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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

THE GRANT LAW CORPORATION,

Plaintiff, Cross-defendant, and
Respondent,

v.

VALLEY OUTDOOR, INC.,

Defendant, Cross-complainant, and
Appellant.

G045166

(Super. Ct. No. 30-2008-00114005)

O P I N I O N

Appeal from a judgment of the Superior Court of Orange County, Richard W. Luesebrink, Judge. (Retired judge of the Orange Sup. Ct. assigned by the Chief Justice pursuant to art. VI, § 6 of the Cal. Const.) Affirmed.

Crawford Weinstein and Daniel A. Crawford for Defendant,
Cross-complainant, and Appellant.

Law Offices of Michael G. York and Michael G. York for Plaintiff,
Cross-defendant, and Respondent.

Valley Outdoor, Inc. (Valley Outdoor) appeals from a judgment entered after a general verdict in favor of The Grant Law Corporation (GLC) for \$32,821, an amount that represents attorney fees for work performed by GLC’s president and attorney employee, Gary D. Grant (Grant). Valley Outdoor claims only licensed attorneys or registered law corporations may collect legal fees in California. It acknowledges two cases that have held otherwise, *Steven M. Garber & Associates v. Eskandarian* (2007) 150 Cal.App.4th 813 (*Garber*) and *Olson v. Cohen* (2003) 106 Cal.App.4th 1209 (*Olson*), but argues “the judicially created exception to Business and Professions Code section 6125 [] does not apply [] because [these cases] are factually and legally distinguishable”¹ In addition, Valley Outdoor argues the trial court abused its discretion and committed reversible error by preventing the cross-examination of Grant about his standing with the California State Bar Association (the State Bar) at the time of trial. We find the first argument unpersuasive, and we disagree with Valley Outdoor’s assessment of the significance of Grant’s standing with the State Bar at the time of trial. Consequently, the judgment is affirmed.²

¹ Business and Professions Code section 6125 provides, “No person shall practice law in California unless the person is an active member of the State Bar.”

² After this matter was fully briefed, argued, and taken under submission, GLC informed the court Valley Outdoor is currently a suspended corporation and as such lacks capacity to prosecute this appeal. We invited Valley Outdoor to file a response addressing its current corporate status and the effect of its corporate status on the appeal, but it did not respond. Although GLC is correct that a suspended corporation may not prosecute or defend an action or appeal from an adverse judgment (*Grell v. Laci Le Beau Corp.* (1999) 73 Cal.App.4th 1300, 1306), we also note, “A plea that a corporation lacks capacity to maintain an action because its corporate powers have been suspended for nonpayment of taxes “is a plea in abatement which is not favored in law, is to be strictly construed and must be supported by facts warranting the abatement” at the time of the plea. [Citations.]’ [Citation.] Pleas in abatement do not challenge the justness or merits of a plaintiff’s claim, but rather object to the place, mode, or time of asserting a claim. [Citation.] [¶] Corporate incapacity is nothing more than a legal disability, depriving the party of the right to come into court and represent its own interests. As such, lack of

FACTS³

In March 2007, Keith Stephens the president of Valley Outdoor signed a retainer agreement for legal services with GLC. Grant signed the retainer agreement in his capacity as the president of GLC. GLC represented Valley Outdoor in numerous matters between March 2007 and July 2008. When Valley Outdoor refused to pay approximately \$42,000 plus interest for some of these legal services, GLC filed an action for breach of contract, common counts, and quantum meruit.

Valley Outdoor filed a cross-complaint for legal malpractice, breach of fiduciary duty, breach of written and oral contracts, and for declaratory relief. The cross-complaint alleged GLC failed to attain favorable results in four lawsuits, “resulting in millions of dollars in attorneys’ fees and damages.” The cross-complaint specifically alleged GLC failed to introduce essential evidence during unidentified court proceedings, failed to adequately communicate with Valley Outdoor, and failed to “conduct essential discovery prior to discovery cutoff.” Valley Outdoor claimed damages in excess of \$5,000,000 and sought prejudgment interest and attorney fees and costs.

At trial, Grant testified he performed work for Valley Outdoor from March 2007 through July 2008. At the time, he was a member in good standing with the bar. During cross-examination, Grant admitted he had been convicted of a felony involving moral turpitude, suspended from the practice of law in January 2009, and failed

capacity is not a jurisdictional defect and is waived if not properly raised. [Citation.]” (*Center for Self-Improvement & Community Development v. Lennar Corp.* (2009) 173 Cal.App.4th 1543, 1552.) Given the late stage in this proceeding at which GLC has raised Valley Outdoor’s capacity to prosecute its appeal, and the lack of any evidence concerning *when* Valley Outdoor was suspended, we treat the matter as waived by GLC and, accordingly, deny its motion to abate or dismiss the appeal.

³ The parties make few references to the over 700 pages of reporter’s transcript or the 105-page appellant’s appendix prepared for this appeal. GLC asserts the facts are undisputed, which is a point Valley Outdoor does not contest. Consequently, our statement of facts is derived from the briefs and those few record references provided.

to register GLC with the State Bar or provide security or have malpractice insurance as required by the State Bar for registered legal corporations.

