BILLMAN v HARMON

23CV47101

CROSS-DEFENDANTS' DEMURRER TO FIRST AMENDED CROSS-COMPLAINT

Now before the Court is a demurrer filed by Cross-Defendants Jamie Billman, Myrna Ray Reynolds, LLC, and Billman's Cool Roofing Company, Inc. ("Cross-Defendants") to the First Amended Cross-Complaint ("FACC") filed by Defendant/Cross-Complainant Krystal Harmon ("Harmon").

On March 18, 2025, the above-referenced parties filed a joint stipulation and order permitting Harmon to file a Second Amended Cross-Complaint ("SACC") within five (5) days of the order. Filing of the SACC would moot the demurrer to the FACC currently on calendar.

Accordingly, this matter is postponed until April 4, 2025, at 9:00 a.m. in Dept. 2, for a determination as to whether the SACC was timely filed, thereby mooting the demurrer to the FACC. In the event the SACC is timely filed, this demurrer will be dropped from calendar.

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

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

23CV47109

PLAINTIFF'S DEMURRER TO COUNTERCLAIM; LAKESIDE VENTURE'S MOTION TO SET ASIDE DEFAULT; PLAINTIFF'S DEFAULT HEARING RE LAKESIDE VENTURES, LLC

This is a dispute arising out of the rental of a mobile home space at a mobile home park located at 1475 Railroad Flat Road, Mokelumne Hill, California, 95245 ("Property"). Now before the Court is the demurrer brought by Plaintiff/Counter-Defendant Edward Mulry's ("Mulry") as to the counterclaim purportedly brought by Lakeside Mobile Home Estates, LLC ("Lakeside") and Bonnie Hurley ("Hurley")(collectively "Counterclaimants")

Demurrer to Counterclaim

As an initial matter, the Court notes that Lakeside has not properly filed an Answer or Counterclaim. On January 6, 2025, Hurley filed an Answer and counterclaim against Mulry on behalf of both herself and Lakeside. However, Lakeside is a limited liability company. As such, it cannot represent itself and must be represented by a licensed attorney. (*CLD Construction, Inc. v. City of San Ramon* (2004) 120 Cal.App.4th 1141, 1146.)

In the interests of justice, the Court will issue a provisional tentative ruling on the demurrer. A final ruling will be delayed until April 18, 2025, at 9:00 a.m. in Dept. 2, in order to allow Lakeside an opportunity to seek licensed counsel.

Mulry's request for judicial notice is granted in part and denied in part. The Court grants judicial notice only to those matters (court filings) that the Court is obligated to take judicial notice of but cannot take judicial notice of other extraneous evidence (declarations, leases).

As set forth below, the demurrer is provisionally sustained in part and overruled in part.

I. FACTUAL BACKGROUND

According to the counterclaim, Bonnie K. Hurley (“Hurley”) is the current owner of the real property commonly known as 1475 Railroad Flat Rd, Mokelumne Hill, CA 95245, Assessor Parcel No.2 020-029-202-000 (the "Property"). (CC ¶ 7.) Up and until August 2023, the Property was owned by Lakeside Ventures LLC ("Lakeside"). (Id. ¶ 8.) On or about July 20, 2021, Hurley and Lakeside entered into a Management Agreement (the "Management Agreement"), with Helen Ariza ("Ariza"), which required Ariza to undertake certain management duties. (Id. ¶ 9.) The Property is operated as a mobile home park (“Park”).

On or about October 1, 2021, Mulry signed a lease agreement with Ariza and Beach Lake Village ("Beach Lake"), which were allegedly acting on behalf of Lakeside and Hurley. (CC ¶ 10.) However, on or about February 10, 2022, Lakeside and Hurley terminated the Management Agreement with Ariza. (Id ¶ 11.) Following Ariza’s termination, on March 15, 2022, Lakeside/Hurley entered into a Commercial Property Purchase Agreement (the "CPPA") with Scott Nordyke (“Nordyke”). (Id. ¶12.) Thereafter, Nordyke and Arthur Trillo (“Trillo”) took over as managers of the Park, with authority to collect rents and evict tenants. (Id. ¶ 13.)

