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NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

EVANGELINA RUIZ, Plaintiff and Appellant, v. CARTER & CARTER, APLC, Defendant and Respondent.	E068632 (Super.Ct.No. RIC1510031) OPINION

APPEAL from the Superior Court of Riverside County. Daniel A. Ottolia, Judge. Affirmed.

Law Offices of David Kestner & Associates and David Kestner for Plaintiff and Appellant.

Law Office of Christopher C. Carter and Christopher C. Carter for Defendant and Respondent.

Plaintiff and appellant Evangelina Ruiz appeals the grant of summary judgment in favor of defendant and respondent Carter and Carter, APLC (Carter). Ruiz began work as a legal assistant with Carter in 2007. In September 2011, Christopher Carter

(Christopher)[1]accepted a tort case involving black water and mold in a house. Ruiz was assigned to inspect documents in the case, which she alleged contained mold and mold spores. Ruiz became ill. Ruiz filed a worker's compensation claim but Carter advised Ruiz it did not carry worker's compensation insurance during the time that she alleged to have been sickened by the documents.

Ruiz filed a lawsuit in the trial court and with the Worker's Compensation Appeals Board (WCAB). The appeal here concerns the second amended complaint (SAC) filed in the trial court, which alleged one cause of action for premises liability. Carter brought a motion for summary judgment (Motion), which was granted by the trial court. Ruiz appeals the grant of Carter's Motion claiming that (1) because Carter was an illegal uninsured employer, she only had to prove worker's compensation causation, which is a lower standard than the civil causation standard used by the trial court in granting the Motion; (2) pursuant to Labor Code section 3708, Carter had the burden to prove it was not negligent; and (3) the trial court erred by rejecting Ruiz's argument when she filed the first amended complaint, that she could allege different theories of negligence

We conclude the Motion was properly granted and affirm the judgment.

[1] We use Mr. Carter's first name to distinguish him from the law firm. No disrespect is intended.

FACTUAL AND PROCEDURAL HISTORY

A. FACTUAL HISTORY

The following facts are taken from the separate statement of undisputed and disputed material facts filed in support of the motion. Carter was a law firm incorporated and in good standing. Beginning in October 5, 1994, Carter occupied the office building located at 1025 South Main Street in Corona. Carter did not own the building or office space. Christopher was an attorney and officer for Carter. He specialized in mold and mold remediation cases.

Ruiz was employed by Carter from 2007 through August 2014 as a legal assistant. In September 2011, Carter was engaged to work on a case entitled *Buchanan v. Twin Rock Partners* (*Buchanan*). Ruiz claimed she became ill because she had been exposed to mold while handling documents in the *Buchanan* case at Carter's office. Ruiz performed no tests for mold or septic water at Carter's office or on the *Buchanan* files between 2011 and 2015. Ruiz insisted the documents were destroyed by Christopher so they could not be tested but Christopher denied the documents were destroyed; they were returned to the plaintiff in the *Buchanan* case.

B. PROCEDURAL HISTORY

1. *FIRST AMENDED COMPLAINT AND DEMURRER*

On October 13, 2015, Ruiz filed her first amended complaint (FAC) against Carter, and Christopher as an individual (collectively, Carter Defendants). Her causes of action were for negligence per se, negligence and premises liability. She alleged she had been employed by Carter from August 2007 until August 2014. Carter took the

Buchanan case in 2011. Ruiz worked on the case from September 2011 until July 2014. She insisted she became ill from the mold spores on the documents. At one point, she was rushed to the hospital and thereafter filed a workers compensation claim with the WCAB. Ruiz additionally alleged that Carter had canceled its worker's compensation insurance in September 2002. Christopher advised his staff that he was not required to carry worker's compensation insurance.

Ruiz alleged the first cause of action as negligence per se. The Carter Defendants had a legal duty to have procedures for identifying workplace hazards and for correcting unsafe and unhealthy conditions. The Carter Defendants had breached that legal duty by failing to correct the unsafe and unhealthy conditions in their office. Ruiz suffered damages including physical injury, pain and suffering. The second cause of action was for negligence. Ruiz alleged that for more than six months, the Carter Defendants were aware of the hazardous conditions at the Corona office but did nothing to fix it. The third cause of action was for premises liability. The Carter Defendants were in possession and control of the Corona office. They were negligent in the maintenance of the Corona office by failing to keep the work place free from mold. It was clear there was mold in the location and employees were harmed. Ruiz sought general and special damages, attorney fees pursuant to Labor Code section 3709, and costs of suit.

