CAIIA Status Report

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Cutting Down Neighbor's Tree is a 'Treble' thing
Credit to Low, Ball, Lynch, San Francisco, CA

The CA Court says that willfully cutting down your neighbor's trees is a 'treble' thing for noneconomic damages if it annoys/disturbs your neighbor.

Jeanette E. Fulle v. Kaveh M. Kanani

Court of Appeal, Second Appellate District (January 31, 2017)

Cutting down your neighbor's trees could be costly as non-economic damages can be trebled. In cases involving the cutting of trees, the court has discretion pursuant to Code of Civil Procedure § 733 and Civil Code § 3346 to award double or treble damages depending on whether the act was willful and malicious or casual and involuntary.

Plaintiff's and Defendant's properties are separated by a fence in Encino, California. Six trees on Plaintiff's property partially blocked the Defendant's view of the San Fernando Valley. Defendant hired workers who went onto Plaintiff's property without Plaintiff's permission to cut down the limbs and branches of the six trees.

Plaintiff filed suit for trespass and negligence. She sought treble damages for trespass under Code of Civil Procedure § 733 and Civil Code § 3346 and double damages for negligence under Civil Code § 3346. Plaintiff argued that trees were irreparably damaged and needed to be removed and replaced, which would require building a retaining wall to "shore up" the hillside. She also sought annoyance and discomfort damages.

The case was tried before a jury. The jury found that the workers who cut/trimmed the trees were acting in the course and scope of the agency with Defendant when they did so. The jury also found that Defendant acted intentionally, willfully and maliciously in causing the workers to enter onto Plaintiff's property and cut/trim the trees. The jury awarded $27,500 for damage to the trees, $20,000 for the cost of repairing the harm, and $30,000 for past non-economic loss, including annoyance and discomfort, loss of enjoyment of the real property, inconvenience and emotional distress.

After the verdict was read and the jury was excused the Plaintiff moved for treble damages. She contended that the term "actual detriment" as used in Civil Code § 3346 includes both the damage to the trees and the harm that she personally suffered as a result, thus the multiplier applied to both economic and non-economic damages. Defendant argued that the damage multiplier should only apply to economic damages.

The trial court entered judgment which trebled Plaintiff's economic damages. However, the trial court declined to treble the non-economic damages. The court noted that the use of the term "actual detriment" in Civil Code § 3346 limited the treble damages to actual economic damages.

The issue on appeal was whether annoyance and discomfort (non-economic) damages resulting from injuries to trees maybe doubled or trebled under the timber trespass statutes (C.C.P. § 733 and Civil Code § 3346). C.C.P. § 733 mandates treble damages.

The Appellate Court held that because case law allows non-economic damages to be assessed for tortious injuries to trees, then such damages should also be allowed to be trebled pursuant to C.C.P. § 733. Next, the Appellate Court considered Civil Code § 3346. The Court stated that it must "harmonize" the two statutes where reasonably possible. The Court concluded that non-economic damages resulting from tortious injuries to trees are subject to the damage multiplier under both C.C.P. § 733 and Civil Code § 3346. As in this case, where the jury finds willful and malicious conduct by the Defendant, the trial court has the discretion to award treble damages for annoyance and discomfort.

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President's Message

My Favorite Things about California

Steve Washington
CAIIA President

I was born and raised in California. I grew up in the San Francisco Bay area but have lived most of my adult life in Southern California; college at UCSD and a home and family in Anaheim Hills. I have camped, fished, hiked, skied or went swimming at Shasta, Yosemite, Medicine Lake (my first fish), Mammoth, Lake Tahoe, Carlsbad and of course up and down the Pacific Ocean. Like many of you the list is endless. And I have had claims from El Centro to Weed. So, I think I know California pretty well. Here is a list of some of my favorite:

The Oakland Athletics. Very big in my house growing up, winning the world series in 1972, 73 and 74. Reggie Jackson was *the man* before he went to the Yankees. I loved Joe Rudi and Catfish Hunter too.

The tacos. Some of the best tacos I ever consumed came from food trucks. Greasy with jalapenos!

The fog at Stinson Beach. Very silky smooth, crisp and clean. (Use to dig up clams there).

The Misty Trail at Yosemite; loud crashing water impacting and misty – fantastic.

Castle Lake. We (my brothers and I) use to jump off a rock cliff and catch water snakes with our hands.

Tommy's World Famous Burgers with Chili ,of course, a delicious late night snack.

