

NOT TO BE PUBLISHED

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT
DIVISION THREE

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| RELIGIOUS TECHNOLOGY CENTER, et al.,) | B068261 |
|) | > (Super. ct.No. BC033035) |
| Plaintiffs and Appellants,) | |
| v.) | |
| JOSEPH A. YANNY, at al,) | |
| Defendants and Respondents.) | |

COURT OF APPEAL - SECOND DIST.
FILED
JAN 11 1994

JOSEPH A. LANE Clerk
Deputy Clerk

APPEAL from a judgment of the Superior Court of Los Angeles County. Raymond Cardenas, Judge. Affirmed.

Rabinowitz, Boudin, Standard, Krinsky fit Lieberman, Eric M. Liebsrman, and William T. Dreacher for Plaintiffs and Appellants *

Lewis, D'Axnato, Brisbois & Bisgaard, David B. Parker, Graham E. Berry, Jayesh Patel; Joseph A. Yanny, in pro per, for Defendants and Respondents.

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Religious Technology Center, Church of Scientology International, and Church of Scientology of California (collectively, "Scientology") appeal from a judgment of dismissal which followed the granting without leave to amend of the motion of defendant Joseph Yanny¹ for judgment on the pleadings. We find that the judgment was properly granted, and we shall therefore affirm it.

Factual and procedural background

From approximately mid-1983 until the end of 1987, Yanny represented Scientology as its counsel in numerous legal matters. He was initially retained as Scientology's counsel by Vicki Aznaran, who was at the time President of the Religious Technology Center.

Shortly after Yanny ceased to represent Scientology, Aznaran and her husband, Richard Aznaran, a former chief of security for Scientology, told Yanny that Scientology had subjected them to extraordinary abuse and asked him to help them find an attorney who could represent them in a lawsuit against Scientology. The Aznarans stayed with Yanny at his home for about two weeks, and he referred them to various lawyers. On April 1, 1988, the Aznarans filed an action against Scientology in the United States Court for the Central District of California.

In response, on June 23, 1988, Scientology filed an action against Yanny and others in the Los Angeles County

¹ Scientology's complaint named Yanny personally and also named Joseph H. Yanny, a Professional Law Corporation.

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Superior Court ("Yanny 1"). seeking an injunction and damages for breach of fiduciary duty, breach of contract, tortious breach of the covenant of good faith and fair dealing/ constructive fraud, fraud, intentional interference with contract/ civil conspiracy and conversion. Yanny cross-complained for unpaid legal fees.

The jury in Yanny I awarded Yanny \$154,000, and in bifurcated proceedings, the court found that: (1) Yanny and other lawyers named in Scientology's complaint had not conspired to breach Yanny's duties to Scientology; and (2) Yanny had not breached such duties. The court denied injunctive relief finding that: (1) Scientology had not established by a preponderance of the evidence that breaches of duty by Yanny were reasonably probable in the future; and (2) the court had no jurisdiction to regulate the practice of law in the federal courts or in other state courts. The court concluded Scientology would have to challenge any allegedly improper representation of its adversaries by Yanny on a case-by-case basis in any court where such representation might occur.^{2/}

On July 1, 1991, Yanny substituted in as attorney of record for the Aznarans' former attorney in their federal action against Scientology. On July 3, Scientology filed a motion in the federal court to disqualify Yanny from appearing

^{2/} Scientology appealed that judgment. Its appeal was dismissed by this division on January 8, 1993 pursuant to rule 10, subdivision (c), Rules of Court, for failure to file the record on appeal within the time allowed.

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for the Aznarans in that action. On July 18, it filed the present action in the superior court for damages for breach of fiduciary duty and a permanent injunction enjoining Yanny from "violating the fiduciary duties he owed to [Scientology] as a result of their former attorney-client relationship." In the superior court complaint, Scientology also sought damages and an injunction enjoining Yanny from violating duties owed to Scientology by representing one Gerald Armstrong, whom Scientology alleged Yanny was representing in matters adverse to Scientology.^{3/} Scientology alleged that Yanny possessed confidential information which he obtained during his representation of Scientology and that he "traded on" that information in representing Scientology's adversaries, Armstrong and the Aznarans.

