GIFFIN v VASCONCELLOS

23CV46905

PLAINTIFF'S MOTION TO ENFORCE SETTLEMENT AGREEMENT

On August 28, 2023, Robin Giffin ("Plaintiff") filed a Complaint against Steven Crane Vasconcellos ("Vasconcellos"), Sierra View Financial Corp. ("SVFC"), and County of Calaveras ("County") seeking orders for partition, accounting, injunctive relief, and declaratory relief. Now before the Court is a second motion to enforce the settlement agreement filed by Plaintiff.

On July 28, 2025, the Court held a mandatory settlement conference. At that conference, the parties represented that a settlement had been reached but that Plaintiff no longer agreed to the terms of that agreement. Consequently, the Court and the parties modified the terms of the agreement at the conference. Pursuant to the new settlement agreement, Plaintiff would deposit a check in the amount of $20,000 with the title company and once those funds were deposited, Vasconcellos was to vacate the property by January 12, 2026. The formalized, CCP 664.6-enforceable settlement agreement was filed.

On August 22, 2025, the Court held a hearing on Plaintiff's ex parte motion to enforce the settlement agreement. Counsel for Plaintiff and Vasconcellos both attended the hearing. At the conclusion of the hearing, the Court ordered Vasconcellos to sign the grant deed once the funds had been deposited. In the event that Vasconcellos refused to sign the deed, the Court ordered that Vasconcellos' then-counsel, Mitchell Abdallah, sign the deed as elisor.

Thereafter, Mr. Abdallah was relieved as counsel for Vasconcellos. According to Plaintiff, "Mr. Abdallah maintains that once he was relieved as counsel for Mr. Vasconcellos, that Mr. Abdallah was also relieved of executing the transfer as ordered in paragraph 3 of the court's August 26, 2025, order and will not do so." (Mtn to Enforce p. 2.) Vasconcellos apparently also continues to refuse to sign the deed, despite the fact that Plaintiff has completed all requirements with the title company.

Plaintiff now seeks an order from the Court requiring Mr. Abdallah to comply with the previous order and sign the deed or to appoint Robin Giffin, Jr. to do so.

The Court has the inherent authority to enforce its own orders. (Code Civ. Proc. § 128.) Pursuant to those powers, the Court may take necessary steps to compel obedience to its orders and judgments, including appointing an elisor[1] to execute the documents on Vasconcellos behalf. (*Blueberry Properties, LLC. V. Chow* (2014) 230 Cal.App.4th 1017, 1020.) The Court had fully expected that all necessary documents would have been prepared and that Mr. Abdallah therefore would have signed as elisor prior to his being relieved as counsel. Unfortunately, this did not occur. The Court feels it would be unfair to require Mr. Abdallah as former counsel to serve as elisor, and appointment of plaintiff's son in this role is potentially problematic.

Therefore, the Court **GRANTS** plaintiff's motion but appoints the clerk of court to act as elisor in this matter, to complete and sign the deed, and any other documents necessary to complete the terms of the settlement agreement. This Order supersedes the Court's previous order appointing Mr. Abdallah as elisor. Plaintiff is required to contact the Court CEO inn advance to schedule an appointment for the signing of documents and also must bring a notary public to the Court for any such signing appointment.

The clerk shall provide notice of this ruling to the parties forthwith. Plaintiff to submit a formal Order complying with Rule 3.1312 in conformity with this Ruling.

[1] "An elisor is a person appointed by the court to perform functions like the execution of a deed or document. (*Blueberry Properties, LLC. V. Chow* (2014) 230 Cal.App.4th 1017, 1020.)

TAYLOR, et al v RITCHIE

25CV47902

PLAINTIFFS' MOTION TO COMPEL RESPONSES TO FORM INTERROGATORIES

This case involves a property dispute between Plaintiffs Kelly and Matthew Taylor ("Plaintiffs") and Lee (aka Lavina) Richie ("Defendant.")

Now before the Court is Plaintiff's motion to compel responses Form Interrogatories (General), Set One ("FROGS.") Plaintiff also seeks sanctions. The motion is unopposed.

I. Procedural History

On September 15, 2025, Plaintiffs propounded FROGS on Defendant. (Declaration of Justin Swierczek ("Swierczek Decl.") ¶ 3, Ex. A.) Responses were due thirty-five days thereafter, on October 20, 2025. (Code Civ. Proc. § §2030.260(a) and 1013(a).) As of the filing of the Motions on November 5, 2025, Defendant had not responded. Defendant has, however, filed her own discovery propounded on Plaintiffs – a meaningless filing for the Court absent any associated motion.

