

CALLISON v. ORTIZ

20CV45077

DEFENDANTS' DEMURRER TO FIRST AMENDED COMPLAINT

This case involves an allegedly broken promise to use the equity from the sale of real property to reduce an existing judgment. Before the Court this day is demurrer to the First Amended Complaint, which includes one cause of action for breach of contract, and another cause of action for promissory estoppel.

On 06/02/17, plaintiff Dan Callison secured a stipulated judgment against co-defendant Dan Riordan in Sonoma County Superior Court Case No SCV260362 (hereinafter "Judgment") for the amount of \$965,000.00.

On 01/10/19, defendant Rose Ortiz and Dan Riordan executed an Assignment of Equity in favor of plaintiff, pledging "in reduction of that certain Judgment all right title and interest in any and all equity which they may hold in 2235 Skunk Ranch Road, Murphys." It is alleged that Rose Ortiz owned the property, and that Dan Riordan had some equitable interest therein based on "his work and improvement of the property." FAC Para 7. Plaintiff alleges that he elected not to execute on the Judgment or seek provisional relief (perhaps a Notice of Lis Pendens) in reliance on the assignment.

On 09/15/20, defendant Ortiz transferred the subject property by way of grant deed, and reportedly failed to tender over to plaintiff any equity from that transaction – which plaintiff estimates to be in the range of \$200,000.00.

A demurrer presents an issue of law regarding the sufficiency of the allegations set forth in the complaint. The challenge is limited to the "four corners" of the pleading (which includes exhibits attached and incorporated therein), or from matters outside the pleading which are judicially noticeable. The complaint is read as a whole. Material facts properly pleaded are assumed true, but not contentions, deductions or conclusions of fact/law. In general, a pleading is adequate if it contains a reasonably precise statement of the ultimate facts, in ordinary and concise language, and with sufficient detail to acquaint a defendant with the nature, source and extent of the claim. CCP §§ 425.10(a), 459; in accord, *Blank v. Kirwan* (1985) 39 Cal.3d 311, 318; *Gray v. Dignity Health* (2021) 70 Cal.App.5th 225, 236 n.10.

Defendants demur to both causes of action on the grounds of uncertainty and failure to state a cause of action. Although demurring on grounds of uncertainty is generally disfavored, it is proper when the essential facts upon which a determination of the controversy depends are ambiguous, unintelligible, or otherwise impossible to discern

from the allegations made. (See *A.J. Fistes Corp. v. GDL Best Contractors, Inc.* (2019) 38 Cal.App.5th 677, 695; *Chen v. Berenjian* (2019) 33 Cal.App.5th 811, 822.) Where the demurrer is based on the pleading not stating facts sufficient to constitute a cause of action, the rule is that if, upon a consideration of all the facts stated, it appears that the plaintiff is entitled to any relief at the hands of the court against the defendants, the complaint will be held good, although the facts may not be clearly stated or may be intermingled with a statement of other facts irrelevant to the cause of action shown. (*New Livable California v. Association of Bay Area Governments* (2020) 59 Cal.App.5th 709, 714; *Wittenberg v. Bornstein* (2020) 51 Cal.App.5th 556, 566.) In other words, a general demurrer for failure to state will not succeed if the pleading states, however inartfully, facts disclosing some right to relief. (*Weimer v. Nationstar Mortgage, LLC* (2020) 47 Cal.App.5th 341, 352.)

The demurrer is OVERRULED. As for the contract claim, plaintiff has alleged sufficient consideration since the agreement was put in writing and something obviously motivated defendants to memorialize the Assignment of Equity. (See Civil Code §§ 1605, 1607.) Even if it was simply to avoid collection efforts, that is sufficient. As for the promissory estoppel claim, a promisor is bound when he should reasonably expect a substantial change of position, either by act or forbearance, in reliance on his promise, if injustice can be avoided only by its enforcement. (*West v. JPMorgan Chase Bank* (2013) 214 Cal.App.4th 780, 803-804.) Although defendants are correct that plaintiff's Judgment was not a real property claim for purposes of a lis pendens, that is not the same as saying no detrimental reliance occurred. Plaintiff could have recorded an *invalid lis pendens* and still interfered with the sale. Although the detrimental reliance is not strong in this case since the Judgment still exists, plaintiff may be able to show damages resulting from the delay. This is a matter for discovery, not something to resolve at the pleading stage.