Scientology's motion to disqualify Yanny in the Aznarans' federal action was granted shortly after it was filed, on July 24, 1991. In the superior court action, after resisting discovery requests by Yanny, which were aimed at identifying confidential information which had been disclosed to Armstrong and the Aznarans, Scientology stipulated that it "[did] not base any claim in this action on any alleged disclosure of . . . confidences to plaintiffs' adversaries, and

^{3/} A lawsuit between Armstrong and Scientology came before this court, and we filed an opinion in that case, Church of Scientology v. Armstrong (1991) 232 Cal.App.3d 1060, on July 29, 1991, shortly after the filing of Scientology's complaint against Yanny. Yanny did not appear as Armstrong's counsel of record in that case, at least not on appeal. However, it appears he may have filed a brief as amicus curiae at some point in the proceedings.

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that such [was] not, and [would] not at trial be, an issue in this case." Based upon this stipulation Yanny filed a motion for judgment on the pleadings.

The court granted the motion for judgment on the pleadings, concluding that Scientology could not maintain a cause of action for Yanny's alleged breach of fiduciary duties—without pleading and proving an injury caused by such breach—without alleging, that is, an actual disclosure of Scientology's confidences to its adversaries. A subsequent motion for reconsideration of the court's ruling on the motion for judgment on the pleadings, or in the alternative, for leave to amend its complaint to allege actual disclosures of confidences, was denied on June 15, 1992. This timely appeal followed.

CONTENTIONS ON APPEAL

Scientology contends the trial court erred in: (1) holding it was not entitled to recover damages for Yanny's breach of fiduciary duty; (2) denying a permanent injunction against further breaches of such duty; (3) denying Scientology leave to amend its complaint.

DISCUSSION

1. Standard of Review

A motion for judgment on the pleadings is the equivalent of a general demurrer. (Columbia Casualty Co. v. Northwestern Nat. Inc. Co. (1991) 231 Cal.App.3d 457, 468.)

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Accordingly^ we review the trial court's grant of such a motion under the same standard as we would a judgment after the sustaining of a demurrer. (Hughes v. western MarArthur Co., (1987) 192 Cal.App.3d 951, 954; Palmer vs City of Ojai (1986) 178 Cal.App.3d 280, 290.) Both motions test whether the allegations of the pleading under attack, if true, support the pleader's cause of action; (~~Columbia Casualty Co. v. Northwestern Nat. Ins. Co.~~, supra, 231 Cal.App.3d at p. 468.)

In making this determination, a court generally looks only to the face of the pleading, presumes all properly alleged facts to be true, and determines whether these facts constitute a cause of action. However, in appropriate circumstances, the court may also consider matters subject to judicial notice. Hughes v. western MarArthur Co., supra 192 Cal.App.3d at p. 955, and cases cited therein.)

Like a judgment based upon an order sustaining a demurrer, a judgment on the pleadings must be affirmed if any one of the several grounds of the motion is correct, (Hugues v. Western MacArthur Co. supra. 192 Cal.App.3d at p. 954; ~~Longshore v. County of Ventura~~ (1979) 25 Cal.3d 14, 21.) As with any ruling, a trial court's order granting judgment on the pleadings will be sustained if correct on any theory. (D'Amico v. Board of Medical Examiners (1974) 11 Cal.3d 1, 19; ~~Johnson V. Berkofsky Barret Productions, Inc.~~ (1969) 211 Cal.App.3d 1067, 1071.)

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2. Scientology Was Not Entitled To Recover Damages Against Yanny Without Pleading and Proving an Actual Disclosure of Confidences.

An attorney's breach of the ethical duties of good faith and fidelity, which are owed by an attorney to his or her client, amounts to legal malpractice and is actionable.

(Lysick v. Walcom (1968) 258 Cal.App.2d 136, 149; Ivy v. Pacific Automobile Ins, Co., (1958) 156 Cal.App.2d 652, 663; see generally Developments in the Law; Conflicts of Interest in the Legal Profession (1981) 94 Herv.L. Rev. 1244, 1486-1496.)

However, like any other action for damages, a claim for breach of an attorney's fiduciary duty has minimum pleading requirements, namely, duty, breach, causation and damages. The absence of any one of these elements defeats the cause of action.

