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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SIX

GRETCHEN D. LICHTENBERGER,

Plaintiff and Appellant,

v.

COUNTY OF SANTA BARBARA et al.,

Defendants and Respondents.

2d Civil No. B242712
(Super. Ct. No. 56-2011-00399806-
CU-MC-VTA)
(Ventura County)

Appellant Gretchen Lichtenberger is the judgment creditor in a civil collection proceeding in Ventura County. When the judgment debtor failed to appear for a debtor's examination, the trial court issued an arrest warrant, fixing bail at \$25,000. Instead of serving the warrant, the Santa Barbara Sheriff's Department (SBSD) "cited and released" the debtor. When the debtor appeared voluntarily at a subsequent hearing, the court recalled the warrant.

Faced with an uncollectible judgment, Lichtenberger filed this action against respondents County of Santa Barbara, SBSB, County of Ventura and Ventura County Sheriff's Office (VCSO), alleging that if they had fulfilled their mandatory duty to serve the warrant and collect the \$25,000 bail, the bail would have been forfeited and applied to the judgment debt. She claims she is entitled to damages in that sum, plus declaratory and injunctive relief. The trial court sustained respondents' demurrer to the first amended complaint without leave to amend. We affirm.

FACTS AND PROCEDURAL BACKGROUND¹

In 2005, Ventura County Superior Court entered a judgment against Denise d'Sant Angelo (debtor) in the amount of \$25,936 (Case No. CIV235809). Subsequently, all rights and interest in the judgment were assigned to Lichtenberger. When the debtor failed to appear at a debtor examination on December 4, 2009, Judge Glen Reiser issued an arrest warrant with bail set at \$25,000. Lichtenberger paid a \$50 fee to secure the warrant.

VCSO apparently questioned whether that warrant was issued under Code of Civil Procedure section 1209² for contempt, or under section 1993 for failure to appear pursuant to a subpoena or court order. On January 8, 2010, Judge Reiser recalled the warrant, and issued a replacement warrant "pursuant to section 1209." The warrant again fixed bail at \$25,000. Lichtenberger claims that notwithstanding the reference to section 1209, the replacement warrant was issued under section 1993, and that she paid the \$105 fee for such a warrant. The original \$50 fee was refunded.

After discovering the debtor was in custody in the Santa Barbara County jail on a criminal charge, VCSO requested that SBSB serve the warrant. On February 3, 2010, SBSB "cited" the debtor and had her sign a promise to appear in Ventura County Superior Court on February 25, 2010. SBSB did not hold her in civil custody or require her to post bail. She did, however, remain in jail for another week in the criminal matter.

The debtor did not appear on February 25, 2010, as she had a conflicting criminal hearing in Santa Barbara. This prompted Lichtenberger to schedule an ex parte hearing before Judge Reiser. She complained, inter alia, that SBSB's service of the warrant was improper. Judge Reiser did not disagree. His tentative ruling stated: "What is 'pending' is that there is an outstanding warrant for the arrest of Ms. D'Sant Angelo for failure to appear; bail having been set in the amount of \$25,000. If the Santa Barbara

¹ Because this is an appeal following a successful demurrer, our factual recitation is limited to those facts alleged in the first amended complaint, subject to judicial notice or conceded by Lichtenberger. (See *Evans v. City of Berkeley* (2006) 38 Cal.4th 1, 20.)

² All statutory references are to the Code of Civil Procedure unless otherwise stated.

deputies wish to 'cite and release' her, it makes no difference. The warrant is still outstanding and has not been recalled."

The debtor appeared at the ex parte hearing on March 3, 2010. Based on her personal appearance, Judge Reiser recalled the outstanding warrant and scheduled a debtor examination. He did not set a contempt hearing.

Lichtenberger filed a complaint against respondents for damages in the amount of \$25,000, plus declaratory and injunctive relief, alleging they negligently failed to perform a mandatory duty. She claims that if the debtor had been held in custody on the civil warrant, the debtor would have paid the \$25,000 cash bail or obtained a bond to secure her release, and that when she failed to appear in Ventura County Superior Court, the cash value would have been forfeited and turned over to Lichtenberger to satisfy the judgment. After taking judicial notice of court documents in the collection action, the trial court sustained respondents' demurrer to the complaint with leave to amend.

