2005 WL 4976054 (Cal.Superior) (Trial Motion, Memorandum and Affidavit)
Superior Court of California,
Rene C. Davidson Alameda County Courthouse.
Alameda County

CAPITOL PEOPLE FIRST, et al., Plaintiffs/Petitioners,
v.
DEPARTMENT OF DEVELOPMENTAL SERVICES, et al., Defendants/Respondents.

No. 2002-038715.
December 27, 2005.

Complex Litigation

Memorandum of Points and AUthorities in Support of Plaintiffs' Motion for Judgment on the Pleadings [C.C.P. § 438(C)] as to the State Defendants' Answer to Plaintiffs' Fifth Amended Complaint

Judge: Hon. Ronald Sabraw.

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Statutes

Other Authorities

I. INTRODUCTION

The State Defendants' Answer is defective. It contains fourteen boilerplate affirmative defenses, many of which are not affirmative defenses at all, and none of which contain any factual allegations to support them.

Plaintiffs have a right to know the basis for the State Defendants' asserted defenses. They cannot conduct meaningful discovery into those defenses unless and until the State Defendants allege some factual bases to support them. Moreover, Plaintiffs do not believe that the State Defendants have any good faith bases to allege most of their defenses. Plaintiffs thus believe that this motion should narrow the issues actually at issue for trial. For those reasons, Plaintiffs move for judgment on the pleadings pursuant to California Code of Civil Procedure Section 438(c), and respectfully request that the Court strike the State Defendants' defective affirmative defenses.

II. ARGUMENT

A. The State Defendants' Answer "Does Not State Facts Sufficient To Constitute A Defense To The Complaint."

To plead an affirmative defense, the State Defendants must allege the ultimate facts, not mere legal conclusions. Their pleading burden is identical to a plaintiff's burden to plead the ultimate facts constituting the cause of action. 5 Witkin, *Cal. Proc.* (4th ed. 1997), Plead § 1009, p. 463; Weil & Brown, *Cal. Prac. Guide: Civ. Pro. Before Trial* ¶ 6:459 (2001).

As the court explained in *S. Shore Land Co. v. Petersen,* 226 Cal. App. 2d 725, 732 (1964), "the determination whether an answer states a defense is governed by the same principles which are applicable in determining if a complaint states a cause of action." *See also FPI Dev., Inc. v. Nakashima,* 231 Cal. App. 3d 367, 384 (1991) (answer must aver facts "as carefully and with as much detail as the facts which constitute the cause of action and are alleged in the complaint").

The "purpose of a motion for judgment on the pleadings is to test the sufficiency of the pleadings." *Shin v. Kong,* 80 Cal. App. 4th 498, 502-03 (2000). Plaintiffs are entitled to test the sufficiency of the State Defendants' affirmative defenses to determine which ones have a legitimate basis and will be actual defenses contested at trial. *See, e.g., Allstate Ins. Co. v. Kim W.,* 160 Cal. App. 3d 326, 333 (1984) (affirming judgment on the pleadings for plaintiff where defendant's "answer failed to ... set up affirmative matter constituting a defense").

The State Defendants' First through Fourteenth Affirmative Defenses fail to "state[] facts sufficient to constitute a defense" to any of the nine claims asserted against them in the Fifth Amended Complaint,[1] and thus are subject to a motion for judgment on the pleadings. Cal.Civ.Proc. Code § 438(c)(1)(A).

1. Purported First Affirmative Defense - Failure to State a Cause of Action

The purported First Affirmative Defense alleges in conclusory terms that the "Complaint fails to state facts sufficient to constitute a cause of action against State Defendants." State Defendants' Answer To Fifth Amended Petition For Writ of Mandate, filed April 8, 2005 ("Ans."), at 15. This affirmative defense alleges no facts. Furthermore, it does not indicate what elements - if any - are missing from any of the causes of action alleged in the Fifth Amended Complaint. It is worth noting that this Court, in its January 6, 2005 Order, already rejected this defense as it applies to Plaintiffs' First Cause of Action for violation of the Lanterman Act and Seventh Cause of Action for violation of the Medicaid Act. If there were any legal defects with respect to any of Plaintiffs' other causes of action, the State Defendants could have (and would have) challenged them

during the more than three years since Plaintiffs brought this action.

