2006 WL 3667292 (Cal.Superior) (Trial Motion, Memorandum and Affidavit)
Superior Court of California.
Alameda County

CAPITOL PEOPLE FIRST, et al., Plaintiffs,
v.
DEPARTMENT OF DEVELOPMENTAL SERVICES (DDS), et al., Defendants.

No. 2002-038715.
January 11, 2006.

Complex Litigation

State Defendants' Opposition to Plaintiffs' Motion for Judgment on the Pleadings as to Affirmative Defenses

Judge: Ronald M. Sabraw.

I. INTRODUCTION

Plaintiffs have moved for judgment on the pleadings as to each of the 14 affirmative defenses pled in State defendants' Answer to the Fifth Amended Complaint.[1] The motion is made on the ground that each affirmative defense fails to state facts sufficient to constitute a defense. Code Civ. Proc. § 438(c)(1)(A).[2] The motion is curious for at least two reasons. First, each affirmative defense includes (but is generally not limited to) the standard language used to plead these defenses. While this may leave defendants open to the charge of using "boilerplate" language, the language is "boilerplate" precisely because it has successfully served the function, in thousands of cases, of giving the plaintiffs in those cases adequate notice of the defenses raised.

Second, each of the 14 affirmative defenses were among the 24 affirmative defenses pled in response to the original complaint. Plaintiffs propounded form interrogatories which addressed, inter alia, the factual basis for each defense. State defendants served Supplemental Responses to those interrogatories in May 2003.[3] Plaintiffs voiced no dissatisfaction with these answers and did not bring a motion to compel additional responses. (Hewitt Decl., ¶ 4.) Accordingly, it is fair to assume that plaintiffs believed they had obtained a satisfactory statement of the factual basis for each defense. Although this discovery may not legally preclude plaintiffs from bringing a motion for judgment on the pleadings based on purported deficiencies in the factual allegations supporting each defense, it certainly calls into question exactly what is being accomplished by the present motion, other than extra and wholly unnecessary work for the court and the defendants.

II. ARGUMENT

A. Legal Standard.

As plaintiffs correctly point out, the same legal standard applies when testing the sufficiency of an affirmative defense as applies in determining whether a cause of action is stated. In determining the sufficiency of pleadings, California courts are becoming increasing liberal - in some cases approximating the notice pleading standards of federal courts. Weil & Brown,

Cal. Prac. Guide: Civ. Pro. Before Trial ¶ 6:128 (2005). The objective is to provide fair notice of the claim or defense being asserted. "There is no need to require specificity in pleadings because 'modern discovery procedures necessarily affect the amount of detail which should be required in pleading.' *Semole v. Sansoucie* (1972) 28 Cal.App.3d 714, 719." *Ludgate Ins. Co. v. Lockheed Martin Corp.* (2000) 82 Cal.App.4th 592, 608. Similarly, the level of specificity required depends on the level of knowledge which the opposing party can be assumed to have. *Jackson v. Pasadena City School Dist.* (1963) 39 Cal.2d 876, 879 ("The particularity required in pleading facts depends on the extent to which the defendant in fairness needs detailed information that can be conveniently provided the plaintiff; less particularity is required where he defendant may be assumed to have knowledge of the facts equal to that possessed by the plaintiff. [Citation.]") In this regard, there is no dispute that Protection and Advocacy, Inc., one of plaintiffs' attorneys, is unquestionably extremely knowledgeable about programs for persons with developmental disabilities in California.

B. The Motion for Judgment on the Pleadings Should Be Denied.

During four years of litigation, plaintiffs have already undertaken extensive discovery, including discovery directed at the affirmative defenses, and therefore can be assumed to have knowledge of the pertinent facts. Consequently, fair notice does not require a more particularized statement of the affirmative defenses. On this ground alone, the motion for judgment on the pleadings should be denied.

