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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

LETTIE HAYNES,

Plaintiff and Appellant,

v.

JOHN CHIANG, as Controller, etc.,

Defendant and Respondent.

B233053

(Los Angeles County
Super. Ct. No. BC440690)

APPEAL from an order of the Superior Court of Los Angeles County,
Terry A. Green, Judge. Affirmed.

Lettie Haynes, in pro. per., for Plaintiff and Appellant.

Kamala D. Harris, Attorney General, Douglas J. Woods, Senior Assistant Attorney
General and Peter A. Krause and Michael Glenn Witmer, Deputy Attorneys General, for
Defendant and Respondent.

INTRODUCTION

Appellant and plaintiff Lettie Haynes appeals an order of dismissal entered after the trial court sustained the demurrer of defendant and respondent John Chiang, California State Controller (defendant or Controller), to plaintiff's complaint. We affirm.

Plaintiff contends that she is entitled to certain oil royalties and that the royalties were paid by third-party oil companies to defendant pursuant to the Unclaimed Property Law (UPL), Code of Civil Procedure section 1500 et seq.¹ She further alleges that defendant mishandled the royalties by failing to pay her the amounts due under the UPL and by wrongfully paying the royalties to her brother. Unfortunately, plaintiff did not comply with the requisite pre-lawsuit claim requirements of the UPL, and thus cannot maintain her current action against defendant.

BACKGROUND

1. Allegations in the Complaint

The complaint alleges the following. Plaintiff's parents, Lewis and Thelma Woodmore, owned about 640 acres of land in Oklahoma and Texas, and received royalties from companies producing oil there. Thelma Woodmore died in 1979. Lewis Woodmore died in 1984. After Lewis passed away, the oil royalties were distributed to his eight children, including plaintiff.

For reasons not explained in the complaint, the oil companies at some point in time began depositing oil royalties belonging to plaintiff and her siblings with the Unclaimed Properties Division (UPD) of the Controller's office.² In 1998, plaintiff first inquired with UPD about her deceased parents' royalties. UPD representatives advised

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

² Plaintiff has not explained in any of her papers filed in the trial court or in this court why she and her siblings are not receiving royalties directly from the oil companies. In other words, it is unclear why the oil royalties are "unclaimed" property. Defendant's counsel stated to the trial court: "Apparently, there's a fractional interest in this oil income all over the family, and there's been no resolution within the family about how to distribute it, so the oil companies have simply been escheating it to the state."

plaintiff that UPD would receive royalties from the oil companies and then distribute the appropriate share to plaintiff and her siblings. At UPD's direction, plaintiff completed necessary paperwork to file a claim. In late 1998 or 1999, plaintiff received approximately \$1,000 from UPD.

In 1999, UPD advised plaintiff that (1) "there was not much of her parents' royalties remaining"; (2) plaintiff's brother, Lodis Woodmore, "had received most of the larger claims"; and (3) "smaller royalties" remained to be paid out.

In 2000, plaintiff received checks totaling about \$1,000 from UPD. UPD advised her that no other unpaid claims remained.

Between 2002 and 2006, plaintiff periodically called UPD to inquire about royalties. UPD advised her that plaintiff was not entitled to receive any payments.

In 2008, plaintiff received a letter from the Oklahoma Oil Commission requesting permission to drill deeper in a well on her family's property. Plaintiff refused to grant permission until she received information regarding royalties. Robert Miller, an attorney for one of the oil companies, advised her that his company would seek a court order to drill. Plaintiff had no further contact with Miller or his client.

In September 2008, plaintiff discovered six accounts on UPD's website under her social security number indicating that she had a balance of \$384 in each account for a total of \$2,304. When plaintiff called UPD, however, a representative advised her there were no unpaid claims and that the online information was inaccurate.

On November 24, 2008, plaintiff received a letter from defendant indicating she was entitled to receive \$164.43 in unpaid royalties. Plaintiff, however, was never paid these royalties.

On December 1, 2008, plaintiff found on UPD's website that there were six checks due to her for payment of royalties. Plaintiff called UPD to inquire about the checks. A UPD representative advised her that he could provide no information why plaintiff was not paid, and that someone would call her back. Plaintiff sent an email to UPD to memorialize this conversation. To date, no one has returned plaintiff's telephone call.

