

DAY v. GIFFIN, JR.

19CV43812

DEFENDANT'S MOTION FOR SUMMARY JUDGMENT OR ALTERNATIVELY SUMMARY ADJUDICATION

Plaintiff alleges that she was paid a monthly food stipend of \$1,000 during "grows," and was to be paid 10% of the gross proceeds of the cultivated cannabis, living at the property during the two "grows" and provided some housekeeping assistance to defendant's father.

Defendant brought a Motion for Summary Judgment or in the Alternative Summary Adjudication on Dec. 11, 2023. The primary grounds for the motions are the unenforceability of an illegal contract, i.e., unpermitted cannabis cultivation.

Defendant contends that he is entitled to summary judgment/adjudication because plaintiff cannot recover on any of the causes of action stated in the Complaint (Breach Of Oral Contract, Breach Of Written Contract, Common Count: Goods and Services Rendered, Intentional Misrepresentation, Negligent Misrepresentation, and False Promise), as a matter of law, because of the claimed illegality of the agreements.

Evidentiary Objections

On a motion for summary judgment, the trial court must consider all of the evidence submitted by the parties except that to which objections have been made and sustained. (*Hernandez v. Hillsides, Inc.* (2009) 47 Cal.4th 272, 281.) A party who wishes to exclude evidence from consideration must "quote or set forth the objectionable statement or material [and] state the grounds for each objection to that statement." (California Rules of Court ("CRC"), rule 3.1354(b).) Assuming objections are made in the proper format, the trial court need only rule on those evidentiary objections that it deems material to the disposition of the motion. (California Code of Civil Procedure ("CCP") §437c(q).) Plaintiff asserted no evidentiary objections to the motion pleadings.

Defendant's Separate Statement

The purpose behind the separate statement requirement for summary judgment/adjudication motions is to inform the court and the parties of what issues and facts truly must be addressed on the motion. (*Nazir v. United Airlines, Inc.* (2009) 178 Cal.App.4th 243, 252; *Eicome v. Chin* (2003) 110 Cal.App.4th 310, 322.) To this end, separate statements must follow the format-set forth in CRC 3.1350: they must separately identify each supporting material fact, and do so "plainly and concisely." (CCP §437c(b); CRC 3.1350(d); *Consumer Cause, Inc. v. SmileCare* (2001) 91 Cal.App.4th 454, 472.)

In support of the pending motion for summary judgment or adjudication, defendant offers 150 undisputed material facts and supporting evidence. Plaintiff unconditionally admits to 32 of defendant's undisputed material facts, and either denies or admits with a distinction as to the remainder. Plaintiff raises the issue of her belief in the legality of the "two cannabis grows," i.e., whether proper licenses had been obtained by defendant, whether some or all of the cannabis was medicinal, whether defendant had proper approvals, and representations and promises made by defendant as to the legality of the grows.

CRC 3.1350(f)(3) allows the opposing party to include any additional facts at the end of the responsive separate statement. Plaintiff offered a single "Additional Material Fact in Disput," of "Defendant misrepresented the legal status of the grow, telling Plaintiff it was a 'legal commercial grow.'"

Summary Judgment

The purpose of the summary judgment procedure is to provide courts with a mechanism to cut through the parties' pleadings to determine whether despite their allegations, trial is in fact necessary to resolve their dispute. A defendant may prevail on the motion in one of three ways: (1) by affirmatively negating at least one of plaintiff's essential elements; (2) by showing that plaintiff does not have, and cannot get, evidence to establish an essential element after fully exploring plaintiff's case through discovery; or (3) by presenting evidence as to each element of an affirmative defense upon which defendant bears the burden of proof at trial. Once the defendant's initial burden is met, the burden shifts to the plaintiff to show by substantial evidence that a triable issue of material fact exists as to the claim or defense. Summary judgment is no longer a disfavored remedy; instead, it is "now seen as a particularly suitable means to test the sufficiency of the plaintiff's case" to see if trial is really warranted. (*Perry v. Bakewell Hawthorne, LLC* (2017) 2 Cal.5th 536, 542; *Aguilar v. Atlantic Richfield Co.* (2001) 25 Cal.4th 826, 851-854.)

Since the operative pleading forms the outer measure of materiality on a motion for summary judgment, a review of that pleading must occur first. (See *Jacobs v. Caldwell Banker Residential Brokerage Co.* (2017) 14 Cal.App.5th 438, 444; *Nativi v. Deutsche Bank National Trust Co.* (2014) 223 Cal.App.4th 261, 289-290.) The operative pleading here is the Complaint, filed Jan. 15, 2019, alleging six causes of action. Although the essential elements for the causes of action differ slightly, defendants' motion is based on what is described as an "illegal contract" that as a matter of law cannot be enforced. (See Defendant's Memorandum of Points & Authorities, Section III.)

The California Civil Code Section 1667 creates three categories of illegal contracts: (1) those "[c]ontrary to an express provision of law"; (2) those "[c]ontrary to the policy of express law, though not expressly prohibited"; and (3) those "[o]therwise contrary to good morals." The repurchase agreement falls into the first category because it violated subdivision map laws.

“A somewhat artificial distinction is made between contracts *malum in se*—(against good morals), and those which are *malum prohibitum*—(prohibited by statute). The distinction has little significance save where the parties are not *in pari delicto* (i.e., not in equal wrong with the other). This is because, as a general rule, the contract itself is void, whether *malum in se* or *malum prohibitum*.” (1 Witkin, Summary of Cal. Law (10th ed. 2005) Contracts, § 431, p. 473.)