The San Diego **Gas Lamp district**. Good food, good drink and because of the weather, good times all year long.

Dodger Dogs….at the ballpark watching the Giants and listening to Vin Scully. By the way the hot dogs at Candlestick Park were the best. Of course Vinny is retired now; 67 years…. can you believe it?

The **diversity and multi-cultural people**. Enlightening, interesting and entertaining, e.g. S.F. and L.A.s China Town.

Fisherman's Wharf. And a rock throw away the Tadich Grill, the city's oldest restaurant (circa 1849). Great atmosphere and style with white coat waiters. Try the Dalmatian stew.

The Sea Lions at Pier 39

La Jolla. I went to college there, so enough said.

Great Baseball, Football and Basketball teams to watch; and you can play outdoors all year long. Although the Lambs and Niners are having some issues. And, say it ain't so….the Raiders are moving to Las Vegas?

By the way, the worst things are traffic and knuckleheads.

Steve Washington
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NEWS OF AND FROM MEMBERS

Sterrett Harper of Harper Claims Service, Inc., from Burbank, California completed four long distance runs in the last six months.

- Santa Monica Classic (10K)- September 2016
- Running the Foothills 5k, La Crescenta- October 2016
- Pasadena Half Marathon (13.1 miles)-January 2017
- The Los Angeles Marathon (26.2 miles)- March 2017

Having completed the LA Marathon one day before his 65th birthday, Sterrett joked, "Thank goodness I'm now Medicare eligible!"

DOI Press Release
Subcontractors of True Religion Brand Jeans allegedly conspired with CPA in multi-million dollar workers' comp insurance fraud scheme

Sung Hyun Kim, Caroline Choi and Jae Kim were sentenced yesterday to felony insurance fraud. Sung Kim was sentenced to two years in local custody or electronic monitoring and two years of mandatory supervision, Caroline Choi and Jae Kim were both sentenced to five years felony probation and one year in local custody or electronic monitoring. In December, Sung Hyun Kim and Jae Young Kim each pleaded no contest to two counts of workers' compensation fraud, while Choi entered her plea to two counts of failure to pay state payroll taxes. Restitution to six insurance companies, investigative costs and fines totaling $4.6 million has been paid.The case was prosecuted by the Los Angeles County District Attorney's office.

Original news release below:
LOS ANGELES, Calif. - Sung Hyun Kim, 57, and her sister Caroline Choi, 59, CEOs of sewing companies that were subcontracted by True Religion Brand Jeans were arrested yesterday along with their CPA, Jae Kim, 71, on 18 felony counts of workers' compensation insurance fraud totaling more than $11 million in losses. The three allegedly conspired to underreport $78.5 million in payroll to multiple insurers including the State Compensation Insurance Fund and two insurance companies owned by Berkshire Hathaway.

According to California Department of Insurance detectives, sisters Kim and Choi, CEOs of Meriko, Inc. and SF Apparel, Inc., allegedly conspired with their CPA to hide tens of millions in payroll to avoid paying workers' compensation insurance premiums. Their underground economy conspiracy led to multi-million dollar premium losses for several workers' compensation insurers including State Fund. "The underground economy is not a victimless crime," said Insurance Commissioner Dave Jones. "By underreporting payroll, paying employees under the table and committing workers' compensation insurance fraud, these employers cheat the system and leave their employees at risk."
The alleged fraud was committed by fabricating payroll records provided to insurance carrier auditors with the help of CPA Jae Kim. State Fund notified Department of Insurance detectives when they discovered payroll reports submitted to them by the companies showed significantly less total payroll than similar reports submitted to the California Employment Development Department (EDD). Evidence also revealed many employees were paid under the table through a bank account that was never disclosed to EDD or insurance carriers.

"Workers' compensation fraud affects everyone and drives up costs in the system," said State Fund Chief of Internal Affairs Dante Robinson. "That's why State Fund actively pursues fraud detection and prosecution.
We commend the Department of Insurance and the other agencies and carriers involved for their diligence in pursuing this significant alleged fraud case."

If convicted, Sung Hyun Kim faces 28 years in state prison and her bail is set at $700,000; Caroline Choi faces 15 years and her bail is set at $430,000; Jae Kim faces 22 years and his bail is set at $520,000. Syung Hyun Kim and Caroline Choi were booked into the Los Angeles County Jail and Jae Kim was booked into the Men's Central Jail in Los Angeles. The Los Angeles County District Attorney's Office is prosecuting this case.

