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THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION THREE

JOHN S. KARLS, Plaintiff and Appellant, v. MELLON CAPITAL MANAGEMENT CORPORATION et al., Defendants and Respondents.	A127001 (San Francisco County Super. Ct. No. 489458)
JOHN S. KARLS, Plaintiff and Appellant, v. THE BANK OF NEW YORK et al., Defendants and Respondents.	A127444 (San Francisco County Super. Ct. No. 489460)

Appellant John S. Karls sued various financial institutions for conversion in 16 different lawsuits, claiming the institutions had converted an idea he conceived that would allow them to achieve tax savings through the use of foreign tax credits. On appeal from orders dismissing two of the lawsuits, Karls contends the trial court erred in dismissing certain defendants, arguing that “a group of corporations” that files consolidated tax returns exists as a separate legal entity capable of being sued. He also contends the trial court erred in concluding that his claim for conversion of an idea is preempted by state and federal intellectual property law and that he failed to state a claim for conversion of tangible property. We affirm.

FACTUAL AND PROCEDURAL BACKGROUND

On June 15, 2009, Karls filed a complaint alleging a single cause of action for conversion against Mellon Capital Management Corporation and other entities claimed to have been part of the "Mellon Financial Corporation U.S.-Tax 'Consolidated Group' of Corporations" (the Mellon action).[1] On that same date, Karls filed a virtually identical complaint against The Bank of New York and other entities claimed to have been part of the "Bank of New York U.S.-Tax 'Consolidated Group' of Corporations" (the BNY action). All of the entities that were defendants in the Mellon action—with the sole exception of The Mellon Financial Corporation U.S.-Tax "Consolidated Group" of Corporations—were also defendants in the BNY action. In addition, the BNY action included a number of defendants that were not named in the Mellon action.[2]

Each of the Mellon action complaint and the BNY action complaint states a single claim for conversion and alleged the defendants made use of confidential and proprietary "intellectual property" belonging to Karls. The complaints describe the property, in general, as " 'an idea' " that Karls "invented" to generate tax savings for two different groups of companies. More precisely, "[t]he [p]roperty was the idea that two different groups of companies could claim a tax advantage from combining the separate income taxes that each would otherwise pay on a portion of their income into a single tax for which both could claim benefit." To secure this advantage, the parties would create a "joint structure [that] would be subject to income tax in two different jurisdictions, one of which would grant a credit (or tax reduction) for the tax paid to the other jurisdiction."

By some means not alleged in the complaints, the defendant financial institutions appropriated Karls's idea and used it to obtain foreign tax credits. Karls seeks

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[1] The other entities named as defendants were Mellon Financial Services Corportion [sic] #1, Mellon Leasing Corporation, Mellon Ventures, Inc., and the Mellon Financial Corporation U.S.-Tax "Consolidated Group" of Corporations.

[2] The other entities named as defendants in the BNY action were The Bank of New York, BNY Mellon Performance & Risk Analytics, Inc., The Dreyfus Service Organization, Inc., MBSC Securities Corporation, Urdang Capital Management, Inc., and The Bank of New York U.S.-Tax "Consolidated Group" of Corporations.

compensatory damages in the amount of the foreign tax credits that defendants have been claiming and will be able to claim in the future as a result of their use of his idea, as well as punitive damages equal to three times the amount of compensatory damages. Attached to the complaints in both the Mellon action and the BNY action is a copy of a newspaper article published on June 30, 2006 in the Wall Street Journal. The article discusses a scheme similar to that described by Karls and explains that it had been used by Barclays Capital Limited in various deals with nine other financial institutions. The article describes the scheme as "tax arbitrage," which "plays off one nation's tax system against another to reduce the banks' tax bills."

