

Superior Court of the State of California
County of Orange
TENTATIVE RULINGS FOR DEPARTMENT CM05
HON. Judge Ebrahim Baytieh

Date: 05/16/2024

Court Room Rules and Notices

| # | Case Name | Tentative |
|---|-------------------------------------|--|
| 1 | Foresman - Trust (2018-01001069) | <p style="text-align:center"><u>MOTION TO DISMISS</u></p> <p>Respondent, Scott Foresman’s Motion to Dismiss Action Pursuant to Code of Civil Procedure §§ 583.310 and 583.360 (“MTD”) as documented in ROA 952 is DENIED based upon the court’s finding that (1) prosecution of all of the proceedings in this matter were stayed during the pendency of the bankruptcy filed by Gayl Beller, and (2) that bringing this matter to trial before April 25, 2024, was impossible and impracticable.</p> <p>Respondent, Scott Foresman (“Scott”) is ordered to give notice of this ruling.</p> <p>The court will refer to the parties by first names in this document. This is done to promote clarity in this decision and no disrespect is intended. (Young v. McCoy (2007) 147 Cal. App. 4th 1078, 1081 fn.2.; and In re Marriage of Olsen (1994) 24 Cal.App.4th 1702, 1704, fn. 1.)</p> <p>Guy Foresman’s (“Guy”) Objections to Scott’s Request for Judicial Notice and Declaration of Ilian Alchehayed in Support of his Motion to Dismiss (ROA 983) are SUSTAINED.</p> <p style="text-align:center"><u>JUDICIAL NOTICE</u></p> <p>Scott’s request for judicial notice (“RJN”) as reflected in ROA 936 is GRANTED as to Exhibits A-E of the existence, date of filing and clear legal effect of the record. Furthermore, Scott’s supplemental request for judicial notice as reflected in ROA 1001 is GRANTED as to Exhibits A-F.</p> <p>The court does not take judicial notice of the truths asserted within those exhibits. (Lockley v. Law Office of Cantrell, Green, Pekich, Cruz & McCourt (2001) 91 Cal.App.4th 875, 882; see also Herrera v. Deutsche Bank National Trust Co. (2011) 196 Cal.App.4th 1366, 1375 [“Taking judicial notice of a document is not the same as accepting the truth of its contents or accepting a particular interpretation of its meaning.”[Citation.] While courts take judicial notice of public records, they do not take notice of the truth of matters stated therein. [Citation.] ‘When judicial notice is taken of a document, ... the truthfulness and proper interpretation of the document are disputable.’ [Citation.]”.)</p> <p>Additionally, Scott has requested this court to take judicial notice of court records, namely the unpublished order and decision in Duffy et al. v. Wintthrop et al. (Cal. Ct. App., March 14, 2024, No. G061657) 2024 WL 1110280 (Evid.Code, §§ 459, subd. (a), 452, subd. (d)). Guy filed objections to Scott’s request for judicial notice as to Paragraph 6, citation to Duffy et al. v. Wintthrop et al. (Cal.Ct. App., March 14, 2024, No. G061657) 2024 WL 1110280 (ROA 983).</p> |

A litigant must demonstrate that the matter as to which judicial notice is sought is both relevant to, and helpful toward, resolving the matters before this court. (Jordache Enterprises, Inc. v. Brobeck, Phleger & Harrison (1998) 18 Cal.4th 739, 748, fn. 6, 76 Cal.Rptr.2d 749, 958 P.2d 1062.) In this case, the court does not consider the ruling in Duffy, supra, to be relevant to or helpful in its decision, and on that basis DENIES the request for judicial notice.

RELEVANT BACKGROUND

On June 12, 2018, Petitioner, Guy Foresman, Co-Trustee of The Foresman General Trust, filed a Petition for Order Compelling Trustees to Account; for Breach of Trust; for Removal of Trustee; for Surcharge of Trustee; and Damages (ROA 2)(“Subject Petition”) against Scott Foresman and Gayl Beller (“Gayl”). On December 19, 2018, Gayl and Scott filed a response to the Subject Petition (ROA 28) and this matter proceeded, albeit slowly, towards trial.

