

No. 19 - 179

IN THE
SUPREME COURT OF UNITED STATES



NAORA BEN-DOV,
Plaintiff/Appellant,

v.

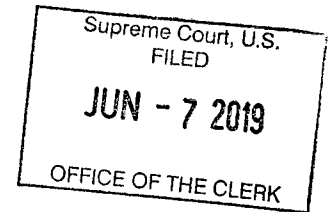
SHOSHANA ZELDA SRAGOW (aka STACY SUZANNE SRAGOW),
ALLEN PHILIP SRAGOW,
TAMAR MIRIAM BRETON,
Defendants/Respondents

On Petition for Writ of Certiorari to the United States Court of Appeals for the
Ninth Circuit

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. Should an action based on multiple civil and criminal offenses be considered from the first instance? The last known instance of a transgression? Or, should it be after evidence of numerous or collective misbehavior showing an unmistakable pattern, illegality, and therefore a tort violation, not a frivolous filing, and worthy of a complaint?
2. Should a complaint with multiple actions be entirely dismissed when only one or two of the actions have been incorrectly considered by a lower court to be filed outside the statute of limitations?
3. Should a complaint have all actions unlawfully grouped together and judged as one without consensus from the Plaintiff?
4. Should a plaintiff be allowed to bring another complaint to the same court if the previous complaint was incorrectly dismissed with prejudice but with actions that are still viable and within statute? Should these actions involving the same parties and issues, but cannot be defined by prejudice against the Plaintiff as they are still valid and within statute, be barred from a new filing?
5. Should an invalid filing that violates CA Code of Civil Procedure - Local Rule 7-3 (Kalivas v Barry Controls Corp., 49 Cal.App. 4th, 1996), which created an order, judgment, and dismissal, that is acknowledged to have been done so by the court, be allowed to stand?

LIST OF ALL PROCEEDINGS

Naora Ben-Dov v. Shoshana S. Sragow, et al
U.S. District Court for Central CA, Santa Ana,
Case No. 8:17-cv-00122-DFM
Decision: November 3, 2017 (App. A1)

Naora Ben-Dov v. Shoshana S. Sragow, et al
Ninth Circuit Court
Case No. 17-56807
Decision: August 15, 2018 (App. A6)

Naora Ben-Dov v. Shoshana S. Sragow, et al
Ninth Circuit Court
Case No. 17-56807
Decision: January 8, 2019 (App. A8)

Naora Ben-Dov v. Shoshana S. Sragow, et al
United States Supreme Court
Case No. 18A931

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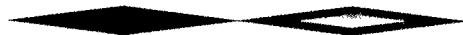
PETITION FOR A WRIT OF CERTIORARI

Petitioner Naora Ben-Dov respectfully prays that a writ of certiorari issue to review the opinions and judgment below.



PREVIOUS OPINIONS

The opinion of the District Court appears at appendix A1 in this petition. The Ninth Circuit opinion appears at appendix A6 in this petition. And, the denial for a rehearing by the Ninth Circuit appears at appendix A8.



JURISDICTION

This Court has jurisdiction to hear Ben-Dov's petition for a writ of certiorari because Ben-Dov timely filed a petition for rehearing, which the Ninth Circuit denied and Ben-Dov now seeks to timely file a petition for writ of certiorari. The jurisdiction of the court is invoked under 28 U.S.C. § 1257 (a).

STATEMENT OF THE CASE

This is a civil action involving multiple claims brought under an aggregation of actions. Plaintiff Naora Ben-Dov alleges that Defendants Shoshana Z. Sragow, Tamar M. Breton and Allen P. Sragow violated California's financial elder abuse laws along with concealment of behavior and fraudulent activities in an attempt to avoid detection and prosecution. Beginning after the applicant's father passed away on October 5, 2013, S. Sragow removed applicant's sister from the decedent's residence and denied Ben-Dov and sister from entering or removing items from the apartment under the guise of being in charge of the premises. Applicant did not question the motives or behavior due to Defendant S. Sragow and Breton having stated they were in charge and the local rabbi having concurred by telephone.

The consistent concealment of fraudulent behavior after the apartment was cleared by Defendants - two of which are attorneys - and the distancing of themselves when questioned by Applicant and a detective, delayed Ben-Dov from discovering that anything was amiss. Applicant was further delayed by Probate Court while filing a Petition for Administrator to be allowed by law to review decedent's paperwork and personal information. The Petition for Administrator 2

was formalized in July 2014 and allowed Applicant the ability to start discovery and detection of the full extent of the fraud.

