

Relation-back doctrine cannot save a cause of action if the original complaint fails to state facts sufficient to provide notice of the essential nature of the claim.

FACTS AND PROCEDURE

In May 2007, a fire broke out at Lambirth Trucking's timber processing facility in Colusa, California, and the fire spread to a neighboring property owned by pro se plaintiff Vincent Scholes.² Scholes filed his original complaint three years to the day after the fire, alleging a "dispute compensation on insurance claim" and loss of use of property, suffering general and property damages. Scholes amended the complaint in January 2011 for damages to property and crops. Defendants moved for judgment on the pleadings, which was granted with leave to amend. In August 2011, Scholes amended his complaint to include a claim for trespass. Defendants demurred on the basis of the statute of limitations, which was granted with leave to amend.

In November 2011, Scholes filed his third amended complaint, alleging negligent trespass, intentional trespass, and strict liability. Defendants demurred on the basis of the statute of limitations, which was granted. This appeal followed.

DISCUSSION

A. Standard of Review

Where the trial court sustains the demurrer without leave to amend, the court must decide whether there is a reasonable possibility the plaintiff can cure the defect with an amendment. The plaintiff bears the burden of proving an amendment would cure the defect.³ On appeal, a party challenging an order has the burden to show error by providing an adequate record and making coherent legal arguments, supported by authority, or the claims will be deemed forfeited.⁴

B. Statute of Limitations for Trespass

In 1982 the Supreme Court held that trespass may be committed by consequential and indirect injury as well as by direct and forcible injury.⁵ In assessing liability for trespass, there is no distinction between a defendant's act of lighting a fire or defendant's negligence in allowing the fire to escape. Thus, a three-year statute of limitations, as opposed to a two-year statute for negligence, applies to a cause of action for trespass under Code of Civil Procedure section 338, subdivision (b).

C. Relation-Back Doctrine

Unless an amended complaint relates back to a timely filed original complaint, it will be barred by the statute of limitations.⁶ Under the relation-back doctrine, in order to avoid the statute of limitations, the amended complaint must rest on the same general set of facts as the general complaint, refer to the same accident and same injuries as the original complaint, and refer to the same instrumentality as the

¹ Use note: The Supreme Court of California granted review in this matter on June 21, 2017. See *Scholes v. Lambirth Trucking, Inc.*, 2017 Cal. LEXIS 4657.

² Defendants are represented by James Anwyl and Lynn Garcia.

³ *Gomes v. Countrywide Home Loans, Inc.* (2011) 192 Cal.App.4th 1149, 1153.

⁴ *Ballard v. Uribe* (1986) 41 Cal.3d 564, 574-575.

⁵ *Wilson v. Interlake Steel Co.* (1982) 32 Cal.3d 229, 232.

⁶ *Barrington v. A. H. Robins Co.* (1985) 39 Cal.3d 146, 150.

original complaint.⁷ The requirement that the complaint allege ultimate facts forming the basis for the plaintiff's cause of action is central to the relation-back doctrine and the determination of whether an amended complaint should be deemed filed as of the date of the original pleading.⁸

Here, Scholes's original complaint alleges a cause of action for "[d]ispute compensation on insurance claim." The relief sought is "compensation for property loss." Finally, the complaint alleges "[d]efendants have accepted liability, dispute amount of damages from fire." Nothing else is listed in or attached to the original complaint.

The original complaint, devoid of factual allegations, fails to meet Code of Civil Procedure section 425.10, subdivision (a)'s minimal fact pleading requirement. The original complaint does not identify the property at issue or specify the damages suffered; it merely lists "loss of use of property" and "property damage." The complaint fails to specify the date, origin, or scope of the fire. The original complaint does not set forth the relationship between the parties or any duties owed to Scholes by Lambirth. Nor does the original complaint specify any causes of action except for checking the box for "Property Damage." Nothing in the original complaint sets forth any factual basis for Scholes's subsequent claims for negligent trespass, intentional trespass, or unnatural activity trespass. It is impossible to even infer the nature of any dispute between Scholes and Lambirth.

Because Scholes's original complaint failed to put Lambirth on notice of any cause of action against it, the amended complaint cannot relate back to the original complaint.

D. Civil Code section 3346

Civil Code section 3346, which authorizes double damages for wrongful injuries to timber or trees and provides for a five-year statute of limitations, does not apply to property damage from negligence.⁹

The *Gould* court considered the legislative history of Civil Code section 3346 and Health and Safety Code sections 13007 and 13008, which states "[a]ny person who allows any fire burning upon his property to escape to the property of another, whether privately or publicly owned, without exercising due diligence to control such fire, is liable to the owner of such property for the damages to the property caused by the fire." The court concluded that the history indicates that the Legislature set up a statutory scheme concerning timber fires completely separate from the scheme to meet the situation of the cutting or other type of injury to timber.

Although the court in *Kelly v. CB&I Constructors, Inc.* (2009) 179 Cal.App.4th 442 disagreed with *Gould*, *Kelly* did not consider the legislative history or purposes behind the two sets of statutes. Thus, *Gould* remained viable and controlling in the Third District Court of Appeals—setting up the appellate court split with *Kelly* and the grant of review by the California Supreme Court.¹⁰

⁷ *Norgart v. Upjohn Co.* (1999) 21 Cal.4th 383, 408–409.

⁸ *Davaloo v. State Farm Ins. Co.* (2005) 135 Cal.App.4th 409, 415.

⁹ *Gould v. Madonna* (1970) 5 Cal.App.3d 404, 406–407.

¹⁰ The federal district court adopted *Kelly*'s analysis in *U.S. v. Sierra Pacific Industries* (E.D.Cal. 2012) 879 F.Supp.2d 1096.