On May 28, 2023, Gayl filed a Chapter 13 petition for bankruptcy in the United States Bankruptcy Court for the Western District of Washington. (“Bankruptcy Action”)(MTD pg. 4:16-17.) On September 15, 2023, the United States Bankruptcy Court dismissed Gayl’s Chapter 13 petition (ROA 742). On October 10, 2023, based upon the filing of proof of the dismissal, this court lifted the stay of these proceedings (ROA 776).

The record reflects that the Bankruptcy Action and its effect on these proceedings were discussed during numerous and subsequent hearings by this court. Most notably as follows:

Per 5/30/23 minute order (“M.O.”)(ROA 637) – “attorney Robert Legate informed the court that Gayle Beller had filed for bankruptcy. The court further indicated that “As to the question of the 5-year statute of limitations pursuant to CCP 583.310, Emergency Rule Related to COVID-19 (Rule10(a)) extends the 5-year period by six months for all civil actions filed on or before April 6, 2020.”

Per 6/12/23 M.O. (ROA 657) – “the court requires a stay to proceed.”

Per 6/27/23 M.O. (ROA 673) – “Attorney Robert Legate informs the Court he's been in contact with Attorney Mary Schmidt regarding status of bankruptcy and she intends to get an extension of stay. The Court notes Gayle Beller has filed for bankruptcy in the state of Washington and her attorney is currently in the process of issuing some authority to Attorney Robert Legate to act on.”

Per 7/14/23 M.O. (ROA 665) – “Matter continued for issuance of a possible written ruling regarding the scope of the bankruptcy stay from the Honorable David Belz clarifying whether it applies to the parties relevant to this Motion for Attorney Fees and Costs. If the written ruling specifies that the entire action is stayed, counsel are encouraged to submit a written stipulation and order for continuance of this matter to a later date.”

Per 7/27/23 M.O. (ROA 686) – “Following a discussion with counsel for Guy Foresman and Scott Foresman, counsel agreed there is some uncertainty as to whether the Honorable David Belz had issued an order on 06/27/23 staying this entire proceeding in connection with a bankruptcy petition filed by a different party (Gayle Beller), or whether Judge Belz intended only to acknowledge the automatic stay caused by that bankruptcy petition. To avoid issuing an order that might contravene a stay issued by another judicial officer, the court continued the hearing on the motion for attorney’s fees to 07/31/23 with counsels’ consent. The

court also obtained the consent of counsel for Guy Foresman and Scott Foresman to speak with Judge Belz and ask him to consider issuing a chambers order clarifying the scope of any stay in effect in this proceeding.

Pursuant to the above, this judicial officer conferred with Judge Belz on 07/26/23. Judge Belz indicated he wanted to confer with all counsel in the broader proceeding before clarifying the scope of any stay in effect. The next hearing in this matter before Judge Belz is scheduled for 08/02/23 at 9:00 a.m. in Department CM08.”

Per 8/2/23 M.O. (ROA 705) – “Attorney Steven Giammichele to contact David Wilson to obtain direction as to how to proceed with bankruptcy.”

Per 8/8/23 M.O. (ROA 717) - “Matter is continued to allow for this court to gain some direction from the State of Washington as and for the bankruptcy matter.”

Per 8/9/23 M.O. (ROA 708) - “Court notes this matter is stayed until further notice pursuant to the issue of bankruptcy.”

Per 8/21/23 M.O. (ROA 726) – “Court inquires into the scope of the stay. Brief discussions held.”

Per 9/26/23 M.O. (ROA 740) – “Mr. Armstrong provided an update to the court and stated that the bankruptcy case has been dismissed and the Court can now lift the stay. Court directs counsel to file proof of the dismissal of the bankruptcy case.”

Per 10/10/23 M.O. (ROA 776) – “Attorney Mark Armstrong informs the Court a Notice of Dismissal of Gayl Beller's Bankruptcy Petition in the United States Bankruptcy Court in Washington was filed on 09/26/2023. The Court now lifts the stay.”