The complaint in the Mellon action contains an allegation that the "Mellon Financial Corporation U.S.-Tax 'Consolidated Group' of Corporations was formed by its members for the purpose of reducing their combined U.S. income tax liability." The complaint describes this " 'Consolidated Group' of Corporations" as an "unincorporated association, acting as a common-law partnership." The complaint alleges that this purported entity is described in section 1504 of the Internal Revenue Code, which defines an "affiliated group" that may choose to file a consolidated income tax return. (26 U.S.C. §§ 1501, 1504(a).) In effect, therefore, the complaint alleges that a group of corporations choosing to file a consolidated tax return as an affiliated group constitutes a separate legal entity that is capable of being sued as such. The BNY action contains similar allegations with respect to the "Bank of New York U.S.-Tax 'Consolidated Group' of Corporations," which was allegedly formed for the purpose of reducing its members' tax liability. For the sake of brevity, we shall refer to the alleged entities that filed consolidated tax returns on behalf of their members as the "Mellon tax return group" and the "BNY tax return group."[3]

[3] Thus, "Mellon tax return group" is shorthand for "Mellon Financial Corporation U.S.-Tax 'Consolidated Group' of Corporations," and "BNY tax return group" is an abbreviated version of "Bank of New York U.S.-Tax 'Consolidated Group' of Corporations."

Aside from the fact the Mellon action refers to the Mellon tax return group and the BNY action refers to the BNY tax return group, the allegations in the two complaints are identical. Indeed, as reflected in the record on appeal and in a summary provided by Karls, he filed a total of at least 16 lawsuits against various financial institutions alleging conversion of his “idea.” He claims his “property was stolen by Barclays Capital Ltd. from whom the 16 different groups of Defendants acquired the property.”

The defendants in the Mellon action filed a demurrer and motion to dismiss in which they argued that the court lacks jurisdiction over the Mellon tax return group, which they claimed does not exist as a separate legal entity and cannot be sued as such. In the alternative, the defendants sought to quash service of process with respect to the Mellon tax return group. Further, the defendants argued the Mellon action is entirely duplicative of the BNY action, which contains the same claim and includes all of the defendants named in the Mellon action following dismissal of the Mellon tax return group from the Mellon action. The defendants sought to dismiss the Mellon action with prejudice under Code of Civil Procedure section 430.10, which permits a party to demur to a cause of action on the ground “[t]here is another action pending between the same parties on the same cause of action.” (Code Civ. Proc. § 430.10, subd. (c).)

In an order dated September 14, 2009, the trial court granted the defendants’ motion and dismissed the Mellon action in its entirety with prejudice. Specifically, the court ruled that it lacked jurisdiction over the Mellon tax return group because that “Defendant is not an existing legal entity or person that can sue or be sued.” Further, the court concluded the Mellon action “is identical to and duplicative of” the BNY action with respect to the remaining defendants. Karls filed a timely notice of appeal from the order of dismissal in the Mellon action.

In the BNY action, the defendants filed a demurrer for failure to state a claim as to the conversion cause of action. The defendants argued that federal and state intellectual property laws preempt a common law cause of action for conversion of intangible intellectual property. The defendants also sought to dismiss the BNY tax return group or, alternatively, to quash service of process on the ground that no such legal entity exists.

In its September 14, 2009 order, the trial court dismissed with prejudice all claims against the BNY tax return group, reasoning that no such legal entity exists. The court sustained the demurrer to the conversion cause of action without prejudice and granted Karls 10 days to file an amended complaint. The court's order states that the conversion claim as pleaded was preempted by federal and state intellectual property laws. Nevertheless, the court permitted Karls an opportunity to amend his complaint to "demonstrate his claim is not preempted under California [or] federal law and that his conversion claim is for tangible property."

On September 24, 2009, Karls filed what he entitled a "First Amendment to Plaintiff's Complaint for Conversion" in the BNY action. This "first amended complaint" primarily consists of legal arguments explaining why Karls's claims are not preempted and why his cause of action contains a claim for conversion of tangible property. Among other things, Karls asserted that the "idea" allegedly converted "is so complicated that it cannot be understood without being embodied in a 'written presentation.' "

The defendants in the BNY action demurred to the first amended complaint, contending that it still failed to state a cause of action for conversion. The defendants argued that federal and state intellectual property laws preempt Karls's claims and that he failed to plead the requisite elements of a conversion claim. The defendants also argued Karls's action was barred under principles of res judicata in view of the fact that identical claims against other defendants (in some of the 14 similar cases) had been dismissed with prejudice for failure to state a cause of action.