For these reasons, Plaintiffs' motion for judgment on the pleadings as to this defense should be granted. Cal.Civ.Proc. Code § 438(c)(1)(A).

2. Purported Second Affirmative Defense -Waiver, Estoppel and/or Laches

The purported Second Affirmative Defense alleges in conclusory terms that "[P]laintiffs have waived, relinquished, and/or abandoned, and are equitably estopped to assert any claim for relief against State Defendants regarding the allegations contained in the Complaint." Ans. at 15.

The equitable defense of waiver requires the "intentional relinquishment of a known right after knowledge of the facts." *See Harper v. Kaiser Cement Corp.,* 144 Cal. App. 3d 616, 619 (1983) (citations omitted). The State Defendants have failed to plead any facts demonstrating that Plaintiffs intentionally relinquished any known right. As a result, the State Defendants have failed to plead the requisite elements of the defense of waiver, and have failed to inform Plaintiffs what they supposedly did that could constitute such a waiver.

"The elements of the doctrine" of estoppel are "that (1) the party to be estopped must be apprised of the facts; (2) he must intend that his conduct shall be acted upon, or must so act that the party asserting the estoppel has a right to believe it was so intended; (3) the other party must be ignorant of the true state of facts; and (4) he must rely upon the conduct to his injury." *County of Los Angeles v. City of Alhambra,* 27 Cal. 3d 184, 196 (1980) (citing *City of Long Beach v. Mansell,* 3 Cal. 3d 462, 488-89 (1970)). The State Defendants plead no facts which show that they relied on any representations or conduct of the Plaintiffs or that any such reliance was either reasonable or detrimental.

The equitable defense of laches may bar relief for those parties that "neglect their rights" to the "disadvantage or prejudice of other parties." 11 Witkin, *Summary of Cal. Law* (9th ed. 1987), Equity, §§ 14-15, pp. 690-92. The State Defendants have alleged no facts showing any "neglect" of any kind on Plaintiffs' part, nor do they allege any facts establishing that State Defendants were disadvantaged or prejudiced by any conduct by Plaintiffs.

For these reasons, Plaintiffs' motion for judgment on the pleadings as to this defense should be granted. Cal.Civ.Proc. Code § 438(c)(1)(A).

3. Purported Third Affirmative Defense - Res Judicata and Collateral Estoppel

The purported Third Affirmative Defense alleges in conclusory terms that "[P]laintiffs' claims, in whole or in part, are barred by the doctrines of res judicata and collateral estoppel." Ans. at 15.

The prerequisite elements for the defense of res judicata are: (1) a claim or issue raised in the present action is identical to a claim or issue litigated in a prior proceeding; (2) the prior proceeding resulted in a final judgment on the merits; and (3) the party against whom the doctrine is being asserted was a party or in privity with a party to the prior proceeding. *Brinton v. Bankers Pension Servs., Inc.,* 76 Cal. App. 4th 550, 556 (1999). To raise the defense of res judicata, the defendant must specifically identify the prior final judgment which bars the present action. 5 Witkin, *Cal. Proc.* (4th ed. 1997), Plead § 1055, p. 505. "When a judgment or order of a court is conclusive, the judgment or order must be alleged in the pleadings if there be an opportunity to do so." Civ. Proc. Code § 1908.5. The State Defendants' Answer does not allege facts which would tend to establish any of the elements of res judicata. Although it lists by title the *Sanchez v. Johnson* case, it does not identify any claims or issues that were adjudicated to a final judgment that would bar this lawsuit, nor does it allege the parties to that action.

