

LENIOR, et al., v. PACIFIC GAS AND ELECTRIC COMPANY

22CV46442

DEFENDANT'S DEMURRER TO PLAINTIFFS' SECOND AMENDED COMPLAINT

This case involves a dispute between utility customers and the utility company concerning an unpaid bill of \$126,691.66.

Before the Court is defendant's demurrer to the Second Amended Complaint (SAC), challenging each cause of action stated therein. A demurrer presents an issue of law regarding the sufficiency of the allegations outlined in the complaint. The challenge is limited to the "four corners" of the pleading (which includes exhibits attached and incorporated therein), or from matters outside the pleading which are judicially noticeable. The complaint is read as a whole. Material facts properly pleaded are assumed true, but contentions, deductions or conclusions of fact/law are not. In general a pleading is adequate if it contains a reasonably precise statement of the ultimate facts, in ordinary and concise language, and with sufficient detail to acquaint a defendant with the nature, source and extent of the claim. (California Code of Civil Procedure (CCP) §§425.10(a), 459; in accord, *Blank v. Kirwan* (1985) 39 Cal.3rd 311, 318; *Gray v. Dignity Health* (2021) 70 Cal.App.5th 225, 236 n.10.)

Defendant's Request for Judicial Notice is GRANTED.

At two prior demurrer hearings, the court thoroughly addressed the matter of exclusive jurisdiction over customer billing disputes. The court previously outlined the necessary facts to challenge the exclusive jurisdiction established by California Public Utility Code (PUC) §1759(a), and to bring the matter within the purview of PUC §2106.

In the previous rulings, the court guided plaintiffs regarding the requirements for stating a cause of action that would remove the complaint from the California Public Utilities Commission (CPUC) exclusive authority for adjudication of customer disputes. Plaintiffs contend the causes of action for slander and intentional infliction of emotional distress achieve this goal.

Upon reviewing the SAC, plaintiffs introduced only two arguably substantive additions when compared to the earlier pleadings. In a three-paragraph amendment labeled "JURISDICTION" (set forth as section/paragraph 17) plaintiffs argue that their claims do not contravene "the commission." The additional language concludes "the civil court has jurisdiction." (SAC ¶17, pg.8.) This is argument, not facts. Further, at ¶21 the amended language adds a damage element assertion- one plaintiff's facial nerve virus flared and was attributed to the stress of the billing dispute.

Notably, plaintiffs did not address their First Cause of Action – Wrongful Investigation.

Demurrer to the Second Amended Complaint is **SUSTAINED** to all causes of action, WITHOUT leave to amend. The Court considers three attempts to provide a viable pleading sufficient to meet the interests of justice.

The Clerk shall provide notice of this Ruling to the parties forthwith. Defendant to prepare a formal Order pursuant to CRC 1.1312 in conformity with this Ruling.

PONTE v. PERREIRA

23CV47125

PLAINTIFF'S MOTION FOR PRELIMINARY INJUNCTION

This is a quiet title action to confirm an easement over defendant's real property. The parcels are adjacent and plaintiff gains access to Hogan Dam Road through defendant's real property. Initially, plaintiff unsuccessfully requested a temporary restraining order and preliminary injunction *ex parte* when filing the complaint. Presently, a noticed motion for a preliminary injunction is before the Court.

All matters noticed for the Law & Motion calendar shall include the following language in the notice:

3.3.7 Tentative Rulings (Repealed Eff. 7/1/06; As amended 1/1/18) All parties appearing on the Law and Motion calendar shall utilize the tentative ruling system. Tentative Rulings are available by 2:00 p.m. on the court day preceding the scheduled hearing and can be accessed either through the court's website or by telephoning 209-754-6285. The tentative ruling shall become the ruling of the court, unless a party desiring to be heard so advises the Court no later than 4:00 p.m. on the court day preceding the hearing including advising that all other sides have been notified of the intention to appear by calling 209-754-6285. Where appearance has been requested or invited by the Court, all argument and evidence is limited pursuant to Local Rule 3.3. All matters noticed for the Law & Motion calendar shall include the following language in the notice:

Pursuant to Local Rule 3.3.7, the Court will make a tentative ruling on the merits of this matter by 2:00 p.m. the court day before the hearing. The complete text of the tentative ruling may be accessed on the Court's website or by calling 209-754-6285 and listening to the recorded tentative ruling. If you do not call all other parties and the Court by 4:00 p.m. the court day preceding the hearing, no hearing will be held and the tentative ruling shall become the ruling of the court. [Emphasis in original.]

Failure to include this language in the notice may be a basis for the Court to deny the motion.

In the instant matter, the Court finds that a combination of exigent circumstances and defendant's tacit waiver of objection to the failure to include the mandatory language suffices to proceed substantively. (Plaintiff is cautioned this is a rare instance where the

Court does not deny a pending motion for the failure to include the mandated language.)

The court may grant a preliminary injunction "at any time before judgment upon a verified complaint, or affidavits show satisfactorily that sufficient grounds exist therefor." (California Code of Civil Procedure (CCP) § 527(a)). When deciding whether to issue a preliminary injunction, the court must weigh two interrelated factors: (1) the likelihood that the plaintiff will prevail on the merits; and (2) the relative balance of harms that is likely to result from the granting or denial of interim injunctive relief. (*White v. Davis* (2003) 30 Cal.4th 528, 554; *Smith v. Adventist Health System/West* (2010) 182 Cal.App.4th 729, 749.) A trial court has broad discretionary powers to grant or deny a request for a preliminary injunction if it does not act capriciously. The court should exercise its judgment to favor the party most likely to be injured. (*Robbins v. Superior Court* (1985) 38 Cal.3rd 199, 205.) Additionally, the Court must find an injunction is necessary to prevent irreparable harm and the inadequacy of legal remedies (i.e., monetary damages).