The Carter Defendants filed a demurrer, which has not been included in the record. Ruiz also apparently filed opposition to the demurrer, which also has not been included in the record. A hearing on the demurrer was conducted on March 2, 2016.

The trial court granted the demurrer to the first cause of action without leave to amend finding it was an evidentiary presumption and not an independent cause of action. As for the second cause of action for negligence, the Carter Defendants had apparently argued in the demurrer that it was redundant; the third cause of action for premises liability was the same. The trial court granted the demurrer to the second cause of action without leave to amend finding, "plaintiff does not address this argument in her opposition and appears to concede the issue."

The trial court found that Ruiz's cause of action for premises liability accrued when she discovered, or had reason to discover, the cause of action. The allegations in the FAC demonstrated that Ruiz first was on notice in early 2013 but did not file her FAC until August 2015. As such, the third cause of action would be barred by the statute of limitations. However, the allegations in the FAC showed that she first filed a worker's compensation claim, which was denied because Carter did not maintain the appropriate worker's compensation insurance. The trial court noted that the doctrine of equitable tolling may apply but Ruiz had to plead facts justifying its application.

The trial court tentatively ruled that Ruiz would be given leave to amend the FAC as to the premises liability cause of action. Ruiz's counsel stated, "As far as the second cause of action for negligence, it's common knowledge and within the scope of the . . . pleading requirements or the pleading rules that somebody can provide different theories of negligence." The trial court interrupted and did not want to hear any further argument.

2. *SECOND AMENDED COMPLAINT*

On April 1, 2016, Ruiz filed the Second Amended Complaint (SAC) raising one cause of action for premises liability. Ruiz again named Carter and Christopher. The facts alleged were essentially the same as in the FAC. She additionally alleged that on September 16, 2014, she filed an application for adjudication with the WCAB claiming she was injured by the condition of Carter's location. As such, even if her suit in the trial court was not filed within the relevant statute of limitations, the deadline for filing the lawsuit was extended by the time during which she was seeking worker's compensation benefits. Moreover, the instant lawsuit and the worker's compensation claims involved the same facts that put Carter on notice of the information it needed to defend the instant suit. The WCAB claim was still ongoing.

She alleged as to the cause of action for premises liability, Christopher at all times was in charge of the location of the law firm; Christopher was negligent in maintaining the office by failing to keep the location free from harmful effects of mold and other hazardous material; and an unsafe condition existed at the office.[2]

3. *SUMMARY JUDGMENT MOTION*

On March 16, 2017, Carter filed the Motion.[3] The Motion first alleged that the single cause of action in the SAC was time barred pursuant to Code of Civil Procedure

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[2] In the Motion, Carter references exhibits attached to the SAC. Those exhibits have not been included in the record on appeal.

[3] Christopher was not a party to the Motion as he had been dismissed on February 6, 2017.

sections 335.1, 338, and 340.8. Equitable tolling was inapplicable because she failed to provide timely notice of her injury to Carter.

Carter also contended that Ruiz had no evidence of any mold, hazardous condition or hazardous material within Carter's business during her employment. In proving a claim for premises liability, Ruiz had to prove the elements of duty, breach, causation and damages. First, Carter was not the owner of the building in which the office was located; it only rented the location. Further, Ruiz had failed to show the existence of any mold or mold spores in the office. Ruiz had produced no admissible evidence that any "mold or dangerous condition" was on the documents or that it caused her alleged injuries. Ruiz admitted in response to interrogatories that she possessed no evidence that any hazardous condition or materials existed at Carter's office or that it was the direct cause of her injuries. Her entire claim was speculative.

Carter presented a declaration from Christopher. Christopher had executed articles of incorporation and registered as a professional law corporation on October 20, 1994. Carter had occupied its office since 1994 and had a month-to-month lease with the landlord. Christopher had never been informed by the landlord that the office contained mold or other hazardous materials. Christopher had handled numerous cases over the years involving mold and remediation. Christopher had no knowledge that any of the documents in the *Buchanan* case had mold. He was unaware of any documents handled by Ruiz while working for Carter that contained hazardous substances.

Exhibits attached to the Motion included the Carter articles of incorporation. They also included the claim filed with the WCAB on September 14, 2016, by Ruiz. She

alleged a cumulative injury of exposure to mold and black water occurring between August 2013 and August 2014.