At the time Nordyke took ownership of the Park, Lakeside did not have a Permit to Operate (“PTO”) and there were numerous code violations within the Park. (CC ¶ 14.) On or about September l, 2022, the Department of Housing and Community Development reinstated Lakeside's Permit to Operate the Park. (Id. ¶ 16.) Between September 1, 2022, and September 26, 2023, Mulry resided in Lot 2 of the Park, and during the above periods had a duty to pay rent but failed to pay said rent. (Id. ¶ ¶ 17, 18.) Nordyke/Trillo gave appropriate notices to Counter-Defendant, including a 7- Day Notice to pay or quit and a 60-Day Notice to Vacate tenancy for failure to pay rent. (Id. ¶ 19.) Mulry allegedly vacated his space at the Park on or about September 26, 2023. (Id. ¶ 20.)

The Counterclaim alleges the following causes of action against Mulry: 1) failure to pay rent; 2) breach of implied covenant of good faith and fair dealing; 3) open book account. All three causes of action stem from Mulry’s alleged failure to pay rent for his space at the Park between September 1, 2022 and September 26, 2023.

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." (*MKB Management, Inc. v. Melikian*, (2010), 184 Cal.App.4th 796, 802.) If a complaint does not sufficiently state a cause of action, "but there is a reasonable probability that a defect can be cured by amendment, leave to amend must be granted." (*Quelimane Co. v. Stewart Title Guaranty Co.* (1998) 19 Cal. 4th 26, 38.)

III. Legal Analysis

A. Res Judicata Does Not Apply

As an initial matter, Mulry argues that the counterclaim is barred by the doctrine of res judicata. 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 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].)

Mulry argues that the counterclaim is identical to the small claims complaint brought by Lakeside. (Case No. 23CS79891). This is true, but res judicata does not apply because there was no final judgment in the small claims case. Rather, in that matter, the case was dismissed without prejudice due to lack of standing pending the outcome of another related case. (Case No. 22CV46059). Accordingly, res judicata does not apply to bar the counterclaim.

B. Failure to Pay Rent (Breach of Contract)

While captioned as a cause of action for "failure to pay rent" the first cause of action is one for breach of contract (lease agreement). In order for counterclaimants to state a claim for breach of contract, the counterclaim must allege: 1) the existence of a contract, 2) counterclaimant's performance thereunder or excuse for lack of performance, 3) defendant's breach, and 4) resulting damages. (*J.B.B. Investment Partners Ltd. v. Fair* (2019) 37 Cal.App.5th 1, 9.)

Here, Counterclaimants allege that there was a lease agreement pursuant to which Mulry was to pay $500 per month in rent (CC ¶ 25) and that Mulry failed to do so. (*Id*. ¶¶ 30-31.) They further allege that the lease agreement, while entered into between, Mulry and Beach Lake Village was done so on behalf of Lakeside. (¶ 10.) The counterclaim alleges that they performed all duties under the contract, but that Mulry breached the

contract in failing to pay the rent. Finally, they allege damages in the amount of $6,433.33.

Mulry argues that there is no cause of action for failure to pay rent because his rental agreement was with Helen Ariza/Beach Lake Village and not Lakeside or Hurley. In support of his arguments, Mulry submits a declaration that the agreement was never with Lakeside. However, at the demurrer stage, the Court is required to presume the allegations in the counterclaim as true and may not consider extrinsic evidence such as declarations. (*Donabedian v. Mercury Ins. Co.* (2004) 116 Cal.App.4th 968, 994.)

As the court is required to presume the allegations to be true, for purposes of demurrer the counterclaim sets forth a cause of action for breach of contract.

C. Breach of Implied Covenant of Good Faith and Fair Dealing

The elements for breach of the implied covenant of good faith and fair dealing are: (1) existence of a contract between plaintiff and defendant; (2) plaintiff performed his contractual obligations or was excused from performing them; (3) the conditions requiring defendant's performance had occurred; (4) the defendant unfairly interfered with the plaintiff's right to receive the benefits of the contract; and (5) the plaintiff was harmed by the defendant's conduct. (*Merced Irr. Dist. v. County of Mariposa* (E.D. Cal. 2013) 941 F.Supp.2d 1237, 1280 [discussing California law].) To allege a breach of the implied covenant, however, the claim must be for something "beyond breach of the contractual duty itself." (*Careau & Co. v. Security Pacific Business Credit, Inc,.* (1990) 222 Cal. App. 3d 1371, 1394.)

Here, the allegations giving rise to the breach of lease/contract are identical to the claims for breach of the implied covenant of good faith and fair dealing. There are no additional factual allegations beyond the breach of the contractual duty itself. (*See eg. Moore v. Wells Fargo Bank, N.A.* (2019), 39 Cal.App.,5th 280, 292 [breach of the implied covenant requires allegations beyond simply breach of contract].)