In addressing the first factor, plaintiff contends that he has an equitable easement for access. Within the First Cause of Action, plaintiff alternately argues the easement exists by prescription, necessity or equity. The recent case of *Romero v. Shih* (2024) 15 Cal.5th 680 discusses the differences between these methods of acquiring easement rights.

Reviewing the moving and opposition papers it appears that at least one such theory will likely apply. It is undisputed that plaintiff has used the claimed easement since 1983. Defendant argues such use was permissive after his acquisition in 2005. Despite the information disclosed in the title report, there is a possibility that plaintiff had acquired easement rights. There is a likelihood of prevailing on at least one argued legal theory, a finding sufficient to meet the burden on this prong of analysis.

In addressing the second factor, the record is undisputed that since defendant purchased the real property in 2005, plaintiff has continued to access his land via the easement. It is a "foundational legal principle" that a preliminary injunction intends to maintain the status quo until a final resolution of claims on the merits." (*O'Connell v. Superior Court* (2006) 141 Cal.App.4th 1452, 1472.) The court exercises discretion when granting the preliminary injunction, recognizing the need for adaptability during ongoing legal proceedings. (*Union Interchage, Inc. v. Savage* (1959) 52 Cal.2nd 601, 605.)

Plaintiff must also show irreparable injury would occur absent the preliminary injunction and the inadequacy of legal remedies. Money damages may not be an adequate legal remedy in a case involving, among others, unique personal property. (See, e.g., *Fonteno v Wells Fargo Bank, N.A.* (2014) 228 CalApp4th 1358.) Here the Court has uncontroverted evidence that failure to grant the preliminary injunction would cause undue and irremediable pain, suffering, and quite possibly death, to plaintiff's cattle.

The defendant's declaration raises safety and dust issues arising from plaintiff's continued use of the easement. These concerns are not sufficient to deny the

preliminary injunction, but can be addressed within the court's authority, particularly regarding the safety and well-being of parties. Adhering to a speed limit would reduce the likelihood of manure and debris falling from truck or trailer, mitigate dust concerns, and reduce danger to users of the servient property.

Plaintiff's Motion for Preliminary Injunction is **GRANTED**. Additionally, Plaintiff is ordered to not exceed 10 miles per hour when using the easement.

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

YOUNG v. RAMIREZ

23CV46514

PLAINTIFF'S MOTION TO ENTER JUDGMENT ON SETTLEMENT

This is a quiet title action to confirm an easement over defendant's real property. The parcels are adjacent and plaintiff gains access to Dogwood Road through defendant's real property. This matter was settled at a Mandatory Settlement Conference held October 9, 2023; Plaintiff now seeks to have the Court enter Judgment on the settlement pursuant to Code of Civil Procedure ("CCP") Section 664.6.

A dispute has arisen concerning the survey described in the settlement. To summarize, plaintiff's surveyor first provided a thirty-foot easement centered on the existing easement then, after receiving defendant's objections, reduced the width to eighteen feet. Defendant nevertheless refuses to execute and allow the recording of the Deed of Easement, wanting the width of the entire linear easement surveyed and reflected in the deed.

An enforceable settlement agreement under CCP §664.6 must, follow the statute, and either be entered into orally before a court or must be in writing and signed by the parties. (See *In re Marriage of Assemi* (1994) 7 Cal.4th 896, 905.) These alternative requirements aim to minimize misunderstandings. Direct participation by the litigants ensures that the settlement results from their mature reflection and deliberate assent. (See *In re Marriage of Assemi* (1994) 7 Cal.4th 896, 905; *Levy v. Superior Court* (1995) 10 Cal.4th 578, 585, fn. omitted.)

Here, the parties announced their settlement terms and agreement in open court and signed the Minute Order as drafted by the court that specified the terms of the settlement, including a statement as to the enforceability under CCP §664.6. All parties along with their counsel, reviewed the written settlement terms in open Court before signing; the Court then signed, adopting the terms of the settlement agreement and making the terms enforceable under CCP section 664.6. Notably, neither party, their counsel nor the court involved in the settlement conference contemplated expanding the easement in the agreement. The parties agreed to a thirty (30) day notice mechanism to address maintenance issues concerning trees. Defendant received specific instructions to prepare a formal settlement agreement, which should specifically state that no expansion or widening of the easement beyond the existing scope is allowed. The survey's description encompasses the *existing* easement which is not to be expanded; It does not expand the width of the existing easement but merely defines the area it lies within. The Court finds defendant's contention that the entirety of the easement must be surveyed and detailed in the deed is beyond the terms of the settlement agreement, and is covered sufficiently by the surveyor's amended description.

Plaintiff's Motion to Enter Judgment is **GRANTED**.

The Clerk shall provide notice of this Ruling to the parties forthwith. Plaintiff to prepare a formal Judgment pursuant to CRC 3.1312 in conformity with this Ruling. Upon filing of the Judgment, defendant to record Deed of Easement incorporating the surveyor's amended description.