Filed 5/29/15 Beck v. Blum Collins, LLP CA2/8

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

CYNTHIA BECK, Plaintiff and Appellant, v. BLUM COLLINS, LLP, Defendant and Respondent,	B250653 (Los Angeles County Super. Ct. No. BC453938)

APPEAL from a judgment of the Superior Court of Los Angeles County. Ramona G. See, Judge; Carolyn B. Kuhl, Judge; Michael C. Solner, Judge; Ruth Ann Kwan, Judge; and Ralph W. Dau, Judge. Affirmed.

Gwire Law Offices, William Gwire and Ujvala Singh; Myron Moskovitz, for Plaintiff and Appellant.

Blum Collins, LLP and Gary Ho for Defendant and Respondent.

_____

Cynthia Beck appeals from the summary judgment entered for defendant Blum Collins, LLP, in this legal malpractice action, contending that there were triable fact issues whether Blum Collins was bound by a statute of limitations tolling agreement signed by one of the firm's partners. We affirm because the tolling agreement does not mention Blum Collins and refers to the partner in his individual capacity only.

FACTS AND PROCEDURAL HISTORY

This legal malpractice action was spawned by a property line dispute between adjoining Bel-Air homeowners Cynthia Beck and the Goldsteins. The issue before us is whether a statute of limitations tolling agreement signed by Beck's lawyer also bound the law firm partnership he formed after he began to represent her. We begin with the underlying actions that led to the tolling agreement.

In 2001 the Goldsteins sued Beck to quiet title to a strip of land where the Goldsteins had renovated a reflecting pool, and Beck cross-complained against the Goldsteins (*Goldstein I*). The parties eventually entered a settlement agreement through mediation and dismissed their actions with prejudice in 2002.

Disputes about each party's obligations under the settlement led the mediator to issue several orders over the next two years in order to carry out the settlement terms. When Beck refused to sign a consent form for a grading plan, the Goldsteins brought a motion seeking to compel Beck to comply with the mediator's orders. The trial court set *Goldstein I* for trial, but later realized it had no jurisdiction because the parties had dismissed that action.[1]

Sole practitioner Craig M. Collins began representing Beck in *Goldstein I* sometime in late 2004 as Beck's post-settlement disputes with the Goldsteins intensified. After the trial court declined to take further action in *Goldstein I,* the Goldsteins sued

---

[1] This portion of our statement of facts comes from the decision in a subsequent case arising from the Beck-Goldstein dispute. (*Goldstein v. Beck* (Dec. 23, 2009, B204904) [nonpub. opn.].)

Beck again, this time for breach of contract, fraud, and nuisance. Beck cross-complained against the Goldsteins, alleging numerous causes of action, including trespass, quiet title, fraud, intentional infliction of emotional distress, breach of contract, and others (*Goldstein II*). Collins represented Beck as to the cross-complaint only, while other counsel defended her against the Goldsteins' new complaint.

In June 2007 the *Goldstein II* jury found for the Goldsteins on their complaint, awarding $2 million in actual damages and $4 million in punitive damages. The jury also found for the Goldsteins on Beck's cross-complaint. The judgment was affirmed by Division 7 of this court. (*Goldstein v. Beck* (Dec. 23, 2009, B204904) [nonpub. opn.].)

In the months leading up to the verdict in *Goldstein II* Beck stopped paying Collins. In September 2007 he asked her to let him substitute out. Beck believed she might have a malpractice claim against Collins and had her long-time companion Gerry Saenz, who is not a lawyer, prepare an agreement to toll the statute of limitations while she appealed the *Goldstein II* judgment. The tolling agreement provided:

"This agreement is made by and between Craig M. Collins, Esq. (hereafter referred to as 'Collins') and Cynthia Beck (hereinafter referred to as 'Beck'), as of September 20, 2007, and is made in reference to the following facts:

"1. Beck may have malpractice claims against Collins arising from representation in [*Goldstein II*].

"2. Collins seeks release as Counsel of Record in [*Goldstein II*] and has requested Beck sign a Substitution of Attorney.

"A. Beck has executed said Substitution of Attorney.

