

ARIZA v. LAKESIDE VENTURES, LLC, et al.

22CV46059

PLAINTIFF'S APPLICATION FOR ORDER PREVENTING THE EVICTION AND COLLECTION OF RENTS BY BONNIE K. TUCKERMAN-AHO SCOTT NORDYKE AND ARTHUR TRILLO

Plaintiff is before the court in essence requesting a preliminary injunction. This Court on January 26, 2024, partially granted and partially denied a preliminary injunction to defendants to clarify a situation of plaintiff representing herself as the owner of the Lakeside Mobile Home Estate ("Park") and operating its business affairs. This Court intended to have the defendants operate the entire Park when it granted the bulk of their request for an injunction.

Plaintiff now requests the inverse. She seeks to enjoin defendants from operating and managing the Park. She wants control of the Park, or a portion of the Park, before this court has determined whether she has this right.

REQUESTS FOR JUDICIAL NOTICE

Each party is asking the Court to take judicial notice and consider various court documents that support their respective positions.

Regarding the "Request For Judicial Notice in Support of Defendants Scott Nordyke and Arthur Trillo's Opposition to Helen Ariza's Motion for Preliminary Injunction":

1. The court DENIES Judicial Notice of this court's earlier Tentative Ruling issued on or about January 18, 2024 – this is a procedural tool used to expedite law and motion hearings; but
2. The court GRANTS Judicial Notice of the Order of this Court granting the Preliminary Injunction to Nordyke and Trillo in this matter issued on January 26, 2024.

Requests For Judicial Notice in Opposition of Defendants are ruled on as follows:

1. The court DENIES Judicial Notice of the "Indirect Contempt of Court filed on April 5, 2024", allegations and facts are in dispute;
2. The court GRANTS Judicial Notice of the Order issued on January 26, 2024;
3. The court DENIES Judicial Notice of the "Grant Deed for Glencoe Property APN 014-006-025-000" as facts are in dispute;

4. The court DENIES Judicial Notice of the “Quitclaim deed transfer from Lakeside Ventures, LLC. to Bonnie K. Hurley formerly Bonnie K. Tuckerman-Aho” facts are in dispute;
5. The court DENIES Judicial Notice of the “SEVEN-DAY NOTICE TO PAY OR QUIT, 60-DAY NOTICE TO REMOVE YOUR MOBILE HOME FROM THE PARK, 60-DAY NOTICE TERMINATING TENANCY” allegations and facts are in dispute;
6. The court DENIES Judicial Notice of the “Unlawful Detainers were given to the following tenants. Tari Sweet, case no. 23UD14367, Shannon Rafferty, case no. 24UD14422, Yvonne Slater, case no. 24UD14423 (sic)” allegations and facts are in dispute; and
7. The court DENIES Judicial Notice of the “Casher's Check issued to Scott Nordyke on April 14, 2024, for the amount of \$7,000.00 as this is not a “Knowable Facts Subject to Judicial Notice.

Facts in the judicial record that are subject to dispute, such as allegations in affidavits, declarations, and probation reports, are not the proper subjects of judicial notice even though they are in a court record. (*Richtek USA, Inc. v uPI Semiconductor Corp.* (2015) 242 Cal.App.4th 651, 659.) Judicial notice is not the proper method for the introduction of these documents.

PLAINTIFF'S APPLICATION FOR ORDER PREVENTING THE EVICTION AND COLLECTION OF RENTS

The current matter and what it seeks is not exactly clear. It appears plaintiff is asking the court to prevent defendants from collecting rent, managing the Park, and proceeding with evictions in relevant cases. In other words, plaintiff is seeking a competing injunction.

In order to have prevailed on their earlier request for a preliminary injunction, defendants had to prove two things: (1) the likelihood that they would prevail on the merits of the case, and (2) the interim harm to the parties involved if the court granted or denied an injunction. They met their burden on both counts and the Court granted an injunction. (*McCann v. City of San Diego* (2021) 70 Cal. App. 5th 51.)