In mid-2009, plaintiff found on UPD's website that there were 16 claims associated with her social security number for \$294 each, totaling \$4,704. To plaintiff's surprise, these claims were listed on the website as "paid."³ Plaintiff, however, had not been paid for these claims. When she called to inquire about the payments, a UPD representative advised her there were no unpaid claims due and that the website information was incorrect.

In late 2009, plaintiff submitted to UPD an "Unclaimed Property Informal Audit Review Conference Request" form. In that form, she alleged that there was \$50,000 in unpaid claims due to her for the years 2001 to 2009.

On February 8, 2010, a paralegal wrote a letter to UPD on behalf of plaintiff requesting information regarding her portion of unpaid royalties from 1984 to the date of the letter. Defendant responded with a letter dated February 19, 2010, advising plaintiff that he had forwarded her inquiry to Ruth Holton-Hodson, "the Property Owner Advocate." Defendant further advised plaintiff that Holton-Hodson would assist plaintiff with her claim, and someone from Holton-Hodson's office would call plaintiff within two weeks. Neither Holton-Hodson, nor anyone from her office, ever contacted plaintiff.

On March 31, 2010, plaintiff filed a "Government Claims Form" with the California Victim Compensation and Government Claims Board (Board). In that form she claimed that defendant owed her \$50,000 for unpaid claims from 2001 to 2009. The Board rejected plaintiff's claim with a letter dated May 27, 2010.

Based on these allegations, the complaint set forth causes of action for (1) violation of Government Code section 815.2—general negligence, (2) violation of Government Code section 815.6—failure to discharge a mandatory duty, (3) violation of Code of Civil Procedure section 1501.5 (Legislative findings and intent regarding UPL), (4) violation of Code of Civil Procedure 1531 (notice and publication of lists of escheated property), (5) violation of Code of Civil Procedure section 1531.5 (notification program

³ Plaintiff printed the screen she found on UPD's website and attached the document to her complaint.

for possible owners of escheated property), and (6) violation of Code of Civil Procedure section 1560 (relief from liability by payment or delivery). The complaint prays for a judgment for no less than \$50,000 in damages.

2. *Procedural History*

On June 29, 2010, plaintiff filed a verified complaint against defendant.⁴ Defendant demurred to the complaint on September 2, 2010. Plaintiff did not file an opposition before the hearing on the demurrer. On November 24, 2010, the trial court sustained the demurrer with 30 days leave to amend.

On December 10, 2010, plaintiff filed a document entitled, “PLAINTIFF’S RESPONSE OR ANSWER TO DEFENDANT’S NOTICE OF HEARING ON DEMURRER AND DEMURRER BY CONTROLLER TO COMPLAINT; MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT.” Plaintiff argued in this document that the demurrer should not have been sustained.

On January 27, 2011, the court held a case status hearing. Plaintiff did not appear. The court issued an order to show cause (OSC) regarding dismissal of the case, and set a hearing on the OSC on March 4, 2011.

On March 4, 2011, the court held a hearing on the matter. Both sides appeared. Plaintiff had still not filed an amended complaint. The trial court granted plaintiff an additional 10 days to do so.

On March 7, 2011, plaintiff filed a document entitled, “PLAINTIFF’S AMENDMENT TO DEFENDANT’S NOTICE OF HEARING ON DEMURRER BY CONTROLLER TO COMPLAINT; MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT.” In this document plaintiff argued that the demurrer should have been sustained.

On March 17, 2011, defendant filed a motion to dismiss the complaint for failure to amend. A hearing was held on the motion on April 21, 2011. After confirming that

⁴ Plaintiff filed the complaint and maintained this action in propria persona. At the time this action was pending in the superior court, plaintiff was about 68 years old and retired.

plaintiff had not filed an amended complaint, the court granted the motion and issued an order of dismissal.

Plaintiff filed a timely appeal of the order of dismissal.

ISSUES

There are two main issues on appeal:

1. Did the trial court correctly sustain defendant's demurrer to the complaint?
2. If so, did the court abuse its discretion by dismissing the complaint?

