Filed 4/10/18 Goni Enterprises v. Dept. of Industrial Relations

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

GONI ENTERPRISES, Plaintiff and Appellant, v. DEPARTMENT OF INDUSTRIAL RELATIONS, DIVISION OF LABOR STANDARDS ENFORCEMENT, Defendant and Respondent.	B277670 Los Angeles County Super. Ct. No. NC059643

APPEAL from a judgment of the Superior Court of Los Angeles County, Michael P. Vicencia, Judge. Affirmed.

Andrew M. Rosenfeld for Plaintiff and Appellant.

California Department of Industrial Relations, Division of Labor Standards Enforcement and Edna Garcia Earley for Defendant and Respondent.

INTRODUCTION

In November 2013, the Office of the State Labor Commissioner (Commissioner) within the California Department of Industrial Relations (Department) cited plaintiff Goni Enterprises, Inc. (Goni) for failing to secure workers' compensation insurance for its employees. The Commissioner issued a stop order requiring Goni to immediately stop using any employee labor until the company secured workers' compensation insurance. The Commissioner also issued a penalty assessment requiring Goni to pay more than $30,000 for failing to have such insurance. The Commissioner provided Goni instructions explaining its rights to administratively appeal the stop order and the penalty assessment pursuant to the procedures established by the Labor Code. Goni never administratively appealed the stop order or the penalty assessment.

In August 2014, Goni filed a complaint against the Department seeking declaratory relief and withdrawal of the penalty assessment. The trial court granted the Department's motion for judgment on the pleadings and entered judgment in the Department's favor. On appeal, Goni contends the court erred because the Department was estopped from asserting that Goni had failed to exhaust its administrative remedies. We affirm.

FACTS AND PROCEDURAL BACKGROUND

1. The stop order and penalty assessment

Goni operates a retail business in Lawndale. On November 15, 2013, the Commissioner issued a "STOP ORDER – PENALTY ASSESSMENT," which required Goni to immediately stop using any employee labor until it secured workers' compensation insurance (the stop order). The November 15, 2013 order also

included a $30,901.67 penalty for "non-insurance" (the penalty assessment), which Goni was required to pay by December 2, 2013, unless it administratively appealed the assessment.[1] The order states that the Commissioner's Office had conducted an investigation of Goni's premises, which revealed that Goni had failed to provide its employees with workers' compensation insurance in violation of Labor Code[2] section 3700.

The November 15, 2013 order also included instructions explaining how Goni could administratively appeal the stop order and the penalty assessment. The instructions state that an employer may contest a stop order by requesting in writing a hearing with the Director of Industrial Relations (director) within 20 days "after service" of the order. If an employer requests a hearing, the director must conduct the hearing within five days of receiving the request and issue a written notice of findings and the director's findings within 24 hours of the hearing. Once the director issues its findings, "[a] writ of mandate may be taken from the findings to the appropriate superior court . . . within 45 days after the mailing of the notice of findings and findings."

The instructions also state that an employer may challenge a penalty assessment by requesting in writing a hearing with the director "within 15 days after service of the order." If the employer requests a hearing on the penalty assessment, the director must conduct the hearing within 30 days of the request

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[1] The order states that the amount of the penalty assessment was calculated as "a sum twice what [Goni] would have paid in workers' compensation insurance premiums during the period [Goni was] uninsured . . . ."

[2] All undesignated statutory references are to the Labor Code.

and issue a "notice of findings and findings" within 15 days of the hearing. "Any amount found due by the director as a result of a hearing" must be paid within 45 days after the director mails its notice of findings and findings to the employer. Within 45 days of the director issuing its findings, the employer may file a petition for writ of mandate in the trial court if the employer executes "a bond to the state in double the amount found due" and "agrees to pay any judgment and costs rendered against" the employer.

Goni never requested a hearing before the director to contest the stop order or the penalty assessment. On March 20, 2014, the Commissioner issued and recorded a "Certificate of Penalty Lien" (lien) in the amount of $30,901.67 against all real property owned by Goni.

2. Goni's lawsuit

In August 2014, Goni filed an unverified, three-page complaint against the Department for declaratory relief. Goni alleged that it had workers' compensation insurance for its employees at "all relevant time periods," and that the Commissioner erroneously issued the November 15, 2013 order. Goni further alleged that despite issuing the order, the Commissioner had kept its investigation open and failed to give Goni "proper notice," which deprived Goni of "its opportunity to challenge [the Commissioner's] findings in a formal agency proceeding." Nevertheless, Goni claimed that it exhausted its administrative remedies "to the extent it is required to do so by law." Goni requested that the trial court enter judgment declaring that Goni had workers' compensation insurance at "all times material to [the Commissioner's] Certificate of Penalty Lien." Goni also requested the court order the Commissioner to

withdraw the November 15, 2013 order and issue a certificate of cancellation of the March 20, 2014 lien.

