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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
THIRD APPELLATE DISTRICT

(Placer)

RICHARD CARRERA et al.,

Plaintiffs and Appellants,

v.

MEAD AIRCRAFT SERVICES, INC.,

Defendant and Respondent.

C075032

(Super. Ct. No. SCV28824)

Plaintiffs Richard Carrera and Juan Carlos Samayoa were passengers who survived an airplane crash in Nicaragua. They filed a complaint for negligence against Dennis Polito and Does One through Ten, alleging defendants were aircraft mechanics who negligently performed work on the airplane and caused it to crash. After the two-year statute of limitations expired, plaintiffs amended their complaint to name Mead Aircraft Services, Inc. (Mead) in place of a Doe defendant.

Mead moved for summary judgment, arguing that when plaintiffs originally filed their complaint, they had knowledge of facts that would have caused a reasonable person to believe liability against Mead was probable. Thus, according to Mead, the Doe amendment did not relate back to the date of the original complaint and the claim against Mead was barred by the statute of limitations. Plaintiffs opposed the motion but the trial court granted summary judgment in favor of Mead.

Plaintiffs now contend the trial court erred in granting summary judgment. They argue that when they filed the original complaint they were aware Mead may have performed maintenance work on the aircraft, but they did not yet know facts that would have supported a cause of action against Mead.

Code of Civil Procedure section 474¹ allows a plaintiff in good faith to delay replacing a Doe defendant with a named defendant until the plaintiff knows sufficient facts to cause a reasonable person to believe the defendant's liability is probable. Here there is no admissible evidence that when the original complaint was filed, plaintiffs actually knew Mead's liability was probable. Accordingly, we will reverse the judgment.

BACKGROUND

Plaintiffs were passengers on a Piper Malibu airplane that crashed in Leon, Nicaragua on December 1, 2008. On November 12, 2010, they filed a complaint for

¹ Undesignated statutory references are to the Code of Civil Procedure.

negligence against aircraft mechanics who had allegedly performed work on the airplane, including Doe defendants. The complaint did not name Mead as a defendant. More than one month earlier, however, their attorney, James C. Henderson, e-mailed Mead.

In his September 1, 2010 e-mail to Mead, Henderson indicated that Mead may have performed maintenance on the airplane. He identified the aircraft and its owner, and added that the Nicaraguan Institute of Civil Aeronautics (NICA) suggested the crash was caused by a sudden decrease in manifold pressure and zero oil pressure. Henderson purported to quote a report by the NICA that “the probable and principal cause [of the crash] was due to oil leakage in the lines of the engine oil system, causing low pressure in the system and high engine temperatures, followed by low pressure in the manifold and low power and decompression in the cabin.” Henderson said the NICA report noted that cylinder numbers three and five had compression below what was allowable, which may have been an important cause of the crash. He concluded by requesting that if Mead performed maintenance on the aircraft, “please report this as a potential claim to your insurance carrier”

Henderson e-mailed Mead again on September 28, 2010. He told Mead that his investigation showed Mead performed the last service on the aircraft, and tests showed cylinder numbers three and five were “suboptimal in compression.” Henderson claimed that Mead knew or should have known the aircraft was developing cylinder and compression problems, but his e-mail did not mention an oil leak in the aircraft or Mead’s connection with an oil leak. He asked Mead to notify its liability insurance carrier of plaintiffs’ intent to bring an action against Mead.

Plaintiffs subsequently filed their complaint against Dennis Polito and Does One through Ten. The parties agree the complaint was filed within the applicable statute of limitations period. (§ 335.1.) The complaint alleged Polito was an aircraft mechanic who performed work on the aircraft and that Polito and the Doe defendants negligently

repaired, maintained, modified, and/or manufactured the aircraft or its component parts, causing it to crash.

Plaintiffs' aviation expert Arthur Lee Coffman participated in a visual inspection of the aircraft on April 28, 2011, which did not involve disassembly of the aircraft. Coffman did not reach any conclusion about maintenance irregularities or equipment failure that may have contributed to the crash, but he opined that an aircraft of the type involved in the crash could have in excess of 30 entities whose work or parts could have contributed to a crash. Coffman could not identify potentially responsible parties based solely on a visual inspection of the aircraft.

