

AMADOR SUPERIOR COURT LAW AND MOTION TENTATIVE RULINGS

Thursday, November 18, 2021

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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.

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21-CVC-12101

DOYLE, AARON

VS.

IHEART HOMES CORPORATION

DEMURRER - DEFENDANT'S

TENTATIVE RULING:

Defendant's demurrer to the verified First Amended Complaint is OVERRULED.  
Defendant's Motion to Strike the verified First Amended Complaint is DENIED.

Request(s) for Judicial Notice:

Defendants request the court take judicial notice of a building permit recorded at City of Sutter Creek pursuant to Ev. Code § 452. (RJR Exh. A.)

Defendants request the court take judicial notice of Dave Evans' Contractor's License pursuant to Ev. Code § 452. (Defendant's P&A's, pg. 7, lines 7-25.)

Plaintiff objects on the grounds that the document (building permit) has not been authenticated and the request does not include the declaration of any witness with personal knowledge of Exhibit A. Further, Defendant offers no authenticated copy of Dave Evans' license. The listing of a name and number on an application for a building permit is not sufficient to support the finding. Objection sustained. The court shall take judicial notice of the existence of the building permit, but not the contents of the writing for the truth of the matters asserted therein.

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.)

First Cause of Action for Violation of Contractor License Law:

Business and Professions Code § 7031(b) provides, in relevant part: [A] person who utilizes the services of an unlicensed contractor may bring an action in any court of competent jurisdiction in this state to recover all compensation paid to the unlicensed contractor for performance of any act or contract. The FAC disgorgement claim is based on Defendants acting as "contractors" of the Property who are therefore required to have a contractor's license. (FAC ¶ 47.)

An unlicensed contractor cannot recover for work performed. (Bus. & Prof. Code § 7031.) Courts broadly construe this prohibition to cover payments of any type to unlicensed contractors. (Ahdout v. Hekmatjah (2013) 213 Cal.App.4th 21, 32.) The term "contractor" is defined to include "any person who undertakes to or offers to undertake to, or purports to have the capacity to undertake to, or submits a bid to, or does himself or herself or by or through others, construct ... any building ..., project, development or improvement, or to do any part thereof." (Ahdout, supra, 213 Cal.App.4th at p. 31; Bus. & Prof. Code § 7026.) "Both the person who provides construction services himself and one who does so 'through others' qualifies as a 'contractor.'" (Id.)

The court is required to accept the factual allegations of the FAC as true and the allegations in the first cause of action are sufficient to allege a disgorgement cause of action under Business & Professions Code § 7031.

Second Cause of Action for Breach of Contract:

Plaintiff's FAC alleges a breach of contract under the theory of implied warranty of construction. Defendants acted as "builders" and were required to be licensed in order to perform the remodel of the Property and are therefore responsible for the resulting defects in workmanship that occurred, breaching the implied warranty of construction.

Plaintiff's verified First Amended Complaint states facts sufficient to constitute a cause of action of breach of contract.

Third Cause of Action for Negligence:

Plaintiff's FAC alleges Defendants, as a contractor and developer, owed Plaintiff a duty to be properly licensed, engage in construction in a workman-like manner, disclose defective construction and damage to the Property and to disclose the full nature of their relationships to other parties in the transaction and to disclose the lack of proper licensure. (FAC ¶¶ 47-52) Defendant's breached their duty by the defective nature of the property and Plaintiff has been harmed as such.

Plaintiff's verified First Amended Complaint states facts sufficient to constitute a cause of action of negligence.

Alter Ego:

In order to make a prima facie showing that Defendant iHeart Homes is the alter ego of Ken Van Der Veen and Michele Van Der Veen, plaintiff must show 1) That there be such a unity of interest and ownership that the separate personalities of the corporation and the individual no longer exists and 1) that the acts are treated as those of the corporation along, and inequitable result will follow.

In Rutherford Holdings, LLC v. Plaza Del Ray (2014) 223 Cal.App.4th 221, defendants argued that plaintiff failed to allege specific facts to support an alter ego theory, but plaintiff was required to allege only "ultimate rather than evidentiary facts." (Doe v. City of Los Angeles (2007) 42 Cal.4th 531, 550.) Moreover, the "less particularity [of pleading] is required where the defendant may be assumed to possess knowledge of the facts at least equal, if not superior, to that possessed by the plaintiff," which certainly is the case here. (Burks v. Poppy Construction Co. (1962) 57 Cal.2d 463, 474.)

The allegations invoking the alter ego doctrine in Paragraph 9 of Plaintiff's FAC are sufficient at the demurrer stage.

Motion to Strike

A motion to strike may be used to “strike out all or any part of any pleading not drawn or filed in conformity with the laws of this state.” (CCP §436(a).) Where there is a substantive defect affecting only a portion of a claim , the proper challenge is a motion to strike. (PH II, Inc. v. Superior Court (1995) 33 Cal.App.4th 1680, 1682-1683.)

Defendant’s Notice of Motion to Strike moves to strike the entire FAC pursuant to CCP §§ 435, 436 and 437 as an “irrelevant, false, or improper matter” inserted in the pleading, specifically as it pertains to the FAC naming Ken Van Der Veen and Michele Van Der Veen, individually as defendants (“alter egos”) when the contract was entered into with iHeart, the corporation, and that Business and Professions Code § 7031(b) does not apply to a residential purchase agreement. Both the alter ego and Business and Professions Code § 7031(b) issues are also included in the demurrer, with the same points and authorities.

Plaintiff asserts the application of Business and Professions Code § 7031(b) to a residential purchase agreement is a matter of first impression, in that Section 7031 is a remedial, consumer-protection statutes that is to be liberally construed in favor of the consumer and Section 7044(b) expressly contemplates the right to file a lawsuit under its provisions.

The Motion to Strike is denied. The allegations in the verified First Amended Complaint have been properly pled .

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.