Ferguson v. Ferguson

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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

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Plaintiff and appellant, Robert M. Ferguson ("Robert"), [1] appeals from an order and judgment entered by the trial court following the granting of a summary judgment motion in favor of respondent and defendant, Beverly Ferguson ("Beverly"), the moving party. Beverly is the surviving spouse of Roland Ferguson ("Roland"). Roland is the predeceased youngest brother of Robert.

The action emanates from Robert's contention that Beverly is jointly and independently liable for an alleged loan by Robert to Roland, during Roland's lifetime, in the amount of $50,000, based upon contractual and agency principles. [2]

The trial court found no material issues of fact to be tried and ruled as a matter of law that no principles of contract or agency obligated Beverly to repay the $50,000, and further that any purported liability of Beverly for the repayment was barred by the one year statute of limitations found in California Code of Civil Procedure section 366.2 and California Probate Code section 13554. [3]

Robert filed a timely notice of appeal.

FACTUAL AND PROCEDURAL SYNOPSIS

Material Facts

The relevant facts are not seriously in dispute. The central issues can be decided as a matter of law in accordance with well- established principles applicable to motions for summary judgment as recently explained by the California Supreme Court in Aguilar, infra, in spite of Robert's contrary claims. We address those principles in the "DISCUSSION" section of this opinion.

On April 10, 1995, Robert and Roland met at the Sizzler Restaurant in Covina, California, for lunch during which Roland revealed to Robert that he and Beverly needed $50,000 to pay their income taxes that were coming due. Roland expressed a fear that the Internal Revenue Service would seize his bank accounts if the taxes were not paid. Robert wrote a check to Roland for $50,000 with the word "loan" on the face of the check. According to Robert's subsequently disclosed intention, Robert opted not to write the words "loan to Robert" on the face of the check because it was his intent to obligate Beverly also to repay the loan for what Robert considered to be a family debt.

Roland then deposited the $50,000 check in the joint bank account with his wife, Beverly, and used the $50,000 plus another $1,000 to pay taxes to the Internal Revenue Service and Franchise Tax Board.

Shortly after Robert wrote the check to Roland, Robert's accountant sent a promissory note for Roland and Beverly to sign. Neither Roland nor Beverly signed the note. At the time of Roland's death on May 14, 1997, which Robert learned of within 24 hours, the note remained unsigned by either Roland or Beverly.

In late 1995, another luncheon took place at the Sizzler Restaurant in Covina among Robert, Roland, and Beverly. Robert inquired when the promissory note would be signed and returned to him. Robert got the "indication" at the luncheon that both Roland and Beverly would sign the note and return it to him because neither expressed any objection to the note. Robert had a subsequent discussion with Beverly about the promissory note during which Beverly indicated dissatisfaction with the "demand" language contained in the note. But according to Robert, no mention was made by Beverly that she was not obligated on the note.

Within a few months after Roland died, Robert inquired of Beverly about repayment of the $50,000 "loan," which prompted Beverly's response that her accountant and lawyer told her to delay payment to see what would happen. Robert maintains that Beverly did not challenge her obligation to repay the "loan." Robert then had his accountant send another promissory note to Beverly with a request that she repay the loan. By letter dated January 17, 1999, Beverly denied owing the $50,000 because she was entitled to offsets. The offsets purportedly arose as a result of Roland's loans to Robert during the years 1974 to 1975 to help finance Robert's purchase of an airplane for use in a business known as Southeast Asia Air Transport. The financing was enhanced with a $20,000 loan from Roland to Robert on which Robert made monthly payments until the business was disrupted when the Khmer Rouge took over the Cambodian government and confiscated all privately owned property, including the airplane and other assets belonging to the business. Following the seizures in January of 1995, Robert obtained relief for his losses by way of a settlement of his claim against the Cambodian government for several million dollars. The expenses of pursuing the claim were partly paid for by Roland, with the knowledge of Beverly. Roland told Beverly that Robert said he would pay Roland $90,000 from his recovery to make good on the 1970's transaction. Roland received a check from Robert on or about January 24, 1995, in the amount of $40,000 but Beverly was not a payee on the check and never endorsed or saw the check. Robert maintains that he was surprised to be asked by Roland for $50,000 because he remembers returning $40,000 to Roland on January 24, 1995.

