Filed 5/18/20 Johnson v. Pacific Maritime Assn. CA1/3

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION THREE

RODERICK JOHNSON, Plaintiff and Appellant, v. PACIFIC MARITIME ASSOCIATION et al., Defendants and Respondents.	A152300 (Alameda County Super. Ct. No. RG-15-790751)

This is an appeal from a judgment of dismissal after the trial court denied the request of plaintiff Roderick Johnson to continue the summary judgment hearing and granted the motion for summary judgment of defendants Pacific Maritime Association and International Longshore and Warehouse Union, Local 10 (collectively, PMA). Plaintiff contends the trial court's denial of his request for a continuance unjustly eliminated his right to a jury trial on procedural grounds. We affirm the judgment for reasons set forth below.

FACTUAL AND PROCEDURAL BACKGROUND

Defendant PMA is a multiemployer collective bargaining association tasked with representing its member companies. Among its member companies are those employing dockworkers, including longshore workers, in San Francisco Bay Area ports. Defendant International Longshore and

Warehouse Union Local 10 (Local 10) is a labor organization and the exclusive bargaining representative of longshore workers and applicants for longshore work in the San Francisco Bay Area.

PMA and Local 10 have a collective bargaining agreement memorialized in the Pacific Coast Longshore Contract Document (PCLCD). The PCLCD, negotiated and administered by PMA and Local 10, governs all aspects of longshore work performed by PMA member companies, including employee recruiting, application processing, and hiring. PMA and Local 10 act collectively through its governing body, the San Francisco Joint Port Labor Relations Committee (JPLRC).

A. Becoming a "Casual" Longshore Worker.

The PCLCD sets out a procedure for hiring so-called "Casual" longshore workers, who are tasked with assisting regularly employed longshore workers when work demands in the San Francisco Bay Area require additional support. Casuals receive no benefits or seniority rights and, once selected, are not guaranteed work on any particular day or for any particular period of time. Further, Casuals are assigned work only after Class A and Class B longshore workers have been dispatched to jobs.

When the JPLRC decides additional longshore workers are needed, it requests that interested individuals submit an "interest card." These interest cards are used by the JPLRC to randomly draw a list of Casual applicants. All applicants for Casual longshore work must, among other things, acknowledge in writing that their submission of an interest card does not guarantee employment. Further, the JPLRC, in its sole discretion and without notice, may change the process for processing Casual applications.

The rules governing the process for becoming a longshore worker require that the JPLRC establish a list of "Identified Casual longshoremen"

who have successfully met the following minimum standards and tests: (a) strength and agility testing, (b) physical examination, (c) drug and alcohol screening, (d) safety training, (e) availability for work, and (f) the clerks cognitive test. Unless all of these requirements were met, the applicant would not be eligible for Casual longshore work.

B. Plaintiff's Interest in Casual Longshore Work.

In 1999, the JPLRC found a need for new Casuals in the San Francisco Bay Area and sought interest cards from individuals desiring to be placed on the Casual list. After receiving over 6,700 interest cards, the JPLRC randomly drew to create a list of Casual applicants. Each applicant was assigned a sequence number based on the order in which his or her interest card was selected in the random drawing. When the JPLRC reached an applicant's sequence number, it would notify the applicant by mail and provide a date on which the applicant was scheduled to appear for an interview with the JPLRC. Once this interview was completed, the applicant was then required to take a strength and agility test, physical examination, drug and alcohol screening, clerks cognitive test, one-day safety training course and lashing training. The eligible applicant's failure to undertake any of these required steps would result in his or her disqualification from further processing as a Casual.

In April 1999, Johnson signed and submitted an interest card in Casual work after attending a recruiting meeting at the West Oakland branch of the Oakland Public Library. Plaintiff was subsequently assigned sequence No. 2354.

On October 25 and 26, 2004, plaintiff was among the list of applicants scheduled for an initial interview to become a Casual. Plaintiff did not appear for his scheduled interview; nor did he contact the JPLRC within 24

hours of the scheduled interview. The JPLRC subsequently decided to remove him from consideration for processing as a Casual.

