ARIZA v LAKESIDE VENTURES LLC

22CV46059

DEFENDANT GARRETT SMITH'S DEMURRER

This matter involves a dispute over the sale of a mobile home estate located at 1475 Railroad Flat Road, Mokelumne Hill, CA ("Mobile Home Estate.") On April 3, 2023, Plaintiff Helen Ariza ("Plaintiff") filed her first amended complaint (FAC) against numerous defendants, including Garrett Smith ("Smith"). Now before the Court is Smith's demurrer to the Plaintiff's sixth cause of action for intentional interference with contractual relations.

I. Factual Background

Defendant Lakeside Ventures, LLC ("Lakeside") is a California Limited Liability Company and was, at all relevant times, the sole owner of Mobile Home Estate. (FAC ¶ 3.) Defendant Bonnie K. Tuckerman-Aho is the sole member of Lakeside. (*Id*. ¶ 16.) On June 9, 2021, Plaintiff entered into a purchase agreement with Tuckerman-Aho and Lakeside for the purchase of the Mobile Home Estate for $800,000.00. (*Id.* ¶ ¶14, 15, Ex. 1 ("Purchase Agreement.") Prior to this contract, Smith had asked Plaintiff if he could represent her as broker/salesperson in this transaction but Plaintiff declined that offer. (*Id.* ¶ 14.)

From August 2021, to the time of the filing of the FAC, Plaintiff made ten interest-only payments of $3,125.00 per month as required by the Addendum to the Contract of Sale, July 8, 2021 (FAC ¶ 17, Ex. 2 ("Addendum".) Plaintiff was to make the payments each month "starting at the opening of escrow not to exceed more than six months." Pursuant to the Addendum, Tuckerman-Aho could continue living in the park for sixty days after the final closing, and then had an option to continue to rent on a month-to-month basis a house for $1,100.00 and a detached out building for $200.

At the time the purchase of the Mobile Home Estate was made, both parties were aware that there were multiple issues with the property. Significantly, the property did not have a "Permit to Operate" because of various health and safety violations. (Purchase Agreement p. 1; FAC ¶ 18.) Tuckerman-Aho was obligated pursuant to the Purchase Agreement to remedy the property so as to reinstate the Permit to Operate. However,

this did not happen. Instead, on January 28, 2022, the Department of Housing and Community Development posted a conspicuous notice of these violations on the property (the "HCD Suspension Notice") (FAC ¶ 22, Ex. 7.)

Sometime after this, Tuckerman-Aho and Lakeside, with the assistance of Smith, entered into an agreement to sell the Mobile Home Estate to third parties for more money than the agreement with Plaintiff. (FAC ¶¶ 28-31.)

The instant lawsuit followed.

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. Discussion

In order to plead a cause of action for intentional interference with contractual relations, the Plaintiff must allege facts showing: "(1) a valid contract between plaintiff and a third party;(2) defendant's knowledge of this contract; (3) defendant's intentional acts designed to induce a breach or disruption of the contractual relationship; (4) actual breach or disruption of the contractual relationship; and (5) resulting damage." (*Pacific Gas & Electric Co. v. BearStearns & Co.* (1990) 50 Cal.3d 1118, 1126.)

Here Plaintiff alleges that there was a valid contract between herself, Tuckerman-Aho and Lakeside. (FAC ¶ 15.) She alleges that Smith was aware of that contract. (FAC ¶ ¶ 28, 93, 94.) Plaintiff next alleges that Smith purposefully acted so as to breach or disrupt the contract between Plaintiff and the sellers by helping Tuckerman-Aho and Lakeside sell the Mobile Home Estate to third parties. (FAC ¶¶ 29, 95, 96, 98, 99.) Plaintiff alleges that as a result of Smith's assistance in selling the Mobile Home Estate to someone

other than Plaintiff – while aware that Plaintiff had a purchase agreement – there was a breach of the contract. (FAC ¶101.) Finally, Plaintiff alleges that there was resulting damage. (FAC ¶ 43, 44, 102.)

Defendant's arguments primarily go to the merits of Plaintiff's claims or defenses to her cause of action. This is not the standard on demurrer. Accordingly, Defendant's demurrer is **OVERRULED**; Defendant Smith to file and serve an answer within ten (10) Court days of this ruling.

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

ZAMORA, TRUSTEE v CLAPP

22CV46467

DEFENDANT'S CCP 473(b) MOTION FOR RELIEF FROM DEFAULT

This is partnership dispute involving the management of real property and two residential units thereon. On December 9, 2022, Plaintiff Dave Zamora (son and acting trustee of his father Gus Zamora's trust) sued Defendant Clyde Clapp for breach of fiduciary duty, fraud, negligence and waste.

On June 26, 2024, the Court entered the following minute order in this matter:

> The related case of 16CV41649 has fully resolved as all appellate avenues have been exhausted and an Amended Judgment was entered on 5/31/24. The Complaint has been served but not answered; plaintiff is directed to have an answer, default, or dismissal on file by the next Case Management Conference on November 13, 2024, at 1:30 p.m. in Dept. 4.

