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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION FOUR

TIFFANY AVEAU,
Plaintiff and Appellant,
v.
23 BOTTLES OF BEER, LLC,
Defendant and Respondent.

A161334
(Sonoma County
Super. Ct. No. SCV-264645)

Plaintiff Tiffany Aveau appeals a judgment in favor of defendant 23 Bottles of Beer, LLC, doing business as Russian River Brewing Company (Russian River), after the trial court granted Russian River’s motion for summary judgment in Aveau’s action for a common law claim of wrongful termination in violation of public policy. Aveau contends the court erred by using the incorrect statute of limitations to conclude her cause of action was time-barred. Russian River maintains the cause of action was properly dismissed as untimely; Aveau had not pleaded a claim for common law wrongful termination. Because we conclude Aveau’s complaint adequately alleged facts apprising Russian River of her cause of action for wrongful termination in violation of public policy, it was therefore timely filed; the trial court erred in summarily adjudicating this cause of action.

BACKGROUND

I. The Injury and Initial Proceedings

Aveau sustained a work-related injury to her back on September 6, 2016, and was placed on an extended leave of absence until September 15, 2017. Russian River terminated Aveau on September 18, 2017. On April 16, 2018, Aveau filed a workers' compensation petition pursuant to Labor Code section 132a, alleging Russian River had discriminated against her when it fired her due to her work-related injury.

More than a year after her termination, Aveau filed an administrative complaint with the Department of Fair Employment and Housing (DFEH), alleging Russian River discriminated against her due to her work-related injury. That same day, November 20, 2018, the DFEH issued a Notice of Case Closure and Right to Sue letter.

II. The Complaint and Answer

On June 17, 2019, Aveau filed a complaint against Russian River alleging three causes of action: (1) disability discrimination in violation of Government Code¹ section 12940, subdivision (a), (2) failure to engage in a timely, good faith interactive process (§ 12940, subd. (n)), and (3) wrongful termination in violation of the public policy articulated under the Fair Employment Housing Act (FEHA) (Gov. Code, § 12920 et seq.).² The complaint generally alleged Aveau was an employee and Russian River was an employer within the meaning of section 12920 et seq.

¹ All further statutory references are to the Government Code unless otherwise stated.

² Aveau does not challenge the trial court's grant of summary adjudication as to her first and second causes of action.

The section, “General Factual Allegations Common to All Claims,” alleged in part:

“11. . . . Aveau sustained a work-related back injury on September 6, 2016 while working for [Russian River]. She received medical treatment and returned to work with work restrictions.

“12. In May 2017, [Aveau’s] primary treating physician sought to discharge [Aveau] from care, prompting [Aveau] to seek a second opinion. [Aveau] received a second opinion from a different doctor, who took her out of work for two consecutive 6-week periods. After the second 6-week leave ended, [Aveau’s] primary treating physician contacted [Russian River’s] workers’ compensation insurance carrier and said [Aveau] could return to work without restrictions

“13. On or about September 18, 2017, [Aveau] went to work to give Human Resources Director Caroline Burke the doctor’s note releasing her to full duty. When [Aveau] handed this note to Burke, Burke gave [Aveau] a termination notice, telling [Aveau] the employer had to terminate her employment out of concern she would injure herself again, and that they needed to hire someone else.

“[¶] . . . [¶]

“16. In doing the acts complained of herein, [Russian River], through its directors, officers, and managing agents, acted willfully, intentionally, and in flagrant disregard of [Aveau’s] rights under [FEHA], or knew of the unlawful conduct and ratified it”

After realleging the previous paragraphs, the first cause of action, “Disability Discrimination,” alleged in part:

“19. At all relevant times, [Aveau] had a physical disability as that term is defined in Government Code section 12926 insofar as she had an

injury to her back that made it more difficult for her to work. . . . [Russian River] knew of [Aveau's] history of physical disability . . . and treated her as though she had a physical injury that made it more difficult for her to work.

“20. Even with her physical disability . . . , [Aveau] was at all relevant times able to perform the functions of her job with or without a reasonable accommodation.

“21. [Aveau's] actual and/or perceived disability . . . was a substantial motivating reason for [Russian River] to take the adverse employment actions described herein.”

The second cause of action, “Failure to Engage in a Timely, Good Faith Interactive Process,” incorporated the previous allegations and further alleged in part:

“25. [Aveau] requested that [Russian River] make reasonable accommodation for her disability so that she would be able to perform the essential functions of her job.