On November 26, 2008, the JPLRC sent another letter to plaintiff stating that the committee was currently processing sequence No. 4568. This letter stated that all applicants with sequence numbers lower than 4568 who, like plaintiff, had not taken the strength and agility test "may call the Union at 415/776.8100 and request to be reinstated. [¶] Should you have any questions or concerns regarding your application status, please appear at the next Class 'B' JPLRC meeting. Bring with you any documentation that has a bearing on your case, or that would support your request."

Plaintiff received this letter and understood that his sequence number (No. 2354) was lower than the number currently being processed (No. 4568) and that he had not taken the strength and agility test. Plaintiff called Local 10 several times after receiving this letter.

In early 2011, plaintiff called or wrote again and went to the PMA office to inquire about the status of his Casual processing. On February 10, 2011, PMA wrote to plaintiff by mail, informing him "we were unable to find your sequence number based on the Name and Social Security number that you have provided. [¶] You may contact the Union and address your concerns with Mr. Pete Dailey—Secretary/Treasurer of Local 10 at (415) 776-8100."

On February 23, 2011, Local 10 representatives Pete Dailey and Lamont Kelly met with plaintiff. Plaintiff understood that under union rules he would not become a Casual without meeting all the required steps, including undertaking the various tests, examinations and trainings.

On March 29, 2013, the JPLRC sent plaintiff a letter using a different assigned sequence number, No. 5531, advising him to reply on the enclosed postcard if he wished to remain eligible for processing as a Casual. Plaintiff

replied on the enclosed postcard on April 4, 2013, indicating his interest in processing and referencing sequence No. 5531.

On April 11, 2014, plaintiff wrote to PMA, stating that Kelly and Dailey had "indicated they would check on my status" with respect to his original sequence No. 2354. He also expressed his belief that "[t]his process has not been handled fairly" and his desire for information about appealing his status on the Casual list.

On July 8, 2015, the JPLRC wrote to plaintiff by mail to advise him that he had been selected to be processed for potential "Identified Casual" status in the San Francisco Bay Area and to instruct him to appear for a scheduled orientation at 8:00 a.m. on July 21, 2015. This letter further instructed plaintiff: "If you do not present the above-requested documentation/information, or if you fail to appear when scheduled, you will be disqualified from further processing." Plaintiff did not appear for this scheduled orientation despite understanding that his failure to appear would cause his disqualification from further processing as a Casual.

The JPLRC thereafter disqualified plaintiff from further processing under sequence No. 5531 based on his nonappearance at the scheduled orientation on July 21, 2015.

C. Plaintiff's Work in Other Vocations.

Plaintiff, who described himself as "always look[ing] for work," held a variety of positions in the workforce between 1999, when he first submitted his interest card to the JPLRC, and 2011. For example, plaintiff finished barber school in 2001 after which he held several jobs cutting hair; he graduated from commercial truck driving school and drove trucks from 2004 to 2009, when a medical condition required him to stop; and he engaged in various manual labor jobs, including construction work.

D. Trial Court Proceedings.

On January 25, 2016, plaintiff, proceeding in propria persona, filed the operative complaint asserting causes of action for promissory estoppel and fraud and deceit.

Plaintiff was deposed on August 18, 2016, having retained counsel to assist him. Afterward, plaintiff personally reviewed the deposition transcript at the certified shorthand reporter's office and submitted corrections on the errata sheet.

On December 16, 2016, PMA moved for summary judgment. Hearing on the motion was set for March 3, 2017, with trial set for April 3, 2017.

On February 2, 2017, plaintiff filed a substitution of attorney form providing notice that he had retained counsel. After meeting and conferring several times, the parties agreed to reschedule the summary judgment hearing and trial, to allow additional time to complete discovery. The summary judgment hearing was thus continued to June 9, 2017, with a new trial date set for September 11, 2017.

On May 23, 2017, three days before the deadline for opposing summary judgment, plaintiff's counsel filed a notice of unavailability stating that she would be unavailable for all purposes beginning May 24, 2017.