Before that November deadline, Plaintiff filed a Request for Entry of Default which was granted on October 10, 2024. At that time, counsel for both parties had been in communication and Defendant's counsel had requested time to file the Answer and Cross-Complaint until after a trial was completed in October. Defendant's counsel was under the impression that this timing was acceptable and was, accordingly, surprised, when he learned that default had been entered. (Declaration of Kenneth M. Foley ("Foley Decl.") ¶ ¶ 8-10.)

Now before the Court is Defendant's motion for relief from default.

A motion to set aside a default judgment under Code Civil Procedure section 473(b) must be based on either: declarations or other evidence showing "mistake, inadvertence, surprise, or excusable neglect" (in which event, relief is discretionary), or an attorney affidavit of fault (in which event, relief is mandatory). Under this section, the court is required to vacate any default or dismissal "whenever an application for relief is made no more than six months after entry of judgment, is in proper form, and is accompanied by an attorney's sworn affidavit attesting to his or her mistake, inadvertence, surprise, or neglect."

The motion for relief was originally filed on October 14, 2024, and an amended motion, must be filed within six months after the clerk's entry of default. Here the motion was filed on November 14, 2024. The motion is timely.

Defendant has submitted the declaration of his attorney attesting to his surprise, mistake, or excusable neglect that the entry of default was entered before the November 13, 2024, deadline set by this Court. Pursuant to the requirements of 473(b, the Court is obligated to grant the Defendant's request for relief.

Accordingly, the motion is **GRANTED**.

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.

CAPITAL ONE, N.A. v CHRIS PETERSON

23CF14351

PLAINTIFF'S MOTION TO HAVE MATTERS DEEMED ADMITTED

Plaintiff Capital One ("Plaintiff") sued Defendant Chris Peterson ("Defendant") for the collection of a debt. Thereafter, Defendant filed an Answer. Now before the Court is Plaintiff's motion to deem admitted the matters specified in the Plaintiff's Requests for Admission ("RFA").

On or about August 29, 2024, Plaintiff served its first set of discovery: Requests for

Admission - Set One ("RFA.") (Declaration of Gregory Parks ("Parks Decl.") ¶ 2, Ex. 1.) On or about October 18, 2024, Plaintiff's counsel attempted a meet and confer by sending the letter to Defendant regarding the outstanding discovery and offering additional time to respond. (Parks Decl. ¶ 4, Ex. 2.) As of the Plaintiff's motion, Defendant has not responded to the letter or provided any responses to the RFA, nor has he filed any opposition to Plaintiff's motion.

Pursuant to Code Civ. Proc. section 2033.280:

> (a) The party to whom the requests for admission are directed waives any objection to the requests, including one based on privilege or on the protection for work product under Chapter 4 (commencing with Section 2018.010). The court, on motion, may relieve that party from this waiver on its determination that both of the following conditions are satisfied:
>
> > 1) The party has subsequently served a response that is in substantial compliance with Sections 2033.210, 2033.220, and 2033.230.
> >
> > 2) The party's failure to serve a timely response was the result of mistake, inadvertence, or excusable neglect.

Further, the Court shall deem the facts admitted as truth, unless it finds that the party to whom the RFAs were directed, “has served, before the hearing on the motion, a proposed response to the requests for admission that is in substantial compliance with Section 2033.220.” (Code Civ. Proc. § 2033.280(c).)

Defendant has not served any response and has not provided any evidence to the court that the failure is a result of mistake, inadvertence, or excusable neglect.

Accordingly, Plaintiff’s motion is **GRANTED**. All requests are deemed admitted.

The Clerk shall provide notice of the Ruling forthwith. The Court intends to sign the submitted (Proposed) Order.

FORD v GREENHORN GOLF, LLC

23CV47102

PLAINTIFF'S MOTION FOR CONTEMPT

On December 6, 2023, Patricia Ford ("Plaintiff") filed a Complaint against Greenhorn Golf, LLC ("Defendant")[1] seeking damages for nuisance and requesting injunctive relief. On September 16, 2024, the Court granted the Plaintiff's request and ordered that the subject trees and roots be removed within thirty (30) days of the entry of the order, i.e., by October 16, 2024.

Now before the Court is Plaintiff's motion to hold Defendant in contempt. At the time Plaintiff filed the motion, Defendant had not complied with the Court order in any manner. However, Defendant now reports in its opposition that it had the trees and stumps removed on November 22, 2024. Defendant asks the Court to deny Plaintiff's request for sanctions.

Pursuant to Code Civil Procedure section 1209(a)(5), contempt occurs whenever there is "disobedience of any lawful judgment, order, or process of the court." When, as is the case here, the contempt occurs outside of the presence of the Court, "an affidavit shall be presented to the court or judge of the facts constituting the contempt. . . (CCP §1211(a).) Once the affidavit is presented and accepted, the Court may order the offending party to show cause as to why they should not be held in contempt.

"The essential facts to establish contempt for violation of a court order are: 1) the making of the order, 2) knowledge of the order, 3) ability of the respondent to render compliance, and 4) willful disobedience of the order." (*Moore v. Superior Court*, (2020) 57 Cal.App.5th 441, 456.)

