposed does not destroy the community of interest linking those petitioners." (*Id*. at p. 233.) In addition, "[c]ommon issues of fact and law abound, because all plaintiffs allege employee exposure to DBCP at the same location over the course of many years." (*Ibid*.)

Any apparent inconsistency in the decisions approving joinder in *Anaya* but disapproving it in *Adams*[5] is resolved by the court's explanation that, in answering the question whether joinder is proper, "we cannot ignore Witkin's observation that '[although] the code seems to authorize the sustaining of a demurrer solely [for misjoinder of parties], the authorities indicate that the defendant is entitled to a favorable ruling only when he can show some prejudice suffered or some interests affected by the misjoinder. In practical effect this means that such a demurrer can be successfully used only by the persons *improperly joined*. A proper defendant is seldom injured by the joinder of unnecessary or improper parties plaintiff or defendant, and his demurrer ought to be overruled.'" (*Anaya, supra*, 160 Cal.App.3d at p. 231, fn. 1.)

Here, as in *Anaya* and *State Farm Fire*, where no misjoinder was found, it was the properly named defendant who demurrered, not one of the allegedly misjoined parties. Moreover, all the insured appellants' causes of action derived not only from damages caused by the same natural disaster (the Station Fire) but also from CFP's alleged

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[5] The brief, three paragraph discussion of joinder in *Adams, supra*, 170 Cal.App.3d 712, does not cite the court's earlier decision in *Anaya, supra*, 160 Cal.App.3d 228.

institution of "claims practices designed to improperly deny and/or minimize valid claims." Thus, there unquestionably was some factual relationship among the claims alleged, as well as at least some common questions of law or fact presented. Joinder, therefore, was proper. (See generally 4 Witkin, Cal. Procedure (5th ed. 2008) Pleading, § 195, p. 272.)

The decisions in *Basurco v. 21st Century Ins. Co, supra*, 108 Cal.App.4th 110 and *Newell v. State Farm General Ins. Co., supra*, 118 Cal.App.4th 1094 do not require a contrary conclusion. Those cases rejected plaintiffs' efforts to certify class actions to pursue bad faith claims against their insurers based on allegations those insurers had employed uniform claims practices to improperly deny Northridge earthquake claims. As we explained in *Newell*, "Even if State Farm and Farmers adopted improper claims practices to adjust Northridge earthquake claims, each putative class member still could recover for breach of contract and bad faith *only* by proving his or her individual claim was wrongfully denied, in whole or in part, and the insurer's action in doing so was unreasonable." (*Newell*, at p. 1103.) Thus, we concluded, as had Division One of this court in *Basurco,* that "[c]ommon questions of law and fact do not predominate"—a threshold requirement for class action certification. (*Newell*, at p. 1103.) But, unlike the requirement for certification of a class action, section 378 requires only there be "*any* question of law or fact common to all these persons," not that the common questions predominate. Although there are a plethora of individual issues relating to CFP's alleged liability to each particular plaintiff in this case, without doubt there are at least *some* common questions of fact or law raised by the insured appellants' complaint.

Similarly unpersuasive is CFP's reliance on the recent decision by the Third District in *Moe v. Anderson* (2012) 207 Cal.App.4th 826. In that case two patients alleged they had been the victims of sexual assaults by their doctor. The women and their husbands sued the doctor and his corporate employers in a single lawsuit under various tort theories. The Court of Appeal affirmed the trial court's ruling the two sets of plaintiffs were improperly joined under section 378 as to the doctor because the events at

issue did not constitute a single transaction and nothing was alleged to indicate a related series of transactions: "Two separate and distinct sets of plaintiffs . . . are suing Anderson for separate and distinct sexual assaults during separate and distinct time periods." (*Moe*, at p. 833.) However, relying on *Anaya, supra*, 160 Cal.App.3d 228, the court reversed the trial court's ruling that joinder of all claims against the corporate employers was improper, explaining those claims were predicated upon the allegedly negligent hiring and supervision of the doctor, which exposed the plaintiffs to his predatory conduct, and thus were based on the same series of transactions raising at least some common issues of law or fact. (*Moe*, at pp. 835-836.) As discussed, in this case the claims of the individual plaintiffs unquestionably arose from the same occurrence—the Stations Fire—and a related series of transactions—CFP's alleged institution of claims practices designed to deny or minimize valid claims—and necessarily present at least some common issues of fact or law.