The case should have proceeded forward - with any action that was being questioned, if out of statute, being argued and possibly removed - but allowing the remaining statutes to stand. However, Judge McCormick, in District Court, made a decision in his final opinion to erroneously dismiss the case in entirety by stating that both parties agreed the statute for all the claims was three (3) years.

The Plaintiff never waived nor agreed that all the actions were grouped as one. And, at no time during the dismissal hearing - nor during any other conversation - did Judge McCormick state an agreement or require the Plaintiff to waive the statutes on the remaining actions. It is due to this invalid opinion, along with other errors, that the case is no longer in the lower court.

REASONS FOR GRANTING THE PETITION

I. THE NINTH CIRCUITS PANEL'S DECISION CONFLICTS WITH PRIOR DECISIONS OF THE NINTH CIRCUIT, A RECENT NINTH CIRCUIT PANEL DECISION AND CALIFORNIA SUPREME COURT DECISIONS

A. COURTS OVERLOOKED THE STATUTES GOVERNING EACH INDIVIDUAL ACTION WHICH HAD NOT RUN OUT PRIOR TO PLAINTIFF'S FILING OF THE INITIAL COMPLAINT

Federal Court and the Ninth Circuit both neglected to view that the Actions are individual with their own specifics and cannot be fully grouped with each other. Each individual Action stated on the complaint must be taken at its own face value and cannot be conjoined, except where lawful, with other Actions listed against the Defendants.

The Action of Accounting and Declaratory Relief as filed is not barred by any Statute limitations. There is no contract between the Plaintiff and Defendants and the relief is relegated to the Trust Account which was under Defendant S. Sragow's control as the Trustee and the Action of Breach of Trustee Duty (Probate Code §16060, §16061, §16061.5, & §16061.7) does not commence until proper paperwork by Defendant had been mailed out to the Plaintiff. Since the latter has never taken place and Defendant S. Sragow has never followed proper Probate procedure and instead has failed to observe the laws and code of conduct in place for a Trustee, the Action of Accounting and Declaratory Relief and Breach of Trustee Duty were both filed within the Statute allowed under the State of California and is within the rights of the Plaintiff to pursue.

The Action of Financial Elder Abuse and Conversion are time barred by the Statute of Limitations to four (4) years and three (3) years respectively. The filing of the complaint December 2016 is within the Statute for Financial Elder Abuse and cannot be dismissed for filing outside the Statute of Limitations. The Act of

Conversion on the claims is tied to the evidence discovered of financial abuse after July 2014 as shown by evidence linking Defendant S. Sragow to receiving Decedent's apartment deposit and later in July 2017, with proof Defendants S. Sragow and T. Breton deposited uncashed checks into Decedent's bank account for the purpose of withdrawal. The Conversion of items within the property of Decedent have never had a start date as no proof has ever been shown by either party as to what happened to items belong to Decedent. Therefore, both Actions are not time barred by a Statute of Limitations and are within the rights of the Plaintiff to pursue.

The Action of Fraudulent Misrepresentation and Fraudulent Concealment are not wholly time barred due to their definition. The acts themselves lead the victim astray and without the full ability to pursue recourse within a Statute as defined in the Panel Opinion but not by case law. Having been blindsided by the action of the Defendants, if the court does not remand or allow an amending or refile of the complaint, then there is grave injustice to the Plaintiff. Without full knowledge the Plaintiff had no way to understand the actions taken by the Defendants and the discovery period for both do not run in the normal course. Therefore the Plaintiff is within rights to pursue both Actions against Defendants.

The Action of Fraud and the separate Action of Unjust Enrichment have a three (3) year Statute of Limitations but are not necessarily conjoined by the court. The Plaintiff reiterates that the knowledge of fraud cannot be construed by an email sent November 2013 as a majority of the items stated in the complaint do not parallel the statements made to intimidate Defendant S. Sragow. And the knowledge or suspicion of Unjust Enrichment was not known to Plaintiff until Probate Court granted Letters of Administration July 2014 which allowed the research to commence that led the Plaintiff to file the initial complaint December 2016. Therefore, Plaintiff was within her rights to file the complaint and was within the Statute of Limitations.