II. Legal Standard and Discussion

Pursuant to Cal. Code Civ. Proc. § 2030.290, if a party to whom interrogatories are directed fails to serve a timely response, then:

> (a) The party to whom the interrogatories are directed waives any right to exercise the option to produce writings under Section 2030.230, as well as any objection to the interrogatories, including one based on privilege or on the protection for work product under Chapter 4 (commencing with Section 2018.010). The court, on motion, may relieve that party from this waiver on its determination that both of the following conditions are satisfied:

(1) The party has subsequently served a response that is in substantial compliance with Sections 2030.210, 2030.220, 2030.230, and 2030.240.

(2) The party's failure to serve a timely response was the result of mistake, inadvertence, or excusable neglect.=

A party moving to compel initial responses under these sections is not required to meet and confer. (*Sinaiko Healthcare Consulting, Inc. v. Pacific Healthcare Consultants* (2007) 148 Cal.App.4th 390, 411.)

Plaintiffs properly served Defendant with the discovery Motion via U.S. mail. Defendant has failed to provide responses to the discovery. Nor has Defendant filed an opposition to the Motion.

Accordingly, Plaintiff's Motion to compel responses to the FROGS is **GRANTED**. Defendant is ordered to provide verified, code-compliant responses within fifteen (15) days of this Order, without objections.

B. Sanctions

Plaintiffs seek sanctions related to Respondent's failure to provide responses to discovery.

Pursuant to Code Civ. Proc. section 2033.2030(a), the Court may impose sanctions for the failure to respond to discovery requests as a misuse of the discovery process. The Court may impose sanctions even where there has been no opposition filed. (Cal. Rule of Court 3.1348.)

Plaintiffs seek $1,360 in sanctions. Plaintiffs' counsel avers that he spent one hour at $260 researching and preparing the instant motion. He avers that he anticipated spending four additional hours preparing a reply and attending the hearing. As the motion was unopposed, Plaintiffs' counsel did not incur four hours in responding, and given this Court's tentative ruling system likely will not have to prepare for a hearing in this matter. Accordingly, the Court finds one hour in fees to be appropriate, plus the amount of the filing fee for the motion ($60).

The Motion for Sanctions is **GRANTED**. Defendant is ordered to pay **$320 in sanctions** for the discovery abuses.

The clerk shall provide notice of this ruling to the parties forthwith. Plaintiffs to submit a formal Order complying with Rule 3.1312 in conformity with this Ruling.

SANDERS v LUHRASSEBI, et al

25CV48201

DEFENDANTS' DEMURRER TO SECOND AMENDED COMPLAINT

Lynne Sanders ("Plaintiff") filed her Complaint arising out of allegations of predatory lending against Loancutters, Inc. dba Evoque Lending ("Evoque"), Mehdi Luhrassebi ("Luhrassebi"), Frank Ortiz ("Ortiz"), Lee Kulick ("Kulick"), and Pasquale Chiechi and Antonia Chichi as Co-Trustees of the Chiechi Family Trust dated February 4, 1993 ("Lenders.")

Now before the Court is a demurrer to the second through fifth causes of action in the Second Amended Complaint ("SAC") brought by Evoque, Luhrassebi, and Kulick (collectively "Evoque Defendants"). The motion is unopposed.

I. Facts

Evoque is a residential mortgage and/or private money-lending corporation primarily engaged in commercial and residential lending. (SAC ¶ 23.) Luhrassebi is believed to be the sole officer of Evoque and acts as its CEO, Secretary, CFO, and agent of service of process. (*Id*. ¶ 24.) Kulick is a senior loan consultant for Evoque and is alleged to have acted as an agent for Evoque. (*Id.* ¶ 26.)

Plaintiff has lived in the home located at 632 HWY 4, Murphys, CA 95237 (the "Property") since 1996 (SAC ¶ 2.) In 2022, Plaintiff began to suffer financial difficulties. At that time, however, she did not have a mortgage (having previously paid it off entirely), her credit score was 579, and she had a monthly income of $1,300.00. (*Id.* ¶ 4.) Because she had been receiving advertisements from Evoque for some time, Plaintiff reached out to them regarding the possibility of a personal loan. (*Id*. ¶ 5.) Plaintiff was informed by Evoque's agents that her credit score did not matter and that the loan would fund quickly. (*Ibid*.)