Plaintiffs filed a first amended complaint on March 5, 2012. The amended complaint omitted Polito as a defendant (plaintiffs apparently settled with him) but retained the negligence cause of action against the Doe defendants. The amended complaint also named Chartis Insurance as a defendant and alleged causes of action against that entity for breach of contract and misrepresentation. The amended complaint alleged that Chartis Insurance was a hull insurer for the aircraft and owned the aircraft wreckage and maintenance records.

A second inspection of the aircraft, involving removal of the aircraft engine, occurred on December 13, 2012. Coffman discovered a loose oil hose and "a substantial amount of oil" at the point where the hose was loose. He opined that the oil leak resulting from the loose hose was likely the cause of the low oil pressure in the engine. It is undisputed that the loss of oil caused the December 1, 2008 crash.

Once he identified the loose oil hose, Coffman reviewed the records to determine which maintenance event resulted in the hose becoming loose. He opined that the maintenance performed by Mead in 2006 would have required the removal and reattachment of the oil hose, and the maintenance performed by Mead in May 2008 may have involved the removal and reattachment of the same hose. Coffman said it would not have been possible for him to discover the loose oil hose or determine the cause of the

crash without removal of the engine. He said an aircraft log book notes certain maintenance work done on an aircraft, but does not describe what went wrong.

Coffman opined, based on his review of the records and the NICA report, that the cylinders of the aircraft did not have low compression. The compression measurements were within the manufacturer's specifications. He added that low cylinder compression, without more, would not result in engine failure.

Plaintiffs amended their complaint to substitute Mead as a Doe defendant about one month after the second inspection of the aircraft. Mead filed an answer to the amended complaint and subsequently moved for summary judgment on the ground that plaintiffs' complaint against Mead was barred by the two-year statute of limitations. Mead argued the filing of the Doe amendment did not relate back to the filing of the original complaint because, at the time plaintiffs filed the original complaint, they knew of Mead's identity and the facts which would cause a reasonable person to believe that liability against Mead was probable.

Plaintiffs did not dispute that they knew Mead's identity when they commenced the lawsuit. They explained that even though they originally suspected the crash may have been caused by low cylinder compression and that Mead may have been responsible for the low compression, by the time they filed their complaint they learned that the cylinder compression was not low and in any event could not have caused the crash. Thus, plaintiffs argued they did not have facts prior to the second inspection indicating that Mead was responsible for the crash. Plaintiffs said they substituted Mead as a Doe defendant when they learned from the second inspection that Mead's work may have caused the loose oil hose and the loss of oil pressure that caused the crash.

The trial court granted summary judgment in favor of Mead.

STANDARD OF REVIEW

A defendant moving for summary judgment may demonstrate that the plaintiff's cause of action has no merit by showing that there is a complete defense to that cause of

action. (§ 437c, subd. (p)(2); *Aguilar v. Atlantic Richfield Co.* (2001) 25 Cal.4th 826, 849 (*Aguilar*.) This showing must be supported by evidence, such as affidavits, declarations, admissions, interrogatory answers, depositions, and matters of which judicial notice may be taken. (§ 437c, subd. (b)(1); *Aguilar, supra*, 25 Cal.4th at p. 855.)

After the defendant meets its threshold burden, the burden shifts to the plaintiff to present evidence showing that a triable issue of one or more material facts exists as to that defense. (§ 437c, subd. (p)(2); *Aguilar, supra*, 25 Cal.4th at p. 850.) The plaintiff may not simply rely on the allegations of his or her complaint but, instead, must set forth the specific facts showing the existence of a triable issue of material fact. (§ 437c, subd. (p)(2).) A triable issue of material fact exists if, and only if, the evidence reasonably permits the trier of fact to find the contested fact in favor of the plaintiff in accordance with the applicable standard of proof. (*Aguilar, supra*, 25 Cal.4th at p. 850.)

In ruling on the motion, the trial court views the evidence and inferences therefrom in the light most favorable to the opposing party. (*Aguilar, supra*, 25 Cal.4th at p. 843; *Saelzler v. Advanced Group 400* (2001) 25 Cal.4th 763, 768 (*Saelzler*.) If the trial court concludes the evidence or inferences raise a triable issue of material fact, it must deny the motion. (*Aguilar, supra*, 25 Cal.4th at p. 843; *Saelzler, supra*, 25 Cal.4th at p. 768.) The trial court must grant the motion if the papers show there is no triable issue as to any material fact and that the moving party is entitled to a judgment as a matter of law. (§ 437c, subd. (c).)

