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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION FOUR

EMEZIEM & OTHERS, Plaintiff and Respondent, v. MARK UNGER et al., Defendants and Appellants.	A170497 (Contra Costa County Super. Ct. No. C2302395)

An attorney represented a group of trust beneficiaries in litigation seeking to remove the trustee, who was replaced pursuant to a settlement reached during a mediation. Following the mediation, the successor trustee arranged to distribute the trust assets to the beneficiaries, and the beneficiaries terminated their relationship with the attorney. The attorney took the position that a portion of the distribution should be made directly to him in payment of his fees under a contingency fee contract. When the distribution was made without paying anything under the contingency contract, the attorney sued the successor trustee, the successor trustee's lawyer, and a law firm in which the lawyer for the successor trustee was a partner, seeking to collect the unpaid fees. The trial court sustained a demurrer without leave to amend, and this appeal followed. We affirm.

I. BACKGROUND

We assume the truth of the following facts as alleged in the operative first amended complaint (FAC).

Kelechi Charles Emeziem, an attorney who practices in a law firm known as "Emeziem & Others" (E&O), represented a group of seven beneficiaries (collectively the Beneficiaries) in certain probate litigation. The litigation concerned a dispute among family members under the Willie L. Spears, Sr. and Bobbie Jean Spears Trust (the Spears Trust or the Trust). Emeziem's clients were Melondy Spears, Candace Spears, Kela Spears, Olajuwon Spears, David Spears, Shante Ray Jackson, LaShonda Ray, and Latondiwe Hasty. A written contingency agreement for the engagement (the Fee Agreement) called for E&O to be paid 40 percent of the gross amount recovered on behalf of the Beneficiaries in the litigation.

During a June 2022 mediation at which Emeziem represented the Beneficiaries, the parties to the Trust litigation agreed to a settlement under which the then trustee of the Spears Trust was removed. The successor trustee, someone suggested by Emeziem, was Mark Unger. Unger retained as his legal counsel Cara Lankford, a partner in The Korn Law Group (KLG). A little over a year after the mediation, Emeziem spoke to Lankford about the sale of the Trust's assets and the potential for future distribution. Lankford advised Emeziem that Unger would soon render an accounting and make a distribution to the Beneficiaries.

Sometime in July 2023, Emeziem received an email from Shante Ray Jackson, who advised him that Lankford needed a letter stating that Emeziem no longer represented her. A few days later, Emeziem received another email from Shante Ray Jackson stating that she, LaShonda Ray and David Spears had terminated Emeziem's representation of them. Emeziem responded that he had earned his contingency fee at the mediation when the litigation settled. At around the same time, Emeziem heard from Melondy Spears, who wrote him a letter on behalf of all the Beneficiaries terminating his services.

Emeziem then notified Lankford in writing that his services had been terminated and advised her of the Fee Agreement. He requested that, in making any distribution, she and Unger take steps to protect the attorney lien he held in the proceeds from settlement of the Spears Trust litigation. In mid-August 2023, Emeziem wrote again to Lankford to inquire about the status of the forthcoming accounting and distribution. Lankford responded that distribution checks and an accounting had already been sent directly to the Beneficiaries without deducting anything payable to Emeziem under the Fee Agreement.

Having not been paid fees purportedly due under the Fee Agreement, E&O brought suit against Unger, Lankford, and KLG (collectively the Defendants) seeking damages. The FAC pleaded four causes of action—the first for interference with contract, the second for imposition of a constructive trust, the third for conversion, and the fourth a common count for money had and received. In May 2024, the trial court entered an order sustaining a demurrer to the FAC in its entirety without leave to amend. E&O now appeals from that order. On appeal, E&O focuses only on the merits of the court's rulings as to each respective cause of action, and makes no claim that the court abused its discretion by giving it no further opportunity to amend.

II. DISCUSSION

A. *Appealability*

An order sustaining a demurrer to the entirety of a complaint is technically not appealable. The proper vehicle for review is an appeal from a judgment of dismissal pursuant to the order sustaining the demurrer. Here, however, the record includes no such judgment. We will nonetheless proceed to resolve the appeal on the merits. Since, normally, "[t]he entry of a judgment of dismissal follows as a matter of course" from an order sustaining a demurrer without leave to amend (*Berri v. Superior Court* (1955) 43 Cal.2d 856, 860), and we have no reason to believe there were further proceedings in this case following the sustaining of the demurrer—a motion to reconsider, for example—we will treat the appeal as if it were taken from a judgment of dismissal, while reminding counsel of the better practice. (*Bullock v. City of Antioch* (2022) 78 Cal.App.5th 407, 411, fn. 1 ["we deem the order on the demurrer to incorporate a judgment of dismissal and will review the order"].)

