BANK OF AMERICA, N.A. v LUCY GARCIA

19CF12836

DEFENDANT'S CLAIM OF EXEMPTION

On June 15, 2019, judgment creditor Bank of America ("BOA") obtained a judgment against Defendant Lucy D. Garcia ("Garcia") in the amount of $20,525.79. After Los Angeles County withheld funds, Garcia filed a claim of exemption. BOA has filed an opposition. On October 23, 2024, the Court ordered Garcia to file a financial statement which is now before the Court.

Code of Civil Procedure section 706.050(a) states:

> Except as otherwise provided in this chapter, the maximum amount of disposable earnings of an individual judgment debtor for any workweek that is subject to levy under an earnings withholding order shall not exceed the lesser of the following: (1) Twenty-five percent of the individual's disposable earnings for that week. (2) Fifty percent of the amount by which the individual's disposable earnings for that week exceed 40 times the state minimum hourly wage in effect at the time the earnings are payable.

Garcia asserts that funds are exempt pursuant to Code Civil Procedure sections 704.070 (wages) and 704.110 (death benefits). In her more detailed financial statement, Garcia identities that funds in her bank accounts are either long term disability payments, or death benefits her mother received from her spouse's death.

Garcia states that her monthly pay is $2005.20 and that this is entirely from social security disability payments. The only other household income is her husband's social security disability payments. Garcia does not identify any other source of income.

Pursuant to 42 U.S.C. § 407(a), social security benefits are exempt from garnishment, except as authorized for attachment by the federal government.

Accordingly, Defendant's claim of exemption is **GRANTED**. There is no income which Los Angeles County can attach.

The Clerk shall provide notice of the Ruling forthwith. Defendant to submit a formal Order pursuant to CRC 1.1312 in conformity with this Ruling.

GRAHAM v CHANCE, et al.

23CV46928

DEFENDANT'S MOTION FOR LEAVE TO FILE CROSS-COMPLAINT

On September 11, 2023, Plaintiff Amber Graham ("Plaintiff") filed her complaint against Defendants Pure Aloha ("Aloha"), Steven J. Chance ("Chance"), and Sarah M. Barry ("Barry"). Plaintiff's complaint alleges various employment discrimination and harassment arising out of a physical assault that she alleges she suffered while an employee of Aloha.

Now before the Court is Defendants' motion for leave to file a cross-complaint and for costs/sanctions against Plaintiff. As set forth below, the motion for leave is granted but the motion for costs/sanctions is denied.

I. Factual and Procedural Background

In or around January 2022, Aloha hired Plaintiff as a sale associate and shortly thereafter promoted Plaintiff to manager. (Complaint ¶ 12.) Barry and Chance are allegedly the co-owners or directors of Aloha. (*Id.* ¶ 5.) In October 2022, Plaintiff was accused of using a derogatory term towards an African-American co-worker, which plaintiff denies. (*Id.* ¶ 14.) On October 17, 2022, Barry wrote Plaintiff up related to the allegations against her but refused to discuss the matter with Plaintiff. (*Id.* ¶ 15.) Plaintiff was not terminated but was instructed to leave the premises for the remainder of the day. (*Id.* ¶ 16).

As Plaintiff was leaving work on that day as requested by Barry, she asked to retrieve some of her personal belongings from the back. (*Id.* ¶ 16.) Barry acquiesced and Plaintiff retrieved her personal notebook, her bag, and her personal houseplant. (*Id.* ¶ 16.) Barry then accused Plaintiff of taking a notebook that had information related to Aloha and attempted to block Plaintiff from leaving the premises. (*Id.* ¶ 17.) At this time, Chance (who is also Barry's boyfriend) placed Plaintiff in a chokehold and threw her to the ground. (*Id*. ¶ 18.) Plaintiff suffered significant injuries including a broken nose and a concussion. (*Id.* ¶ 20.) The next day, Plaintiff received a termination notice from Aloha signed by Barry citing the allegation of a racial slur and that Plaintiff had refused to take part in an investigation. (*Id*. ¶ 21.)

