

VINC PROPERTIES, LLC. v GREG BISHOP

25UD15165

DEFENDANT GREG BISHOP'S DEMURRER TO PLAINTIFF'S COMPLAINT

On April 29, 2025, plaintiff filed a complaint against defendant alleging an Unlawful Detainer. On May 21, 2025, Defendant filed a demurrer to the complaint. For the reasons discussed below, defendant's demurrer is overruled.

The case involves a landlord-tenant dispute between a Limited Liability Company as owner of the mobilehome park, and a mobilehome-owning tenant who rents a lot at the park. As owner of the mobile home park, plaintiff alleges grounds for an eviction, that the defendant failed to timely pay rent and multiple violations of park rules related to a guest policy and a home and space maintenance policy. Three termination notices with proof of service are attached to the complaint.

Defendant's demurrer presents three grounds: (1) that the complaint is unclear and uncertain pursuant to Code of Civil Procedure § 430.10(f), due to multiple termination notices; (2) that no cause of action exists because plaintiff refused to accept timely tender of rent; and (3) that no cause of action exists because the termination notices fail to comply with Mobilehome Residency Law (Civil Code §§ 798 et seq).

Taking each of defendant's claims in turn:

(1) The complaint is unclear and uncertain pursuant to Code of Civil Procedure § 430.10(f).

Defendant's demurrer on the ground that the complaint is unclear as to which termination notice is the basis for the unlawful detainer is **OVERRULED**.

A complaint in unlawful detainer action must set forth facts on which plaintiff predicates his right to recover. (*Hinman v. Wagnon* (1959), 172 Cal. App. 2d 24). Plaintiff's termination notices attached to the complaint suffice. The fact that there is more than one termination notice does not render the complaint unintelligible. Defendant can reasonably be expected to respond to each termination notice. No authority was provided supporting the position that the use of multiple termination notices in a single complaint makes the complaint defective. Code of Civil Procedure § 1166(d)(1) explicitly contemplates multiple termination notices in a single complaint by referring to termination notices in plural form: "A copy of the notice or *notices* of termination served on defendant upon which the complaint is based." (italics added).

(2) No cause of action exists because plaintiff refused to accept timely tender of rent.

Defendant's other contention, that plaintiff refused to accept timely tender of rent, is also **OVERRULED**.

A demurrer does not challenge the truthfulness of allegations in a pleading; quite the contrary, it assumes all facts pleaded are true, no matter how improbable. (*Serrano v. Priest* (1971) 5 Cal. 3d 584, 591). A sufficient factual basis alleging failure to pay rent is on the face plaintiff's complaint and the attached termination notice, which includes the amount of rent due and when it became delinquent. Defendant disputes a question of fact here, which cannot be resolved by demurrer. In ruling on a demurrer, a Court must accept as true all the allegations of fact contained in the complaint and ignore contrary allegations. (*Sheehan v. San Francisco 49ers, Ltd.* (2009) 45 Cal 4th 992, 998; *Childs v. State* (1983)144 Cal.App.3rd 155, 159).

(3) No cause of action exists because the termination notices fail to comply with Mobilehome Residency Law (Civil Code §§ 798 et seq).

Defendant's third contention that the complaint fails to state a cause of action because the termination notices fail to comply with Mobilehome Residency Law, resulting in an incurable defect to the complaint, is **OVERRULED**.

Code of Civil Procedure § 1166(d)(1) requires that in an action regarding residential property, the plaintiff shall attach to the complaint "A copy of the notice or notices of termination served on defendant upon which the complaint is based." All three termination notices state a ground for termination under Civil Code § 798.56: under subdivision (d) for failure of the resident to comply with a reasonable rule or regulation of the park that is part of the rental agreement; and under subdivision (e), for failure to pay rent.

Defendant's motion states that defendant did not receive the 7-day notice to cure a park rule violation, as required by Civil Code § 798.5(d). Defendant is again disputing a factual issue through a demurrer. The two termination notices attached to the complaint provide dates that defendant was served a "citation" for the park rule violations and provides detail as to what park rule was violated. On the face of the termination notices, there is sufficient evidence of compliance with Civil Code § 798.5(d), as there was notice of a violation and more than seven days until the termination notice was served.

The question the Court will also address, tangentially raised by defendant, is whether the 7-day notice required by Civil Code § 798.56(d), i.e. notice of an alleged rule or regulation violation, and the opportunity to cure within seven days, is a mandatory notice within the meaning of Code of Civil Procedure § 1166(d)(1). The Court is not aware of any authority addressing this narrow

issue, and none has been provided by the parties. Nothing in Code of Civil Procedure § 1166(d)(1) or Civil Code § 798.56(d) would lead to the conclusion that a copy of the 7-day notice is an essential element of the complaint, such that the lack of inclusion would be a fatal defect. The statute does not authorize concurrent service of both notices, meaning park management must wait the full seven days before serving the 60-day termination notice. (See *Simandle v. Vista de Santa Barbara Assocs., LP* (2009) 178 Cal.App.4th 1317, 1322). This strongly suggests that these are two separate and distinct documents with different purposes.

The Court must overrule a demurrer if the allegations of the complaint adequately state a cause of action under *any legal theory*. [italics added] (*Cellular Plus, Inc. v. Superior Court* (1993) 14 Cal.App.4th 1224, 1231). Therefore, under the liberal standard in the construction of pleadings (see CCP § 452), since the dates of the notices of park rule violations appear to be referenced in the termination notice, plaintiff is not precluded from bringing a cause of action here without a copy of those 7-day notices included with the complaint.

Based on the foregoing, defendant's demurrer is **OVERRULED**. Pursuant to Code of Civil Procedure § 1167.3, defendant has five days to file an answer to the complaint. The clerk shall provide notice of this ruling to the parties. Plaintiff to prepare a formal order.