Plaintiff has presented the affidavit of her counsel, Eurik O'Bryant. (Declaration of Eurik O'Bryant ("O'Bryant Decl.") ¶ 2.) First, Mr. O'Bryant avers that there was a Notice of Entry of Order and Order Granting Plaintiff's motion for Mandatory Injunction Ordering Defendant to Abate Nuisance." (Id., ¶ 4, Ex. 1.) Second, there is no question that Defendants were aware of the Court's Order. (Declaration of Brian E. Colton ("Colton Decl.") ¶ 3.) Third, Defendant was clearly able to render compliance with the Order because the trees and stumps have been removed, albeit significantly later than ordered by the Court. However, while there is evidence of willful disobedience of the Order as no action was taken for removal by the Court's deadline, there also is evidence of active communication between counsel regarding issues that arose delaying the actual removal, though a bit belatedly, at least initially.

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[1] Plaintiff has also sued Does 1-10.

As such, the Court does not believe a contempt finding is appropriate. Alternatively, the Court was prepared to award attorney's fees and costs associated with this motion but notes defendant's agreement to pay same. Accordingly, the Motion for Contempt is **DENIED**, without prejudice to file a motion for sanctions if the parties are unable to agree on an amount through direct discussions.

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

WELLS FARGO BANK, N.A. v VELLIOS

24CF14462

PLAINTIFF'S MOTION TO HAVE MATTERS DEEMED ADMITTED

Plaintiff Wells Fargo Bank, NA ("Plaintiff") sued Defendant Nicholas Vellios ("Defendant") for the collection of a debt and Defendant answered. Now before the Court is Plaintiff's motion to deem admitted the matters contained in Plaintiff's Requests for Admission – Set One ("RFA").

On or about July 12, 2024, Plaintiff served RFA. (Declaration of Angela A. Velen ("Velen Decl.") ¶ 3, Ex. 1.) On or about August 21, 2024, Plaintiff's counsel attempted a meet and confer by sending the letter to Defendant regarding the outstanding discovery and offering additional time to respond. (Velen Decl. ¶ 5, Ex. 2.) Defendant has not responded to the letter, provided any responses to the RFA, or filed any opposition to the motion.

Pursuant to Code Civ. Proc. section 2033.280:

> (a) The party to whom the requests for admission are directed waives any objection to the requests, including one based on privilege or on the protection for work product under Chapter 4 (commencing with Section 2018.010). The court, on motion, may relieve that party from this waiver on its determination that both of the following conditions are satisfied:
>
> > 1) The party has subsequently served a response that is in substantial compliance with Sections 2033.210, 2033.220, and 2033.230.
> >
> > 2) The party's failure to serve a timely response was the result of mistake, inadvertence, or excusable neglect.

Further, the Court shall deem the facts admitted as truth, unless it finds that the party to whom the RFAs were directed, "has served, before the hearing on the

motion, a proposed response to the requests for admission that is in substantial compliance with Section 2033.220." (Code Civ. Proc. § 2033.280(c).)

Defendant has not served a response and has not provided any evidence to the court that the failure is a result of mistake, inadvertence, or excusable neglect. Accordingly, Plaintiff's motion is **GRANTED**; all requests are deemed admitted.

The Clerk shall provide notice of the Ruling forthwith. The Court intends to sign the submitted (Proposed) Order

GIANOTTI v KLAUSE, et al.

24CV47238

DEFENDANT'S MOTION TO COMPEL ARBITRATION

Before the Court is a motion to compel arbitration filed by Defendants Downey Management Group, Inc. ("Downey"), Airola Road Vineyards, LLC ("Airola"), George Klause and Birgit Klause (collectively "Defendants Klause").

Initially, the Court notes defendant's Notice of Motion fails to include the language mandated by the Court's Local Rule 3.3.7 concerning the tentative ruling system in place since 1/1/18; lack of the requisite notice language provides a basis for the Court to deny any motion. However, in the interests of justice and judicial economy, the Court waives the shortcoming with regard to the instant motion and provides the following substantive Ruling.

I. Factual and Procedural Background

Plaintiff alleges that Defendants Downey and Airola are joint employers with a unity in interest and ownership with Downey owning Airola. (Complaint ¶ 22.) George Klause is listed as the agent for both businesses. (*Ibid.*). Defendants own an 88-acre estate that operates as a vineyard and wedding venue. (*Id.* ¶ 23.) Defendants Klause also own two residential properties on the estate, both of which operate as Airbnb rental properties. (*Ibid*.) Apparently, the entire estate is owned and operated by Defendants Klause. (*Ibid*.)

On or about December 1, 2022, Defendants hired Plaintiff on a full-time basis as a caretaker at a pay rate of approximately $800.00 every two weeks, alleged to be significantly below the California minimum wage of $15.00 per hour. (Complaint ¶ 24.) Plaintiff was required to live in an on-site residential unit as a condition of employment. (*Id*. ¶ 25.) As such, Plaintiff was treated not as a tenant but as a licensee. (*Ibid*.) Plaintiff's job duties and responsibilities included, but were not limited to, cleaning the rental properties, fountains, and pools, mowing the grass, nurturing plants and flowers, and pruning trees and grapes. (*Id*. ¶ 26.)