In particular, for a former client to plead a cause of action against its former attorney for damages for breach of the attorney's duties of loyalty and confidentiality, the client not only must show the existence and breach of a fiduciary duty, but also must show injury proximately caused by such breach. (Pierce V. Lyman (1991) 1 Cal.App.4th 1093, 1101; Stockton Theatres, Inc. v. Palermo (1953) 121 Cal.App.2d 616, 625-627.) Yanny contends, in effect, that Scientology fails to state a cause of action against Yanny, because the allegations of its complaint do not establish causation or injury. We agree.

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Scientology is simply incorrect in contending that it could establish a cause of action for breach of fiduciary duties by showing only that a substantial relationship existed between Yanny's prior representation of Scientology and his current representation of its adversaries. It is indeed established beyond all possible dispute that a former client can successfully move to disqualify its former attorney from representing the former client's adversary on a matter in which the attorney has obtained confidential information; actual possession of confidential information by the attorney need not be shown, but is presumed if the client merely establishes that there is a substantial relationship between the former and the current representation. /People ex rel Deukmejian v. Brown (1981) 29 Cal.3d 150, 156-157; H.F. Ahmanson & Co. v. Salomon Brothers, Inc. (1991) 229 Cal.App.3d 1445, 1452-1453; Global Van Lines, Inc. v. Superior Court (1983) 144 Cal.App.3d 483, 487-488.)4/ Disqualification motions exist to enforce the duties of an attorney, as articulated in Business and Professions Code section 6068, subdivision (e) and rule 3-310, subd. (d) of the Rules of Professional Conduct for attorneys,

A/ See also, e.g., In re Complex Asbestos Litigation (1991) 232 Cal.App.3d 572, 587; Henrikson v. Great American Savings & Loan (1992) 11 Cal.App.4th 109, 113-114; Truck Ina. Exchange v. Fireman's fund Ins. Co. (1992) 6 Cal.App.4th 1050, 1056; Rosenfeld Construction Co. v. Superior Court; (1991) 235 Cal.App.3d 566, 575; Western Continental Operating C^o. Natural Gas Corp. (1989) 212 Cal.App.3d 752, 758-759; BJLYJBX West, Inc. v Nickel (1987) 188 Cal.App.3d 1297, 1302-1303; Elliot v. McFarland Unified school District (1985) 165 Cal.App.3d 562, 569, fn, 6; Grove v. Grove Valve & Regulator C^o (1963) 213 Cal.App.2d 646, 652.

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to preserve client confidences and to refuse employment adverse to a former client in matters on which the attorney has received confidential information.^

The "substantial relationship" rule, which governs disqualification motions, is a "rule by necessity." (Global Van Lines, Inc. v. Superior Court, supra 144 Cal.App.3d at p. 489; Western Continental Operating Co. v. Natural Gas Corp., supra, 212 Cal.App.3d at p. 759.) It exists because a former client cannot prove what is in the mind of the attorney, nor should the attorney have to engage in a subtle evaluation of the extent to which he acquired relevant information in the first representation and of the actual use of that knowledge and information in the subsequent representation." (Global van Lines, Inc. v. Superior Court, supra, 144 Cal.App.3d at p. 489, quoting from Developments in the Law? Conflicts of Interest in the Legal Profession, &U&U, 95 Karv. L. Rev. at p. 1318.)

It does not follow, however, that an action for damages will lie against a former attorney, where the former client merely shows a substantial relationship between the

5./ Bus. & Prof. Code, 5 6068, in relevant part, provides: "It is the duty of an attorney to do all of the following: * . . [V](e) To maintain inviolate the confidence, and at every peril to himself or herself to preserve the secrets, of his or her client. . . ."

Rule 3-110, subd. (d), Rules of Professional Conduct, substantially embodies the provisions of former rule 4-101 and rule 5-101 which preceded rule 4-101. Rule 3-110, subd. (d), provides: "A member shall not accept employment adverse to a client or former client where, by reason of the representation of the client or former client, the member has obtained confidential information material to the employment except with the informed written consent of the client or former client."

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attorney's former and current representation end does not allege or show that the attorney actually possessed, disclosed or used confidential information. Scientology cites no binding or persuasive authority for the proposition that damages are or should be recoverable under such circumstances, and we can imagine no reason in policy to allow such recovery.

