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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION THREE

VALERIE RODRIGUEZ,

Plaintiff and Appellant,

v.

KAISER FOUNDATION HOSPITALS et
al.,

Defendants and Respondents.

No. A146050

(San Mateo County
Super. Ct. No. CIV513408)

On April 26, 2012, plaintiff Valerie Rodriguez filed a complaint seeking damages for personal injuries arising from a May 5, 2010, incident, naming as defendants Automatic Door Systems, Inc. and Does 1 to 25, inclusive. Three years later, Rodriguez filed and served a Doe Amendment to the complaint, adding Kaiser Foundation Hospitals (KFH) as a defendant, instead of a fictitious Doe (hereinafter referred to as the “Doe Amendment”). KFH filed a demurrer to the Doe Amendment, which was opposed by Rodriguez. The trial court sustained the demurrer to the Doe Amendment without leave to amend, and entered judgment in favor of KFH. In so ruling, the court held, in pertinent part, that (a) the Doe amendment was barred by the applicable two-year statute of limitations; and (b) the Doe Amendment did not relate back to the filing date of the original complaint because Rodriguez failed to demonstrate genuine ignorance of KFH’s

identity so as to avail herself of the Doe statute (Code Civ. Proc. § 474¹). We affirm the judgment in favor of KFH.²

FACTS³

A. Background

On April 26, 2012, Rodriguez filed a complaint seeking damages for personal injuries, alleging five causes of action: strict liability (product design defect), strict liability (failure to warn), negligence, breach of express warranty, and breach of implied warranty. In the opening paragraph, the complaint specifically alleged “the injuries described herein occurred on May 5, 2010 at the Kaiser Permanente San Jose Regional Center, located at 256 International Circle, City of San Jose, County of Santa Clara, State of California.” According to the complaint, Rodriguez was allegedly injured by an automatic door in the entryway of the Appointment and Advice Call Center at the Kaiser Permanente San Jose Regional Center when a defective door sensor did not keep the door open long enough to allow her to clear the entryway. The complaint, naming as defendants Automatic Door Systems, Inc. (Automatic Door Systems), a California corporation, and “Does 1-25,” alleged all defendants were “strictly, negligently, or otherwise liable in some manner for the events and happenings herein described, and

¹ All further unspecified statutory references are to the Code of Civil Procedure.

² Although the judgment does not resolve Rodriguez’s claims against all named defendants, she may appeal from the judgment, which is final as to her claims against KFH. (See *Desaigoudar v. Meyercord* (2003) 108 Cal.App.4th 173, 182, fn. 2.)

³ Because the action against KFH was resolved by demurrer, we set forth the relevant facts as alleged in the complaint and Doe Amendment. (*Shvarts v. Budget Group, Inc.* (2000) 81 Cal.App.4th 1153, 1156.) Additionally, over Rodriguez’s objection we granted KFH’s motion to augment the record to include a “notice of and application for lien” (one document), filed by The Permanente Medical Group, in the superior court on December 10, 2012. In granting the request for judicial notice, we expressed no view on whether the document was material or relevant to the issues raised on appeal. While this document was not submitted as an attachment to the parties’ papers filed on the demurrer, the information therein — that Rodriguez had filed a workers’ compensation claim with The Permanente Medical Group — was included in the demurrer papers filed by the parties. In all events, we conclude the appeal can be resolved without reference to the document.

strictly, negligently, or otherwise legally caused the injuries and damages claimed.” The complaint also contained standard Doe allegations that the true names and capacities of the fictitious Doe defendants were unknown to Rodriguez, but she would seek leave to amend the complaint when their true names and capacities were ascertained.

Five years after the alleged injury and within three years of the commencement of the action, on April 21, 2015, plaintiff filed a Doe Amendment, adding KFH as a defendant, instead of fictitious Doe 3.⁴ Three days later, the complaint and Doe Amendment were served on KFH. The Doe Amendment alleged: “Plaintiff was ignorant of the true name of a defendant and designated the defendant in the Complaint by a fictitious name of ‘Doe 3.’ Plaintiff has discovered the true name of this defendant to be Kaiser Foundation Hospitals, and hereby amends the Complaint by inserting this true name in the place of the fictitious name ‘Doe 3’ wherever it appears in the Complaint.”