By order dated November 12, 2009, the trial court sustained the defendants' demurrer to the first amended complaint without leave to amend in the BNY action. The court stated that Karls "has not alleged facts showing the claim is not preempted by state and federal intellectual property law or that the property converted was tangible property." The court further stated there was no reasonable probability the defect could be cured by amendment. The court's order dismissed the action with prejudice as to the remaining defendants. On January 6, 2010, Karls filed a timely notice of appeal in the

BNY action from the court's order dated November 12, 2009. At the urging of the defendants, we consolidated the appeals in the Mellon action and the BNY action for purposes of oral argument and decision.

DISCUSSION

I. *Standard of Review*

We apply an independent review to the question of whether a defendant has the legal capacity to be sued. (*People ex rel. Totten v. Colonia Chiques* (2007) 156 Cal.App.4th 31, 38 (*Totten*); *Barr v. United Methodist Church* (1979) 90 Cal.App.3d 259, 263-264 (*Barr*).) We also apply a de novo standard of review to an order sustaining a demurrer without leave to amend, " 'i.e., we exercise our independent judgment about whether the complaint states a cause of action as a matter of law.' [Citation.]" (*Santa Teresa Citizen Action Group v. State Energy Resources Conservation & Development Com.* (2003) 105 Cal.App.4th 1441, 1445.) " ' "We treat the demurrer as admitting all material facts properly pleaded, but not contentions, deductions or conclusions of fact or law. [Citation.] We also consider matters which may be judicially noticed." [Citation.]' " (*Zelig v. County of Los Angeles* (2002) 27 Cal.4th 1112, 1126.) "We affirm if any ground offered in support of the demurrer was well taken but find error if the plaintiff has stated a cause of action under any possible legal theory. [Citations.] We are not bound by the trial court's stated reasons, if any, supporting its ruling; we review the ruling, not its rationale. [Citation.]" (*Mendoza v. Town of Ross* (2005) 128 Cal.App.4th 625, 631.) We review the court's refusal to allow leave to amend under the abuse of discretion standard. (*Zelig v. County of Los Angeles, supra,* 27 Cal.4th at p. 1126.)

II. *Dismissal of Non-Existent Entities*

It is well established that "[a] civil action can be maintained only against a legal person, i.e., a natural person or an artificial or quasi-artificial person, a nonentity is incapable of suing or being sued. [Citations.] Where a suit is brought against an entity which is legally nonexistent, the proceeding is void *ab initio* and its invalidity can be called to the attention of the court at any stage of the proceeding. [Citations.]" (*Oliver v.*

Swiss Club Tell (1963) 222 Cal.App.2d 528, 537-538.) The commonsense rationale of this rule is that courts sit to settle disputes between existing parties, and when a plaintiff or defendant does not exist, no lawful judgment can be rendered for or against such a party. (*Id.* at p. 538.)

Karls contends the court erred in dismissing the Mellon tax return group and the BNY tax return group, respectively, from the Mellon action and the BNY action. He argues that the question of whether an entity has a separate legal existence is one of fact. Further, he contends the defendants offered no evidence to support their assertion that the Mellon tax return group and the BNY tax return group have no independent legal existence.

While it may be true in general that the question of a party's ability to sue or be sued as a separate legal entity turns on the facts of the case, the question here is fundamentally one of law. Karls does not allege that the Mellon tax return group or the BNY tax return group has a purpose aside from permitting the filing of consolidated tax returns to achieve tax savings. The question is therefore one of law: does the filing of a consolidated tax return by a group of affiliated corporations—without more—create a new, distinct entity that is capable of being sued under California law? As we explain, the mere fact of filing a consolidated federal tax return does not transform a group of affiliated corporations into an unincorporated association or a common law partnership under California law.