Ruiz's responses to the requests for admissions were provided with the Motion. She admitted to all of the requests for admissions except for one question. She admitted she had no medical training. She admitted to having performed no testing on any of the documents from the *Buchanan* case to determine the presence of mold or septic water. She had performed no testing on any document from Carter's office to determine if it contained mold. Ruiz also admitted she had performed no testing on anything in Carter's office to determine if it contained mold or septic water or other hazardous material.

A portion of the August 23, 2016, deposition of Mayra Silhy was included with the Motion. Silhy explained she was a physician's assistant. She was qualified to make her own diagnoses, and only in more complicated cases did she consult with her supervising doctor. Silhy saw Ruiz at her clinic on January 17, 2012. Ruiz advised Silhy that Ruiz had been exposed to mold at work. Silhy could not confirm that Ruiz in fact had been exposed to mold. The exposure was never verified. Ruiz complained of a rash. Ruiz provided no clothes or documents to test.

Silhy told Ruiz that based on the location of the rash and lesions—on her bottom and back of her legs— it was more likely something she was sitting on was causing the reaction rather than documents. Ruiz was prescribed allergy medicine.

Silhy saw Ruiz again on February 13, 2012. Ruiz told Silhy she had fainted the prior day. She was diagnosed with a strep bacterial infection. She also saw Silhy on June 27, 2012; she was complaining of heart palpitations. Ruiz informed Silhy her father

had a history of heart disease and diabetes. Silhy diagnosed Ruiz with a thyroid problems. In August 2012 or 2013, Silhy diagnosed Ruiz with sinusitis. Silhy did not know the cause; it could be hay fever or another allergy. Silhy believed she had seen Ruiz before January 17, 2012, regarding complaints of allergy symptoms.

4. *RUIZ'S OPPOSITION TO THE MOTION*

Ruiz filed opposition to the Motion (Opposition) on May 18, 2017. Ruiz alleged that the case was filed timely and that her injury was cumulative.

Ruiz presented the declaration of Lori Gluck. Gluck was employed by Carter from 2012 through 2015. Gluck declared the office was known to have mold. Air purifiers were brought to the office by Christopher in 2013 and 2014 because "some" employees were having allergy symptoms. Christopher threw away the *Buchanan* case documents. She declared, "During the *Buchanan* case, I experienced allergic symptoms: itchiness, water[y] eyes." Gluck heard Ruiz tell Carter in "early to middle 2014" that she was suffering from symptoms such as having headaches and trouble breathing, which she related to the *Buchanan* case.

Ruiz included a report signed by Samuel Chan, M.D., J.D., Medical Director of Coast Medical Group, Inc. (Coast). There was no date on the report but Dr. Chan stated Ruiz was seen by him on August 1, 2016. The report included prior medical treatment. Ruiz reported coughing and a tingling sensation in her throat at work between August 2013 and August 2014. She could not get out of bed and had no strength. She had stomach, breast and ear pain. She started treating at Coast in October 2014. She was seen several times between November 2014 and November 2016. Dr. Chan recounted

times that Ruiz was seen at Allergy Asthma Care Center, Inc. and Inland Pulmonary Specialists. It was not clear whether these doctors were part of Coast.

In June 2014, Dr. Katz of Allergy Asthma Care Center determined that Ruiz was allergic to pollens, animal dander and food. In July 2014, she was found by Katz to be hypersensitive to dust mites, Aspergillus Fumigatus and Aspergillus Niger. In August 2014, Ruiz saw Dr. Anoop Maheshwari at Inland Pulmonary Group for "complaints of shortness of breath, cough and exposure to mold at work." She was diagnosed with shortness of breath and cough. She was seen by the same doctor several times in September and October 2014 complaining of a myriad of symptoms including shortness of breath, headaches and nausea. In February 2015, Ruiz was seen by a doctor at Coast; she complained of headaches, dizziness, neck pain, peripheral neuropathy and muscle spasms, insomnia and depression.

Psychological testing conducted at Coast revealed she suffered from depressive disorder and posttraumatic stress disorder. Dr. Chan concluded, "Based upon the patient's clinical presentation and described history, combined with these psychological test results, there do not appear to be any non-industrial factors of causation. [¶] In my opinion, I do not believe the patient would suffer her present psychiatric condition if it had not been for the physical injury she experienced at her job."