Plaintiff alleges a number of wage and hour violations, and also alleges that Defendants Klause failed to secure the necessary permits to make her living space habitable. (Complaint ¶ 33.) Plaintiff subsequently was allowed to live in one of the Airbnb units, though was not allowed to unpack her belongings and required to accommodate Defendants Klause's various guests (*Id*. ¶¶ 34, 35.) Plaintiff also was required to pay rent for the Airbnb unit. (*Id*. ¶ 37.) Allegedly, Defendants Klause also forced Plaintiff to participate in religious proceedings. (*Id*. ¶ ¶ 42-46.) After Plaintiff complained about the

various wage and hour violations, her living conditions, and other matters, she had her hours significantly reduced and then she was constructively terminated. (*Id*. ¶¶ 50-52.)

On October 18, 2024, Defendants moved for an order compelling the matter to arbitration pursuant to an alleged arbitration agreement ("Agreement") between Plaintiff and Downey Management. Plaintiff opposes the motion.

II. Procedure and Burden of Proof on Petition to Compel Arbitration

In determining the enforceability of an arbitration agreement, the court considers "two 'gateway issues' of arbitrability: (1) whether there was an agreement to arbitrate between the parties, and (2) whether the agreement covered the dispute at issue." (*Omar v. Ralphs Grocery Co.* (2004) 118 Cal.App.4th 955, 961.) The trial court must first determine whether an "agreement to arbitrate the controversy exists." (Code Civ. Proc., 1281.2.) "Because the existence of the agreement is a statutory prerequisite to granting the petition, the petitioner bears the burden of proving its existence by a preponderance of the evidence." (*Rosenthal v. Great Western Fin. Securities Corp.* (1996) 14 Cal.4th 394, 413.) The party seeking arbitration can meet its initial burden by attaching to the petition a copy of the arbitration agreement purporting to bear the respondent's signature. (*Espejo v. Southern California Permanente Medical Group* (2016) 246 Cal.App.4th 1047, 1060.) Alternatively, the moving party can meet its initial burden by setting forth the agreement's provisions in the motion. (Cal. Rules of Court, rule 3.1330.)

It then becomes Plaintiff's burden, in opposing the motion, to prove by a preponderance of the evidence any fact necessary to her opposition. (*Espejo*, *supra* 246 Cal.App.4th at 1057.) "Code of Civil Procedure section 1281.2 requires a trial court to grant a petition to compel arbitration 'if the court determines that an agreement to arbitrate the controversy exists.'" (*Avery v. Integrated Healthcare Holdings, Inc*. (2013) 218 Cal.App.4th 50, 59, quoting Code Civ. Proc. § 1281.2.)

Generally, on a petition to compel arbitration, the court must grant the petition unless it finds either (1) no written agreement to arbitrate exists; (2) the right to compel arbitration has been waived; (3) grounds exist for revocation of the agreement; or (4) litigation is pending that may render the arbitration unnecessary or create conflicting rulings on common issues. (*Desert Reg'l Med. Ctr. v. Miller*, (2022), 87 Cal.App.5th 295, 308.)

III. Legal Analysis

Defendants have met their initial burden of showing the existence of the Agreement that appears to have been signed by Plaintiff on November 19, 2022. (Declaration of George Klause ("Klause Decl.") ¶ ¶ 15, 16, Ex. A.) (*Espejo v. S.Cal. Permanente Med. Grp*. (2016) 246 Cal.App.4th 1047, 1060 [party moving to compel arbitration may meet their initial burden to show an agreement to arbitrate by attaching a copy of the agreement purportedly bearing the opposing party's signature].)

However, Plaintiff disputes that the signature on the agreement is hers. She avers that she did not see the arbitration agreement before litigation, she did not sign the arbitration agreement, and that she could not have signed it on the date alleged because she was not hired until December 1, 2022. (Declaration of Kristin Gianotti ("Gionatti Decl.") ¶ ¶ 4,5,8.) Because Plaintiff asserts under oath that she did not see or sign the arbitration agreement she has successfully carried her burden of producing evidence that challenges the authenticity of the agreement. (*Gamboa v. Ne. Cmty. Clinic*, (2021) 72 Cal.App.5th 158, 165 [declaring under penalty of perjury that the opposing party never saw the arbitration agreement or signed it is sufficient evidence to challenge the authenticity of the agreement].)

Accordingly, the burden returns to Defendants to show, by a preponderance of the evidence, that the agreement is valid. (*Gamboa*, *supra* 72 Cal.App.5th at 165.) In support of this, Defendant submits Mr. Klause's declaration in which he states that he was the person who onboarded Plaintiff and that he would have given her the Agreement just as he does with all new hires. (Klause Decl. ¶ ¶ 14-15.) He then makes the conclusory statement that Plaintiff signed the Agreement. (*Id*. ¶ 15.) While Klause states all of this as fact, he does not provide any preliminary facts to show that he has the personal knowledge to affirmatively make the statement that Plaintiff signed the Agreement. (Evid Code. 403(a)(2), 702(a).) Klause does not aver that he remembers anything about his actual interaction with Plaintiff. He does not aver that he personally provided her with the Agreement nor that he saw her review said Agreement. Rather, he states that he "would" have done so because that was his typical practice. (Klause Decl.