"3. Beck seeks to evaluate her claims and determine if she has incurred and/or suffered damages arising from Collins [*sic*] representation.

"4. Beck desires not to file a lawsuit against Collins until she exhausts her Appeal period, in order to protect her Attorney/Client privilege.

"5. Collins agrees to furnish Beck with time to evaluate her assertions and her potential damages without filing an action during the time her appeal rights are in place.

"6. Statute of Limitations rights commence upon the last day Beck's appeal rights expire.

"7. Any dispute in interpreting this Agreement shall be maintained in the State of California.

"Therefore, the parties agree that the Statute of Limitations in [*Goldstein II*], is suspended pursuant to the terms of this Agreement.

Collins signed his name over a printed signature line that read "Craig M. Collins."

In January 2011 Beck sued the lawyers who represented her in *Goldstein II* for malpractice. In addition to Collins she also sued Blum Collins, LLP, the partnership Collins formed sometime in 2005. Blum Collins moved for and was granted summary judgment on the ground that the statute of limitations had run because it had not represented Beck in *Goldstein II* and was not a party to the tolling agreement.

Blum Collins's summary judgment motion was supported by the declaration of Collins. According to Collins, Beck hired him in late 2004 pursuant to a retainer agreement with his sole practice, The Collins Law Firm. Blum Collins had not been formed at that time. Collins contends Blum Collins was formed in August 2005. However, he continued to handle several matters, including his representation of Beck in *Goldstein II*, through his old practice. Blum Collins never signed an agreement to represent Beck, never represented her in *Goldstein II* although it represented her in other matters, and never appeared on Beck's behalf in *Goldstein II*. The Collins Law Firm appeared as Beck's only counsel of record throughout *Goldstein II*. Blum Collins also received no legal fees from Beck for *Goldstein II,* Collins said.

According to Collins it was Beck who asked for the tolling agreement and he took no part in its preparation. When Collins signed the tolling agreement he did not discuss it with his Blum Collins partner because Blum Collins had not represented Beck in *Goldstein II*. Collins understood the tolling agreement to be personal as to him and he did not intend to bind Blum Collins when he signed it. He would not have signed the agreement if Beck or Saenz had included Blum Collins. Collins said that by the time Beck signed the tolling agreement she had seen numerous documents in other matters

handled by Blum Collin that bore the firm's name. Among the exhibits included with Blum Collins's summary judgment motion were several letters concerning *Goldstein II* sent from Collins to Beck on stationery with the letterhead "The Collins Law Firm." The verdict form in *Goldstein II* lists only The Collins Law Firm as counsel for Beck, and the substitution of attorney form Beck signed lists only Collins's firm.[2]

Beck's opposition declaration claimed that as far as she knew Blum Collins was formed in April or May of 2005 and began to represent her at that time in *Goldstein II*. Although she did not have a written agreement with Blum Collins concerning that matter, she said Collins never told he would continue to represent her in *Goldstein II* as a sole practitioner. Instead, Collins simply told her he had merged his practice with Steven Blum to form Blum Collins. Beck was already acquainted with Blum because he and Collins previously shared office space and he had attended a deposition on her behalf in *Goldstein I*.

After Blum Collins was formed, she received e-mails from Collins stating that they were from Blum Collins. She was also billed for Collins's services on *Goldstein II* as part of Blum Collins invoices for several other matters. Copies of those e-mails and invoices were attached as exhibits to Beck's declaration. Collins was always her "point of contact" on the various legal matters being handled by Blum Collins. Steve Blum did some work on *Goldstein II* and represented her interest when Saenz was deposed in *Goldstein I*. Once Blum Collins was formed, she and Saenz normally met with Collins at the Blum Collins office. Nothing there indicated that Collins was maintaining a separate practice.

---

[2] We asked for and received supplemental briefing from the parties concerning whether we should augment the record to include the substitution of attorney form, which lists only Collins and does not mention Blum Collins. At oral argument both parties stipulated that we could do so. Beck's supplemental briefing included a declaration from Saenz that was not in the record, and an e-mail from Collins that was part of the record. We decline to augment the record as to the declaration because it was not before the trial court and as to the e-mail because it is already in the record.

