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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

JAMES G. BRAKKE, Individually and as
Trustee, etc., et al.,

Plaintiffs and Appellants,

v.

PENSION STRATEGIES, LLC,

Defendant and Respondent.

G046292

(Super. Ct. No. 30-2009-00315313)

O P I N I O N

Appeal from a judgment of the Superior Court of Orange County, Gregory H. Lewis, Judge. Request for judicial notice. Judgment affirmed. Request granted.

Crandall, Wade & Lowe, James L. Crandall and Geoffrey T. Hill for Plaintiffs and Appellants.

Farmer & Ridley and Rebecca Mocciano for Defendant and Respondent.

* * *

This appeal is a companion case to (*Brakke v. Economic Concepts, Inc.*, (Jan. 15, 2013, G045846) [nonpub. opn.].) Plaintiffs' first amended complaint alleged defendant Pension Strategies, LLC performed the actuarial calculations used to determine the contributions plaintiffs needed to make to the pension plan designed by defendant Economic Concepts, Inc. Pension Strategies, LLC's managing agent, Maurice Gordan, made the same purportedly false representations as Economic Concepts, Inc.'s agent; plaintiffs' pension plan was designed to comply with former section 412(i) of the Internal Revenue Code (former 26 U.S.C. § 412(i), now 26 U.S.C. § 412(e)(3); hereinafter 412(i) plan), was legal, complied with the tax code, and their entire contribution to the plan would be tax deductible. The Internal Revenue Service later determined plaintiffs' 412(i) plan did not qualify for favorable tax treatment, resulting in plaintiffs incurring back taxes, penalties, and other expenses.

Pension Strategies, LLC filed a separate demurrer to plaintiffs' first amended complaint and the hearing and ruling it occurred after the demurrer that resulted in the dismissal of the action as to Economic Concepts, Inc. Consequently, a separate judgment of dismissal was entered in favor of Pension Strategies, LLC.

Otherwise the issues raised and arguments asserted by plaintiffs in this appeal are identical to those presented in the companion case. In fact, Pension Strategies, LLC has requested this court take judicial notice of the appellants' opening brief and respondent's brief filed in that same case. For the reasons set forth in (*Brakke v. Economic Concepts, Inc., supra*, G045846), we shall affirm the judgment for Pension Strategies, LLC.

Respondent Pension Strategies, LLC's request for judicial notice is granted.
The judgment is affirmed. Respondent shall recover its costs on appeal.

RYLAARSDAM, J.

WE CONCUR:

O'LEARY, P. J.

THOMPSON, J.