Lichtenberger filed a 38-page amended complaint alleging the same causes of action. The trial court again took judicial notice of the court documents and sustained respondents' demurrer, but denied leave to amend. It stated: "[E]ven if the County of Santa Barbara did not follow its procedures in serving the debtor with a warrant, there is no point to plaintiff's declaratory relief actions as plaintiff was not damaged. And the judgment debtor exam is just that, an exam to determine the debtor's assets. It is not a hearing where the debtor has to pay over any money in satisfaction of the judgment. Therefore, obtaining an arrest warrant for the debtor to appear at [a] judgment debtor examination would not entitle plaintiff to bail, close quote, if posted." This appeal followed.

DISCUSSION

Standard of Review

In reviewing the sufficiency of a complaint against a general demurrer, we assume the truth of all facts properly pleaded, together with facts that may be properly judicially noticed, and review the complaint de novo to determine whether it states facts sufficient to state a cause of action. (*Balikov v. Southern California Gas Co.* (2001) 94

Cal.App.4th 816, 819-820; *Platt v. Coldwell Banker Residential Real Estate Services* (1990) 217 Cal.App.3d 1439, 1444.) We give the complaint a reasonable interpretation, and liberally construe the pleading with a view to substantial justice between the parties. (§ 452; *Schifando v. City of Los Angeles* (2003) 31 Cal.4th 1074, 1081.)

Claims for Damages

Lichtenberger alleges she is entitled to damages based on Government Code section 815.6, which states: "Where a public entity is under a mandatory duty imposed by an enactment that is designed to protect against the risk of a particular kind of injury, the public entity is liable for an injury of that kind proximately caused by its failure to discharge the duty unless the public entity establishes that it exercised reasonable diligence to discharge the duty." She lists a myriad of statutes that she claims impose mandatory duties upon public entities and alleges that she was injured by respondents' failure to discharge their duties under these statutes. Respondents contend that even if Lichtenberger could establish the breach of a mandatory duty, she has not pled facts demonstrating she suffered injury as a result of that breach. We agree.

"Government Code [section] 815.6 contains a three-pronged test for determining whether liability may be imposed on a public entity: (1) an enactment must impose a mandatory, not discretionary, duty . . . ; (2) the enactment must intend to protect against the kind of risk of injury suffered by the party asserting section 815.6 as a basis for liability . . . ; and (3) breach of the mandatory duty must be a proximate cause of the injury suffered.' [Citations.]" (*Becerra v. County of Santa Cruz* (1998) 68 Cal.App.4th 1450, 1458; *State of California v. Superior Court* (1984) 150 Cal.App.3d 848, 854.) We need not decide whether the first two prongs apply, because Lichtenberger cannot satisfy the third prong. Her theory of causation and injury is speculative at best.

Section 708.170, subdivision (a) provides that if an examinee fails to appear for a debtor examination, the court may have the person brought before the court pursuant to a warrant and punish the person for contempt, or issue an arrest warrant pursuant to section 1993. (Ahart, *Cal. Practice Guide: Enforcing Judgments and Debts* (The Rutter Group 2013) ¶ 6:1316, pp. 6G-16 to 6G-17.) The parties' briefs debate at

length whether the arrest warrant was issued for contempt or for "the arrest of a witness who failed to appear pursuant to a subpoena or a person who failed to appear pursuant to a court order," as provided in section 1993, subdivision (a)(1). Since the warrant was recalled before it was served, that point seems somewhat superfluous.

Lichtenberger's theory of liability is that if SBSD had not improperly "released" the debtor with a promise to appear, Lichtenberger "would have been the lawful recipient of the \$25,000.00 undertaking associated with [the civil warrant.]" This theory is based on a series of assumptions. First, it assumes the Santa Barbara deputies had a mandatory duty to serve the warrant when the debtor was about to be released from jail in the criminal matter. Next, it assumes that if the warrant had been served at that time, (1) the debtor would have had the ability to post the \$25,000 bail, through cash or a bond, (2) the debtor would have posted bail rather than remain in temporary custody until she could be brought before the court,³ (3) the debtor would have knowingly forfeited the bail by failing to appear at the next hearing, and (4) the trial court would have ordered that \$25,000 be turned over to Lichtenberger.