Accordingly, the demurrer as to the breach of implied covenant of good faith and fair dealing is sustained, with leave to amend.

D. Open Book Account

An open book cause of action requires the Counterclaimants to establish that: 1) the parties had financial transactions with each other; 2) that Counterclaimants, in the regular course of business, kept a written account of the debits and credits involved in the transactions; 3) that Mulry owes Counterclaimants money on the account; and 4) the amount of money owed. (*Farmers Ins. Exchange v. Zerin* (1997) 53 Cal.App.4th 445, 460; CACI 372)

Here, the Counterclaimants allege that Mulry *never* paid rent to them from the time they were lawfully allowed to collect rent after the PTO was reinstated in September 2022 until Mulry vacated the property in September of 2023. Accordingly, there is no allegation that Mulry and Counterclaimants ever engaged in "financial transactions" with each other during the claim period. As such, there is no cause of action alleged for open book account.

Accordingly, the demurrer to the cause of action for open book account is sustained, with leave to amend.

Motion to Set Aside Default

Now before the Court is a motion to set aside default brought by Defendant Lakeside Ventures LLC ("Lakeside") to the entry of default granted on motion of Plaintiff/Counter-Defendant Edward Mulry's ("Mulry").

As an initial matter, the Court notes that Lakeside has not properly filed the counterclaim. Lakeside is a limited liability company. As such, it cannot represent itself and must be represented by a licensed attorney. (*CLD Construction, Inc. v. City of San Ramon* (2004) 120 Cal.App.4th 1141, 1146.)

In the interests of justice, the Court will issue a provisional tentative ruling, on the motion to set aside the default. A final ruling will be delayed until April 18, 2025, at 9:00 a.m., in Dept. 2, in order to allow Lakeside an opportunity to seek licensed counsel.

I. FACTUAL BACKGROUND

Mulry alleges that on or about October 1, 2021, he and Alice Mulry entered into a Rental Agreement ("Agreement") with Helen Ariza ("Ariza") as owner/manager of Beach Lake Village to rent Mobile Home Space 2 ("Space 2") on the Property. (FAC, Ex. 1.) The Property, however, was owned by Lakeside, Bonnie K. Hurley ("Hurley"), Scott Noniyke ("Noniyke") and Arthur Villa ("Villa"). Mulry alleges that there was an ongoing dispute about the rightful ownership of the Property, as evidenced by a lawsuit brought by Ariza against Lakeside ("Ownership Litigation") Case No. 22CV46059). Mulry alleges that while the issue of who owned the Property was still being litigated, he was improperly evicted from Space 2. (FAC ¶ 5.)

Mulry alleges that on October 7, 2022, he was served with a 60-day Notice to Terminate Tenancy by Lakeside. (FAC ¶ 5.) However, according to Mulry, at the time of this Notice, there was a Notice of Suspension on the Property issued by the Department of Housing and Community Development ("DHCD") which prohibited Lakeside from collecting rents while the Property was suspended. (FAC ¶ 5.) Mulry alleges he was the only tenant to receive the notice to terminate for failing to pay rent (during the suspension period). (*Ibid*.) On December 16, 2022, Defendants again served a 7-day Notice to Pay or Quit and a 60-day Notice to Vacate Tenancy while the Ownership Litigation was still pending. (FAC ¶ 6.) On February 7, 2023, Mulry alleges he was served with a 5-Day Notice to Quit Due to Forcible Detainer. (FAC ¶ 7.)

0n February 24, 2023, the Defendants filed a Complaint for Forcible Detainer against Mulry, cited as *Lakeside Ventures LLC v. Mulry*, Case No. 23UDI4090 (FAC ¶ 8.) On May 16, 2023, the forcible detainer was denied because Mulry had lived on the premises for twelve months. (FAC ¶ 17.) Lakeside's motion to set aside and vacate that ruling was denied. (FAC ¶ 18.) Mulry alleges that despite court orders ruling that Lakeside could not collect rents during the pendency of the Ownership Litigation, Defendants repeatedly attempted to evict Mulry for failure to pay rent. (FAC ¶ ¶ 19-24.)

Mulry's lawsuit against Defendants/Counter-claimants followed.

II. RELEVANT PROCEDURAL HISTORY

On December 7, 2023, Mulry filed a complaint against Defendants Lakeside, Bonnie K. Hurley ("Hurley"), Scott Noniyke ("Noniyke") and Arthur Villa ("Villa"). Mulry filed his First Amended Complaint against the same defendants on February 27, 2024. Mulry brings a variety of causes of action, including wrongful eviction, arising out of the Agreement.

