

MULRY, JR. v LAKESIDE VENTURES, LLC, et al.

23CV47109

**PLAINTIFF'S DEFAULT HEARING AS TO DEFENDANT LAKESIDE VENTURES<
LLC**

The Court notes that defendant has a Motion to Set Aside Default on calendar on March 14, 2025. Therefore, in the interests of judicial economy, Plaintiff's scheduled default prove-up hearing as to said defendant is rescheduled for March 21, 2025, on the same calendar as Plaintiff's "demurrer to counterclaim".

The Clerk shall provide notice of this Ruling to the parties forthwith. No further formal Order is required.

HESSLER v KAUTZ VINEYARDS

21CV45613

DEFENDANT'S MOTION TO DISMISS

This is a personal injury case arising out of Plaintiff Darlene Hessler's ("Plaintiff") alleged fall at the Kautz Vineyards dba Ironstone Winery ("Ironstone") on October 6, 2019. Now before the Court is Ironstone's motion to dismiss pursuant to Code of Civil Procedure sections 583.410 and 583.420.

Code of Civil Procedure section 583.410(a) provides:

The court may in its discretion dismiss an action for delay in prosecution pursuant to this article on its own motion or on motion of the defendant if to do so appears to the court appropriate under the circumstances of the case.

Discretionary dismissal may be ordered if an action is not brought to trial within two years after the action is commenced against the defendant if the Judicial Council by rule so prescribes. (Cal. Rules of Court, Rule 3.1340(a); Code Civ. Proc., § 583.420(a)(2).) Additionally, the court has the inherent authority to dismiss an action. (Code Civ. Proc., § 583.150.) In ruling on a motion to dismiss under Code of Civil Procedure sections 583.410-583.430, the Court must consider all relevant matters, including: (1) The court's file in the case and the declarations and supporting data submitted by the parties and, where applicable, the availability of the moving party and other essential parties for service of process; (2) The diligence in seeking to effect service of process; (3) The extent to which the parties engaged in any settlement negotiations or discussions; (4) The diligence of the parties in pursuing discovery or other pretrial proceedings, including any extraordinary relief sought by either party; (5) The nature and complexity of the case; (6) The law applicable to the case, including the pendency of other litigation under a common set of facts or determinative of the legal or factual issues in the case; (7) The nature of any extensions of time or other delay attributable to either party; (8) The condition of the court's calendar and the availability of an earlier trial date if the matter was ready for trial; (9) Whether the interests of justice are best served by dismissal or trial of the case; (10) Any other fact or circumstance relevant to a fair determination of the issue. (Cal. Rules of Court, Rule 3.1342(e).)

Plaintiff filed this case on September 21, 2021. The Defendant answered on April 8, 2022 and subsequently served discovery on May 11, 2022 and reserved on July 7, 2022. (Declaration of Daniel C. Taylor, Esq. (“Taylor Decl.”) ¶ 4.) On July 22, 2022, Plaintiff’s counsel informed Defendant’s counsel that Plaintiff had passed away. (*Id.* ¶ 5.)

In January 2023, Plaintiff’s counsel confirmed that Plaintiff’s family intended to move forward with the case and that steps would be taken in probate court to appoint Plaintiff’s granddaughter, Stephanie Hessler, as the personal representative. (*Id.* ¶ 6.) Defendant propounded additional discovery on March 7, 2023, including Requests for Admissions, Set One, and Judicial Council Form Interrogatories, Set Two. (*Id.* ¶ 7.) As of January 27, 2025, no responses have been received, and Plaintiff’s counsel has not requested any extensions. (*Id.* ¶

On October 10, 2023, Plaintiff’s counsel submitted a verification executed by Stephanie Hessler to the initial discovery requests. (*Id.* ¶ 9.) However, it was not until three days later that the Sacramento Superior Court, Probate Division, issued orders appointing Stephanie Hessler as the administrator of the Estate of Darlene Hessler. (*Id.* ¶ 8.) In December 2023, Defendant’s counsel requested that Ms. Hessler resubmit the verification because the first one, done prior to her appointment as administrator, was ineffective. (*Id.* ¶ 10.) Despite representations by Plaintiff’s counsel that the new verification would be forthcoming, it never came. (*Ibid.*) Plaintiff’s counsel was non-responsive to Defendant’s counsels attempts in January 2024 to discuss the deficient responses. (*Id.* ¶ 11.) As of the filing of this motion, Plaintiff has not served any discovery nor scheduled any depositions. (*Id.* ¶ 12.)

This action has not been brought to trial within two years. The Plaintiff has taken no meaningful steps to actively pursue litigation in this case. Further, Plaintiff has not filed an opposition. Given all these factors, the Court finds that dismissal is warranted. (See (Cal. Rules of Court 3.1342(b) [“The failure of the opposing party to serve and file a written opposition may be construed by the court as an admission that the motion is meritorious, and the court may grant the motion without a hearing on the merits.”].)