B. *Standard of Review*

In an appeal from a judgment of dismissal following an order sustaining a demurrer, we review the operative complaint de novo to determine whether the complaint alleges facts sufficient to state a cause of action under any legal theory. We give the complaint a reasonable interpretation and treat the demurrer as admitting all material facts properly pleaded that are not inconsistent with other allegations, exhibits, or judicially noticed facts. (*Morris v. JPMorgan Chase Bank, N.A.* (2022) 78 Cal.App.5th 279, 292; see *Aubry v. Tri-City Hospital Dist.* (1992) 2 Cal.4th 962, 966–967.)

C. *Interference with Contract*

The first claim in the FAC, entitled "Intentional Interference with Contractual Relations/Inducing Breach of Contract," alleges that the Defendants "willfully, deliberately, and maliciously induced, aided and encouraged [the Beneficiaries] to breach their contract obligations" to E&O by instructing them to "fire [Emeziem] in order to maximize their recovery from the Trust," thereby inducing them to breach the Fee Agreement and deny E&O its fees.

In support of this claim, the FAC alleges that the Beneficiaries were entitled to and did receive a distribution of funds from the Trust. The FAC further alleges that this distribution came about because of work performed by Emeziem; that E&O was due to be paid out of the distribution based on the Fee Agreement; and that Unger made the distribution from the Trust without taking out amounts E&O claims it is owed and should have been paid directly.

"The elements which a plaintiff must plead to state the cause of action for intentional interference with contractual relations are (1) a valid contract between plaintiff and a third party; (2) defendant's knowledge of this contract; (3) defendant's intentional acts designed to induce a breach or disruption of the contractual relationship; (4) actual breach or disruption of the contractual relationship; and (5) resulting damage." (*Pacific Gas & Electric Co. v. Bear Stearns & Co.* (1990) 50 Cal.3d 1118, 1126 (*Pacific Gas*).)

E&O contends the trial court erred in finding that the FAC failed to plead the third element—intentional acts designed to induce a breach or the disruption of a contractual relationship. According to E&O, the trial court's mistake was its determination that there must be an " 'independently wrongful act' " apart from deliberate intent to carry out the interference or disruption with the objective of bringing about a breach. We disagree. The court did not err.

In the case of a contract that is terminable at-will—which all parties acknowledge the Fee Agreement was—our Supreme Court has held that a plaintiff must allege that the defendant engaged in an independently wrongful act to state a claim for interference with an at-will contract by a third party. (*Ixchel Pharma, LLC v. Biogen, Inc.* (2020) 9 Cal.5th 1130, 1148.) That is the dispositive principle here. As the trial court explained, "to state a claim for interference with a contract by a third party, 'the plaintiff must allege that the defendant engaged in an independently wrongful act.' [Citation.] '[A]n act is independently wrongful if it is unlawful, that is, if it is proscribed by some constitutional, statutory, regulatory, common law, or other determinable legal standard.' " For this standard, the court correctly cited *Ixchel Pharma* and *Korea Supply Co. v. Lockheed Martin Corp*. (2003) 29 Cal.4th 1134, 1159.

The trial court then went on to explain, "[t]he only 'independent wrongful act' identified in the FAC is the alleged improper communication with a represented party." As the court read the allegations in the FAC, "There is no indication as to why th[e] Beneficiaries terminated [E&O's] services, nor any specific allegations indicating what Defendant Lankford said or did which allegedly led to the Beneficiaries terminating [E&O's] services. Even if it can be inferred th[at] . . . Lankford told Shante to terminate her Agreement with [E&O], there are no allegations establishing such actions were 'independently wrongful' i.e. unlawful."

The trial court presumed that E&O's theory of wrongfulness is founded on an attorney's obligations under rule 4.2(a) of the California Rules of Professional Conduct—communication with a represented person. That rule states, in pertinent part, that a "lawyer shall not communicate directly or indirectly about the subject of the representation with a person the lawyer knows to be represented by another lawyer in the matter, unless the lawyer has the consent of the other lawyer." (Rules Prof. Conduct, rule 4.2(a) (Rule 4.2(a)).) Here on appeal, E&O confirms that the trial court correctly presumed Rule 4.2(a) supplies the basis of its allegation of an independent wrongful act.