The defense of collateral estoppel requires that: (1) the party against whom collateral estoppel is asserted was a party in the prior proceeding; (2) the issue decided at the previous proceeding is identical to that which is sought to be relitigated; and (2) the previous proceedings resulted in a final judgment on the merits." *People v. Sims,* 32 Cal. 3d 468, 484 (1982). The State Defendants' Answer does not allege any facts which would establish any of the elements of collateral estoppel.

For these reasons, Plaintiffs' motion for judgment on the pleadings as to this defense should be granted. Cal.Civ.Proc. Code § 438(c)(1)(A).

4. Purported Fourth Affirmative Defense - Uncertainty

The purported Fourth Affirmative Defense alleges in conclusory terms that the allegations in Plaintiffs' Fifth Amended Complaint "are uncertain," and cites to several paragraphs in the Plaintiffs' Fifth Amended Complaint. Ans. at 15. The State Defendants do not articulate what it is about Plaintiffs' allegations that is uncertain. Thus, the State Defendants have not satisfied their burden to allege this defense "as carefully and with as much detail as the facts which constitute the cause of action and are alleged in the complaint." *Nakashima,* 231 Cal. App. 3d 384. For these reasons, Plaintiffs' motion for judgment on the pleadings as to this defense should be granted. Cal.Civ.Proc. Code § 438(c)(1)(A).

5. Purported Fifth Affirmative Defense - Claims Are Subject To Other Actions Already Pending

The purported Fifth Affirmative Defense alleges in conclusory terms that Plaintiffs' claims are barred "because such claims are subject to other actions litigated in other courts, e.g. writ proceedings in individual cases and *Richard S."* Ans. at 15. State Defendants' allegations do not contain a proper allegation that the actions are pending, rather it alleges that they were "litigated."

The defense that other actions are pending is a plea in abatement that must be "specific and factual." 5 Witkin, *Cal. Proc.* (4th ed. 1997), Plead § 1074, p. 522. "It should identify the former action and state when it was brought, what the cause of action was, what relief was demanded, and the facts of its pendency." *Id.* (citing *Fresno Planing Mill Co. v Manning,* 20 Cal. App. 766, 768 (1912). Since pleas in abatement are generally disfavored, "[s]etting up the plea in general terms is ineffective." *Id.; see, e.g., California Trust Co. v. Gustason,* 15 Cal. 2d 268, 273 (1940) (granting demurrer to defense because answer "does not state when the other action was brought, what the cause of action was, nor what relief was demanded."). The State Defendants have not met their strict burden of specifically pleading this defense. The State Defendants have not identified any pending action, when such action was brought, what causes of action purportedly overlap with the present action, what relief was demanded, nor any specific facts of the pendency of any other action.

For these reasons, Plaintiffs' motion for judgment on the pleadings as to this defense should be granted. Cal.Civ.Proc. Code § 438(c)(1)(A).

6. Purported Sixth Affirmative Defense - Failure to Exhaust Administrative Remedies

The purported Sixth Affirmative Defense alleges in conclusory terms that Plaintiffs' claims are barred because "Plaintiffs' claims, and those of the putative class,... have failed to exhaust their administrative remedies." Ans. at 15.

The defense of exhaustion of administrative remedies relies upon the rule that where an administrative remedy is provided by statute, relief must be sought from the administrative body and this remedy exhausted before the courts will act. *Campbell v. Regents of the Univ. of California,* 35 Cal. 4th 311, 321-322 (2005). There are "numerous exceptions to the rule including situations where the agency indulges in unreasonable delay, when the subject matter lies outside the administrative agency's jurisdiction, when pursuit of an administrative remedy would result in irreparable harm, when the agency is incapable of granting an adequate remedy, and when resort to the administrative process would be futile because it is clear what the agency's decision would be." *Green v. City of Oceanside,* 194 Cal. App. 3d 212, 222 (1987).

