

JOHNSON v CITY OF ANGELS CAMP, et al

24CV47321

PLAINTIFF'S MOTION FOR ENLARGEMENT OF TIME

Plaintiff filed his Second Amended Motion For Order Substituting Successor-In-Interest to be heard on October 6, 2023. At the hearing on the motion for substitution, the Court also expedited the hearing on defendant's counsel 's motion to be relieved as counsel (originally set for November 17, 2023) and granted the motion. The executor of defendant's estate now seeks to set aside the Court's Order relieving counsel from representation of defendant

Initially, the Court notes moving party failed to include the mandatory notice language of Local Rule 3.3.7 (adopted 1/1/18) which provides:

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. Failure to include this language in the notice may be a basis for the Court to deny the motion.

Additionally, the Court notes that plaintiff filed the motion after the Court had already issued its ruling on the demurrers and motions to strike, providing a further basis for denial as the motion was moot at the time of filing.

Based on the foregoing, Plaintiff's Motion for Enlargement of Time is **DENIED**.

The Clerk shall provide notice of this Ruling to the parties forthwith. Defendant to submit a formal order pursuant to Rule of Court 3.1312 in conformity with this ruling.

TRIPLETT v LAGUNA GOLD MORTGAGE, INC., et al

23CV47133

**DEFENDANT TULARE INDUSTRIAL'S MOTION FOR TRANSFER OF VENUE,
PAYMENT OF COSTS AND FEES**

On December 27, 2023, James Triplett ("Plaintiff") filed his complaint for conversion, breach of contract, and negligence against multiple defendants including Tulare Industrial Center, Inc. ("TCI"). Now before the Court is TCI's motion to transfer venue.

I. Background and Procedural History

On or around May 4, 2021, Plaintiff entered into a contract ("Agreement") to purchase an unbuilt steel building ("Product") from Laguna Gold Mortgage, Inc. ("LGM"). Pursuant to the Agreement, Product was to be delivered by LGM to the jobsite located at 124 Pine St. in West Point, California 95255, Calaveras County ("Jobsite"). Plaintiff paid a total of \$49,000 to LGM for the Product. (Complaint, Ex. A.)

LGM purchased Product from Bluescope. According to Plaintiff, LGM and/or Bluescope then hired defendant Feijo Trucking to transport Product. LGM, Bluescope and/or Feijo Trucking then hired TCI to store Product while it was in transit. TCI was supposed to safely store Product while it was physically located in TCI's yard in Tulare County ("Yard"). There is no allegation that there was ever a contract between TCI and Plaintiff.

Plaintiff was supposed to receive Product at the jobsite on approximately November 30, 2021, but it was never delivered. On May 1, 2023, Plaintiff was informed by an investigator for Great Western Casualty, that Product had been stolen from Yard. Product had been specifically targeted, because a different item was stolen first, then returned and then Product was stolen. Plaintiff alleges that TCI did not take steps necessary to secure the Yard where Product was stored after the first theft occurred.

On March 1, 2024, the clerk entered default against TIC. On November 8, 2024, the Court granted TCI's motion to set aside default and ordered that TCI respond to the Complaint within fourteen days. TCI filed the instant motion to transfer venue on November 21, 2024.

II. Legal Standard

Pursuant to Code Civil Procedure section 397(a), the Court may, on motion, change the place of trial “when the court designated in the complaint is not the proper court.”

Venue rules depend on whether an action is “transitory” or “local.” In transitory actions, namely actions whose main relief is personal and does not involve land, proper venue is generally “the county where the defendants or some of them reside at the commencement of the action.” (Code Civ. Proc., § 395 (a). However, this general rule of venue is subject to exceptions, specifically:

Subject to subdivision (b), if a defendant has contracted to perform an obligation in a particular county, the superior court in the county where the obligation is to be performed, where the contract in fact was entered into, or where the defendant or any defendant resides at the commencement of the action is a proper court for the trial of an action founded on that obligation, and the county where the obligation is incurred is the county where it is to be performed, unless there is a special contract in writing to the contrary. (Code Civil Procedure §395(a).)

Venue where the plaintiff has chosen to file the action is presumed proper. (*Battaglia Enterprises, Inc. v. Superior Court* (2013) 215 Cal.App.4th 309, 313-14.) The burden is on the moving party to defeat the plaintiff’s presumptively correct choice of court. (*Ibid.*) If venue is proper in more than one county, the defendant must show more than mere residence in another county. The moving defendant has the burden of “negating the propriety of venue as laid on all possible grounds.” (*Karson Industries, Inc. v. Superior Court* (1969) 273 Cal.App.2d 7, 8-9.)

Where the plaintiff alleges two or more causes of action or joins two or more defendants governed by different venue provisions, venue must be proper as to all causes of action. “In cases with mixed causes of action, a motion for change of venue must be granted on the entire complaint if the defendant is entitled to a change of venue on any one cause of action.” (*Brown v. Superior Court* (1984) 37 Cal.3d 477, 488.)