In sum, all of this left her with the impression that she was being represented in *Goldstein II* by Blum Collins once it came into existence. When Collins signed the tolling agreement, she believed he did so "as a partner of Blum Collins, LLP, since that was how I believed him to be representing me throughout the *Goldstein II* matter."

Saenz's opposition declaration included similar statements concerning his belief that Collins represented Beck in *Goldstein II* as a partner of Blum Collins. According to Saenz he had heard about agreements that could stop the statute of limitations from running and came up with the idea of getting such an agreement from Collins to see if *Goldstein II* might be reversed on appeal, thus avoiding a malpractice action. Saenz therefore drafted the tolling agreement in order to suspend the limitations period while Beck pursued her appeal. Saenz presented the agreement to Collins and believed that when Collins signed it he did so as a partner of Blum Collins.

The trial court found no triable issues to show that Collins signed the tolling agreement in anything other than his individual capacity and that the complete absence of Blum Collins's name in the agreement showed that the firm was not bound by that agreement. Beck contends the trial court erred.[3]

STANDARD OF REVIEW

Summary judgment is granted when a moving party establishes the right to the entry of judgment as a matter of law. (Code of Civ. Proc., § 437c, subd. (c).) In reviewing an order granting summary judgment, we must assume the role of the trial court and re-determine the merits of the motion. In doing so, we must strictly scrutinize the moving party's papers. The declarations of the party opposing summary judgment, however, are liberally construed to determine the existence of triable issues of fact. All doubts as to whether any material, triable issues of fact exist are to be resolved in favor of

---

[3] Beck also contends the trial court erred by granting Blum Collins's separate motion to strike allegations that Blum Collins was liable for the amount of the punitive damage award against Beck in *Goldstein II*. We need not reach that issue because we affirm the summary judgment for Blum Collins on statute of limitations grounds.

the party opposing summary judgment. While the appellate court must review a summary judgment motion by the same standards as the trial court, it must independently determine as a matter of law the construction and effect of the facts presented. (*Doe v. Salesian Society* (2008) 159 Cal.App.4th 474, 478.)

A defendant moving for summary judgment meets its burden of showing that there is no merit to a cause of action if that party has shown that one or more elements of the cause of action cannot be established or that there is a complete defense to that cause of action. (Code of Civ. Proc., § 437c, subds. (o)(2), (p)(2).) If the defendant does so, the burden shifts back to the plaintiff to show that a triable issue of fact exists as to that cause of action or defense. In doing so, the plaintiff cannot rely on the mere allegations or denial of her pleadings, "but, instead, shall set forth the specific facts showing that a triable issue of material fact exists . . . ." (Code of Civ. Proc., § 437c, subd. (p)(2).) A triable issue of material fact exists "if, and only if, the evidence would allow a reasonable trier of fact to find the underlying fact in favor of the party opposing the motion in accordance with the applicable standard of proof." (*Aguilar v. Atlantic Richfield Co.* (2001) 25 Cal.4th 826, 850.) We must consider all the evidence, along with all the inferences that can be reasonably drawn from it, and must view the evidence in the light most favorable to the party opposing summary judgment. (*Faust v. California Portland Cement Co.* (2007) 150 Cal.App.4th 864, 877.)

DISCUSSION

For purposes of this appeal Blum Collins concedes that it represented Beck, but contends it was not bound by the tolling agreement because Code of Civil Procedure section 360.5 states that a waiver of the statute of limitations must be "in writing and signed by the person obligated." That statute, which allows successive four-year waivers of the limitations period, was designed to prevent lenders from exacting unlimited and indefinite waivers from borrowers. It has no application to tolling agreements, which are a relatively recent phenomenon and which operate to suspend the running of the

limitations period. (*Don Johnson Productions, Inc. v. Rysher Entertainment, LLC* (2012) 209 Cal.App.4th 919, 929-930.)

