

Parker Moselle v. James Sadegi, et al.

20CV44668

RULING ON FIRST AMENDED DEMURRER TO COMPLAINT

Defendant James Sadegi demurs, pursuant to Code of Civil Procedure section 430.10 (e), to plaintiff's complaint on the grounds that it does not state facts sufficient to constitute a cause of action. (See Notice at 2:7-8.) Defendant argues that the contract at the heart of the complaint was for an illegal purpose and that Plaintiff is not entitled to the relief sought based on the legal principal that the Court will not enforce such a contract. (See *id.* at 2:24-28.)

A complaint must contain "facts constituting the cause of action." (Code Civ. Proc., § 425.10, subd. (a)(1).) Where it does not, the party against whom the complaint has been filed may object by demurrer. (See *id.* At §430.10, subd. (e).) A demurrer is treated as "admitting all material facts properly pleaded, but not contentions, deductions or conclusions of fact or law." (*Blank v. Kirwan* (1985) 39 Cal.3d 311, 318.) The Court must "construe the allegations of a complaint liberally in favor of the pleader." (*Skopp v. Weaver* (1976) 16 Cal.3d 432, 438.) Because, "[a] demurrer tests only the legal sufficiency of the pleading...the question of plaintiff's ability to prove the[] allegations, or the possible difficulty in making such proof does not concern the reviewing court." (*Comm. on Children's Television, Inc. v. Gen. Foods Corp.* (1983) 35 Cal.3d 197, 213-14.) A general demurrer will also lie "where the complaint has included allegations that clearly disclose some defense or bar to recovery." (*Cryolife, Inc. v. Super. Ct.* (2003) 110 Cal.App.4th 1145, 1152.) "All that is necessary as against a general demurrer is to plead facts entitling the plaintiff to some relief." (*Tristram v. Marques* (1931) 117 Cal.App. 393, 397.)

Defendant asserts that "[a]t the time that Plaintiff alleges he entered into the partnership in 2012, cultivation of cannabis was a felony violation under California law." (Support Memo at 4:7.) This characterization is not entirely accurate. As Plaintiff notes, former Health & Safety Code section 11358 – the statute cited and relied on by Defendant – explicitly provides that such cultivation was a felony, "except as otherwise provided by law." (Stats. 2011, ch. 15, §160.) Defendant acknowledges that one such exception was provided by law for persons with valid identification cards who provided cannabis to member patients of a collective. (See Support Memo at 4:21; see also former Health & Saf. Code, §11362.775, Stats. 2003, ch 875, § 2, *People v. Jackson* (2012) 210 Cal.App.4th 525, 529-30.)

Defendant fails to direct the Court to allegations in the pleading that would clearly disclose facts from which the Court could conclude that the cultivation that formed the object of the parties' alleged agreement did not qualify for this exception. In light of the foregoing, the Court is unable to conclude that the allegations of the Complaint "clearly disclose" facts establishing that the object of the parties' agreement was illegal. (*Cryolife, Inc. v. Super. Ct.*

(2003) 110 Cal.App.4th 1145, 1152.) Moreover, allegations in the Complaint specifically undermine Defendant's arguments. "[T]he arrangement was for...Defendant Jimmy Sadegi to attend to compliance and licensing..." (Complaint at 4:1-5.) "Compliance" is fairly interpreted as working with the appropriate governmental agencies to ensure that the parties' activities comply with laws and regulations. "Licensing" is fairly interpreted as applying to those agencies for legal entitlements to engage in such activities. That the Complaint contains allegations that the agreement contemplated both "compliance and licensing" undermines Defendants' assertion that the object of that agreement was an illegal purpose. The Court is unconcerned, on demurrer, with Plaintiff's ability to prove such allegations. (*Comm. on Children's Television, Inc. v. Gen. Foods Corp.*, *supra*, 35 Cal.3d at 213-14.)

As this is the sole grounds asserted by Defendant in support of his demurrer, the demurrer is OVERRULED.¹ Defendant has 10 days to answer or otherwise respond to the Complaint. (See Rules of Court, rule 3.1320, subd. (j).)

The clerk shall provide notice of this ruling to the parties forthwith. Plaintiff to prepare a formal Order pursuant to Rules of Court, rule 3.1312, in conformity with this ruling.

¹ The Court notes that Defendant filed a "Reply to Plaintiff's Opposition to Defendant's First Amended Demurrer to Complaint" on June 22, 2021. "All papers opposing a motion...shall be filed with the court and a copy served on each party at least nine court days, and all reply papers at least five court days before the hearing." (Code Civ. Proc., §1005.) The hearing on the matter is scheduled for June 25, 2021. Therefore, Defendant's reply brief, filed three court days prior to the hearing, is untimely.