B. THE CALIFORNIA SUPREME COURT DEFINES CONTINUOUS ACCRUAL IN *ARYEH V. CANON BUSINESS SOLUTIONS, INC*

The California Supreme Court noted in *Aryeh v. Canon Business Solutions, Inc.*, 55 Cal. 4th 1185 (2013) that, generally, a claim accrues and the statute of limitations begins to run, "from 'the occurrence of the last element essential to the cause of action.'" The court explained, however, that several equitable modifications to this so-called "last element" accrual rule have developed under common law. The most significant of those doctrines is the "discovery rule" which, if applicable, "postpones accrual of a cause of action until the plaintiff discovers, or has reason to discover, the cause of action." The "continuing violation" rule may apply in situations where the defendant commits "a series of small harms," such that any single act might not give rise to a cause of action or the victim of the

practice might not be able to identify with certainty when harm has occurred or is sufficiently serious.

In that circumstance, “allegations of a pattern of reasonably frequent and similar acts may, in a given case, justify treating the acts as an indivisible course of conduct actionable in its entirety,” even though part of the conduct occurred outside the limitations period.”

The ability to bring a lawsuit depends on whether the time period on a statute of limitations has run on a particular cause of action. The statute of limitations begins to run when a cause of action accrues. Under the common law “last element” accrual rule, this typically occurs when the elements of wrongdoing, harm and causation are complete. Because certain harms have the potential of recurring and repeating over time, courts and the California Legislature developed a series of equitable exceptions that modify the rules governing the initial accrual of a claim and the subsequent running of the statute of limitations period.

One of these exceptions is the theory of continuous accrual. The theory posits that a series of wrongs or injuries may be viewed as each triggering its own limitations period, allowing for newer violations to come within the applicable limitations period. Thus, although the initial violation might be time barred because it occurred before the limitations period, events occurring within the statute of limitations are deemed timely.

Further, *Aryeh* clarified that in continuous accrual cases, the series of wrongs are discrete and independently actionable. This is in contrast with the continuing violation doctrine, another exception to the “last element” accrual rule, which involves a series of small harms, any one of which may not be actionable on its own and does not trigger its own limitations period.

The *Aryeh* case articulates and clarifies the nature of the continuous accrual exception, and distinguishes it from similar exceptions to the traditional common law “last element” accrual rule.

The Plaintiff therefore states that the California Supreme Court decision of *Aryeh* overrules the lower courts and notes that continuous discovery took place for months and years afterwards as shown by Plaintiff’s evidence.

Therefore, the Actions of Fraud and Unjust Enrichment do not begin to run prior to the November 2013 email and cannot even be justified to begin when the police report was made December 2013 and cannot be dismissed with prejudice.

C. THE NINTH CIRCUIT RECENT DECISION IN
G & G PRODUCTIONS, LLC v. RITA RUSTIC

The Ninth Circuit on August 29, 2018 ruled on the case of G & G Productions, LLC v. Rita Rustic, No. 16-56107 (9th Cir. 2018). The case was remanded by the Ninth Circuit to District Court while vacating the summary judgment against unjust enrichment claims because there was no indication that the district court determined when those claims accrued.

Nothing in the District Court's ruling in this complaint defines each statute and that includes unjust enrichment.

The G & G Productions, LLC v. Rita Rustic also creates understanding of the statute of limitations by defining how an action accrues:

Statutes of limitations are intended to "promote justice by preventing surprises through the revival of claims that have been allowed to slumber until evidence has been lost, memories have faded, and witnesses have disappeared." Order of R.R. Telegraphers v. Ry. Express Agency, Inc., 321 U.S. 342, 348–349 (1944). Unless a statute provides otherwise, the "statute of limitations begins to run at the time when a complete cause or right of action accrues." 54 C.J.S. Limitations of Actions § 129 (2018). "In common parlance," a right is said to accrue "when it comes into existence." United States v. Lindsay, 346 U.S. 568, 569 (1954); see also Wallace v. Kato, 549 U.S. 384, 388 (2007) (recognizing the "standard rule" that a claim accrues "when the plaintiff has a complete and present cause of action") (internal quotation marks omitted).

The Ninth Circuit in its ruling on G & G Productions, LLC v. Rita Rustic also defined conversion in the opinion:

In California, three elements comprise a cause of action for conversion. First, the plaintiff owned, possessed, or had the right to possess an item of personal property. Second, the defendant intentionally took wrongful possession of, disposed of, and/or prevented the plaintiff from having access to the property for a significant period of time. Third, the plaintiff was harmed by the defendant's actions. Mindys Cosmetics, Inc. v. Dakar, 611 F.3d 590, 601 (9th Cir. 2010) (citing Oakdale Vill. Group v. Fong, 43 Cal. App. 4th 539, 543–44 (1996)).

All three of those elements combined were not present when Plaintiff sent Defendant S. Sragow a November 2013 email.

