

BILLMAN v HARMON

23CV47101

CROSS-DEFENDANTS' DEMURRER TO FIRST AMENDED CROSS-COMPLAINT

Now before the Court is a demurrer filed by Cross-Defendants Jamie Billman, Myrna Ray Reynolds, LLC, and Billman's Cool Roofing Company, Inc. ("Cross-Defendants") to the First Amended Cross-Complaint ("FACC") filed by Defendant/Cross-Complainant Krystal Harmon ("Harmon").

On March 19, 2025, Harmon filed a Second Amended Cross-Complaint ("SACC") within five (5) days of the stipulation and order filed by the parties. Per the Court's ruling on March 21, 2025, the demurrer to the FACC is moot and OVERRULED on that basis.

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

HSU v DEL MUNDO

24CV47462

DEFENDANTS' DEMURRER TO COMPLAINT

Plaintiff Mike Sheng Con Hsu ("Plaintiff") filed his Complaint arising out of a real property dispute with Defendants Leonardo Del Mundo and Angela Del Mundo ("Defendants"). Now before the Court is Defendants' demurrer.

There is some dispute over the sufficiency of meet and confer efforts. The Court reminds the parties of the requirement of Code of Civil Procedure section 430.41, but notes that the failure to meet and confer may not be a reason to grant or deny a demurrer. (Code Civ. Proc.430.41(a)(4).)

I. FACTS

Allen Weeks and Barbara Weeks (hereinafter "the Weeks") were the homeowners of the property at 11058 Slate Drive, San Andreas, California (hereinafter "Subject Property"). In May 1993, John W. Matthews and Diane Matthews (hereinafter "Matthews") were the homeowners of the property at 11034 Slate Drive, San Andreas, California (hereinafter "Neighboring Property").(Complaint ¶ 8.) The Subject Property and the Neighboring Property are adjacent to one another and located at the end of Slate Drive. (Id. ¶ 9.) On or about May 28, 1993, the Weeks obtained an easement for non-exclusive use for a 20 feet in width roadway on the Neighboring Property to be used by the Weeks ("Easement") (Id. ¶ 10.) Plaintiff alleges that Easement has been used as a driveway from 1993 to present day. (Id. ¶ 11.)

On or about August 10, 2017, Plaintiff purchased the Subject Property from the Weeks and continued to use the recorded Easement. (Id. ¶ 12.) In 2021, Defendants purchased the Neighboring Property. (Id. ¶ 13.) In December 2022, Defendants built a wired fence on the recorded easement covering about 80% of the driveway thereby reducing Plaintiff's ability to use the recorded easement. (Id. ¶ 14.) Plaintiff has repeatedly requested that Defendants remove the fence but Defendants have refused to do so. (Id. ¶ 17, 18.)

The parties strongly contest the factual issue of whether the wired fence still exists on the driveway. However, at the demurrer stage the Court may only consider the pleadings alone, and not the legitimacy of the facts alleged. (*City of Atascadero v. Merrill Lynch, Pierce, Fenner & Smith, Inc.* (1998) 68 Cal.App.4th 445, 458.)

Plaintiff brought the instant action against Defendants for: 1) injunctive relief, 2) nuisance, 3) easement by prior use, and 4) declaratory relief.

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.)

III. Discussion

A. Injunctive Relief and Viable Causes of Action

When considering a claim for injunctive relief the Court balances the: (1) likelihood of success on the merits, (2) irreparable harm if the injunction is not granted, (3) whether a balancing of the relevant equities favors the injunction; and (4) whether the issuance of the injunction is in the public interest. (Cal. Civ. Proc. §527.) Defendant claims that plaintiff fails to establish a viable cause of action to support injunctive relief.

Here Plaintiff alleges two causes of action underlying their request for injunctive relief: 1) nuisance and 2) easement based on prior use (implied easement).

