6-07/530.10 Properly Named Defendant

Plaintiffs often inadvertently fail to name both the firm and partners as defendants in the summons. For example, if the only defendants sued are “AB and CD copartners doing business under the firm name of ABCD,” the individuals are the only defendants in the action and the firm is not a defendant. (Maclay Co. v. Meads, 14 CA 363; Potts v. Whitson, 52 CA 2d 199) Similarly, where the defendants were designated as “A B and C D doing business as W L”, it was held that the association W L was not a party defendant. (Bums v. Downs, 42 CA 2d 322) Conversely, where the suit is against a firm name, the statement that the firm consists of certain named persons does not render such persons defendants liable individually. Phrases such as “d.b.a. XY Company”, or “composed of AB and CD partners thereof”, or “partners doing business under the fictitious name of XY Company” and the like have been held to be merely descriptive words of the defendants specifically named and they do not add to the number of defendants. (Billings v. Finn, 55 Cal.App. 134, 136 [202 P. 938])

(CCP 369.5)