We are unconvinced by Scientology's claim that damages must be presumed in cases of an attorney's breach of fiduciary duty, just as they are presumed in cases of defamation per se. It is provided by statute that damages may be presumed in cases of libel per se. (Civ. Code, §§ 45a, 46, 48a.) No statute, and as we have observed, no judicial authority, provides for presumed damages for an attorney's breach of confidence. In addition, damages are presumed in defamation cases only where it is established that the defendant did indeed publish a statement, and the statement was of a kind which, on its face, has a natural tendency to injure a person's reputation. (Civ. Code, §§ 45a, 46; *Slaughter v. Friedman* (1982) 32 Cal.3d 149, 153.) Scientology would have the law go farther in cases of an attorney's breach of confidence and presume not only damage from the disclosure or use of a former client's confidences, but also the disclosure or use itself.

In order to prevent such disclosures or uses, the courts have found it necessary to disqualify an attorney from representing a former client's adversary, if the new

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representation bears a substantial relationship to the former one. However, where the former client claims the damage inherently threatened by any adverse representation has already occurred and seeks a money recovery for it, we fail to see any reason why the former client should not be required/ as is any plaintiff in an action for damages, to identify the injury and establish that the defendant attorney's breach caused it.⁶

Scientology claims, however, that it would be paradoxical to require a former client to reveal the very confidences which are threatened by its former attorney's defection. Such a requirement clearly would be both paradoxical and improper in the context of a disqualification motion. (Cf. Woods v. Superior Court (1983) 149 Cal.App.3d 931, 934.) However, it is neither improper nor paradoxical in the context of an action for damages. If disclosure or use of the confidences is merely threatened, the plaintiff's proper remedy is a motion to disqualify the attorney from representing the plaintiff's adversary. If the confidences have already been revealed or used, the damage has been done. That, indeed, is the very damage which gives rise to the plaintiff's right of

^{6/} Scientology is, of course, correct in arguing that nominal damages are appropriate where a plaintiff establishes a mere technical violation of a right, and that nominal damages and punitive damages may be recovered where the damage is substantial, but the amount is not susceptible of precise proof. (Staples v. Hoefke (1987) 189 Cal.App.3d 1397, 1406; Avina v. flp»rloek (1972) 28 Cal.App.3d 1086, 1088.) But this does not mean that even nominal damages can be recovered where the plaintiff does not plead and prove an actual, if "technical!" violation of a right, as opposed to showing the mere existence of circumstances posing a threat, even a serious one, that a right will be violated.

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recovery, and it roust be pled end proven, or en iction for damages simply does not lie. The trial court thus quite properly granted judgment on the pleadings as to Scientology's claims for damages.

3. Scientology Was Not Entitled to a Broad Injunction Affecting Yanny's Practice of Law In Other Courts.

Scientology contends, however, that, having pled the existence of a substantial relationship between Yanny's former representation of Scientology and any matter in which he might represent the Aznarans or Armstrong against Scientology, it was entitled to prove the existence of that relationship, and thereafter to obtain a permanent injunction enjoining Yanny both from representing those parties as their attorney of record in (any proceeding in any court and from assisting them informally! in any such proceedings. We cannot agree.

Initially, Scientology has an adequate remedy by way of a disqualification motion, which it is free to file in any matter in which it believes Yanny is improperly aiding its adversaries. The injunction requested would do no more than enjoin Yanny from "violating the fiduciary duties he owes to plaintiffs as a result of their earlier attorney-client relationship," and Yanny is already prohibited from such violations by his duties under Business and Professions Code section 6068 and rule 3-310 of the Rules of Professional Conduct, further, given the broad phrasing of the requested

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injunction, the only means of enforcing it would be to bring a motion for contempt in any proceeding in which Yanny might be representing or assisting an adversary. Such a motion would raise the issue of whether Yanny was violating a duty to Scientology—precisely the issue which would be raised by an ordinary notion to disqualify Yanny, which could be brought without regard to the injunction.

Scientology denies a disqualification motion would be an effective remedy, and contends it has no effective remedy against threatened breaches by Yanny of his duties to it, because Yanny has acted in the past, and may act in the future, "behind this scenes" to give improper assistance to its adversaries, rather than appear in their behalf as attorney of record. Scientology argues that it is unclear whether a court would have jurisdiction to disqualify an attorney who does not make a formal appearance in an action and who denies any participation in it.