The Motion to Dismiss is **GRANTED**.

The Clerk shall provide notice of this Ruling to the parties forthwith. No further formal Order is required. The Case Management OSC scheduled for June 4, 2025, at 1:30 p.m., in Dept. 4 is VACATED.

DAVID ZAMORA, TRUSTEE v CLAPP

22CV46467

PLAINTIFF/CROSS-DEFENDANT'S DEMURRER TO CROSS-COMPLAINT

This is partnership dispute involving the management of real property and two residential units thereon. Now before the Court is a demurrer filed by Plaintiff/Cross-Defendant Dave Zamora (son and acting trustee of his father Gus Zamora's trust) to the Cross-Complaint filed by Defendant/Cross-Complainant Clyde Clapp.

I. Factual and Procedural Background

The instant case is related to two other cases: 16CV41649 and 19PR8129.

In November of 2007, Gus Zamora ("Gus"¹, now deceased), his son and acting trustee of Gus' trust Dave Zamora ("Dave") and Gus' close friend Clyde Clapp ("Clapp") pooled together their respective resources to acquire APN 073-044-006, commonly known as 1521 Country View Drive in Valley Springs ("Property"). Although all three were to share equally in the \$138,000 down payment, Dave or Gus (the pleading is unclear) advanced Clyde's share. The balance of the purchase price was covered by loan from Indymac.

Over the years, the parties contributed different efforts to the Property, which eventually came to house a second rental dwelling. Shortly after the second dwelling was rented, disagreement arose between the parties regarding contributions and sweat equity, prompting Gus to file a lawsuit against Clapp (Case No: 16CV41649). Given his advanced years (91) and diminishing health, Gus was represented throughout most of the case by his son Dave, in the latter's capacity as guardian ad litem. Gus died while that action was pending. The dispute was subject of a bench trial in April of 2021. Following witness testimony and the admission of nearly 200 exhibits, this court found that partnership did exist, that it was not impliedly terminated by Gus or Dave, and that Clapp breached his fiduciary duties to the other partners by treating the Property as his own (recording title and keeping rent checks). Judgment was entered for Gus and Dave. This Court ordered that the Property was to be sold, with Clapp taking 1/3 of the net proceeds and Gus/Dave to receive the balance. (See Statement of Decision dated 06/21/21, and Judgment entered 09/07/21.) Clapp filed an appeal.

¹ Given the common surname between Gus and Dave Zamora, the Court refers to the parties by their first names. No disrespect is intended.

On April 21, 2022, Clapp listed the Property for sale for \$589,000 on his own and without involving Dave or this Court. Dave filed motion for preliminary injunction in the probate case (Case No: 19PR8129), barring Clapp from proceeding with the sale without acknowledging Dave's interest therein. Clapp removed the listing two months later in response to this Court's granting of a TRO (see Minute Order dated 06/16/22) and preliminary injunction (see Minute order dated 08/05/22). This Court advised the parties that they could sell the Property if they wanted to work together and hold the funds in constructive trust pending the resolution of the appeal, but to the extent Clapp may prefer to keep the Property should the appeal go his way, any sale would have to wait.

On February 24, 2023, this Court granted a stay in this matter pending Clapp's appeal. Thereafter, the related case of 16CV41649 has fully resolved as all appellate avenues were exhausted and an Amended Judgment was entered on May 31, 2024.

On January 2, 2025, Clapp filed a Cross-Complaint against Gus' estate ("Estate") and Dave (collectively "Cross-Defendants") alleging: 1) Breach of Contract and 2) Nuisance and Waste. The instant demurrer followed.

The Court grants Cross-Defendants' Request for Judicial Notice.

II. Legal Standard

"A demurrer tests the sufficiency of a complaint and admits all facts properly pleaded." (*Setliff v. E.I. Du Pont de Nemours & Co.* (1995) 32 Cal. App. 4th 1525, 1533.) The court assumes the truth of the allegations asserted but does not assume the truth of "contentions, deductions, or conclusions of law." (*California Logistics, Inc. v. State of California* (2008) 161 Cal. App. 4th 242, 247.) The court can further look at those facts that "reasonably can be inferred from those expressly pleaded, and matters of which judicial notice has been taken." (*Fremont Indemnity Co.*, 148 Cal. App. 4th 100, 111.) In considering the demurrer, the court must accept the allegations set forth in the complaint as true. (*Serrano v. Priest* (1971) 5 Cal.3d 584, 591.)