In June 2016, the Department filed a motion for judgment on the pleadings along with a request for judicial notice of the November 15, 2013 order and the March 20, 2014 lien. The Department argued Goni's complaint failed to state a cause of action because (1) the complaint improperly sought declaratory relief to redress a past wrong; (2) the complaint improperly sought declaratory relief to review an administrative decision; and (3) Goni failed to exhaust its administrative remedies because the company never requested a hearing before the director to challenge the stop order or the penalty assessment. Goni opposed the Department's motion.

On June 30, 2016, the court granted the Department's motion for judgment on the pleadings without leave to amend. The court also granted the Department's request for judicial notice.[3] On July 29, 2016, the court entered judgment in favor of the Department.

Goni filed a timely notice of appeal from the judgment.

DISCUSSION

1. Standard of Review

" 'A motion for judgment on the pleadings serves the function of a demurrer, challenging only defects on the face of the complaint.' [Citation.] As with a demurrer, '[t]he grounds for a motion for judgment on the pleadings must appear on the face of the complaint or from a matter of which the court may take

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[3] The record does not contain any reporter's transcript from the hearing on the motion for judgment on the pleadings.

judicial notice.' [Citations.] We exercise our independent judgment in determining whether the challenged complaint states a cause of action." (*Eckler v. Neutrogena Corp.* (2015) 238 Cal.App.4th 433, 439.)

" 'Denial of leave to amend after granting a motion for judgment on the pleadings is reviewed for abuse of discretion.' [Citation.]" (*Bezirdjian v. O'Reilly* (2010) 183 Cal.App.4th 316, 325, fn. 8.) On appeal, we must determine whether there is a reasonable possibility that the defect in the pleadings can be cured by amendment. (*Blank v. Kirwan* (1985) 39 Cal.3d 311, 318.) Such a showing can be made for the first time before the reviewing court. (*Smith v. State Farm Mutual Automobile Ins. Co.* (2001) 93 Cal.App.4th 700, 711.) "The burden of proving such reasonable possibility is squarely on the plaintiff." (*Blank*, at p. 318.)

2. Relevant Statutory Scheme

Under section 3710.1, the director must issue a stop order to an employer who has not secured workers' compensation insurance for its employees. A stop order issued under section 3710.1 is "effective immediately upon service." (§ 3710.1.) An employer who has been issued a stop order must pay "[a]ny employee . . . affected by such work stoppage . . . for such time lost, not exceeding 10 days, pending compliance by the employer." (*Ibid.*) Section 3710.1 also establishes the process through which an employer may administratively challenge a stop order, the language of which largely mirrors the language included in the instructions attached to the November 15, 2013 order Goni received. (See *ibid.*)

Under section 3722, the director must also issue a penalty assessment at the time it issues a stop order. The penalty

assessment requires the employer to pay to the director, "for deposit in the State Treasury to the credit of the Uninsured Employers Fund," a sum as calculated under subdivisions (a) and (b) of that statute. (See § 3722, subds. (a)–(b).) The procedure for administratively appealing a penalty assessment issued under section 3722 is set forth in section 3725, which also largely mirrors the language included in the instructions attached to the November 15, 2013 order.

Under section 3727, "If the director determines pursuant to Section 3722 that an employer has failed to secure the payment of compensation as required by this division, the director may file with the county recorder of any counties in which such employer's property may be located his certificate of the amount of penalty due from such employer and such amount shall be a lien in favor of the director from the date of such filing against the real property and personal property of the employer within the county in which such certificate is filed. . . . Upon payment of the penalty assessment, the director shall issue a certificate of cancellation of penalty assessment, which may be recorded by the employer at his expense." (§ 3727.)

3. The trial court properly granted the Department's motion for judgment on the pleadings without leave to amend.

Declaratory relief is an appropriate remedy where a plaintiff seeks a declaration that a statute or regulation is facially unconstitutional or otherwise invalid. (*Tejon Real Estate, LLC v. City of Los Angeles* (2014) 223 Cal.App.4th 149, 154–155 (*Tejon*).) Declaratory relief cannot, however, be used to challenge an administrative decision. (*Ibid.*) Rather, a party who wishes to challenge such a decision must petition for a writ of

administrative mandamus under Code of Civil Procedure section 1094.5. (*Ibid.*)

Because Goni's complaint seeks declaratory relief to review the Commissioner's decision to issue the November 15, 2013 order, which is an administrative decision, the court properly granted the Department's motion for judgment on the pleadings. (See *Tejon*, *supra*, 223 Cal.App.4th at p. 155.) Even if we were to assume, however, that Goni's complaint for declaratory relief could be construed as a petition for writ of administrative mandamus (see *Lee v. Blue Shield* (2007) 154 Cal.App.4th 1369, 1378), the trial court properly granted judgment on the pleadings because Goni conceded that it did not challenge the Commissioner's decision in "a formal agency proceeding."