Preliminary injunctions come in two forms: prohibitory and mandatory. A prohibitory injunction requires a person to stop a specific act, while a mandatory injunction compels the performance of an affirmative act that changes the parties' positions. (*Davenport v. Blue Cross of California* (1997) 52 Cal.App.4th 435, 446-447.) Courts rarely grant mandatory injunctions and scrutinize them more strictly than prohibitory injunctions. The moving party must demonstrate that it's an extreme case and that the right to the injunction is clearly established. (*Teachers Inc. & Annuity Ass'n. v. Furlotti* (1999) 70 Cal.App.4th 1487.)

The January 26, 2024, Order did not discuss the distinction between types of injunctions because the parties did not argue or brief it; however, the court refrained from ordering plaintiff “to do” certain items 10 and 11, i.e., a mandatory injunction was not issued.

This Court's intent was to allow defendants to operate the entire Park when it granted their request for an injunction. The denial of items 9 through 13 was not intended to limit the power of defendants to take all necessary actions to manage the Park; rather, the court held its injunction granting "**items (1) through (8) will allow defendants to operate the Park pending resolution of this litigation.**" (January 19, 2024, Ruling, emphasis added.) The court has already decided that defendants are likely to prevail in this lawsuit and would suffer harm in the absence of an injunction. Requested items 9, 12 and 13 were deferred and will be addressed as an ultimate matter of damages.

The Court **DENIES** Plaintiff's Application for Order Preventing the Eviction and Collection of Rents.

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

GENESIS PVB, LLC v. GRAFER, et al

18CV43485

CROSS-COMPLAINANTS' MOTION FOR PREFERENCE IN TRIAL SETTING, and DEFENDANT/CROSS-COMPLAINANTS' MOTION FOR MANDATORY DISMISSAL PURSUANT TO CCP § 583.310 OF SECOND AMENDED COMPLAINT

The court summarized the torturous procedural history in this matter in the recent minute order from a vacated March 11, 2024, Settlement Conference. The court re-asserts relevant portions of the summary:

* The original Complaint was filed [Aug. 13, 2018] by Attorney Amanda Potier on behalf of Plaintiffs Genesis PVB; 3NT Management, LLC; and Craig Bordon.

* A Demurrer to the Second Amended Complaint, was partially sustained and partially overruled. Attorney Jasun Molinelli of Hanson Bridgett LLP filed an Answer, for Defendants George Grafer; Raquel Grafer; George 7820, LLC; George 7820, Inc.; Raquel 1331, LLC; and Two Grafers Management, LLC [May 23, 2019].

* A Cross complaint was filed [May 23, 2019] on behalf of George Grafer against Genesis PVB, LLC, 3NT Management, LLC; Craig Bordon and Nickitas Panayotou.

* Motion to transfer from Marin County to consolidate is granted. Court notes that the Order was filed by Mr. Molinelli, who had substituted out. [Complaint in Marin case was filed Nov. 16, 2018.]

* Attorney David Furtado had his 3rd Amended motion to withdraw as counsel granted and Attorney Michael Creamer is representing Mr. Bordon. [Sept. 15, 2023.]

* Cross-Complaint names Nickitas Panayotou, who has never appeared or been dismissed, so Court determines case is not at issue and vacates Mandatory Settlement Conference and instead puts matter back on for case management.

* The matter was set for Case Management Conference on May 8, 2024, at 1:30 p.m. in Dept. 4. All parties were directed to file what they consider to be current status of which parties remain in the action, who they are represented by, and as to what causes of action.

Defendant/Cross-complainant now brings two noticed motions to the Court.

The first is “Defendant and Cross-Complainants’ Motion for Mandatory Dismissal Pursuant to Code of Civil Procedure (CCP) § 583.310 of Plaintiff Craig Bordon’s Second Amended Complaint.” The second, filed two days later, was a “Motion for Order Granting Preference in Trial Setting or, in the Alternative, Trial Setting with Sufficient Time to Advance to Trial Prior to The September 27, 2024 Deadline.”