Plaintiff's complaint alleges causes of action for harassment, discrimination, retaliation, wrongful termination, and intentional infliction of emotional distress.

After their demurrer was overruled, Defendants filed an answer on January 25, 2024. Defendants thereafter filed a substitution of attorney on February 13, 2024, and then a second substitution with different counsel on February 23, 2024. On August 15, 2024, Defendants filed a third substitution of counsel, this time naming their current attorney as counsel.

Defendants now seek leave to file a cross-complaint on the grounds that their former attorney erred in failing to do so. They argue that the claims in the cross-complaint are related to the original action and that Plaintiff will not be prejudiced by allowing this amendment.

II. LEGAL STANDARD

Code of Civil Procedure section 428.10(a) provides that a party against whom a cause of action has been asserted may file a cross-complaint against the parties who filed a complaint against him. Code of Civil Procedure section 426.30(a) provides:

> Except as otherwise provided by statute, if a party against whom a complaint has been filed and served fails to allege in a cross-complaint any related cause of action which (at the time of serving his answer to the complaint) he has against the plaintiff, such party may not thereafter in any other action assert against the plaintiff the related cause of action not pleaded.

Code of Civil Procedure section 426.50 provides:

> A party who fails to plead a cause of action subject to the requirements of this article, whether through oversight, inadvertence, mistake, neglect, or other cause, may apply to the court for leave to amend his pleading, or to file a cross-complaint, to assert such cause at any time during the course of the action. The court, after notice to the adverse party, shall grant, upon such terms as may be just to the parties, leave to amend the pleading, or to file the cross-complaint, to assert such cause if the party who failed to plead the cause acted in good faith. This subdivision shall be liberally construed to avoid forfeiture of causes of action.

The cross-complaint must be filed before the time for an answer (Code Civ. Proc. § 428.50(a)) or any time before the court has set a date for trial. (*Id.,*subd (b).) Otherwise, the party seeking to file the cross-complaint must seek leave to do so. (*Id.*, subd (c).) Leave may be granted in the interest of justice at any time during the course of the action. (Code Civ. Proc., § 428.50.)

Cross-complaints may be either permissive or compulsory. (*Crocker Nat. Bank v. Emerald* (1990) 221 Cal.App.3d 852, 863–864.) "Permission to file a permissive cross-complaint is solely within the trial court's discretion." (*Id*. at 864 (citing *Orient Handel v. United States Fid. and Guar. Co*. (1987) 192 Cal.App.3d 684, 701).) However, cross-claims against complainants arising from the same transaction or series thereof, existing at the time of filing an answer, are compulsory. (See, e.g., Code Civ. Proc., §426.30(a).) Leave to file compulsory cross-complaints "shall" be granted where moving parties acted in good faith. (Code Civ. Proc., § 426.50.)

"[W]hat constitutes 'good faith'-or lack of it-under Code of Civil Procedure section 426.50 must be determined in light of and in conformity with the liberality conferred upon the trial courts by the section…." (*Foot's Transfer & Storage Co. v. Superior Court* (1980) 114 Cal.App.3d 897, 902.) "[D]elay only may constitute the requisite bad faith to preclude the granting of the request to file a cross-complaint when it appears that a delayed cross-complaint, if allowed, would work a substantial injustice to the opposing party and would prejudice that party's position in some way." (*Id.* at 903.)

"The reason for allowing cross-complaints is to have a complete determination of a controversy among the parties in one action, thus avoiding circuity of action and duplication of time and effort." (*City of Hanford v. Superior Court* (1989) 208 Cal.App.3d 580, 587–588 [citation omitted].)

III. DISCUSSION

Defendants attempted a meet and confer with Plaintiff's counsel but no stipulation could be reached. Plaintiff opposes Defendant's motion on the grounds that there has been an unreasonable delay of several months after the Answer was filed and that the Defendants have acted in bad faith. In Reply, Defendants assert that their newly substituted attorney came on board in August of 2024 and, after reviewing the files, determined that a cross-complaint was needed.