On May 26, 2017, plaintiff filed an opposition to summary judgment in addition to a request for a continuance of the summary judgment hearing pursuant to Code of Civil Procedure section 437c, subdivision (h). Plaintiff's counsel filed a supporting declaration in which she attested that she was currently engaged in trial in another department, in *Luckey-McGee v. Employment Development Dept.*, case No. HG13664487, and would be in trial on the day of the summary judgment hearing, a circumstance of which she had only recently become aware due to scheduling changes in the other case.

According to counsel's declaration, plaintiff's request for a continuance was not based on her unavailability, but on plaintiff's need for additional discovery relevant to his promissory estoppel and fraud claims. As counsel explained: "Discovery largely is in its initial phases, and is not complete and counsel needs additional discovery to competently prepare [plaintiff's] Opposition to the MSJ. Specifically, . . . plaintiff needs to depose Lamont Kelly and Farless (a.k.a. 'Pete') Dailey. This is because an element of his claim for promissory estoppel requires that he prove that the defendant [*sic*] made him a 'promise' of employment."

Plaintiff's counsel further attested that she had been diligent in her efforts to obtain discovery to date but that her efforts had been hindered by her late entry into the case and by defendants' failure to produce substantive responses to plaintiff's discovery requests (which responses initially contained only objections and no documents). Moreover, counsel attested that she had only received a copy of plaintiff's 143-page deposition transcript on May 16, 2017.

On June 2, 2017, PMA filed a reply brief in support of summary judgment in which PMA opposed plaintiff's request for a continuance on the grounds that plaintiff had failed to prove that more time for discovery was warranted and that his counsel had not diligently litigated the case. In support of this opposition, defense counsel filed a declaration attesting that plaintiff's counsel had never contacted her office to meet and confer regarding the scheduling of any depositions and that, according to publicly available court minutes downloaded from the court Web site, the trial in *Luckey-McGee v. Employment Development Dept.*, case No. HG13664487, had been continued on April 21, 2017, nearly a month before plaintiff's counsel filed the notice of unavailability.

On June 22, 2017, a contested hearing on PMA's motion for summary judgment and plaintiff's request for a continuance were heard. Following this hearing, the trial court granted PMA's motion and denied plaintiff's continuance request. In doing so, the trial court found no triable issues of fact with respect to plaintiff's promissory estoppel and fraud claims. With respect to plaintiff's request for a continuance, the court found plaintiff had failed to show that facts essential to justify opposition may exist. Judgment of dismissal was thus entered for PMA.

On August 22, 2017, plaintiff filed a timely notice of appeal of the judgment of dismissal.

DISCUSSION

Plaintiff argues on appeal that the trial court's denial of his request for a statutory continuance of the summary judgment hearing (Code Civ. Proc., § 437c, subd. (h))[1] to permit him to adequately prepare his opposition and to accommodate his counsel's unavailability was a manifest miscarriage of justice. He thus seeks reversal of the judgment of dismissal. The following legal principles apply.[2]

"The purpose of the law of summary judgment is to provide courts with a mechanism to cut through the parties' pleadings in order to determine whether, despite their allegations, trial is in fact necessary to resolve their dispute." (*Aguilar v. Atlantic Richfield Co.* (2001) 25 Cal.4th 826, 843

---

[1] Unless otherwise stated herein, all statutory citations are to the Code of Civil Procedure.

[2] Plaintiff does not directly appeal the trial court's grant of PMA's motion for summary judgment based on the lack of triable issues of fact with respect to his promissory estoppel and fraud claims. He appeals only the denial of his request for a continuance. We nonetheless set forth the general legal principles governing summary judgments to provide context for his challenge.

(*Aguilar*).) Accordingly, a summary judgment motion must demonstrate that the "material facts" are undisputed. (§ 437c, subd. (b)(1).) The moving party "bears the burden of persuasion that there is no triable issue of material fact and that he is entitled to judgment as a matter of law." (*Aguilar*, *supra*, at p. 850.) A defendant moving for summary judgment must demonstrate that one or more elements of the plaintiff's cause of action cannot be established by either presenting affirmative evidence that negates an essential element of the plaintiff's claim (*Guz v. Bechtel National, Inc.* (2000) 24 Cal.4th 317, 334) or presenting evidence "that the plaintiff does not possess, and cannot reasonably obtain, needed evidence" supporting an essential element of its claim (*Aguilar*, *supra*, at p. 855).

