

LOHRE v ARIZA

25UD15569

DEFENDANT HELEN ARIZA'S MOTION TO QUASH UNLAWFUL DETAINER

Defendant Helen Ariza brings a "Motion to Quash Unlawful Detainer of Jack A. Lohre." It begins by discussing some ownership issues of the mobile home park where the mobile home at issue is stationed, and problems with the service of the 60-day Notice to Quit. She makes no mention or challenge related to the service of the Complaint and Summons and the Court's personal jurisdiction over her, subjects of a typical Motion to Quash Service. Given Ms. Ariza's status as a self-represented litigant and because the motion challenges the allegations of the complaint as legally insufficient to support an Unlawful Detainer, the court will liberally construe this motion as a demurrer.

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). 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). The Court must overrule a demurrer if the allegations of the complaint adequately state a cause of action under any legal theory. (*Cellular Plus, Inc. v. Superior Court* (1993) 14 Cal.App.4th 1224, 1231).

Defendant disputes questions of fact here, including service of the Notice to Quit, which cannot be resolved by demurrer. Assuming the facts plead as true, the verified complaint states a proper cause of action for an Unlawful Detainer, alleging plaintiff's ownership of the property, a lease, personal service of a Notice to Quit and a 60-day Notice to Quit attached, and continued possession of the property, the elements of an Unlawful Detainer. Factual disputes and other legal arguments are proper subjects for a trial.

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.