

McIntyre's California Civil Law Update

Case Dates: Nov. 11 – Nov. 22, 2013

Organized Succinct Summaries

by Monty A. McIntyre, Esq.: Mediator, Arbitrator & Referee

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McIntyre's California Civil Law Update (MCCLU) helps you keep up with new California civil case law. I provide these summaries to help you do your job better. It also helps me do my job better as mediator, arbitrator & referee. California attorneys who use me as a neutral can get free general California Participatory MCLE Credits! California attorneys can also subscribe to the MCCLU to get Ca. MCLE Credits.

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California Civil Law Update

U.S. SUPREME COURT

No cases

9th CIRCUIT COURT OF APPEAL

Trademarks

Hana Financial, Inc. v. Hana Bank _ F.3d __, 2013 WL 6124588 (9th Cir. 2013): The Court of Appeal affirmed the district court's ruling denying Hana Financial, Inc.'s motion for judgment as a matter of law on trademark priority. In the Ninth Circuit, tacking (tacking allows a party to "tack" the date of the user's first use of a mark onto a subsequent mark to establish priority where the two marks are so similar that consumers would generally regard them as being the same) presents a question of fact that must ultimately be decided by the jury unless the evidence is so strong that it permits only one conclusion. Because the district court properly instructed the jury and allowed it to decide the issue, and HFI failed to show that the jury's decision was unreasonable, the district court properly denied the motion for judgment as a matter of law. (November 22, 2013.)

CALIFORNIA SUPREME COURT

No cases

CALIFORNIA COURTS OF APPEAL

Civil Procedure/Anti-SLAPP/Demurrer

JKC3H8 v. Colton (2013) _ Cal.App.4th __, 2013 WL 6008846: The Court of Appeal vacated the trial court's order denying an anti-SLAPP motion because it was moot. When a plaintiff who has filed a complaint with causes of action that are based, in part, on protected conduct and potentially subject to an anti-SLAPP motion to strike under Code of Civil Procedure section 425.16 subsequently files an amended complaint removing the allegations of protected conduct, the filing of the amended complaint renders moot a later-filed anti-SLAPP motion based on the original complaint. (C.A. 3rd, November 13, 2013.)

Kurz v. Syrus Systems, LLC (2013) _ Cal.App.4th __, 2013 WL 6136969: The Court of Appeal reversed the trial court's denial of an anti-SLAPP motion under Code of Civil Procedure section 425.16. The anti-SLAPP motion attacked a cross-complaint alleging malicious prosecution of a claim for unemployment insurance benefits that terminated in the former employer's favor. The trial court erred in denying the motion. The former employer could not show a probability of prevailing on the claim because Unemployment Insurance Code section 1960 prohibits the use of any finding of fact or law, judgment, conclusion, or final order in any action or proceeding before the Unemployment Insurance Appeals Board as evidence in any separate or subsequent action or proceeding, between an individual and his or her present or prior employer. (C.A. 6th, November 22, 2013.)

Leal v. Mansour (2013) _ Cal.App.4th __, 2013 WL 6092500: See summary below under Torts.

Moncada v. West Coast Quartz Corp. (2013) _ Cal.App.4th __, 2013 WL 5798957: The Court of Appeal reversed the trial court's order sustaining a demurrer to the first amended complaint without leave to amend. Plaintiffs sued and alleged various causes of action for defendants' breach of repeated promises to plaintiffs that if they continued to work for West Coast Quartz Corp. (West Coast) until the company was sold they would be paid a bonus sufficient for them to retire. When defendants sold West Coast in 2009 for approximately \$30 million no bonuses were paid to plaintiffs. The trial court erred in sustaining the demurrer because the complaint adequately alleged causes of action for misrepresentation, breach of contract and promissory estoppel. (C.A. 6th, filed October 28, 2013, published November 22, 2013.)

Sweeting v. Murat (2013) _ Cal.App.4th __, 2013 WL 6000869: The Court of Appeal affirmed the trial court's orders granting defendants' discovery motions and motion for summary judgment. This case was an issue of first impression. A party to a lawsuit who was not represented by counsel and who did not have a permanent residence filed a notice of change of address that listed a UPS store address at which he rented a mailbox and stated that all "notices and documents regarding the action should be sent to [that] address." The Court of Appeal ruled that after the notice was filed, personal service was effectuated under Code of Civil Procedure section 1101(b) by personal delivery of a notice of motion to the UPS store. (C.A. 2nd, November 13, 2013.)

Employment/Labor

Kurz v. Syrus Systems, LLC (2013) _ Cal.App.4th __, 2013 WL 6136969: See summary above under Civil Procedure.

Moncada v. West Coast Quartz Corp. (2013) _ Cal.App.4th __, 2013 WL 5798957: See summary above under Civil Procedure.

Family

In re Marriage of Bianco (2013) _ Cal.App.4th _ , 2013 WL 6145543: The Court of Appeal reversed the trial court's orders sanctioning an attorney \$43,000 under rule 2.30(b) of the California Rules of Court (rule 2.30(b)) for violating the California State Bar Rules of Professional Conduct by negligently hiring an attorney ineligible to practice law to assist her in representing the wife in a dissolution trial. The Court of Appeal concluded that rule 2.30(b) applies only to rules in the California Rules of Court, does not authorize sanctions for violations of the Rules of Professional Conduct, and does not apply in family law proceedings. Rule 2.30(b) did not authorize the sanctions imposed in this case. (C.A. 4th, November 22, 2013.)