¶ 16.) More importantly, Klause does not say that he witnessed the Plaintiff sign the Agreement. His conclusory statement that she signed it is insufficient to prove, by a preponderance of the evidence, that Plaintiff in fact signed the Agreement when she has sworn that she did not. (*See Gamboa*, *supra* 72 Cal.App.5th 169, fn. 4 [where human resources declarant did not aver that she personally saw the employee sign the arbitration agreement, a conclusory declaration that the employee signed it was insufficient to show, by a preponderance of the evidence, that the Agreement was valid].) Alternatively, Defendants could have presented expert evidence establishing the signature was in fact plaintiff's signature.

As such, Defendants have not carried their burden to show, by a preponderance of the evidence, that the Plaintiff's signature is authentic.

Accordingly, Defendants' motion to compel arbitration is **DENIED**.

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

MOSS v IRONSTONE AMPITHEATRE, et al

24CV47251

DEFENDANT RICHTER'S MOTION TO SET ASIDE DEFAULT

This personal injury case arises out of Plaintiff Sharon Moss's alleged trip and fall at the Ironstone Amphitheatre on August 18, 2022. Richter Entertainment Group ("REG") is a named defendant. Now before the Court is Richter's motion to vacate default.

Code of Civil Procedure section 473 authorizes the Court to set aside a default and grant leave to defend the action on grounds of "mistake, inadvertence, surprise or excusable neglect." (Code Civ. Proc., § 473(b).) The motion for discretionary relief must be filed within six months after the clerk's entry of default. Here the original motion was filed on October 17, 2024, and the amended motion on November 14, 2024. The motion is timely.

On April 8, 2024, Larry Richter, President of REG, was personally served at his home in Ft. Lauderdale, Florida. (Declaration of Larry Richter ("Richter Dec."), ¶7.) Mr. Richter forwarded the Summons and Complaint to his insurance broker the following morning. (Richter Dec., ¶8.) As part of her custom and practice, insurance broker Ms. LaFever forwarded the Summons and Complaint she received to his insurer that same day of April 9, 2024. (LaFever Dec. ¶9.)

The insurer confirmed receipt of the Summons and Complaint and assigned it to a claims adjuster. (Lefever Decl. ¶ 3.) However, the claim was subsequently transferred to another claims adjuster, who was not aware that the matter had not been accepted by a defense firm or counsel. (Declaration of Carol Driscoll ("Driscoll Decl.") ¶ 12.) The insurance carrier had not received any information to reflect that its insured was in jeopardy of having a default entered. (*Id*. ¶ 13.) The insurer was only aware that the matter had not been assigned to defense counsel when it became aware of the entry of default on August 28, 2024, and then sent an immediate request for representation to Defendants' current counsel. *(Id. ¶ ¶13-14.)* Mr. Richter was not advised that his insurance carrier failed to retain counsel or that a default had been entered against REG until counsel so advised him. (Richter Decl. ¶10.)

Plaintiff opposes the motion, arguing that there are no grounds to grant the Defendant's motion because Defendant and its insurer had notice of the lawsuit. The Court disagrees. Defendant forwarded the complaint and related papers to his insurance broker within twenty-four hours of being served as he had done in previous litigation. His insurance broker followed her customary care and practice and forwarded the summons and complaint to the insurer, who confirmed receipt of the same. While a claims adjuster at the insurance company was waiting on a response from a law firm as

to representation, that adjuster left her employment. Thereafter, another claims adjuster took over the file but failed to realize that no representation had been secured until notice of default was received, and then immediately retained Defendant's current attorney.

REG has demonstrated that they acted in good faith to participate fully in the ligation from the moment he was served and that the failure to file an answer was due to mistake, inadvertence or excusable neglect in relying on its long-time insurance broker and prior custom in believing that providing his broker with the lawsuit would lead to his insurance company protecting his rights.

Accordingly, the motion is **GRANTED**; the Answer attached as Exhibit "A" to the original motion filed on 10/17/24 is ordered filed as Defendant REG's Answer to the Complaint.

The Clerk shall provide notice of the Ruling forthwith. The Court intends to sign the submitted (Proposed) Order.

WATKINS v STONE

24CV47717

PLAINTIFF'S MOTION FOR PRELIMINARY INJUNCTION AND OSC RE CONTEMPT

This case arises out of a business dispute between Plaintiff Terrilynn Watkins and Defendant Amber Stone. Now before the Court is Plaintiff's motion for preliminary injunction and order to show cause for violation of the Court's interim order.

Defendant has filed a "Response to Complaint and Counterclaim" but has not filed an opposition to the instant motions.

I. Factual and Procedural Background

On December 15, 2022, Plaintiff and Defendant incorporated Arnold Realty, Inc ("Arnold Realty") for the purpose of selling real estate in Arnold, CA. (Complaint ¶ 9.) Plaintiff and Defendant each own 50% of the available shares in Arnold Realty, with Plaintiff as the Chief Financial Officer and Secretary and Defendant the CEO. (Complaint ¶¶ 1,2.)

