GOLD CREEK ESTATES v. VALLEY SPRINGS GOLD CREEK, et al

17CV42103

MOTION TO DEEM SETTLEMENT MADE IN GOOD FAITH

This is a construction defect action involving allegations of negligent design and implementation of common areas within a condominium complex.

On 05/06/22, this Court found that plaintiff's settlement with Reynen & Bardis Communities, Inc. was made in good faith.

On 05/16/22, this Court found that plaintiff's settlement with Moreno Trenching LTD was made in good faith.

Before the Court is another motion to deem a settlement to have been made in good faith, this time by Mozingo Construction. Mozingo would not be dismissed from the action whichever way the Court decides (given Reed's express indemnity cause of action). Unlike the earlier motions and applications, this pending motion is opposed.

This state has a strong public policy promoting civil settlements. To this end, parties who settle disputes in good faith are immunized from claims for equitable indemnity or contribution. (CCP §877.6(c).) There is no precise yardstick for measuring "good faith," but it must harmonize the public policy favoring settlements with the competing public policy favoring equitable sharing of costs among co-obligors. At a minimum, the settlement must be within the reasonable range (aka "ballpark") of the settling party's share of liability. Whether a settlement is within the "ballpark" is to be evaluated on the basis of information available at the time of settlement, including (1) a rough approximation of plaintiff's recovery and the settlor's proportionate liability; (2) the amount paid in settlement; (3) a recognition that a settlor should pay less in settlement than if found liable after a trial; (4) the settlor's financial condition and insurance policy limits, if any; (5) evidence of any collusion between the settlor and the plaintiff aimed at making the nonsettling parties pay more than their fair share; and (6) the settlor's potential liability to others. The initial burden of proof rests with the settlor to demonstrate the value of the consideration paid in settlement (ordinarily a sum certain, but can be settlements in kind). Thereafter, the burden shifts to any party opposing the motion to show that the consideration paid in settlement was grossly disproportionate to what a reasonable person at the time of settlement would estimate settlor's liability to be. (CCP §877.6(d); *Tech-Bilt, Inc. v. Woodward–Clyde & Associates* (1985) 38 Cal.3d 488, 499; *Long Beach Mem. Med. Ctr. v. Superior Court* (2009) 172 Cal.App.4th 869, 873-876; *TSI Seismic Tenant Space, Inc. v. Superior Court* (2007) 149 Cal.App.4th 159, 166.)

As described by Mozingo, the settlement here was a walk-away for a waiver of costs. In the absence of any prevailing party attorney fee clause, the value of a walk-away is generally the amount of litigation costs incurred to date. The value of this settlement with plaintiff is $3,736.00 – which Mozingo contends is the amount of litigation costs already incurred and waived in the face of its pending MSJ (even though that MSJ was based solely on repose and not the merits). (See Stipulation re Dismissal Paragraph 4 and Schneider Declaration Paragraph 10.) Although there is no "proof" of those costs, given the de minimus nature, no additional proof is required. On its face, and without regard to liability, in a case seeking $4M in damages, any settlement for a walk-away with litigation costs this low does not immediately resonate as good faith. Moreover, since Mozingo's pending MJS was based solely on the passage of time, and not the merits, the dismissal of the MSJ left the merits entirely untouched.

Nevertheless, Mozingo's potential involvement in the alleged harm would have to be reviewed either way, and as Mozingo itself admits (Opening Brief at 5:26-6:2), nobody has done the work to actually determine whether Mozingo's work on Unit 2 was part of the problem. Mozingo admits that it performed work relating to the water distribution system, sanitary sewer system, and the dry utilities (digging trenches and laying conduit) around Unit 2 for almost a full year. Although Mozingo did not install the storm drainage system, its work was in close proximity to that system, and water is a transient medium prone to migrate wherever a path might lead. Containing water ranks up there with herding cats and chickens, and as Gold Creek notes, much of Mozingo's work actually touched parts of the existing storm drainage system. Gold Creek notes that Mozingo's daily journal describes one incident in which the storm drainpipe was actually nicked by Mozingo. Mozingo does not dispute this, but assumes it would have prompted some contemporaneous reaction (see Mozingo Declaration Paragraph 11).

