

If the Plaintiffs file an amended pleading, at the time of that filing, Plaintiffs shall lodge with the Court, and serve on the Parties, a copy of that amended pleading, redlined, to show any changes made to the prior pleading.

Motion No. 1- Demurrer by Berger Kahn as to Individual Plaintiffs

Plaintiffs objections to the Demurrers and Motions to Strike by Berger are overruled. The Demurrer to the First and Second Causes of Action are sustained without leave to amend. The Demurrers to the remaining Causes of Action are sustained, 45 days leave to amend.

The statute of limitations bars all the claims as Plaintiffs allegations of late discovery are insufficient. If Plaintiffs are relying on fraudulent concealment to toll the statute, Plaintiffs must plead that fraudulent concealment with the same specificity as with any other allegation of fraud. Additionally, Plaintiffs each must plead and prove that they could not have discovered the wrongdoing despite reasonable diligence. Fraudulent concealment by one Defendant does not toll the statute as to others.

Plaintiffs cannot be imputed with knowledge of others who are all alleged to be acting for their own interests and contrary to the interests of the Plaintiffs.

The First and Second Causes of Action attempt to re allege the wrongdoing that took place in 2001 and fail in that regard as there can be no reliance or causation for the same wrongdoing occurring in 2006. As to the Fraudulent Concealment and Constructive Fraud Causes of Action, Defendant does not address the allegations of Par 537 et seq., and the same allegations in other parts of the pleading.

As to the allegations of Elder Abuse, the allegations are totally confusing as to which Defendant is liable here (Para. 689) and there are no allegations showing that Allen or Berger obtained any property. Berger cannot conspire with or aid and abet Allen, as Berger can only act through an agent.

The receipt of a specified amount of fees received by Berger can constitute conversion.

A cause of action for Negligent Hiring or Retention is stated. Plaintiffs are not attempting to allege that Defendant's knowledge of the lawsuits constituted notice, Plaintiffs are attempting to allege Defendant's knowledge of the wrongdoing done by Allen, not lawsuits themselves; the fact that the lawsuits were settled or dismissed being irrelevant.

The allegations are sufficient to state a cause of action for Legal Malpractice and Breach of Fiduciary Duty. The allegations are sufficient in that there are allegations to the effect that during the time Allen was employed by Berger, he created GSF to defraud Plaintiffs. Defendants don't address these allegations.

A cause of action is stated for Violation of the "Prudent Investor Rule." Contrary to the assertions of Defendant, Plaintiffs do allege that Novell delegated functions to Berger. (Par. 1152). As the trust instruments were used as a vehicle for fraud, their included terms cannot preclude liability.

For the reasons noted by Defendant, the RICO claim fails. Plaintiffs cannot join the Opposition by the Entity Plaintiffs as the Entity Plaintiffs do not have the same substantive rights as the Individual Plaintiffs. That is why it is appropriate to bring separate Demurrers.

Motion No. 2- Demurrer by Berger Kahn as to Trust and Entity Plaintiffs

The Demurrer is **Sustained** without leave to amend. Defendant argues that none of the misrepresentation claims can be asserted as Novell cannot logically have been misled by Allen. That is entirely correct. One cannot defraud oneself. Plaintiffs argue there is reliance by the beneficiaries. Yes, and that is why they may have a cause of action for their interests, but not the trusts. The entities have no beneficiaries. Plaintiffs argue, without any legal authority, that the trustee is not the only one who could be the recipient of the misrepresentations and that he is not the only one who has standing. First of all, the Trustee is the only one who could receive the misrepresentations as he is the only one who acts on behalf of the trusts. As to standing, that is not the issue, the issue is reliance. The claims are barred.

It doesn't matter that Meyer is now the Trustee, the fact is there is no cause of action so no one can pursue it.

The claims are all barred by the statute of limitations on their face. Plaintiffs refer to the arguments made by them with regard to the Individual Plaintiffs, but those do not apply as the Individual Plaintiffs do not have the same substantive rights as the Entity and Trust Plaintiffs.

The Cause of Action for conversion does not lie. The fact that Berger allowed GSF to have offices in the building does not constitute conversion.

The other Causes of Action are all based on the alleged fraudulent scheme by Allen and Novell and, as that scheme is not actionable, these Causes of Action are not actionable.

Motion No. 3- Motion to Strike by Berger Kahn

The Motion is **Granted** as to the punitive damages in relation to the Causes of Action to which demurrers have not be sustained, **without leave to amend**. The Motion is denied in all other respects.

While the Snyder, Sliepka and Lloyd's cases themselves are not relevant, the facts alleged in them, if proven otherwise, may be.

If Defendants used entities to transfer sums obtained by fraud, so the funds couldn't be traced, that is money laundering by Defendant's definition.

Defendant is a corporation and therefore punitive damages may only be pursued if certain conditions are alleged, as defined by CCP Section 3294(b) and the allegations are insufficient here.

Motion No. 4- Special Proceeding and Motion by Berger Kahn

The Motion is **Granted in part**. All allegations of conspiracy as to Berger are stricken. Plaintiffs shall not rely on any such allegations and shall not assert any allegations of conspiracy as to Berger unless they meet the requirements of the statute. Plaintiffs are bound by their prior pleadings, even if they now contradicted by a subsequent pleading. Did or did not CN Management, Argimass, Clarke Novell Management and Clarke Novell LLC conspire with the other Defendants, including the law firms? Why were those allegations deleted? Those are part of the alleged scheme by Defendants, so why are they not now part of the scheme? Plaintiffs have not explained the omissions of these allegations and they are thus bound by them. As Plaintiffs have not complied with the provisions of Civil Code Section 1714.10, the Motion must be granted.

