

**CHARLES LAGUNA v. CORBIN CLOUGH, et al.**

**22CV46348**

**DEFENDANT 'S MOTION FOR ORDER DISMISSING ENTIRE ACTION**

This is a quiet title and specific performance action involving an alleged oral promise to make a testamentary gift of real property. There are related coordinated actions (see 22UD13972 and 22PR8530). Before the Court is a Motion to Dismiss after the Court sustained a demurrer to the operative complaint, Order filed 10/17/23, providing plaintiff with thirty (30) days leave to amend. No amended pleading was filed. Plaintiff has not filed an Opposition to Motion.

California Code of Civil Procedure § 581 provides in pertinent part:

\* \* \*

(f) The court may dismiss the complaint as to that defendant when:

...

(2) Except where Section 597 applies, after a demurrer to the complaint is sustained with leave to amend, the plaintiff fails to amend it within the time allowed by the court and either party moves for dismissal.

\* \* \*

Upon review of moving documents, and the court file, the Motion for Order Dismissing Entire Action is **GRANTED**.

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.

# JOHN LOUDERMILK v. DOLLAR GENERAL

21CV45482

## PLAINTIFF'S MOTION TO COMPEL WRITTEN DISCOVERY

This action arises from an alleged breach of duty to provide safe premises resulting in a slip and fall injury to plaintiff John Loudermilk.

On July 19, 2023, plaintiff propounded the following discovery on defendant Dolgen California, LLC, (erroneously named as "Dollar General"): form interrogatories; request for production of documents; and special interrogatories, sets one. No response has been provided. No opposition to the Motion to Compel was filed.

The Motion to Compel is **GRANTED**. Defendant Dolgen California, LLC, is to produce complete verified answers, without objection, and produce all responsive documents in its care, custody or control, to plaintiff's form interrogatories, request for production, and special interrogatories, sets one, by November 17, 2023.

As this motion was not opposed, no monetary sanctions are awarded.

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

# SMITH v. WOLFMAN, et al.

22CV46316

## DEFENDANTS' MOTION FOR STAY OF PROCEEDINGS; PLAINTIFF'S OSC/Motion FOR PRELIMINARY INJUNCTION

Plaintiff's complaint seeks a Demand for Accounting; Declaratory Relief; Breach of Fiduciary Duty; Involuntary Dissolution of Limited Liability Company; Fraud and Deceit; Conversion; Breach of Fiduciary Duty; and Unjust Enrichment due to the sale of all assets of the entity WolfSmith, LLC. Defendants seek a Stay of Proceedings, pursuant to Corporations Code Section 17707.03. Plaintiff Smith seeks to enjoin WolfSmith from transferring assets or monies to defendant Wolfman.

### REQUEST FOR STAY

Plaintiff filed a Request for Dismissal of the Fifth Cause of Action for Dissolution of Limited Liability Company, on October 12, 2023, thus rendering the Request for Mandatory Stay MOOT; on that basis, the Motion For Stay is DENIED.

### ORDER to SHOW CAUSE and MOTION for PRELIMINARY INJUNCTION

The general rule concerning pleading a cause of action in fraud, breach of fiduciary duty or unjust enrichment to justify a preliminary injunction is that it must be specifically pleaded, and the complaint or declarations must state specific facts of how and where the wrongful activity occurred. Vague conclusory terms such as: "under the false pretense that false promises," "intentional representations," "irreparable harm," "immediate danger," "The fraud of Defendants, and each of them, was and is malicious, oppressive, despicable, and justifies the recovery of punitive and exemplary damages in amounts according to proof" are insufficient.

The effect of this general rule is twofold: (1) the facts constituting fraud must be alleged factually and specifically; and (2) every element of the cause of action for fraud must be alleged in the proper manner. The policy of liberal construction of the pleadings will not ordinarily be invoked to sustain a pleading defective in any material respect [*Hall v. Department of Adoptions* (1975) 47 Cal. App. 3d 898, 904; *Bank of America v. Vannini* (1956) 140 Cal. App. 2d 120, 130 (party pleading defense based on fraud required to set forth all elements of fraud)].

Code of Civil Procedure § 526(a) provides that "The general purpose of a preliminary injunction is to preserve the *status quo* pending a determination on the merits of the action ... [A]s a general matter, the question whether a preliminary injunction should be granted involves 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.' [Citation omitted] Typically, the trial court's evaluation of

the relative balance of harms compares the interim harm the plaintiff is likely to sustain if the injunction is denied to the harm the defendant is likely to suffer if the preliminary injunction is issued. [Citation omitted] The potential merit and interim harm are described as interrelated factors because the greater the plaintiff's showing on one, the less must be shown on the other to obtain an injunction. [Citation omitted]. The goal of this test is to minimize the harm that an erroneous interim decision would cause. [Citations omitted].” (*Tulare Lake Canal Company v. Stratford Public Utility* (2023) 92 Cal.App.5th 380, 397-98.)

In determining whether to issue a preliminary injunction, courts consider two factors: (1) the likelihood that the plaintiff will prevail on the merits of its case at trial; and (2) the interim harm that the plaintiff is likely to sustain if the injunction is denied compared to the harm the defendant is likely to suffer if the court grants the preliminary injunction. (*Yu v. University of La Verne* (2011) 196 Cal. App. 4th 779, 786; *Right Site Coalition v. Los Angeles Unified School District* (2008) 160 Cal. App. 4th 336, 341–42.) The memorandum and declarations supporting the request should address both factors, showing that the plaintiff has a strong likelihood of ultimately prevailing on the merits and that the harm that plaintiff will suffer if the defendant is not enjoined will greatly outweigh the harm that the preliminary injunction will cause to the defendant. (See, e.g., *Saltonstall v. City of Sacramento* (2014) 231 Cal. App. 4th 837, 856; *Casmalia Resources, Ltd. v. County of Santa Barbara* (1987) 195 Cal. App. 3d 827, 838; “*The moving party bears the burden of proof and persuasion on these issues*” *Drakes Bay Oyster Co. v. California Coastal Commission* (2016) 4 Cal. App. 5th 1165, 1172 [Emphasis added].)

