G.C. v. CALAVERAS UNIFIED SCHOOL DISTRICT et al

22CV45999

DEMURRER AND MOTION TO STRIKE

This is a civil action for alleged childhood sexual assault by an elementary school Special Education teacher, between the years 1996 and 1998. Before the Court this day is a defense demurrer and motion to strike, directed at all four causes of action set forth in the operative First Amended Complaint, as well as the prayer for treble damages.

The singular focus of the demurrer is an attack on the revival statute permitting this claim to be made, on the ground that it constitutes an unauthorized gift of public funds. Subsumed within the same argument is the related contention that Legislative revival of the cause of action for limitations purposes does not retroactively forgive plaintiff's failure to timely file a government tort claim. The demurrer and motion to strike require for success what could be described as a trial court going rouge, for no trial court staying within the lines would take such a bold position as to declare a statute of such magnitude as unconstitutional.

To prevail on a constitutional challenge at the demurrer stage, the moving party must show from the text itself that the enactment clearly, positively, and unmistakably poses a present total and fatal conflict with applicable constitutional prohibitions. The standard for a facial constitutional challenge to a statute is exacting. All presumptions and intendments favor the validity of a statute and mere doubt does not afford sufficient reason for a judicial declaration of invalidity. If the validity of the measure is fairly debatable, the demurrer must be overruled. (*Today's Fresh Start, Inc. v. Los Angeles County Office of Education* (2013) 57 Cal.4th 197, 218; *City of Los Angeles v. Superior Court* (2002) 29 Cal.4th 1, 10-11; *Nisei Farmers League v. Labor & Workforce Development Agency* (2019) 30 Cal.App.5th 997, 1012.)

Here, defendants contend that CCP §340.1(q), and to a lesser extent Govt. Code §905(m) and (p), are unconstitutional because those enactments – which permit stale claims of childhood sexual abuse to be automatically revived – violate California's constitutional prohibition against gifts of public funds (Cal. Const. Art. XVI §6). Pursuant to CCP §340.1(q), claims for childhood sexual abuse which would have been barred due to the claimant's failure to present a claim within six months of accrual would be revived if commenced before January 1, 2023 (or before reaching the age of 40, or within five years of discovery of an injury). Govt. Code §905(m) and (p) took the next step by eliminating the need for claimants to present any claim before commencing suit. Since one of the GCA's purposes is to provide the public entity sufficient information to enable it to investigate/settle claims without the expense of litigation (see *DiCampli-*

Mintz v. County of Santa Clara (2012) 55 Cal.4th 983, 991), removing the prefiling requirement for very old claims is seemingly at odds with the entire claim presentation system. Nevertheless, it is the law.

In general, CCP §340.1(q) and Govt. Code §905(m) and (p) have been viewed as remedies the Legislature was free to employ without running afoul of Constitutional provisions. (See Coats v. New Haven Unified School District (2020) 46 Cal.App.5th 415, 425-426; *Deutsch v. Masonic Homes of California, Inc.* (2008) 164 Cal.App.4th 748, 760; *Roman Catholic Bishop of Oakland v. Superior Court* (2005) 128 Cal.App.4th 1155, 1161.) No published authority has yet to address the revival statutes in the face of Cal. Const. Art. XVI §6, which provides in pertinent part as follows: "The Legislature shall have no power … to make any gift or authorize the making of any gift, of any public money or thing of value to any individual, municipal or other corporation whatever." The term "gift" in the constitutional provision includes all appropriations of public money for which there is no authority or enforceable claim, even if there is a moral or equitable obligation. (*Jordan v. California Department of Motor Vehicles* (2002) 100 Cal.App.4th 431, 450.) As a general rule, settling a disputed, yet colorable, claim does not constitute a gift. See *Page v. MiraCosta Community College District* (2009) 180 Cal.App.4th 471, 495:

> "the settlement of a good faith dispute between the [district] and a private party is an appropriate use of public funds and not a gift because the relinquishment of a colorable legal claim in return for settlement funds is good consideration and establishes a valid public purpose."