Finally, CFP's concern that permitting joinder of all 34 plaintiffs' claims will create a risk of unfair influence on the jury because "repetitive accusations by so many different people could be taken as enhancing credibility" is not an appropriate basis for finding misjoinder. Section 379.5 expressly provides, when parties have been joined as plaintiffs under section 378, "the court may make such orders as may appear just to prevent any party from being embarrassed, delayed or put to undue expense, and may order separate trials or make such other order as the interests of justice may require." As recognized in *State Farm Fire* and *Anaya*, that provision arms the trial court with ample authority to ensure a fair trial and to meet any other legitimate practical concerns that may arise in a lawsuit with multiple plaintiffs pursuing separate claims. (See *Anaya, supra*, 160 Cal.App.3d at pp. 233-234; *State Farm Fire, supra*, 45 Cal.App.4th at p. 1114.)

2. *As Originally Pleaded the Complaint Omits Necessary Allegations Regarding the Individual Claims Asserted*

Insisting the demurrer had been sustained not only for misjoinder but also for failure to state facts constituting any valid cause of action, CFP argues the order of

dismissal should be affirmed on this alternate ground. As discussed, however, while the trial court noted the potentially fatal lack of detail in the individual claims asserted in the complaint, it expressly stated the issue of "uncertainty" in the pleading would be addressed, if necessary, at another time.[6] Accordingly, the trial court's order cannot be affirmed on this basis.

Nonetheless, in the interest of moving this case forward in an efficient manner, we, too, note our concern about the complaint's generic allegations of bad faith and its lack of specificity with respect to the essential facts of each individual insured's claims. In *Davaloo v. State Farm Ins. Co*. (2005) 135 Cal.App.4th 409 this court explained section 425.10 subdivision (a)'s fact-pleading requirement obligates a plaintiff to file a complaint that contains "'[a] statement of the facts constituting the cause of action, in ordinary and concise language.'" The pleader must "allege ultimate facts that 'as a whole apprise[] the adversary of the factual basis of the claim.'" (*Davaloo*, at p. 415.)

Although the two complaints for breach of contract and bad faith at issue in *Davaloo* contained general allegations of unfair claims practices not dissimilar to those in the case at bar, we held the pleadings were the functional equivalent of no complaint at all because they failed to allege the specifics of each plaintiff's dispute with the insurer: that is, what the insurer did to breach the insurance policy with respect to a specific homeowner's claim of damage from the Northridge earthquake or what made those unidentified actions unreasonable. (*Davaloo v. State Farm Ins. Co.*, *supra*, 135 Cal.App.4th at p. 417.) "[F]rom the original complaints State Farm cannot ascertain whether it denied policy benefits entirely for earthquake damages to Davaloo and the Abdel-Messihs based on its conclusion the damages were less than the specific policy deductible or by finding the damages reported were not earthquake related at all, or whether it actually paid policy benefits for earthquake damages but simply in an amount

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[6] In light of the trial court's clear statement it was not sustaining the demurrer on this ground, it is not surprising the appealing insureds do not address the adequacy of the charging allegations in their brief in this court.

less than Davaloo and the Abdel-Messihs now contend they were entitled to as determined by a further evaluation of the damage to their properties. Thus, nothing in the original complaints '"acquaint[s]"' State Farm with the '"nature, source, and extent"' of Davaloo's and the Abdel-Messihs's claims against it." (*Id*. at p. 419; see also *Hawkins v. Oakland Title Ins. & Guar. Co.* (1958) 165 Cal.App.2d 116, 122 ["'complaint, to be sufficient, must contain a statement of facts which, without the aid of other conjectured facts not stated shows a complete cause of action'"].)

The insured appellants' nonspecific pleading suffers from the same deficiencies. Although the complaint identifies the insureds, their property addresses and the numbers of the CFP policies under which claims were apparently made, it is devoid of any specific allegations of the nature of the damage suffered, the response of CFP to the claim submitted, the reasons (if any) proffered for the denial or withholding of policy benefits or the basis for the charge that CFP acted unreasonably toward the specific plaintiff who is asserting the breach of contract and bad faith causes of action. If the insured appellants intend to proceed with their claims against CFP on remand, they would be well-advised to do so only after filing an amended complaint.

DISPOSITION

The order of dismissal is reversed, and matter remanded for further proceedings not inconsistent with this opinion. Kazaryan and the other insured appellants are to recover their costs on appeal.

PERLUSS, P. J.

We concur:

WOODS, J. JACKSON, J.