We review an order granting summary judgment de novo. (*Aguilar, supra*, 25 Cal.4th at p. 860.) We independently examine the record that was before the trial court to determine whether a triable issue of material fact exists, liberally construing the evidence and resolving all doubts concerning the evidence in favor of the party opposing summary judgment. (*Patterson v. Domino's Pizza, LLC* (2014) 60 Cal.4th 474, 499-500; *Saelzler, supra*, 25 Cal.4th at p. 767.) We consider all the evidence set forth in the moving and opposition papers except that to which objections have been made and

sustained. (*Wilson v. 21st Century Ins. Co.* (2007) 42 Cal.4th 713, 717 (*Wilson*); *Gin v. Pennsylvania Life Ins. Co.* (2005) 134 Cal.App.4th 939, 946 (*Gin*).)

DISCUSSION

Plaintiffs contend the trial court erred in granting summary judgment. They argue that when they filed the original complaint they were aware Mead may have performed maintenance work on the aircraft, but they did not yet know facts that would have supported a cause of action against Mead. Plaintiffs say their counsel initially believed Mead was negligent in failing to detect low compression in the aircraft's cylinders. But at the time this action was commenced, their counsel learned that low compression could not have caused the crash, and plaintiffs knew of no facts to support a cause of action against Mead.

Mead responds that while plaintiffs' counsel may have rejected low cylinder compression as a cause of the crash, the complaint alleges that defendants negligently repaired and maintained the aircraft, and at the time plaintiffs filed the original complaint, plaintiffs knew the NICA had determined that an oil leak was the probable cause of the crash and plaintiffs were aware that Mead was the last entity to service the aircraft prior to the crash. Mead contends the NICA's probable cause finding, the aircraft log book, and the knowledge that Mead performed the last service on the aircraft are sufficient to defeat plaintiffs' claim of ignorance under section 474.

Section 474 provides that when a plaintiff is ignorant of the name of a defendant, he or she must state that fact in the complaint, and may designate that defendant by any name. (§ 474.) The plaintiff may amend the complaint to name the defendant sued by a fictitious name when the plaintiff discovers the true name. (§ 474.) In such a case, the fictitiously named defendant is considered a party to the action from its commencement. (*General Motors Corp. v. Superior Court* (1996) 48 Cal.App.4th 580, 589 (*General Motors Corp.*)) The amended pleading relates back to the filing of the original

complaint so as to satisfy the statute of limitations if it involves the same general set of facts. (*Parker v. Robert E. McKee, Inc.* (1992) 3 Cal.App.4th 512, 516 (*Parker*).

“[T]he purpose of section 474 is to enable a plaintiff to avoid the bar of the statute of limitations when he [or she] is ignorant of the identity of the defendant. [Citations.] The statute must be liberally construed to that end. [Citations.]” (*General Motors Corp., supra*, 48 Cal.App.4th at p. 593, fn. 12.) “ ‘There is a strong policy in favor of litigating cases on their merits, and the California courts have been very liberal in permitting the amendment of pleadings to bring in a defendant previously sued by fictitious name.’ ” (*Streicher v. Tommy’s Electric Co.* (1985) 164 Cal.App.3d 876, 882 (*Streicher*); see *Dieckmann v. Superior Court* (1985) 175 Cal.App.3d 345, 352, 355 (*Dieckmann*); *Munoz v. Purdy* (1979) 91 Cal.App.3d 942, 946 (*Munoz*)). The determinative question under section 474 is whether the plaintiff’s claimed ignorance of the true name of a fictitiously named defendant is real or feigned. (*Dieckmann, supra*, 175 Cal.App.3d at p. 355.)

A plaintiff is “ignorant of the name of a defendant” within the meaning of section 474 if, at the time the original complaint is filed, the plaintiff is aware of the identity and name of the defendant who is sued by a fictitious name, but lacks knowledge of facts that would cause a reasonable person to believe that such defendant is probably liable for the plaintiff’s injuries. (*Fuller v. Tucker* (2000) 84 Cal.App.4th 1163, 1172 (*Fuller*) [the relevant inquiry was whether the plaintiff knew the identity of the fictitiously named defendant and the facts giving rise to a cause of action against that defendant]; *Parker, supra*, 3 Cal.App.4th at pp. 514-515 [the plaintiff can use the Doe defendant procedure to bring a dismissed defendant back into the suit after the statute of limitations period had run where the plaintiff was ignorant of that defendant’s legal capacity (as a general contractor) in connection with the conditions at the construction site which caused the plaintiff to fall]; *Dieckmann, supra*, 175 Cal.App.3d at p. 363 [“Section 474 allows a plaintiff in good faith to delay suing particular persons as named