When summary judgment is granted, we independently review the trial court order under the same standard as the lower court. Thus, "[w]e examine: (1) the pleadings to determine the elements of the claim for which the party seeks the relief; (2) the summary judgment motion to determine if movant has established facts justifying judgment in its favor; and (3) the opposition to the motion—assuming movant has met its initial burden—to 'decide whether the opposing party has demonstrated the existence of a triable, material fact issue. [Citation.]' " (*Knapp v. Doherty* (2004) 123 Cal.App.4th 76, 84–85.)

A trial court's denial of a party's request for a continuance of the summary judgment proceedings is governed by section 437c, subdivision (h), which provides in relevant part: "If it appears from the affidavits submitted in opposition to a motion for summary judgment or summary adjudication, or both, that facts essential to justify opposition may exist but cannot, for reasons stated, be presented, the court shall deny the motion, order a continuance to permit affidavits to be obtained or discovery to be had, or

make any other order as may be just." Thus, when a party makes a good faith showing by affidavit demonstrating that a continuance is necessary to obtain essential facts to oppose a summary judgment motion, the trial court shall grant the continuance request or make any other " 'just' " order. (*Johnson v. Alameda County Medical Center* (2012) 205 Cal.App.4th 521, 532 (*Johnson*).) However, relief is not warranted if the moving party fails to submit an affidavit sufficient to make the necessary showing under section 437c, subdivision (h). (*Ibid*.)

" ' "[I]n the absence of an affidavit that requires a continuance under section 437c, subdivision (h), we review the trial court's denial of appellant's request for a continuance for abuse of discretion." ' " (*Johnson*, *supra*, 205 Cal.App.4th at p. 532; see *Hamilton v. Orange County Sheriff's Dept.* (2017) 8 Cal.App.5th 759, 765 ["Where a plaintiff cannot make the showing required under section 437c, subdivision (h), a plaintiff may seek a continuance under the ordinary discretionary standard applied to requests for a continuance. [Citation.] This requires a showing of good cause"]; *Lerma v. County of Orange* (2004) 120 Cal.App.4th 709, 716 (*Lerma*).)[3]

---

[3] We acknowledge certain cases holding that section 437c, subdivision (h) *mandates* a continuance whenever the moving party files an affidavit meeting the statutory requirements. (E.g., *Lerma*, *supra,* 120 Cal.App.4th at p. 714; *Bahl v. Bank of America* (2001) 89 Cal.App.4th 389, 395-396 (*Bahl*).) We, like other courts, question this reading of the statute, which expressly provides that if it appears from the moving party's affidavit that facts essential to justify opposition to the summary judgment motion may exist, "the court shall deny the motion, order a continuance to permit affidavits to be obtained or discovery to be had, *or make any other order as may be just*." (§ 437c, subd. (h), italics added; see *Rodriguez v. Oto* (2013) 212 Cal.App.4th 1020, 1038 [disagreeing that section 437c, subdivision (h) mandates a continuance once the statutory requirements are met].) Thus, rather than mandating a continuance, the statute provides for three possible orders, including any order "as may be just," where its requirements are met.

I. *Facts essential to plaintiff's opposition do not appear from his counsel's declaration.*

Plaintiff's counsel attested there were grounds for granting a statutory continuance because (1) plaintiff needed to take the depositions of two witnesses, Dailey and Kelley, the Local 10 representatives with whom plaintiff met on February 23, 2011, to prove he was promised employment; and (2) he needed to complete other third party discovery, including business records subpoenas. Plaintiff's counsel also attested that she was "currently engaged in trial in Dept. 23 and will be in trial at the time this motion is heard," although the request for continuance was made "not because I am unavailable but because I need additional discovery" with respect to plaintiff's promissory estoppel and fraud claims.