Government

Lamar Central Outdoor, LLC v. California Department of Transportation (2013) _ Cal.App.4th _ , 2013 WL _ : The Court of Appeal affirmed the trial court's decision denying a writ petition seeking to vacate the Department of Transportation's decision denying Lamar's permit application for an electronic "message center" next to a public highway. The Court of Appeal concluded that Lamar's electronic message center display violated the 1,000-foot spacing requirement prescribed in Business and Professions Code section 5405(d)(1). (C.A. 2nd, November 22, 2013.)

Insurance

Berendes v. Farmers Insurance Exchange (2013) _ Cal.App.4th _ , 2013 WL 6059267: The Court of Appeal affirmed the trial court's summary judgment for defendant. The trial court properly found that neither the insurance statutes nor the policies provided underinsured motorist coverage for the decedent as a pedestrian. (C.A. 3rd, November 18, 2013.)

Medical Staff Privileges

Sadeghi v. Sharp Memorial Medical Center Chula Vista (2013) _ Cal.App.4th _ , 2013 WL 69031: The Court of Appeal affirmed the trial court's denial of a writ petition challenging the hospital Judicial Review Committee's (JRC) decision affirming the suspension of Dr. Sadeghi's medical privileges. The Court of Appeal rejected Dr. Sadeghi's contentions that (1) the JRC applied an improper standard by not addressing the actions of the Medical Executive Committee that occurred after 2007; (2) the JRC was improperly constituted; (3) Dr. Sadeghi was improperly precluded from communicating with potential witnesses; (4) his lack of representation for one of the hearing sessions was a violation of his rights; and (5) the length of time it took to reach a hearing and the extended length of the hearing constituted a denial of due process. (C.A. 4th, filed October 23, 2013, published November 19, 2013.)

Real Property

Norberg v. California Coastal Commission (2013) _ Cal.App.4th _ , 2013 WL 5781109: The Court of Appeal reversed the trial court's order granting attorney fees to the writ petitioner. The trial court erred in awarding fees because the issuance of the peremptory writ of mandate did not confer a substantial benefit on either the general public or a large number of persons, and the financial burden of the litigation was not out of proportion to Norberg's individual stake in the matter. (C.A. 4th, filed October 25, 2013, published November 15, 2013.)

Torts/Personal Injury/Wrongful Death

Cuff v. Grossmont Union High School District (2013) _ Cal.App.4th _ , 2013 WL 6056612: The Court of Appeal reversed the trial court's order granting summary judgment for defendants. Government Code section 11172 did not immunize the school district employee's act of providing a copy of a suspected child abuse report (SCAR) to the father, a person who was not an authorized recipient under Government Code section 11165. SCARs are not "pupil records" as that term is defined in the Education Code. The release of a copy of the SCAR, allegedly in response to an "emergency," was not immunized pursuant to the Education Code provision that authorizes the release of certain information from pupil records in an emergency situation. In addition, Government Code section 820.2 does not immunize a school district employee for her conduct in disclosing the SCAR to the father. (4th C.A., filed November 18, 2013.)

Devore v. California Highway Patrol (2013) _ Cal.App.4th _ , 2013 WL 6000920: The Court of Appeal reversed the trial court's denial of a petition under Government Code section 946.6 for relief from the requirement of presenting a timely government tort claim. Plaintiffs showed excusable neglect because nothing in the accident report or the records of the CHP would have led plaintiffs or an attorney acting with reasonable diligence to discover a traffic stop by a CHP officer two hours earlier of the drunk driver who caused the accident and the death of plaintiff's decedent, the identity of CHP officer, or the existence of an audio/video recording from his patrol car. In a little more than three months after learning of these facts, plaintiffs retained counsel (despite the prosecutor's discouragement about the merits of pursuing an action against the CHP), who immediately filed the claim/leave to file late claim. (C.A. 3rd, November 11, 2013.)

Leal v. Mansour (2013) _ Cal.App.4th _ , 2013 WL 6092500: The Court of Appeal affirmed the trial court's ruling, following a directed verdict in favor of the defendant hospital, allowing the defendant doctor to defend the medical malpractice wrongful death claim on the basis that a ventilator malfunction was the cause of death. Code of Civil Procedure section 581c(d) was intended to prevent the bad faith practice of relying on a dismissed defendant to confuse the jury and attempt to avoid liability for one's own wrongdoing (the "empty chair" defense). The statute was not intended to prevent a defendant from presenting, in good faith, relevant evidence related to a causative factor for which there is no culpable party. (C.A. 2nd, filed October 30, 2013, published November 20, 2013.)

See U.S. Supreme Court opinions at: <http://www.supremecourt.gov/opinions/opinions.aspx>
See 9th Cir. opinions at: <http://www.ca9.uscourts.gov/opinions/>
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