1. Nuisance

In order to state a claim for nuisance, Plaintiff must allege facts showing: “[a]nything which is injurious to health . . . or is indecent or offensive to the senses, or an obstruction to the free use of property, so as to interfere with the comfortable enjoyment of life or property.” (Civ. Code, § 3479.)” “A nuisance may be both public and private, but to proceed on a private nuisance theory the plaintiff must prove an injury specifically referable to the use and enjoyment of his or her land.” (*Koll-Irvine Center Property Owners Assn. v. County of Orange* (1994) 24 Cal.App.4th 1036, 1041.)

To establish an action for private nuisance, the plaintiff must prove an interference with his use and enjoyment of his property; (2) the invasion must be substantial and cause substantial actual damage; and 3) the interference with the protected interest must not only be substantial, but it must also be unreasonable. (*Mendez v. Rancho Valencia Resort Partners, LLC* (2016) 3 Cal.App.5th 248, 262-263.)

Here, Plaintiff alleges that he has a valid and recorded Easement which has been consistently used as a driveway to access his property. Plaintiff alleges that Defendants built a wired fence on the Easement covering 80% of the driveway. (Complaint ¶¶ 12, 14). As a result of the fence covering 80% of their driveway, Plaintiff has had his use and enjoyment of his property substantially limited. While Plaintiff has sufficiently alleged that use of the driveway has been restricted, he does not allege that he has suffered any “substantial actual damage.” (*Mendez, supra* 3 Cal.App.5th 248, 262-263.) That is, there is no factual allegation of substantial economic or non-economic damage caused by Defendants’ conduct.

Because Plaintiff does not allege substantial actual harm caused by the fence, he does not state a cause of action for nuisance. As such, his claim for nuisance cannot form the basis for the request for injunctive relief.

2. Easement from Prior Use

California Civil Code section 1104 provides:

A transfer of real property passes all easements attached thereto, and creates in favor thereof an easement to use other real property of the person whose estate is transferred in the same manner and to the same extent as such property was obviously and permanently used by the

person whose estate is transferred, for the benefit thereof, at the time when the transfer was agreed upon or completed.

An implied easement may be inferred “where there is an obvious ongoing use that is reasonably necessary to the enjoyment of the land granted.” (*Thorstrom v. Thorstrom* (2011). 196 Cal.App.4th 1406, 1419.)

Plaintiff has alleged that the Weeks, from whom Plaintiff purchased the Subject Property, had an Easement to use the 20-foot strip of road as a driveway. He alleges that the use of the Easement had occurred continuously since 1993 and that when plaintiff purchased the Subject Property, he took the Easement and continued using the driveway to access his home. Plaintiff has alleged that the Easement is necessary for the use and enjoyment of the Subject Property because it provides the means of access.

Plaintiff adequately sets forth a cause of action based on implied easement and accordingly can rely on this cause of action in seeking injunctive relief. However, while Plaintiff has shown that he may have success on the merits of this cause of action, he has not alleged irreparable harm by being forced to drive more carefully or over the dirt, rather than the driveway. Thus, he has not stated a claim for injunctive relief.

B. Declaratory Relief

Code of Civil Procedure section 1060 allows for the bringing of an action for declaratory judgment in order to ascertain the ongoing rights and duties of parties to an actual controversy. “One test of the right to institute proceedings for declaratory judgment is the necessity of present adjudication as a guide for plaintiff’s future conduct in order to preserve his legal rights.” (*Meyer v. Sprint Spectrum L.P.* (2009) 45 Cal.4th 634, 647.)

Defendants argue that there is no active controversy because the wired fence has been removed. This fact is contested by Plaintiffs. Regardless, at the demurrer stage, the Court looks only to the facts as alleged in the pleadings. The Complaint explicitly alleges that there is an ongoing controversy surrounding the existence of fence on the Plaintiff’s driveway.

The demurrer to the cause of action for declaratory relief is **OVERRULED**.