A partnership or an unincorporated association, "whether organized for profit or not, may sue and be sued in the name it has assumed or by which it is known." (Code Civ. Proc., § 369.5, subd. (a).) To qualify as an unincorporated association, there must be " '(1) a group whose members share a common purpose, and (2) who function under a common name under circumstances where fairness requires the group be recognized as a legal entity.' [Citation.]" (*Totten*, *supra*, 156 Cal.App.4th at pp. 38-39.) Labor unions, political parties, social clubs, religious organizations, environmental societies, athletic organizations, condominium owners, lodges, gangs, stock exchanges, and veterans are common types of unincorporated associations. (*Barr, supra*, 90 Cal.App.3d at p. 266; *Totten, supra,* at pp. 38-39.)

Here, Karls fails to satisfy the second prong of California's two-prong test. Specifically, the complaint does not contain an allegation that anyone has joined together to function under the common names "Mellon Financial Corporation U.S.-Tax 'Consolidated Group' of Corporations" or "Bank of New York U.S.-Tax 'Consolidated Group' of Corporations." Karls does not allege that these affiliated groups, which exist solely to permit the filing of consolidated tax returns, are recognized by any common name, much less by the lengthy names that Karls has chosen to confer on them in the Mellon action and the BNY action.

Further, Karls fails to establish why fairness requires that these defendants be recognized as legal entities for purposes of being sued, especially in light of the fact that he already sued all of the business entities that comprise both the Mellon tax return group and the BNY tax return group. It is unclear what detriment Karls would suffer if he were unable to sue a purported unincorporated association comprised of entities that he has already sued. Indeed, principles of fairness weigh against treating affiliated groups that have no relationship other than filing consolidated tax returns as unincorporated associations. If such affiliated tax groups were treated as unincorporated associations, a corporation could potentially be exposed to liability for the actions taken by every other corporation that is part of the same affiliated tax group, even though their only relationship is through a common parent.[4] Notably, Karls has failed to provide any legal

[4] United States Code section 1504(a)(1) is the definitional section of the federal statutory scheme permitting a group of companies sharing a common parent to file a consolidated tax return. That section provides: "Affiliated group defined. [¶] For purposes of this subtitle [26 U.S.C. §§ 1 et seq.]— [¶] (1) In general. [¶] The term 'affiliated group' means [¶] (A) 1 or more chains of includible corporations connected through stock ownership with a common parent corporation which is an includible corporation, but only if— [¶] (B)(i) the common parent owns directly stock meeting the requirements of paragraph (2) in at least 1 of the other includible corporations, and [¶] (ii) stock meeting the requirements of paragraph (2) in each of the includible corporations (except the common parent) is owned directly by 1 or more of the other includible corporations."

authority to support his allegation that the mere filing of a consolidated tax return creates a common law partnership or unincorporated association under California law.

We conclude that the trial court did not err in dismissing the Mellon tax return group and the BNY tax return group, respectively, from the Mellon action and the BNY action. The mere fact those affiliated groups are alleged to have filed consolidated tax returns does not make them unincorporated associations capable of being sued in California.[5]

III. *Dismissal of Duplicative Action*

Karls contends the court erred in dismissing the Mellon action as duplicative of the BNY action, arguing that the parties in the two cases are not the same. He points out that the BNY action includes additional defendants not named in the Mellon action.

Code of Civil Procedure section 430.10, subdivision (c) codifies the common law plea in abatement and permits a court to dismiss an action when two separate actions are "pending . . . 'between the *same parties* on the *same cause of action*.' [Citation.]" (See *People ex rel. Garamendi v. American Autoplan, Inc.* (1993) 20 Cal.App.4th 760, 770.) In determining whether two actions are duplicative, courts analyze (1) the parties named in the complaints, and (2) whether the causes of action alleged in the actions arise from the same primary rights. (*Bescos v. Bank of America* (2003) 105 Cal.App.4th 378, 397.)