The proposed cross-complaint seeks to assert claims against Plaintiff. These claims include breaches of duties, conversion, trespass, and assault and battery. The Court agrees that these cross-claims arise out of the same transaction, occurrence, or series

of transactions or occurrences as the causes of action alleged in the Complaint. Plaintiff's complaint revolves around the alleged racial incident, the accusation regarding the notebook, the assault, and her subsequent termination.

The proposed cross-complaint is compulsory and accordingly, leave to file must be granted unless there is substantial evidence of bad faith by Defendants in bringing the Motion. The Court does not find substantial evidence of bad faith. Defendants' counsel contends that the Motion was brought in good faith, and brought within a reasonable time after counsel was brought into this matter and had a chance to review the case in detail. No trial date has been set in this matter and there is no evidence that Defendants are acting without good faith. The Court is not called upon, at this time, to consider the merits of Defendants' cross-complaint.

The liberality principles applicable to Code of Civil Procedure section 426.50 require a strong showing of bad faith, and the Court does not find that there has been any undue delay by Defendants in seeking to file the proposed cross-complaint such as to result in a "substantial injustice" or prejudice to Plaintiffs. There is no trial scheduled and there is no persuasive argument that Plaintiff will be prejudiced by allowing the filing.

However, the Plaintiff's objections to the filing were colorable given the delay after the filing of the answer before seeking leave. Accordingly, the Court denies Defendants' motion for costs and fees related to bringing their motion for leave.

Accordingly, for all the foregoing reasons, the Motion for **leave** is **GRANTED**; the motion for **costs and fees** is **DENIED**. Defendants must separately file and serve their Cross-Complaint within five (5) court days.

The Clerk shall provide notice of the Ruling forthwith. No further formal Order Is required.

HAMPTON V EBMUD, et al.

22CV46329

DEFENDANT URBAN PARK'S MOTION FOR LEAVE TO FILE RENEWED MOTION FOR SUMMARY JUDGMENT

This matter involves personal injuries sustained by Plaintiff Maxwell Hampton ("Plaintiff") while swimming in Lake Comanche. On August 18, 2023, the Court denied Defendant Urban Park (Defendant)'s motion for summary judgment/adjudication. Now before the Court is Defendant's motion for leave to file renewed motion for summary judgment.

The motion does not comply with Local Rule 3.3.7. All matters noticed for the Law & Motion calendar shall Include the following language in the notice:

> 3 3 7 Tentative Rulings (Repealed Eff 7/1/06, As amended 1/1/18) All parties appearing on the Law and Motion calendar shall utilize the tentative ruling system. Tentative Rulings are available by 2:00 p.m. on the court day preceding the scheduled hearing and can be accessed either through the court's website or by telephoning 209-754-6285. The tentative ruling shall become the ruling of the court, unless a party desiring to be heard so advises the Court no later than 4:00 p.m. on the court day preceding the hearing including advising that all other sides have been notified of the intention to appear by calling 209-754-6285. Where appearance has been requested or invited by the Court, all argument and evidence Is limited pursuant to Local Rule 3 3. All matters noticed for the Law & Motion calendar shall Include the following language in the notice:
>
> **Pursuant to Local Rule 3 3 7, the Court will make a tentative ruling on the merits of this matter by 2:00 p.m. the court day before the hearing. The complete text of the tentative ruling may be accessed on the Court's website or by calling 209-754-6285 and listening to the recorded tentative ruling. If you do not call all other parties and the Court by 4:00 p.m. the court day preceding the hearing, no hearing will be held and the tentative ruling shall become the ruling of the court** [emphasis in original.]
>
> Failure to include this language In the notice may be a basis for the Court to

deny the motion.

Based on the foregoing, the Motion is **DENIED**, without prejudice to refile, if otherwise statutorily allowed.

The Clerk shall provide notice of the Ruling forthwith. No further formal Order Is required.