Blum Collins also contends that the ordinary rules of contract interpretation compel the same result. We agree. Because we construe a contract, we begin with the rules concerning both contract formation and interpretation. The fundamental rules of contract interpretation arise from the premise that the parties' mutual intent governs. (Civ. Code, § 1636; *U.S. Bank National Association v. Yashouafar* (2014) 232 Cal.App.4th 639, 646 (*U.S. Bank*).) If possible, mutual intent should be inferred solely from the written provisions of the contract. (Civ. Code, § 1639.) The clear and explicit meaning of the provisions, interpreted in their ordinary and popular sense, controls judicial interpretation. (Civ. Code, §§ 1638, 1644; *U.S. Bank*, at p. 646.) If the language used is clear and explicit, it governs, and we will not create an ambiguity where none exists. (*U.S. Bank,* at p. 646.)

These general principles must be viewed in context with another rule concerning contract formation: "It is essential to the validity of a contract, not only that the parties should exist, but that it should be possible to identify them." (Civ. Code, § 1558.)

These rules have found expression in various California appellate decisions concerning whether a contract extends to unidentified parties or whether a contracting party signed in his individual or representative capacity. The court in *Kayser v. Gorman* (1935) 3 Cal.2d 478 (*Kayser*) considered the appeal of a bank that sued the receiver of a dissolved partnership to enforce a note guarantee signed by the majority partner. The partner signed the guarantee in his own name, without any reference to the partnership or his status as a partner. The trial court found that the obligation belonged to the partner in his individual capacity.

After pointing out how conflicting evidence supported the trial court's findings, the *Kayser* court turned to the receiver's contention that the primary partner's individual signature, made without reference to the partnership, governed the interpretation of the guarantee. Characterizing the partner's signature as his "individual promise," the *Kayser* court held there was a presumption "that a written instrument deliberately executed

expresses the intention of the parties. [Citations.] This presumption should prevail unless the evidence offered to show a contrary contention is clear and convincing. [Citation.]" (*Kayser, supra,* 3 Cal.2d at p. 486.)

The court in *Performance Plastering v. Richmond American Homes of California, Inc.* (2007) 153 Cal.App.4th 659 (*Performance Plastering*) considered whether a subcontractor's insurer had standing to sue a developer for breaching two settlement agreements reached in connection with two earlier disputes. In reversing a demurrer for the defendant developer, the *Performance Plastering* court held that the insurer was not a party to one of the settlement agreements because that agreement identified only the subcontractor and the developer. The court therefore held that the insurer was not a party to the agreement because it was "noticeably absent" from it. (*Id.* at pp. 666-667.)[4]

The issue also arises in connection with petitions to compel arbitration, where arbitration provisions are construed according to the usual rules of contract interpretation. (*Segal v. Silberstein* (2007) 156 Cal.App.4th 627, 633.) The court in *Benasra v. Marciano* (2001) 92 Cal.App.4th 987 (*Benasra*) held that the president of one company who sued the officers of another company for libel could not be compelled to arbitrate the dispute pursuant to the arbitration provision in two licensing agreements between the two companies because the plaintiff had "unambiguously signed both agreements as a corporate officer and only as a corporate officer." (*Id.* at p. 990.) The *Benasra* court supported its holding by citing *McCarthy v. Azure* (1st Cir. 1994) 22 F.3d 351, 360, for the proposition that "the distinction between individual capacity and representative capacity portends a meaningful legal difference." (*Ibid.*)

We applied *Benasra's* reasoning in *Goliger v. AMS Properties, Inc.* (2004) 123 Cal.App.4th 374 (*Goliger*), where a nursing home moved to compel arbitration of claims by plaintiff both on behalf of herself for wrongful death and on behalf of her late mother for mother's injuries. When the mother was admitted to the nursing home after

---

[4] However, the court held that the insurer had standing to enforce the agreement as a third party beneficiary. (*Performance Plastering, supra,* 153 Cal.App.4th at pp. 667-668.)

hip surgery, the daughter signed the admission form on a signature line designating her as a "Responsible Party" – someone who agrees to be responsible for covering the patient's bills. The daughter left blank a signature line with the designation "Agent." The daughter also signed as the responsible party arbitration agreements that contained three possible signature lines: resident; responsible party, or agent.