Plaintiff filled out the necessary loan forms and accurately listed her occupations over the last ten years as follows: "a housekeeper for one year, a server for the 3 years before that, and bartender for over 20 years before that." (SAC ¶6.) Plaintiff alleges that she was very clear with Evoque's agents that the purpose of any loan was personal and

had nothing to do with starting or operating a business. (*Id*. 40.) Nonetheless, Plaintiff alleges that she was repeatedly instructed to sign paperwork representing that the Loan was for business purposes, such as advertising and supplies, and that it was for the purpose of a non-existent company called "Lynn Sanders Housekeeping Services." (*Id*. ¶¶ 7, 39.) At the same time, Plaintiff alleges that her monthly income was fraudulently changed on the form from $1300 to $1800. (*Id*. ¶ 9.) Other forms filled out apparently on her behalf also contained false information. (*Ibid*.)

In September of 2022, Plaintiff was offered a commercial bridge loan ("Loan.") (SAC ¶ 43.) Though structured as a commercial loan, the Loan was secured by a Deed of Trust by the Lenders on the Property. Plaintiff alleges that the Lenders are the beneficiaries of the Loan. (*Ibid*.) Evoque is alleged to have acted as a dual agent for both Plaintiff and the Lenders. (*Id*. ¶ 41.)

The Loan was structured as a commercial, interest-only, hard money loan, with a principal amount of $115,000 and an initial rate of 9.99%. (SAC ¶ 43.) In the event of a payment made later than the 10th calendar day of any month, an additional late penalty of 10% would be added that that payment. In the event of default, the interest rate would rise an additional 7%. (*Ibid*.) The Loan had a 6-month prepay and Plaintiff was charged $5,744.28 "prepaid" at origination. The Loan terms would conclude with a balloon payment of less than five years, due on December 31, 2024, and had a late charge of 10% of entire original loan balance if delinquent more than 10 days. (*Ibid*.) In total, Plaintiff was required to pay $16,849 in fees in connection with the Loan to the Evoque and $8,603.52 in fees to other parties, including Lender Defendants. (*Ibid*.)

Plaintiff alleges that Evoque Defendants were aware that she did not have sufficient earning power to make the necessary payments on the defined Loan terms. (SAC ¶ 48). She alleges that they seized the opportunity and fraudulently mischaracterized the Loan as a "non-consumer fiduciary loan." (*Ibid*.)

Plaintiff made a consistent and good faith effort to meet her loan obligations by making twenty-one interest-only payments totaling $14,475.32 between 2023 and 2024. (SAC ¶ 55.) However, by November 2024, Plaintiff was receiving notices that she was not only overdue on her Loan but that she accrued numerous other fees. (*Id.* ¶ 56.) On December 31, 2024, the loan maturity date, the balloon installment of interest became due and payable. Plaintiff received a statement demanding a balance of $123,779.11. To date, Plaintiff now owes a total of $126,806.24, more than the actual loan amount itself. (*Ibid*.)

In February 2025, Plaintiff received a notice from FCI Lender Service, Inc., the Lenders' authorized servicing agent, instructing her to pay the balance due, $126,020.13 by March 29, 2025, or risk foreclosure of her home. (SAC ¶ 18.)

II. Legal Standard

"A demurrer tests the sufficiency of a complaint and admits all facts properly pleaded." (*Setliff v. E.I.Du Pont de Nemours & Co.* (1995) 32 Cal. App. 4th 1525, 1533.) The court assumes the truth of the allegations asserted but does not assume the truth of "contentions, deductions, or conclusions of law." (*California Logistics, Inc. v. State of California* (2008) 161 Cal. App. 4th 242, 247.) The court can further look at those facts that "reasonably can be inferred from those expressly pleaded, and matters of which judicial notice has been taken." (*Fremont Indemnity Co.,* 148 Cal. App. 4th 100, 111.) In considering the demurrer, the court must accept the allegations set forth in the complaint as true. (*Serrano v. Priest* (1971) 5 Cal.3d 584, 591.)

As against the Evoque Defendants, Plaintiff brings causes of action for declaratory relief (causes of action two and three), breach of fiduciary duty (fourth cause of action), and violation of unfair competition law (fifth cause of action).

III. Discussion

Evoque Defendants demur to the second through fifth causes of action on the grounds that Plaintiff's complaint is barred by the statute of limitations set forth in Code Civil Procedure section 340. First, Evoque Defendants assert that despite their labels, all claims are basically claims for violation of Financial Code section 4970, et seq. Evoque Defendants argue that all predatory lending claims must be brought within one year from when the cause of action accrues. (CCP § 340; *Matlock v. J.P. Morgan Chase Bank, N.A.* (July 9, 2014,) 2014 Cal.App.Unpub.LEXIS 4820.0 No. B246823.) Evoque Defendants assert that the claims are barred because Plaintiff entered into the Loan in 2022.

