

AMADOR SUPERIOR COURT LAW AND MOTION TENTATIVE RULINGS

Monday, April 12, 2021

TO REQUEST A HEARING ON ANY MATTER ON THIS CALENDAR, YOU MUST CALL THE COURT AT (209) 257-2692 BY 4:00 P.M. ON THE DAY PRECEDING THE HEARING. NOTICE OF THE INTENTION TO APPEAR MUST ALSO BE GIVEN TO ALL OTHER PARTIES.

IF THE CLERK IS NOT NOTIFIED OF A PARTY'S INTENTION TO APPEAR, THERE WILL BE NO HEARING AND THE TENTATIVE RULING WILL BECOME THE ORDER OF THE COURT. NO FURTHER NOTICE OF THE COURT'S RULING WILL BE PROVIDED.

18-CVC-10654

BLAKE, MICHAEL

VS.

YARBOROUGH, JUSTIN

CIVIL MISCELLANEOUS MOTION

TENTATIVE RULING:

Defendant Crocker's Amended Motion Objecting to the Application of Good Faith Settlements by Co-Defendants Justin Yarborough and Victoria King pursuant to CCP §877.6 is DENIED.

Plaintiff's Motion for Sanctions pursuant to CCP § 128.7 is DENIED.

Defendant's Objection/Motion:

CCP §877.6 provides, in pertinent part:

(a)(2) ...a settling party may give notice of settlement to all parties and to the court, together with an application for determination of good faith settlement and a proposed order. The application shall indicate the settling parties, and the basis, terms, and amount of settlement. The notice, application, and proposed order shall be given by certified mail, return receipt requested. Proof of service shall be filed with the court. Within 25 days of mailing the notice, application, and proposed order, or within 20 days of personal service, a nonsettling party may file a notice of motion to contest the good faith of the settlement. If none of the nonsettling parties files a motion within 25 days of mailing of the notice, application, and proposed order, or within 20 days of personal service, the court may approve the settlement. The notice by a nonsettling party shall be given in the manner provided in subdivision (b) of Section 1005. (Emphasis added.)

CRC 3.1112 (a) sets forth the requirements for a motion: "Unless otherwise provided by the rules in this division, the papers filed in support of a motion must consist of at least the following: (1) A notice of hearing on the motion, (2) The motion itself, and (3) A memorandum in support of the motion or demurrer".

A motion is deemed to have been made on the service and filing of notice of motion. (CCP §1005.5; Gardner v. Trevaskis (1958) 158 Cal.App.2d 410.)

Defendant Crocker's Notice of Objection filed November 17, 2020 failed to include a notice of hearing as required under CCP § 877.6, and also under CRC 3.1112(a). Even if the November 17, 2021 filing was treated as a noticed motion, the memorandum contained within it was devoid of any meaningful legal argument regarding the factors relevant to a good-faith settlement determination and lacked admissible evidence in support.

Crocker's amended notice of motion filed January 12, 2021, along with a supplemental brief with legal argument and supporting evidence, and request for judicial notice filed January 11, 2021, fulfilled the requirements under CRC 3.1112(a), but not CCP § 877.6, as the deadline had passed.

The court declines to rule on Defendant's requests for judicial notice as the underlying motion is denied on procedural grounds.

Plaintiff's Request for Sanctions:

CCP § 128.7(b), which provides:

By presenting to the court, whether by signing, filing, submitting, or later advocating, a pleading, petition, written notice of motion, or other similar paper, an attorney or unrepresented party is certifying that to the best of the person's knowledge, information, and belief, formed after an inquiry reasonable under the circumstances, all of the following conditions are met:

(1) It is not being presented primarily for an improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation.

(2) The claims, defenses, and other legal contentions therein are warranted by existing law or by a nonfrivolous argument for the extension, modification, or reversal of existing law or the establishment of new law.

