

**SUPERIOR COURT OF CALIFORNIA,
COUNTY OF SAN DIEGO
NORTH COUNTY**

MINUTE ORDER

DATE: 01/16/2018

TIME: 10:55:00 AM

DEPT: N-29

JUDICIAL OFFICER PRESIDING: Ronald F. Frazier

CLERK: Amy Wagoner

REPORTER/ERM:

BAILIFF/COURT ATTENDANT:

CASE NO: **37-2015-00010911-CU-PN-NC** CASE INIT.DATE: 04/01/2015

CASE TITLE: **Vintage Airport LLC vs Gatzke Dillon & Ballance LLP [IMAGED]**

CASE CATEGORY: Civil - Unlimited CASE TYPE: Professional Negligence

EVENT TYPE: Summary Judgment / Summary Adjudication (Civil)

APPEARANCES

The Court, having taken the above-entitled matter under submission on 1/12/2018 and having fully considered the arguments of all parties, both written and oral, as well as the evidence presented, now rules as follows:

Defendants Gatzke, Dillion & Ballance, LLP's motion for summary adjudication is denied.

The Court notes that defendants have asserted evidentiary objections within their response to the plaintiff's separate statement of undisputed facts. Despite the fact that the objections are not in the proper format, the Court has reviewed the objections and overrules the objections.

Plaintiff has brought causes of action for professional negligence, breach of written contract, breach of fiduciary duty and fraud (intentional misrepresentation) arising from defendants' prior representation of the plaintiff in the underlying action entitled *Fly Fishing Outfitters, LLC v. Vintage Airport, LLC, et al* (Case number SCV 253874 (filed on June 26, 2013)) in Sonoma County.

Defendants move for summary adjudication of the request for punitive damages sought in connection with the breach of fiduciary duty and fraud causes of action.

Summary adjudication may be granted as to a claim for punitive damages even though it does not dispose of an entire cause of action. CCP § 437c(f)(1); see *Catalano v. Sup.Ct. (Camenson)* (2000) 82 Cal.App.4th 91, 92. A claim for punitive damages requires "clear and convincing" evidence that defendant has been guilty of oppression, fraud or malice" in the commission of a tort. Civ.C. § 3294(a). Thus, defendants may seek summary adjudication either that: (a) some element of the tort claim cannot be established; or (b) defendants' conduct does not constitute "oppression, malice or fraud" (as defined by Civ.C. § 3294(c)); or (c) plaintiff's proof is not "clear and convincing" as required by Civ.C. § 3294(a).

In this case, defendants argue that their conduct does not constitute "an intent to harm or extreme indifference to Vintage's rights." MPA, 9:1-3. Defendants further argue that a "breach of fiduciary duty alone" will not support a claim for punitive damages; an award of punitive damages for such a breach is only appropriate where "the defendant's acts are reprehensible, fraudulent or in blatant violation of law or policy" citing to *Sheppard, Mullin, Richter & Hampton* (2002) 96 Cal.App.4th 1017, 1051.

The Court has carefully reviewed the arguments, evidence and authorities presented by the parties and finds that the defendants have failed to meet their burden of establishing that the conduct alleged does not rise to the level necessary to obtain punitive damages. The Court further finds that defendants have failed to establish that Lori Ballance is not an officer, director or managing agent of the Gatzke, Dillion & Ballance, LLP.

Further, assuming arguendo that the burden does shift to the plaintiff, plaintiff has presented admissible evidence establishing that the following representations made by Ms. Ballance were false: (1) CalTrans told Ms. Ballance that the 2008 permit made compliance with FAA circular mandatory (Plaintiff's Separate Statement of Undisputed Material Facts (PSSUMF), Nos. 10-11, 21 and the evidence cited therein); (2) CalTrans had told Ms. Ballance that the airport was out of compliance with its permit as it regards the RSA (PSSUMF, Nos. 10-11, 24-25 and the evidence cited therein); (3) Runway 17/35 could be shut down at any time by CalTrans due to lack of permit compliance (PSSUMF, Nos. 15 and 25 and the evidence cited therein); (4) the only way to fix the airport's issues was for CalTrans to issue a corrected permit (PSSUMF, Nos. 13, 16, 22, 23, 28 and the evidence cited therein); (5) that a corrected permit has been applied for and will be forthcoming (PSSUMF, Nos. 17 and 27 and the evidence cited therein); (6) Ms. Ballance had extensive experience in litigation (PSSUMF, No. 3 and 4 and the evidence cited therein); and (7) that Ms. Ballance had represented many other Public Use/Private Airports in the past (PSSUMF, Nos. 3, 4 and 5 and the evidence cited therein).

Therefore, the Court cannot conclude, on this record, that defendants' conduct was not "reprehensible, fraudulent or in blatant violation of law or policy" or that defendants' conduct does not constitute "an intent to harm or extreme indifference to Vintage's rights." The motion for summary adjudication is denied.

IT IS SO ORDERED.



Judge Ronald F. Frazier