SANTELICES v TURNER, et al

24CV47361

DEFENDANT TURNER and FOUNTAINS' DISCOVERY MOTIONS

This civil action stems from a dispute over the destruction and burning of several trees on real property owned by Plaintiff Cynthia Santelices ("Plaintiff") by Defendants Dolores Turner ("Turner"), Kristeen B. Fountain ("Fountain"), Josh Noble ("Noble") and Noble Tree Service (collectively "Defendants".) Turner and Fountain filed a Cross-Complaint against Plaintiff and Noble and Noble Tree Service.

Before the Court are Defendants Turner and Fountain's four separate motions to compel discovery which ask the Court to: 1) deem admitted the truth of facts in the Request for Admissions ("RFA"), 2) compel answers to Requests for Production of Documents ("RPDs"), 3) compel responses to form interrogatories ("Form Interrogatories") and) compel responses to special interrogatories ("Special Interrogatories") (collectively "Discovery"), and 5) impose sanctions on Plaintiff.

The Court initially heard this matter on November 1, 2024, and continued the matter for three weeks after giving Plaintiff directions as to how discovery needed to be answered in an effort to balance equities, specifically ordering that:

> Plaintiff is directed to submit verified responses to Defendant's RFAs, RPDs, Special Interrogatories and Form Interrogatories by 5:00 P.M. on November 8, 2024. Within one week of receipt of the responses, Defendants are to contact the Court to drop the hearing if they are satisfied with Plaintiff's final responses or, alternatively, to file a supplemental declaration attaching the responses and detailing the claimed continued shortcomings. The Court declines sanctions at this stage, noting Plaintiff has provided some portion of responses, and this matter could have been resolved informally without court involvement; if the matter remains on calendar for November 22, 2024, the Court will revisit the issue of sanctions.

Based on Defendants' declaration filed on November 15, 2024, there are continued claimed shortcomings in plaintiff's discovery responses.

I. Factual and Procedural Background

A. Background Facts

Plaintiff is the owner of a ten-acre parcel of real property in Calaveras County with Assessor's Parcel Number (APN) #004-006-010-000) ("Property"). (FAC ¶ 6.); the

neighboring property is located at 200 Miwuk Court in West Point and is co-owned by Turner and Fountain.

In October 2020, Defendants engaged in the destruction of a significant 48-inch diameter oak tree standing 40 feet tall which fell across what the Plaintiff then believed was the border of her property. (FAC ¶ 7.) In March 2022, Plaintiff observed that the entire neighboring property had been clear-cut and burned and that the fire had encroached beyond the then known boundary, onto her property. (FAC ¶ 8.) On June 29, 2022, Plaintiff confronted Noble about the fire damage which Noble refused to address or remedy. (FAC ¶ 9.) After hiring a surveyor, Plaintiff learned that the land which had been cut and burned was in fact hers. (FAC ¶ 10.) Plaintiff thereafter employed an arborist who assessed the damages to the trees alone at over $194,000.00. (FAC ¶ 11.)

Plaintiff's FAC brings causes of action for 1) Timber Trespass (CA Civil Code § 3346); 2) Trespass (CA Civil Code § 733); 3) Negligence; 4) Nuisance (CA Civil Code § 3479); 5) Encroachment; and 6) Willfulness & Malice (CA Civil Code § 3294).

B. Discovery and Supplemental Responses

Defendant asserts that issues remain with Plaintiff's discovery responses. First, Defendant asserts that the Plaintiff's response to Form Interrogatory 12.1 is insufficient and contains objections which this Court explicitly disallowed. Form Interrogatory 12.1 states:

- Form Interrogatory 12.1 requires the responding party to: "State the name, ADDRESS, and telephone number of each individual: (a) who witnessed the INCIDENT or the events occurring immediately before or after the INCIDENT; (b)who made any statement at the scene of the INCIDENT; (c)who heard any statements made about the INCIDENT by any individual at the scene; and (d)who YOU OR ANYONE ACTING ON YOUR BEHALF claim has knowledge of the INCIDENT (except for expert witnesses covered by Code of Civil Procedure section 2034)."