DISCUSSION

1. *The Trial Court Correctly Sustained Defendant's Demurrer Because the Complaint Does Not State a Cause of Action*

- a. *Standard of Review*

Where, as here, the trial court sustains a general demurrer, we review the complaint de novo to determine whether it alleges facts stating a cause of action under any legal theory. (*Rakestraw v. California Physicians' Service* (2000) 81 Cal.App.4th 39, 43 (*Rakestraw*)). We also assume all of the facts alleged in the complaint are true and make all reasonable inferences from those facts in favor of plaintiffs. (*Miklosy v. Regents of University of California* (2008) 44 Cal.4th 876, 883; *Kruss v. Booth* (2010) 185 Cal.App.4th 699, 714.) "However, the assumption of truth does not apply to contentions, deductions, or conclusions of law and fact." (*C.R. v. Tenet Healthcare Corp.* (2009) 169 Cal.App.4th 1094, 1102.)

- b. *The Unclaimed Property Law*

Under the UPL certain types of unclaimed property escheats to the state. (*Harris v. Westly* (2004) 116 Cal.App.4th 214, 219 (*Harris*)). "The UPL requires holders of unclaimed property—banking or financial organizations, business associations including corporations, and so on—to file reports and to pay or deliver the unclaimed property to the Controller." (*Ibid.*)

"The statute does not operate a true escheat. The law expressly provides title to property received by the state under its provisions does not pass to the state. (§ 1501.5.)

The state holds the property as a custodian until the property's rightful owner can claim the property.” (*Fong v. Westly* (2004) 117 Cal.App.4th 841, 844 (*Fong*).

The UPL has two purposes: “(1) to reunite owners with unclaimed funds or property, and (2) to give the state, rather than the holder, the benefit of the use of unclaimed funds or property.” (*Bank of America v. Cory* (1985) 164 Cal.App.3d 66, 74 (*Cory*).

The UPL is administered by the Controller. (§ 1561 et seq.; *Harris, supra*, 116 Cal.App.4th at p. 220.) Although the UPL “compels the Controller to affirmatively take all steps necessary” to carry out its purposes (*Cory, supra*, 164 Cal.App.3d at p. 74), the Controller cannot be sued for failing to meet its obligations, except as provided by the UPL. (See §§ 1540, 1541, 1566.)

Section 1540, subdivision (a) provides: “Any person, excluding another state, who claims an interest in property paid or delivered to the Controller under this chapter may file a claim to the property or to the net proceeds from its sale. *The claim shall be on a form prescribed by the Controller* and shall be verified by the claimant.” (Italics added.) The Controller must consider the claim within 180 days after it was filed. (§ 1540, subd. (b).)

Section 1540, subdivision (e) provides that “the Controller shall adopt guidelines and forms that shall provide specific instructions to assist owners in filing claims” The Controller has done just that. The instructions and forms can be found on the Controller’s website under the heading of “Unclaimed Property.” (See <<http://www.sco.ca.gov>> [as of May 2, 2012].)⁵ A potential claimant can search to see if he or she has unclaimed property in the Controller’s possession. If so, the claimant must complete a Claim Affirmation Form, which can be filed electronically or by mail.

Section 1541 provides: “Any person aggrieved by a decision of the Controller or as to whose claim the Controller has failed to make a decision within 180 days after the

⁵ We take judicial notice of the website. (Evid. Code, §§ 452, subd. (a), 459, subd. (a).)

filing of the claim, may commence an action, naming the Controller as a defendant, to establish his or her claim in the superior court” The “decision” referred to in section 1541 is the Controller’s decision on a claim. (*Fong, supra*, 117 Cal.App.4th at p. 853.)

Section 1566 provides: “(a) When payment or delivery of money or other property has been made to any claimant under the provisions of this chapter, no suit shall thereafter be maintained by any other claimant against the state or any officer or employee thereof for or on account of such property.

“(b) Except as provided in Section 1541, no suit shall be maintained by any person against the state or any officer or employee thereof for or on account of any transaction entered into by the State Controller pursuant to this chapter.”