Here, each of the defendants in the Mellon action—other than the Mellon tax return group, which was properly dismissed—is named by Karls as a defendant in the BNY action. The single cause of action in each complaint is effectively identical. The mere fact the BNY action names additional defendants is irrelevant. Consider a plaintiff who sued a single defendant for fraud. If that plaintiff filed a second, identical fraud complaint but added an additional defendant to the second complaint, no one would dispute that the first complaint is now entirely duplicative of the second complaint. The

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[5] Even if the Mellon tax return group and the BNY tax return group were proper parties to the Mellon action and the BNY action, we would still conclude that the complaints are subject to dismissal as a whole because Karls has failed to state a cause of action for conversion, as explained in section IV., *post.*

same is true here. After the dismissal of the Mellon tax return group from the Mellon action, that lawsuit is entirely superfluous because its claims and parties are included within the BNY action.

To the extent Karls argues the Mellon action and the BNY action allege different means to achieve the alleged conversion of his idea—through different affiliated groups organized to file consolidated tax returns—the argument falls short. The primary rights violation in both of the actions is the alleged conversion of an idea. Whether the defendants in the Mellon action achieved the supposed conversion through the formation of the Mellon tax return group, the BNY tax return group, or some other affiliated group of companies, the fact remains that those parties allegedly converted Karls's idea for their own benefit. A contention that the defendants may have utilized Karls's idea in different ways amounts to nothing more than "different ways of committing the same wrongs. [Citation.]" (*Bescos v. Bank of America, supra,* 105 Cal.App.4th at p. 397.) Accordingly, we conclude the trial court did not err in dismissing the Mellon action as duplicative of the BNY action.

IV. *Failure to State a Claim for Conversion*

Conversion is generally described as the wrongful exercise of dominion over the personal property of another. (*Gruber v. Pacific States Sav. & Loan Co.* (1939) 13 Cal.2d 144, 148.) The basic elements of the tort are (1) the plaintiff's ownership or right to possession of personal property; (2) the defendant's disposition of the property in a manner that is inconsistent with the plaintiff's property rights; and (3) resulting damages. (*Burlesci v. Petersen* (1998) 68 Cal.App.4th 1062, 1066.)

Defendants assert that Karls's conversion claim fails as a matter of law because the alleged converted property is not tangible property, the claim is preempted by federal and state intellectual property statutes, and there is no allegation that the defendants deprived Karls of the use of his alleged property. As explained below, we agree.

A. *Conversion of an Idea*

Historically, a claim for conversion arose out of the wrongful control of tangible property capable of identification and taken into actual possession. (*Payne v. Elliot*

(1880) 54 Cal. 339, 340.) While over time the tangibility requirement has been relaxed somewhat, " 'Courts have traditionally refused to recognize as conversion the unauthorized taking of intangible interests that are not merged with, or reflected in, something tangible. [Citations.] And Dean Prosser has cautioned against scuttling conversion's tangibility requirement altogether, recommending instead the use of other remedies to protect intangible interests. [Citation.]' " (*Fremont Indemnity Co. v. Fremont General Corp.* (2007) 148 Cal.App.4th 97, 119-120.)

Under California law, "[t]he tort of conversion does not apply to ideas. [Citations.]" (*Melchior v. New Line Productions, Inc.* (2003) 106 Cal.App.4th 779, 793 (*Melchior*).) In *Melchior*, an author brought an action against the assignee of the film production company to which he had optioned his rights to Lost in Space, a motion picture based on his story. (*Id.* at pp. 783-784.) He alleged that he was the creator and owner of the property, Lost In Space, and that the assignee defendant had converted his property for its own use. (*Id.* at p. 791.) The Court of Appeal held the plaintiff could not state a claim for conversion of the idea upon which the movie was based. (*Id.* at p. 793.) Likewise, in *Dielsi v. Falk* (C.D. Cal. 1996) 916 F.Supp. 985, 992, the court held that a plaintiff could not state a claim for conversion against a defendant who allegedly copied ideas from a television script for the defendant's own use.