defendants until he has knowledge of sufficient facts to cause a reasonable person to believe liability is probable.”]; *Snoke v. Bolen* (1991) 235 Cal.App.3d 1427, 1432; *Munoz, supra*, 91 Cal.App.3d at p. 946.) The plaintiff need not be aware of each and every detail concerning the fictitiously named defendant’s connection with the case or with the plaintiff’s injuries. (*General Motors Corp., supra*, 48 Cal.App.4th at p. 594; *Dover v. Sandowinski* (1983) 147 Cal.App.3d 113, 117-118.) But a suspicion of wrongdoing arising from one or more facts is not enough to defeat a claim of ignorance under section 474. (*General Motors Corp., supra*, 48 Cal.App.4th at p. 594; *Dieckmann, supra*, 175 Cal.App.3d at p. 363.)

Moreover, the lack of knowledge requirement in section 474 is restricted to the actual knowledge of the plaintiff at the time the original complaint was filed. (*Streicher, supra*, 164 Cal.App.3d at pp. 882-883 [the plaintiff was not aware of any facts for a product liability claim against the defendant until, after the filing of the complaint, an expert indicated that the electronic door controllers involved in the accident were defective; the defective design in the controllers was not externally visible]; *Munoz, supra*, 91 Cal.App.3d at p. 947.) The inquiry whether a plaintiff may substitute a defendant for one named as a Doe under section 474 is, therefore, different from the question of whether a plaintiff timely filed a cause of action under the applicable statute of limitations. (*McOwen v. Grossman* (2007) 153 Cal.App.4th 937, 943 (*McOwen*); *General Motors Corp., supra*, 48 Cal.App.4th at pp. 587-588.) “When a lawsuit is first initiated after the applicable period of limitations has expired and the plaintiff is entitled to claim the benefit of a delayed discovery rule (that is, when for one reason or another the plaintiff is granted an extended period within which to file suit), the relevant inquiry is what the plaintiff knew or, through the exercise of due diligence, reasonably could have discovered at an earlier date. . . . [¶] But where . . . a lawsuit is initiated within the applicable period of limitations against someone (that is, almost anyone at all) and the plaintiff has complied with section 474 by alleging the existence of unknown additional

defendants, the relevant inquiry when the plaintiff seeks to substitute a real defendant for one sued fictitiously is what facts the plaintiff actually knew at the time the original complaint was filed.” (*General Motors Corp., supra*, 48 Cal.App.4th at pp. 587-588, italics omitted.)

The trial court considered what plaintiffs knew or reasonably could have discovered prior to the filing of the original complaint. But what plaintiffs reasonably could have discovered prior to the filing is not relevant to a section 474 analysis. Section 474 does not impose a duty of inquiry upon a plaintiff. (*Irving v. Carpentier* (1886) 70 Cal. 23, 26-27 (*Irving*); *McOwen, supra*, 153 Cal.App.4th at p. 944; *General Motors Corp., supra*, 48 Cal.App.4th at pp. 594, 596 & fn. 15; *Balon v. Drost* (1993) 20 Cal.App.4th 483, 488-490 [plaintiff who knew but then forgot the defendant’s name and did not inquire about it before filing her complaint may use section 474 procedure because she did not know the defendant’s identity at the time she filed her complaint]; *Streicher, supra*, 164 Cal.App.3d at p. 883; *Munoz, supra*, 91 Cal.App.3d at pp. 947-948.) Whether the plaintiff’s ignorance of facts is due to misinformation or negligence is immaterial. (*Irving, supra*, 70 Cal. at pp. 26-27.)

The trial court also concluded that plaintiffs knew of defendant’s “possible” liability at the time they filed the original complaint. As we have explained, however, section 474 allowed plaintiffs in good faith to delay suing Mead as a named defendant until plaintiffs had knowledge of sufficient facts to cause a reasonable person to believe Mead’s liability was probable, not just possible. (*Fuller, supra*, 84 Cal.App.4th at p. 1172, quoting *Dieckmann, supra*, 175 Cal.App.3d at p. 363.)

Henderson’s September 1, 2010 e-mail indicated that he did not know whether Mead performed maintenance on the aircraft. The e-mail purported to quote a report by the NICA that the probable and principal cause of the crash was a leak in the engine oil system. But the September 1, 2010 e-mail did not suggest that the NICA or anyone else attributed the oil leak to Mead.

