
TENTATIVE RULING

The motion to set aside the order granting Hamrick's motion for dismissal is denied because there is no evidence that Victoria Platonova misaddressed the email by which the motion was served; there no evidence that the other addressees did not receive the motion; the email search conducted by the Law Offices of James P. Ballantine appeared to search for email from MPlatonova instead of Vplatonova; and any inference that this email was likely misaddressed because previous emails had been misaddressed is speculative. In any event, the court dismissed the case on the basis that plaintiffs failed to bring it to trial within 5 years and there was otherwise no stipulation or other period of tolling that would extend that period. Plaintiffs provide no basis for the court to believe its conclusion that they failed to bring the case to trial within 5 years was incorrect, even on a prima facie basis.

There is a lengthy litigation history between the owners and management of Nomad Village Mobile Home Park ("the Park") and the homeowners living in the Park ("Homeowners") as follows:

Case No. 1468773: Hamrick v. Board of Supervisors

On September 12, 2014, Homeowner Debra Hamrick filed a petition for writ of mandate against the Santa Barbara Board of Supervisors and, as real parties in interest, Park owner, Lazy Landing MHP, LLC, ("Lazy Landing"), and Park manager, Waterhouse Management Corp. ("Waterhouse"), for the Board's failure to revoke the Park's permit to operate after an improper change of lessee from Nomad Village Inc. to Lazy Landing. This petition was resolved on November 15, 2015, when Honorable Colleen K. Stern granted summary judgment in favor of defendants and real parties in interest.

Administrative Proceedings

The City of Santa Barbara enacted the "Mobilehome and Recreational Vehicle Park Lease Ordinance of the City of Santa Barbara," which, among other things, controls the timing and amount of rent increases.

1. The 2016 Increase

On March 31, 2016, the Park issued a Notice of Rent Increase to the Homeowners. On May 27, 2016, Homeowner Hamrick and Lindsey Davis commenced a proceeding on behalf of all Homeowners with the Santa Barbara Community Development Department of the City of Santa Barbara challenging that

increase. The Department selected an arbitrator, who ultimately determined that the rent increase was allowed pursuant to the Ordinance. (June 16, 2017 Arbitrator's Ruling.)

2. PUC Complaint

On December 16, 2016, Hamrick on behalf of herself and Homeowners filed suit before the Public Utilities Commission against Lazy Landing and Waterhouse, claiming they noticed a rent-controlled rent increase, effective July 1, 2016, that includes pass-through charges for Health and Safety Code and Title 25 violations for common area and sub-metered electrical system abatement. Homeowners asserted that the charges (i.e. attorneys' fees and professional fees related to the code violations, and administrative and general expenses pertaining to sub-metered utility service) violated state law. On November 8, 2018, the PUC dismissed the complaint without prejudice.

3. The 2017 Increase

On August 28, 2017, Park issued a Notice of Rent Increase to the Homeowners. Homeowner Hamrick once again commenced a proceeding through the Community Development Department of the City of Santa Barbara challenging that increase. On June 13, 2018, the arbitrator denied the petition because the Homeowners failed to meet and confer prior to the arbitration, as is required by the Ordinance. The arbitrator subsequently ruled that the proposed rent increase was lawful.

Case No. 17CV02185 Alfaro v. Waterhouse Management Corp. (Failure to Maintain Action)

On May 17, 2017, Homeowners (without Debra Hamrick) filed their complaint asserting claims arising from defendants' alleged failure to maintain the Park and violations of the Mobile Home Residency Law. Homeowners seek damages and equitable relief under alternative legal theories arising from substandard living conditions at the Park. According to Hamrick, she "ceased to reside at the mobile home park in December 2015." (Hamrick Decl., ¶ 1.) It thus makes sense that she was excluded from this action.

On May 19, 2021, the court denied Park's demurrer and motion to strike as well as the special motion to strike (SLAPP). This decision was appealed and upheld by published decision dated August 4, 2022. It appears that the parties subsequently engaged in mediation. This case is ongoing.

At the December 19, 2023 CMC, the parties presented the court with a Joint Case Management Order in which they stipulated to extend the 5-year limitation

for bringing these matters to trial to December 31, 2024. The court signed the order in open court. Trial is set for November 4, 2024.

Case No. 17CV05698 Waterhouse v. Hamrick et al. (Malicious Prosecution Action)

On December 18, 2017, Lazy Landing and Waterhouse filed a separate action against Homeowners (including Hamrick) commencing with a complaint for wrongful use of civil proceedings. The second amended complaint was filed on June 5, 2019, alleging (1) wrongful use/malicious prosecution of civil proceedings based on Case No. 1468773: *Hamrick v. Board of Supervisors*; (2) wrongful use of administrative proceedings based on the challenge to the 2016 rent increase; (3) wrongful use of administrative proceeding based on the challenge to the 2017 rent increase; and (4) wrongful use of administrative proceeding based on the complaint made to the Public Utilities Commission.