The State Defendants allege no facts which would raise even an inference that the defense of exhaustion of administrative remedies would bar Plaintiffs' claims. The State Defendants do not allege which, if any, statutes require exhaustion of administrative remedies, nor for which of Plaintiffs' nine causes of action those purported administrative remedies apply. Moreover, the State Defendants do not allege any specific facts tending to show that Plaintiffs have failed to exhaust any or all administrative remedies. For these reasons, Plaintiffs' motion for judgment on the pleadings as to this defense should be granted. Cal.Civ.Proc. Code § 438(c)(1)(A).

7. Purported Seventh Affirmative Defense - No Equitable Relief

The purported Seventh Affirmative Defense alleges in conclusory terms that equitable relief is barred "because plaintiffs are not entitled to any relief, but even if they were entitled to relief, plaintiffs have an adequate remedy of law and cannot otherwise establish the elements necessary to obtain equitable relief." Ans. at 15.

"The rule in this state is that injunctive ... relief will not be granted where there is a plain, complete, speedy, and adequate remedy at law." *Flying Dutchman Park, Inc. v. City and County of San Francisco,* 93 Cal. App. 4th 1129, 1138 (2001). Noticeably absent from the State Defendants' Seventh Affirmative Defense is any factual allegation setting forth what other remedy at law Plaintiffs may have, and how that remedy would be complete and adequate to address Plaintiffs' claims. Thus, the State Defendants have fallen well short of alleging this defense "as carefully and with as much detail as the facts which constitute the cause of action and are alleged in the complaint." *Nakashima,* 231 Cal. App. 3d at 384. For these reasons, Plaintiffs' motion for judgment on the pleadings as to this defense should be granted. Cal. Civ. Proc. Code § 438(c)(1)(A).

8. Purported Eighth Affirmative Defense - Statute of Limitations

The purported Eighth Affirmative Defense alleges in conclusory terms that each of Plaintiffs' claims "is barred by the applicable statute of limitations." Ans. at 15.

In pleading the defense of statute of limitations, the defendant must specifically cite the statutory code section which bars the cause of action. Cal.Civ.Proc. Code § 458. Failure to specially plead the statute of limitations defense results in a waiver of the defense. 5 Witkin, *Cal. Proc.* (4th ed. 1997), Plead §§ 1043-1047, pp. 491-498. The State Defendants do not cite any specific statutes of limitations, nor do they identify the causes of action to which their Eighth Affirmative Defense applies. For these reasons, Plaintiffs' motion for judgment on the pleadings as to this defense should be granted. Cal.Civ.Proc. Code § 438(c)(1)(A).

9. Purported Ninth Affirmative Defense - Fundamental Alteration

The purported Ninth Affirmative Defense alleges in conclusory terms that the relief sought by Plaintiffs "is barred because it would require defendants to fundamentally alter substantial portions of California's services and programs ... result[ing] in an allocation of available resources that is inequitable." Ans. at 15-16.

The defense of fundamental alteration applies to claims arising under the Americans with Disabilities Act ("ADA"). *See Olmstead v. L.C.,* 527 U.S. 581, 605-606 (1999). "Factors that are relevant to the fundamental alteration defense ... include but [are] not limited to the state's ability to continue meeting the needs of other institutionalized [persons] for whom community placement is not appropriate, whether the state has a waiting list for community placement, and whether the state has developed a comprehensive plan to move eligible patients into community care settings." *Id.* In asserting that the relief sought by Plaintiffs is barred by the fundamental alteration defense, the State Defendants ignore the fact that aside from their ADA cause of action, Plaintiffs have eight other causes of action to which the fundamental alteration defense is inapplicable. Moreover, the State Defendants have not alleged any facts tending to show that the fundamental alteration defense would apply to Plaintiffs' ADA claim. For these reasons, Plaintiffs' motion for judgment on the pleadings as to this defense should be granted. Cal.Civ.Proc. Code § 438(c)(1)(A).

10. Purported Tenth Affirmative Defense - Conduct of Other Persons

The purported Tenth Affirmative Defense alleges in conclusory terms that "to the extent the Complaint alleges violations of law, those alleged violations are the result of conduct or omissions of persons other than the State Defendants." Ans. at 16.