Dr. Chan examined Ruiz. Dr. Chan reported her "nasal airways were patent" and no "nasal mucosa." She was diagnosed with exposure to mold, Gastroesophageal Reflux Disease, chronic cough, dyspnea and gastritis. Dr. Chan concluded "based on reasonable medical probability, it is my opinion that this patient did sustain industrial injury as

described in this report." Dr. Chan stated Ruiz would need further medical treatment and could return to work as long it was free of any chemical air pollutants. The reason for Dr. Chan's opinion was listed as "Patient's subjective complaints" and "Objective findings."

Ruiz's counsel, David Kestner, filed a declaration in support of the Opposition. Kestner relied upon the findings of Dr. Chan that Ruiz's injury arose out of the scope of her employment. There remained issues that should survive the Motion including Carter proving the documents were not hazardous or having the jury decide whether the documents or the building were hazardous.

On May 18, 2017, Ruiz filed a declaration from David Buchanan. He claimed to be one of the plaintiffs in the *Buchanan* case. He stated, "I received communication from Christopher Carter in which he stated that he threw away documents I provided him because the documents were making him sick." He claimed to have seen a photograph of the documents in the trash.

5. *CARTER'S REPLY TO THE OPPOSITION*

Carter filed its reply to the Opposition (Reply) on May 26, 2017. Carter first claimed that the SAC was time barred. Ruiz agreed with the undisputed facts that she had no evidence that there was mold in Carter's office or on the documents in the *Buchanan* file. Dr. Chan's report was inadmissible and could not support her claims. Ruiz had not shown any credible or admissible evidence that any injury was caused by the negligence of Carter during her employment. Ruiz alleged for the first time in the Opposition that there was water in the building; she did not allege this in the SAC. There was no admissible evidence that the *Buchanan* documents had been destroyed.

Carter submitted a declaration from the owner of the building where the office was located.[4] The owner attested that between 2008 and 2015 there had been no problems with any of the building's plumbing, toilets or roof. The roof was replaced in 2006 due to age. Gluck was the owners' part-time property manager at the building and had never informed him of problems with the water, toilets or that there was mold at the building during her employment. Further, the owner had a part-time maintenance person who took care of any repairs at the building. He had never reported any problems with the toilets or mold.

Christopher also submitted a declaration in support of the Reply. Gluck worked for Christopher as the office manager from 1999 to 2014. She never advised Christopher of any problems with mold or toilet problems. In May 2014, Christopher was diagnosed with throat cancer. He had to get rid of most of his cases and shut down the office from August 2014 through November 2014. Christopher declared that Buchanan, after losing after a jury trial, picked up his entire file in October 2015. The files were not destroyed. Christopher never told Buchanan that he destroyed documents in the file.

6. *EVIDENTIARY OBJECTIONS*

Carter filed objections to the evidence presented with Ruiz's Opposition. Carter objected to the statements in Gluck's declaration on the grounds of speculation, self-serving, lack of foundation and statements requiring expert testimony. Carter also

[4] The declarant was Charles Carter, who was Carter's brother, and was not a party to the lawsuit.

objected to Ruiz's declaration on the grounds of speculation, lack of foundation, requiring expert testimony, self-serving, vague as to time and based on speculation.

Carter further objected to the declaration from Buchanan as hearsay, speculation and lacked foundation. Carter also objected to the report by Dr. Chan as the report was based on speculation, lacked no foundation as it had no date or declaration, it was not authenticated, and was hearsay.

7. *RULING*

The Motion was heard on June 6, 2017. The trial court first noted that the lawsuit was not really a premises liability case. Ruiz had "not really alleged" how the property was itself dangerous but limited her SAC to the *Buchanan* file, which allegedly contained mold and made her sick. Her true theory was a negligence theory. The trial court noted that Ruiz was alleging she was injured on the job and Labor Code section 3600, subdivision (a) et. seq. applied. Further, Carter lacked worker's compensation insurance. The trial court understood Ruiz's claim was negligence under Labor Code section 3706 and not premises liability.

The trial court noted that an injured employee can bring an action against an employer for damages in the superior court when the employer does not possess worker's compensation insurance. The SAC was a negligence case and Ruiz initially had the burden of proving the injury occurred during the course of employment. The court recited the elements of negligence and stated once it was proven by Ruiz that she suffered an injury at work, it was presumed her injury was a direct result and grew out of the

negligence of the employer. The burden of proof shifted to the employer to rebut the presumption of negligence.

