



TENTATIVE RULING:

Defendant RICK FINCH and FINCH BODY SHOP, Inc.'s demurrer to the Second Amended Complaint (Plaintiff's Addendum to First Amended Complaint, Plaintiff's Judicial Notice in Support of Complaint, and First Amend to Plaintiff's Judicial Notice in Support of Complaint, collectively) is SUSTAINED without leave to amend.

The function of a demurrer is to test the legal sufficiency of a pleading. (Rakestraw v. Cal. Physicians' Service (2000) 81 Cal.App.4th 39, 42) In reviewing the sufficiency of a complaint against a general demurrer, the court treats the demurrer as admitting all material facts properly pleaded, as well as matters which may be judicially noticed. (Blank v. Kirwan (1985) 39 Cal.3d 311, 318.) However, contentions, deductions or conclusions of fact or law are insufficient to constitute a cause of action. (Id.)

Fails to State Facts Sufficient to Constitute a Cause of Action

A party may demur generally if the pleading fails to state facts sufficient to constitute a cause of action. (CCP §430.10(e).) Despite the fact that no causes of action are identified, the substance of the "Estoppel, Abatement, and Complaint First Amended" alleges that FINCH was in possession of stolen property, i.e., GIGENA's vehicle, having received the vehicle from the CHP officer.

To establish a cause of action for the offense of receiving stolen property, Plaintiff must show 1) the property has been stolen, 2) the Defendant received it in his possession, and 3) Defendant had knowledge it was stolen. (People v. Osborne (1978) 77 Cal.App.3d 472; People v. Tessman (2014) 223 Cal. App. 4th 1293.)

To the extent a cause of action is discernible; Plaintiff First Amended Cause of Action fails to state facts sufficient to constitute a cause of action of receiving stolen property.

Plaintiff's subsequent filings, 1) Plaintiff's Addendum to First Amended Complaint filed June 15, 2020, 2) Plaintiff's Judicial Notice in Support of Complaint filed July 22, 2020, and 3) First Amend to Plaintiff's Judicial Notice in Support of Complaint filed July 28, 2020, if treated collectively as a Second Amended Complaint, fail to establish a cause of action for receiving stolen property, and any other cause of action is indiscernible.

Leave to Amend

A demurrer should be sustained without leave to amend absent a showing by plaintiff that a reasonable possibility exists the defect can be cured by amendment. (Blank v. Kirwan (1985) 39 Cal.3d 311, 318; Lacher v. Superior Court (1991) 230 Cal.App.3d 1038, 1043.)

Plaintiff has not discharged their burden to show how the complaint can be amended to state a cause of action. (Goodman v. Kennedy (1976) 18 Cal.3d 335, 349.) Plaintiff must show in what manner he can amend his complaint and how that amendment will change the legal effect of his pleading. Id.

Plaintiff was granted leave to amend his First Amended Complaint. However, Plaintiff's Opposition to Defendant's Second Demurrer, indicates "Plaintiff may only be persuaded to amend the complaint" and "Plaintiff was persuaded and elected addendum to clarify the complaint". "The complaint was not amended". (Opp. ¶ 4, subsection (c))

Where there is any reasonable probability the complaint can be amended, failure to grant leave is an abuse of discretion. (Goodman v. Kennedy (1976) 18 Cal.3d 335.) Plaintiff fails to show that a reasonable possibility exists that a defect can be cured by amendment and, in fact, indicates that the complaint was not amended, despite the court sustaining the first demurrer, and granting leave to amend. Granting Plaintiff leave to amend a second time would be futile in this case, as Plaintiff indicates he is not "persuaded to do so".

Judgment of dismissal shall enter forthwith.

Defendant is directed to prepare an order that complies with the court's ruling.

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.