The nursing home appealed after the trial court denied its petition to compel arbitration, contending that the trial court erred because: (1) by signing the admission agreement and then making certain health care decisions for mother, daughter was mother's agent in fact; and (2) daughter's conduct also made her mother's ostensible agent. We rejected both contentions, relying in large part on the capacity in which the daughter signed the relevant agreements.

We held that the daughter's authority to act for her mother in protecting her health did not make her mother's agent for purposes of waiving mother's right to a jury trial, especially in light of the arbitration agreements, which daughter signed in only her capacity as someone financially responsible for mother, having left the "Agent" signature line blank. (*Goliger, supra,* 123 Cal.App.4th at pp. 376-377.) As for arbitration of the daughter's own claims, we again relied on the fact that she signed the arbitration agreements in her capacity as mother's responsible party. Citing to *Benasra, supra,* 92 Cal.App.4th at page 990, we noted that "[n]othing on the arbitration form indicates she signed in her personal capacity." (*Goliger,* at p. 377.) Because the daughter was not acting in her personal capacity when she signed the agreements, she had not waived her personal rights. (*Ibid.*)

These decisions and Beck's appeal are stitched together with common threads. As in *Kayser, supra,* 3 Cal.2d 478, Collins signed in his individual name only. As in *Performance Plastering, supra,* 153 Cal.App.4th 659, Blum Collins is noticeably absent from the tolling agreement. Although the signature line did not delineate between or designate different capacities, as in *Goliger, supra,* 123 Cal.App.4th 374, nothing in the tolling agreement indicates that Collins signed in other than his individual capacity. That makes this the factual obverse of *Benasra, supra,* 92 Cal.App.4th 987, with Collins's

signature in only his individual capacity excluding him from having signed in his partnership capacity. Having signed in his name only, without reference to his representative capacity, and in a document that fails to mention Blum Collins, we conclude that Collins unambiguously signed in his individual capacity.

Under the doctrine of ostensible authority, which we acknowledged in *Goliger, supra,* 123 Cal.App.4th at page 376, Beck contends that Blum Collins is bound by the tolling agreement because Collins and Blum Collins led her to believe that the firm was representing her after it was formed. With one exception, she supports this contention by citing decisions holding that a partnership is vicariously liable for the tortious acts of actual or ostensible partners. (*Dow v. Jones* (D.Md. 2004) 311 F.Supp.2d 461 (*Dow*); *Blackmon v. Hale* (1970) 1 Cal.3d 548; *PCO, Inc. v. Christensen, Miller, Fink, Jacobs, Glaser, Weil & Shapiro, LLP* (2007) 150 Cal.App.4th 384, 391; *Atlas Tack Corp. v. DiMasi* (1994) 37 Mass.App.Ct 66.)

We have no dispute with the proposition that a partnership can be vicariously liable for the actions of an ostensible partner. However, none of these decisions considered the issue before us: whether a partner's signature in his individual capacity only is also effective as to his partnership. They are therefore inapplicable.

The other decision Beck cites actually supports Blum Collins. The court in *Carlton Browne and Company v. Superior Court* (1989) 210 Cal.App.3d 35 (*Carlton Browne*) considered a writ petition challenging a trial court order that overruled a defendant's demurrer on statute of limitations grounds. The action arose from defendant's failure to pay a contractually agreed loan commission. The complaint, which was filed about six years after the breach occurred, alleged that defendant waived the statute of limitations under Code of Civil Procedure section 360.5. According to the complaint, defendant's lawyer signed the agreement after telling plaintiff that defendant agreed it would not raise the statute of limitations defense if plaintiff deferred filing its action. Defendant contended the waiver was not valid because section 360.5 required the signature of the person obligated. The court of appeal held that a written waiver of the limitations period signed by an authorized agent was binding on the principal.

Setting aside whether a decision interpreting Code of Civil Procedure section 360.5 applies to tolling agreements, there is a noticeable difference between the facts here and the allegations of the complaint in *Carlton Browne*. In *Carlton Browne* the agent said his principal agreed to the waiver and the agent unambiguously signed on the principal's behalf. Here, in addition to Collins signing only his own name to a document that did not mention his partnership, there is no evidence that he said or did anything to lead Beck to believe that he was also signing on behalf of Blum Collins.