The issue of whether a court would have jurisdiction to enjoin an attorney from assisting a party "behind the scenes" in a particular case is, of course, not before us. However, it is mere sophistry to say that a court would have jurisdiction to prohibit as a contempt Yanny's informal or surreptitious participation in a case, yet say that the same court might lack jurisdiction to prohibit the same conduct as a

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potential violation of the attorney's duties under generally applicable statutes and rules.

More fundamentally, the court below had no jurisdiction to grant the injunction Scientology sought. Scientology correctly argues that an attorney's former client can seek to disqualify the attorney from an improper successive representation in either of two ways: either (1) by a disqualification motion in the action in which the former attorney appears for the former's client's adversary (People ex rel. Deukmejian v. Brown, supra, 29 Cal.3d at p. 159; Big Bear Mun. Water Distr. v. Superior Court (1969) 269 Cal.App.2d 919, 927; Grove v. Grove Valve & Regulator Co., supra, 213 Cal.App.2d at p. 652); or (2) by a separate action to enjoin the adverse representation (Watchumna Water Co, v. Bailey (1932) 216 Cal. 564, 565/ 574). However, even where a separate action for an injunction has successfully been brought, the injunction was directed only against the attorney's participation in specific lawsuits in courts whose proceedings are subject to the jurisdiction of the court issuing the injunction. (Ibid.) Scientology has cited no precedent for the kind of broad injunction which it seeks. Indeed, such authority as exists is squarely against the issuance of such an injunction.

The power to disqualify an attorney derives from the court's inherent power to control the conduct of persons "in

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any manner connected with .a judicial proceeding before it, in every matter pertaining thereto.* (Code Civ. Proc, § 128, subd. (a)(5); In re Complex Asbestos Litigation, supra, 232 Cal.App.3d at p. 600.) A superior court has no inherent or statutory power to control the conduct of persons in judicial proceedings pending or later to be brought before a different court, and indeed is not permitted to interfere with the process of another court of equal jurisdiction in a case properly before the latter. (Ibid.) This is a matter of fundamental comity between courts, which should not be set aside in what would amount to an ineffectual effort to enable Scientology, in one single proceeding, to prevent Yanny from ever using confidences he obtained while serving as its attorney to assist its adversaries in any proceeding at any time.

In sum, the injunction was both duplicative of existing remedies and beyond the court's jurisdiction. It was therefore properly denied.

4. The Court Did Not Abuse Its Discretion in Denying Scientology The Opportunity to Amend lire Complaint.

Scientology contends it should have been afforded the opportunity of amending its complaint to allege actual disclosure!! of confidences. As a general matter, a motion for judgment on the pleadings should not be granted without leave to amend if facts are alleged which would entitle the plaintiff

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to relief under any theory. (Concerned Citizens of Costa Mesa, Inc, V. 32nd Dist. Agricultural Assn/ (1986) 42 Cal.3d 929, 936; Minsky v. City of Los Angeles (1974) 11 Cal.3d 113, 118.) However, under the specific circumstances of this case, Scientology could not possibly have amended its complaint to state a cause of action for damages for Yanny's alleged breach of duty, where Scientology had stipulate that it did not base any claim upon any alleged disclosure of confidences, and that the existence or nonexistence of any such disclosures would not be an issue in the case. In ruling on the motion for judgment on the pleadings, the court could take judicial notice of the Stipulation. (Cantu v. Resolution Trust Corp. (1992) 4 Cal.App.4th 857, 877, and cases cited therein; Hughes v. Western MacArthur Co, supra, 192 Cal.App.3d at p. 955.) Nor could any possible amendment of the complaint have entitled Scientology to the broad injunction it sought, for such relief, as we have observed, was beyond the court's jurisdiction. Under these circumstances, the court did not abuse its discretion in entering judgment on the pleadings without leave to amend.

: DISPOSITION

The judgment is affirmed. Costs on appeal are awarded to Yanny.

NOT TO BE PUBLISHED

CROSKY, Acting F.J.

We concur: i

MINZ, J.

KITCHING, J.