

Defendants' demurrer to the unverified Complaint is OVERRULED.

Defendants' Motion to Arbitrate and Stay the Case is CONTINUED.

Demurrer

A demurrer challenges the sufficiency of a complaint based on defects that appear on its face or from matters that are subject to judicial notice. (*Blank v. Kirwan* (1985) 39 Cal.3d 311, 318; CCP §430.10.) To survive a demurrer, a complaint must plead specific facts to establish every element of a cause of action. (*Cantu v. Resolution Trust Corp.* (1992) 4 Cal.App.4th 857, 879.) A court should treat a demurrer as admitting all material facts that are properly pled, but need not accept conclusions, contentions or deductions of law or fact. (*Blank*, 39 Cal.3d at 318.)

Plaintiff is required to plead factual allegations addressing the elements of each cause of action. Although pleadings are to be liberally construed, they must nonetheless set forth essential facts with reasonable precision. (*Semole v. Sansoucie* (1972) 28 Cal.App.3d 714.) Further, a court in examining the sufficiency of a complaint should “treat the demurrer as admitting all material facts properly pleaded, but not contentions, deductions or conclusions of law or fact.” (*Blank v. Kirwan* (1985) 39 Cal.3d 311, 318.)

Breach of Contract and Declaratory Relief:

Plaintiffs' complaint alleges a breach of contract in that the parties' Business Purchase Agreement executed January 28, 2017, provides under #12(B) “An option to extend Seller's present lease for an additional 5 year(s) on terms acceptable to Buyer and Seller's landlord”.(Compl. Exh. 3.)

The complaint alleges Defendants have breached the contract by wrongfully denying the Plaintiffs the option to extend the lease for an additional 5 years, causing damages according to proof but in no case less than \$1,500,000 or in the alternative seeks a declaration that Plaintiffs have an option to extend the Lease for five (5) additional years.

Defendants' demur to the complaint for failure to state a cause of action in that the Lease agreement did not provide for an extension. If that was a mistake, Defendants argue the parties would have corrected it in a subsequent Addendum and did not. Further, even if the Business Purchase Agreement can be interpreted as a lease extension, it is unenforceable because it lacks essential terms required for an extension, such as an agreed upon amount of rent.

21 CVC 12313 Tentative Ruling Continued:

The complaint states facts sufficient to constitute a cause of action of breach of contract and declaratory relief.

Defendants are ordered to file and serve an answer to the complaint within ten (10) court days unless the parties stipulate otherwise.

Parties are ordered to appear to determine a date to continue the Motion to Arbitrate and Stay Case and to discuss a possible date to hear the Motion to Consolidate.

Unless a hearing is requested, this ruling is effective immediately. Neither further notice of the ruling nor a formal order per CRC 3.1312 is required.