IV. Conclusion.

Plaintiff has not stated a cause of action for nuisance and the demurrer is **SUSTAINED, with leave to amend.**

Plaintiff has stated a cause of action for implied easement and the demurrer is **OVERRULED** as to that cause of action.

Plaintiff has not sufficiently alleged facts showing irreparable harm, and as such the cause of action for injunctive relief is **SUSTAINED, with leave to amend.**

The demurrer to the cause of action for declaratory relief is **OVERRULED.**

Plaintiff's request for leave to amend the Complaint to add causes of action for breach of contract and interference with easement is **GRANTED.** Plaintiff must file and serve a First Amended Complaint within ten (10) Court days of service of this Ruling.

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

PURDY, et al v MERRICK

24CV47781

PLAINTIFFS' MOTION FOR SERVICE VIA PUBLICATION

This case involves a complaint to partition by sale of real property located at 1439 Calaveritas Road, San Andreas, CA 95249 ("Property") brought by Kristie Purdy ("Purdy") and Steven Savickas ("Savickas") (collectively "Plaintiffs") against Robert Merrick ("Defendant").

Now before the Court is plaintiffs' motion for service by publication.

Pursuant to California Code of Civil Procedure section 415.50, if service by other means authorized by statute is impossible, service may be effected by publication upon approval by the trial court. (*See also Watts v. Crawford* (1995) 10 Cal.4th 743, 748-749, fn. 5.) For service by publication, a plaintiff must show that they have exercised reasonable diligence to attempt to locate and serve the defendants in another manner. Summons may be served by publication if the plaintiff can, by affidavit, show the court that the party cannot be served with reasonable diligence in another manner specified in that article, and " [t]he party to be served has or claims an interest in real property in this state that is subject to the jurisdiction of the court or the relief demanded in the action consists wholly or in part in excluding the party from any interest in the property." (Cal. Code Civ. Proc. §415.50(a)(2).)

Code of Civil Procedure sections 873.320 provides the manner of service by publication in proceedings for partition. It provides:

- (a)** The plaintiff shall post, not later than 10 days after the date the order is made, a copy of the summons and complaint on the real property that is the subject of the action.
- (b)** The plaintiff shall record, if not already recorded, a notice of the pendency of the action.
- (c)** The publication shall describe the property that is the subject of the action. In addition to particularly describing the property, the publication shall describe the property by giving its street address, if any, or other common designation, if any;

but, if a legal description of the property is given, the validity of the publication shall not be affected by the fact that the street address or other common designation recited is erroneous or that the street address or other common designation is omitted.

In determining whether to grant a motion to serve by publication, a number of reasonable, honest attempts to determine the defendant's whereabouts will usually be sufficient. (*Rios v. Singh* (2021) 65 Cal. App. 5th 871, 880.) The determination of whether the diligence exercised is sufficient to justify the order will depend on the facts of the case. (*Donel, Inc. v. Badalian* (1978) 87 Cal. App. 3rd 327, 333.)

Here, Plaintiff provides the declaration of Kristie Purdy which demonstrates the reasonable and good faith efforts made by Plaintiff to serve Defendant and give notice. These efforts include seeking out Defendant at his last known residence, attempting to contact him by phone and email at his last known contacts, community searches of areas where Defendant is known to frequent, attempts to find Defendant through social media, contacting Defendant's relatives and filing a missing person's report. (Declaration of Kristie Purdy ("Purdy Decl") ¶¶ 2(a)-(h).)

The Court finds that Plaintiff's efforts have been extensive and exhaustive. Plaintiff met the requirements of Code of Civil Procedure section 415.50 demonstrating that it is not possible to serve Defendants through other means authorized in the article, and that Plaintiff has exhausted reasonable avenues of inquiry and investigation with reasonable diligence under the circumstances, warranting grant of the motion in compliance with statutory mandates.