Robert references the following facts in support of his claim that Beverly is jointly and independently liable for the $50,000 "family" debt: Beverly was employed by her husband, Roland, from 1983 to 1997 and up to the date of his death; the employment included doing accounting work, paying bills, depositing money and sending out bills; Beverly handled the family finances from 1960 to 1983, with Roland handling the family finances thereafter until the date of his death; Beverly would periodically write checks for purchases and make entries in the check register of Roland and Beverly's joint bank account; Beverly would also write checks for purchases for household members; and signed joint income tax returns with Roland from 1983 to 1997.

Relevant Proceedings

Robert commenced his action against Beverly by filing a complaint on April 9, 1999, which contained two causes of action, the first being for breach of contract and the second for the common count of money had and received. Robert prayed for damages of $50,000 together with interest on this sum from April 10, 1995, to date; for interest on said sum at 10 percent per annum until paid in full; for cost of suit; and further relief as the court deemed proper.

Beverly responded to the complaint by filing an unverified answer containing a general denial and eleven affirmative defenses, the ninth containing an allegation that Robert's causes of action were barred by the statutes of limitation found in CCP section 366.2 and PC section 13554.

On June 8, 2000, Beverly filed a summary judgment motion supported by declarations, a memorandum of points and authorities, a separate statement of undisputed facts and the matter was set for hearing on July 6, 2000. Robert responded by filing opposition on June 29, 2000, containing supporting declarations, objections to specified evidence submitted by Beverly on her motion and a memorandum of points and authorities. Beverly responded further by filing a reply brief on June 30, 2000, in support of her motion for summary judgment.

On July 16, 2000, the court heard the matter and granted Beverly's motion, ruling that Robert failed to carry his burden of proof that a meeting of the minds occurred between Robert and Beverly with respect to the "loan," or that an agency relationship existed between Beverly and Robert with respect to the "loan" and further ruled that the undisputed evidence established that the "loan" was solely between Robert and Roland. The court further found that the action was time-barred under CCP section 366.2 and PC section 13554.

Following a denial of Robert's motion for new trial on December 28, 2000, Robert filed a timely notice of appeal.

DISCUSSION

Standard of Review

The standards to be utilized in trial courts in considering the merits of a motion for summary judgment and the standard to be used by appellate courts in determining the correctness of a grant of such motion by the trial court was recently addressed by the California Supreme Court in Aguilar v. Atlantic Richfield Co. (2001) 25 Cal.4th 826, 848-852. According to the California Supreme Court, amendments to Code of Civil Procedure in 1992 and 1993 changed summary judgment law dramatically, by liberalizing the grant of such motions. A defendant meets the burden of showing a cause of action has no merit by demonstrating that an element of the cause of action cannot be established, or that there is a complete defense to the cause of action. Once a defendant meets that burden, the plaintiff must show that a triable issue of material fact exists by setting forth specific facts, or else the trial court is required to grant summary judgment.

On appeal an order granting summary judgment is independently reviewed. The appellate court, like the trial court, "may not weigh the plaintiff's evidence or inferences against the defendants' as though it were sitting as the trier of fact," but it "must nevertheless determine what any evidence or inference could show or imply to a reasonable trier of fact." (Aguilar v. Atlantic Richfield Co., supra, 25 Cal.4th at p. 856; original emphasis.)

Bearing in mind the imperatives from the California Supreme Court, we now examine Beverly's claim that none of Robert's evidence, or the reasonable inferences drawn therefrom, can alter the timeframe within which Robert commenced his action or changed the substance of California law pertaining to the bar of the statutes of limitation.

Bar of the One Year Statutes of Limitation

CCP section 366.2 provides: "If a person against whom an action may be brought on a liability of the person, whether arising in contract, tort, or otherwise, and whether accrued or not accrued, dies before the expiration of the applicable limitations period, and the cause of action survives, an action may be commenced within one year after the date of death, and the limitations period that would have been applicable does not apply." (Emphasis added.)