A review of each affirmative defense further confirms this conclusion.[4]

1. Failure to state a cause of action.

This defense presents only legal issues, i.e, the legal sufficiency of the facts pled by plaintiffs to state the various causes of action alleged in the complaint. It does not turn on facts alleged, or not alleged, by defendants. Consequently, the defense cannot be challenged on the ground that it fails to state facts sufficient to constitute a defense. Moreover, plaintiffs cite no authority for their contention that the defense must specify, for each cause of action, the element of the cause of action that is allegedly "missing." (Plaintiffs' Memo, p. 2:13-15.) Clearly, plaintiffs have no need for this information in the answer. If defendants bring a motion for judgment on the pleadings as to one or more causes of action, plaintiffs will know what the alleged legal deficiency is and will have a full opportunity to respond.

2. Waiver, estoppel.

Plaintiffs memorandum at pages 2-3 inexcusably fails to quote the entire Second Affirmative Defense, which alleges waiver and estoppel. In its entirety, that defense states "Certain plaintiffs and putative class members have waived, relinquished, and or abandoned, and are equitably estopped to assert any claim for relief against State Defendants regarding the allegations contained in the Complaint because, inter alia, they have elected to stay in institutions and/or have explicitly or impliedly refused community placement." (Emphasis added.) Thus, contrary to plaintiffs' assertion, the actual language of the affirmative defense does assert the facts which provide the grounds for asserting waiver and/or estoppel.

3. Res judicata/collateral estoppel.

As the third affirmative defense states, the res judicata/collateral estoppel defense is based on the decision in *Sanchez v. Johnson,* a decision with which the plaintiffs are completely familiar. Whether, and to what extent, the final judgment in that case (which has now been affirmed by the Ninth Circuit) precludes this action is almost entirely a question of law. To require, as plaintiffs suggest, that defendants plead the particular elements of res judicata and collateral estoppel would accomplish nothing. Rather, it would essentially require that the issues be briefed in the answer. As written, the affirmative

defense gives plaintiffs fair notice. If State defendants bring a motion based on these theories, plaintiffs will be able to respond.

4. Uncertainty.

The defense of uncertainty asserts that some of the complaint's allegations, as pled, are not sufficiently definite and comprehensible. The defense therefore presents only legal issues and does not turn on facts alleged or not alleged by defendants. Moreover, the defense, as written, identifies particular paragraphs of the complaint which are allegedly uncertain. The defense thus provides adequate notice to plaintiffs.

5. Claims subject to other actions already pending.

This defense is based on the fact that some of the plaintiffs and putative class members have writ proceedings pending or resolved. However, because plaintiffs have represented to the court that they are not seeking to establish liability or obtain relief on behalf of individual plaintiffs or individual putative class members, State defendants drop this defense without prejudice.

6. Failure to exhaust administrative remedies.

This defense is based on plaintiffs' failure to exhaust the fair hearing procedures established by the Lanterman Act. Again, because plaintiffs have consistently stated that they are not seeking to establish liability or obtain relief on behalf of individual plaintiffs or individual putative class members, State defendants drop this defense without prejudice.

7. No equitable relief/adequate remedy at law.

Although the Seventh Affirmative Defense does not expressly state the nature of plaintiffs' adequate legal remedy that forecloses equitable relief, it has been no secret from the outset of this case that defendants contend that the fair hearing procedures in the Lanterman Act provide named plaintiffs and putative class members with an adequate means of insuring that they are placed in the appropriate and least restrictive environment - the sole objective of the "systemic" injunctive and equitable relief sought by plaintiffs. If the court deems it necessary, State defendant will amend the Seventh Affirmative Defense to so state.

8. Statute of limitations.

The uncertainty about which of defendants' alleged actions or omissions will be asserted by plaintiffs in their attempt to establish liability results in uncertainty about the dates those actions or omissions occurred. Consequently, it is virtually impossible to plead the statute of limitations defense with more specificity. However, if the court deems it necessary, State defendants request permission to amend the Eighth Affirmative Defense to plead the code sections which could give rise to a statute of limitations defense.