Plaintiffs argument that the Section does not apply to Law Firms would make the statute nonsensical

and therefore it cannot be read in that way. Berger only acts through is agent, and that is the source of its liability, so it can invoke its agent's defenses. The reasoning of *Pavicich* is misguided and has not been followed by other Courts. See, *Panoutopoulos v. Chambliss* (2007) 157 Cal. App. 4th 297.

The allegations of the Second Amended Complaint do not show any exemption applies here. Berger owed no independent duty to Plaintiffs, although Allen may have. The financial gain of receiving attorneys fees is not independent of the attorney-client relationship.

Plaintiffs should identify all conspiracy allegations involving Berger to the Court and they all should be stricken. If the Plaintiffs file an amended pleading, at the time of that filing, Plaintiffs shall lodge with the Court, and serve on the Parties, a copy of that amended pleading, redlined, to show any changes made to the prior pleading. Plaintiffs shall particularly identify all allegations of conspiracy that have been stricken as to Defendant Berger Kahn.

Motion No. 5- Demurrer by Novell Defendants

The Demurrer is **Overruled**. The question of whether an attorney-client relationship arose is ultimately one of fact and there are sufficient allegations to allow the issue to proceed beyond demurrer.

Motion No. 6. Motion to Strike by Novell Defendants

The Motion is **Denied**. The question of whether an attorney client relationship arose is ultimately one of fact and there are sufficient allegations to allow the issue to proceed beyond the Motion to Strike.

Motion No. 7 and 8. Joinders by Novell Defendants

The Joinders are **Denied**. These Defendants cannot join the other Defendants' Motions as these Defendants do not have the same substantive rights as the Defendants who are sought to be joined nor is the basis of liability the same.

Motion No. 9. Demurrer by Kostic Defendants

The Demurrer is sustained, 45 days final leave to amend.

The allegations of conspiracy are devoid of fact and amount to no more than legal and factual conclusions. They do not support liability. Once more, Plaintiffs had alleged the misrepresentations were made to Novell who was acting as Ruth Stueve's agent and Novell defrauded her. That does not make these Defendants liable for Ruth Stueve's agents acts when he was acting on her behalf. Now Plaintiff alleges a letter of 2009. The specifics of that Letter and the who, what, where when and how are not alleged. In addition, the Letter of 2009 doesn't change anything and was not relied upon in any event. At oral argument Plaintiff characterized the 209 letter as a "lulling letter", but that would be the case, only if the Defendant had committed wrongdoing earlier. Plaintiffs had already exchanged their policies. The allegations of causation and damages are far too nebulous to maintain liability against these Defendants. The other allegations as to these Defendants fail to show how they are actionable and how they brought harm to the Plaintiffs. Plaintiffs will need far more facts to visit liability upon these Defendants.

Motion No. 10- Motion to Strike by Kostic Defendants

The Motion to Strike is taken **Off Calendar** as moot, as the Demurrer has been sustained.

Motion No. 11- Demurrer by Defendant Allen

The Demurrer is **Sustained with 45 days leave** to amend as to the Cause of Action for Elder Abuse, **Sustained without leave to amend** as to the Rescission Cause of Action and **Overruled** in all other

respects.

For the reasons stated previously by the Court, the Demurrer on the basis of another action pending is overruled. As to the RICO Cause of Action, the allegations are sufficient. Whether the notes were of the type as to constitute securities, is a question to be answered only after a trier of fact has reviewed all material facts. In addition, the Cause of Action does not only encompass allegations as to notes to impose liability, so that a demurrer will therefore not lie.

Rescission does not lie as Allen as he was not a party to any alleged contract.

As to the Cause of Action for Edler Abuse, this Cause of Action is barred by the statute of limitations, particularly as to those Plaintiffs who are deceased, but equally as to the others as the allegations of late discovery are insufficient. The allegations of late discovery and fraudulent concealment are factually devoid and must be pled specifically. Fraudulent concealment by other Defendants does not toll a statute as to those Defendants who did not fraudulent conceal.

Motion No. 12. Motion to Strike by Defendant Allen

The Motion is **Denied**. While the Snyder, Sliepka and Lloyd's' cases themselves are not relevant, the allegations of wrongdoing, if proven otherwise, may be. The allegations of extortion are sufficient. The allegations of fear must be accepted as true.

Motion No. 13- Demurrer by Defendant Buchalter Nemer

The Demurrer is **Overruled**.

For the reasons stated previously by the Court, the Demurrer on the basis of another action pending is overruled. As to the RICO Cause of Action, the allegations are sufficient. The issue of whether the notes were of the type as to constitute securities is a question to be answered only after a trier of fact has reviewed all material facts. In addition, the Cause of Action does not only encompass allegations as to notes to impose liability, so that a demurrer will therefore not lie.

Motion No. 14- Joinder and Motion to Strike by Defendant Buchalter Nemer

The Joinder is **granted**, as Buchalter has the same substantive interests as Allen and the allegations against Buchalter are the same as those against Allen. Buchalter's liability only arises through the actions of Allen, its agent.

Motion Nos. 15 and 16- Joinder by Novell Defendants

The Joinder is **granted** as to Item Nos. 1 and 3 as the Joining Defendants interests are the same as the Defendants to whom the joinder is directed. It is **denied** as to the remainder of the Items, as the interests and allegations are not the same.

The Clerk shall serve Defendant Berger Kahn, who shall give immediate Notice.