PC section 13554 states "(a) Except as otherwise provided in this chapter, any debt described in Section 13550 may be enforced against the surviving spouse in the same manner as it could have been enforced against the deceased spouse if the deceased spouse had not died.

"(b) In any action or proceeding based upon the debt, the surviving spouse may assert any defense, cross-complaint, or setoff which would have been available to the deceased spouse if the deceased spouse had not died.

"(c) Section 366.2 of the Code of Civil Procedure applies in an action under this section." (Emphasis added.).

While Robert is correct in asserting that any debt incurred by Roland during the marriage is a community debt obligating Beverly for the indebtedness whether incurred by Roland or incurred jointly by Roland and Beverly, the argument is wide of the mark when considered in conjunction with the statutes of limitation contained in section 366.2 of the CCP and section 13554 of the PC. In Dawes v. Rich (1997) 60 Cal.App.4th 24, the appellate court clearly stated that a surviving spouse is liable for the debts incurred by the deceased spouse, with the proviso that such liability is "expressly made subject to the limitations set forth in Code of Civil Procedure section 366.2." This principle was recently confirmed by the California Supreme Court in Collection Bureau of San Jose v. Rumsey (2000) 24 Cal.4th 301, a case in which a collection agency was hired by a hospital to collect the medical expenses of a deceased spouse from a surviving spouse. In holding that the agency's action was subject to the one year bar of the statute of limitations, the high court reviewed the one year bar in the following language "The overall intent of the Legislature in enacting Code of Civil Procedure former section 353 [now section 366.2] was to protect decedents' estates from creditors' stale claims. . . . `[T]he drafters of former Code of Civil Procedure 353 and current Code of Civil Procedure section 366.2 believed the limitation period the statute imposes serves "the strong public policies of expeditious estate administration and security of title for distributees, and is consistent with the concept that a creditor has some obligation to keep informed of the status of the debtor."' . . .

"The December 1989 California Law Revision Commission recommendation on the proposed legislation amending Code of Civil Procedure former section 353 explained that `the one year statute of limitations is intended to apply in any action on a debt of the decedent, whether against the personal representative under Probate Code Sections 9350 to 9354 (claim on cause of action), or against another person, such as . . . a person who takes the decedent's property and is liable for the decedent's debts under Section[ ] . . . 13554 (passage of property to surviving spouse without administration), or a trustee.' . . . It thus appears that when the amendments to former section 353 were enacted, they were done so with the clear understanding and intent that such provisions would govern and apply to `any action on a debt of the decedent,' regardless of whom the action was brought against, and specifically including the surviving spouse." (Collection Bureau of San Jose v. Rumsey, supra, 24 Cal.4th at p. 308; original emphasis.)

We note Robert's efforts to distinguish both Dawes and Rumsey on a factual basis, i.e., Dawes on the theory that the husband of the decedent wife incurred business expenses in which the wife had no involvement, and Rumsey on the theory that the medical expenses expended on behalf of the deceased spouse in no way benefited the surviving spouse. We find Robert's attempts to distinguish Dawes and Rumsey to be disingenuous and we find little, if any, reason to be persuaded by the arguments of Robert.

We accordingly find the holding in Rumsey to be dispositive of this appeal. We also note the Supreme Court cited Dawes with approval in its decision. Robert having failed to comply with the applicable one-year statute of limitations by waiting 23 months before filing his action, the decision of the trial court in granting Beverly's motion for summary judgment must be affirmed.

DISPOSITION

The judgment is affirmed. Respondent to recover costs of appeal.

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We concur:

LILLIE, P.J.

PERLUSS, J.

1. Because the parties to this action and the decedent have the last name of "Ferguson," all are referred to by their first names for convenience and not out of any untoward familiarity or disrespect for the persons involved.

2. Robert's action is entitled "COMPLAINT FOR BREACH OF WRITTEN CONTRACT AND COMMON COUNTS."

3. California Code of Civil Procedure and California Probate Code are respectively referred to hereafter as CCP and PC.