Plaintiff's response to this interrogatory was:

> THE ARBORIST WHO WROTE THE REPORT (NAME AND INFO IS AVAILABLE THERE).
>
> JUDY MCGRAW (OBJECTION - OVERBROAD, RELEVANCE TO FURTHER DISCLOSURE)

(Declaration of Seth Nunley ("Nunley Decl.") ¶ 2, Ex. A.)

The Court agrees that this answer is insufficient as it does not provide the name, address or telephone number of either witness. Moreover, the Court's November 1, 2024, order required Plaintiff to submit complete, verified responses *without any objection*. Accordingly, Plaintiff's answer to Form Interrogatory 12.1 is nonresponsive and Defendant's motion is well-taken.

Defendant next takes issue with Plaintiff's response to Form Interrogatory 17.1. It is unclear what Defendant is referring to as there is no Form Interrogatory 17.1 on the Plaintiff's discovery response. Defendant does cite to Form Interrogatory 17.0, however, to which Plaintiff replied "NO." However, the Plaintiff did not set forth the question she was responding to and Defendant has not identified exactly what the discovery request was either. However, it appears to have been a request for all information upon which the Plaintiff's denial of the Requests for Admissions was based. **Plaintiff is ordered to provide a substantive supplemental response to Form Interrogatory 17.1, without any objections, within ten (10) days of this Ruling**.

Defendant's next issue is with Plaintiff's response to the Request for Production of Documents. Based on counsel's declaration and attachment, Plaintiff did provide significant amounts of document production, but such production was not done in compliance with Code Civil Procedure section 2031.280(a) [requiring any documents or category of documents to be identified "with the specific request to which the documents respond."]) (Nunley Decl. ¶ 10, Ex. B.) The Court agrees that while Plaintiff attempted to respond to the discovery requests, she failed to identify which documents pertained to which request. Accordingly, **Plaintiff is ordered to provide supplemental responses indicating which documents pertain to which request, again within ten (10) court days of this ruling**.

Finally, Defendant takes issue with Plaintiff's response to the Requests for Admission because, while she did respond, Plaintiff failed to sign the verification. (Nunley Decl. ¶ 14, Ex. C.) As such, the responses are not verified and are considered non-responsive. (*Appleton v. Superior Court* (1998), 206 Cal.App.3d 632, 636.) Plaintiff was already given a second chance to remedy the failures in these discovery responses, including being expressly ordered to include verifications of all responses. At this point, given the court's leniency and Plaintiff's continued failure to timely and adequately respond, the **Court grants Defendant's motion to have the truth of the matters therein deemed admitted**. (Code Civ. Proc. § 2033.280(b).)

The Court is required under the Discovery Act to impose sanctions upon Plaintiff because of her continued failures to comply with the rules of discovery, as well as this Court's order. Defendant seeks at a minimum, $5,503.50. It is unclear how Defendant calculated this amount. In the original motions, Defendant sought a total of $2700 in sanctions for bringing the four motions to compel ($675 per motion) (*See e.g.*, Nunley Decl. attached to Motion to Compel RPDs at ¶ 11.)

Mr. Nunley avers that he has spent three hours “reviewing plaintiff’s responses to the subject discovery, researching, writing, and otherwise attending to this declaration for a total of $1,050.00.” (Nunley Decl. ¶ 17) ($1050/3 = $350 per hour). He further avers that his paralegal spent .75 hours for a cost of $30.00 (*Id.*). Defendant also seeks $240 in filing fees.

Based on the Court’s calculations, Defendant’s counsel has incurred $3750.00 in fees related to these motions. Plaintiff substantially replied to the SROGs and accordingly the Court declines to award sanctions for those responses, making Defendant’s fees $3,075 plus $240 in filing fees. **Accordingly, the Court awards Defendant sanction in the amount of $3315.00, to be paid by plaintiff within ten (10) court days of this Ruling**.

The Clerk shall provide notice of the Ruling forthwith. Defendant to submit a formal Order pursuant to CRC 3.1312 in compliance with this Ruling.