In accord, *Martin v. Santa Clara Unified School District* (2002) 102 Cal.App.4th 241, 253-254 [back pay to teacher suspended for admitted wrongdoing was not unconstitutional gift of public funds]. Defendants do not explain how a statute requiring a public entity *to defend* a tort claim it thought was behind it constitutes an unlawful gift of public money, when the same defense employed in a new case just filed would not. Both require the plaintiff to prove wrongdoing and damages to recover. Nothing about §340.1(q) or §905(m)/(p) obligates any defendant to actually pay a settlement on a meritless claim – at least not on its face. See *Heron v. Riley* (1930) 209 Cal. 507, 517:

> "We are not strongly impressed with the contention of the respondent that the application of funds to pay judgments obtained against the state constitutes a gift of public money, within the prohibition of the Constitution … The judgments which are to be paid bear no semblance to gifts. They must be first obtained in courts of competent jurisdiction, to which the parties have submitted their claims in the manner directed by law. In other words, they are judgments obtained after the requirements of due process of law have been complied with."

As for the motion to strike, defendants are correct that there is no intellectually honest way to view CCP §340.1(b) as anything but a damage imposed primarily for the sake of example and by way of punishing the defendant for "covering up" an employee's transgressions. Such exemplary damages are expressly prohibited by law. (See

Government Code §818.) When the Legislature passed AB 218, it could have easily created a carve-out in §818 for damages arising under §340.1(b), but it elected not to do so. This cannot be viewed as mere oversight given the breadth of AB 218. Although the issue is presently before the California Supreme Court, which will make the final decision on the matter, all three appellate courts tasked with deciding this very issue have concluded that the treble damage provision cannot be applied to public entities. (See *K.M. v. Grossmont Union High School District* (2022) --- Cal.Rptr.3d ---, --- Cal.App.5th ---, WL14391790 at *11-15 (opinion filed 10/25/22); *X.M. v. Superior Court* (2021) 68 Cal.App.5th 1014, 1026-1029 (review granted, but still citable for persuasion per CRC 8.1115(e)(1); *Los Angeles Unified School District v. Superior Court* (2021) 64 Cal.App.5th 549, 552 (review granted, but still citable for persuasion and conflict resolution per CRC 8.1115(e)(3)).) This Court sees no basis upon which to go in a different direction, particularly in light of what it considers to be the correct analysis employed in all three cases.

Demurrer Overruled. Motion to strike Granted Without leave to amend, but without prejudice to a motion for leave to amend should the California Supreme Court go a different way than expected. Defendants to answer in 10 court days.

The Clerk shall provide notice of this Ruling to the parties forthwith. Plaintiff to prepare the CCP §1019.5/CRC 3.1312 order thereon.

T.Z. v. CALAVERAS UNIFIED SCHOOL DISTRICT et al

22CV46000

DEMURRER AND MOTION TO STRIKE

This is a civil action for alleged childhood sexual assault by an elementary school Special Education teacher, between the years 1996 and 1998. Before the Court this day is a defense demurrer and motion to strike, directed at all four causes of action set forth in the operative First Amended Complaint, as well as the prayer for treble damages.

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created a carve-out in §818 for damages arising under §340.1(b), but it elected not to do so. This cannot be viewed as mere oversight given the breadth of AB 218. Although the issue is presently before the California Supreme Court, which will make the final decision on the matter, all three appellate courts tasked with deciding this very issue have concluded that the treble damage provision cannot be applied to public entities. (See *K.M. v. Grossmont Union High School District* (2022) --- Cal.Rptr.3d ---, --- Cal.App.5th ---, WL14391790 at *11-15 (opinion filed 10/25/22); *X.M. v. Superior Court* (2021) 68 Cal.App.5th 1014, 1026-1029 (review granted, but still citable for persuasion per CRC 8.1115(e)(1); *Los Angeles Unified School District v. Superior Court* (2021) 64 Cal.App.5th 549, 552 (review granted, but still citable for persuasion and conflict resolution per CRC 8.1115(e)(3)).) This Court sees no basis upon which to go in a different direction, particularly in light of what it considers to be the correct analysis employed in all three cases.