Although this scenario theoretically could have occurred, it is just as possible, and perhaps more probable, the debtor would have chosen not to post bail or would have appeared as scheduled to avoid its forfeiture. Even assuming Lichtenberger could prove that bail would have been posted and forfeited, she can only speculate as to what would have happened next. Certainly, she could have asked the trial court for any forfeited bail, but she cites no authority indicating she would have been entitled to it as a matter of law.⁴ Among other things, the court could have denied her request in full or in part, determined that another creditor had a superior claim or decided the funds should remain with the court. It is fundamental that "damages which are speculative, remote,

³Lichtenberger does not cite any statute suggesting that respondents had a mandatory duty, or even the ability, to force the debtor to post bail. In fact, she contends that SBSD's policies required the deputies, upon service of the warrant, to "hold [the debtor] in custody until brought before the court *or* until she paid the \$25,000 bail." (Italics added.)

⁴Lichtenberger's reliance on a footnote in *In re Harris* (1968) 69 Cal.2d 486, 488, footnote 3, is misplaced as it discusses a statute that was later repealed.

imaginary, contingent, or merely possible cannot serve as a legal basis for recovery. [Citations.]" (*Frustuck v. City of Fairfax* (1963) 212 Cal.App.2d 345, 367-368; *Piscitelli v. Friedenber*g (2001) 87 Cal.App.4th 953, 989; see *McDonald v. John P. Scripps Newspaper* (1989) 210 Cal.App.3d 100, 107 ["Our courts try to give redress for real harms; they cannot offer palliatives for imagined injuries"].)

As Lichtenberger concedes, the purpose of the warrant was to secure the debtor's future appearance in court. It was not to secure payment of the debt. (See *Tobin v. Casaus* (1954) 128 Cal.App.2d 588, 589.) Although the warrant was not served, it did serve its purpose. Not long after the debtor was released from jail, she appeared before Judge Reiser and was ordered to submit to a debtor examination. Lichtenberger does not allege the debtor failed to appear at that or any subsequent hearing. The trial court appropriately determined she had failed to state a claim for damages.

Claims for Declaratory and Injunctive Relief

The first amended complaint asks the trial court to use its equitable power to declare the rights and duties of Lichtenberger and respondents with respect to a variety of statutory provisions and to issue a permanent injunction ensuring their compliance with those provisions. It alleges, inter alia, that respondents use unlawful civil warrant forms, collect illegal fees on civil warrants and fail to properly serve such warrants. Lichtenberger contends that "[a]ll judgment creditors will continue to have their due process rights violated if [these issues] are not corrected by [r]espondents."

Declaratory relief is available only if an actual, present controversy or a "probable future" controversy exists between the parties to litigation. (*Sherwyn v. Department of Social Services* (1985) 173 Cal.App.3d 52, 58; *City of Cotati v. Cashman* (2002) 29 Cal.4th 69, 79; see §§ 1060, 1061.) Lichtenberger's allegations stem from respondents' handling of the replacement warrant. All issues related to that warrant were resolved when the debtor appeared before Judge Reiser and he ordered it recalled. There are no allegations suggesting that Lichtenberger has an outstanding warrant to be served or that she is entitled to another warrant. She also has not alleged facts showing she was

harm by respondents' actions. Accordingly, there are no present or "probable future" controversies between the parties.

Lichtenberger's claims for injunctive relief fail for the same reason. As with a declaratory judgment, injunctive relief will be granted only to a party beneficially interested in the controversy. (*Holmes v. California Nat. Guard* (2001) 90 Cal.App.4th 297, 315 [claimant "must have 'some special interest to be served or some particular right to be preserved or protected over and above the interest held in common with the public at large'"].) Lichtenberger has no such interest. Moreover, an injunction is appropriate only if the plaintiff "will suffer irreparable harm if the injunction is denied." (*Davenport v. Blue Cross of California* (1997) 52 Cal.App.4th 435, 450.) Lichtenberger does not allege facts suggesting she will suffer irreparable harm in the absence of an injunction.

Leave to Amend

Lichtenberger does not argue that further leave to amend her complaint is warranted. Indeed, we find no reasonable probability that she could amend the complaint to state a viable cause of action. The demurrer was therefore properly sustained without leave to amend. (*Blank v. Kirwan* (1985) 39 Cal.3d 311, 318.)

DISPOSITION

The judgment is affirmed. Respondents shall recover their costs on appeal.

NOT TO BE PUBLISHED.

PERREN, J.

We concur:

GILBERT, P. J.

YEGAN, J.

Frederick Bysshe, Judge
Superior Court County of Ventura

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