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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIFTH APPELLATE DISTRICT

ANDREW VASSILIOU,

Plaintiff and Appellant,

v.

GENERAL ELECTRIC COMPANY et al.,

Defendants and Respondents.

F063385

(Super. Ct. No. CV54998)

OPINION

APPEAL from a judgment of the Superior Court of Tuolumne County. James A. Boscoe, Judge.

Andrew Vassiliou, in pro. per., for Plaintiff and Appellant.

Sedgwick LLP, Charles T. Sheldon and Derek S. Johnson for Defendant and Respondent General Electric Company.

Brydon Hugo & Parker, John R. Brydon, Brian H. Buddell, Thomas J. Moses and Elsa Sham for Defendant and Respondent Union Carbide Corporation.

Horvitz & Levy, Lisa Perrochet, Dean A. Bochner; DeHay & Elliston, Jennifer Judin and Eduardo Robles for Defendant and Respondent Kaiser Gypsum Company, Inc.

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Appellant, Andrew Vassiliou, challenges the judgment dismissing his personal injury action against respondents, General Electric Company (GE), Union Carbide Corporation (Union Carbide) and Kaiser Gypsum Company, Inc. (Kaiser Gypsum), entered after the trial court sustained respondents' demurrers to the third amended complaint without leave to amend. The court ruled that appellant had not stated a cause of action for injury resulting from exposure to toxic materials because he had not alleged that he was exposed to a particular product manufactured by any of these respondents.

Appellant asserts that the information stated in the complaint is "not vague it is factual" and that the "defendants lied and tricked [the] judge." However, appellant has neither supported his contentions by argument or citation of authority nor met his burden to show reversible error. Moreover, the complaint is insufficient as a matter of law. Therefore, the judgment will be affirmed.

BACKGROUND

Appellant filed a complaint alleging that he was injured as a child by wallboard, ceiling tiles, and other unidentified asbestos containing products manufactured by multiple defendants, including GE and Union Carbide, between 1966 and 1973 at his parents' restaurant. Thereafter, appellant filed a first amended complaint, modifying the defendants but otherwise making the same allegations. Appellant later added Kaiser Gypsum as a Doe defendant.

Kaiser Gypsum demurred to the first amended complaint. The trial court sustained the demurrer on the ground that the complaint was uncertain, ambiguous, and unintelligible and granted appellant leave to amend.

Appellant then filed a second amended complaint stating a single cause of action for intentional tort specifically naming 13 defendants. Appellant alleged that he was

injured when he was exposed to asbestos containing products. With respect to respondents, appellant alleged:

“Defendant Union Carbide manufactured the following products or asbestos-containing components of the following products, phenolic resin used in plywood paneling used in the dining room of the restaurant, adhesive used to hold on the bar rail, acoustic ceiling tile, wallboard, tile, tile glue, fireboard, exterior stucco, material used in the fireplace flue.
[¶]...[¶]

“General Electric Company manufactured asbestos wire insulation used in the restaurant and in the installation of, and contained within the hood, and back bar chiller box of the restaurant.”

Kaiser Gypsum again demurred. The court sustained the demurrer to the second amended complaint with leave to amend.

Appellant’s third amended complaint was identical to the second amended complaint except appellant hand wrote in a “to[x]ic chemical list.” All three respondents demurred. Respondents argued that the complaint still failed to satisfy the applicable pleading requirements. GE also noted that appellant admitted in discovery that he was only age seven to nine years old during the alleged exposure period and thus was unaware of any “brand names or identifying tags” on the products installed in his parents’ restaurant.

The trial court sustained the demurrers without leave to amend for failure to state facts sufficient to constitute a cause of action against respondents. The court concluded that, under *Bockrath v. Aldrich Chemical Co.* (1999) 21 Cal.4th 71 (*Bockrath*), appellant was “required to specifically allege exposure to toxic materials that he claims caused his illness, and he must identify each specific product that allegedly caused the injury.” The court found that appellant had failed to allege that he was exposed to a particular product manufactured by any of the moving defendants.