Defendants to answer in 10 days.

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

TYLER et al v. OAKDALE IRRIGATION DISTRICT et al
17CV42319

PLAINTIFFS' MOTION TO COMPEL FURTHER RPD

This is an inverse condemnation action. Plaintiffs generally allege that variations in water levels in the Tulloch Reservoir caused hillside erosion and damage to the deck on the rear of their home. Before the Court is another motion to compel cooperation with a party's discovery efforts.

The motion is GRANTED in part.

Although defendants contend that the motion is moot following discovery and production of the report requested, plaintiffs are correct that the varying responses are inconsistent and permit ambiguity. A party responding to an RPD is obligated to provide a response which mirrors one of these three responses: (1) a verified statement of compliance, which includes the actual documents (organized and labeled or as they are kept in the usual course of business) or a clear indication as to when and how the documents will be provided; (2) a verified statement of noncompliance based on inability, confirming a "diligent search and reasonable inquiry" and the reason for the inability, to wit: the documents never existed, were lost/destroyed, or in the possession of someone inaccessible; or (3) a statement of noncompliance based on objection, which must describe responsive documents and set forth "clearly" the specific grounds for the objection. (CCP §§ 2031.210-2031.280.) Here, defendants initially provided a statement of noncompliance, then amended with a statement of noncompliance AND a statement of compliance. Defendants' contention that they never had a copy, but now have a copy, is open to question since the copy was found in a location generally within their control.

In addition to the failure to provide a clear code-complaint response, there appears to be some question as to whether the document produced includes all of the referenced addenda. This Court is not in a position to evaluate this, but notes that taking any uncertainty out of defendants' verified response will aid both sides.

Defendants to provide a supplemental, verified response within 10 days of service of this ruling.

Regarding sanctions, this Court finds that plaintiffs' counsel is entitled to recoup costs associated with perfecting the moving papers, since it appears that this effort produced the document in question. Counsel's hourly rate of \$175 is more than reasonable. This Court awards \$935.00 (5 hrs + filing fee) payable within 10 days.

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

AMIN v. VANDENBERG et al

20CV44940

PLAINTIFF'S MOTION FOR LEAVE TO FILE FIRST AMENDED COMPLAINT

This is a personal injury action involving a dog bite at an RV park. Before the Court this day is plaintiff's motion for leave to file a First Amended Complaint. Plaintiff generally wishes to add new negligence claims, revive a previously dismissed claim, and add new parties.

To amend a pleading already at issue, the sponsoring party is required first to seek leave of court by way of noticed motion. (CCP §473(a)(1).) Pursuant to California Rules of Court, Rule 3.1324, the moving party must:

- a) Specify in the moving papers by page, paragraph, and line number the allegations proposed to be added and/or deleted; and
- b) Include with the moving papers:
 - a copy of the proposed amended pleading; and
 - a declaration specifying:
 - (1) the effect of the amendment(s);
 - (2) why the amendment is necessary and proper;
 - (3) when the facts giving rise to the amended allegations were discovered;
and
 - (4) the reasons why the request was not made earlier.

The supporting declaration is devoid of the required elements for leave to amend. The declaration merely authenticates proposed exhibits without regard to their import or timing. While the memorandum does address the salient concerns, the memorandum is not verified as a declaration would be. This is particularly important where, as here, the opposing party suggests that the proffered amendments are sham.

To be clear, a court will not ordinarily consider the validity of the proposed amendment in deciding whether to grant leave to amend (that can normally be dealt with via demurrer) and may not condition leave upon the submission of evidence substantiating the new claim(s). (*Sanai v. Saltz* (2009) 170 Cal.App.4th 746, 769-770.) However, the court has discretion to deny leave to amend where the new claim is, on its face, fatally flawed or where the amendment is a sham. (See *Edwards v. Superior Court* (2001) 93 Cal.App.4th 172, 180; *Yee v. Mobilehome Park Rental Review Board* (1998) 62 Cal.App.4th 1409, 1429; *Garcia v. Roberts* (2009) 173 Cal.App.4th 900, 912; *State ex rel Metz v. CCC Information Services, Inc.* (2007) 149 Cal.App.4th 402, 412.) In this case,

the lack of any sworn statement from counsel is sufficient to find a failure to meet the burden of proof in favor of granting leave.

Motion DENIED without prejudice.

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