The evidence provided in opposition to the motion raises a reasonable inference that work performed by Mozingo could have been a factor in the ongoing drainage issues involving the subject property. Mozingo's work would be considered a *substantial factor* if it was not a non-remote, non-trivial, and non-theoretical factor which a reasonable person would consider to have contributed to the accident, and which is based on evidence that is credible and of solid value. However, when the matter remains one of conjecture, when the probabilities are at best evenly balanced, no basis for liability is shown. (See *State Dept. of State Hospitals v. Superior Court* (2015) 61 Cal.4th 339, 354; *Frausto v. Department of California Highway Patrol* (2020) 53 Cal.App.5th 973, 996; *Modisette v. Apple Inc.* (2018) 30 Cal.App.5th 136, 152; *Toste v. CalPortland Construction* (2016) 245 Cal.App.4th 362, 370.) Even at 1% fault for the $4M damages, the settlement is well outside the ballpark – particularly when one further considers Mozingo's $1M insurance policy.

The motion to deem the settlement made in good faith is DENIED without prejudice.

The Clerk shall provide notice of this Ruling to the parties forthwith. Cross-complainant Gold Creek to prepare a formal Order pursuant to CRC 3.1312 in conformity with this ruling.

JP MORGAN CHASE BANK v. MACLEAN

21CF13548

PLAINTIFF'S (THIRD) MOTION TO VACATE JUDGMENT

This is a limited jurisdiction collections case. Before the Court is a motion by plaintiff to vacate the clerk's entry of a default judgment herein. This is plaintiff's third attempt to secure the requested relief.

This action was commenced by way of complaint filed on 07/06/21. According to plaintiff, after several unsuccessful attempts at personal service, defendant was sub-served at home with the summons and complaint on 08/03/21.

On 09/20/21, plaintiff requested entry of default and a clerk's judgment based upon the amount in controversy, with no request for prejudgment interest or legal fees. That same day, the clerk entered default and a judgment thereon.

Nine months later, on 06/07/22, plaintiff filed its first motion to have that default judgment set aside. The first motion was denied on procedural grounds. The second motion was denied on the merits, without prejudice. Plaintiff was provided a roadmap of how to properly present this motion.

Now that plaintiff has provided this Court with a memorandum of points and authorities (CRC 3.1113), and the missing Exhibit A, this Court still does not understand plaintiff's desire to have the default judgment set aside so that a dismissal "without" prejudice can be entered. Plaintiff filed this lawsuit on 07/06/21 to recover an unpaid debt occurring within the preceding four years. At the time the lawsuit was filed, there was no bankruptcy petition. Although the filing of the petition three days *before* the clerk's judgment was entered might arguably have violated the automatic stay, it is of no consequence here. Despite counsel's apparent attempt to mislead this Court, this Court has its own PACER access and can see that (1) the debt lying at the heart of this pending lawsuit was scheduled by defendant (see ¶ 4.4-4.5) and subsequently discharged (see Order entered 12/20/21).

The motion to vacate the judgment entered 09/20/21 is GRANTED. The case is dismissed *with* prejudice.

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

WELLS FARGO BANK v. SCHULTZ

21CF13622

PLAINTIFF'S MOTION FOR JUDGMENT ON THE PLEADINGS

This is a limited jurisdiction collections case. Before the Court is plaintiff's statutory motion for judgment on the pleadings directed at *both* the Complaint filed 09/28/21 and the Answer filed 01/18/22. The motion includes a reasonable attempt – under the circumstances – to satisfy the meet and confer requirement set forth in CCP §439.