On April 2, 2024, Noniyke and Villa filed an answer and counter-claim against Mulry. On May 13, 2024 the Court refuse to enter Mulry's request for entry of default judgment

against Hurley on the grounds that there was no proof of service of the amended complaint. On May 17, 2024, Mulry filed a proof of service showing service by U.S. mail to Hurley.

On August 2, 2024, the Court denied Mulry's motion for reconsideration striking the request for default against Hurley. In that some ruling, the Court overruled Mulry's demurrer to the counter-claim filed by Noniyke and Villa.

On October 21, 2024, Mulry filed a proof of service showing personal service of the original and amended complaint on Lakeside. On November 19, 2024, Mulry filed an entry of default against Lakeside. However, on December 30, 2024, the Court refused to enter judgment in the amounts requested based on lack of proof, and ordered Mulry to schedule a prove-up hearing on damages.

On January 6, 2025, Hurley filed an answer to the FAC on behalf of herself and Lakeside as well as a counterclaim against Mulry.

Now before the Court is Lakeside's motion to set aside default.

II. Legal Standard and Analysis

Lakeside moves for relief on three grounds: (1) the summons was defective because it did not comply with Code Civ. Proc. section 412.30; (2) lack of actual notice based on the defective summons; and (3) the default should be set aside due to excusable neglect pursuant to Code of Civil Procedures section 473(b).

A. Defective Service of Summons/Invalid Default

Lakeside first argues that the summons was defective (and thereby the default was also defective) because the service of summons lacked the requisite language under Code Civil Procedure section 412.30. Pursuant to that code section:

> In an action against a corporation or an unincorporated association (including a partnership), the copy of the summons that is served shall contain a notice stating in substance: "To the person served: You are hereby served in the within action (or special proceeding) on behalf of (here state the name of the corporation or the unincorporated association) as a person upon whom a copy of the summons and of the complaint may be delivered to effect service on said party under the provisions of (here state appropriate provisions of Chapter 4 (commencing with Section 413.10 of the Code of Civil Procedure)." If service is

> also made on such person as an individual, the notice shall also indicate that service is being made on such person as an individual as well as on behalf of the corporation or the unincorporated association.
>
> If such notice does not appear on the copy of the summons served, no default may be taken against such corporation or unincorporated association or against such person individually, as the case may be.

Here, the service of summons did not contain the requisite language. Rather, the summons shows that Lakeside was served as an individual, not as an LLC. While the Code only requires substantial compliance, the complete failure to include the requisite language, and the checkbox indicating that the defendants were being served only as "individuals", cannot be considered substantial compliance. (*MJS Enterprises, Inc. v. Superior Court*, (1984) 153 Cal.App.3d 555, 557 [the failure to include any of the required language of CCP §412.30 rendered the summons "fatally defective."].) '

Where the service of summons is fatally defective, it cannot serve as the basis for default. Accordingly, Lakeside's motion to set aside defect is well taken and is provisionally **GRANTED**.

IV. Conclusion

The demurrer is **OVERRULED as to the cause of action for "failure to pay rent"** (breach of contract) but is **SUSTAINED, with leave to amend, as to the causes of action for breach of the implied covenant of good faith and fair dealing and open book account**.

Lakeside's Motion to set aside default is **GRANTED**, and Lakeside is to file an answer within ten (10) court days of the issuance of this ruling.

The Clerk shall provide notice of this Ruling to the parties forthwith. No further formal Order in conformity with this Ruling is required as these Rulings are illustrative and provisional in nature.

The Court will adopt these rulings at the hearing on April 18, 2025, **IF** Lakeside is properly represented; if not, the Court will modify these provisional rulings accordingly.

DEBT COLLECTION PARTNERS OF CALAVERAS, LLC v REED

24CV47262

DEFENDANTS' CLAIM OF EXEMPTION

On August 17, 2022, a deed of trust executed by Justin Reed ("Justin") and Kristen Reed ("Kristen") was recorded in the Official Records of Calaveras County (the "Trust Deed"). The Trust Deed secured the payment of a promissory note executed by both Justin and Kristen in the initial principal amount of $ 147,000 (the "Promissory Note"). Plaintiff Debt Collection Partners of Calaveras LLC ("DCPC") is the assignee of record for the Trust Deed and the Promissory Note. The Defendants defaulted on the Trust Deed/Promissory Note and as of October 17, 2024, owed $198,268.43 on the Promissory Note.

