

21 CVC 12313 KARAI, SANGEETH, et al. vs. DEVLIN, ROBERT, et al.

Defendants' demurrer to the unverified Complaint is OVERRULED.

The court shall hearing from the parties regarding the Motion to Arbitrate and Stay the Case and Motion to Consolidate.

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

21 CVC 12313 Tentative Ruling Continued:

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.

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.

Motion to Arbitrate and Stay Case

Defendants' Motion to Arbitrate and to Stay Case includes claims and issues in this case, i.e. the extension of the Lease, and other claims not included in this case, including loss of rent from the loss of other tenants, and the pending issue of damages from the holdover by Plaintiffs, related to the UD case.

Plaintiffs indicate their filing of the complaint was not in conflict with the arbitration provision of either agreement in that it was made to preserve the recording of pending action and statute of limitations. Plaintiffs' argue Defendants' litigation tactics in filing the demurrer and unlawful detainer meets the test of waiving the right to arbitrate under *Hoover v. American Income Life Ins. Co.* (2012) 206 Cal.App.4th 1193, 1203, which requires that plaintiffs demonstrate that: defendants had knowledge of their right to compel arbitration; (2) that they engaged in acts inconsistent with that right; and (3) that such acts were prejudicial to plaintiffs.

Despite filing the motion to arbitrate, Defendants do not want to arbitrate the issue of the lease extension, only the other issues between the parties. Plaintiff also does not want to arbitrate, indicating that their preference is this court hearing the matter.

The Business Purchase Agreement and the Lease agreement both have arbitration clauses covering "...any dispute or claim in Law or equity arising between them out this agreement or any resulting transaction..." (Compl. Exh 3, Exh 5.) The case should be stayed and the parties ordered to arbitration.

Parties are ordered to provide legal authority as to why this case should not be ordered to arbitration, since neither appears inclined to do so.

Motion to Consolidate

Plaintiffs argue the civil case (21 CVC 12313) and the unlawful detainer case (2022 CVC 12514) should be consolidated because the two actions involve a common question of fact and law (CCP § 1048.) Further, that it would be an abuse of discretion not to grant the motion to consolidate where a litigant may be unfairly prejudiced by the summary nature of an unlawful detainer action. (*Martin-Bragg v. Moore* (2013) 219 Cal.App.4th 367, 388-389.)

21 CVC 12313 Tentative Ruling Continued:

In opposition, Defendants argue consolidation of the two cases is not appropriate in this case as it would cause delay. CCP § 1048 provides "...it may order all the actions consolidated and it may make such orders concerning proceedings therein as may tend to avoid unnecessary costs or delay."

Parties are ordered to appear for oral argument. The court is inclined to consolidate the two cases.

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.