The trial court first found the SAC was timely filed. The trial court sustained Carter's objections to Ruiz's and Gluck's statements that the office contained mold. Further, the SAC only alleged mold in the *Buchanan* file so any allegation of mold in the building was not properly raised. Further, the statements that other employees had the same symptoms had no evidentiary value since there was no expert testimony regarding those accusations. Buchanan's declaration as to Christopher throwing away documents because they made him sick was not sufficient because there was no information as to Christopher's illness.

Further, Dr. Chan's report was clearly prepared for the worker's compensation case. There was no declaration authenticating the report. Further, the only references to mold were that she was allergic to mold. Ruiz's own statements that she was exposed to mold at work were inadmissible hearsay. Finally, Dr. Chan made a final diagnosis of mold exposure but provided no explanation as to how he reached that conclusion; the conclusions lacked foundation and were speculative. The trial court stated, "There is no evidence that this was exposure at work. While this report may be sufficient for workers' comp proceedings, they do not meet the evidentiary burden on summary judgment. [¶] The Court finds that [Ruiz] has not proved causation, which is a necessary element." The Motion was granted.

The judgment on the Motion was filed on June 16, 2017. Ruiz filed a timely notice of appeal.

DISCUSSION

Ruiz's first and second claims in her opening brief, albeit confusing, appear to concede that she was required to show that she suffered an industrial injury. However, she insists the trial court erred by applying the civil standard in determining whether she had an industrial injury rather than the worker's compensation standard. She appears to contend Dr. Chan's report provided the appropriate proof that she was injured at work within the worker's compensation standard. Ruiz proved an industrial injury and the trial court's order granting summary judgment should be reversed because Carter failed to rebut negligence.[5]

A. STANDARD OF REVIEW

"A trial court will grant summary judgment where there is no triable issue of material fact and the moving party is entitled to judgment as a matter of law. A defendant moving for summary judgment must prove the action has no merit. [She] does this by showing one or more elements of plaintiff's cause of action cannot be established

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[5] The trial court considered the claim of premises liability in the SAC to actually be a claim of negligence because Ruiz never alleged that the building itself was making her sick. In Ruiz's third claim on appeal, she insists the trial court erred by denying her argument in favor of the FAC that she could allege different theories of negligence. Initially, it is not clear what Ruiz is arguing. Moreover, the trial court did consider her claim to be negligence and addressed the merits so it is entirely unclear how Ruiz was harmed. " '[D]e novo review does not obligate us to cull the record for the benefit of the appellant in order to attempt to uncover the requisite triable issues. As with an appeal from any judgment, it is the appellant's responsibility to affirmatively demonstrate error and, therefore, to point out the triable issues the appellant claims are present by citation to the record and any supporting authority. In other words, review is limited to issues which have been adequately raised and briefed.' " (*Claudio v. Regents of the University of California* (2005) 134 Cal.App.4th 224, 230.) We will not address this argument made by Ruiz.

or that [she] has a complete defense to the cause of action. At this point, plaintiff then bears the burden of showing a triable issue of material fact exists as to that cause of action or defense." (*Towns v. Davidson* (2007) 147 Cal.App.4th 461, 466; see also *Aguilar v. Atlantic Richfield Co.* (2001) 25 Cal.4th 826, 849 (*Aguilar*).) "A trial court may only grant a motion for summary judgment if no triable issues of material fact appear and the moving party is entitled to judgment as a matter of law." (*Schachter v. Citigroup, Inc.* (2009) 47 Cal.4th 610, 618.)

If the moving defendant meets its burden of showing evidence "that one or more elements of the cause of action . . . cannot be established, or that there is a complete defense to that cause of action . . . the burden shifts to the plaintiff . . . to show that a triable issue of one or more material facts exists as to the cause of action or a defense thereto. The plaintiff . . . shall not rely upon the allegations or denials of its pleadings to show that a triable issue of material fact exists but, instead, shall set forth the specific facts showing that a triable issue of material fact exists as to the cause of action or a defense thereto." (Code Civ. Proc., § 437c, subd. (p)(2); see *Aguilar*, *supra*, 25 Cal.4th at p. 849.) "[A] party 'cannot avoid summary judgment by asserting facts based on mere speculation and conjecture, but instead must produce admissible evidence raising a triable issue of fact.' " (*Dollinger DeAnza Associates v. Chicago Title Ins. Co.* (2011) 199 Cal.App.4th 1132, 1144-1145.)

