FILED
9/16/2024
Court of Appeals
Division I
State of Washington

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

CORRINA MARKLEY, Appellant, v. CITY OF SEATTLE, Respondent.	No. 86135-2-I DIVISION ONE UNPUBLISHED OPINION

MANN, J. — Corrina Markley, a former employee of Seattle City Light, sued the City of Seattle (City) for damages alleging the City committed fraud by obtaining her signature by deception or duress in violation of RCW 9A.60.030. Markley appeals the trial court's decision dismissing her complaint under CR 12(b)(6) for failure to state a claim upon which relief can be granted.

We affirm.

I

Markley began working for the City in June 2011. In 2014, chronic illness prevented Markley from working and eventually she resigned on July 1, 2016. At the time, Markley described the reason for her resignation as medical separation.

Before her resignation, Markley filed two discrimination charges with the Equal Employment Opportunity Commission (EEOC) under the American with Disabilities Act of 1990 (ADA).[1] Markley also filed a tort claim against the City for disability discrimination. The EEOC dismissed both charges. Markley did not pursue a lawsuit at that time.

On August 29, 2016, Markley submitted a third charge of discrimination to the EEOC. Markley claimed harassment and discrimination based on her disability. The EEOC closed the file because it could not conclude based on the available information that the statute was violated. The EEOC's letter contained "notice of suit rights" which stated that Markley may "file a lawsuit against respondent(s) under federal law based on this charge in federal or state court. Your lawsuit must be filed within 90 days of your receipt of this notice; or your right to sue based on this charge will be lost." Markley did not file suit within the 90 days.

On March 19, 2019, Markley sent the City a "corrected resignation letter," which changed the reason for her resignation to "constructive discharge." On October 28, 2019, Markley sent a letter to the City and claimed that on October 1, 2019, she "connected all the facts" that the City defrauded her.

On February 11, 2022, Markley sued the City, alleging fraud and employment discrimination. The trial court dismissed the claims with prejudice under CR 12(b)(6). On appeal, Markley conceded the discrimination claim was time-barred but argued the City committed fraud when it attained her signature on the resignation form. In an

[1] 42 U.S.C. §§ 12101-12213 et seq.

unpublished opinion this court affirmed the dismissal of the fraud claim but reversed in part the dismissal with prejudice.[2]

On September 25, 2023, Markley sued the City alleging fraud in violation of RCW 9A.60.030 and sought $26 million in damages.[3] Markley asserted that she was defrauded from seeking damages related to personal injury caused by a hostile work environment. The complaint alleged that when Markley contacted the City for a form that was required in order for her to collect her retirement funds, the City told her that she would need to wait two weeks for the form until a human resources employee returned from vacation. Markley asserted the two-week delay "for a mystery form" was material to her duress and that the City knowingly and falsely claimed the form could not be sent for two weeks. The complaint alleged that Markley was ignorant of the false representation of the delay of the retirement form, she relied on it, and as a result suffered personal injury.

The City moved to dismiss under CR 12(b)(6) for failure to state a claim on which relief can be granted. The City argued that Markley failed to plead facts supporting a fraud claim and that her claim was barred by the three-year statute of limitations. On November 17, 2023, the trial court dismissed Markley's claim with prejudice.

Markley appeals.

---

[2] Markley v. City of Seattle, No. 84191-2-I (Wash. Ct. App. Mar. 6, 2023) (unpublished), https://www.courts.wa.gov/opinions/pdf/841912.pdf.

[3] "A person is guilty of obtaining a signature by deception or duress if by deception or duress and with intent to defraud or deprive he or she causes another person to sign or execute a written instrument." RCW 9A.60.030.

II

A

Markley argues the trial court erred in granting the motion to dismiss. Markley, pro se, asserts that it was not an individual who induced her to write "medical separation" but rather the City's process.[4] In contrast, the City argues that even if Markley was induced to write "medical separation," those facts do not establish a claim of fraud. We agree with the City.

We review a trial court's ruling to dismiss a claim under CR 12(b)(6) de novo. Tenore v. AT & T Wireless Servs., 136 Wn.2d 322, 329-30, 962 P.2d 104 (1998). Dismissal is warranted only if the court concludes, beyond a reasonable doubt, the plaintiff cannot prove "any set of facts which would justify recovery." Tenore, 136 Wn.2d at 329-30. The court presumes all facts alleged in the plaintiff's complaint are true and may consider hypothetical facts supporting the plaintiff's claims. Tenore, 136 Wn.2d at 329-30. But "[i]n all averments of fraud or mistake, the circumstances constituting fraud or mistake shall be stated with particularity." CR 9(b).

A plaintiff must allege specific fraudulent acts and plead both the elements and circumstances of fraudulent conduct. Haberman v. Wash. Pub. Power Supply Sys., 109 Wn.2d 107, 165, 744 P.2d 1032 (1987). A fraud claim has nine elements: (1) a representation of existing fact, (2) that is material (3) and false, (4) the speaker knows of its falsity, (5) intent to induce another to act, (6) ignorance of its falsity by the listener, (7) the latter's reliance on the truth of the representation, (8) his or her right to rely on it,

[4] We recognize that Markley appeals pro se. However, pro se litigants are "bound by the same rules of procedure and substantive law as attorneys." Westberg v. All-Purpose Structures Inc., 86 Wn. App. 405, 411, 936 P.2d 1175 (1997).

and (9) consequent damages. Baker Boyer Nat'l Bank v. Foust, 6 Wn. App. 2d 375, 381 n.4, 436 P.3d 382 (2018). To determine whether allegations of fraud satisfy CR 9(b), we consider only the complaint, and not other allegations made in the briefs. Haberman, 109 Wn.2d at 165. A complaint adequately alleges fraud if it informs the defendant of who did what, and describes the fraudulent conduct and mechanisms. Haberman, 109 Wn.2d at 165.

Here, the complaint fails to allege fraud. Markley believes the City fraudulently induced her to sign her letter of resignation when the City delayed providing a form to her. But she does not allege that she submitted her resignation against her will or explain how a delay in receiving a form related to collecting retirement funds or signing a letter of resignation deprived her of the ability to pursue a personal injury claim against the City. Markley's complaint is thus insufficient under CR 9(b) and the trial court did not err in dismissing her fraud claim.

B

Markley also asserts that a tolling of the statute of limitations is warranted. We disagree.

An action for fraud must be commenced within three years of discovery by the aggrieved party of the facts constituting fraud. RCW 4.16.080(4). Our Supreme Court has consistently held that "equitable tolling is a remedy to be used sparingly," and, in civil cases, has identified four conditions that must be met for a court to grant such relief:

> Washington law allows equitable tolling [1] when justice requires. The predicates for equitable tolling are [2] bad faith, deception, or false assurances by the defendant and [3] the exercise of diligence by the

> plaintiff. In Washington equitable tolling is appropriate [4] when consistent with both the purpose of the statute providing the cause of action and the purpose of the statute of limitations.

Fowler v. Guerin, 200 Wn.2d 110, 515 P.3d 502 (2022).

Here, the facts that Markley relies on to assert fraud were known to her in 2016 and the complaint was filed more than three years later. Additionally, none of the required conditions for tolling the statute of limitations are present in Markley's complaint. Thus, dismissal with prejudice of Markley's fraud claim was appropriate. See Elliot Bay Adjustment Co., Inc. v. Dacumos, 200 Wn. App. 208, 212, 401 P.3d 473 (2017) (dismissal with prejudice is appropriate where dismissal without prejudice would be pointless).

We affirm.

Mann, J.

WE CONCUR:

Díaz, J.

Hazelrigg, ACJ