This is not a recognized affirmative defense, but rather a denial of specific factual allegations made in Plaintiffs' Fifth

Amended Complaint. Moreover, the State Defendants do not allege any specific facts tending to show that the violations of law alleged in Plaintiffs' Fifth Amended Complaint were the result of the conduct of other persons. For these reasons, Plaintiffs' motion for judgment on the pleadings as to this defense should be granted. Cal. Civ. Proc. Code § 438(c)(1)(A).

11. Purported Eleventh Affirmative Defense - No Ministerial Duties

The purported Eleventh Affirmative Defense alleges in conclusory terms that plaintiffs' "writ of mandate under the Lanterman Act and the Medicaid Act is barred because the actions plaintiffs seek to compel are not ministerial." Ans. at 16. This is not a recognized affirmative defense. In any event, this Court and the Court of Appeal have already held that mandamus will lie even where the duty sought to be enforced is not purely ministerial. *E.g.,* January 6, 2005 Order. Moreover, the State Defendants do not specify which actions, if any, are not ministerial. For these reasons, Plaintiffs' motion for judgment on the pleadings as to this defense should be granted. Cal.Civ.Proc. Code § 438(c)(1)(A).

12. Purported Twelfth Affirmative Defense - Relief Inconsistent With State Plan

The purported Twelfth Affirmative Defense alleges in conclusory terms that "the relief requested is barred, in whole or in part, because it is inconsistent with the federally mandated and approved Medicaid state plan." Ans. at 16. This is not a recognized affirmative defense, but rather a denial of specific factual allegations made in Plaintiffs' Fifth Amended Complaint. Moreover, the State Defendants do not allege any specific facts tending to show that the relief sought by Plaintiffs is inconsistent with any federally mandated and approved Medicaid state plan. For these reasons, Plaintiffs' motion for judgment on the pleadings as to this defense should be granted. Cal.Civ.Proc. Code § 438(c)(1)(A).

13. Purported Thirteenth Affirmative Defense - No Entitlement

The purported Thirteenth Affirmative Defense alleges in conclusory terms that Plaintiffs' claims are barred "because to the extent that the Complaint alleges entitlement to services or programs which are not being provided, some or all plaintiffs or their representatives have themselves failed to demonstrate entitlement to such programs or services." Ans. at 16. This is not a recognized affirmative defense, but rather a denial of specific factual allegations made in Plaintiffs' Fifth Amended Complaint. Moreover, the State Defendants do not allege any specific facts tending to negate Plaintiffs' allegations that they are entitled to certain programs and services. For these reasons, Plaintiffs' motion for judgment on the pleadings as to this defense should be granted. Cal.Civ.Proc. Code § 438(c)(1)(A).

14. Purported Fourteenth Affirmative Defense - All Placements Appropriate

The purported Fourteenth Affirmative Defense alleges in conclusory terms that Plaintiffs claims are barred "because at all relevant times, placements of plaintiffs and the putative class members were based upon professional judgment and/or were appropriate under prevailing practice." Ans. at 16. This is not a recognized affirmative defense, but rather a denial of specific factual allegations made in Plaintiffs' Fifth Amended Complaint. Moreover, the State Defendants do not allege any facts tending to negate Plaintiffs' specific allegations concerning the inappropriate placement of the representative plaintiffs and putative class members. For these reasons, Plaintiffs' motion for judgment on the pleadings as to this defense should be granted. Cal.Civ.Proc. Code § 438(c)(1)(A).

III. CONCLUSION

For the reasons set forth above, Plaintiffs respectfully request that this Court grant Plaintiffs' motion for judgment on the pleadings and strike the State Defendants' defective affirmative defenses.

Footnotes

[1] Moreover, State Defendants fail to indicate to which of the nine causes of action - if any - each defense supposedly applies. This alone is a reason to grant the motion.