Instead, Beck merely assumed Collins was signing on behalf of Blum Collins because she believed the firm represented her. This conclusion was mirrored by the declaration of Saenz, who prepared the tolling agreement. Saenz did not state that he had any discussions with Collins about the agreement beforehand, much less any that concerned binding Blum Collins as well. Therefore, Saenz too assumed the agreement applied to Blum Collins simply because Collins was a partner of that firm. While there is sufficient, albeit conflicting, evidence to support Beck's belief that Blum Collins represented her once it came into being, she has conflated that belief with her assumption that Collins's individual signature standing alone necessarily meant that he was signing in his capacity as partner.[5]

---

[5] To the extent Beck contends that Collins had a duty to advise her concerning the scope of the tolling agreement Saenz had prepared, we note the following correspondence from the record: As early as August 29, 2007, 23 days before the tolling agreement was signed, Collins sent Saenz e-mails noting that the firm that had represented Beck in defending the Goldsteins' complaint in *Goldstein II* was taking the lead and that he sought to withdraw. In a September 11, 2007 e-mail, Collins asked that Beck have the other firm sign the substitution of attorney form. In a September 12 e-mail, Collins made it clear that he was not representing Beck in connection with insurance coverage issues arising from the *Goldstein II* judgment, and urged her to hire new counsel for that purpose. In a September 18 e-mail Collins asked why the substitution form had not been signed and reminded Saenz he was not working on certain briefs that were due the next day. On September 20, the date the tolling agreement was signed, Collins sent an e-mail urging Beck to hire new counsel "to protect her interests." Letters from Collins between September and November 2007 – on letterhead from the Collins Law Firm – again urged Beck to hire new counsel or have existing counsel act for her. Finally, the substitution form itself, which Collins prepared, was set up to substitute in the law firm that had

Beck also cites *Dow, supra,* 311 F.Supp.2d 461, for the proposition that under the law of agency, as described in the Restatement (Second) of Agency, Collins had the apparent authority to bind Blum Collins to the tolling agreement. The issue in *Dow* was whether a lawyer sued for malpractice had apparent authority to enter a retainer agreement with the plaintiff-client on behalf of a law firm. In denying a summary judgment motion for the law firm, the district court relied on the following evidence: the lawyer was listed as a partner of the firm; the plaintiff met with the lawyer and another partner to discuss their representation of him; and the agreement was printed on the firm's letterhead. Under those circumstances, there were triable issues of fact whether the firm itself had represented the plaintiff. (*Id.* at pp. 469-470.)

The result in *Dow* is consistent with the rules of agency law. These include: (1) that a disclosed principal is liable on contracts made by an agent acting with apparent authority "if made in proper form and with the understanding that the apparent principal is a party." (Rest.2d, Agency, § 159); and (2) the liability of the principal "depends upon the agreement between the agent and the other party as to the parties to the transaction." (Rest.2d, Agency, § 146.) Those rules were satisfied because a law firm partner discussed representing the client and because the retainer agreement was on the firm's letterhead. Here, however, the form of the tolling agreement excludes the partnership by omission, and there is no evidence that Collins did or said anything concerning the scope of the agreement in connection with its drafting and execution.

At bottom, a contract should objectively manifest the intentions of the parties, and one party's subjective intent is irrelevant. (*Cedars-Sinai Medical Center v. Shewry* (2006) 137 Cal.App.4th 964, 980.) The tolling agreement prepared by Saenz does not reflect an intention to bind Blum Collins. We therefore affirm the judgment.[6]

---

defended Beck against the complaint in *Goldstein II*. Even though that firm did not sign the form, and it is unclear whether it in fact ever substituted in at that point, it shows that Collins signaled Beck that she should have new counsel take over at that time.

[6] Beck also cites Corporations Code section 16301 for the rule that a partnership is bound by its partners' contracts. However, as Beck acknowledges, that section applies,

DISPOSITION

The judgment for respondent Blum Collins is affirmed, and respondent shall recover its appellate costs.

RUBIN, ACTING P. J.

WE CONCUR:

FLIER, J.

GRIMES, J.

---

among others, to the "execution of an instrument in the partnership name." For that reason it is inapplicable.