On August 19, 2019, Homeowners (other than Hamrick) moved to strike each cause of action as an anti-SLAPP suit. On October 25, 2019, the Court (Judge Maxwell) issued an Order After Hearing granting Defendants' Special Motion to Strike as to the fourth cause of action regarding Defendants' proceeding before the California Public Utilities Commission. The remainder of the motion was denied.

This case was heard with related Case No. 17CV05698 *Waterhouse v. Hamrick et al.* at the December 19, 2023 CMC. Mr. Avila, counsel for Debra Hamrick, appeared after these cases were called and contested the extension of the 5-year statute. Trial is set for November 4, 2024.

On May 2, 2024, Hamrick filed a motion for dismissal from Case No. 17CV05698 for failure to serve the complaint on Ms. Hamrick; failure to file a proof of service within three years after the action commenced as required under Code of Civil Procedure section 583.210; and failure to bring the case to trial within five years as required by Code of Civil Procedure section 583.310. Opposition was due on May 15, 2024. There was no opposition. The court granted the motion on May 29, 2024. On June 10, 2024, plaintiffs filed an ex parte application to set aside the order granting Hamrick's motion on the basis that they were not served. The court denied the motion on the basis that plaintiffs did not "make an affirmative factual showing of irreparable harm, immediate danger, or any other statutory basis for granting relief ex parte." (Cal. Rules of Court, rule 3.1202(c); see *Webb v. Webb* (2017) 12 Cal.App.5th 876, 879.) The denial was "without prejudice to renewal of the request on a properly noticed motion."

On Calendar

On July 1, 2024, plaintiffs filed its motion to set aside the order granting Hamrick's motion to dismiss. Opposition was filed on July 18, 2024. Reply was filed on July 24, 2024.