The trial court properly rejected E&O's theory that a Rule 4.2(a) violation may serve as the wrongful act supporting the first cause of action. As it explained, "[w]hile a violation of these Rules may subject an attorney to discipline, such actions are not 'unlawful.' " The ethical rules governing lawyers in this state are intended to regulate professional conduct of lawyers through discipline, but "[a] violation of a rule does not itself give rise to a cause of action for damages caused by failure to comply with the rule." (Rules Prof. Conduct, rule 1.0(a), (b)(3); see *Noble v. Sears, Roebuck & Co.* (1973) 33 Cal.App.3d 654, 658–659 [violation of rule of professional conduct does not render attorney liable in damages]; *Wilhelm v. Pray, Price, Williams & Russell* (1986) 186 Cal.App.3d 1324, 1333, fn. 5 ["violation of [former] rule 7-103 does not subject an attorney to civil liability in damages"].)

We see an even more basic flaw in the theory that Lankford (and circumstantially Unger) unethically spoke to the Beneficiaries about terminating their attorney-client relationship with E&O. Although it may be inferred that the subject matter of the Fee Agreement was E&O's engagement to represent the Beneficiaries in the Trust litigation, there are no specifics as to the subject matter scope of the engagement. We find it unlikely that the scope could have had such a broad sweep as to prohibit the Beneficiaries from consulting independent counsel about terminating the engagement or refusing any payment obligation under the Fee Agreement, since E&O stood in a potentially adverse position to the Beneficiaries on those topics. But even assuming that, by its express terms, the Fee Agreement was written that broadly, it must be construed more narrowly to allow such consultations. Thus, while, factually, E&O alleges communications that in its view breached Rule 4.2(a), we see no such violation as a matter of law on the facts alleged here.

E&O relies heavily on *Pacific Gas, supra,* 50 Cal.3d 1118, a case in which the investment brokerage house Bear Stearns persuaded the Placer County Water Agency (the Agency) to embark on a course of action designed to enable the Agency to retire certain project bonds early, thus justifying the termination of a long-term hydroelectric power supply contract with PG&E, and freeing the Agency to sell hydroelectric power at market rates higher than the rates PG&E was paying. (*Id*. at pp. 1123–1125.) To secure a ruling that termination of its long-term supply contract with PG&E was legally permissible, the Agency initiated an arbitration and then a declaratory judgment action that, according to PG&E, foisted significant litigation expense upon it and destroyed any assurances that the Agency would perform under its long-term power supply contract. (*Id*. at pp. 1124–1125.)

The Supreme Court held that PG&E's attempt to plead causes of action for interference with contract and interference with prospective economic advantage failed on the foregoing facts. (*Pacific Gas, supra,* 50 Cal.3d at pp. 1130–1137.) It began by acknowledging that, in principle, consistent with settled case law in many other states, a third party may be held liable for inducing the termination of an at-will contract, since a contract " 'at the will of the parties, respectively does not make it one at the will of others.' " (*Id*. at p. 1127.) It is this aspect of the opinion in *Pacific Gas* that E&O relies upon. Under tortious interference doctrine so understood—that is, under a rule allowing the parties to an at-will contract to terminate freely, but not extending that privilege to third parties who seek to *induce* termination—the court observed that the "expectation that the parties will honor the terms of [a] contract is protected against officious intermeddlers." (*Id*. at p. 1128.)

E&O not only overlooks the remainder of the *Pacific Gas* court's reasoning, it ignores the fact that the holding in *Pacific Gas* cuts against it.

After broadly recognizing that third parties generally do not enjoy a privilege against tort liability for inducing the termination of at-will contracts, the bottom-line holding in *Pacific Gas*—that no viable cause of action was stated—supports the Defendants on this record. The court focused on the fact that the only injury Bear Stearns inflicted was to bring about costly litigation. No other form of wrongful conduct was alleged. (*Pacific Gas, supra,* 50 Cal.3d at p. 1130.) And in the absence of an allegation that the litigation spurred by Bear Stearns was frivolous in the sense of having been initiated without probable cause, no cause of action for tortious interference could be stated. Drawing upon the law of malicious prosecution (*id.* at p. 1131, citing *Bertero v. National General Corp.* (1974) 13 Cal.3d 43, 50), which disfavors expanding tort liability against lawyers to such a degree that it may chill their willingness to provide legal advice, the court grounded its holding for Bear Stearns on concern for access to the legal system. (*Id.* at pp. 1123, 1131–1137.)