"In ruling on the motion, the court must 'consider all of the evidence' and 'all' of the 'inferences' reasonably drawn therefrom [citation], and must view such evidence [citations] and such inferences [citations], in the light most favorable to the opposing

party." (*Aguilar, supra,* 25 Cal.4th at p. 843.) Our review of the summary judgment is de novo. (*Claudio v. Regents of University of California, supra,* 134 Cal.App.4th at p. 230.)

B. RUIZ DID NOT MEET HER BURDEN OF PROVING THAT HER INJURY OCCURRED IN THE SCOPE OF HER EMPLOYMENT

There is a strong public policy for employers to compensate their injured employees in California. (*Valdez v. Himmelfarb* (2006) 144 Cal.App.4th 1261, 1267.) "In carrying out this public policy the Legislature has directed the workers' compensation laws 'shall be liberally construed by the courts with the purpose of extending their benefits for the protection of persons injured in the course of their employment.' Normally this liberal construction operates in favor of awarding workers' compensation, not in permitting civil litigation. . . . [H]owever, the Legislature has made an exception to the rule favoring workers' compensation over civil litigation when the employer is illegally uninsured." (*Id.* at pp. 1267-1268, fns. omitted.)

"Labor Code section 3600, subdivision (a) provides that workers' compensation liability 'shall, without regard to negligence, exist against an employer for any injury sustained by his or her employees arising out of and in the course of the employment and for the death of any employee if the injury proximately causes death.' ' "The requirement of Labor Code section 3600 is twofold. On the one hand, the injury must occur 'in the course of the employment.' This concept 'ordinarily refers to the time, place, and circumstances under which the injury occurs.' [Citation.] . . . [¶] On the other hand, the statute requires that an injury 'arise out of' the employment. . . . It has long

been settled that for an injury to 'arise out of the employment' it must 'occur by reason of a condition or incident of [the] employment. . . .' [Citation.] That is, the employment and the injury must be linked in some causal fashion." ' [Citations.] 'The applicant for workers' compensation benefits has the burden of establishing the "reasonable probability of industrial causation." ' " (*South Coast Framing, Inc. v. Worker's Comp. Appeals Bd.* (2015) 61 Cal.4th 291, 297.)

" 'The statutory proximate cause language [of section 3600] has been held to be less restrictive than that used in tort law, because of the statutory policy set forth in the Labor Code favoring awards of employee benefits. In general, for the purposes of the causation requirement in workers' compensation, it is sufficient if the connection between work and the injury be a contributing cause of the injury." (*Nash v. Workers' Comp. Appeals Bd.* (1994) 24 Cal.App.4th 1793, 1809.)

"Labor Code section 3700 requires '[e]very employer' to 'secure the payment of compensation in one or more of the following ways: (a) By being insured against liability to pay compensation by one or more insurers . . . [or] (b) By securing from the Director of Industrial Relations, a certificate of consent to self-insure[.]' Absent compliance with one of these alternatives an employee is not subject to the exclusive remedy of workers' compensation but may bring a claim before the WCAB and a tort action against the uninsured employer." (*Valdez v. Himmelfarb*, *supra*, 144 Cal.App.4th at p. 1268.)

"Sections 3706 and 3715[6] explicitly permit an injured employee to proceed against an uninsured employer in a workers' compensation proceeding and sue the employer in superior court for personal injury damages." (*Le Parc Community Assn. v. Worker's Comp. Appeals Bd.* (2003) 110 Cal.App.4th 1161, 1172.) Labor Code section 3706 states, "If any employer fails to secure the payment of compensation, any injured employee or his dependents may bring an action at law against such employer for damages, as if this division did not apply."

Labor Code section 3708 mandates a presumption not present in other tort actions that the injury to the employee "was a direct result and grew out of the negligence of the employer, and the burden of proof is upon the employer, to rebut the presumption of negligence." Claims in a worker's compensation proceeding and superior court action assert two primary rights: "the statutory right to prompt, certain compensation for all work-related injuries regardless of fault and the common law right to be free of [an] employer's negligence in maintaining [the] work environment.." (*Le Parc Community Assn. v. Worker's Comp. Appeals Bd*., *supra*, 110 Cal.App.4th p. 1173.)