Regarding the first element, there was no way to know what should or should not be owned by Plaintiff as Defendant S. Sragow had not been truthful nor given explanation of the circumstances as shown in the return email and response

to the Anaheim Police Detective. There wasn't even an assumption by the Plaintiff at the time the police report was filed and possibly the accrual of the statute could possibly begin at that time but should begin at the earliest when the detective contacted Plaintiff to discuss the interview with Defendant S. Sragow. Those two instances both took place after December 1, 2013, and therefore the complaint was filed timely by the Plaintiff.

The second element was also fully unknown when the email was sent as shown by text messages between the Plaintiff and both Defendants S. Sragow and T. Breton respectively, but could be stated to begin when evidence started turning up in 2014 as to their illicit behavior.

The third element is therefore assumed when the first and second are acknowledged and is impossible to be defined earlier in this action.

All three elements constructed together form the Action of Conversion beginning at the earliest December 3, 2013 when the police report was filed. Therefore, the complaint was filed within the statute of limitation for conversion.

The Ninth Circuit violated their own ruling on unjust enrichment and conversion as defined by *G & G Productions, LLC v. Rita Rustic*.

D. THE NINTH CIRCUIT DECISION IN VARGAS V. FOBI - FRAUDULENT CONCEALMENT NEGATES LIMITATIONS DEFENSE

Ordinarily, if a statute of limitations has run, an aggrieved party has no recourse. However, there are exceptions. Among the exceptions are situations in which fraudulent concealment is involved.

What convinced the Ninth Circuit Court when reviewing *Vargas v. Fobi*, 2002 WL 31664052 P. 2d that the statute of limitations should be tolled to allow the patient to proceed with her claim was the fact that the patient alleged that Dr. Fobi made postoperative statements to the patient reassuring her that her medical condition would get better "little by little," and that he was happy with her progress. Accordingly, the court concluded that fraudulent concealment was involved in this case and that the statute should be tolled.

The same situation holds true in this complaint. Defendants S. Sragow and T. Breton concealed their true purpose during the month they were cleaning out the Decedent's apartment and barring Plaintiff from entering without permission and without one of them present. Defendant S. Sragow continued to fraudulently conceal when returning Plaintiff's email and trying to reassure Plaintiff that nothing untoward took place at the same time reprimanding her for even voicing concern.

The same fraudulent concealment took place during the interview between the Anaheim Police detective and Defendant S. Sragow when she lied and concealed about having paperwork to control anything. When she lied and concealed to the Detective about her intent and what the Decedent would want her to have from his apartment. And when lying and concealing that she was a lawyer during her conversation with the Detective.

Based on *Vargas v. Fobi*, the Ninth Circuit violated their own ruling while reviewing this case. The Action of Fraudulent Concealment should have based on precedent been tolled past the date of when the November 2013 email was sent and even past the point of when the Police Report was filed and place it at the earliest in 2014.

E. THE DISTRICT COURT DID NOT EXPLICITLY DETERMINE WHEN THE CLAIMS FOR UNJUST ENRICHMENT, ACCOUNTING & DECLARATORY RELIEF, BREACH OF TRUSTEE DUTY, ELDER ABUSE AND CONVERSION, FRAUDULENT MISREPRESENTATION AND FRAUDULENT CONCEALMENT ACCRUED

At no time has the District Court defined or determined when the claims for each Action brought by Plaintiff accrued. The general definition of the email sent November 2013 along with the statement that the complaint was time barred is not enough of a determination by the District Court. This is especially valid when each action is not linked whether by law or by definition to any other, and therefore the Plaintiff states the ruling was decided incorrectly. To state differently defines each action together as a whole instead of a separate items against the Defendants, which is against procedure.

The California Supreme Court in July 2018 remanded the complaint and reversed the summary judgment against the Plaintiff in *Dominique Lopez v. Sony Electronics, Inc.* (2018) S235357. The court, after looking through conflicting statutes to determine which ones if any were allowable and recognizing that the longer statute should apply and the complaint was timely filed, reversed and remanded the case.

The rules for construing irreconcilable statutes are well established. (State Dept. of Public Health, *supra*, 60 Cal.4th at p. 960.) When possible, courts seek to harmonize inconsistent statutes, construing them together to give effect to all of their provisions. (State Dept. of Public Health v. Superior Court (2015) 60 Cal.4th 940, 955.

