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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

BRAND TARZANA SURGICAL INSTITUTE, INC., a California Corporation,

Plaintiff-Appellant,

v.

INTERNATIONAL LONGSHORE & WAREHOUSE UNION-PACIFIC MARTIME ASSOCATION WELFARE PLAN,

Defendant-Appellee,

and

INTERNATIONAL LONGSHORE & WAREHOUSE UNION-PACIFIC MARITIME ASSOCIATION COASTWISE INDEMNITY PLAN; DOES, 1 through 10,

Defendants.

No. 22-55211

D.C. No. 2:14-cv-03191-FMO-AGR

MEMORANDUM*

Appeal from the United States District Court for the Central District of California

* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

Fernando M. Olguin, District Judge, Presiding

Submitted December 6, 2022[**]
Pasadena, California

Before: BEA, IKUTA, and CHRISTEN, Circuit Judges.

Brand Tarzana Surgical Institute, Inc. ("Brand") appeals the denial of its motion to reopen the district court's prior order and judgment under Rule 60(b)(6) of the Federal Rules of Civil Procedure, based "on a fundamental change in applicable law." We have jurisdiction under 28 U.S.C. § 1291 and affirm.

We reject Brand's claim that *Beverly Oaks Physicians Surgical Center, LLC v. Blue Cross & Blue Shield of Illinois*, 983 F.3d 435 (9th Cir. 2020), made a fundamental change in applicable law regarding waiver of an anti-assignment clause, because *Beverly Oaks* is consistent with *Spinedex Physical Therapy USA Inc. v. United Healthcare of Arizona, Inc.*, 770 F.3d 1282, 1296 (9th Cir. 2014), on which the district court relied in granting summary judgment to the defendant in this case, and on which this court relied in affirming the district court. Consistent with the rule set forth in *Spinedex*, *Beverly Oaks* held that a healthcare provider had plausibly alleged that an employee health plan waived its anti-assignment clause when the healthcare provider informed the plan that it was acting as its

[**] The panel unanimously concludes this case is suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

patients' assignee (by submitting claims forms identifying itself as the patients' assignee), and the plan failed to explain that its denial of the provider's claims were based on an anti-assignment clause. 983 F.3d at 440–42.

The district court and this court applied the same rule from *Spinedex* in this case, but reached a different outcome due to factual differences from *Beverly Oaks*. Unlike in *Beverly Oaks*, here the employee health plan did not waive its anti-assignment clause because Brand did not engage in the administrative claims process or otherwise indicate that it was acting as its patients' assignee, and therefore the Plan was not informed of the basis of Brand's claim and had no obligation to provide its reason for denying claims.[1]

Nor did *Beverly Oaks* make a fundamental change in applicable law regarding equitable estoppel. Unlike the plan in *Beverly Oaks*, here the Plan did

[1] The district court erred by holding that the Plan "ha[d] not waived its right to raise anti-assignment, because the anti-assignment provisions are not substantive basis for claim denials, and therefore they need not be raised at the outset." *Brand Tarzana Surgical Inst., Inc. v. Int'l Longshore & Warehouse Union-Pacific Mar. Ass'n Welfare Plan*, 2016 WL 3480782, at *7 (C.D. Cal. Mar. 8, 2016); *see also Brand Tarzana Surgical Inst., Inc. v. Int'l Longshore & Warehouse Union-Pac. Mar. Ass'n Welfare Plan*, 706 F. App'x 442, 443 (9th Cir. 2017) (same). This reasoning conflicts with our prior holding in *Spinedex* that an administrator may not raise an anti-assignment provision as a basis for denial for the first time in litigation. 770 F.3d at 1296–97. However, because both the district court and we also relied on a valid ground for rejecting Brand's argument, the district court's error was harmless.

not make any misrepresentation regarding Brand's eligibility to receive Plan benefits as an out-of-network provider. Therefore, factual differences rather than a change in law explain the different results reached in this case.

Because there was no change in the law, the district court did not abuse its discretion in denying a motion to reopen under Rule 60(b)(6) based on an extraordinary change in the law. *See Delay v. Gordon*, 475 F.3d 1039, 1043 (9th Cir. 2007). We therefore do not reach Brand's arguments regarding the six factors used to assess a motion to reopen based on post-judgment changes in law under Rule 60(b)(6). *See Bynoe v. Baca*, 966 F.3d 972, 980 (9th Cir. 2020).

AFFIRMED.