III. Legal Analysis

TCI moves to transfer venue for this action to Tulare County arguing that Plaintiff improperly filed in Calaveras County. TCI argues that under California Code of Civil Procedure section 395(a), the general rule of venue requires that an action must be

tried in the county of the Defendant's residence. TCI asserts that except for the signing of the contract all actions alleged in the Complaint took place in Tulare County, including Product's manufacture, placement on the trailer, and storage in Yard. (MPA p. 2-3.) TCI further argues that none of the Defendants resides in, or has its principal place of business in, Calaveras County.

In opposition Plaintiff makes two separate arguments. First, Plaintiff argues that TCI's motion is untimely since TCI did not file the motion at the time the defendant answers, demurs, or moves to strike. (Code Civ. Proc. § 396(b).) Plaintiff argues that TCI's first Notice of its motion, filed on November 21, 2024, was defective under Local Rule 3.37 and 3.42. Plaintiff is correct that the original notice was defective under Local Rule 3.37, but TCI cured this shortcoming by way of an amended notice filed prior to the hearing. Plaintiff next argues that the curative amended notice was too late because it was filed and served when there were fewer than sixteen (16) court days before the hearing on the motion. (Code Civ. Proc. § 1005.) The Court disagrees: The "principle purpose of the requirement to file and serve a notice of motion a specified number of days before hearing [Code of Civ. Proc., §1005, subd(b) is to provide the opposing party adequate time to prepare an opposition." (*Arambula v. Union Carbide Corp.* (2005) 128 Cal.App.4th 333, 343.) Where, as here, the party appears at the hearing and opposes the motion on its merits, the purpose of the notice is met, while the purpose of the late-filed amended notice was to allow the hearing to go forward on the merits. (*Id.*) Accordingly, TCI's amended motion is considered timely.

Next, Plaintiff argues that venue in Calaveras County is proper because the contract was entered into in Calaveras County and the Product was supposed to be delivered to and built in Calaveras County. However, Plaintiff brings only one cause of action based in contract, and that is between Plaintiff and LGM. TCI is not a party to the contract with the Plaintiff. The causes of action against TCI are both based in tort: 1) conspiracy to commit conversion, and 2) negligence. Thus, this case is a "mixed action" where Plaintiff has alleged two or more causes of action, each of which is governed by a different venue statute. (*Brown v. Superior Court* (1984) 37 Cal.3d 477, 488.) Here, the tort causes of action against TCI are subject to the general venue rules, and not the exception for contract matters. Plaintiff argues that the mixed action rule does not apply because the alleged injury occurred in Calaveras County because that was where Product was supposed to be delivered. But the Complaint alleges that TCI had a duty to properly store Product in Yard in Tulare County and that the negligent actions took place at Yard.

Thus, the matter must be transferred to Tulare County because where "a defendant is entitled to change of venue as to one cause of action, the entire action is transferred." (*Gallin v. Superior Court* (1991), 230 Cal.App.3d 541, 544; *Goossen v. Clifton* (1946), 75 Cal.App.2d 44, 49-50 [if there is any cause of action that defendant is entitled to change to the county of his residence, "then defendant is entitled to that change no matter how many other causes of action may be set forth in which he is not entitled to that change."].) Further, on a practical note, witnesses and other evidence pertaining to the

alleged negligent storage and theft are more likely to be in Tulare County where the events occurred.

TCI also requests attorney's fees and costs for filing this motion. "In its discretion, the court may order the payment to the prevailing party of reasonable expenses and attorney's fees incurred in making or resisting the motion to transfer . . ." (Code Civ. Proc., § 396b, subd. (b).) In determining whether to award fees and costs, the Court must consider: "1) whether an offer to stipulate to a change of venue was reasonably made and rejected and 2) whether the selection of venue was made in good faith given the facts and law the party making the motion or selecting the venue knew or should have known." (*Ibid.*)

Here, TCI requested that Plaintiff stipulate to transferring venue. (Declaration of Nicholas B. Buss ("Buss Decl.") ¶ 7.) In its opposition, Plaintiff argues that this request was made while TCI was in default and therefore Plaintiff reasonably rejected the request. However, it is clear that TCI made the request to stipulate after the default had been lifted. (Supplemental Declaration of Nicholas B. Buss ("Supp. Buss Decl") ¶ 2, Ex. A.) As to the second prong, though, the Court does find that Plaintiff's counsel had a good faith belief that the exceptions to the general venue rules would apply in this matter because the contract was signed in Calaveras County and Product was supposed to be delivered to Calaveras County. Accordingly, the Court, in its discretion, declines to award attorney's fees and costs to TCI.

Based on the foregoing, Defendant Tulare's Motion for Transfer of Venue is **GRANTED** but the included request for Payment of Costs and Fees is **DENIED**.

The Clerk shall provide notice of this Ruling to the parties forthwith. Defendant TCI to submit a formal order pursuant to Rule of Court 3.1312 in conformity with this ruling. Once the formal Order is signed, Plaintiff is ordered to pay all necessary fees to effectuate the transfer to Tulare County.