B. Trial Court Proceeding Under Review

KFH, identifying itself as “a non-profit corporation,” filed a demurrer to the Doe Amendment, which was opposed by Rodriguez.⁵ Following a hearing, the court sustained the demurrer to the Doe Amendment, without leave to amend, and entered judgment dismissing the action against KFH. In so ruling, the court stated in its written order, in pertinent part: “[¶]1. The Doe amendment, filed nearly five years after Plaintiff’s alleged injury, is barred by the two-year statute of limitations. [Citation.] The Doe Amendment does not ‘relate back’ to the filing date of the original Complaint,

⁴ Previously, Rodriguez filed Doe Amendments (1) adding Stanley Access, Inc. (erroneously sued and served as Stanley Access Technologies, LLC) (Stanley Access), as a named defendant instead of Doe 1, and (2) adding Assa Abloy Entrance Systems U.S., Inc. (Assa Abloy), as a named defendant instead of Doe 2. Subsequently, the action was dismissed against the originally named defendant Automatic Door Systems and Assa Abloy, following the grants of summary judgment in favor of those defendants. Stanley Access remained the sole named defendant in the complaint at the time Rodriguez sought to add KFH.

⁵ Named defendant Stanley Access submitted a notice of joinder to Rodriguez’s opposition to KFH’s demurrer. However, Stanley Access is not a party to this appeal and has not filed an appellate brief.

because Plaintiff fails to demonstrate ‘genuine ignorance’ of [KFH]’s identity so as to avail herself of the Doe statute [Citations.]” Rodriguez now appeals.

DISCUSSION

Because this case was resolved on demurrer, we apply a de novo standard of review. (*Farm Raised Salmon Cases* (2008) 42 Cal.4th 1077, 1089, fn. 10.) Thus, we will affirm a judgment of dismissal after a demurrer has been sustained without leave to amend if proper on any grounds stated in the demurrer, whether or not the superior court acted on that ground. (*Carman v. Alvord* (1982) 31 Cal.3d 318, 324.)

Rodriguez’s personal injury action is based on an accident that occurred on May 5, 2010. The Doe Amendment adding KFH, as a named defendant was filed on April 21, 2015, approximately five years after the accident. Section 335.1 provides that a plaintiff must commence a personal injury action “caused by the wrongful act or neglect of another” within two years of the alleged wrongful act or neglect. Thus, the allegations in the complaint demonstrate that absent any tolling, the Doe Amendment adding KFH as a named defendant, was time-barred as a matter of law.

“The general rule is that an amended complaint that adds a new defendant does not relate back to the date of the filing of the original complaint and the statute of limitations is applied as of the date the amended complaint is filed, not the date the original complaint is filed. [Citations.] A recognized exception to the general rule is the substitution under section 474 of a new defendant for a fictitious Doe defendant named in the original complaint as to whom a cause of action was stated in the original complaint. [Citations.]” (*Woo v. Superior Court* (1999) 75 Cal.App.4th 169, 176 (*Woo*)). Section 474 provides in pertinent part: “When the plaintiff is ignorant of the name of a defendant, he must state that fact in the complaint . . . , and such defendant may be designated in any pleading or proceeding by any name, and when [the] true name is discovered, the pleading or proceeding must be amended accordingly” “If the requirements of section 474 are satisfied, the amended complaint substituting a new defendant for a fictitious Doe defendant filed after the statute of limitations has expired is deemed filed as of the date the original complaint was filed. [Citation.]” (*Woo, supra*, at p. 176.)

Thus, the Doe Amendment adding KFH as a defendant would be timely only if it related back to the original complaint's filing date of April 26, 2012.

Because “no specific procedure” is provided by section 474, we have held that a defendant may employ “a motion for dismissal, or for summary judgment or *a demurrer*” to challenge a plaintiff's failure to comply with the statute. (*Maier Brewing Co. v. Flora Crane Service, Inc.* (1969) 270 Cal.App.2d 873, 875; italics added; see, e.g., *Lipman v. Rice* (1963) 213 Cal.App.2d 474, 480-481 [demurrer to amended complaint sustained without leave to amend after court held section 474 inapplicable as original complaint on its face showed name and capacity of purported Doe].)