Demurrer Overruled. Motion to strike Granted Without leave to amend, but without prejudice to a motion for leave to amend should the California Supreme Court go a different way than expected. Defendants to answer in 10 court days.

The Clerk shall provide notice of this Ruling to the parties forthwith. Plaintiff to prepare the CCP §1019.5/CRC 3.1312 order thereon.

In re ESTATE OF CAROLYN SILVEIRA

21PR8424

MOTION TO QUASH BUSINESS RECORDS SUBPOENA

This is one of several actions involving the interests of Carolyn Silveira, deceased, and more particularly three parcels of land and roughly $500,000 in community assets allegedly embezzled. (There is pending before this Court a request to abate or consolidate various actions.) The legal actions relating to this contentious family dispute include:

Case No	Filed	Substance
20FL44567	02/10/20	Carolyn's petition for dissolution of long-term (60 yr) marriage. RFO re spousal support and property control were denied, but Court ordered David to give Carolyn equalizing payments of $1,200/month. Carolyn died before any ruling on support or community property. **Dismissed**.
20EA44667	04/09/20	David's petition for protection (EARO) from son-in-law Rodd. Court granted 3 yr RO w/stay away. RO **terminated** early due to David's passing.
20DV44888	08/24/20	Carolyn's petition for protection (EARO) from David. No TRO. Carolyn died before hearing. **Dismissed**.
20EA44889	08/24/20	Carolyn's petition for protection (EARO) from daughter Audrey. No TRO. Carolyn died before hearing. **Dismissed**.
20PR8354	12/15/20	David's petition to probate Carolyn's "lost" will. **Dismissed** without prejudice due to lack of publication.
21PR8357	01/07/21	David's petition to quiet title, partition and recover property (joined by Audrey, Manuel, and Dominick). Francille and David Jr. objected. Court appointed Andrew Smith to serve as partition referee. The parties appear to be in agreement that partition by sale is warranted. **Pending**.
21PR8424	08/23/21	David's petition to probate Carolyn's estate, and for letters of administration with will annexed. David and

		Manuel both filed creditor claims. Manuel filed petition against Francille in her capacity as trustee of Carolyn's separate property trust. Francille filed her own petition for appointment as executor. After David died, Audrey filed petition seeking her own letters of administration. Francille prevailed and appointed executor. **Pending**.
21PR8425	08/24/21	David's spousal property petition. Francille, Rodd and David Jr. objected. After David died, Audrey substituted in as David's executor. **Pending**.
21PR8452	11/12/21	Audrey's petition to probate David's estate, and for letters testamentary. The petition was approved, and Audrey was appointed executor. **Pending**.
21DV45739	12/15/21	Manuel's petition for protection (DVRO) against Francille's husband Rodd. Petition **denied**.
22CV46053	05/31/22	Francille and David Jr's complaint for partition of Burson residence, and rent, against Audrey in her capacity as trustee of David's trust. **Pending**.

Before the Court is a motion to quash Manuel's business record subpoenas seeking all records, communications, signature cards, beneficiary designations, and statements for accounts belonging to Carolyn "and/or" David Jr. "and/or" Francille, from (1) Transamerica Corporation, (2) Wells Fargo Bank, (3) Wells Fargo Advisors Financial Network, (4) Pacific Cascade Federal Credit Union, (5) Bank of Stockton, (6) Comenity Capital Bank, and (7) Charles Schwab & Co. The singular basis stated for the motion to quash is that the records sought invade the privacy rights belonging to David Jr. and Francille.