The moving papers did not include the required language of 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.

In the instant matter, the Court finds that exigent circumstances occur in both motions. (Defendant is cautioned this is a rare instance where the Court does not deny a pending motion for the failure to include the mandated language.)

DEFENDANT'S MOTION TO DISMISS PURSUANT TO CODE OF CIVIL PROCEDURE SECTION 583.310

Following the outbreak of COVID-19 in March 2020, the Judicial Council of California adopted an emergency rule that extended the deadline to bring a civil action to trial under section 583.310. Specifically, emergency rule 10(a), effective April 6, 2020, provides that 'Notwithstanding any other law, including ... section 583.310, for all civil actions filed on or before April 6, 2020, the time in which to bring the action to trial is extended by six months for a total time of five years and six months. (*State ex rel. Sills v. Gharib-Danesh* (2023) 88 Cal.App.5th 824, 840, quoting Cal. Rules of Court (CRC), appen. I, emergency rule 10(a), emphasis added.)

The original Complaint was filed on Aug. 13, 2018 by Plaintiffs Genesis PVB; 3NT Management, LLC; and Craig Bordon. The CCP § 583.310 deadline was Aug. 13, 2023. The Emergency Rule extended the deadline to February 13, 2024. Thus the elements of CCP § 583.310 are clearly met.

This matter must be dismissed unless a tolling or exception exists.

CCP § 583.340 provides:

In computing the time within which an action must be brought to trial pursuant to this article, there shall be excluded the time during which any of the following conditions existed:

- (a) The jurisdiction of the court to try the action was suspended.
- (b) Prosecution or trial of the action was stayed or enjoined.
- (c) Bringing the action to trial, for any other reason, was impossible, impracticable, or futile.

Plaintiff argues that the legislative intent behind the enactment of CCP § 583.340 was to dispose of civil actions on their merits rather than dismissing them on procedural technicalities, citing *Perryman v. Superior Court* (2006) 141 Cal.App.4th 767, 774. *Perryman* does not provide any help to plaintiff's position; in *Perryman*, the court ruled in a criminal context that the defendants' successful motion to quash a jury venire and restart jury selection did not constitute a "mistrial" motion. Since it did not prejudice the prosecution, it did not trigger a new period for the defendants to be "brought to trial" under Penal Code §1382, subdivision (a)(2), a decision unique to the constitutional speedy trial rights.

Reported cases citing CCP § 583.340(c) from the court's independent research do not define the current matter as falling within the section's scope of "impossible, impracticable, or futile."

The rest of the plaintiff's argument criticizes previous counsel. The declaration might provide some backstory to the attorney/client relationship relevant in another context but not relevant to the matter before this Court.

CROSS-COMPLAINANTS' MOTION FOR PREFERENCE IN TRIAL SETTING OR, IN THE ALTERNATIVE, TRIAL SETTING WITH SUFFICIENT TIME TO ADVANCE TO TRIAL PRIOR TO THE SEPTEMBER 27, 2024 DEADLINE

A complaint and a cross-complaint are for most purposes treated as independent actions. (*McLellan v. McLellan* (1972) 23 Cal.App.3rd 343, 353.) Accordingly, even a judgment dismissing the complaint does not deprive the cross-complainant of his right to a trial of the issues on his cross-complaint. (*Westamerica Bank v. MBG Industries* (2007) 158 Cal.App.4th 109; *National Electric Supply Co. v. Mount Diablo Unified School Dist.* (1960) 187 Cal.App.2nd 418, 422.)

This Court held at the March 11, 2024, Mandatory Settlement Conference that Cross-Defendant Nickitas Panayotou has never appeared or been dismissed, so the case is *not at issue* so any request for trial setting of any kind is not ripe.