ANALYSIS

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.) “An action shall be dismissed by the court on its own motion or on motion of the defendant, after notice to the parties, if the action is not brought to trial within the time prescribed” (Code Civ. Proc., § 583.360(a).) This dismissal requirement is mandatory and “not subject to extension, excuse, or exception except as expressly provided by statute.” (Code Civ. Proc., § 583.360(b).)

The 5-year statute begins to run when the action is “commenced against the defendant.” The action is “commenced” upon plaintiff's filing the original complaint against the defendant. It continues to run until the action is “brought to trial.” (Code Civ. Proc. § 583.310.) For purposes of the 5-year statute, an action is “brought to trial” when the jury is sworn; or, in a nonjury trial, when the first witness is sworn. (Hartman v. Santamarina (1982) 30 Cal.3d 762, 765; see also Stueve v. Nemer (2017) 7 Cal. App. 5th 746, 752.)

Emergency Rule 10 states, in relevant part: “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.” (Emergency Rule 10(a).)

Guy's original petition against Scott and Gayl was filed on June 12, 2018 (ROA 2).

Pursuant to Code of Civil Procedure section 583.310 and Emergency Rule 10, the deadline for Guy to bring this action to trial, absent any tolling or exceptions, would have expired on **December 12, 2023**.

The 5-year period in which an action must be brought to trial is tolled (extended) by any period of time during which:

- The court's jurisdiction to try the action was suspended (Code Civ. Proc. § 583.340(a); or
- Prosecution of the action was stayed or enjoined, including judicial arbitration during the last 6 months of the 5-year period (Code Civ. Proc. § 583.340(b)); or
- Bringing the action to trial, for any other reason, was "impossible, impracticable, or futile" (Code Civ. Proc. § 583.340(c)).

STAY OF PROSECUTION

"[T]he prosecution of an action is stayed under [section 583.340] subdivision (b) only when the stay encompasses all proceedings in the action." "Subdivision (b) contemplates a bright-line, nondiscretionary rule that excludes from the time in which a plaintiff must bring a case to trial only that time during which all the proceedings in an action are stayed." Such complete stays "stop the prosecution of the action altogether", making it impossible to bring the action to trial. (Gaines v. Fidelity National Title Ins. Co. (2016) 62 Cal.4th 1081, 1101)

There is no dispute that Respondent Gayl was involved in a bankruptcy proceeding from May 28, 2023, to September 15, 2023 and that the Bankruptcy Action stayed any action against Gayl during its pendency.

Scott, having previously argued the contrary position, now argues that all of the proceedings were not stayed during the pendency of Gayl's bankruptcy but rather, that the stay was limited to Gayl as the sole debtor protected by the bankruptcy filing and, accordingly, the 5-year deadline continued to run as to Guy's action against Scott. (MTD, pg. 10:2-3 and 4-7.)

In contrast, Guy argues that the 5-year period was tolled for a period of 133 days encompassing the period from May 30, 2023, to October 10, 2023, due to a stay of the entirety of the action by the Hon. David Belz. Guy's argument is based, in part, on the following portion of the transcript of this court's June 27, 2023, proceeding (attached as Exhibit A to the Declaration of Mark L. Armstrong) (ROA 982)):

THE COURT: YES. THERE'S A BANKRUPTCY THAT MS. BELLER HAS FILED IN THE STATE OF WASHINGTON, AND THAT FEDERAL COURT IS IN THE PROCESS OF ISSUING SOME AUTHORITY TO MR. LEGATE TO ACT -- IN BEHALF OF THE BANKRUPTCY COURT IN THESE STAYS PROCEEDINGS, SO HE NEEDS TO GET THAT AUTHORITY. OTHERWISE, EVERYTHING ELSE IS STAYED, AND I THINK THE COURT'S POSITION, AND I THINK YOU GUYS -- YOU GUYS MAY NOT AGREE, BUT OUR POSITION IS THE BANKRUPTCY PROCEEDINGS

STAY THIS CASE, AS WELL AS THE COVID ADMINISTRATIVE -- THE ADMINISTRATIVE REGULATIONS, REGULATION TEN, ALSO STAYS THE CASE PURSUANT TO THE COVID RULES THAT WERE PROMULGATED TO PUT -- TO GIVE THESE CASES SOME ADDITIONAL TIME TO PROCEED TO RESOLUTION.