9. Fundamental alteration.

Again plaintiffs' memorandum inexcusably fails to quote the entire Ninth Affirmative Defense. That defense states "The relief, as sought in the Petition/Complaint, is barred because it would require State Defendants to fundamentally alter substantial portions of California's services and programs because, inter alia, to provide the class-wide relief sought by plaintiffs relating to community placement and related issues would result in the allocation of available resources that is inequitable, given the responsibility the State Defendants have undertaken for the care and treatment of a large and diverse population of persons with developmental disabilities, as well as other persons dependent on the State for all or part of their care." When the language of the entire defense is examined, it is clear that it properly pleads the ultimate facts which support the assertion that the relief sought would result in a fundamental alteration under the standards set forth in *Olmstead v. L.C.,* 527 U.S. 581, 605-606 (1999). It should also be noted that a more detailed statement of the facts supporting the defense is not possible now because plaintiffs have articulated widely varied versions of the relief they would seek everything from a request for a non-specific order simply requiring defendants to develop a "plan" for deinstitutionalization to the very particularized relief pled in the prayer. Finally, the extent to which the fundamental alteration defense may apply to causes of action other than the ADA raises legal issues which need not be addressed in the affirmative defense, and, in any event, are not subject to challenge for an alleged failure to pled sufficient facts to state a defense.

10. Conduct of other persons.

Whether or not "the conduct of other persons" is an affirmative defense, the assertion is adequately pled in light of plaintiffs' knowledge of how the system of care for persons with developmental disabilities is structured in California and in light of the answers to form interrogatories. (See Exh. B to the Hewitt Decl.) As plaintiffs are obviously aware and as the interrogatory answers make explicit, the functions of assessment, community resource development, and community placement - matters at the heart of plaintiffs' claims - are carried out under the Lanterman Act primarily by the regional centers. Whether, and to what extent, this fact is a defense to State defendants' possible liability under one or more of the 68 provisions of the Lanterman Act, or the other statues or constitutional provisions that have been allegedly violated, is a legal issue that is not required to be briefed in the answer.

11. No ministerial duties.

Whether a duty is "ministerial" and therefore subject to mandate under section 1085 is a legal issue and thus does not depend on any factual allegations alleged in the affirmative defense. Moreover, defendants take the position that each of the alleged "actions" pled in paragraph 230 of the Lanterman Act claim and in the Medicaid cause of action (i.e., those matters allegedly subject to mandate) are not ministerial. Therefore, even if there is some requirement to identify the specific actions in the affirmative defense as plaintiffs assert, that has been accomplished.

12. Relief inconsistent with Medicaid state plan.

This affirmative defense raises a legal issue - is the relief sought inconsistent, as a matter of law, with the federally mandated Medicaid state plan. Until plaintiffs settle on the exact relief they plan to seek, defendants cannot, and should not, be required to be more specific.

13. Failure to demonstrate entitlement to services.

If this is not an affirmative defense, but a denial of specific factual allegations in the complaint, as contended by plaintiffs, then it is simply surplusage and arguably subject to a motion to strike, but not subject to a motion for judgment on the pleadings based on an alleged failure to allege sufficient facts to constitute a defense. In addition, it is State defendants' position that each plaintiff is being provided the services and supports to which he/she is entitled, as set forth in his/her IPP.

Therefore, more detailed factual allegations are unnecessary to give plaintiffs adequate notice of defendants' position. This is especially true given the lack of specificity in the complaint about the alleged services and support each plaintiff has purportedly been denied. In short, generalities beget generalities.

14. All placements appropriate.

Judgment on the pleadings should be denied on this affirmative defense for the same reasons it should be denied on the Thirteenth Affirmative Defense.

III. CONCLUSION

For the reasons stated, plaintiffs' motion for judgment on the pleadings on each of State defendants' 14 affirmative defenses should be denied.

Footnotes

1 A copy of the portion of State Defendants' Answer setting forth the affirmative defenses is attached as Exhibit A to the Declaration of Henry Hewitt in Opposition to Plaintiffs' Motion for Judgment on the Pleadings on Affirmative DEFENSES ("Hewitt Decl.")

2 See Plaintiffs' Memo, p. 2:4-7.

3 A copy of the portion of the Supplemental Responses addressing the affirmative defenses is attached as Exhibit B to the Hewitt Declaration. The responses are titled by the number of the affirmative defenses. Because the numbering changed with the reduction defenses from 24 to 14, the current numbers are shown in handwriting next to corresponding number in the responses. For example, current affirmative defense No. 5 was No.7 in the original answer and in the answers to form interrogatories.

4 If the court grants the motion as to any of the affirmative defenses, State defendants request that the court grant them leave to amend.