Here, Karls's claim fails because it is premised upon the conversion of an idea. Nevertheless, Karls contends the subject of his lawsuit is properly brought as a claim for conversion because it cannot " 'exist separate and apart from the paper on which it is written, or the physical substance in which it is embodied.' "   He contends his tax-saving concept, like Leonardo da Vinci's painting the Mona Lisa, is an "intangible idea" that cannot be understood without reference to the tangible written presentation that he prepared before the defendants' alleged conversion.

The analogy to the Mona Lisa is inapt. The complaint explicitly identifies the property at issue as an "idea." An "idea" does not qualify as property subject to conversion, even if the idea is complicated and is reduced to a writing. Further, the value of the Mona Lisa is in the physical substance in which it is embodied. A photocopy of the Mona Lisa would have a marginal value, at best. By contrast, a photocopy of Karls's complicated tax scheme would presumably have as much value as the original to anyone who might be interested in the scheme. Thus, unlike the value of the Mona Lisa, the value of Karls's idea does not inhere in the tangible substance on which the idea is expressed.

In sum, while an action for conversion may be entirely appropriate in the context of paintings and other tangible media of artistic expression, the tort is not available to plaintiffs suing for infringement of their intellectual property rights, regardless of whether the concepts at issue have been memorialized in a writing.

B. *Substantial Interference with Property Rights*

An essential element for establishing a claim for common law conversion is proving the plaintiff was deprived of use of the property as a result of the alleged wrongdoing. (*Jordan v. Talbot* (1961) 55 Cal.2d 597, 610.) Defendants correctly observe there can be no substantial interference with Karls's right to his own written presentation because he still retains the presentation and the ideas behind it.

The gist of a conversion action is "the wrongful interference with the owner's right of dominion and possession of his property." (*Chatterton v. Boone* (1947) 81 Cal.App.2d 943, 946.) To state a claim for conversion, a plaintiff must allege an intention on a defendant's part to " 'convert the owner's property, or to exercise some act of ownership over it, or to prevent the owner's taking possession of his property. [Citation.]' [Citations.]" (*Simonian v. Patterson* (1994) 27 Cal.App.4th 773, 782.)

Even if Karls had identified a form of property susceptible to conversion, the first amended complaint in the BNY action contains no allegations as to how defendants substantially interfered with his personal use or possession of the property in issue. The first amended complaint essentially relates that his corporate tax strategy was utilized by defendants, but says nothing more. He never alleges how any of the defendants substantially interfered with his own use or possession of this corporate tax-reduction concept. Failure to allege substantial interference with possession or right to possession permits rejection of the conversion claim. (*Zaslow v. Kroenert* (1946) 29 Cal.2d 541, 550.)

C. *Federal Copyright Preemption*

A state law cause of action is preempted by federal copyright law if (1) the rights alleged are equivalent to those protected by federal copyright law, and (2) the work involved falls within the "subject matter" of the federal Copyright Act (17 U.S.C. § 101 et seq.). (*Kodadek v. MTV Networks, Inc.* (9th Cir. 1998) 152 F.3d 1209, 1212.) " 'To survive preemption, the state cause of action must protect rights which are qualitatively different from the copyright rights. The state claim must have an extra element which changes the nature of the action.' [Citations.]" (*Laws v. Sony Music Entertainment, Inc.* (9th Cir. 2006) 448 F.3d 1134, 1143.)