(3) The allegations and other factual contentions have evidentiary support or, if specifically so identified, are likely to have evidentiary support after a reasonable opportunity for further investigation or discovery.

(4) The denials of factual contentions are warranted on the evidence or, if specifically so identified, are reasonably based on a lack of information or belief.

(c) If, after notice and a reasonable opportunity to respond, the court determines that subdivision (b) has been violated, the court may, subject to the conditions stated below, impose an appropriate sanction upon the attorneys, law firms, or parties that have violated subdivision (b) or are responsible for the violation. In determining what sanctions, if any, should be ordered, the court shall consider whether a party seeking sanctions has exercised due diligence.

The trial court has broad discretion to impose sanctions for the assertion of claims that are interposed "for an improper purpose," or that are "indisputably without merit, either legally or factually." (CCP § 128.7; McCluskey v. Henry (2020) 56 Cal.App. 5th 1197.)

While the initial notice of objection was deficient procedurally, and the amended notice of motion and supplemental brief was untimely, the court does not find that there was an improper purpose on the part of Defendant Crocker, or that the objection was "indisputably without merit, either legally or factually" under CCP § 128.7.

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.

18-CVC-10777 TOMA, CIRO

VS.

PETERSON, FREDERICK

MOTION FOR SUMMARY JUDGMENT

TENTATIVE RULING:

THE FOLLOWING TENTATIVE RULING IS ISSUED BY JUDGE JUDITH S. CRADDICK, ASSIGNED.

Before the Court for decision are:

(1) Plaintiffs' Motion for Summary Adjudication (filed July 2, 2020) as to Defendant's affirmative defenses in his Answer based on which Statute of Limitations applies (UCC 3-118(a) or CCP 337(a)) and Offset, and

(2) Defendant's Motion for Summary Judgment and/or Alternative Summary Adjudication (filed September 2, 2020) as to Plaintiffs' First Amended Complaint (based primarily on which Statute of Limitations applies -- UCC 3-118(a) or CCP 337(a))

Determining whether a Statute of Limitations has run or not is ordinarily a question of fact; however, determining which Statute of Limitations applies is a question of law. It is the duty of the trial court to make that determination. (Marron v. Superior Court (2003) 108 Cal.App.4th 1049.)

For the reasons hereinafter set forth, the Court determines, finds and rules that the 6-year Statute of Limitations contained in UCC 3-118(a), et seq. is the correct Statute of Limitations to be applied in this case. That section states:

“Except as provided in subsection (e), an action to enforce the obligation of a party to pay a note payable at a definite time shall be commenced within six years after the due date or dates stated in the note or, if a due date is accelerated, within six years after the accelerated due date.”

[Subsection (e) states: “An instrument is a ‘note’ if it is a promise and is a ‘draft’ if it is an order. If an instrument falls within the definition of both ‘note’ and ‘draft’, a person entitled to enforce the instrument may treat it as either.”]

The original complaint was filed on September 19, 2018. The operative First Amended Complaint filed on January 31, 2020 contains 2 Causes of Action – (1) Breach of Contract for Failure to pay money owed on 4 promissory notes and (2) Reformation. The 4 promissory notes (which are attached to the FAC) signed by Defendant were dated: June 4, 2009 in the amount of \$11,685.00, July 2, 2009 in the amount of \$6,896.00, August 20, 2009 in the amount of \$11,685.00 and July 1, 2011 in the amount of \$7,895.00. The notes were otherwise identical and contained provision for payment of interest at 7% on the unpaid balance. (The 4 notes originally were in favor of Argonaut Development Co., Inc. and subsequently on November 11, 2010, were assigned to Plaintiffs herein.)

The Pleadings, Contentions and Discussion of Issues

The gravamen of Plaintiffs’ Complaint and First Amended Complaint is that Defendant borrowed money from their assignor (Argonaut Development Co., Inc.) on 4 occasions, executed 4 separate promissory notes and failed to pay the principal, plus accrued interest. Plaintiffs allege that Defendant made some interest payments, but failed to pay the principal and any interest on any note after October 2, 2013. They claim that the amount due and owing is \$54,188.20, plus interest at the rate of 7% per annum. These allegations are essentially not disputed by Defendant.

