

MICHAEL HATFIELD v. UNION PUBLIC UTILITY DISTRICT

Case No. 23CV46786

DEFENDANT UNION PUBLIC UTILITY DISTRICT'S DEMURRER TO PLAINTIFFS' FIRST AMENDED COMPLAINT

This action challenges a component of the rates charged by the Union Public Utility District, ("UPUD") which is an independent special district formed under the California Public Utility District Act (Public Utility Code, §§15501-17501) for water service to district customers. Plaintiff Michael Hatfield, a ratepayer and customer of UPUD, challenges the imposition and collection of portions of water rates charged to customers. The plaintiff seeks a certification of class action, a fee refund and a declaration that an element of the UPUD fee is invalid.

Defendant UPUD has demurred pursuant to Code of Civil Procedure section 430.10 (e), alleging plaintiff fails to state facts sufficient to constitute a cause of action in that the contentions are barred by the applicable statute of limitations outlined in Government Code section 53759 (a), and because the Court has no jurisdiction over the subject matter alleged in the First Amended Complaint due to Plaintiffs' failure to comply with the reverse validation procedures required by Government Code section 53759 (b).

Plaintiff requests a determination of the validity of specific rates, fees and charges. Although plaintiff does not cite a specific code section in the First Amended Complaint, CCP §§ 860-870 and Government Code section 53759 set forth the applicable period of limitations, the latter providing in pertinent part:

- (a) Any judicial action or proceeding to attack, review, set aside, void, validate, or annul an ordinance, resolution, or motion adopting a fee or charge for water or sewer service, or modifying or amending an existing fee or charge for water or sewer service, shall be commenced within 120 days of the effective date or of the date of the final passage, adoption, or approval of the ordinance, resolution, or motion, whichever is later.
- (b) Any action under this section by a local agency or interested person shall be brought pursuant to Chapter 9 (commencing with Section 860) of Title 10 of Part 2 of the Code of Civil Procedure, except that the time limits of subdivision (a) shall apply...

Pursuant to the reverse validation procedures, an interested party must obtain jurisdiction of all interested parties by publishing a summons in a newspaper that is directed to the public agency and "all persons interested in the matter." (CCP §§ 861, 861.1, 863.)

The Court grants plaintiff's request for Judicial Notice of the entirety of the UPUD rate study, fee policy and adopted rates. The First Amended Complaint does not, as is argued in the opposition, restrict its challenge to a single component of the overall rate; rather, it challenges the entire rate.

Judicial actions or proceedings to attack, review, set aside, void, raise Proposition 218 issues or annul an ordinance, resolution or motion fixing or changing rates or charges (such as a resolution setting a district's water rates) are subject to the 120-day statute of limitations (PU Code, § 14402; see also California Constitution, Article XIII D, § 6, subdivision (b)).

The Court SUSTAINS the demurrer to the First Amended Complaint in its entirety with 20 days leave to amend to address the statute of limitations and the court's jurisdiction shortcomings.

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

RYAN v. HUTCHNSON

Case No. 19CV44070

**SECOND AMENDED MOTION FOR ORDER SUBSTITUTUING
SUCCESSOR-IN-INTEREST**

This is a renewed motion to substitute defendant's estate as a party-defendant.

At the previous hearing, the Court continued the matter and ordered proper service of on all lawyers, including those representing the estate. (Additionally, if there was no opposition, the parties were encouraged to file a stipulation and order allowing the substitution.) No stipulation was filed nor any opposition. Proofs of Service on attorneys Brian Chavez-Ochoa and Theresa Haefele is included with the Motion.

Order requesting substitution is GRANTED.

The Clerk shall provide notice of this Ruling to the parties forthwith. Plaintiff to prepare a formal Order pursuant to California Rule of Court 3.1312 in conformity with this ruling.

ANDREWS v. ANDERSON

Case No. 23CV46644

DEFENDANTS' DEMURRER TO SECOND AMENDED COMPLAINT

Plaintiff MEG ANDREWS alleges breach of contract, fraud, and elder abuse, with regard to construction work at 3441 Appaloosa Road in Angels Camp.

Before the Court is defendants' demurrer to the Second Amended Complaint.

FRAUD ALLEGATIONS

The general rule concerning pleading a cause of action in fraud is that fraud must be specifically pleaded, and the complaint must state specific facts of how and where the fraud occurred. A vague inclusion of terms contained in the second amended complaint such as: "under the false pretense that false promises," "intentional representations," and/or "The fraud of Defendants, and each of them, was and is malicious, oppressive, despicable, and justifies the recovery of punitive and exemplary damages in amounts according to proof" does not provide the requisite specificity.