Stephens took issue with Grant's honesty, the quality of his representation, and accuracy of his billing. On the issue of security or malpractice insurance, Stephens testified he assumed GLC "had everything necessary to do the job" when he signed the retainer agreement.

DISCUSSION

Trial Court's Award of Attorney Fees to a General Purpose California Corporation

As noted, Valley Outdoor attempts to distinguish *Garber, supra*, 150 Cal.App.4th 813 and *Olson, supra*, 106 Cal.App.4th 1209, by pointing out the law corporations in both cases registered with the State Bar prior to trial and arguing GLC's failure to obtain malpractice insurance caused some type of detrimental reliance on its part. However, these distinctions make no difference in our application of established legal authority.

In *Olson*, the appellant, David K. Olson filed an action on behalf of himself and other legal clients of Baruch C. Cohen and Cohen's variously named legal corporations (Corp). (*Olson, supra*, 106 Cal.App.4th at p. 1212.) The complaint alleged that between August 13, 1996, when Corp incorporated, through April 8, 2001, Corp failed to register as a law corporation with the State Bar. (*Ibid.*) Olson sought an accounting, rescission, and the imposition of a constructive trust on the grounds Corp engaged in the unauthorized practice of law and violated Business and Professions Code section 17200 et seq., the unfair competition law (UCL). (*Ibid.*) Olson alleged intentional misrepresentation and concealment and requested disgorgement of attorney fees and statutory damages (Bus. & Prof. Code, § 17206.1). (*Ibid.*) The trial court sustained Cohen and Corp's demurrer with leave to amend. (*Ibid.*) The demurrer to the first amended complaint was sustained without leave to amend, and Olson appealed. (*Id.* at pp. 1212-1213.)

The appellate court began with an explanation of the statutory requirements for corporations desiring to become legal corporations under the State Bar. (*Olson, supra*, 106 Cal.App.4th at p. 1213.) The process begins with the State Bar’s issuance of a certificate of registration, which is predicated on a finding the general corporation seeking certification is “organized and existing pursuant to the General Corporation Law or pursuant to section 13406, subdivision (b) of the Corporations Code” (*Ibid.*) It must appear the corporation “will be conducted in compliance with law and the rules and regulations of the State Bar.” (*Olson, supra*, 106 Cal.App.4th at p. 1213; Bus. & Prof. Code, §§ 6161, 6171.) There is a registration fee and provision for annual fees. (*Olson, supra*, 106 Cal.App.4th at p. 1213; Bus. & Prof. Code, §§ 6161, 6161.1) The State Bar initiates investigations to determine if “any pertinent statute, rule or regulation” has been violated by a certified law corporation, and the issuance of an order to show cause constitutes the mechanism for prosecuting such claims. (*Olson, supra*, 106 Cal.App.4th at p. 1213; Bus. & Prof. Code, §§ 6168, 6169.) The Supreme Court reviews judgments rendered under this procedure. (Bus. & Prof. Code, § 6170.)

The appellate court then addressed Olson’s claims that Corp engaged in the unauthorized practice of law, thus rendering the collection of legal fees “unlawful, unfair or fraudulent business practices” under the UCL. (*Olson, supra*, 106 Cal.App.4th at p. 1214.) Noting Cohen was a licensed attorney, but assuming Corp and Cohen violated the UCL by labeling Corp as a professional law corporation, the court held the factors governing equitable actions under the UCL “weighed strongly in favor of denying” relief. (*Ibid.*) Of primary importance was Olson’s failure to demonstrate detrimental reliance on Corps’ corporate status and its inability to prove actual injury as a result of this failure. (*Ibid.*)

Valley Outdoor attempts to distinguish its case from *Olson* by pointing to GLC’s continued failure to register with the State Bar, its inclusion of a malpractice action in the cross-complaint, and a showing of detrimental reliance. While it is true

Corp registered with the State Bar prior to trial and Olson did not include a malpractice claim in its complaint, we fail to see how these distinctions permit an abandonment of clear legal precedent. In any event, the jury rejected Valley Outdoor's malpractice claim. Moreover, here, as in *Olson*, the complaining client has failed to prove detrimental reliance. Stephens testified he assumed GLC had everything it needed to provide legal services, and GLC did provide legal services. There is no evidence Valley Outdoor relied on GLC's name or corporate status in making its decision to retain the firm.

As the *Olson* court explained, the decision to incorporate as a professional corporation is not "undertaken for the protection of clients." (*Olson, supra*, 106 Cal.App.4th at p. 1215.) Rather, it is a business decision "typically made to obtain tax advantages and to avoid personal liability for the corporation's debts. [Citation.]" (*Id.* at p. 1214.) While the registration procedure does afford some protection to clients, primarily by limiting shareholders and requiring security, "[t]o require disgorgement of fees because of a failure to register the corporation . . . is disproportionate to the wrong." (*Id.* at p. 1215.) And because the focus of the inquiry is the period of representation, the corporation's status after the fact makes little difference. While it may be one factor to consider in equity, *Olson* does not stand for the proposition this factor alone precludes the collection of otherwise legitimate legal fees. To hold otherwise would result in a windfall to the client.