Defendant’s Answer to the First Amended Complaint filed February 21, 2020 is a general denial with 15 affirmative defenses. Defendant concedes in both his and Plaintiffs’ Statement of Undisputed Facts that his viable affirmative defenses are: 3rd – Statute of Limitations CCP 437(a) and 14th – Offset, and he does not dispute Plaintiffs’ MSA as to those other 13 affirmative defenses.

Defendant acknowledges that he signed the 4 notes, that Plaintiffs performed their obligations under the notes by loaning the money stated in each of them to him, that he breached his agreement to repay both principal and interest due to Plaintiffs and tacitly agrees that the documents are “promissory notes.” The dispute revolves around which Statute of Limitations applies, Plaintiffs arguing that the 6-year Statute of Limitations contained in UCC 3-118(a), et seq. applies with Defendant contending that the 4-year Statute of Limitations contained in CCP 337(a) applies and bars Plaintiffs’ claim, since it is also undisputed that the last interest payment made by Defendant was on October 2, 2013 more than 4 years before the original complaint was filed on September 19, 2018.

Defendant contends that the “promissory notes” in this case are barred by the 4 year Statute of limitations which applies to all written contracts – CCP 337(a), -- not the 6 year Statute of Limitations which applies to promissory notes -- UCC 3-118(a) – as they are not “negotiable instruments” as required for the UCC to apply. A promissory note by definition is “one species of negotiable instrument” which contains an unconditional promise in writing made by one person to another, signed by the maker, engaging to pay on demand or at a fixed or determinable future time, a sum certain in money to or to the order of a specified person or to a bearer. (See UCC 3-102, 3-104, Saks v. Charity Mission Baptist Church (2001) 90 Cal.App.4th 1116.) Importantly, the Commercial Code requires that for a promissory note to be non-negotiable, the parties must include a conspicuous statement to that effect in the note (UCC 3-104(d)).

The notes in this case refer to themselves as “note.” Each is an unconditional promise to pay money, given in writing and signed by Defendant. At the top of each note is a prominent statement to the holder to preserve the original note so that it may be surrendered for cancellation upon full performance (applicable only to negotiable instruments and required by UCC 3-501(b)(2)). There is no condition precedent or advanced performance due from the payor that must occur. They all are payable at a fixed date, they call for payment in lawful of the United States and they are payable to an identified name. They include an address specifying the place of payment. Importantly, Defendant does not raise a dispute of fact, but simply argues that the documents are not “negotiable instruments.”

The Court determines as a matter of law that the 4 promissory notes at issue in this case meet the case and statutory criteria of negotiable instruments on their face. California decisional law has made clear that a promissory note is a negotiable instrument. The UCC defines a negotiable instrument as an unconditional promise to pay a fixed amount of money, with or without interest. Further, to be unconditional the promise cannot require that the payor be obligated to do any act in addition to the payment of money, which should be due at a definite time and the note should be payable to an identified person or entity, and finally defines it as a “note.” (See UCC 3-104(a)-(e), (Yanova v. New Century Mortgage (2016) 62 Cal.4th 919.)

RULING: The Court has determined as a matter of law that the statute of limitations applicable to this case is UCC 3-118(a) Statute of Limitations of 6 years. Since less than 6 years had passed between Defendant’s last payment on the note and the date the complaint was filed, the statute of limitations had not run. Therefore, Defendant’s MSJ/MSA are denied. Plaintiff’s Motion for Summary Adjudication is granted as to the Statute of Limitations Affirmative Defenses contained in Defendant’s Answer for the same reasons. Plaintiffs’ MSA as to the other 13 Affirmative Defenses was not contested by Defendant.