Earth Day is April 22nd

Obtaining Medical Records in Personal Injury Claim
Credit to: Tyson & Mendes, La Jolla, CA

Defending against a personal injury claim requires complete access to a plaintiff's medical records. Sometimes, however, medical records are difficult to obtain. This is particularly true when a plaintiff has treated at the Veteran's Administration (VA). As set forth below, VA records are protected from disclosure by federal law. Short of an authorization for release, the only way to obtain VA records is by filing a motion for an order directing production by the VA. Even then, however, the VA can refuse to release the records. When faced with this issue, a defendant should consider filing a motion to compel the plaintiff's signature on an authorization for the release of the records.

Medical Records are Discoverable in a Personal Injury Lawsuit

California's discovery act is broad and liberally construed in favor of disclosure. The purpose of the act is to provide a "'*simple*, convenient, and *inexpensive*' means of revealing the truth and exposing false claims." To that end, Code of Civil Procedure section 2017.010 gives parties the right to discover *any matter*, not privileged, that is relevant or likely to lead to the discovery of admissible evidence. The trial court is vested with wide discretion in granting or denying discovery

Medical records are protected by the right to privacy. The right to privacy, however, is not absolute It may be abridged to accommodate a compelling public interest. "One such interest, evidenced by California's broad discovery statutes, is 'the historically important state interest in facilitating the *ascertainment of truth* in connection with legal proceedings.'" (*Id.* [emphasis added], *quoting Britt v. Super. Ct.* (1978) 20 Cal.3d 844, 857.) In short, in certain circumstances, a party's privacy right must give way to the opponent's right to a fair trial.

When information sought is protected by the right to privacy, the court must balance the party's right to discover relevant facts against the privacy interests of the person seeking to foreclose discovery. The party seeking discovery of private information must establish that it is directly relevant to the claims alleged. In a personal injury action, a plaintiff places at issue his past and present physical and mental conditions. All medical records relating to the condition are discoverable. Records of unrelated conditions are discoverable if the condition is relevant to the issue of proximate cause.

Federal Law Protects Against Disclosure of VA Records

Under 38 U.S.C. section 5701, VA records are confidential and privileged, and no disclosure of them can be made except as provided. Section 5701 allows for disclosure to the patient. (38 USC § 5701, sub. (b)(1).) It also allows for disclosure in state court proceedings, provided certain procedures are followed. (38 USC § 5701, sub. (b)(2). A simple subpoena will not suffice.

38 Code of Federal Regulation 1.511 provides the requisite procedures that must be followed to obtain VA records in a state court proceeding.

The Regulation requires a "state or local court order directing disclosure of claimant records." (38 C.F.R 1.511(c)(1).) Once a state court order is obtained, the VA's Regional Counsel then reviews the order and the records to determine whether disclosure is necessary to prevent the "perpetration of fraud or other injustice in the matter in question." (38 C.F.R. 1.511(c)(3).) The Regional Counsel can refuse to disclose the records or can request additional information regarding a party's need for the records. (*Id.*)

Obviously, this procedure is not ideal in a personal injury lawsuit. Not only is it time consuming, but also there is no guarantee that the defendant will receive the records from the VA. An alternative to this process is a motion to compel plaintiff's signature on an authorization for release of the records.

California Law Permits the Court to Issue an Order Compelling Plaintiff's Signature on an Authorization

Typically, a personal injury plaintiff will sign an authorization for release of relevant medical records. When, however, a party refuses to sign an authorization, the court can issue an order compelling plaintiff to sign it. Indeed, courts in a variety of settings have compelled parties to consent to a third party's disclosure of material where such consent was a prerequisite to its production.

Construction Defect– Right to Repair
Credit to: Low, Ball & Lynch, San Francisco, CA

A residential builder must assert insufficiency of claimant's notice within 14 days under the California Right to Repair Act also known as SB 800.

William Blanchette, et al. v. The Superior Court of Imperial County

California Court Of Appeals, Fourth Appellate District (February 10, 2017)

The Right to Repair Act, Civil Code § 895 et seq. (the "Act"), requires that, before initiating litigation, persons claiming defects in residential construction must give the builder notice of the alleged defects and an opportunity to inspect and repair. The Act requires the notice set forth the defects "in reasonable detail" sufficient to determine their nature and location. A builder has 14 days to acknowledge the claim and 14 additional days, if the builder so wishes, to inspect the premises. Within 30 days after completing an inspection, a builder may make an offer to repair the defects. The Act requires that its time limits and other requirements be strictly construed. This case considered the timeliness of a builder's response which claimed the notice was insufficient for lack of specificity.