The effect of this general rule is twofold: (1) the facts constituting fraud must be alleged (that is, general pleading of the legal conclusion of fraud is insufficient); and (2) every element of the cause of action for fraud must be alleged factually and specifically. The policy of liberal construction of the pleadings will not ordinarily be invoked to sustain a pleading defective in any material respect. (Hall v. Department of Adoptions (1975) 47 Cal. App. 3d 898, 904, (quoting a legal commentator); Bank of America v. Vannini (1956) 140 Cal. App. 2d 120, 130 (party pleading defense based on fraud required to set forth all elements of fraud)).

Each element of a fraud claim must be factually and specifically alleged by the plaintiff. (See Small v. Fritz Companies, Inc., (2003) 30 Cal. 4th 167, 184.) The policy of liberal construction of pleadings is generally not invoked to sustain a pleading of a fraud claim that is defective in any material respect, and mere conclusory allegations are insufficient. (See Cadlo v. Owens-Illinois, Inc., (2004) 125 Cal. App. 4th 513, 519.)

In California, a plaintiff must plead all the circumstances constituting the alleged fraud with *specificity*. This requirement necessitates pleading facts that show how,

when, where, to whom, and by what means the fraud was committed. (See *Robinson Helicopter Co., Inc. v. Dana Corp.*, (2004) 34 Cal. 4th 979, 993.) Plaintiff must allege every element of the cause of action in full, both factually and specifically, not simply making a general statement that any or all comments or actions were fraudulent.

ELDER ABUSE

To state a cause of action for elder abuse, the plaintiff must plead facts showing two elements: (1) the defendant has subjected an elder to statutorily-defined physical abuse, neglect or financial abuse; and (2) the defendant acted with recklessness, malice, oppression, or fraud in the commission of the abuse. (*Carter v. Prime Healthcare Paradise Valley LLC* (2011) 198 Cal.App.4th 396, 407.)

As with the Fraud Cause of Action, it is not sufficient to simply state that a party is elderly and suffered damages. The plaintiff must allege conduct within the Elder Abuse Act, and those claims must be pled "with particularity." (*Covenant Care, Inc. v. Superior Court* (2004) 32 Cal.4th 771, 790.) Welfare & Institutions Code section 15657 mandates specific pleading requirements for an elder abuse cause of action and requires more than general allegations. (*Id.*) The California Supreme Court has affirmed that trial courts are to perform the function of gatekeepers for elder abuse claims by examining the material factual content of the pleadings, which requires pleading with factual particularity. (*Id.*)

"The plaintiff must allege (and ultimately prove by clear and convincing evidence) facts establishing that the defendant (1) had responsibility for meeting the basic needs of the elder or dependent adult, such as nutrition, hydration, hygiene or medical care; (2) knew of conditions that made the elder or dependent adult unable to provide for his or her own basic needs; and (3) denied or withheld goods or services necessary to meet the elder or dependent adult's basic needs, either with knowledge that injury was substantially certain to befall the elder or dependent adult (if the plaintiff alleges oppression, fraud or malice) or with conscious disregard of the high probability of such injury (if the plaintiff alleges recklessness)." (*Carter v. Prime Healthcare Paradise Valley LLC* (2011) 198 Cal.App.4th 396, 406-407 [citations omitted].)

Based on the foregoing reasons, the Court SUSTAINS the demurrer to the Second Cause of Action for Fraud and the Third Cause of Action for Elder Abuse with 20 days leave to amend.

The Clerk shall provide notice of this Ruling to the parties forthwith. Defendant to prepare a formal Order pursuant to California Rule of Court 3.1312 in conformity with this Ruling

HANNINK, et al. v. HERNANDEZ

Case No. 23CV46522

PLAINTIFFS' MOTION TO COMPEL WRITTEN DISCOVERY AND DEEMING MATTERS ADMITTED

This action arises from an alleged breach of contract relating to three loans made to defendant.

On May 2, 2023, plaintiff propounded the following discovery on defendant: Form Interrogatories (Set One); Request for Production of Documents and Things (Set One); Special Interrogatories (Set One); and Requests for Admission (Set One). No response have been provided. The Motion to Compel was filed on August 18, 2023.

No opposition to the Motion to Compel was filed.

The Motion to Compel is GRANTED. Defendant, GILBERT HERNANDEZ is to produce complete verified answers, without objection, and produce all responsive documents in his care, custody or control, to Plaintiffs' Form Interrogatories (Set One), Request for Production (Set One), and Special Interrogatories (Set One), by November 3, 2023.

IT IS FURTHER ORDERED that all matters specified in the Requests for Admission (Set One) are deemed admitted and all documents referenced therein are deemed genuine.

As this motion was not opposed, no monetary sanctions are awarded.

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