In *Huang v. L.A. Haute* (2003) 106 Cal.App.4th 284 (*Huang*), the court addressed a case brought in superior court pursuant to Labor Code section 3706 and the standard of

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6 Labor Code section 3715 provides in pertinent part, "[Any employee . . .whose employer has failed to secure the payment of compensation as required by this division, . . . in addition to proceeding against his or her employer by civil action in the courts as provided in Section 3706, file his or her application with the appeals board for compensation and the appeals board shall hear and determine the application for compensation in like manner as in other claims and shall make the award to the claimant as he or she would be entitled to receive if the employer had secured the payment of compensation as required."

proving that the injury occurred during the plaintiff's employment. The plaintiff brought a lawsuit against her former employer for injuries she claimed to have occurred in the course of her employment as a maid in the home. The plaintiff's former employer did not possess worker's compensation insurance so the plaintiff brought a suit under Labor Code section 3706. (*Huang,* at p. 285.) A bench trial was held wherein the plaintiff testified she fell off a ladder in her former employer's home. She presented testimony from her medical doctor as to injuries she sustained to her back. After trial was concluded, the court found, " '[b]ased upon all the evidence and the credibility of the witnesses,' " that (1) the plaintiff did not meet her burden of proof "that she was injured at [her former employer's] premises or in her employment by [her former employer]." (*Id*. at p. 288.)

The appellate court upheld the trial court's order, stating "[T]he trial court did not misinterpret Labor Code section 3708 or improperly allocate the burden of proof. [The plaintiff] had the burden of proving by a preponderance of the evidence that she sustained an injury during her employment. If she did so, the employer's negligence would be presumed under section 3708, and the employer would have to prove it was not negligent to avoid liability. However, the trial court found [the plaintiff] did not show 'that she was injured at [her former employer's] premises or in her employment by [her former employers.]' We are not at liberty to interfere with that conclusion if there is any competent evidence to support it." (*Huang, supra,* 106 Cal.App.4th at p. 291.)

The *Huang* court noted, "While Labor Code section 3202 requires workers' compensation laws to be liberally construed, '[n]othing contained in Section 3202 shall

be construed as relieving a party . . . from meeting the evidentiary burden of proof by a preponderance of the evidence. "Preponderance of the evidence" means such evidence as, when weighed with that opposed to it, has more convincing force and the greater probability of truth.' " (*Huang*, *supra*, 106 Cal.App.4th at p. 291, fn. 8.)

Huang has been cited with approval. (*Vebr v. Culp* (2015) 241 Cal.App.4th 1044, 1051 ["if the employee establishes that he or she was injured in the course and scope of his or her employment, section 3708 creates a rebuttable presumption that an uninsured employer was negligent"]; 1 Witkin, Cal. Evidence (2018) Burden, § 112, subd. (11), p. 276.)

Here, Ruiz had the burden of proving by a preponderance of the evidence that she was injured in the Carter offices. *Huang* clearly addresses the evidentiary burden in a case brought pursuant to Labor Code section 3706, which the trial court properly determined was Ruiz's claim in the SAC. Ruiz failed to provide any competent evidence with the SAC to support she was injured at Carter's office. She admitted she did not test any of the documents in the *Buchanan* file. The trial court found that the statements by Ruiz, Gluck and Buchanan—which included that there was mold in the building, that Gluck also got sick when the *Buchanan* file was in the office, and that Christopher destroyed the *Buchanan* file—were not admissible evidence. On appeal, Ruiz does not dispute these evidentiary rulings. The trial court also found that she had not properly plead a claim that the building itself contained mold and would not consider the claim.

Ruiz failed to present competent evidence to show there was a triable issue of fact as to whether the preponderance of the evidence established she in fact was injured at

work due to mold on the *Buchanan* file. The burden of proof did not shift to Carter under Labor Code section 3708 to prove that it was not negligent because Ruiz failed to present competent evidence that she had suffered an injury at work. As such, the trial court properly concluded the SAC did not support her cause of action whether it was for negligence or premises liability. There simply was no evidence that she suffered any injury because of mold at her work.

Ruiz contends the trial court erred by excluding Dr. Chan's conclusion that she suffered an industrial injury. She insists that his report and conclusion the she suffered an injury at work was admissible based on her claim his report would have been admissible in a worker's compensation case.