“26. [Aveau] was willing to participate in an interactive process to determine whether reasonable accommodation could be made so that she could perform the essential functions of her job.

“27. [Russian River] failed to participate in a timely, good faith interactive process with [Aveau] to determine whether reasonable accommodation could be made for her physical disability.”

The third cause of action, “Wrongful Termination in Violation of Public Policy,” is at issue here. After again realleging the prior paragraphs, it further alleged:

“30. In doing the acts alleged herein, [Russian River] violated the public policies codified in the California Fair Employment and Housing Act, Government Code section 12900 *et seq.*, as alleged above.”

Russian River filed an answer to Aveau's complaint, generally denying its allegations and specifically asserting certain affirmative defenses, including those based on statutes of limitations, workers' compensation exclusivity, and insufficiency of allegations to support each and every cause of action.

III. Summary Judgment Proceedings

In April 2020, Russian River filed a motion for summary judgment or, in the alternative, summary adjudication of Aveau's three separate causes of action. In relevant part its motion argued that the undisputed facts established that Aveau failed to comply with DFEH's one-year filing requirement³ and, as such, Aveau's "cause of action for Wrongful Termination in Violation of Public Policy is barred by the applicable Statute of Limitations." Russian River further argued that Aveau failed to plead the three required elements for the equitable tolling of the statute of limitations to apply: "(1) timely notice of her intended 'disability discrimination' to the defendant of the claim; (2) a lack of prejudice to the defendant in gathering evidence to defend the time-barred claim; **and** (3) a demonstration of good faith and reasonable conduct in filing of the later claim."

In opposition, Aveau specifically stated, "In addition to seeking summary adjudication of Ms. Aveau's FEHA claims, [Russian River] also seeks to lump her wrongful termination in violation of public policy (WTVPP) claim in its MSJ. Yet there is no dispute that Ms. Aveau timely brought the WTVPP claim, and [Russian River] has entirely failed to explain why it is subject to summary adjudication." Aveau further argued her wrongful

³ It is undisputed that, at all relevant times, the applicable time period to file an administrative complaint with DFEH was one year. (See § 12960, subd. (e)(1)), Stats. 2017, ch. 799, § 13.)

termination in violation of public policy claim was timely because “FEHA’s one-year statute of limitations for a private right of action does not apply to a common law cause of action for wrongful termination in violation of FEHA’s public policy against disability discrimination. Instead, Code Civ. Proc. § 335.1 applies to a common law cause of action for wrongful termination in violation of public policy tethered to the FEHA.” In support, Aveau cited *Prue v. Brady Co./San Diego, Inc.* (2015) 242 Cal.App.4th 1367, 1382 (*Prue*).

In reply, Russian River asserted that Aveau’s wrongful termination in violation of public policy claim was still untimely because it rested on FEHA violations, which required a timely presuit administrative complaint, which did not occur. Assuming that Aveau was able to “transmorph her FEHA allegations into one sounding in common-law wrongful termination (a ‘*Tameny*’⁴ claim),” Russian River argued Aveau’s claim still failed because “the required legal elements d[id] not exist.”

IV. Summary Judgment Hearing and Trial Court Ruling

The September 2, 2020 hearing on the summary judgment motion largely focused on whether Aveau had established equitable tolling with respect to her FEHA claims. Near the end of the hearing, Aveau’s counsel argued: “[W]e haven’t even talked about the other claims, but I don’t believe there is any basis for the wrongful termination . . . claim being summarily adjudicated since—even though it’s based on the—.” The court interjected, “Well, I think you’re now going beyond the reply.” The court took the matter under submission; there was no further discussion concerning the common-law wrongful termination cause of action.

The court subsequently granted Russian River’s motion for summary judgment on the grounds that it had met its initial burden and made a prima

⁴ *Tameny v. Atlantic Richfield Co.* (1980) 27 Cal.3d 167 (*Tameny*).

facie showing that Aveau’s claims were barred by the statute of limitations under section 12960; the elements for equitable tolling had not been established. The ruling did not specifically call out the common law claim of wrongful termination in violation of public policy or address the applicability of Code of Civil Procedure section 335.1 to this claim.

Aveau timely appealed.

DISCUSSION

I. Standard of Review

We independently review the trial court’s order granting summary judgment and determine if the undisputed facts establish that Russian River is entitled to judgment as a matter of law on its statute of limitations defense. (Code Civ. Proc., § 437c, subd. (c); *Aguilar v. Atlantic Richfield Co.* (2001) 25 Cal.4th 826, 849, 860.)