"A plaintiff must bring a claim within the limitations period after accrual of the cause of action. In other words, statutes of limitation do not begin to run until a cause of action accrues. Generally speaking, a cause of action accrues at the time when the cause of action is complete with all its elements." (*V.C. v. Los Angeles Unified School Dist*. (2006) 139 Cal.App.4th 499, 509-510, internal citations and quotation marks omitted.) Though generally a factual issue, the statute of limitations can be subject to demurrer if the

pleading clearly shows that the statute has expired. (*Fuller v. First Franklin Financial Corp*. (2013) 216 Cal.App.4th 955, 962.) However, when the relevant facts do not clearly and affirmatively show that the claims are time-barred, the demurrer will be overruled. (*Schmier v. City of Berkeley* (2022) 76 Cal.App.5th 549, 554.) When evaluating whether a claim is time-barred, a court must determine (1) which statute of limitations applies and (2) when the claim accrued. (*E-Fab, Inc. v. Accountants, Inc. Services* (2007) 153 Cal.App.4th 1308, 1316.)

The second cause of action for declaratory relief seeks to void the Loan on the grounds that it was a consumer loan, not a commercial loan, and therefore subject to the protections found in the consumer predatory lending laws. Because this cause of action clearly is predicated on the consumer lending laws, it is subject to the one-year statute of limitations and is barred. The demurrer as to the second cause of action is sustained, with leave to amend.

The third cause of action for declaratory relief seeks to void the Loan on the grounds that it is unconscionable. Pursuant to this cause of action, Plaintiff seeks to void the contract on the grounds that it was both procedurally and substantively unconscionable. **"**Procedural unconscionability focuses on oppression or unfair surprise." (*Sanchez v. Western Pizza Enterprises, Inc.* (2009) 172 Cal. App. 4th 154, 171.) Substantively unconscionable terms are those that "contravene the public interest or public policy" or attempt to impermissibly alter fundamental legal duties. (*OTO, L.L.C. v. Kho* (2019) 8 Cal.5th 111, 126.) The "substantive element concerns whether a contractual provision reallocates risk in an objectively unreasonable or unexpected manner." (*Mayers v. Volt Mgmt. Corp*. (2012) 203 Cal.App.4th 1194, 1205.) The SAC alleges that the Loan was unconscionable because it contained unfair terms that reallocated risk in an unexpected manner (substantive unconscionability) and did so through unfair surprise (procedural unconscionability). As pleaded, the alleged unfairness of the process leading up to the signing of the Loan, as well as the terms itself, are not dependent upon the protections found in the predatory lending law. Accordingly, at this juncture, the Court cannot find with certainty that the statute of limitations bars this claim. Thus, the demurrer to the third cause of action is overruled.

Likewise, the fourth claim for breach of fiduciary duty is independent of the obligations found in the consumer lending laws. First, the allegations are that the Loan was purposefully made as a commercial loan, rather than a consumer one, specifically to avoid the confines of those legal protections. Second, the allegations are premised not on the consumer lending laws, but rather on the statute setting forth the fiduciary duties owed by mortgage brokers to their clients. (Civil Code § 2923.1.) The statute of limitations for breach of fiduciary duty is three or four years – depending on whether the breach was fraudulent or not. (*American Master Lease LLC v. Idanta Partners, Ltd.*

(2014) 225 Cal.App.4th 1451, 1479.) Accordingly, the fourth cause of action is not time-barred and the demurrer is overruled.

The fifth cause of action alleges violations of unfair competition law (Cal. Bus. Prof. Code § 17200, et seq.) The California unfair competition law (UCL) (§ 17200) defines "'unfair competition' as 'any unlawful, unfair or fraudulent business act or practice and unfair, deceptive, untrue or misleading advertising.'" (*Graham v. Bank of America*, *N.A.* (2014) 226 Cal.App.4th 594, 609.) Here, Plaintiff alleges that Evoque Defendants engaged in fraudulent tactics to lure consumers into unfair commercial business loans through deception, in a distinct effort to avoid the more consumer-protective laws. That is, the allegedly unfair acts were not violations of the predatory lending laws, but rather the intentional act of leading consumers into fraudulently-derived commercial loans. As pleaded, the alleged unfairness of the process leading up to the signing of the Loan, as well as the terms themselves are not dependent upon the protections found in the predatory lending law. Accordingly, at this juncture, the Court cannot find with certainty that the statute of limitations bars this claim. Thus, the demurrer to the fifth cause of action is overruled.

The demurrer is **SUSTAINED, with** leave to amend as to Plaintiff's **second** cause of action. The demurrer is **OVERRULED** as to Plaintiff's **third, fourth, and fifth** causes of action.

The clerk shall provide notice of this ruling to the parties forthwith. Evoque Defendants to submit a formal Order complying with Rule 3.1312 in conformity with this Ruling.