“The purpose of [section 474] is to help a plaintiff who truly does not know the name of someone against whom he states a cause of action, in order to prevent the running of the statute of limitations. [Citation.] On the other hand, it is important to a defendant that he receive notice of the charge against him, in order to inform himself and to prepare his defense, and for this purpose, among others, the statutes of limitations have been enacted [citation]; and it is plain that similar protection is afforded defendant by the first part of section 474.” (*Lipman, supra*, 213 Cal.App.2d at p. 478.) Case law interpreting section 474 holds that a plaintiff seeking to use the statute must meet two mandatory requirements. First, the plaintiff must make a clear statement in the complaint that the true names and capacities of the defendants sued by fictitious names are unknown to the plaintiff. (*Woo, supra*, 75 Cal.App.4th at pp. 176-177; see *Stephens v. Berry* (1967) 249 Cal.App.2d 474, 477.) Second, the plaintiff must have been genuinely ignorant of the Doe defendant's identity at the time the plaintiff filed the original complaint. (*Woo, supra*, at p. 177, citing to *Optical Surplus, Inc. v. Superior Court* (1991) 228 Cal.App.3d 776, 783-784; *Hazel v. Hewlett* (1988) 201 Cal.App.3d 1458, 1464-1466 (*Hazel*).) “[I]f the identity ignorance requirement of section 474 is not met, a new defendant may not be added after the statute of limitations has expired even if the new defendant cannot establish prejudice resulting from the delay. [Citation.]” (*Woo, supra*, at p. 177.)

In this case, Rodriguez argues she has met the requirements set forth in section 474 to add KFH, instead of a fictitious Doe, because at the time she filed her complaint she did not know the true corporate name of the entity conducting business as the Kaiser Permanente San Jose Regional Center. However, it is not disputed that Rodriguez, by her Doe Amendment, is attempting to sue a single business entity: to wit, the owner of the building where she was allegedly injured. Although Rodriguez was apparently unaware of the building entity's proper corporate name, she nonetheless "knew the identify of the alleged tortfeasor – the business entity known as" Kaiser Permanente San Jose Regional Center (by which KFH conducted its business dealings) - "and the address at which it conducted business." (*Hawkins v. Pacific Coast Bldg. Products, Inc.* (2004) 124 Cal.App.4th 1497, 1505; see *Ibid.* [court allowed plaintiff to substitute correct corporate name for his original misdescription of his employer's name attributable to the employer's use of a fictitious name in conducting its business].) ⁶ In determining whether a plaintiff should have named a defendant, or can rely on a Doe appellation, the issue is "did plaintiff know *facts*?" not "did plaintiff know or believe that [he] had a cause of action based on those facts?" (*Hazel, supra*, 201 Cal.App.3d at p. 1465.) Here, Rodriguez's allegations demonstrate she could have named KFH as a defendant by using

⁶ Our case is distinguishable from *Garrett v. Crown Coach Corp.* (1968) 259 Cal.App.2d 647, in which the plaintiff alleged in the original complaint that he was injured when his car was struck by a "1960 Crown 79 passenger school bus," which was negligently operated and maintained by the named defendants and Does. (*Id.* at pp. 648, 650.) Plaintiff substituted Crown Coach Corporation for Doe One, making new allegations that Crown Coach Corporation negligently designed and manufactured the bus. (*Id.* at p. 649.) The court found plaintiff could amend its complaint to hold Crown Coach Corporation liable based on a theory not spelled out in the original complaint. (*Id.* at pp. 649-650.) In so concluding, the court commented there was nothing in the record that called into question "the bona fides of plaintiff's allegation that he was ignorant of the true name of Doe One." (*Id.* at p. 650.) Specifically, the court found the original complaint's mention of the offending bus by using "a trade name" could not be deemed the equivalent of knowledge that Crown Coach Corporation was the designer and manufacturer of the bus. (*Id.* at p. 650.) In this case, Rodriguez's allegations demonstrate she knew the identity of the building owner and could have sued it using the appellation Kaiser Permanente San Jose Regional Center under which it was doing business at that location.

the appellation Kaiser Permanente San Jose Regional Center under which the corporate entity was conducting its business operations at that location. Therefore, we conclude Rodriguez cannot use a Doe Amendment to add KFH to the complaint to toll the statute of limitations as the complaint's allegations demonstrate she was not genuinely ignorant of the Doe defendant's identity at the time she filed her original complaint.⁷ The cases cited by Rodriguez do not require a different result.

DISPOSITION

The judgment of dismissal in favor of Kaiser Foundation Hospitals is affirmed. Kaiser Foundation Hospitals is awarded costs on appeal.

Jenkins, J.

We concur:

McGuinness, P. J.

Siggins, J.

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⁷ In light of our determination, we do not address Rodriguez's additional contention that the trial court erred in ruling that the Doe Amendment was barred by laches due to Rodriguez's unreasonable delay in filing and serving the Doe Amendment.