II. Wrongful Termination in Violation of Public Policy

Aveau contends the trial court erred by summarily adjudicating her wrongful termination in violation of public policy claim because it was timely brought within the applicable statute of limitations set forth in Code of Civil Procedure section 335.1, which provides a two-year statute of limitations for tort actions. Russian River maintains that Aveau’s claim is barred by FEHA’s one-year statute of limitations. Alternatively, Russian River asserts that even if the two-year statute of limitations applies, Aveau’s claim still fails for failing to adequately plead a cause of action for wrongful termination in violation of public policy. Both of Russian River’s arguments fail.

A. Applicable Law

“Although our Legislature has determined that an employment contract is generally terminable at either party’s will,” in *Tameny, supra*, 27 Cal.3d 167, our Supreme Court “created a narrow exception to this rule by

recognizing that an employer's right to discharge an at-will employee is subject to limits that fundamental public policy imposes." (*Green v. Ralee Engineering Co.* (1998) 19 Cal.4th 66, 71; *Tameny*, at p. 172.) "Accordingly, while an at-will employee may be terminated for no reason, or for an arbitrary or irrational reason, there can be no right to terminate for an unlawful reason or a purpose that contravenes fundamental public policy. Any other conclusion would sanction lawlessness, which courts by their very nature are bound to oppose." (*Gantt v. Sentry Insurance* (1992) 1 Cal.4th 1083, 1094, overruled on another point in *Green v. Ralee Engineering Co.*, at p. 80, fn. 6.)

In *Stevenson v. Superior Court* (1997) 16 Cal.4th 880, 905 (*Stevenson*), the California Supreme Court held: "An employee's post-termination failure to exhaust administrative remedies has no bearing on whether the termination violated the public policy expressed through the statutory prohibition against age discrimination, and thus the employee's post-termination administrative default does not preclude assertion of a nonstatutory tort claim for wrongful termination in violation of public policy." In so holding, the court explained: "[W]hen a plaintiff relies upon a statutory prohibition to support a common law cause of action for wrongful termination in violation of public policy, *the common law claim is subject to statutory limitations affecting the nature and scope of the statutory prohibition, but the common law claim is not subject to statutory procedural limitations affecting only the availability and scope of nonexclusive statutory remedies.*" (*Id.* at p. 904, italics added.)

Prue, supra, 242 Cal.App.4th at p. 1383, applied *Stevenson* in a disability discrimination case to conclude "FEHA's one-year statute of limitations (§ 12965) for a private right of action under FEHA is only a

procedural limitation and does not affect the substantive nature and scope of its statutory prohibitions.” (*Ibid.*)

Prue further explained that “[b]ecause FEHA’s provisions may provide the policy basis for a common law tort claim for wrongful termination in violation of public policy, that ‘tort claim is tethered to the meaning of the FEHA.’ (*Estes v. Monroe* (2004) 120 Cal.App.4th 1347, 1355.)” (*Prue, supra*, 242 Cal.App.4th at p. 1383.) The reason for tethering public policy to specific constitutional or statutory provisions is twofold. It avoids judicial policymaking, while ensuring employers have adequate notice of the conduct that will subject them to tort liability for wrongful discharge. (*Esberg v. Union Oil Co.* (2002) 28 Cal.4th 262, 271.)

Accordingly, a *Tameny* claim cannot be based on vague charges of illegal activities “unaccompanied by citations to specific statutes or constitutional provisions.” (*Turner v. Anheuser-Busch, Inc.* (1994) 7 Cal.4th 1238, 1257.) Such charges are insufficient because they put the defendant and the court “in the position of having to guess at the nature of the public policies involved, if any.” (*Ibid.*) It is therefore plaintiff’s burden to provide the specific statutes and regulations on which the claim is based. (*Green v. Ralee Engineering Co., supra*, 19 Cal.4th at p. 84; see *Prue, supra*, 242 Cal.App.4th at p. 1380 [employee sufficiently alleged *Tameny* claim based on FEHA’s public policy against disability discrimination where employee made numerous references to statutory provisions of FEHA elsewhere in the complaint].)

B. Analysis

Consistent with *Prue*, Aveau’s common law tort cause of action for wrongful termination in violation of public policy is not barred by FEHA’s one-year statute of limitations. (*Prue, supra*, 242 Cal.App.4th at p. 1382.)