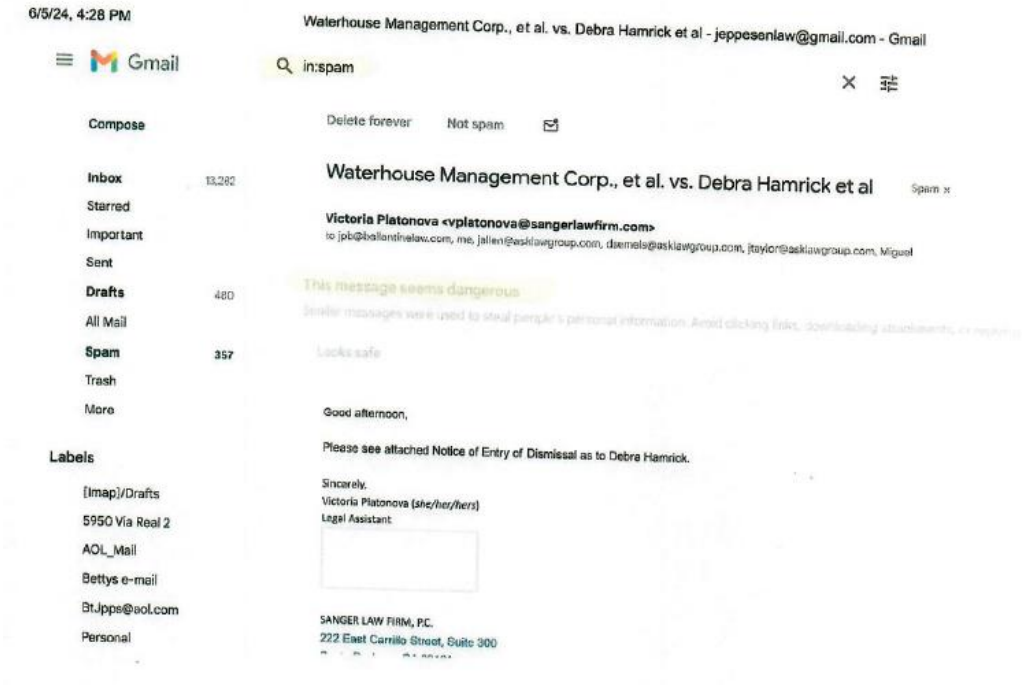
Analysis

Code of Civil Procedure section 473, subdivision (b) provides that the court may, upon "any terms as may be just, relieve a party or his or legal representative from a . . . dismissal, order, or other proceeding taken against him or her through his or her mistake, inadvertence, surprise, or excusable neglect. . . . .." Relief is discretionary. (Code Civ. Proc., § 473, subd. (b); see *Lorenz v. Commercial Accept. Ins. Co.* (1995) 40 Cal.App.4th 981, 989.) The party moving for relief on the basis of "mistake, inadvertence, surprise, or excusable neglect" must show specific facts demonstrating that one of these conditions was met. (*Hopkins & Carley v. Gens* (2011) 200 Cal.App.4th 1401, 1410—defendant's burden to demonstrate "that due to some mistake, either of fact or of law, of himself or of his counsel, or through some inadvertence, surprise or neglect which may properly be considered excusable, the judgment or order from which he seeks relief should be reversed.") Here, plaintiffs assert surprise, as they were never served with the motion. This term refers to "some condition or situation in which a party … is unexpectedly placed to his injury, without any default or negligence of his own, which ordinary prudence could not have guarded against." (*Credit Managers Ass'n of Southern Calif. v. National Independent Business Alliance* (1984) 162 Cal.App.3d 1166, 1173.) It is thus plaintiffs' burden to show that failure of service was without any negligence of their own, which ordinary prudence would not have guarded against.

Proof of electronic service of the motion to dismiss was submitted pursuant to Code of Civil Procedure section 1013b. According to the proof, the motion was served by email on James Ballantine at jpb@ballantinelaw.com and on Betty Jeppesen at Jeppesenlaw@gmail.com as attorneys for Waterhouse and Lazy Landing on May 2, 2024, by Victoria Platonova. A proof of service creates a rebuttable presumption of proper service. (*Floveyor Internat., Ltd. v. Superior Court* (1997) 59 Cal.App.4th 789, 795)

Attorney Ballantine states that he never received this email. (Ballantine Decl., ¶ 3.) Attorney Jeppesen also states "After a diligent search of my e-mails, I found NO Motion to Dismiss by Defendant Debra Hamrick. Therefore, I do not believe that I was served with it." (Jeppesen Decl., ¶ 3.) Both statements are belied by evidence of an email sent on Thursday, May 2, 2024 from Victoria Platonova to Ballantine, Jeppesen, and three other recipients. (Platonova Decl., ¶2, Exh. A.) While one can imagine a scenario in which the server prepared the proof of service and simply forgot to subsequently serve the motion, that simply didn't occur here based on evidence of the email delivering the motion and the absence of evidence of lack of receipt by the other three recipients.

Attorney Ballantine also submits the declaration of Shain Cox, an IT consultant with 9 years of experience. In turn, he states he "was contacted by Lisa Paik, Paralegal with the Law Offices of James P. Ballantine to do a search on the office's e-mail for any e-mails from 'MPlatonova.' [He]searched the entire office computer and there was no e-mail received from MPlatonova in their e-mail Inbox . . . [or] anywhere on their system." (Cox Decl., ¶¶ 3, 5.) However, the simple explanation for this could be that the motion was sent by vplatonova@sangerlawfirm.com not "MPlatanova" as demonstrated by the transmittal email attached to Ms. Platonova's declaration. (Platonova dec., ¶2, Exhibit A.) He further states that a "single e-mail from MPlantonova@sangerlawfirm.com [] came up on their system [] in their SPAM folder, and it was dated June 10, 2024. I took a screenshot of that e-mail which shows that the e-mail was in the SPAM folder. A copy of that screenshot is attached as Exhibit A hereto." (Cox Decl., ¶ 4.) Exhibit A to the Cox Declaration is as follows:



This shows an email from "vplantonova@sangerlawfirm.com," not MPlatonova. The fact that Cox did not find the May 2, 2024 email from "MPlatonova" does not convince the court that the proof of service signed by Victoria Platonova, which reflects the correct service email address, is erroneous.[1] This is so even though attorney Ballantine provides evidence that the Sanger Law firm has twice in the past reported having served him at "jpb@ballentinelaw.com" instead of

[1] Mr. Cox's testimony that the Sanger Law Firm may not be compliant with e-mail requirements imposed by Google and Yahoo, thus interfering with proper delivery, is speculation, and therefore not convincing.

"jpb@ballantinelaw.com." It's speculative to assume this error occurred based on the present record.

Even if the court were to set aside these procedural issues, the moving party has failed to show any error on the merits (i.e., the reason why the court granted the dismissal motion) The court made its determination based on plaintiffs' failure to bring the action to trial against Hamrick within 5 years. An action must be brought to trial within 5 years after it is commenced against the defendant. If not, dismissal is mandatory on motion of any party, or on the court's own motion. (Code Civ. Proc. §§ 583.310, 583.360.) The 5-year statute begins to run when the action is "commenced against the defendant." It continues to run until the action is "brought to trial." (Code Civ. Proc. §§ 583.310.)