There was no formal partnership agreement between Plaintiff and Defendant but both members had equal access to all corporate accounts, including, but not limited to, the company Google Workspace, the company website (discoverarnold.com), and the company emails. (Complaint ¶ 10.) All, or almost all, business and administration for both Plaintiff's and Defendant's mutual and independent endeavors, including client communication, was conducted utilizing the company's Google Workspace and related email addresses. (Complaint ¶ 11.) This included Plaintiff's individual corporation, Terri Watkins Real Estate Services, whose client list is managed almost entirely utilizing terri@discoverarnold.com. (*Ibid.*)

While the partnership went smoothly at first, over time the parties disputed the direction of the business and things became less amicable. On or about September 20, 2024, Plaintiff discovered that she no longer had access to the Arnold Realty Instagram account or her company email account. (Complaint ¶ 19.) On September 21, 2024, Plaintiff learned that Defendant had removed company furniture, and that Plaintiff no longer had access to the Arnold Realty Google workspace, including access to the domain discoverarnold.com, Plaintiff's corporate email address, the administrative address for the company, and the official company email address utilized in communicating with business associates, agents, clients, and potential clients of Arnold

Realty. (*Id.* ¶ 20.) Plaintiff contacted Arnold Realty's web creator, non-party Dan Kushnir, to see if he could assist in regaining access Mr. Kushnir informed Plaintiff that his admin privileges had also been revoked and he could no longer access either the website or the Google Workspace. (*Ibid*.)

On October 4, 2024, counsel representing Plaintiff sent a cease-and-desist letter to Defendant, demanding that she return access to the subject accounts to Plaintiff immediately. Defendant ignored this request. (Complaint ¶ 25.) On November 2, 2024, Plaintiff learned that someone had reactivated her Arnold Realty email account with a new password, thereby gaining access to all of Plaintiff's prior emails, including those with personal information. (*Id*. ¶ 26.) Plaintiff, however, was unable to log in to her own email account.

On November 8, 2024, Plaintiff brought the instant lawsuit against Defendant alleging causes of action for: 1) involuntary dissolution; 2) breach of fiduciary duty; 3) accounting; and 4) intentional interference with prospective economic advantage. Defendant filed a responsive document.

On November 13, 2024, upon the ex parte request of the Plaintiff, the Court held a hearing on Plaintiff's request for an immediate temporary restraining order and order to show cause why Plaintiff was not entitled to a preliminary injunction. After that hearing, the Court issued an Interim Order restraining Defendant and her employees or agents from:

1. Removing or destroying any documents on the Arnold Realty Google Workspace;

2. Making changes to any Arnold Realty accounts without seeking written consent from both parties;

3. Withdrawing or utilizing funds from Arnold Realty's corporate account without seeking written consent from both parties.

In addition, Plaintiff was ordered to send an email to Defendant with the "accurate and contemporary passwords and login information for the following accounts related to Arnold Realty: 1) Zillow; 2) Homes.com; 3) Instagram ; 4) Business Profile; and 5) Bank Accounts" and to give equal administrative privileges to Defendant for these same accounts. Defendant was ordered to email Plaintiff with the "accurate and contemporary passwords and login information for the following accounts related to Arnold Realty: 1) Google Workspace – Including the email addresses terri@discoverarnold.com,

sandra@discoverarnold.com, and arnoldrealty@discoverarnold.com; and 2) Meta" and to provide Plaintiff with equal administrative privileges for these same accounts. The Court also provided the parties with a briefing schedule related to the Plaintiff's request for an injunction.

Plaintiff filed her Motion for Preliminary Injunction on November 22, 2024. On December 11, 2024, Plaintiff filed an *ex parte* application for Order to Show Cause Re Contempt For Violation of The Court's Interim Order. Defendant has not filed oppositions to either motion.

II. Legal Standard and Analysis

A. Defendant is ordered to show cause why she should not be held in contempt.

Pursuant to Code Civil Procedure section 1209(a)(5), contempt occurs whenever there is "disobedience of any lawful judgment, order, or process of the court." When, as is the case here, the contempt occurs outside of the presence of the Court, "an affidavit shall be presented to the court or judge of the facts constituting the contempt. . . (CCP §1211(a).) Once the affidavit is presented and accepted, the Court may order the offending party to show cause as to why they should not be held in contempt.

"The essential facts to establish contempt for violation of a court order are: 1) the making of the order, 2) knowledge of the order, 3) ability of the respondent to render compliance, and 4) willful disobedience of the order." (*Moore v. Superior Court*, (2020) 57 Cal.App.5th 441, 456.)

Here, the Court issued an Interim Order pursuant to which Defendant was required to provide login access, and equal administrative rights, to all business emails and the Google Workspace. Defendant had knowledge of the Order as evidenced by the fact she was present in Court when the Court orally made the orders and subsequently by her actions when she proceeded to comply with the Order (in part) by providing Plaintiff with the login credentials for the business emails by the mandated deadline. Defendant had the ability to comply with the Court's Interim Order because she has retained access to electronic/internet domains for Arnold Realty and has positioned herself to be the only person with such access. Finally, there appears to be willful disobedience of the Court's Order. Defendant was ordered to provide full and equal administrative rights to Plaintiff to Google Workspace and the emails pending the outcome of this case. Plaintiff is unable to access the "admin console" and therefore does not have full administrative rights.