Nothing in *Garber* mandates a different result. There, the nonpaying clients of Steven M. Garber & Associates (Garber) appealed from a default judgment entered as a terminating sanction for their failure to respond to discovery propounded by Garber. (*Garber, supra*, 150 Cal.App.4th at pp. 816-819.) After making several procedural errors and failing to respond to various pleadings and discovery requests, the nonpaying clients asserted Garber could not maintain an action for attorney fees because it failed to register as a law corporation. (*Ibid.*) The *Garber* court, citing the *Olson* opinion, rejected this argument in no uncertain terms: "Contrary to appellants' claim that

the holding of *Olson* is ‘limited to the facts of the case,’ *Olson* took into consideration broad questions of policy . . . and concluded that the failure to register as a professional corporation should not have, and does not have, an impact on attorney fees.” (*Garber, supra*, 150 Cal.App.4th at p. 820.)

The bottom line is this: Grant was a member of the State Bar in good standing when he provided legal services to Valley Outdoor. His failure to register GLC with the State Bar does not mean he or the corporation engaged in the unauthorized practice of law, or that he should be prevented from collecting fees for work performed while a properly licensed attorney. In short, the distinctions Valley Outdoor attempts to make between this case and *Olson* and *Garber* make no difference.

The Court’s Limitation of Cross-Examination

Valley Outdoor argues the trial court abused its discretion by limiting its cross-examination of Grant on the issue of his status with the State Bar at the time of trial.⁴ It complains “the result of the trial court’s ruling was to allow the jury to believe that Mr. Grant was a member of the [State] Bar in good standing, rather than being suspended and recommended for disbarment for moral turpitude, and because Mr. Grant was the sole witness for [GLC] on whose credibility [GLC] relied, the trial court’s erroneous ruling was prejudicial reversible error.” Valley Outdoor insists the court’s ruling enabled GLC to exploit “the aura of credibility attorneys enjoy.”

There are a number of problems with this argument, not least of which being the record on appeal. Although the court and counsel engaged in a pretrial discussion about Grant’s felony conviction and the admissibility of State Bar

⁴ Valley Outdoor argues this situation calls for the application of a higher standard of review than abuse of discretion, but provides no citation to authority in support of this assertion. “When an appellant fails to raise a point, or asserts it but fails to support it with reasoned argument and citations to authority, we treat the point as waived. [Citations].” (*Badie v. Bank of America* (1998) 67 Cal.App.4th 779, 784-785.)

proceedings, they did not discuss Grant's current status with the State Bar. From the record, we can merely infer GLC argued the evidence was irrelevant (Evid. Code, § 350), and/or excludable under Evidence Code section 352, but the arguments pro and con failed to result in a definitive ruling.⁵

In any event, we need not conduct a detailed analysis of the trial court's ruling because Valley Outdoor cannot demonstrate the error, if committed, resulted in a miscarriage of justice. (Evid. Code, § 354.) First, with respect to GLC's comments during opening statement, the court instructed the jury that "[w]hat the attorneys say during the trial is not evidence . . . their statements and argument are not evidence." (CACI No. 106.) With this instruction, the trial court specifically directed the jury to decide the case based on evidence, not GLC's opening statement reference to Grant as an attorney and GLC as a legal corporation. We presume the jurors followed the court's instructions. (*People v. Morales* (2001) 25 Cal.4th 34, 47.)

Secondly, Valley Outdoor dashed any "an aura of credibility" Grant might have enjoyed during cross-examination. The jury learned Grant had been convicted of a serious felony, one involving moral turpitude. It also learned Grant had been suspended from the practice of law because of the felony and failed to properly register his legal corporation with the State Bar. It is nonsensical to assume the jury disregarded all of this information just because Grant's attorney referred to his client as an attorney during opening statement. Moreover, because of the failed malpractice action, Valley Outdoor was able to elicit Stephens' assessment of Grant's veracity and business ethics. Stephens' claimed Grant once told him he was out of the office due to a military

⁵ On appeal, Valley Outdoor also relies on Evidence Code section 773, subdivision (a), which states, "A witness examined by one party may be cross-examined upon any matter within the scope of the direct examination by each other party to the action in such order as the court directs." However, GLC did not question Grant about his current status with the State Bar during direct examination.

deployment, but that he later found this untrue. Stephens' also testified Grant did sloppy work and overbilled him for work performed. Under the circumstances, Valley Outdoor fails to demonstrate prejudice sufficient to require a reversal of the judgment.

DISPOSITION

The judgment is affirmed. Respondent to recover its costs on appeal.

O'LEARY, P. J.

WE CONCUR:

FYBEL, J.

THOMPSON, J.