

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

COURT OF APPEAL – SECOND DIST.

FILED

Mar 08, 2019

DANIEL P. POTTER, Clerk

Z. Clayton

Deputy Clerk

PAUL ZAPATA,

B293601

Petitioner,

(Super. Ct. No. BC686854)

v.

(Georgina Torres Rizk, Judge)

THE SUPERIOR COURT OF  
LOS ANGELES COUNTY,

Respondent;

NOTICE OF INTENTION TO GRANT  
PEREMPTORY WRIT IN THE FIRST  
INSTANCE and ORDER

JERRY ARAGON,

Real Party in Interest.

THE COURT:

We have read and considered (1) the petition for writ of mandate filed on November 2, 2018, (2) the preliminary response filed on November 13, 2018, and (3) the reply filed on November 21, 2018.

Based on the record before us, it appears petitioner is entitled to relief. The petition challenges the respondent trial court's order denying his motion to quash, which motion was made on the ground that real party in interest was not ignorant of petitioner's name when he filed the complaint and that, therefore, the addition of petitioner to the action by way of a Doe amendment (Code Civ. Proc., § 474) did not "relate back" to the filing of the complaint for statute of limitations purposes.

The trial court denied the motion because another judge had previously rejected the same argument and the court believed petitioner was required, and had failed, to comply with the reconsideration requirements in Code of Civil Procedure section 1008.

This ruling was contrary to the holding in *Ziller Electronics Lab GmbH v. Superior Court* (1988) 206 Cal.App.3d 1222, 1230-1233 (see especially *id.* at p. 1231), a case directly on point. Accordingly, petitioner makes out a case for relief.

Petitioner asks this court to grant the petition and direct the trial court to (1) grant the motion to quash, or (2) reconsider the motion on the merits. Like the Court of Appeal in *Ziller, supra*, 206 Cal.App.3d at p. 1234, we decline the invitation to issue a directive concerning the merits of the motion to quash. Under the circumstances, the appropriate remedy is to direct the trial court to reconsider the motion on the merits.

In light of the above, the parties are notified of our intention to issue a peremptory writ in the first instance (*Palma v. U.S. Industrial Fasteners, Inc.* (1984) 36 Cal.3d 171; *Ng v. Superior Court* (1992) 4 Cal.4th 29, 35), requiring the respondent court to vacate its September 25, 2018 order denying petitioner's motion to quash, and to thereafter reconsider petitioner's motion on the merits.

The respondent court may avoid the issuance of a peremptory writ by proceeding as suggested above. If the respondent court elects to do so – in the manner provided for in *Brown, Winfield & Canzoneri, Inc. v. Superior Court* (2010) 47 Cal.4th 1233, 1247-1250 – it is requested to transmit to this court a copy of the minute order reflecting its action on or before April 3, 2019.<sup>1</sup>

If the respondent court elects not to proceed as suggested above, real party in interest may serve and file plenary opposition to the petition on or before April 10, 2019, and petitioner may file a reply within seven days after the plenary opposition is filed.



EDMON, P. J.



LAVIN, J.



DHANIDINA, J.

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<sup>1</sup> The minute order need not necessarily reflect that the court has reconsidered petitioner's motion to quash. It need reflect only that the court has vacated its September 25, 2018 order denying petitioner's motion to quash, and that it will be reconsidering the motion.