The trial court found counsel's declaration did not meet the standard for a continuance under section 437c, subdivision (h) because it failed to show facts essential to justify opposition may exist. We agree.

Putting aside the statement in counsel's declaration that she needed time to complete third party discovery, which is too vague to support a continuance (see *Lerma*, *supra*, 120 Cal.App.4th at pp. 715–716 ["a declaration stating that unspecified essential facts may exist" does not support a continuance]), there is only one specific fact in the declaration that counsel attested was essential to justify plaintiff's opposition—to wit, an

---

(§ 437c, subd. (h); *Rodriguez v. Oto*, *supra*, at p. 1038.) However, we need not decide this legal issue for purposes of this appeal because as we will explain, plaintiff has not presented an affidavit from which it appears facts essential to his opposition may exist. Accordingly, plaintiff's request for a continuance was a matter left to the trial court's discretion dependent upon a showing of good cause. (*Hamilton v. Orange County Sheriff's Dept.*, *supra*, 8 Cal.App.5th at p. 765.)

alleged promise of employment made by Kelly and Dailey on February 23, 2011, that would support plaintiff's promissory estoppel claim.

As plaintiff appears to recognize, his promissory estoppel claim required proof of: (1) a promise; (2) the promisor should reasonably expect the promise to induce action or forbearance on the part of the promisee or a third person; (3) the promise induces action or forbearance by the promisee or a third person; and (4) injustice can be avoided only by enforcement of the promise. (*Kajima/Ray Wilson v. Los Angeles County Metropolitan Transportation Authority* (2000) 23 Cal.4th 305, 310 (*Kajima*).) Plaintiff's own deposition testimony, however, established that he was *not* promised employment by Dailey, Kelly or anyone else.

In particular, plaintiff alleged that he was told by union representatives at a 1999 meeting at the West Oakland branch of the Oakland Public Library that all attendees would get hired as long as they had no felony convictions. Yet, plaintiff testified, one, that the 1999 meeting was merely a "recruiting" meeting at which no one was promised work and, two, that he had a prior felony conviction.

Plaintiff also alleged he was promised in a November 26, 2008 letter from the JPLRC that he would be processed for Casual work based on sequence No. 2354. Yet, plaintiff testified in deposition that this letter in fact stated that the JPLRC was currently processing sequence No. 4568 and, if the applicant's sequence number was lower than No. 4568 (as plaintiff's was), he or she was required to call to schedule an interview and submit to a strength and agility test in order to be processed. Plaintiff admitted never having an interview or submitting to a strength and agility test. Plaintiff also admitted that the interest card he submitted to PMA stated, among other things, " 'I understand and agree that submission of this card for casual

employment as a longshoreman does not guarantee employment' " and that " 'no employment is promised and that the committee may at its sole discretion and without notice change its process for obtaining casual longshoremen.' "

Next, plaintiff alleged he was personally promised employment at the aforementioned February 23, 2011 meeting with Kelly and Dailey. Yet, as before, plaintiff testified at deposition that no actual promise of employment was made at this meeting. Rather, plaintiff was told and understood that to be eligible as a Casual, he would have to undergo a process that included an interview, strength and agility test, physical examination, drug and alcohol screening and safety training. Plaintiff acknowledged he had not been interviewed or taken any of these required tests, screenings or trainings.

Moreover, plaintiff acknowledged at his deposition receiving another chance to have his Casual application processed. Plaintiff received a letter dated July 8, 2015, stating that he had been selected " 'to process for potential identified casual status in the port of San Francisco' " and that " '[t]o begin that process, you are required to appear at an orientation as follows: Date: Tuesday, July 25th, 2015.' " According to his own testimony, plaintiff did not appear for this mandatory orientation despite understanding that, if he "didn't show up" he would "be disqualified from further processing for the identified casual longshore position."