The doctrine of "exhaustion of administrative remedies" is well-established in California. Before petitioning the trial court for mandamus review of an administrative agency's decision, a party must first exhaust its administrative remedies. (*California Correctional Peace Officers Assn. v. State Personnel Bd.* (1995) 10 Cal.4th 1133, 1148.) Generally, where an administrative remedy is provided by statute, relief must first be sought from the administrative agency responsible for providing that remedy, and all available remedies before that agency must be exhausted, before courts will review the administrative body's decision. (*Ibid.*; see also *California Water Impact Network v. Newhall County Water Dist.* (2008) 161 Cal.App.4th 1464, 1489 ["The exhaustion doctrine precludes review of an intermediate or interlocutory action of an administrative agency."].) Put another way, before seeking judicial review of an administrative decision, "[a] party must proceed through the full administrative process 'to a final decision on the merits.' [Citation.]" (*California Water*

Impact Network, at p. 1489.) Unless an exception to the exhaustion doctrine applies, "[t]he fact that the [administrative] remedy is no longer available does not . . . alter application of the doctrine." (*Roth v. City of Los Angeles* (1975) 53 Cal.App.3d 679, 687.)

As set forth in the Labor Code, as well as in the instructions Goni received when the Commissioner issued the November 15, 2013 order, Goni was required to request hearings before the director to administratively challenge the stop order and the penalty assessment before it could seek judicial review of those orders. Once Goni exhausted those remedies, the company could then have filed a petition for a writ of administrative mandamus in the trial court to review the director's findings. (See §§ 3710.1 & 3725.) As Goni admits in its complaint and opening brief, it never sought a hearing before the director to challenge the stop order or the penalty assessment. The trial court therefore properly granted judgment on the pleadings because Goni failed to exhaust its administrative remedies before seeking review of the November 15, 2013 order in the trial court.

Apparently conceding that it failed to exhaust its administrative remedies, Goni contends the Department should be estopped from raising the exhaustion doctrine as a defense to Goni's lawsuit. We disagree.

"At common law, estoppel was unavailable against the government. The long-established rule in this state, however, is that estoppel may be asserted against the government ' "where justice and right require it." ' [Citation.]" (*Shuer v. County of San Diego* (2004) 117 Cal.App.4th 476, 486.) "In this context a government entity will be estopped from asserting as a defense a failure to exhaust administrative remedies when a government

agent has negligently or intentionally caused a party to fail to comply with a procedural precondition to recovery. [Citations.] Equitable estoppel may be asserted when (1) the party to be estopped was apprised of the facts, (2) the party to be estopped intended that its conduct be acted upon or acted in such a manner that the party asserting the estoppel had a right to believe it was so intended, (3) the party asserting estoppel was ignorant of the true state of facts and (4) the party must have relied on the conduct to its injury." (*Ibid*.)

As to its claim that the Department is estopped from raising Goni's failure to exhaust its administrative remedies as a defense, Goni's complaint alleges only that "[the Department] did conduct an investigation of sorts, by keeping the matter open. However, as a result of its continued consideration of the matter, and failure to give proper notice to [Goni], [Goni] was deprived of its opportunity to challenge these findings in a formal agency proceeding." The complaint does not allege, however, that the Department knew Goni would not challenge the Commissioner's November 15, 2013 order based on the Department's conduct, or that the Department intended for Goni to forego challenging the Commissioner's order in an administrative proceeding. Nor does Goni's complaint allege that any agent or employee of the Department told Goni that it could not, or did not need to, administratively challenge the stop order or the penalty assessment included in the November 15, 2013 order. Finally, the complaint does not allege that anyone at the Department informed Goni that the periods for administratively challenging the stop order and the penalty assessment never started to run once the Commissioner issued the November 15, 2013 order.

In addition, with respect to the allegation that the Department did not provide Goni "proper notice," the court took judicial notice of the November 15, 2013 order, which states that (1) Goni was personally served with the order; (2) the stop order was "effective immediately"; and (3) Goni was required to pay the penalty assessment no later than December 2, 2013, "[u]nless appealed." The court also took judicial notice of the instructions attached to the November 15, 2013 order, which outline the procedures for administratively challenging the stop order and the penalty assessment as well as the time periods within which Goni was required to pursue those challenges. On appeal, Goni does not challenge the court's order granting judicial notice of the November 15, 2013 order, and the allegations in the complaint are not accepted as true if they are contradicted by, or are inconsistent with, facts judicially noticed by the court. (*Cansino v. Bank of America* (2014) 224 Cal.App.4th 1462, 1474.)

Because Goni does not explain how it could amend its complaint to establish estoppel, the court properly granted the Department's motion for judgment on the pleadings without leave to amend.[4] (See *Blank v. Kirwan*, *supra*, 39 Cal.3d at p. 318.)

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[4] Because we conclude the court properly granted the Department's motion for judgment on the pleadings on the grounds discussed above, we do not need to address whether the court also could have granted the motion on the other ground raised in the Department's motion—i.e., that the complaint improperly sought declaratory relief to redress a past wrong.

DISPOSITION

The judgment is affirmed. The Department shall recover its costs on appeal.

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LAVIN, J.

WE CONCUR:

EDMON, P. J.

EGERTON, J.