Henderson's September 28, 2010 e-mail indicated that plaintiffs' counsel knew Mead worked on the airplane's cylinders. Henderson had a copy of the aircraft log book prior to the filing of the complaint. Henderson believed Mead was responsible for low compression in the cylinders. But the aircraft log book is not in the record before the trial court, and there is no indication in the September 28, 2010 e-mail that Henderson knew of facts showing that Mead did anything in relation to an oil hose or the oil lines.² There is no admissible evidence indicating that when the original complaint was filed, plaintiffs had knowledge of facts suggesting a connection between Mead and the oil leak.

It is undisputed that it was not possible to discern the cause of the airplane crash from the aircraft's log book. Coffman could not find the loose oil hose or determine the cause of the crash prior to the December 13, 2012 inspection. No admissible evidence indicates that plaintiffs knew Mead was responsible for the oil leak which caused the airplane to crash until Coffman so opined in December 2012.³

² We do not suggest that section 474 requires plaintiffs or their counsel to conduct an investigation by examining the aircraft's log book. As we have explained, section 474 does not impose a duty of inquiry upon a plaintiff. (*Irving, supra*, 70 Cal. at pp. 26-27.) "The fact that the plaintiff had the means to obtain knowledge is irrelevant [under section 474]." (*General Motors Corp., supra*, 48 Cal.App.4th at p. 594.) The relevant inquiry here is what facts plaintiffs or their counsel actually knew at the time the original complaint was filed. (*Id.* at p. 588.)

³ Mead argued in oral argument that when plaintiffs filed the original complaint, Henderson knew the following: NICA concluded an oil leak was the probable cause of the crash, Mead performed the last service on the aircraft, and Mead returned the aircraft to service after working on it. According to counsel for Mead, those facts would have caused a reasonable person to believe that Mead was probably liable for the crash because Mead had a duty, pursuant to 14 Code of Federal Regulations part 43.9, to discover the loose oil hose when it certified the aircraft for return to service. But Mead did not raise this argument in the trial court or in its appellate briefs. "It is a clearly understood principle of appellate review, so well established as to need no citation to authority, that contentions raised for the first time at oral argument are disfavored and may be rejected solely on the ground of their untimeliness." (*People v. Harris* (1992)

The trial court's summary judgment order refers to items 6 and 7 in Mead's separate statement of undisputed material facts. Those items cite Henderson's September 30, 2010 e-mail to Mead's claims representative and his October 3, 2010 demand letter as supporting evidence. But the trial court sustained plaintiffs' evidentiary objections to those documents. Mead does not challenge the trial court's evidentiary rulings on appeal. (*Frittelli, Inc. v. 350 North Canon Drive, LP* (2011) 202 Cal.App.4th 35, 41 [claim of error concerning evidentiary rulings is forfeited by not attacking the rulings on appeal].) We therefore presume that the September 30, 2010 e-mail and the October 3, 2010 demand letter were properly excluded. (*Villanueva v. City Of Colton* (2008) 160 Cal.App.4th 1188, 1196; *Stockinger v. Feather River Community College* (2003) 111 Cal.App.4th 1014, 1022.) We cannot consider evidence to which objections have been made and sustained. (*Wilson, supra*, 42 Cal.4th at p. 717; *Gin, supra*, 134 Cal.App.4th at p. 946.)

Based on the above, Mead failed to meet its burden on summary judgment. (*Barrows v. American Motors Corp.* (1983)144 Cal.App.3d 1, 10 [the defendants did not show that the plaintiff had actual knowledge of the defendants' identities or the facts showing their involvement in the injuries to the decedent where there was no evidence that the plaintiff knew who designed, manufactured, or distributed the vehicle in which the decedent was a passenger]; *Wallis v. Southern Pacific Transportation Co.* (1976) 61 Cal.App.3d 782, 785-787 [use of section 474 was appropriate where the plaintiff knew a defective door on a boxcar caused his injuries but did not know the owner of the boxcar or the name of the entity responsible for maintenance and control of the boxcar]; *Oakes v. McCarthy Co.* (1968) 267 Cal.App.2d 231, 253-254 [use of Doe amendment was proper where the plaintiffs knew of the defendant's identity but was ignorant of the defendant's

10 Cal.App.4th 672, 686; see *Allen v. City of Sacramento* (2015) 234 Cal.App.4th 41, 56.) Accordingly, we do not consider Mead's argument.

