COMBRINCK v. CLERICO

23CV46872

PLAINTIFF'S MOTION FOR JUDGMENT ON THE PLEADINGS

Plaintiff's suit seeks a partition by sale of the real properties located at: 1) 41 Purdy Road, Angels Camp; 2) 938 Purdy Road, Angels Camp; and 3) "Dead Horse Mine" (Calaveras County Assessor Parcel Number 062-002-094-000), and Declaratory Relief. Plaintiff now brings a Motion for Judgment on the Pleadings.

A motion for judgment on the pleadings, like a general demurrer, challenges the sufficiency of the plaintiff's cause of action and raises the legal issue, regardless of the existence of triable issues of fact, of whether the complaint states a cause of action. The standard of review for a motion for judgment on the pleadings is the same as that for a general demurrer. The pleadings are to be treated as admitting all material facts properly pleaded, but not contentions, deductions or conclusions of fact or law. "We review the complaint de novo to determine whether [it] alleges facts sufficient to state a cause of action under any legal theory." (*Ellerbee v. County of Los Angeles* (2010) 187 Cal.App.4th 1206, 1213–1214.)

Plaintiff's Motion for Judgement on the Pleadings is identical to the Demurrer to Cross-Complaint previously filed except for the descriptions of motion, a request for Judicial Notice of portions of the court's file, and a two-sentence addition that "this Motion is Procedurally Proper" which states:

> IV. THIS MOTION IS PROCEDURALLY PROPER
> "Denial of motion without prejudice impliedly invites the moving party to renew the motion at a later date, when he can correct the deficiency that led to the denial, so Code of Civil Procedure section 1008 is inapplicable." (Farber v. Bay View Terrace Homeowners Assn' (2006) 141 Cal.App.4th 1007, 1015.)
>
> "Here, the Court explicitly denied the Cross-Defendants' prior motion "without prejudice" to bringing a motion for judgment on the pleadings on the same topic. As such, this Motion is procedurally proper. **(Request for Judicial Notice No. 1.)** [Emphasis in original.]"

Given the fact that apart from these two sentences arguing that the December 8, 2023, overruling of the Demurrer was done without prejudice, and therefore the Motion for Judgment on the Pleadings is proper ignores the language in the statute and cases. The Court does not dispute that the present motion is procedurally appropriate, noting CCP § 438 (g)(1) directly addresses the motions propriety, and provides:

> (g) The motion provided for in this section may be made even though either of the following conditions exist:
> (1) The moving party has already demurred to the complaint or answer, as the case may be, on the same grounds as is the basis for the motion provided for in this section and the demurrer has been overruled, provided that there has been a material change in applicable case law or statute since the ruling on the demurrer.

The issue for this Court is whether or not the motion has substantive merit.

The Court grants the request for judicial notice and takes notice of the requested file items listed in the request.

Authority upheld the procedure where "there has been a material change in applicable case law or statute since the ruling on the demurrer. "[A] motion for judgment on the pleadings may not be granted if a demurrer on the same grounds was either not made or was overruled unless there has been an intervening material change in the applicable law." (CCP § 438, subd. (g)(1); *Edwards v. Centex Real Estate Corp*. (1997) 53 Cal.App.4th 15; *Yancey v. Superior Court* (1994) 28 Cal.App.4th 558, 562, fn.1.) No intervening material change in the substantive applicable law has been asserted.

Plaintiff/cross-defendant's Motion for Judgment on the Pleadings is **DENIED.**

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

SANCHEZ, et al., v. SIMPSON, et al.

22CV46351

- **DEFENDANT'S MOTION TO MEDIATE AND ARBITRATE**
- **PLAINTIFF'S MOTION FOR ORDER GRANTING PREFERENCE IN SETTING CASE FOR TRIAL**

As the court previously noted, "This is a civil action stemming from an oddly conceived real estate transaction between friends, neighbors, and distant cousins. The plaintiffs — elderly and/or infirm — sold their residence to defendants for $356,000 but obtained no cash in the transaction. Instead, plaintiffs agreed to pay all escrow fees and carry back the entire purchase price (minus $1,000) as a promissory note with only 3% interest. Based on the amortization schedule provided by escrow, plaintiffs were not due to be paid in full until after two of three plaintiffs had reached the age of 107. Plaintiffs allege in their Complaint that many of the terms "understood" by the parties did not make it into the Residential Purchase Agreement (RPA) signed by the parties, such as defendants' obligation to secure financing to pay off the promissory note in due course. (See prior ruling, dated December 12, 2022.)

The procedural history of this case also exhibits an unusual sequence of events. Defendants have never filed a response, yet their counsel participated in the *ex parte* hearing for Temporary Restraining Order (TRO) on Oct. 11, 2022, held one day after filing the complaint. Subsequently, both counsel stipulated to postpone the Preliminary Injunction hearing from Oct. 21, 2022, to Nov. 4, 2022, and then again to Dec. 2, 2022, when the court granted the Preliminary Injunction request.