Accordingly, Plaintiff's Motion for Contempt is **GRANTED**. Defendant is ordered to appear and show cause as to why she should not be held in contempt of the Court's Interim Order. Further, the Court will hear from Plaintiff regarding what appropriate sanction should be imposed, evidentiary, financial, or otherwise.

B. Preliminary Injunction

When determining whether to issue a preliminary injunction, the court considers two interrelated questions: (1) the likelihood that the plaintiff will prevail on the merits, and (2) the relative balance of harms that is likely to result from the granting or denial of interim injunctive relief. (*White v. Davis* (2003) 30 Cal.4th 528, 554; *see also Robbins v. Sup. Ct*. (1985) 38 Cal.3d 199, 206; Code Civ. Proc., § 526.)

1. Likelihood of Prevailing on the Merits

Involuntary Dissolution

The grounds for involuntary dissolution include where an even number of directors who are deadlocked and therefore unable to conduct the business to its advantage (Cal. Corp. Code §1800(b)(2) or where those in the control of the corporation have engaged in fraud, unfairness, or misapplication or waste of corporate property (Cal. Corp. Code §1800(b)(3).)

Here, Plaintiff has alleged and presented evidence of the fact that Arnold Realty operated as a type of partnership with Plaintiff and Defendant as equals who can no longer conduct the business to its advantage. Even before Plaintiff had been allegedly locked out of the business accounts, the parties had discussed dissolving the business due to irreconcilable differences. (Declaration of Terrilynn Watkins in Support of Motion for Preliminary Injunction ("Watkins Decl. 1") ¶ ¶ 9-11.) Now, Plaintiff and Defendant are in contentious litigation, with Plaintiff allegedly unable to fully access the necessary accounts for running the business. As such, Plaintiff has alleged and established sufficient evidence of prevailing on the merits of her involuntary dissolution claim.

Breach of Fiduciary Duty and Accounting

"The elements of a claim for breach of fiduciary duty are (1) the existence of a fiduciary relationship, (2) its breach , and (3) damage proximately caused by that breach. [Citations Omitted.]" (Mendoza v. Continental Sales Co. (2006) 140 Cal.App.4th 1395, 1405.)

Plaintiff alleges that she and Defendant were 50% equal shareholders and officers Arnold Realty. As a matter of law, directors of a corporation owe each other a fiduciary duty. (*GAB Business Services, Inc. v. Lindsey & Newsom Claim Services, Inc.*, (2000) 83 Cal.App.4th 409, 416.) Likewise, officers of a corporation endowed with discretionary power to manage corporate affairs also owe fiduciary duties, including the duty to act in good faith and loyalty and with due care. Plaintiff alleges, and has demonstrated evidence that, Defendant breached her fiduciary duties when she unilaterally blocked Plaintiff from access to the all of the company's online accounts and emails and began removing furniture from the office. In addition, Plaintiff has alleged that Defendant engaged in self-dealing by taking a commission from a mutual client. As a result of the alleged breaches, Plaintiff has shown that she has suffered damages, and will continue to suffer damages.

Accordingly, Plaintiff has demonstrated a likelihood of prevailing on her claim for breach of fiduciary duty.

A complaint also states a claim for an accounting where the Plaintiff alleges: 1) the existence of a fiduciary relationship; 2) losses in an amount that cannot be entertained; and 3) misconduct. (*Kritzer v. Lancaster* (1950) 96 Cal.App.2d 1, 6-7.) As set forth above, Plaintiff has sufficiently demonstrated the existence of a fiduciary relationship and Defendant's misconduct. Additionally, Plaintiff has sufficiently demonstrated that her alleged losses cannot be ascertained without an accounting because she does not know the value of the company because she has been prevented from accessing the books, records, files and other assets. (Complaint ¶ 42.)

Accordingly, Plaintiff has demonstrated a likelihood of prevailing on the merits of her cause of action for accounting,

<u>Intentional Interference with Prospective Economic Advantage</u>

The elements of prospective interference with prospective economic advantage are: " '1) an economic relationship between the plaintiff and some third party, with the probability of future economic benefit to the plaintiff; 2) the defendant's knowledge of the relationship; 3) intentional acts on the part of the defendant designed to disrupt the relationship; 4) actual disruption of the relationship; and 5) economic harm to the plaintiff proximately caused by the acts of the defendant.' [citation]." (*Korea Supply Co. v. Lockheed Martin Corp*. (2003), 29 Cal.4th 1134, 1153.)

Here, Plaintiff alleges, and has produced some evidence, of prospective economic relationships with her real estate clients and potential client who were the subject of "leads" sent to her Arnold Realty email account. Defendant was clearly aware of Plaintiff's relationship with clients and potential clients. Defendant appears to have actively and intentionally acted to disrupt those relationships by blocking Plaintiff from the Google Workspace and Plaintiff's work email and those relationships were disrupted. Finally, Plaintiff argues that as a result of this conduct, she has lost

commissions, referrals, and the ability to communicate with clients all to her economic disadvantage.

