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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIFTH APPELLATE DISTRICT

ANDREW VASSILIOU,

Plaintiff and Appellant,

v.

STATE FARM GENERAL INSURANCE
COMPANY,

Defendant and Respondent.

F064644

(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, Michael Fox and Sean Patterson for Defendant and Respondent.

-ooOoo-

Appellant, Andrew Vassiliou, challenges the judgment dismissing his personal injury action against respondent, State Farm General Insurance Company (State Farm), entered after the trial court sustained State Farm's demurrer to the third amended complaint without leave to amend. The court ruled that the complaint failed to state facts sufficient to constitute a cause of action against State Farm and was uncertain. State

Farm was not named as a defendant in the complaint and no facts or theories of liability were alleged against State Farm.

Appellant asserts that, under the Insurance Code and “basic premises liability,” State Farm is liable. However, appellant has neither supported his contention by argument and citation to relevant 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 between 1966 and 1973 at his parents’ restaurant. Thereafter, appellant filed a first amended complaint, modifying the named defendants but otherwise making the same allegations.

One of the defendants 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 in general terms that he was injured when he was exposed to asbestos containing products. For example, as to defendant General Electric Company, appellant alleged that it “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.” Following the sustaining of another demurrer, appellant was again granted 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.” Three defendants, General Electric Company, Union Carbide Corporation and Kaiser Gypsum Company,

Inc., demurred. These defendants argued that the complaint still failed to satisfy the applicable pleading requirements.

The trial court sustained these demurrers without leave to amend for failure to state facts sufficient to constitute a cause of action against the defendants. 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.

Thereafter, appellant served State Farm with the third amended complaint. However, with the exception of listing State Farm on the “amended summons” and proof of service, appellant did not amend this complaint to allege any additional facts or theories of liability specific to State Farm. The third amended complaint neither mentions State Farm nor explains why State Farm is a defendant.

State Farm demurred on the grounds that it was not named as a defendant and that, as the court had already ruled, the third amended complaint did not state a cause of action. The trial court sustained State Farm’s demurrer without leave to amend.

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 against State Farm.*

The third amended complaint does not name State Farm as a defendant or set forth any claim against State Farm. Accordingly, this complaint does not state facts sufficient to constitute a cause of action against State Farm. Moreover, the complaint fails to state a cause of action based on alleged toxic exposure against the named defendants as well.

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 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 the defendants’ 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. Thus, in addition to State Farm not being named as a defendant, appellant’s complaint is insufficient as a matter of law.

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 relevant 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 merely lists two Insurance Code sections, 108 and 11583, to support his claim that State Farm is liable. However, these sections have no relevance to this case. Section 108 defines liability insurance and section 11583 pertains to advance payments or partial payments made by an insurer. Further, appellant does not even attempt to explain how State Farm is involved. Thus, appellant has not met his burden of demonstrating that the trial court abused its discretion when it sustained the demurrer without leave to amend.

DISPOSITION

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

LEVY, J.

WE CONCUR:

WISEMAN, Acting P.J.

PEÑA, J.