DISCUSSION

1. *Standard of review.*

In reviewing a ruling on a demurrer, the appellate court's only task is to determine whether the complaint states a cause of action. (*Gentry v. eBay, Inc.* (2002) 99 Cal.App.4th 816, 824.) In doing so, the court treats the demurrer as admitting all material facts properly pleaded, but not contentions, deductions or conclusions of fact or law. (*Blank v. Kirwan* (1985) 39 Cal.3d 311, 318.) Further, the complaint must be given a reasonable interpretation, reading it as a whole and its parts in their context. (*Ibid.*) The complaint's allegations must be liberally construed with a view to attaining substantial justice among the parties. (*Semole v. Sansoucie* (1972) 28 Cal.App.3d 714, 719.)

When a demurrer is sustained without leave to amend, the appellate court must decide whether there is a reasonable possibility that the defect can be cured by amendment. (*Blank v. Kirwan, supra*, 39 Cal.3d at p. 318.) If so, the trial court abused its discretion and the judgment will be reversed. (*Ibid.*) However, the appellant bears the burden of demonstrating that the trial court erred in sustaining the demurrer. (*Zelig v. County of Los Angeles* (2002) 27 Cal.4th 1112, 1126.) The appellant must show how the defects in the complaint can be cured by amendment. (*Goodman v. Kennedy* (1976) 18 Cal.3d 335, 349.)

2. *Appellant did not state a cause of action for injury based on asbestos exposure.*

A plaintiff attempting to allege injury resulting from exposure to toxic materials must comply with specific guidelines. (*Jones v. ConocoPhillips Co.* (2011) 198 Cal.App.4th 1187, 1194.) To state such a cause of action, the plaintiff must: (1) allege that he was exposed to each of the toxic materials claimed to have caused a specific illness; (2) identify each product that allegedly caused the injury, not simply allege that the toxins in the defendants' products caused it; (3) allege that as a result of the exposure, the toxins entered his body; (4) allege that he suffers from a specific illness, and that each

toxin that entered his body was a substantial factor in bringing about, prolonging, or aggravating that illness; and (5) allege that each toxin he absorbed was manufactured or supplied by a named defendant. (*Bockrath, supra*, 21 Cal.4th at p. 80.)

These guidelines are designed to prevent overbroad litigation. “The law cannot tolerate lawsuits by prospecting plaintiffs who sue multiple defendants on speculation that their products may have caused harm over time through their exposure to toxins in them, and who thereafter try to learn through discovery whether their speculation was well-founded.” (*Bockrath, supra*, 21 Cal.4th at p. 81.)

Here, appellant has not stated the essential elements of a toxic exposure cause of action. The third amended complaint does not identify which of respondents’ products allegedly caused appellant’s injury. Further, appellant does not allege that he suffers from a specific illness and that each toxin that entered his body was a substantial factor in bringing about such illness. Accordingly, the trial court properly sustained respondents’ demurrers to the third amended complaint.

Moreover, in his opening brief, appellant does not demonstrate how the defects in his complaint could be cured by amendment. In fact, appellant’s opening brief contains neither an intelligible legal argument nor any citations to authority as are required to support his contentions. (*Kensington University v. Council for Private Postsecondary etc. Education* (1997) 54 Cal.App.4th 27, 42-43.)

Appellant did attach a proposed fourth amended complaint to his reply brief. However, that proposed complaint does not correct the insufficiencies. Although appellant has drastically changed the allegations, he still has not identified the products that allegedly caused his injury. Rather, this complaint contains only generalizations to the effect that the respondents manufactured, sold, supplied, etc. products containing asbestos. Thus, appellant has not met his burden of demonstrating that the trial court abused its discretion when it sustained the demurrers without leave to amend.

DISPOSITION

The judgment is affirmed. Costs on appeal are awarded to respondents.

LEVY, J.

WE CONCUR:

WISEMAN, Acting P.J.

PEÑA, J.