As this undisputed evidence reflects, there was no promise of employment made by PMA to plaintiff. And, even if there had been, there was no reliance by plaintiff on any such promise. (See *Kajima*, *supra*, 23 Cal.4th at p. 310.) Plaintiff testified that between 1999 and February 10, 2011, he was "always look[ing] for work" and was in fact hired as a commercial truck driver, barber, and construction worker/laborer. He also

performed other "[o]dds-and-ends jobs . . . ." He stopped driving a commercial truck—a job he began in 2004 and had wanted since childhood—due to a medical condition in 2009.

Thus, based on plaintiff's own admissions, PMA was able to negate multiple elements required to prove promissory estoppel. " ' "[A] promise is an indispensable element of the doctrine of promissory estoppel. The cases are uniform in holding that this doctrine cannot be invoked and must be held inapplicable in the absence of a showing that a promise had been made upon which the complaining party relied to his prejudice . . . ." ' " (*West v. JPMorgan Chase Bank* (2013) 214 Cal.App.4th 780, 803–804.) Moreover, when attempting to prove these elements, "[a]dmissions against interest have high credibility value, particular [*sic*] when, as here, they are made in the context of proceedings designed to elicit the facts. 'Accordingly, when such an admission becomes relevant to the determination, on motion for summary judgment, of whether or not there exist triable issues of *fact* (as opposed to legal issues) between the parties, it is entitled to and should receive a kind of deference not normally accorded evidentiary allegations in affidavits.' (Italics added; *D'Amico* v. *Board of Medical Examiners* (1974) 11 Cal.3d 1, 22 [112 Cal.Rptr. 786, 520 P.2d 10]; [citation].) After-the-fact attempts to reverse prior admissions are impermissible because a party cannot rely on contradictions in his own testimony to create a triable issue of fact. [Citations.] The assertion of facts contrary to prior testimony does not constitute ' "substantial evidence of the existence of a triable issue of fact." ' (*D'Amico v. Board of Medical Examiners*, *supra*, 11 Cal.3d 1.)" (*Thompson v. Williams* (1989) 211 Cal.App.3d 566, 573–574.)

Applying these legal principles here, we affirm the trial court's finding that no grounds exist for granting a continuance under section 437c,

subdivision (h) because facts essential to plaintiff's opposition are missing from his counsel's declaration.

II. *No good cause existed for granting a continuance.*

In the absence of the requisite showing under section 437c, subdivision (h), a trial court may still exercise its discretion to grant a continuance upon a showing of good cause. (*Hamilton v. Orange County Sheriff's Dept.*, *supra*, 8 Cal.App.5th at p. 765; *Johnson*, *supra*, 205 Cal.App.4th at p. 533.) Here, there was no such good cause for reasons just explained: Any "essential fact" arising out of the proposed depositions of Kelly and Dailey with respect to a promise of employment would be completely at odds with plaintiff's own admissions that no such promise was made or relied upon. (*Ante*, pp. 12–14.)

Moreover, with respect to the remaining fraud claim, plaintiff's admissions were similarly fatal. Fraud requires a showing that (1) the defendant made a false representation; (2) the defendant knew the representation was false at the time it was made; (3) in making the representation, the defendant intended to deceive the plaintiff; (4) the plaintiff justifiably relied on the representation; and (5) the plaintiff suffered resulting damages. (*Lazar v. Superior Court* (1996) 12 Cal.4th 631, 638.)

Here, plaintiff alleges that, on or about November 25, 2008, PMA falsely represented to him that he would be processed as a Casual based on sequence No. 2354. Plaintiff further alleges that PMA knew this representation was false, yet PMA made it with the intent to deceive and defraud him and to induce his reliance on it, causing him $800,000 in damages. Yet, plaintiff offered no deposition testimony or other evidence to support these allegations.

In particular, the JPLRC, in its November 26, 2008 letter, advised plaintiff to call the union to schedule a strength and agility test because they had already passed his original sequence number and were processing sequence No. 4568. This letter nowhere stated that plaintiff's application would be processed based on his original sequence No. 2354. Moreover, plaintiff testified he did not know what happened to his original sequence number. He did not testify that he was told his original number would be used for processing. Plaintiff also admitted submitting an interest card to PMA stating that he understood and agreed " 'the committee may at its sole discretion and without notice change its process for obtaining casual longshoremen.' " Finally, putting aside the absence of any evidence of a false representation, plaintiff's testimony that he sought and obtained a variety of other jobs between 1999 and 2011 defeats any showing of detrimental reliance.

