COMBRINCK v. CLERICO

23CV46872

PLAINTIFF'S MOTION TO DEEM MATTERS ADMITTED [to third set of requests for admission]; PLAINTIFF'S MOTION TO COMPEL INITIAL RESPONSES [to third set of form interrogatories], and FOR SANCTIONS

Plaintiff 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.
The matters before the court are two separate discovery motions brought by plaintiff.

On October 11, 2023, plaintiff served second set of form interrogatories, second set of special interrogatories, second set of requests for admission, and second set of document production requests to defendant who has not responded to these discovery requests, requested an extension of time to respond, or contacted plaintiff's counsel (Initial Motion).

Plaintiff's 330-page Second Motion sought to compel further responses to the supplemental responses to first sets of discovery (form and special Interrogatories, requests for admission, and document production). Defendant responded to the first sets of discovery, asserting numerous objections. After exchanges as to the sufficiency of responses between counsel, defendant provided supplemental responses, which plaintiff claims are still defective as they contain the same objections. Sanctions were also requested as part of both motions.

At the December 22, 2023, hearing on the Initial Motion to Compel was DENIED as moot. The Second Motion was also DENIED as defendant had provided sufficient responses and the crux of the argument is as to the breadth and propriety of objections, an issue that is not ripe for decision until trial admissibility issues arise. The requests for sanctions was also DENIED, the Court again noting that the raised issue was the asserted objections accompanied by proper responses. [At the Dec. 22, 2023 hearing. the Court cautioned plaintiff to take the "totality of this ruling to heart" before filing any future discovery motions.]

The following week plaintiff filed a new motion to compel initial responses to form interrogatories (third set) and a motion to deem matters admitted (third set). The single item in the form interrogatories is number 17.1. (Luu Declaration, ¶¶ 6 and 7; Exhibit 3.) A copy of plaintiff's Requests for Admission, Set Three, is attached to Luu Declaration in Support of Motion to Deem Matters Admitted and are substantially the same as the earlier Set Two that was the subject of December 22, 2023 hearing.

MOTION TO DEEM MATTERS ADMITTED:

If the propounding party believes that the responses to Requests for Admission are deficient in some respect or that any objections are without merit or are unaccompanied by a proper response, they may make a motion to compel further responses under Code of Civil Procedure (CCP) § 2033.290. (See *Wimberly v. Derby Cycle Corp*. (1997) 56 Cal.App.4th 618, 636; *Tobin v. Oris* (1992) 3 Cal.App.4th 814, 829, fn. 25.)

Defendant's responses to Requests for Admissions, Set Three were substantially compliant as virtually the same requests were previously responded to with plaintiff making minimal revisions and brought forth a CCP § 2033(k) to have admission requests deemed admitted. The Court continues to view plaintiff's actions in bringing continuing discovery motions through counsel as improperly seeking to obtain litigation advantage against a pro se party. As the Court advised counsel at the previous hearing, while a pro se party is held to the same standard as an attorney, The Court also is charged with levelling the playing field so cases proceed on their merits. Based on the foregoing, plaintiff's Motion to Deem Matters Admitted is DENIED.

MOTION TO COMPEL INITIAL RESPONSES TO FORM INTERROGATORIES, SET THREE:

There is insufficient showing that Defendant's 17.1 responses to preceding earlier sets of form interrogatories are deficient when applied to the substantially similar Requests for Admission in the third set. As discussed above, the underlying Requests for Admissions, Set Three, are insufficiently challenged in the motion, nor is it appropriate to deem them admitted. Based on the foregoing, including the Court's advisement concerning further discovery motions, the motion to compel a response to the form interrogatory set before the court is DENIED.

Plaintiff's requests for sanctions are DENIED. The Court considered awarding sanctions to defendant for what it considers a borderline misuse of the discovery process but refrains at this time, taking into account plaintiff's filings of Notices of Non-Opposition to these motions. However, the Court still must evaluate any nonopposed motion to determine if they are inherently meritorious or not.

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.

PORTFOLIO RECOVERY ASSOCIATES V. SNOW

23CF14053

PLAINTIFF'S MOTION FOR JUDGMENT ON THE PLEADINGS

This is a limited jurisdiction collections case. Before the Court is an unopposed motion by plaintiff under California Code of Civil Procedure §438 for entry of judgment on the pleadings for the amount set forth in the complaint plus costs in favor of plaintiff.

'"The standard for granting a motion for judgment on the pleadings is essentially the same as that applicable to a general demurrer, that is, under the state of the pleadings, together with matters that may be judicially noticed, it appears that a party is entitled to judgment as a matter of law." (*Southern California Edison Co. v. City of Victorville* **(**2013) 217 Cal.App.4th 218, 227*; Department of Fair Employment & Housing v. M&N Financing Corp.* (2021) 69 Cal. App. 5th 434**.)**

In reviewing defendant's answer, he first admits that all statements of the complaint are true, but then affirmatively alleges that he has "no knowledge of the allegations being brough [SIC] up by the plaintiff. Therefore defendant denies ANY and ALL allegations in this case." (Answer 3.b and 4.) This inconsistency was addressed in the discovery process. The defendant was served Requests for Admissions, which were previously deemed admitted (Order filed September 13, 2023) that establishes all elements of Account Stated and Open Book Account alleged in Complaint.

Based on the foregoing, the motion is GRANTED and the plaintiff is awarded the account stated and/or open book account sum of $4,850.53, and costs in the amount of $369.50, for a **total Judgment of $5,220.03**.

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

CONNOLLY v De La CRUZ

23CV46549

DEFENDANT'S MOTION FOR ORDERS RE EASEMENT

Appearances required.