Accordingly, read together, sections 1540, 1541 and 1566 provide that (1) a plaintiff can only sue the Controller “for or on account of any transaction” entered into by the Controller pursuant to the UPL if the Controller expressly or impliedly rejected a claim made by the plaintiff to an “interest in property paid or delivered to the Controller”; and (2) the claim was filed on a form prescribed by the Controller.

c. *Plaintiff Cannot Maintain a Suit Against the Controller Because She Did Not File a Claim Against Him on a Form Prescribed by the Controller*

The complaint does not allege that plaintiff satisfied the claim requirements of section 1540. Plaintiff fell short in two ways. First, she did not file *any* claim with the Controller. Rather, she filed a claim with the Board. Second, she did not use a Claim Affirmation Form or some other form prescribed by the Controller. Instead, she filed a Government Claims Form. Because plaintiff did not satisfy the claim requirements of the UPL, she cannot maintain a suit against the Controller “for or on account of any transaction entered into by the State Controller pursuant to [the UPL].” (§ 1566, subd. (b).)⁶

⁶ Nothing in this opinion precludes plaintiff from filing claims with the Controller on forms prescribed by the Controller and, if such claims are rejected or not acted upon by the Controller within 180 days, pursuing a new lawsuit. At oral argument, the

d. *Plaintiff Cannot Maintain a Suit Against the Controller for Payments the Controller Made to Another Claimant*

The complaint alleged that defendant erroneously paid royalties belonging to plaintiff to a third party, namely her brother. If that payment was made pursuant to a claim under the UPL, defendant cannot be liable for mistakenly paying the wrong party. (§ 1566, subd. (a).)

e. *Plaintiff Cannot Obtain a Court Order Compelling the Controller to Conduct an Audit*

In her opening brief plaintiff states that she is merely seeking an “investiga[tion]” or “audit” by the Controller regarding oil royalties and distributions associated with her name and social security number.⁷ The Controller, however, cannot be compelled by court order to conduct an audit or investigation. Although the Controller is required by statute to safeguard escheated property (§ 1560, subd. (a)), nothing in the UPL grants a claimant the right to compel an audit or investigation, or to sue the Controller if he or she does not conduct one.⁸

Controller’s counsel stated the UPD had money in an account that was payable to plaintiff.

⁷ The complaint alleges that the Controller breached its statutory duties by failing to conduct an audit but does not specifically pray for this relief.

⁸ This opinion does not, of course, prohibit the UPD of the Controller’s office from investigating plaintiff’s allegations, providing plaintiff with additional information regarding oil royalties associated with her name and social security number, and assisting her with filing claims in the future.

f. *The Complaint Does Not State a Cause of Action*

All of the causes of action set forth in the complaint are based on the Controller's alleged mishandling of royalties pursuant to his duties under the UPL. In other words, the complaint is based on transactions entered into by defendant pursuant to the UPL, and thus falls within the scope of section 1566, subdivision (b). As explained *ante*, defendant is immune from liability for such transactions because plaintiff did not comply with the requisite claim requirements. The complaint therefore fails to state sufficient facts to constitute a cause of action, and was subject to general demurrer. (§ 430.10, subd. (e).)

2. *The Trial Court Did Not Abuse Its Discretion By Dismissing the Complaint*

Section 581, subdivision (f) provides: "The court may dismiss the complaint as to that defendant when: [¶] . . . [¶] (2) . . . after a demurrer to the complaint is sustained with leave to amend, the plaintiff fails to amend it within the time allowed by the court and either party moves for dismissal." "The phrase 'may dismiss' means discretionary dismissal." (*Cano v. Glover* (2006) 143 Cal.App.4th 326, 329.) We thus review a trial court's dismissal pursuant to section 581, subdivision (f)(2) for abuse of discretion. (See *Harding v. Collazo* (1986) 177 Cal.App.3d 1044, 1054.)

The trial court did not abuse its discretion in this case. Plaintiff was given 30 days leave to amend her complaint. When she did not do so within the time allotted, the court gave her additional time. After plaintiff again did not file an amended complaint, the court finally dismissed her action. This decision was well within the trial court's discretion. (See *Sierra Investment Corp. v. County of Sacramento* (1967) 252 Cal.App.2d 339, 346-347 ["It is almost axiomatic that the trial court may enter a judgment of dismissal after it has sustained a demurrer to the complaint if the plaintiff elects to stand on the complaint and fails to amend"].)

DISPOSITION

The order of dismissal dated April 21, 2011, is affirmed. In the interests of justice, the parties shall bear their own costs.

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KITCHING, J.

We concur:

KLEIN, P. J.

CROSKEY, J.