William Blanchette ("Blanchette") owned one of 28 homes constructed by GHA Enterprises, et al. ("GHA"). On February 2, 2016, Blanchette served GHA with notice of a claim, alleging defects in all 28 homes. Blanchette's notice used, almost verbatim, the Act's language setting forth building standards, the violation of which give rise to actionable claims against homebuilders.

GHA responded on February 23, 2016 with a letter asserting the defects set forth in the claim were not alleged with reasonable detail, as required by § 910, subdivision (a); nonetheless GHA offered to inspect the homes.

Blanchette's reply of February 26, 2016 asserted that GHA's response was untimely and excused him and the other homeowners from any obligations under the Act. Blanchette then filed a construction defect class action complaint against GHA.

GHA responded with a motion to stay the action until Blanchette satisfied the Act's pre-litigation requirements. Blanchette opposed, claiming GHA had not timely responded to the notice.

The trial court agreed with GHA that Blanchette's notice lacked detail sufficient to trigger GHA's obligations under the Act. The trial court stayed the action pending completion of the notice and inspection procedures and ordered Blanchette to serve a new notice to "identify each individual claimant by address," "provide a defect list for each subject property, which sets forth the alleged defects," "set forth the location, nature and severity of each alleged defect," and identify "the code sections the claimants contend each alleged defect violates." Blanchette petitioned for a writ of mandate.

The Appellate Court noted, "The statute provides that notice shall provide the claimant's name, address, and preferred method of contact, and shall state that the claimant alleges a violation pursuant to this part against the builder, and shall describe the claim in reasonable detail sufficient to determine the nature and location, to the extent known of the claimed violation." The Court also noted that "the builder must acknowledge in writing its receipt of the notice of the claim within 14 days after the claim is received. The homeowner is released from the requirements of § 910 if the builder does not acknowledge receipt of the notice of claim, elects not to go through the process, or fails to request an inspection in a timely manner; the builder must complete its initial inspection and testing within 14 days after it acknowledges its receipt of the notice of claim."

The Court of Appeal concluded that the notice was served but on its face was insufficient. It simply repeated the language of section 896 but did not provide the required "reasonable detail sufficient to determine the nature and location." The Court stated that "while at the early stage of giving notice of potential defects, the statutory process does not require a homeowner provide anything approaching an expert opinion as to the nature and extent of the defects, without some information about the nature and location of the circumstances which the claimants believe support their claims, builders cannot be expected to meaningfully engage in the inspection and resolution process required by the statute."

But while the notice was insufficient, the Court emphasized that it was clear that GHA did not acknowledge receipt of the notice within the 14 day period prescribed by § 913. Reversing the trial court, it held GHA's failure to timely acknowledge the notice and resolve the issue of specificity relieved Blanchette of any further obligations under the Act.

The Court stated that if a builder believes the notice is not sufficient to determine the nature and location of the claimed violation, the builder may (within the 14 day period) bring the lack of specificity to the claimant's attention, but the requirement for specificity is not a ground upon which the builder may ignore the notice or the 14-day time period within which it must respond. Accordingly, the Court concluded that because GHA did not timely acknowledge receipt of Blanchette's claim and set forth its objections to it, Blanchette was released from the requirements of the Act.

On the Lighter Side...

A teacher with no sense of humor failed the student for his answers to this quiz.
We think this kid will be a success !

Q1.. In which battle did Napoleon die?
- his last battle

Q2.. Where was the Declaration of Independence signed?
- at the bottom of the page

Q3.. River Ravi flows in which state?
- liquid

Q4.. What is the main reason for divorce?
- marriage

Q5.. What is the main reason for failure?
- exams

Q6.. What can you never eat for breakfast?
- Lunch & dinner

Q7.. What looks like half an apple
- The other half

Q8.. If you throw a red stone into the blue sea what will it become?
- Wet

Q9.. How can a man go eight days without sleeping ?
- No problem, he sleeps at night.

Q10. How can you lift an elephant with one hand?
* You will never find an elephant that has one hand.

Q11. If you had three apples and four oranges in one hand and four apples and three oranges in other hand, what would you have?
- Very large hands

Q12. If it took eight men ten hours to build a wall, how long would it take four men to build it?
*No time at all, the wall is already built.

Q13. How can u drop a raw egg onto a concrete floor without cracking it?
*Any way you want, concrete floors are very hard to crack.