

Calaveras Superior Court
Civil Law & Motion Calendar
Friday, January 17, 2020
Hon. David M. Sanders, Courtroom #2

9:00 AM	19CV44041	Demurrer Hearing	04/30/2019
Ptff/Pet:	Hardisty, Kathy; Kelley, Kenneth; Valley Sober Living Inc		Atty: Russell & Associates
Def/Res:	Laguna Gold Mortgage Inc; Regan, Ronald		Atty: Keene, Patrick M

Tentative Ruling: On April 30, 2019, plaintiffs filed the complaint. On September 3, 2019, defendants demurred. The demurrer was sustained on its face in toto with ten (10) days leave to amend. The First Amended Complaint was filed on October 29, 2019, and defendants timely demurred.

Defendants' request for judicial notice of the Notice of Rescission of Notice of Default and Election to Sell Under Deed of Trust dated June 7, 2019 and recorded July 11, 2019, is denied as inappropriate in the context of the demurrer, without prejudice to be renewed in a different procedural context.

As to defendants' special demurrer:

Defendants' demurrer to the first cause of action is SUSTAINED without leave to amend. Plaintiffs admit an "enforceable sales or purchase contract between the parties" does not exist.

Defendants' demurrer to the second cause of action is SUSTAINED without leave to amend. The Court finds plaintiffs' amended pleading is overly conclusory even under California's liberal pleading laws. Plaintiffs have not alleged sufficient facts to support the necessary elements for this cause of action.

Defendants' demurrer to the third cause of action is OVERRULED. When the complaint sets forth facts showing the existence of an actual controversy between the parties relating to their respective legal rights and duties, and requests that these rights and duties be adjudged, plaintiffs have stated a legally sufficient claim for declaratory relief. (*Alborzian v JPMorgan Chase Bank, N.A.* (2015) 235 CA4th 29, 40.)

Defendants' demurrer to the fourth cause of action is SUSTAINED without leave to amend as the arbitration clause only applies to the first note that is not at issue in this matter. (See this Court's prior ruling dated September 13, 2019).

Defendants' demurrer to the fifth cause of action is OVERRULED. Plaintiffs have pled an actionable claim for attorney's fees based on the provisions of the note.

Defendants' demurrer to the sixth cause of action is SUSTAINED without leave as the Court previously denied plaintiffs' request for a preliminary injunction. (See Court's ruling dated June 3, 2019; the Court notes plaintiffs have misconstrued the Court's rulings as a temporary restraining order was issued but the request for a preliminary injunction was denied.)

Defendants did not demurrer to the seventh cause of action.

As to defendant Ronald Regan's general demurrer:

The amended complaint asserts no facts upon which personal liability may be assessed against a corporate officer. The unambiguous terms of an exhibit will control over conflicting allegations in the body of the complaint. *Burnett v Chimney Sweep LLC* (2004) 123 Cal.App.4th 1057, 1064. Therefore, the general demurrer is SUSTAINED without leave to amend.

The clerk shall provide notice of this ruling to the parties forthwith. Defendants to prepare a formal Order pursuant to Rule of Court 3.1312 in conformity with this ruling.