

GUARANTY HOLDINGS OF CALIFORNIA, INC. v CATTANEO

20CV44713

PLAINTIFF'S MOTION FOR TRIAL SETTING PREFERENCE

This case involves a landlord-tenant dispute over the condition of the residence after being surrendered back to the homeowner. At the core of the dispute is Defendants' removal of a floating boat dock and other items on the property owned by Plaintiff Guaranty Holdings of California, Inc ("GHOC"). The original complaint was filed on May 19, 2020. On May 12, 2023, the Court granted GHOC's Motion to Amend Complaint and the First Amended Complaint (FAC) was filed on May 27, 2023, setting the parameter of the pleadings (although there were subsequent cross-complaints and answers thereto, as these were for indemnity and contribution they did not materially affect the ability of the parties to complete discovery and seek to have trial set well before the application in March 2025. (In fact, the parties engaged in a private mediation in 2023, further reflecting when the issues were framed for trial.)

Now before the Court is GHOC's motion to specially set the matter for trial before expiration of the 5-year statute under Code of Civil Procedure section 583.310.

Defendants Christopher Dufresne and Dan Holman have each filed an opposition to the motion. Plaintiff's requests for judicial notice ("RJN") are unopposed and granted. However, the Court notes it only judicially notices the existence of the document, not the truth of the contents. (*Sosinsky v. Grant* (1992) 6 Cal.App.4th 1548, 1565.)

I. Legal Standard

Code of Civil Procedure section 583.310(a) provides that "an action shall be brought to trial within five years after the action is commenced against the defendant." Subsection (b) provides that the requirement of dismissal is mandatory and "not subject to extension, excuse, or exception except as expressly provided by statute."

Code of Civil Procedure section 36(e) states:

Notwithstanding any other provision of law, the court may in its discretion grant a motion for preference that is supported by a showing that satisfies the court that the interests of justice will be served by granting this preference.

If the court grants a motion for trial preference under CCP § 36(e), then it must set trial “not more than 120 days from that date and there shall be no continuance beyond 120 days from the granting of the motion for preference except for physical disability of a party or a party’s attorney, or upon a showing of good cause stated in the record.” (CCP § 36(f).)

A motion for preferential trial setting raises the same issues for the trial court as a motion to dismiss for failure to prosecute. (*Wilson v. Sunshine Meat Liquor Co.* (1983) 34 Cal.3d 554, 561.) The *Wilson* court further stated:

In passing upon a motion for an early and preferential setting, the court was not limited to a consideration of the single fact that the five-year period was about to expire but was required to view the total picture, including the dilatory action of the plaintiff, the condition of the court’s calendar, the rights of other litigants, and the prejudice to the defendant resulting from the delay. (*Wilson, supra* 34 Cal.5d at 561.)

Finally, “while the interests of justice weigh heavily against disposing of litigation on procedural grounds . . . that policy will necessarily prevail only if a plaintiff makes some showing of excusable delay.” (*Salas v. Sears* (1986) 42 Cal.3d. 342, 346.)

II. Analysis

The Complaint was originally filed on May 19, 2020, meaning that a trial date needed to commence within five years or by May 19, 2025. GHOC therefore requests that a trial date be set before May 19, 2025 or, in the alternative, that the Court extend the statutory five year deadline by excluding time during which bringing the trial was “impossible, impracticable, or futile despite the plaintiff’s reasonable diligence.” (Code Civ. Proc., § 583.340, subd. (c).) At the outset, the Court finds that there were no circumstances presented which made bringing the matter to trial impossible, impracticable or futile. Therefore the core issue is whether plaintiff has made a sufficient showing of *excusable* delay.

First, GHOC argues that the motion should be granted because it has not been dilatory. In support of this argument, GHOC provides the following facts. GHOC’s current counsel did not start representation of GHOC until approximately six months after the Complaint was filed. (Declaration of Matthew J. Weber (“Weber Decl.”) ¶ 3.) All GHOC’s

noticed depositions were completed by January 2023. (*Id.* ¶ 5.) Thereafter, some discovery was conducted and the parties engaged in discussions about postponing dispositive motions until after settlement attempts. (*Id.* ¶¶ 12-13.) When the mediation was ultimately unsuccessful, certain defendants filed a demurrer and motion to strike which were denied, with prejudice, on May 30, 2024. (*Id.* ¶ 22.) GHOC further notes there was a delay in filing and responding to the demurrer due to a serious medical condition suffered by defense counsel. (Declaration of Kevin J. Rooney (“Rooney Decl.”) ¶¶ 4,5.) GHOC points out that it has consistently filed Case Management Statements and alerted the Court and parties to the need for a trial date. GHOC also alleges Defendant Holman did not file an Answer to the FAC until March 11, 2025, but this is incorrect as the Court’s file reflects this answer was filed 1/12/24, at which time all parties were involved.

In opposition, Defendant Dufresne argues that GHOC has been dilatory, and points that GHOC waited until 59 days before the five-year trial deadline to move for trial preference. Defendant Holman further points out that any delays in setting the matter for trial or moving the case along could have been remedied by GHOC expeditiously dismissing, as the Court had ordered, any remaining non-answering Defendants (ie., the Resort at Lake Tuloch, LLC (“Resort Defendant”) and James Giambi.) GHOC failed to do so, however, until January of 2024. Holman argues that there was no reason GHOC could not have moved to set a trial date at that time, rather than waiting until so close to the five year deadline to so move.