As explained by one authority: “It is common to speak of the necessity of a showing of threatened ‘irreparable injury’ as the basis for both preliminary and permanent injunctions. (See *Nicholson v. Getchell* (1892) 96 C. 394, 396 [proof of inevitable or certain injury is not required; relief is allowed to prevent great and irreparable injury; reversing judgment on demurrer]; *E.H. Renzel Co. v. Warehousemen's Union I.L.A.* 38-44 (1940) 16 C.2d 369, 373 [mere allegation, without pleading of facts, of injury is insufficient; reversing order granting preliminary injunction]; *Torrance v Transitional Living Centers for Los Angeles* (1982) 30 C.3d 516, 526 [plaintiff must plead irreparable injury]; *Intel Corp. v. Hamidi* (2003) 30 C.4th 1342, 1352, citing the text [“in order to obtain injunctive relief the plaintiff must ordinarily show that the defendant's wrongful acts threaten to cause irreparable injuries ones that cannot be adequately compensated in damages”]; reversing order granting permanent injunction]; *Lezama v. Justice Court* (1987) 190 C.A.3d 15, 21 [prerequisites to injunctive relief are inadequate remedy at law and serious risk of irreparable harm]; *Loder v. Glendale* (1989) 216 C.A.3d 777, 782, 786 [plaintiff must present evidence of irreparable injury]; *Choice-in-Education League v. Los Angeles Unified School Dist.* (1993) 17 C.A.4th 415, 431 [preliminary injunction was reversed for failure to show real threat of immediate and irreparable interim harm]).”

Plaintiff argues she cannot be compensated through the payment of damages for the harm they will likely suffer if the injunction is not issued because there will be no way for them to verify any accounting of the WolfSmith monies is accurate and such funds will be dissipated leaving them with no remedy because any judgment will be rendered

ineffectual. Plaintiff Smith will also be irreparably harmed if the injunction is not issued because her reputation and goodwill in the small cannabis community of Calaveras County where she still does business for her other cannabis farms will continued to be damaged by the compliance issues affecting the WolfSmith cannabis licenses and Defendant Wolfman's failure to file and pay the WolfSmith taxes. Plaintiff Smith cannot be compensated for this harm to her reputation and goodwill because the damage that will flow from it will extend to her family, other businesses, employees, vendors and her customers. (Smith Declaration ¶ 18).

When granting a Preliminary Injunction, the court weighs two interrelated factors; the likelihood that the moving party will prevail on the merits, and the relative interim harm to the parties from the issuance or non-issuance of the injunction. (*Whyte v. Schlage Lock Co.* (2002) 101 Cal.App.4th 1443, 1449.)

Plaintiff argues that exigent circumstances exist to grant this application because WolfSmith is in jeopardy of losing the cannabis cultivation licenses due to deficiencies noted at its annual inspection. Making the required corrections will cost time and money that WolfSmith does not possess due to Defendant Wolfman's alleged distribution and retention of over \$1.5 million and monthly interest payments of \$11,250 to himself from his sale of substantially all WolfSmith's assets, WolfSmith does not possess. The only assets WolfSmith retains are the cannabis cultivation licenses. Plaintiff will suffer immediate and irreparable harm if the requested injunction is not granted because the cannabis cultivation licenses will be revoked and due to their unique and restricted nature plaintiff claims an inability to be fairly compensated for this loss by mere monetary damages.

Whether by OSC or noticed motion, a request for a preliminary injunction must be supported by facts stated in a verified complaint (or cross-complaint) or on affidavits or declarations under penalty of perjury showing sufficient grounds for issuance of the preliminary injunction. (CCP§527(a),(h)(1); CCP § 2015.5 (declaration under penalty of perjury).) The allegations of the affidavits, declarations, or complaint must be factual. Conclusory averments are insufficient to support issuing an injunction. (*Levy v. City of Santa Monica* (2004) 114 Cal. App. 4th 1252, 1262 [finding declarations relying on conclusory statements, hearsay, and speculation were insufficient].) Averments that are conclusions of law are not competent testimony to support issuance of an injunction even if they may stand as a matter of pleading. (*E. H. Renzel Co. v. Warehousemen's Union*, (1940) 16 Cal. 2d 369, 370–71 ; *Finnie v. Town of Tiburon*, (1988) 199 Cal. App. 3d 1, 15.) Loss of cannabis cultivation licenses would be irreparable damage. The other alleged losses can be ascertained and remedied with an award of monetary damages.

For the foregoing reasons, the Court finds that plaintiff has provided the necessary pleadings or evidence for issuance of a Preliminary Injunction. The Request for a Preliminary Injunction is **GRANTED**. Defendant Brad Wolfman on his own behalf, and as trustee of the 2021 Bradford G. Wolfman Revocable Trust and as majority member of WolfSmith is enjoined from withholding the distribution of the \$200,000 from the sale of the WolfSmith assets to Plaintiff Smith which represents her 20% share of the \$1 Million cash payment Defendant Wolfman admits he received in sale of the WolfSmith assets.

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