Following the outbreak of COVID-19 in March 2020, the Judicial Council adopted an emergency rule which tolled the deadlines to bring a civil action to trial under sections 583.310 and 583.320. Emergency rule 10, effective April 6, 2020, provides in pertinent part as follows: "(a) ... [¶] Notwithstanding any other law, including Code of Civil Procedure section 583.310, for all civil actions filed on or before April 6, 2020, the time in which to bring the action to trial is extended by six months for a total time of five years and six months." (Cal. Rules of Court, appendix I, emergency rule 10.)[2] The five-year period begins to run when the initial complaint is filed in the action. (*Bruns v. E-Commerce Exchange, Inc.* (2011) 51 Cal.4th 717, 723; *State ex rel. Sills v. Gharib-Danesh* (2023) 88 Cal.App.5th 824, 841.) Thus, the time to commence trial began to run on December 18, 2017, when the complaint was filed in this case.

Pursuant to the Code of Civil Procedure 583.310 and Emergency Rule 10, the period expired on June 18, 2023, a Sunday. (www.timeanddate.com, last accessed 5/20/2024.) Time was thus extended to June 19, 2023, a date long past.

Excluded from the computation of time is any period during which the court's jurisdiction to try the case was suspended (e.g., during pendency of an appeal or writ proceeding where the action has been stayed by the trial or appellate court). (Code of Civ. Proc. § 583.340(a); see *Spanair S.A. v. McDonnell Douglas Corp.* (2009) 172 Cal.App.4th 348, 356.) There was an appeal of Judge Maxwell's order granting defendants' special motion to strike plaintiffs' fourth cause of action. (See Notice of Appeal filed December 30, 2019.) Remittitur was filed on April 12, 2021 affirming the trial court in full. However, this stay would have affected the fourth cause of action only. An appeal from an order granting or denying a special motion to strike automatically stays all further proceedings on the merits *upon the causes of action*

[2] This rule has a sunset provision on June 30, 2022. (Cal. Rules of Court, appendix I, emergency rule 10(c).) However, "[t]his sunset does not nullify the effect of the extension of time in which to bring a civil action to trial under the rule." The court included the additional 6-month extension since the impact of COVID was felt during the middle of this time period.

affected by the motion. (*Varian Med. Systems, Inc. v. Delfino* (2005) 35 Cal.4th 180, 191-192—judgment rendered while appeal pending was void for lack of subject matter jurisdiction; see also *Grewal v. Jammu* (2011) 191 Cal.App.4th 977, 1001.) No stay appears in the record, and thus the period of appeal is not excluded from the time calculation.

The parties may extend the 5-year period by either written stipulation, or oral agreement entered into in open court and recorded in the minutes or a transcript of the proceedings. (Code Civ. Proc. § 583.330.) There is a stipulation in the record executed by attorneys James Allen and Jessica Taylor, who represent the *other* defendant homeowners.[3] But there is no evidence that Hamrick stipulates to extend the 5-year deadline. There is thus no stipulation extending the period on behalf of Hamrick.

The court thus concluded the case against Hamrick must be dismissed for failure to bring the case to trial within five years under Code Civ. Proc. §§ 583.310, 583.360 and did not consider the alternative bases for this motion, such as failure to serve within 3 years after the action is commenced pursuant to Code Civ. Proc. §§ 583.210, 583.250.[4] Plaintiffs provide no basis for the court to believe its conclusion that they failed to bring the case to trial within 5 years was incorrect.

The motion to set aside the order granting Hamrick's motion to dismiss is denied.

---

[3] James Allen and Jessica Taylor of Allen Semelsberger & Kaelin, LLP do not represent Hamrick. This can be confirmed by review of the most recently filed CMC on February 26, 2024, Attachment 1a. They did not represent Hamrick at the time the Motion: Strike (SLAPP) was filed. (See Memorandum filed 8/9/2019, fn. 1.0

[4] Hamrick argued the court must dismiss the action if defendant is not served with summons and complaint within 3 years after the action is commenced. However, defendant's general appearance in the action within the statutory period for service of summons has the same effect as a valid service and filing proof of service, and thus prevents dismissal under Code Civil Procedure § 583.210. (Code Civ. Proc. § 583.220; see *Ikerd v. Warren T. Merrill & Sons* (1992) 9 Cal.App.4th 1833, 1834, fn. 10.) While Hamrick denied having been served, in fact, she filed a Case Management Statement in this case on June 28, 2019, which she filled in and signed by hand. (See June 28, 2019 CMC Statement.) This appearance undermines her argument.