If conflicting statutes cannot be reconciled, later enactments supersede earlier ones [citation], and more specific provisions take precedence over more general ones [citation]." (Collection Bureau of San Jose v. Rumsey (2000) 24 Cal.4th 301, 310; see § 1859; City of Petaluma v. Pac. Tel. & Tel. Co. (1955) 44 Cal.2d 284, 288.) The rule 6 encompasses competing limitations periods. (Strother v. California Coastal Com. (2009) 173

Cal.App.4th 873, 879; see, e.g., *May v. City of Milpitas* (2013) 217 Cal.App.4th 1307, 1337; *Vafi v. McCloskey* (2011) 193 Cal.App.4th 874, 880; *Committee for a Progressive Gilroy v. State Water Resources Control Bd.* (1987) 192 Cal.App.3d 847, 859.)
 (Dominique Lopez v. Sony Electronics, Inc. (2018) S235357, 5-6)

As stated by Plaintiff previously, not only does each action have its own accrual, each one is not lawfully linked to the other. And, as determined by the Ninth Circuit and California Supreme Court, and shown in preceding paragraphs and case law, the actions cannot be wholly defined as accrued from an email as stated in opinions rendered by both courts which make clear as to when actions are allowable per statute limitations and when actions can be tolled, and therefore forces a remand of this case.

If the filing has been found to be beyond the statute of limitations on the one action, it logically follows that the Plaintiff should have been allowed to file an amended complaint striking that action but allowing the remaining items to continue forward or that action itself stricken by the court, but not a dismissal. (*Knickerbocker v City of Stockton*, (1988) 199 CA3d).

II. THE MOTION FOR SUMMARY JUDGMENT WAS INCORRECTLY FILED BY DEFENDANTS MAKING ANY DECISION BY THE COURTS LEGALLY AND TECHNICALLY INVALID

A. THE DISTRICT JUDGE WENT BEYOND THE RULE OF LAW BY ALLOWING THE HEARING AND OPINION TO STAND

District Court Local Rule 7-3 was never followed properly and Magistrate Judge McCormick and the Defendants admitted to that fact:

"I'm not inclined to punt the – I'm not inclined to kick the can down the road or punt the issue."

– Judge McCormick

Judge McCormick amended a courtroom local rule, generating inconsistency with Judicial Council and creating procedural ambiguity which therefore would conflict with California's local rules and did not comply with promulgation requirements in the Code of Civil Procedure. (*Kalivas v Barry Controls Corp.*, 49 Cal.App. 4th, 1996)

Any ruling made on a motion that violates the meet and confer requirement of Local Rule 7-3 cannot stand and technically must be reversed. (*Bohn v. Pharmavite, LLC*, No. CV 11-10430-GHK (AGRx), 2013 WL 4517173, 1 (C.D. Cal.

Feb. 5, 2013); Singer v. Live Nation Worldwide, Inc., No. SACV 11-0427 DOC (MLGx), 2012 WL 123146, 1-2 (C.D. Cal. Jan. 13, 2012)

The District Court and the Ninth Circuit's refusal to view the Local Rule as necessary sets dangerous precedence for future complaints. The courts as a result may state to future litigants that if a motion is improperly filed it will not be stricken and instead allowed.

Therefore, due to incorrect filing procedures which normally would have pulled a Motion for Summary Judgment and Dismissal from the calendar, and the District Court refusing to adhere to Local Rules and procedures in a manner - which looked to be only an expedient removal of the case from the courtroom - the granting of the motion was incorrect, unlawful and unjust to the Plaintiff.

B. MULTIPLE MISLEADING STATEMENTS ARE FOUND IN THE DISTRICT COURT OPINION

The order by Judge McCormick in the District Court professes that both parties agreed the statute for the claims was three (3) years. Nothing of the sort occurred. Each claim and action carries an individual statute and discovery period and the Plaintiff never waived or agreed that all the actions should be held to one rule. Judge McCormick also misleads in his statements that the discovery showed the Plaintiff found nothing new during November 2013 and therefore the start of the statute should be November 17, 2013. The original complaint is based on fraudulent and misleading behavior on the Defendant's part. During the time the Plaintiff was waiting for a response from Defendant S. Sragow by email she had no reason to be suspicious and attempt to discover misbehavior.

As has been stated multiple times in the Plaintiff's complaints, if fraudulent behavior was noted a report would have been filed immediately for fraud instead of waiting for a response and explanation. The report that was filed on December 3, 2013 was only for theft of the items in the apartment. The statute should start no earlier than when the police report was filed but should be extended to the detective contacting the Defendant and thereafter the Plaintiff about the situation.

CONCLUSION

For the foregoing reasons, Plaintiff Naora Ben-Dov respectfully requests that this court grant her petition for a writ of certiorari.

Respectfully submitted,

Naora Ben-Dov
Petitioner
Pro Per
July 31, 2019