The Court **GRANTS** Defendants' Motion to Dismiss pursuant to CCP § 583.310, and **DENIES**, without prejudice, the Motion for Order Granting Preference in Trial Setting.

The Clerk shall provide notice of these Rulings to the parties forthwith. Defendant/Cross-Complainant is to submit formal Orders in compliance with Rule 3.1312 in conformity with these Rulings.

TRYON v. ANGELS GUN CLUB, INC.

17CV42160

CROSS-COMPLAINANT'S MOTION FOR LEAVE TO FILE FIFTH AMENDED CROSS-COMPLAINT

Cross-Complainant Angels Gun Club, Inc., moves for leave to file a Fifth Amended Cross-Complaint to include a new Cause of Action for Quiet Title.

The court generally affords great liberality to a party to file an amended pleading. (See *Cal. Gasoline Retailers v. Regal Petroleum Corp.* (1958) 50 Cal. 2nd 844, 851.) However, if a proposed amendment or a party suffers prejudice due to unnecessary delay in seeking the amendment, the court may refuse permission to file an amended pleading. Cross-Defendant argues that Cross-Complainant has unjustifiably delayed the request and that actual prejudice exists.

In considering the questions of unnecessary delay and prejudice to cross-defendant, the court previously was persuaded that it is necessary to include all family members on the title to the real property in the pleadings for any enforceable resolution. The court also took into account declarations, which clarified issues, even though they arguably exceeded the scope of the underlying motion.

The Court notes that the initial 2019 Cross-Complaint title the first two causes of action: "Quiet Title – Prescriptive Easement"; and "Quiet Title – Declaratory Relief." The First Amended Complaint adds a specific "Quiet Title" cause of action. This nomenclature continues in Second Amended Complaint. The appended "Quiet Title" and separate cause of action was dropped at Cross-Complainant's request to file a Third Amended Cross-Complaint, and ruled, in part:

Gun Club's request to delete the cause of action for quiet title is GRANTED. Removing this cause of action does not unduly prejudice Tryon.

Gun Club's requests to amend the cross-complaint to change Tryon's interest from an easement to a license based on the deed and to add an allegation seeking to terminate that license is GRANTED. Either party can argue whether the parties' intent was to form an easement or to grant a license. Both sides can present their arguments at any appropriate procedural forum. (Ruling, June 12, 2020.)

The Third and Fourth Amended Complaints did not include separate Quiet Title Causes of Action. However, all versions of the cross-complaint raised the same Land-Swap Agreement and equitable rights and remedies. Regardless of whether it's a separate cause of action or an equitable remedy, the court still may consider the disputed facts and render a decision on these property rights, equitable or legal.

Cross-complainant made the argument in requesting leave to file its third amended complaint:

“[T]he Club’s quiet title cause of action is superseded and enveloped by the asserted breach of contract and declaratory relief actions. Simply put, if the Club prevails in these causes of action, the quiet title action is duplicative and ancillary. There is no reason to further complicate this case, and confuse the jury who will eventually hear the case.” (Defendant Angels Gun Club, Inc.'s Motion For Leave To File Third Amended Cross-Complaint, Memorandum of Points and Authorities, filed April 27, 2020, pg.5.)

Cross-Complainant’s current effort to restore a cause of action for Quiet Title is unnecessary and from this Court’s perspective reflects excessive pleading practice, as Cross-complainant is now seeking to come full circle and reinstate a cause of action that the very same party previously formally brought before this Court to delete. The opposition from the cross-defendants brings up procedural issues and a high potential for prejudice to any added or existing cross-defendants.

The existing pleadings put at issue equitable, title, legal, and beneficial interests in the parties’ property, and seek the right to formal legal title.

The Court **DENIES** Plaintiff’s Motion for Leave to File Fifth Amended Cross-Complaint

The Clerk shall provide notice of this Ruling to the parties forthwith. Cross-defendants are to submit a formal Order in compliance with Rule 3.1312 in conformity with this Ruling.