GUARANTY HOLDINGS OF CALIFORNIA, INC. v CATTANEO

20CV44713

DEFENDANTS' MOTION TO DISMISS ACTION

This case involves a landlord-tenant dispute over the condition of the residence after surrender 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. The FAC removed some of the original causes of action, but added, for the first time, a cause of action for private nuisance.

On April 25, 2025, the Court denied 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. Now before the Court is a motion to dismiss pursuant to Code of Civil Procedure section 583.360 brought by Defendant Christopher Dufresne ("Dufresne") and joined by Defendant Dan Holman ("Holman") (collectively "Defendants.")

GHOC opposes the motion. The Court finds the opposition was filed timely.[1]

I. Legal Standard

Code of Civil Procedure section 583.360 provides:

> (a) An action shall be dismissed by the court on its own motion or on motion of the defendant, after notice to the parties, if the action is not brought to trial within the time prescribed in this article.
>
> (b) The requirements of this article are mandatory and are not subject to extension, excuse, or exception except as expressly provided by statute.

[1] Defendants asserted in their Reply that the opposition was late under Cal. Rule of Court 3.1342. However, that Rule applies to actions brought under Code Civil Procedure sections 583.410-583.430 and is not applicable here.

II. Analysis

GHOC opposes the motion to dismiss on the grounds that the cause of action for private nuisance, added in 2023, does not relate back to the original complaint and cannot be dismissed. (*Brumley v. FDCC California, Inc.* (2007) 156 Cal.App.4th 312.)

In *Brumley,* the original Plaintiff filed suit for asbestos injuries in 2000 and, nearly four years after filing suit, died of asbestos-linked lung cancer. His surviving wife and children then filed a third amended complaint that substituted her and their children as plaintiffs and brought claims for wrongful death. The entire matter was dismissed pursuant to Code of Civil Procedure sections 583.310 and 583.360. However, on appeal, the Court found that where added claims do not "relate back" to the original claims (that is, the new claims could have been brought by a separate lawsuit), those new claims were not barred by section 583.310. In making that determination, the Court concluded that while the plain language of the dismissal statute referred to a single "action," precedent dictated that causes of action could be treated individually under the statute. (*Id*. at p. 322 [citing *Barrington v. A.H. Robins Co.* (1985) 39 Cal.3d 145].)

Under that logic, GHOC argues that the cause of action for private nuisance, which relies on different facts than those alleged in the original complaint, cannot be dismissed because the FAC was not filed until May 27, 2023. Thus, the five year dismissal rule would not apply.

"A private nuisance cause of action requires the plaintiff to prove an injury specifically referable to the use and enjoyment of his or her land. (*Madani v. Rabinowitz* (2020) 45 Cal.App.5th 602, 607.) A nuisance may be classified as permanent or continuing.

"In general, a permanent nuisance is considered to be a permanent injury to property for which damages are assessed once and for all, while a continuing nuisance is considered to be a series of successive injuries for which the plaintiff must bring successive actions." (*Id.* at 608 [citations omitted].) However, the "crucial test of the permanency of a trespass or nuisance is whether the trespass or nuisance can be discontinued or abated." (*Id*. at 608-609 [citations omitted].) Under the "abatability test" a nuisance is continuing if it can be " 'remedied at a reasonable cost by reasonable means.' " (*Ibid* [citation omitted.].)

Here, GHOC original compliant did not allege a cause of action for private nuisance. Arguably, it could have brought a cause of action for private nuisance based on the removal of the dock against the relevant defendants. And that nuisance cause of action would have related back to the original complaint because that complaint's entire focus was on the removal and destruction of the dock. However, the private nuisance claim in the FAC is different. This claim focuses on the installation and position of other structures on the reservoir to "intentionally block GHOC's access to its marine deck." (FAC ¶ 55.) This claim against Defendant Cattaneo only, does not relate back to the original claim and could be brought in successive claims because the alleged nuisance is continuing. Thus, the private nuisance claim – which was not brought until 2023 – is not subject to the five-year dismissal rule until 2028.

However, the private nuisance claim is only against Defendant Cattaneo. Thus, all the other claims in the FAC, which all relate back to the original complaint, are subject to the five-year dismissal. Importantly, these are the only claims against the moving Defendants.