Section 106 of the Copyright Act confers upon copyright owners the exclusive rights to reproduce, to distribute, and to display original works of authorship, and to prepare works derived from the originals. (17 U.S.C. § 106.) Section 106 also gives copyright owners the exclusive right to authorize such reproduction, distribution, display, and preparation. (*Ibid.*)

Karl's claims fall squarely within the confines of the federal Copyright Act. He attempted to assert a conversion claim based on the allegation that he had reduced a creative idea to a tangible writing that others wrongfully used, reproduced, or distributed. Because the report was an original work of authorship, fixed in a tangible medium, and manifesting plaintiff's creativity, the conditions for preemption are satisfied. (See *Melchior, supra,* 106 Cal.App.4th at pp. 791-792.)

Relying on *Gladstone v. Hillel* (1988) 203 Cal.App.3d 977 (*Gladstone*), Karls claims his action contains the "extra element" that allows his claim to avoid federal copyright preemption. We are unpersuaded.

In *Gladstone*, the defendants had taken the plaintiff's unique jewelry molds, claiming they were collateral for the plaintiff's alleged debt, and changed the locks to the his jewelry workshop. (*Gladstone, supra*, 203 Cal.App.3d at pp. 984-985.) The plaintiff successfully sued for equitable relief to recover possession of his molds, and for damages based on theories of conversion and fraud. (*Id.* at p. 981.) The appellate court found the conversion claim was not preempted by the Copyright Act: "Under the extra element test, it is clear that federal copyright law does not preempt state causes of action alleging fraud or conversion—the two theories pleaded in the complaint. Fraud involves 'the extra element of misrepresentation.' [Citation.] Conversion entails the 'wrongful possession of the tangible embodiment of a work.' [Citations.]" (*Gladstone, supra,* at p. 987.)

Here, unlike in *Gladstone*, the alleged conversion does not involve wrongful possession of a "tangible embodiment" of Karls's idea. As discussed above, the value of Karls's idea is in the abstract thought or scheme that he has allegedly reduced to writing. The paper or other medium on which the idea is recorded does not have intrinsic value, unlike the "unique jewelry molds" described in *Gladstone.* Karls's conversion cause of action therefore lacks the "extra element" that would cause the claim to avoid federal copyright preemption.[6]

Furthermore, because Karls failed to demonstrate a reasonable probability that he could cure the numerous defects in the first amended complaint by amendment, we conclude the trial court did not abuse its discretion in denying him further leave to amend his complaint in the BNY action.

D. *Equal Protection*

Finally, Karls contends that the trial court's decision amounts to an unconstitutional denial of equal protection for American inner-city children. This unusual claim, as best we can understand, turns on the following contentions: (1) Karls has pledged the proceeds of his tax-savings idea to a foundation that assists in educational efforts directed at inner-city children, (2) his claim that financial institutions have converted his idea is functionally equivalent to a claim that Nazis stole fine art from

[6] Because we conclude that Karls's claim is preempted by federal copyright law, we need not address whether his common law claim is also preempted by the California Uniform Trade Secrets Act (Civ. Code, § 3426 et seq.).

Holocaust victims' families and Holocaust survivors, because the supposed conversion of his tax scheme is like the theft of fine art, and (3) it is a denial of equal protection to allow Holocaust victims' families and Holocaust survivors to recover stolen art but not allow inner-city children to recover damages resulting from the theft of his idea.

To state an equal protection claim, one must show that the state has adopted a classification that treats two or more similarly situated groups in a different manner. (*Walgreen Co. v. City and County of San Francisco* (2010) 185 Cal.App.4th 424, 434.) Here, Karls has failed to demonstrate that inner-city children who would supposedly benefit from his idea are similarly situated to Holocaust victims' families and Holocaust survivors who had fine art stolen from them, much less that there is a legislative classification that treats these two groups differently. As discussed above, Karls's tax scheme is not the equivalent of fine art work. Persons who claim that a third party has stolen an idea from them are not similarly situated to persons who have suffered a theft of fine art. Thus, Karls's equal protection claim fails at the threshold.

DISPOSITION

The judgments are affirmed. Respondents shall be entitled to recover their costs on appeal.

McGuiness, P.J.

We concur:

Pollak, J.

Jenkins, J.