The subject subpoenas were issued by Manuel in 21PR8424. The subpoenas were presumably for the purpose of discovering evidence in relation to Manuel's First Amended Petition to enforce Carolyn's alleged oral promise to gift to Manuel APNs 048-025-031, 048-025-038, and 048-025-040. As alleged, after serving two tours of duty in Iraq, Manuel returned stateside to serve in the Air Force Reserves and work as a pharmacist in Texas. Because Carolyn and David Sr. were unable to effectively work the cattle ranch, they allegedly made him an offer: *leave your life in Texas and come live/work on the Ranch, contributing labor and finances as needed, and we will leave the Ranch to you*. Manuel accepted the offer in 2008, moving to the Ranch. Unbeknownst to Manuel, on 08/02/16 his mother Carolyn executed various deeds moving the Ranch into her separate property revocable trust, and directed those assets elsewhere. Manuel contends that Carolyn (or rather her estate) is liable under §850 and principals of promissory estoppel to make good on that promise. Manuel's creditor

claim, filed 09/21/21, is based on the same theory of promissory estoppel, although he attributes a dollar amount to the share of the ranch he was allegedly promised.

It is unclear to this Court how banking records would reflect upon the existence or nonexistence of the alleged oral agreement to devise or otherwise gift the Ranch to Manuel. Although Manuel has a presumptive right to inquire about any matter which – based on reason, logic and common sense – might (1) be admissible, (2) lead to admissible evidence, or (3) reasonably assist that party in evaluating the case, preparing for trial and/or facilitating resolution (see *Williams v. Superior Court* (2017) 3 Cal.5th 531, 557), there is a counterbalance to this broad right to discovery in the Constitutional right to privacy. (See Calif. Const. Art. 1, §1; and *County of Los Angeles v. Los Angeles County Employee Relations Commission* (2013) 56 Cal.4th 905, 927; *Board of Registered Nursing v. Superior Court* (2021) 59 Cal.App.5th 1011, 1039.) Thus, Manuel must generally show a particularized need for the confidential information sought, to wit: the information is directly relevant to a party's cause of action, essential to a fair determination of the action, AND not available through alternative, less-intrusive means. (*Britt v. Superior Court* (1978) 20 Cal.3d 844, 859). Considerations should include "the purpose of the information sought, the effect that disclosure will have on the parties and on the trial, the nature of the objections urged by the party resisting disclosure, and ability of the court to make an alternative order which may grant partial disclosure, disclosure in another form, or disclosure only in the event that the party seeking the information undertakes certain specified burdens which appear just under the circumstances." (*Valley Bank of Nevada v. Superior Court* (1975) 15 Cal.3d 652, 658; *Fortunato v. Superior Court* (2003) 114 Cal.App.4th 475, 480.)

Based on the papers, Manuel is seeking the financial records in order to establish that Carolyn stole from David, but since Audrey is David's personal representative, she is the proper person for requesting these records in this case vis-à-vis David's creditor claim, which does not appear to have ever been acted upon, or in David's probate (21PR8452) or (to a lesser extent) spousal petition (21PR8425). Manuel does not represent David, and Manuel never had his own enforceable claim to the money Carolyn allegedly stole – which is a prerequisite for any §850 discovery. (See *Estate of Linnick* (1985) 171 Cal.App.3d 752, 761-763.) There is little question that Audrey has a good faith basis for wishing to see the accounts in her capacity as David's personal representative, but for Manuel the need is less apparent. Since these cases are not consolidated for all purposes, Manuel's need is even further distanced.

Based on the foregoing, the Motion to Quash is GRANTED. The Clerk shall provide notice of this Ruling to the parties forthwith. Moving party to prepare the CCP §1019.5/CRC 3.1312 order thereon.

SILVEIRA MATTERS

21PR8357, 21PR8424, 21PR8425, 21PR8452, 22CV46053

MOTION TO DISMISS/ABATE/CONSOLIDATE

Appearances required. The Court is likely to grant one of the procedural requests as to 22CV46053 but wants to hear from all parties as to their thoughts on the request.