

***Zakk v. Diesel* (2019) 33 Cal.App.5th 431**

An amended complaint consistent with a previous complaint's allegations of a specific contract, but omitting allegations of an overarching contract, was not a sham pleading.

FACTS/PROCEDURE

George Zakk was the executive producer for several films by One Race Films, Inc, which is owned by Vin Diesel. In March 2016, Zakk brought suit against Diesel, One Race Films, Inc., and Revolution Studios for breach of an oral contract, breach of an implied-in-fact contract, intentional interference with contractual relations, quantum meruit, promissory estoppel, and declaratory relief. Zakk alleged that he had an oral/implied-in-fact contract with Defendants under which Zakk would act as Executive Producer for various One Race films and receive compensation for each film ranging from \$250,000 to \$275,00. The alleged contract also stated that Zakk would receive an Executive Producer credit and identical compensation for any sequels produced, regardless of Zakk's involvement in those sequels. Specifically, Zakk claimed in his suit that he was entitled to an Executive Producer credit and compensation for the xXx sequels (xXx was a 2002 film which Zakk worked on and developed for Defendants).

During the pleadings stage, Zakk filed three amended complaints, and Defendants responded each time with demurrers. In the final demurrer, Defendants alleged that Zakk's third amended complaint was a sham pleading for two reasons: (1) in the third amended complaint, Zakk alleged the existence of multiple contracts (one for each film), while previously, Zakk alleged the existence of only a single contract (applicable to all films); and (2) in the third amended complaint, Zakk adjusted the range of compensation he alleged he was entitled to receive from the previous complaints. Defendants also filed demurrers arguing that Plaintiff's breach of oral contract claim, and its derivative claims, was barred by the statute of frauds, the quantum meruit claim was barred by the statute of limitations, and the promissory estoppel claim was improperly raised without leave of the court. The trial court sustained all of Defendants' demurrers, finding that the third amended complaint was a sham pleading and Zakk's remaining claims were barred for the reasons stated above.

HOLDING/DISCUSSION

The Court of Appeal for the Second District affirmed with respect to the promissory estoppel claim and reversed with respect to all other claims. Under the sham pleading doctrine, a party may not remedy defects in a complaint by "adding facts inconsistent with those of the previous pleadings." Here, Defendants argued Zakk's third amended complaint was a sham pleading because Zakk previously alleged the existence of only one contract but later alleged the existence of multiple contracts. The court rejected Defendants' argument, finding the prior complaints did in fact allude to multiple contracts. The court held the single contract was actually a "contract to enter into separate contracts with respect to each film, because it alleged a range of compensation and credits." Thus, although the previous complaints did not specify multiple contracts, they alluded to a single overarching contract to create further contracts. Defendants also alleged that Zakk's third amended complaint was a sham pleading because of the changes in compensation terms. The court rejected Defendants' argument, finding that plaintiffs may amend their pleadings to change inaccurate facts that result from merely "faulty recollection." Therefore, the court held Plaintiff's third amended complaint was improperly dismissed as a sham pleading.