Prior to this, on June 14, 2023, an abstract of judgment documenting a judgment against Defendant Justin Reed *only* was recorded in the official records. The principal amount of that judgment and the lien created thereby was $2,729,668.86 plus interest and collection costs. ("Abstract Judgment"). DCPC is the assignee of the Abstract Judgment as well.

On October 21, 2024, DCPC obtained a judgment against both Defendants in the amount of $2,927,937.29, which included the amount due on the Promissory Note as well as the abstract of judgment. On October 23, 2024, a Writ of Sale was filed with the Court.

Defendants have each filed their own claim of exemption on the grounds that the property is needed for their support and further that it is exempt under Code Civil Procedure section 704.730 ("Homestead Exemption").

Code Civil Procedure section 704.730(a) provides that the amount of the homestead exemption is the greater of the following:

(1) The countywide median sale price for a single-family home in the calendar year prior to the calendar year in which the judgment debtor claims the exemption, not to exceed six hundred thousand dollars ($600,000).

(2) Three hundred thousand dollars ($300,000).

Under this section, Defendants are entitled to an exemption between $300,000 and $600,000 depending on the evidence and value of single-family homes in the county. Defendants argue, however, that Justin's share of equity in the property is less than the value of the Homestead Exemption.

Plaintiff has filed an opposition expressing the levy is pursuant to writ of sale for a foreclosure judgment on a voluntary lien-a deed of trust signed by both Mr. & Mrs. Reed-not an abstract of judgment. Foreclosures under trust deeds or other consensual liens are not subject to
exemption claims. (Code Civ. Proc., Y5 703.010, subd. (b); In re Pavich (BC ED CA 1996) 191 BR 838, 847.) .

Defendants have provided no evidence to support their claims regarding the amount of equity Justin has in the property. The only evidence the Court has is that the Defendants hold the property as community property with rights of survivorship, that DCPC has a lawful judgment in the amount of $2,927,937.29 against both Defendants, and DCPC has a judgment authorizing them to seek a writ of sale on the property. Additionally, the Court finds plaintiff's position that the levy is pursuant to the lien contained in the deed of trust (rather than the abstract of judgment) to be persuasive.

The claim for exemption is **DENIED**.

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

LEITNER-HERNANDEZ, et al v LAKESIDE VENTURES, LLC, et al

24CV47786

PLAINTIFF'S DEMURRER TO ANSWER

This is a real property dispute involving 1475 Railroad Flat Road, Mokelumne Hill, California, 95245 ("Property"). Now before the Court is the demurrer brought by Plaintiff/Cross-Defendant Vicki Leitner-Hernandez ("Vicki") and Miguel Hernandez ("Miguel") as to the Answer purportedly brought by Lakeside Mobile Home Estates, LLC ("Lakeside") and Bonnie Hurley ("Hurley")(collectively "Cross-claimants").

As an initial matter, the Court notes that Lakeside has not properly answered the Complaint. Lakeside is a limited liability company. As such, it cannot represent itself and must be represented by a licensed attorney. (*CLD Construction, Inc. v. City of San Ramon* (2004) 120 Cal.App.4th 1141, 1146.)

The Court also notes that Vicki Hernandez is purporting to represent both herself and Miguel in this matter in pro per. However, Vicki does not appear to be a licensed attorney and as such cannot represent Miguel in this matter.

On March 6, 2025, Lakeside/Hurley filed a notice of filing an Amended Answer which would moot the instant demurrer.

In the interests of justice, the Court will issue the foregoing as a *provisional* tentative ruling, despite the fact that both Lakeside and Miguel are not properly represented. The Court finds that the filing of an Amended Answer moots the demurrer to the original Answer. A final ruling will be delayed until April 16, 2025, in order to allow Lakeside an opportunity to seek licensed counsel and for Miguel to either obtain counsel or enter an appearance on his own behalf.

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

CHARTER-SMITH v MALLERY

24CV47281

PLAINTIFF'S MOTION TO COMPEL THE DEPOSITION OF RHONDA COPELAND AND REQUEST FOR SANCTIONS

This case involves a dispute over real property known as 1374 Hubbard Road, Sheep Ranch, CA 95246. Now before the Court is Plaintiff's Motion to Compel Deposition and for Sanctions.

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.

Accordingly, the motion is **DENIED**, without prejudice to refile.

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