The same rationale applies here. E&O's theory, no matter how it is characterized, rests on inferences E&O draws from the words and conduct of some of the Beneficiaries about advice the Defendants must have given them, leading to the termination of their relationship with Emeziem and a default in payment under the Fee Agreement. Perhaps E&O's suspicions about the Defendants' role in undermining Emeziem's relationship with the Beneficiaries are true, but even if they are, no tortious interference theory lies. The reasoning in *Pacific Gas* is just as applicable in this case as it was there, since two of the Defendants here are a lawyer and her law firm. Because the core of E&O's intentional interference claim is the giving of legal advice, no viable interference cause of action may rest on a claim that that advice caused the Beneficiaries to terminate their engagement with E&O.

We conclude that the trial court did not err in sustaining the demurrer as to the first cause of action.

D. *Constructive Trust*

E&O's second cause of action is for constructive trust. Here, E&O alleges that the Defendants "wrongfully detained the fees and costs to which [E&O was] entitled and instead paid the funds to former client[s]." E&O argues the trial court "erred when it bought the contention of respondents that this claim is directed at the trust property."

The second cause of action is legally insufficient because a constructive trust is an equitable remedy, not a cause of action. (See *Shoker v. Superior Court* (2022) 81 Cal.App.5th 271, 278; *Glue-Fold, Inc. v. Slautterback Corp.* (2000) 82 Cal.App.4th 1018, 1023, fn. 3; but see *Higgins v. Higgins* (2017) 11 Cal.App.5th 648, 659, fn. 2; *id.* at p. 658.) Even construing the second claim generously as an attempt to plead a cause of action on facts that might support a constructive trust, it fails on that score too. "Three conditions must be shown to impose a constructive trust: (1) a specific, identifiable property interest, (2) the plaintiff's right to the property interest, and (3) the defendant's acquisition or detention of the property interest by some wrongful act." (*Higgins v. Higgins*, at p. 659.)

To the extent E&O contends the FAC alleges sufficient facts to support an independently viable predicate claim, we do not see any such claim here under even a generous reading of the second cause of action. Although the trial court did not address the distinction between a remedy and a cause of action, its reasoning focusing on the third element of the required showing for a constructive trust was correct. The court ruled, and we agree, that the FAC is bereft of any allegation that, by distributing their inheritance to the Beneficiaries, Unger and Lankford breached a duty owed to E&O or to Emeziem. Because, as successor trustee, Unger had "a duty to administer the trust solely in the interest of the beneficiaries," and because neither E&O nor Emeziem is a Trust beneficiary, E&O had no cognizable interest in the Trust res.

The trial court elaborated on this point as follows. "The key [to analyzing the viability of] the constructive trust cause of action is the right of [E&O] to the money in the Trust. While it may be true that the Beneficiaries owe [E&O] money due under the [Fee] Agreement, that does not give [E&O] a right to any funds in the Trust. It also [did] not impose upon the Trustee of the Trust . . . any obligation to pay [E&O] monies from the Trust to satisfy those debts. . . . Unger [was] obligated to administer the Trust according to the trust instrument and solely in the interest of the beneficiaries. Any dispute regarding the failure to abide by the terms of the [Fee] Agreement should be brought directly against the Beneficiaries."

As the trial court pointed out, E&O concedes that we are dealing with a spendthrift trust. "A spendthrift trust is a trust that provides that the beneficiary's interest cannot be alienated before it is distributed to the beneficiary." (*Carmack v. Reynolds* (2017) 2 Cal.5th 844, 849 (*Carmack*).) Subject to some exceptions—none of which applies here—"[c]reditors of the beneficiary generally cannot reach trust assets while those assets are in the hands of the trustee, even if they have secured a judgment against the beneficiary." (*Ibid.*) "Rather, creditors must wait until the trustee makes distributions to the beneficiary." (*Ibid.*)

Although we are inclined to believe the second cause of action fails most basically because a constructive trust is a remedy, not a cause of action, we have no reason to disagree with the trial court's rationale. Arguing that "a third party (e.g., the Trustee of a Trust or his Counsel) with notice of the plaintiff's former counsel's attorney's lien . . . may be civilly liable to the lien holder for paying out the funds directly to the client," E&O seeks to avoid the consequences of the spendthrift clause in the Trust by contending that "the *res* in question ceased to be 'Trust Property' immediately [when] it was designated and set aside for distribution to its clients." "Once that was done," E&O contends, citing *Carmack*, *supra*, 2 Cal.5th 844, a leading spendthrift trust case, "the funds became the segregated property of its clients upon which its attorney lien attached."