Accordingly, Plaintiff has demonstrated a likelihood of prevailing on the merits of her claim for intentional interference with economic advantage.

2. Balance of Harm to the Parties

The Court must next look at the relative balance of harms that is likely to result from the granting or denial of interim injunctive relief. (*White v. Davis* (2003) 30 Cal.4th 528, 554.) "[T]he more likely it is that [applicant] will ultimately prevail, the less severe must be the harm that they allege will occur if the injunction does not issue." (*King v. Meese* (1987) 43 Cal. 3rd 1217, 1227.) The general purpose of a preliminary injunction is often to preserve the status quo. (*Harbor Chevrolet Corp. v. Machinists Local Union 1484* (1959) 173 Cal.App.2d 380, 384.)

Plaintiff's motion seeks a return to the status quo before she and Defendant began having a dispute and Plaintiff was locked out of the company Google Workspace and emails. The Court's Interim Order recognized Plaintiff's need to have full access to the Google Workspace and emails. Without such access, Plaintiff is unable to communicate with her current and potential clients and asserts that this is affecting her reputation. On the other hand, there is no evidence that Defendant will be harmed if required to give Plaintiff access to Arnold Realty's Google Workspace, emails, and business records and to comply with the Court's Interim Order.

Accordingly, Plaintiff's motion for preliminary injunction is **GRANTED**.

III. Conclusion

Plaintiff's motion for order to show cause is **GRANTED** and the Court will determine appropriate sanctions at the hearing. Plaintiff's motion for preliminary injunction is also **GRANTED** in its entirety.

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.

HAMPTON v EAST BAY MUD, et al

22CV46329

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

(TO BE HEARD BY JUDGE BARRY GOODE, ASSIGNED FOR ALL PURPOSES)

This is a personal injury action. Plaintiff generally alleges that while recreating along the south shore of the Camanche Dam and Reservoir ("Reservoir"), near the Arrowhead campground, he dove into the water from a rock wall and struck a submerged boulder, resulting in quadriplegia. Defendant East Bay Municipal Utility District ("EBMUD") owns and maintains the Reservoir. Defendant Urban Park Concessionaires ("UPC") has a contractual relationship with EBMUD to provide hospitality and resort management services at the Reservoir.

On August 18, 2023, this Court denied UPC's motion for summary judgment on the grounds that there remained genuine issues of material fact as to whether UPC did something to increase the risk of getting hurt diving off the rock wall. Specifically, there remained issues of fact as to whether UPC participated with EBMUD in the selection of contractor and/or actual placement of the rock which Plaintiff struck. (*See* 8/18/23 Ruling.)

Now before the Court is UPC's motion for leave to file renewed motion for summary judgment. UPC contends that it is entitled to renew its motion pursuant to Code Civil Procedure section 437c(f)(2) because there are "newly discovered facts or circumstances or a change of law supporting the issues reasserted in the summary judgment motion." (CCP § 437c(f)(2).) UPC argues that after the first motion for summary judgment was denied, UPC was able to obtain new deposition testimony which evidenced that the Plaintiff had been using drugs/drinking at the time of the incident. Specifically, UPC cites to three allegedly new facts:

1. In the 4-5 hour period that Plaintiff was at Lake Camanche until the incident occurred, he consumed two shots of alcohol, low dosage marijuana, and sips of ecstasy diluted in water, and had only eaten a quarter of a family-size bag of chips (Quan Dec., Ex. 4 at 25:16-26:2, 28:25-29:8, 105:19-106:12);

2. The water that Plaintiff dove into had zero to six inches visibility. (Quan Dec., Ex. 4 at 35:8-21, Ex. 5 at 36:18-25); and

3. Plaintiff dove headfirst into the water (Quan Dec., Ex. 4 at 36:9-10).

None of these facts can be considered "newly discovered" so as to warrant allowing UPC to renew its motion for summary judgment. In ruling on the previous motion for summary judgment, this Court took notice of the fact that Plaintiff was "apparently intoxicated and careless" and that Plaintiff dove into the water even though he was unfamiliar with the water and it could have posed risks, including unseen rocks. (8/18/23 Ruling.) The Court agreed then, and still agrees, that these facts are pertinent to the defense of assumption of risk.

Not only has the Court already considered these acts, the Court's ruling denying the motion for summary judgment, was not dependent upon the issue of Plaintiff's own negligence. Rather, the Court's decision was based on the fact that there remained issues of fact as to "whether UPC participated with EBMUD in the selection of contractor and/or actual placement of the rock which Plaintiff struck." (*See* 8/18/23 Ruling.)

UPC has provided no new evidence that has not already been considered by the Court in its previous ruling. As such, the motion to renew the motion for summary judgment is not well-taken. (*Schachter v. Citigroup Inc*. (2005) 126 Cal.App.4th 726, 739 [it was error for the trial court to allow a renewed motion for summary judgment when the moving party failed to present any newly discovered facts].) Accordingly, UPC's motion is **DENIED**.

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.