"A properly qualified expert may offer an opinion relating to a subject that is beyond common experience, if that expert's opinion will assist the trier of fact. [Citation.] Even so, the expert opinion may not be based on assumptions of fact that are without evidentiary support or based on factors that are speculative or conjectural, for then the opinion has no evidentiary value and does not assist the trier of fact. [Citation.] Moreover, an expert's opinion rendered without a reasoned explanation of why the underlying facts lead to the ultimate conclusion has no evidentiary value because an expert opinion is worth no more than the reasons and facts on which it is based." (*Bushling v. Fremont Medical Center* (2004) 117 Cal.App.4th 493, 510.) "Similarly, an expert's conclusory opinion that something did occur, when unaccompanied by a reasoned explanation illuminating how the expert employed his or her superior knowledge and training to connect the facts with the ultimate conclusion, does not assist

the jury." (*Jennings v. Palomar Pomerado Health Systems, Inc.* (2003) 114 Cal.App.4th 1108, 1117.)

Here, Ruiz contends that since Dr. Chan's report would have been admissible in a worker's compensation case, it should have been admitted by the trial court. The trial court should have adopted Dr. Chan's conclusion that she was injured at work. However, she provides no authority that supports this claim. She provides no authority that the evidentiary rules for a tort action in superior court were somehow changed by Labor Code section 3706. The trial court found the references to mold in Dr. Chan's report—including Ruiz's self-serving statement that she was exposed to mold at work and that she was found to be allergic to mold—did not support Dr. Chan's conclusion that she was injured at work. Further, the trial court concluded, "Dr. Chan . . . has a final diagnosis of mold exposure, among other items as well. There is no explanation as to how he got to that conclusion [therefore it is] lacking foundation and speculative." We cannot find this was an abuse of the trial court's discretion.

Moreover, even had the trial court admitted Dr. Chan's report, it would not have supported that Ruiz suffered an industrial injury. In *Huang*, the court addressed the exclusion of evidence on causation. "Huang also contends the trial court erred in refusing to admit three items of evidence: Huang's medical records showing she told her doctor in May 1999 she was injured cleaning a window at work, and her medical bills, as circumstantial evidence of her injuries, and the letter of April 17, 1999 advising L.A. Haute of Huang's workers' compensation claim . . . . Even if any of the court's rulings were erroneous, none of them are pertinent to the court's conclusion that Huang did not

prove her injury occurred during her employment. Huang's account to her doctor is duplicative of her own testimony (and the court allowed Dr. Mitzelfelt to testify to Huang's statements about the accident for the purpose of understanding the basis for his decisions and treatment); Huang's medical bills merely confirm her injury, not how or where it occurred; and Huang called no witness to authenticate the letter to L.A. Haute." (*Huang, supra,* 106 Cal.App.4th at p. 292, fn. 9.)

Here, even if the trial court had additionally considered Dr. Chan's report, it would not have found there was a triable issue as to whether Ruiz was injured at work. Ruiz agreed that she never tested the *Buchanan* documents for the presence of mold. In addition, she never had the building tested for mold. Dr. Chan in his report never stated how he was aware that she was injured at work. He merely recounted all of her doctor visits and symptoms but never stated that mold was clearly present on any files handled at Carter's office. In fact, he could not make such a statement because there were never any tests conducted on the *Buchanan* files or the building.

In Dr. Chan's report, he merely concluded that she was injured at work but provided no explanation how he reached this conclusion other than "Patient's subjective complaints" and "Objective findings." Again, there was no evidence of mold being at Carter's office. The only evidence of mold was based on Ruiz's self-serving statements to her treating physicians that she had been exposed to mold at Carter's office. This was insufficient to support Dr. Chan's opinion that any injuries she suffered were as a result of working at Carter's office. (*Jennings v. Palomar Pomerado Health Systems, Inc., supra*, 114 Cal.App.4th at p. 1117 ["Similarly, when an expert's opinion is purely

conclusory because unaccompanied by a reasoned explanation connecting the factual predicates to the ultimate conclusion, that opinion has no evidentiary value because an 'expert opinion is worth no more than the reasons upon which it rests' ") The Motion was properly granted by the trial court as Ruiz failed to present competent evidence that she was injured at work.

DISPOSITION

The judgment is affirmed. As the prevailing party, respondent is awarded costs on appeal.

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

MILLER
J.

We concur:

McKINSTER
Acting P. J.

FIELDS
J.