Moreover, while the various transcripts and proceedings in this matter indicate that the record may not have been entirely clear as to whether all of the actions, including Guy's, were stayed during the pendency of the bankruptcy, what is clear is Guy's and the Hon. David Belz' understanding that the "whole case" was stayed during the bankruptcy. That understanding is confirmed by the transcript of this court's September 26, 2023, proceedings (attached as Exhibit H to the Declaration of Mark L. Armstrong) (ROA 982)) in which the Hon. David Belz indicated, in pertinent part, that:

MR. ARMSTRONG: AND FOR CLARITY, MY UNDERSTANDING IS THAT THE COURT ACTUALLY STAYED THIS MATTER ENTIRELY PENDING THE OUTCOME OF THE BANKRUPTCY, SO I BELIEVE THAT STAY'S STILL IN PLACE UNTIL THE COURT ORDERS OTHERWISE.

THE COURT: WELL, MY UNDERSTANDING IS THAT THERE WAS A STAY, AT LEAST AS TO MS. "BELLERMAN'S" (SIC) -- WELL, THE WHOLE CASE, I THINK, WAS STAYED BECAUSE OF THAT BANKRUPTCY, BECAUSE OF THE OVERLAY AND THE ISSUES THAT RELATE TO HER -- AS TO THE OTHERS, BUT I DON'T KNOW. MAYBE SOME OF YOU WOULD DISAGREE, BUT THAT WAS MY RECOLLECTION.

While the court is at a disadvantage when attempting to interpreting the intention of a now retired judicial officer (the Hon. David Belz retired from service with the Orange County Superior Court on April 11, 2024), a plain reading of the various transcripts submitted in this matter indicates the intent of the court to stay the entirety of the action due to the bankruptcy proceedings. This intent is showcased by the court's specific language that "everything else is stayed" (the parties appeared to except from the stay Mr. Legate's ability to be appointed as Gayl's state court attorney through the bankruptcy action to negotiate settlement (See ROA 982, Exh. A, pg. 12:1-8)), "the bankruptcy proceedings stay this case" and "the whole case, I think, was stayed because of that bankruptcy...".

Moreover, Scott's position fails to recognize or acknowledge that the stay appeared to be based, at least in part, on Scott's Memorandum of Points and Authorities related to (1) Bankruptcy Stay etc., filed in this action on 6/7/2023 (ROA 645)("P&A") which sets forth persuasive authority that the stay of the action **should be** expanded to the entirety of the action, including any petition filed by Guy.

It is notable that this court's 6/12/2023 minute order (ROA 657) requiring a stay of the proceeding was issued immediately after the filing of Scott's P&A's that convincingly argued that "the relief sought seeks to charge Scott Foresman and Gayl Beller's beneficiary share of the Trust, however, this is impossible to determine independently, because each have a beneficial interest in a portion of the Trust Estate. An award against one share will necessarily impact the share of the other. For these reasons, the bankruptcy stay under Section 541 is applicable." (P&A pg. 3:24-28) and further that "by affecting the beneficiary interest of Gayl Beller, any ruling on Guy Foresman's petition would inherently affect assets of

Gayl Beller's bankruptcy estate and is therefore subject to the automatic stay under Section 541(a)." (P&A, pg. 3:14-16.)

This position is further supported by the court's disinclination to take any action on any of the pending petitions, including Guy's, until Gayl's bankruptcy petition was resolved (ROA 708), and Scott's counsel's statements to the court that "I think that the bankruptcy court has to issue an order lifting the stay as to whatever is going to proceed in this court" and "Your Honor, it's Guy Foresman's petition, not my client's petition, that's stayed currently". (See Exhibit E attached to the Decl. of Mark L. Armstrong, pg. 8:1-4 and pg. 11:19-21.) These statements by counsel clearly indicate an understanding that the petition of Guy was stayed during the bankruptcy proceedings. Scott's contrary argument now is not persuasive and could reasonably be interpreted as somewhat disingenuous.