Both parties' original Case Management Statements state that they were engaged in mediation. The defendants' recent statement expressed an Interim Settlement Agreement, allowing the plaintiffs to move personal property off the lot while defendants make property improvements for financing options.

Defendants originally filed a Motion for Order to Mediate, which was withdrawn and refiled as a Motion for Order to Mediate and Arbitrate on March 4, 2024. (Defense counsel provided plaintiffs' counsel with Local Rule 3.3.7 language in mailed correspondence dated March 22, 2024, although the language was not included in either of defendants' motions; the Court will proceed substantively as there is the belated reference to the Court's tentative ruling system but notes any future motions will be denied if the notice lacks the mandatory language.)

On March 6, 2024, plaintiffs filed a Motion for Order Granting Preference in Trial Setting. While the motions are inter-related, the history remains peculiar. Plaintiffs made arguments based on a Declaration of counsel that was initially objectionable; however,

they addressed and corrected this declaration in the reply by providing an accompanying “affidavit” of counsel and relevant medical records. Specifically, defendants object to Declaration of Vanessa Amador in Support of Plaintiffs’ Motion for Preference to Set the Case for Trial executed March 6, 2024, because it violates the hearsay rule. The Court grants the objection. However, the subsequent affidavit of counsel contained properly worded language.]

Despite these efforts, the Motion for Preference faces an insurmountable hurdle: this matter is not at issue. This obstacle, although not raised by defendants, renders granting the trial-setting preference impossible for this Court, though it also is rendered moot by the ruling on the motion to compel arbitration.

MOTION FOR ORDER GRANTING PREFERENCE IN SETTING CASE FOR TRIAL

Plaintiff brings a motion under CCP §36 for calendar preference arguing that under subdivision (a) preference must be granted. (*Fox v. Super. Ct.* (2018) 21 Cal. App. 5th 529, 535.) If the statutory requirements are met, the Court must grant the preference and set the trial within 120 days of ruling. (*Id*.) "No weighing of the interests is involved." (*Id.; Koch-Ash v. Super Ct.*(1989) 212 Cal. App.3rd 1082, 1085.)

However, the seeming mandatory application of CCP §36 is affected by two factors. First, the defendants have never answered the complaint so this matter is not at-issue and therefore cannot be set for trial. Second, CCP §§ 1281 and 1281.2 ‘s strong public policy in favor of arbitration can overcome the mandatory provisions of CCP § 36.

In *Laswell v. AG Seal Beach, LLC* (2010) 189 Cal.App.4th 1399, 1403, 1409-1410, the trial court's decision to grant the plaintiff trial preference under CCP §36 had "no relevance" to whether to grant the opponent of 93-year-old terminally ill party to compel arbitration. A trial court is required to order a dispute to arbitration when the party seeking to compel arbitration proves the existence of a valid arbitration agreement covering the dispute.

Arbitration is strongly favored as a speedy and inexpensive method of dispute resolution. This is especially the case, where the arbitration agreement is governed by the Federal Arbitration Act, 9 U.S.C.S. § 1 et seq. (*Macaulay v. Norlander* (1992) 12 Cal.App.4th 1.)

Based on the foregoing, plaintiffs’ Motion for CCP §36 preference is **DENIED**.

MOTION TO COMPEL ARBITRATION

The Federal Arbitration Act, 9 U.S.C. §§ 1, et seq. (FAA) applies to any "contract evidencing a transaction involving commerce." 9 U.S.C. § 2. The United States Supreme Court has broadly interpreted the FAA's application, stating that the FAA is a "body of substantive law enforceable in both state and federal courts." (*Perry v. Thomas*, 482 U.S. 483, 489 (1987).)

California precedent similarly has a "strong public policy in favor of arbitration." (*Evenskaas v. California "Transit, Inc*. (2022) 81 Cal. App. 5th 285; *Larkin v. Williams, Woolley, Cogswell, Nakazawa & Russell* (1999) 76 Cal. App. 4th 227, 229; *United Trans. UniOn, AFL ClO v. Southern Cal. Rapid Transit Dist*. (1992) 7 Cal. App. 4th 804, 808.) Thus, a court generally must compel arbitration in accordance with the agreement when requested by one of the parties. (California Code of Civil Procedure (CCP) §1281.2; 9 U.S.C. § 2; *Rockefeller Technology Investments VII v. Changzhou Sino Type Technology Co.* (2020) 9 Cal.5th 125, 146; *Weiler v. Marcus & Millichap Real Estate Investment Services, Inc*. (2018) 22 Cal.App.5th 970, 979.)

Plaintiffs devote much of their opposition brief to the futility of past mediation (the first step in the RPA's Section XXIV's dispute resolution direction to first mediate, and then arbitrate.) This has the unintended effect of supporting the argument to compel the RPA's arbitration clause.

Based on the foregoing, Defendants' Motion for Motion for Order to Compel Arbitration is **GRANTED**.

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