“Instead, Code of Civil Procedure section 335.1 applies, providing a two-year statute of limitations for tort actions based on injuries to plaintiffs caused by the wrongful act or neglect of others.” (*Ibid.*)

As here, in *Prue*, a former employee brought an action against his employer for wrongful termination in violation of FEHA’s public policy against disability discrimination. (*Prue, supra*, 242 Cal.App.4th pp. 1371–1372.) On appeal, the court reversed the summary judgment because the employee’s action was timely, despite noncompliance with FEHA’s one-year statute of limitations; the two-year statute of limitations for tort actions applied (Code Civ. Proc., § 335.1). (*Prue*, at pp. 1382–1383.) Applying *Stevenson, supra*, 16 Cal.4th at page 904, *Prue* explained that a cause of action for wrongful termination in violation of FEHA’s policy against disability discrimination is “not . . . subject to the procedural requirements or limitations affecting only the availability and nature of nonexclusive remedies under FEHA.” (*Prue*, at p. 1383.)

Under the same reasoning, we conclude FEHA’s one-year statute of limitations (§ 12965) for a private right of action under FEHA is only a procedural limitation that does not affect the substantive nature and scope of its statutory prohibitions. Thus, contrary to Russian River’s assertion, FEHA’s one-year statute of limitations does *not* apply to Aveau’s common law tort cause of action for wrongful termination in violation of FEHA’s public policy against disability discrimination, and Aveau’s failure to exhaust her administrative remedies for the underlying FEHA claims does not, standing alone, bar her wrongful termination claim.

We also disagree with Russian River’s claim that Aveau’s complaint failed to allege sufficient facts to support a wrongful termination claim in

violation of public policy.⁵ In moving for summary judgment, Russian River argued Aveau’s third cause of action for wrongful termination in violation of public policy was barred by FEHA’s one-year statute of limitations. Russian River’s attempt to reframe the issue as one regarding the sufficiency of the complaint is akin to a motion for judgment on the pleadings. (See *Prue*, *supra*, 242 Cal.App.4th at p. 1378; *American Airlines, Inc. v. County of San Mateo* (1996) 12 Cal.4th 1110, 1117–1118; *Alliance Mortgage Co. v. Rothwell* (1995) 10 Cal.4th 1226, 1232.) Accordingly, on appeal from the trial court’s order granting Russian River’s motion, we review de novo the question of law whether Aveau’s complaint alleged sufficient essential facts to acquaint Russian River with the nature, source, and extent of Aveau’s claim. (See *Prue*, at p. 1378; *Prakashpalan v. Engstrom, Lipscomb & Lack* (2014) 223 Cal.App.4th 1105, 1120.) Alternatively stated, Aveau’s complaint “is adequate so long as it apprises [Russian River] of the factual basis for the claim.” (*Birke v. Oakwood Worldwide* (2009) 169 Cal.App.4th 1540, 1549.)

To establish a cause of action for disability discrimination in violation of FEHA’s public policy, a plaintiff must show: “(1) plaintiff suffers from a disability; (2) plaintiff is a qualified individual; and (3) plaintiff was subjected to an adverse employment action [e.g., termination of employment] because of the disability.” (*Brundage v. Hahn* (1997) 57 Cal.App.4th 228, 236.) The employee must also show the employer knew of his or her disability at the time it made the adverse employment decision. (*Avila v. Continental Airlines, Inc.* (2008) 165 Cal.App.4th 1237, 1248.)

⁵ The record on appeal does not contain any document showing, and the parties do not represent, that Russian River filed either a demurrer or motion for judgment on the pleadings. Instead, as discussed further below, Russian River complains that Aveau failed to seek leave to amend to remedy the public policy pleading deficiencies it now argues.

Here again Aveau's pleadings parallel those in *Prue, supra*, 242 Cal.App.4th 1367, including the numerous references to the statutory provisions of FEHA and specifically alleging a cause of action for "wrongful termination in violation of public policy." We similarly conclude Aveau's complaint sufficiently alleged essential facts to inform Russian River that she was asserting a common law cause of action for wrongful termination in violation of FEHA's public policy against disability discrimination.

In the complaint's preliminary and general allegations, Aveau expressly alleged her claims were authorized by section 12920 *et seq.* and the common law. The complaint alleged Aveau was an employee within the meaning of section 12926, and Russian River was an employer within the meaning of sections 12926 and 12940, subdivisions (a) and (n), all of which are provisions of FEHA. More importantly, Aveau's third cause of action was titled, "Wrongful Termination in Violation of Public Policy," and alleged, in part: "[Russian River] violated the public policies codified in the California Fair Employment and Housing Act, Government Code section 12900 *et seq.*, as alleged above." In addition, Aveau's complaint specifically refers to section 12920, which sets forth the public policy against employment discrimination based on physical disability. Aveau's complaint further cites section 12940 (unlawful for an employer to discriminate against an employee (e.g., by discharging the employee from employment) based on his or her physical disability) and section 12926 (definition of physical disability includes any physiological disorder affecting the musculoskeletal system and limiting a major life activity (e.g., working)).