Yuba Cypress Housing Partners, Ltd. v. Area Developers (2002) 98 Cal.App.4th 1077 serves to illustrate that a contract that is *malum prohibitum* may not be wholly void when the parties are not *in pari delicto*, involving a real estate contract that was deemed unlawful because the defendant violated the Subdivided Lands Act (Business & Professions Code, § 11000 et seq.). (Yuba Cypress, supra, 98 Cal.App.4th at p. 1080.) . . . Even though the contract was determined to be illegal, the Yuba Cypress court nevertheless held that the plaintiff was entitled to attorney fees: “[H]ow the aims of policy can best be achieved depends on the kind of illegality and the particular facts involved.’ Thus, for example, ‘when the Legislature enacts a statute forbidding certain conduct for the purpose of protecting one class of persons from the activities of another, a member of the protected class may maintain an action notwithstanding the fact that he has shared in the illegal transaction.’ The protective purpose of the statute is realized by allowing the plaintiff, who is not *in pari delicto*, to enforce the contract or maintain his action against a defendant within the class primarily to be deterred.” (Id. at pp. 1082–1083, italics added.) . . . The court concluded that “[a]lthough plaintiff chose to void the contract, this does not preclude him from recovering attorney fees via the attorney fee clause in the contract. Rather, defendant, who violated the Subdivided Lands Act, is estopped from asserting the invalidity of the contract. Otherwise, the court will have assisted defendant in profiting from its own wrong. To deny plaintiff the attorney fees to which he is entitled as a result of the contract would permit defendant to benefit from the illegality that it created, thus disserving the goal of deterring illegal conduct.” (Ibid; *Mountain Air Enterprises, LLC v. Sundowner Towers, LLC* (2014) 231 Cal.App.4th 805, 816-817.)

Where any illegality of a contract is due to facts of which one party is justifiably ignorant and the other party is not - as where defendants represented to plaintiffs that they were licensed brokers whereas one defendant only was licensed - the illegality does not bar recovery by the innocent party of compensation for performance rendered while he remains justifiably ignorant of the fact establishing illegality. (*Holland v. Morgan & Peacock Properties Co.* (1959) 168 Cal. App. 2nd 206.)

Additionally, where the record contains conflicting evidence regarding the potential culpability of each party, the question of relative wrong is one of fact and inappropriate for summary judgment. (*McIntosh v. Mills* (2004) 121 Cal.App.4th 333, 351, 352; 1 Witkin, Summary of Cal. Law (10th ed. 2005) Contracts, § 446, p. 486 [“The question of relative wrong is often one of fact.”]; *Tiedje v. Aluminum Taper Milling Co.* (1956) 46 Cal. 2nd 450.)

Only when the inferences are indisputable may the court decide issues as a matter of law. . . . An issue of fact becomes one of law only when "the undisputed facts leave no room for a reasonable difference of opinion." (*Manuel v. Pacific Gas & Electric Co.* (2009) 173 Cal.App.4th 927, 937.)

Assuming arguendo that the contract which is the basis of the complaint is illegal, such is a matter of law. The questions about whether the parties are *in pari delicto* is an issue of fact and is disputed by plaintiff's response to defendant's separate statement. Plaintiff has established with substantial evidence that a triable issue of material fact exists as to the potential illegality of the underlying contract.

Based on the foregoing, defendant's Motion for Summary Judgment is DENIED.

Summary Adjudication

As with summary judgment, defendant moving for summary adjudication may prevail on the motion in one of three ways: (1) by affirmatively negating at least one of plaintiff's essential elements; (2) by showing that plaintiff does not have, and cannot get, evidence to establish an essential element after fully exploring plaintiff's case through discovery; or (3) by presenting evidence as to each element of an affirmative defense upon which defendant bears the burden of proof at trial. (*Perry v. Bakewell Hawthorne, LLC, supra*; *Aguilar v. Atlantic Richfield Co., supra*.)

Again, the contract may as a matter of law be illegal, however there are triable issues of fact (CCP §437c), and it would be unjust for person in control of the legality or illegality of the subject contract to benefit.

Based on the foregoing, defendant's Motion for Summary Adjudication is DENIED.

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

MULRY v. LAKESIDE VENTURES, LLC, et al

Case No. 23CV47109

**PLAINTIFF'S MOTION TO DEEM MATTERS ADMITTED
AND REQUEST FOR SANCTIONS**

This is an action asserting claims for Wrongful and Constructive Eviction, Intentional and Negligent Infliction of Emotional Distress, and Negligence, *inter alia*, against four named defendants, none of whom has filed any responsive pleadings. Default was entered as to defendant Hurley on January 23, 2024.

On January 3, 2024, various discovery requests, namely Requests for Admission, Form and Special Interrogatories, and Requests for Production, were served on said defendant. Subsequently, plaintiff filed this Motion to Deem Requests for Admissions True on February 9, 2024.

Plaintiff took defendant Hurley's default before bringing this motion. The default divested the court of jurisdiction to grant the requested relief. Once defaulted, a party has no further right or obligation to participate in the case unless default is vacated. There is no right to discovery by notice on defaulted parties. In California, entry of default completely cuts off a party's right to appear in the action (e.g., take discovery, file motions other than a motion for relief from default or contest the material allegations of the complaint for purposes of the action). (See *Devlin v. Kearny Mesa AMC/Jeep/Renault, Inc.* (1984) 155 Cal.App.3rd 381, 385-86.)

Based on the foregoing, the motion is DENIED.

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