The Court finds that, under the circumstances, that GHOC was somewhat dilatory in seeking a trial date. Where plaintiff “has diligently prosecuted his action up to the point of the motion for trial preference, denial of that motion may constitute an abuse of discretion.” (*Dick v. Superior Court* (1986) 185 Cal.App.3d 1159, 1165.); here the Court finds that under the totality of the circumstances, GHOC has been dilatory in prosecuting this action to provide sufficient basis to exercise discretion in denying the present motion.

GHOC also argues that there will be no prejudice to the Defendants if the trial is set before May 2025. GHOC points out that the parties attended mediation in 2023 and that the Defendants did not represent that they needed more time to prepare for that or trial. In addition, GHOC states that all defendants, “as early as April 2022, indicated that this matter would be ready for trial ‘within 12 months.’” (Weber Decl. ¶ 28, Ex. 22. 24-25.) While plaintiff makes this argument in support of the request for trial preference, the same facts are at least equally a basis for denial – plaintiff could have put forth this same facts and sought trial setting over a year prior to actually doing so.

Finally, GHOC argues that the Defendants could alleviate any prejudice from an immediate trial date but stipulating to extend the trial date to a more convenient time.

In contrast, Defendant Dufresne argues that he will be extremely prejudiced if he is forced to go to trial in the next one or two months. Counsel for Dufresne practices in a small, four-attorney firm, with the two primary attorneys competent to handle this case in a three week trial starting May 6, 2025. (Declaration of Drexwell M. Jones (“Jones Decl.”) ¶¶ 3-4.) Mr. Jones avers that it is not possible for his firm to represent Mr. Dufresne at a trial set only weeks away. Further, Dufresne joins Holman’s argument that there is still significant discovery to be completed that will not be able to happen before a trial date in May 2025.

The Court agrees that there is significant prejudice to the Defendants in forcing a trial upon them within the next six weeks.

The final statutory factor to be considered in ruling on plaintiff’s motion is the condition of the court’s calendar. The Court is in a similar, if not even more extreme position, the counsel for defendant Dufresne. Calaveras County’s Superior Court consists of two judges, each handling over ten (10) distinct calendars every week. Any trial estimated to last three or more days requires this Court to find a suitable and willing assigned Judge. The CMC Statements in this case have estimates ranging from 3 to 10 days. Granting plaintiff’s motion, even if the Court was able to obtain the services of an assigned judge would also be asking that preference be given to this matter over all scheduled felony jury trials, contrary to their having statutory preference over a civil matter.

Ultimately, the decision to grant or deny a motion under section 36(e) rests in the discretion of the trial court. Under the circumstances, although the Court is well-aware of the strong preference for disposing of matters on their merits, rather than technicalities, all factors weigh against granting plaintiff’s motion..

Based on the foregoing, Plaintiff’s Motion for Trial Preference is **DENIED**.

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

**JAMI DICK, an individual dba JBD CONSTRUCTION, et al v.
LISA SAHLMAN, an individual**

24CV47140

**DEFENDANT U.S. BANK, N.A.'S MOTION FOR INTERPLEADER AND
REQUEST FOR ATTORNEY'S FEES**

This action arises out of a construction project dispute between Jami Dick dba JBD Construction and Rod Scott ("Plaintiffs"), on the one hand, and Lisa Sahlman and Milton Brown ("Defendants"). Defendant U.S. Bank National Association ("U.S. Bank") is the lender of the construction funds used to finance the construction project at issue in the lawsuit. U.S. Bank is a nominal defendant as there are no claims being made against it in the lawsuit.

Now before the Court is a Motion for Interpleader brought by U.S. Bank seeking a Court order to interplead the Funds, discharge U.S. Bank from any liability with respect to the Funds, dismiss U.S. Bank from this action, and award \$1,000 in attorney's fees.

Defendant's motion fails to comply with Local Rule 3.3.7. All matters noticed for the Law & Motion calendar shall include the following language in the notice:

3.3.7 Tentative Rulings (Repealed Eff 7/1/06, As amended 1/1/18) All parties appearing on the Law and Motion calendar shall utilize the tentative ruling system. Tentative Rulings are available by 2:00 p.m. on the court day preceding the scheduled hearing and can be accessed either through the court's website or by telephoning 209-754-6285. The tentative ruling shall become the ruling of the court, unless a party desiring to be heard so advises the Court no later than 4:00 p.m. on the court day preceding the hearing including advising that all other sides have been notified of the intention to appear by calling 209-754-6285. Where appearance has been requested or invited by the Court, all argument and evidence is limited pursuant to Local Rule 3.3. All matters noticed for the Law & Motion calendar shall include the following language in the notice:

Pursuant to Local Rule 3.3.7, the Court will make a tentative ruling on the merits of this matter by 2:00 p.m. the court day before the hearing. The complete text of the tentative ruling may be accessed on the Court's website or by calling 209-754-6285 and listening to the recorded tentative ruling. If you do not call all other parties and the Court by 4:00 p.m. the

court day preceding the hearing, no hearing will be held and the tentative ruling shall become the ruling of the court [emphasis in original.]

Failure to include this language In the notice may be a basis for the Court to deny the motion.

Additionally, the motion is not supported by an affidavit or declaration as required in Code Civil Procedure section 386.5(b).)

Accordingly, the motion is **DENIED**, Without prejudice to refile an appropriate motion.

The Clerk shall provide notice of this Ruling to the parties forthwith. No further formal order is required.