As the allegations in Aveau's complaint quite specifically allege a cause of action for wrongful termination in violation of public policy and made numerous references to statutory provisions of FEHA, Russian River was

unquestionably placed on notice that Aveau was relying on public policies set forth in FEHA.

Moreover, Aveau's complaint alleged all of the facts necessary to state a cause of action for wrongful termination in violation of FEHA's public policy against disability discrimination: (1) Aveau suffered from a disability (i.e., a back injury); (2) she was capable of performing the essential functions of her position; (3) she was subjected to an adverse employment action (i.e., termination of her employment) because of her disability; and (4) Russian River knew of her disability when it decided to terminate her employment. (*Brundage v. Hahn, supra*, 57 Cal.App.4th at p. 236; *Avila v. Continental Airlines, Inc., supra*, 165 Cal.App.4th at p. 1248.)

We disagree with Russian River's suggestion that *Prue* is not applicable here—because there, unlike here, the employee requested leave to amend. Although the appellate court did conclude the trial court erred to the extent it failed to grant the employee leave to amend, *Prue* expressly did not decide whether the trial court committed reversible error in denying the employee's request for leave to amend. It instead concluded that the trial court erred in granting summary judgment because the complaint adequately alleged facts apprising the employer of the employee's cause of action for wrongful termination in violation of public policy and was timely filed. (See *Prue, supra*, 242 Cal.App.4th at pp. 1371, 1384 [“we need not address or decide whether the trial court also erred by denying Prue's request for leave to amend his complaint”].) As the trial court's failure to grant leave to amend was not an essential component of the appellate court's holding, it does not lead us to a different conclusion here.

Equally unpersuasive is Russian River's reliance on *Shoemaker v. Myers* (1990) 52 Cal.3d 1 (*Shoemaker*), which involved the scope of the

workers' compensation exclusivity rule. Russian River's suggestion that *Shoemaker* forecloses Aveau's *Tameny* claim represents a fundamental misreading of the case and misunderstanding of the law. Contrary to Russian River's contention, *Shoemaker* did not reject a common law wrongful termination claim as a matter of law because "both the act of termination and the acts leading up to the termination necessarily arise out of and occur during and in the course of the employment." (*Shoemaker*, at p. 20.) Russian River takes this language out of context and ignores its connection to the court's determination that "injuries arising from termination of employment ordinarily arise out of and occur in the course of the employment within the meaning of Labor Code section 3600 avoids the evidentiary nightmare that might result from . . . differentiat[ing] between injuries, especially psychological injuries, caused by conduct leading up to the termination and injuries caused by the termination itself." (*Shoemaker*, at pp. 19–20.)

Instead, *Shoemaker* confirms the basic principle "that disabling injuries, whether physical or mental, arising from termination of employment are generally within the coverage of workers' compensation and subject to the exclusive remedy provisions, *unless* the discharge comes within an express or implied statutory exception or *the discharge results from risks reasonably deemed not to be within the compensation bargain.*" (*Shoemaker*, *supra*, 52 Cal.3d at p. 7, italics added.) In fact, as *Shoemaker* pointed out, "Where the injury is a result of conduct, whether in the form of discharge or otherwise, not seen as reasonably coming within the compensation bargain, a separate civil action may lie." (*Id.* at p. 20.) Termination in violation of public policy (i.e., FEHA) is not within the risks reasonably encompassed within the compensation bargain (*Stevenson*, *supra*, 16 Cal.4th at p. 885), and thus this separate public policy-based FEHA action may be pursued

irrespective of a DFEH claim. The two-year statute of limitations set forth in Code of Civil Procedure section 335.1 applies.

DISPOSITION

The judgment is reversed, and the matter is remanded with directions that the trial court vacate its order granting Russian River's motion for summary judgment and issue a new order denying that motion, but granting Russian River's motion for summary adjudication of Aveau's first and second causes of action. Aveau shall recover her costs on appeal.

Desautels, J.*

WE CONCUR:

Pollak, P.J.

Streeter, J.

A161334 Aveau v. 23 Bottles of Beer

* Judge of the Alameda County Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.