E&O misreads *Carmack*. Summing up its holding, the *Carmack* court explained, "after an amount of principal has become due and payable (but has not yet been distributed), a creditor can petition to have the trustee pay directly to the creditor a sum up to the full amount of that distribution ([Prob. Code,] § 15301[, subd.] (b)) unless the trust instrument specifies that the distribution is for the beneficiary's support or education and the beneficiary needs the distribution for those purposes ([*id.*,] § 15302). If no such distribution is pending or if the distribution is not adequate to satisfy a judgment, a general creditor can petition to levy up to 25 percent of the payments expected to be made to the beneficiary, reduced by the amount other creditors have already obtained and subject to the support needs of the beneficiary and any dependents. ([*Id.*,] § 15306.5.)" (*Carmack*, *supra*, 2 Cal.5th at pp. 856–857.)

The predistribution claim procedure referenced in *Carmack* that is pertinent here—the one governed by Probate Code section 15301, subdivision (b)—is as follows: "After an amount of principal has become due and payable to the beneficiary under the trust instrument, upon petition to the court under Section 709.010 of the Code of Civil Procedure by a judgment creditor, the court may make an order directing the trustee to satisfy the money judgment out of that principal amount. The court in its discretion may issue an order directing the trustee to satisfy all or part of the judgment out of that principal amount."[1] Thus, where a trust includes a spendthrift clause, as this one did, a general creditor has an available remedy if it wishes to have any trust distribution paid directly to it. The creditor can obtain a judgment against the beneficiary and then petition the court for direct payment. Here, considerable time passed after the conclusion of the mediation and notification of an imminent distribution, yet nothing in the record shows that E&O demanded payment directly from the Beneficiaries and then pursued relief under Probate Code section 15301, subdivision (b), upon refusal of that demand.

We conclude that the trial court did not err in sustaining the demurrer as to the second cause of action.

E. *Conversion*

E&O's third cause of action is for conversion. " ' "Conversion is the wrongful exercise of dominion over the property of another. The elements of a conversion claim are: (1) the plaintiff's ownership or right to possession of the property; (2) the defendant's conversion by a wrongful act or disposition of property rights; and (3) damages." ' " (*Welco Electronics, Inc. v. Mora* (2014) 223 Cal.App.4th 202, 208.)

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[1] The second claim procedure described in the quoted passage from *Carmack* is set forth in Probate Code section 15306.5 and provides that, under certain circumstances and subject to limitations, a judgment creditor may petition the court for an order "directing the trustee to satisfy all or part of the judgment out of the payments to which the beneficiary is entitled under the trust instrument or that the trustee, in the exercise of the trustee's discretion, has determined or determines in the future to pay to the beneficiary." (Prob. Code, § 15306.5, subd. (a).)

The trial court ruled that Emeziem's conversion claim failed as to the first and second elements. First, the court noted how Emeziem had no ownership interest in the Trust assets, as he was not a Trust beneficiary nor did he obtain a court order directing payment from the Trust. Second, for the same reason the first cause of action failed, the court found there could be no " 'wrongful act' " alleged.

Agreeing on both counts, we conclude that the demurrer was properly sustained as to the third cause of action.

F. *Money Had and Received*

Emeziem's fourth cause of action alleges "money had and received." He claims that "[o]nce defendants received funds for distribution to the beneficiaries . . . the funds due to plaintiff [from his former clients] became funds had and received by defendants for plaintiff's benefit."

The trial court properly concluded that, "while the Beneficiaries may owe [E&O] money via the [Fee] Agreement between the parties, this does not entitle [E&O] to any assets held in the Trust. None of the funds held in the Trust were held for [E&O]'s benefit. [¶] [And] [a]s for Defendants Lankford and [KLG], there are no allegations that they had any authority, control, or responsibility for administering the Trust." The court thus concluded that as a matter of law E&O has not shown that any Trust funds were due to be paid to it or for its benefit.

We agree. Wherever one person has received money which belongs to another, and which " ' "in equity and good conscience," or in other words, in justice and right, should be returned. . . . The plaintiff's right to recover is governed by principles of equity, although the action is one at law.' " (*Mains v. City Title Insurance Co.* (1949) 34 Cal.2d 580, 586.) In this case, the trial court properly found that E&O did not state and could not state an equitable claim for money due from the Trust. E&O may claim entitlement to fees under the Fee Agreement directly from its former clients; but what it may not do is sue strangers to the attorney-client relationship for the allegedly delinquent fees.

Thus, we conclude that the trial court did not err in sustaining the demurrer as to the fourth cause of action.

III. DISPOSITION

Affirmed. Costs on appeal to be awarded to Defendants.

STREETER, Acting P. J.

WE CONCUR:

GOLDMAN, J.
CLAY, J.*

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* Judge of the Alameda Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.