In light of this undisputed evidence negating essential elements of plaintiff's fraud claim, the trial court had discretion to deny his request for a continuance. (See *Mahoney v. Southland Mental Health Associates Medical Group* (1990) 223 Cal.App.3d 167, 170 [" 'unless a clear case of abuse is shown and unless there has been a miscarriage of justice a reviewing court will not substitute its opinion and thereby divest the trial court of its discretionary power' "].) While plaintiff points to various external factors inhibiting his opposition, including the fact that he had only recently retained counsel after proceeding in propria persona for most of the discovery period and his new counsel's unavailability for the hearing, the court had reasonable

grounds to find that continuing summary judgment and reopening discovery would have been futile and an unwise expenditure of judicial resources.[4]

We acknowledge plaintiff's argument that the court's ruling effectively ended his case on a procedural ground. However, "[j]udges are faced with opposing responsibilities when continuances for the hearing of summary judgment motions are sought. On the one hand, they are mandated by the Trial Court Delay Reduction Act (Gov. Code, § 68600 et seq.) to actively assume and maintain control over the pace of litigation. On the other hand, they must abide by the guiding principle of deciding cases on their merits rather than on procedural deficiencies. [Citation.] Such decisions must be made in an atmosphere of substantial justice. When the two policies collide head-on, the strong public policy favoring disposition on the merits outweighs

---

[4] Plaintiff also contends the trial court prejudicially erred by denying his request for a continuance without first considering each of the factors identified by our appellate colleagues in *Chavez v. 24 Hour Fitness USA, Inc.* (2015) 238 Cal.App.4th 632 (*Chavez*). In *Chavez*, our colleagues observed that "in deciding whether to continue a summary judgment to permit additional discovery courts consider various factors, including (1) how long the case has been pending; (2) how long the requesting party had to oppose the motion; (3) whether the continuance motion could have been made earlier; (4) the proximity of the trial date or the 30-day discovery cutoff before trial; (5) any prior continuances for the same reason; and (6) the question whether the evidence sought is truly essential to the motion." (*Chavez*, *supra*, at p. 644.) *Chavez* does not hold that consideration of these factors is mandatory, but rather points out these factors are among those properly considered by the court when exercising its discretion to the extent they are applicable in a particular case. (See, e.g., *Mahoney v. Southland Mental Health Associates Medical Group*, *supra*, 223 Cal.App.3d at p. 172 ["Although a trial court *may* excuse failure to comply with the requirement of a declaration in support of a motion for continuance [citations], the court is not required to do so"].) Given the circumstances of this case, discussed at length above, the trial court appropriately focused on *Chavez*'s sixth factor, whether the evidence sought was truly essential to plaintiff's opposition.

the competing policy favoring judicial efficiency." (*Bahl*, *supra*, 89 Cal.App.4th at p. 398.)

Here, these important policies did not collide head-on; rather, the scale tipped in favor of judicial efficiency given plaintiff's inability to show " ' "facts essential to justify opposition may exist." ' " (*Bahl*, *supra*, 89 Cal.App.4th at p. 397.) Plaintiff's deposition testimony made it unequivocally clear there was no promise on behalf of PMA to employ plaintiff as a Casual and, even if there had been such a promise, plaintiff did not rely upon it, reasonably or otherwise. His testimony also made it unequivocally clear that no one falsely represented that his application would be processed based on sequence No. 2354 with the intent to defraud him and, even if someone had, he did not rely on such representation to his detriment. Thus, because no purpose would have been served by reopening discovery, the trial court properly denied his request for a continuance.

DISPOSITION

The judgment of dismissal in favor of defendants is affirmed.

_____
Jackson, J.

WE CONCUR:

_____
Siggins, P. J.

_____
Fujisaki, J.

A152300/*Johnson v. Pacific Maritime Assn.*