Based on the foregoing, plaintiffs/ motion for service by publication is **GRANTED**. Plaintiffs are therefore ordered to, within ten days of this order, post a copy of the summons and complaint on the real property that is the subject of the action. Plaintiffs are further ordered to record a lis pendens. Finally, plaintiffs are ordered to publish a CCP 873.320 compliant notice in the Calaveras Enterprise for four consecutive weeks. Upon filing a declaration with the Court attesting to perfection of the CCP 873.320 requirements (including attachments of the lis pendens and proof of publication) service shall be deemed effected.

The Clerk shall provide notice of this Ruling to the parties forthwith. Plaintiffs to submit a formal Order in conformity with this Ruling.

ARIZA v LAKESIDE VENTURES, LLC

22CV46059

**PETITIONER'S MOTION TO VACATE PRELIMINARY INJUNCTION; PLAINTIFF'S
MOTION TO COMPEL PRODUCTION OF DOCUMENTS**

Motion to Vacate Preliminary Injunction:

This matter involves a dispute over the sale of a mobile home estate located at 1475 Railroad Flat Road, Mokelumne Hill, CA ("Mobile Home Estate.") Before the Court is the motion to compel production of documents filed by Plaintiff Helen Ariza ("Plaintiff") against Defendants Lakeside Ventures, LLC, Bonnie K. Tuckerman-Aho (Hurley), Scott Nordyke and Arthur Trillo ("Defendants").

On January 19, 2024, the Court granted the motion for preliminary injunction filed by Defendants Nordyke and Trillo. Pursuant to that ruling, the Plaintiff was ordered to refrain from representing that she was an owner in the Mobile Home Park, had authority to collect rents, to evict tenants, to make alterations to the Park, to incur debts related to the Park or to solicit tenants to file complaints against the Park.

Now before the Court is Plaintiff's motion to vacate the Preliminary Injunction. Plaintiff does not cite any legal theory, case law, or statute upon which the motion is brought, although she does reference Code of Civil Procedure section 473 in the pleading's caption.

Code of Civil Procedure 473(a) allows for amendments to pleadings to correct mistakes, which is inapplicable herein. Subsection (b) allows for a court to relieve a party from a judgment or ruling against it based on "mistake, inadvertence, surprise, or excusable neglect." Plaintiff makes no such allegations in her motion to vacate. Rather, the motion is simply a set of allegations that Nordyke and Trillo are not operating the Park according to appropriate law or standards. She provides no citation that would authorize the Court to vacate the injunction based on her allegations.

Accordingly, Plaintiff's motion to vacate the preliminary injunction currently in place is **DENIED**.

Motion to Compel Production of Documents:

This matter involves a dispute over the sale of a mobile home estate located at 1475 Railroad Flat Road, Mokelumne Hill, CA ("Mobile Home Estate.") Before the Court is the motion to compel production of documents filed by Plaintiff Helen Ariza ("Plaintiff") against Defendants Lakeside Ventures, LLC, Bonnie K. Tuckerman-Aho (Hurley), Scott Nordyke and Arthur Trillo ("Defendants").

On February 11, 2025, Plaintiff filed a motion to compel production of documents against the named Defendants. Defendants, including Lakeside, filed a joint opposition to the motion to compel. The Court reminds Lakeside that as a limited liability company, it cannot represent itself and must be represented by a licensed attorney. (*CLD Construction, Inc. v. City of San Ramon* (2004) 120 Cal.App.4th 1141, 1146.)

On March 19, 2025, Plaintiff filed an amended motion to compel, adding non-parties Gilbert Mink, Rashel Rosa and Pamela Canessa.

The motions do not 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.

Based on the foregoing, the motion is **DENIED**, without prejudice to refile. Plaintiff is on notice that continued failure to include the required language in her motions may result in denials with prejudice.

Plaintiff is also instructed to review the requirements for filing motions, and supporting memorandum, as set forth in California Rule of Court 3.1112. Plaintiff is further instructed to review Code of Civil Procedure section 2031.310 which sets forth the requirements for bringing motions to compel production of documents.

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