Therefore, the admissible evidence supports a finding that, at the request of the parties, including Scott, the Hon. David Belz stayed the entirety of this action, which included the petition brought by Guy, pending resolution of the Gayl's bankruptcy proceeding. This stay halted any prosecution of Guy's petition and made it impossible for Guy to bring his action to trial.

Even if this court was to view Scott's argument in its most favorable light, this court must still conclude that based upon the seemingly contradictory, uncertain nature of the position of the court and the policy favoring trial on the merits, and based upon the statements by the court, the parties could reasonably infer that the bankruptcy action stayed the proceeding not only as to Gayl but as to Guy as well and, in reliance upon those statements, it became both impractical and futile for Guy to bring the matter to trial during the pendency of the bankruptcy.

Accordingly, the above listed stay extended the 5-year, 6-month period by 135 days (05/28/2023-10/10/2023) to Thursday, April 25, 2024. Therefore, based upon the stay, the new deadline for Guy to bring this matter to trial was April 25, 2024. (Code Civ. Proc. § 583.340(b)). On **April 15, 2024**, this court granted a further stay of the proceedings pursuant to Code of Civil Procedure § 583.340, pending this Court's determination of this motion.

IMPOSSIBLE, IMPRACTICAL OR FUTILE

It is well settled that "[b]ecause the purpose of the dismissal statute "is to prevent avoidable delay, ... [section 583.340, subdivision (c)] makes allowance for circumstances beyond the plaintiff's control, in which moving the case to trial is impracticable for all practical purposes." (Tanguilig v. Neiman Marcus Grp., Inc., (2018) 22 Cal. App. 5th 313, 323.) Furthermore, Code of Civil Procedure section 583.130 instructs that "the policy favoring trial or other disposition of an action on the merits [is] generally to be preferred over the policy that requires dismissal for failure to proceed with reasonable diligence in the prosecution of an action in construing the provisions of this chapter." "Accordingly, the tolling provisions of Code of Civil Procedure section 583.340 must be liberally construed consistent with the policy favoring trial on the merits." (Dowling v. Farmers Ins. Exchange (2012) 208 Cal.App.4th 685, 693.)

When applying the tolling exceptions in section 583.340(c), a trial court must consider all the circumstances in the individual case, including the acts and conduct of the parties and the nature of the proceedings themselves. The critical factor in applying these exceptions to a given factual situation is whether the plaintiff exercised reasonable diligence in prosecuting his or her case. (Gaines, supra, 62 Cal.4th at 1100.) Therefore, the question of impossibility, impracticability, or futility is best resolved by the trial court, which "is in the most

| | | |
|---|--|--|
| | | <p>advantageous position to evaluate these diverse factual matters in the first instance.”</p> <p>In addition to the extension due to the pending bankruptcy, the record reflects that the court, due to calendaring unavailability, was unable to set the matter for trial during the period beginning February 20, 2024, through April 15, 2024. This unavailability of the court, through no fault of the parties, extended the stay an additional 49 days due the court’s calendaring congestion and made it impossible, impracticable, and futile for Guy to bring this matter to trial during that period. (Goers v. Superior Court of Ventura County (1976) 57 Cal.App.3d 72, 75.)</p> <p>For all the above listed reasons, considered in totality, Respondent, Scott Foresman’s Motion to Dismiss Action Pursuant to Code of Civil Procedure §§ 583.310 and 583.360 is DENIED.</p> <p style="text-align: center;"><u>REQUEST FOR SANCTIONS</u></p> <p>The court DENIES Guy’s request for \$3,150.00 in sanctions pursuant to Code of Civil Procedures section 128.5.</p> <p>Respondent, Scott Foresman is ordered to give notice of this ruling.</p> |
| | | |
| 3 | | |
| 4 | | |