A plaintiff moving for judgment on the pleadings must demonstrate that (1) the complaint states facts sufficient to constitute a viable cause of action against the defendant and (2) the answer does ***not*** state facts sufficient to constitute a defense to that cause of action. (CCP §438(c); see *Templo v. State of California* (2018) 24 Cal.App.5th 730, 735; *Bezirdjian v. O'Reilly* (2010) 183 Cal.App.4th 316, 321.) The grounds for the motion must appear on face of pleadings (the complaint and the answer), or from facts judicially noticeable. (CCP §438(d); *Tung v. Chicago Title Co.* (2021) 63 Cal.App.5th 734, 758-759; *Bucur v. Ahmad* (2016) 244 Cal.App.4th 175, 186-187.) A court passing on the legal sufficiency of a pleading may also go outside the pleadings for the limited purpose of considering a party's indisputable sworn discovery responses so long as the hearing does not cross the line into an incomplete evidentiary hearing. (*New Livable California v. Association of Bay Area Governments* (2020) 59 Cal.App.5th 709, 716; *Del E. Webb Corp. v. Structural Materials Co.* (1981) 123 Cal.App.3d 593, 604.)

Reference is first made to the operative complaint. Plaintiff alleges two causes of action: breach of written contract; and common counts. Plaintiff attached a copy of the written contract to the complaint. Within the second cause of action for common counts, there are three separate counts: open book, account stated and money had. The complaint does not attach or incorporate any papers demonstrating acceptance of the card, use of the card, billing statements, or notices of default. Although the complaint shows an indebtedness, it does not include *facts* connecting that debt specifically to plaintiff. (See *Farmers Ins. Exchange v. Zerin* (1997) 53 Cal.App.4th 445, 460; *Kawasho Internat., U.S.A. Inc. v. Lakewood Pipe Service, Inc.* (1983) 152 Cal.App.3d 785, 793; *Gleason v. Klamer* (1980) 103 Cal.App.3d 782, 786; *H. Russell Taylor's Fire Prevention Service, Inc. v. Coca Cola Bottling Corp.* (1979) 99 Cal.App.3d 711, 726.) Moreover, where the party seeking money has a contractual obligation that is still executory, he cannot plead a cause of action for money had (*Ferrero v. Citizens of National Trust and Savings Bank of Los Angeles* (1955) 44 Cal.2d 401, 409), and there is no averment that the agreement was rescinded or otherwise no longer executory.

On to defendant's answer, filed 01/18/22, which is on an old Judicial Council form. It automatically includes a general denial of the allegations. There is a single "affirmative defense" listed in the answer, and that is for "fraud." There are no facts alleged to support that "defense" or how defendant was allegedly defrauded by plaintiff.

Based solely on the pleadings, plaintiff is not entitled to judgment. However, plaintiff further asks this Court to consider the recently-admitted RFAs. On 07/22/22, this court granted a motion by plaintiff to have deemed admitted the following matters: (1) defendant had an account with plaintiff pursuant to the written contract attached to the complaint, (2) defendant received account statements, (3) defendant had a balance owing on the account, and (4) defendant did not pay the balance. Although matter admitted in response to an RFA is preclusively established against the party making the admission (and therefore something a court can consider on a pleading motion), an RFA response is preclusive only to the extent required by a literal reading of the request. (*Murillo v. Superior Court* (2006) 143 Cal.App.4th 730, 736; *Burch v. Gombos* (2000) 82 Cal.App.4th 352, 359.) There is no admission by plaintiff that he used the card to make purchases reflected in the balance due, nor are there any admissions relating the defendant's "defense" of "fraud." Nevertheless, in light of defendant's complete silence since filing the answer, including a failure to oppose the motion to deem admitted or the current MJOP, this Court concludes that the pleadings sufficiently demonstrate a meritorious claim for relief and a substantively unmeritorious defense thereto.

Motion for judgment on the pleadings is GRANTED, WITH twenty days leave to amend *the answer* to properly state an affirmative defense, if any. (See CCP §438(h)(1).) Leave to amend is routinely granted when the original pleading is found wanting, even if the proponent of the pleading has not demonstrated an ability to cure. If no first amended answer is filed within the time allowed, plaintiff may appear by ex parte application to have judgment entered.

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