III. Legal Discussion

A. Breach of Contract

A breach of contract claim requires: 1) the existence of a contract, 2) plaintiff's performance or excuse for nonperformance, 3) defendant's breach, and 4) the resulting damages to the plaintiff. (*San Mateo Union High Sch. Dist. v. Cnty. of San Mateo*, (2013) 213 Cal. App. 4th 418, 439.) "Where contract language is clear and explicit and does not lead to absurd results, we ascertain intent from the written terms and go no further." (*Shaw v. Regents of Univ. of Cal.*, (1997) 58 Cal. App 4th 44, 53.)

Cross-Defendants argue that Clapp cannot maintain his breach of contract claim for multiple reasons. First, they argue that there is no allegation of the existence of any contract between the parties, no allegation of any breach of a contract, and no damages have been incurred. They also argue that the breach of contract claim is barred by *res judicata* and the statute of limitations.

The Cross-Complaint does not specify the agreement, which is alleged to have been breached, nor any terms of such agreement. Rather, the Cross-Complaint states that in 2021, there was a different Court judgment pursuant to which the Estate was given two-thirds of the Property. It appears to be this judgment which Clapp asserts has been breached because even though the Estate owns two-thirds of the Property, it has not made any payments for upkeep or losses. (Cross-Complaint ¶¶ 10, 11.) However, there is not a single allegation of any agreement between the parties pursuant to which the Estate would make any financial contributions to the Property after the 2021 judgment. Accordingly, there is no allegation of an agreement or breach of that agreement.

Further, even assuming that Clapp could amend the Cross-Complaint so as to allege that the 2021 Judgment was a contract and that it was breached, such claim would be barred by the statute of limitations. Causes of action for breach of written contract are subject to a four-year statute of limitations. (Code of Civil Procedure section 337(1).) Here, the Judgment was rendered on September 7, 2021, but the Cross-Complaint was not filed until well after four years on January 2, 2025.²

Finally, to the extent that the breach of contract claim is attempting to relitigate who is responsible for and owns the Property, this has already been determined by the 2021 Judgment. The doctrine of *res judicata*, "precludes piecemeal litigation by splitting a single cause of action or relitigation of the same cause of action on a different legal theory or for different relief." (*Weikel v. TCW Realty Fund II Holding Co.* (1997) 55 Cal.App.4th 1234, 1245.) Further, *res judicata* bars the litigation "not only of issues that

² The opposition suggests that the claims for breach of contract are based on actions taken even earlier. "Paying nothing since 2013 is simply not fair." (Opp. p. 5.)

were actually litigated, but also issues that **could have been litigated** in that proceeding [citation].” (*Zevnik v. Superior Court* (2008) 159 Cal.App.4th 76, 82 [emphasis added].)

Based on the foregoing, the Demurrer as to the cause of action for breach of contract is **SUSTAINED**, WITHOUT leave to amend.

B. Nuisance

A private nuisance includes “[a]nything which is injurious to health . . . or is indecent or offensive to the senses, or an obstruction to the free use of property, so as to interfere with the comfortable enjoyment of life or property.” (Civ. Code, § 3479.) “A nuisance may be both public and private, but to proceed on a private nuisance theory the plaintiff must prove an injury specifically referable to the use and enjoyment of his or her land.” (*Koll-Irvine Center Property Owners Assn. v. County of Orange* (1994) 24 Cal.App.4th 1036, 1041.) To establish an action for private nuisance, the plaintiff must prove an interference with his use and enjoyment of his property; (2) the invasion must be substantial and cause substantial actual damage; and 3) the interference with the protected interest must not only be substantial, but it must also be unreasonable. (*Mendez v. Rancho Valencia Resort Partners, LLC* (2016) 3 Cal.App.5th 248, 262-263.)

Cross-Defendants argue that that Cross-Complaint fails to state a claim for private nuisance because Clapp is not the owner of the Property. Rather, Clapp is the custodian while the Property has been impounded by the Court pursuant to the 2021 Judgment. While this may be true, Clapp still has an ownership interest in one-third of the Property and would therefore have an interest in ensuring that the value of the Property is not decreased. While arguably Clapp may not be able to prove that any of the alleged actions have or will diminish the value of the Property, for purposes of the demurrer, such allegations are deemed to be true.³

Accordingly, the Demurrer as to the cause of action for nuisance is **OVERRULED**.

³ Cross-Defendants have submitted multiple declarations in support of their demurrer. However, reference to matters outside the pleadings, unless subject to judicial notice, is not proper at the demurrer stage. (*Kanter v. Reed* (2023), 92 Cal.App.5th 191, 203.)

The Clerk shall provide notice of this Ruling to the parties forthwith. Cross-Defendant to prepare a formal Order in conforming with this Ruling in compliance with Rule of Court 3.1312.