GHOC argues, however, that if one claim (private nuisance) is not subject to dismissal then the remaining claims are also not subject to dismissal. (*General Motors Corp. v. Superior Court of Los Angeles County* (1996) 65 Cal.2d 88.) However, *General Motors* involved a wrongful death action where the same actions, by the same people, caused both the personal injury damages and the wrongful death. This is not the same here. GHOC's actions against the moving Defendants related to the removal of the dock and various fixtures. The private nuisance action is solely against a different defendant and related to the placement of obstructions to GHOC's new dock.

Finally, the Court notes that there is a two year statute of limitations for causes of action for private nuisance. The only date referenced in the FAC is June 2020, which would make this cause of action either necessarily related back to the original filing date (and therefore subject to dismissal) or facially outside the statute of limitations (and therefore subject in in the interests of judicial economy dismissible before proceeding with granting a demurrer).

Accordingly, the Defendants' motion to dismiss is **GRANTED**; however, with ten (10) days Leave to Amend the FAC but only as to the cause of action for the private nuisance claim against Defendant Cattaneo.

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

VINCENT v MONA LEE SOLAR CA, LLC

25CV47888

DEFENDANT'S MOTION TO SET ASIDE DEFAULT

This is a breach of contract dispute arising out of the sale and installation of solar panels. Plaintiff Aben K. Vincent ("Plaintiff") alleges that he entered into a contract for the installation of solar panels by Defendant Mona Lee Solar CA LLC ("Defendant") and that the panels do not work.

Now before the Court is Defendant's Motion to Set Aside Default.

I. RELEVANT PROCEDURAL HISTORY

On February 18, 2025, Plaintiff filed a complaint against Defendant. The Complaint and Service of Summons were served by substituted service via U.S. mail on March 5, 2025. (Declaration of Jonathon Joannides ("Joannides Decl.") ¶ 6, Ex. D.) The summons shows that the items were served by mail at a business address of 5325 Elkhorn Blvd in Sacramento, California. (*Ibid*.)

According to Brittany Bartel, Director of Customer Experience at Mona Lee Solar CA LLC, when Defendant receives mail it is scanned through a virtual mailbox hosted by Post Scan Mail. (Declaration of Brittany Bartel ("Bartel Decl.") ¶ 3.) The service receives physical mail, scans it digitally and then places it in a portal for viewing and disbursement to the appropriate people. (*Ibid*.)

On February 27, 2025, Plaintiff informed Defendant that he had filed a lawsuit and that service would be forthcoming. (Bartel Decl. ¶ 9, Ex. C.) On February 28, 2025, Defendant requested an address at which he could serve Defendant because the listed address was a P.O. Box. On March 3, 2025, Ms. Bartel responded that the Defendant's business was fully remote and that the documents should be forwarded via email to her as well as the CEO of the company. (*Ibid.*)

On March 5, 2025, Mona Lee received a letter in US Mail that was scanned by the mailing services and submitted to Defendant's portal. (Bartel Decl. ¶ 4.) The proof of service shows that the items to be served were left with a Postal Annex employee. Ms. Bartel got notice of the mail on March 26, 2025, and reviewed the attached documents, attached as Exhibit A to Ms. Bartel's declaration. (*Ibid*.)

On April 17, 2025, Plaintiff filed a proof of service. On April 18, 2025, Defendant's attorney sent Plaintiff an email setting forth reasons why the service was deficient and asking for Plaintiff to delay seeking default judgment so they could resolve the service issues. (Joannides Decl. ¶ 3, Ex. A.) Although the email requested a reply confirming receipt from Plaintiff, it is not apparent from the documents filed whether any reply was made.

On April 23, 2025, Plaintiff filed a request for entry of default judgment which was entered by the Court. (Joannides Decl. ¶¶ 7, 8, Exs. E, F.) In his affidavit in support of his request for default judgment, Plaintiff acknowledges that Defendant had informed him of the alleged issues with service and had requested that default be delayed.

II. Legal Standard and Analysis

Code Civil Procedure section 473(d) authorizes the Court to vacate a judgment that is void while section 473(b) permits the Court to set aside a judgment entered because of mistake, inadvertence, surprise, or excusable neglect. Because courts favor resolution on the merits, "when a party in default moves promptly to seek relief, very slight evidence is required to justify a trial court's order setting aside a default." (*Shamblin v. Brattain* (1988) 44 Cal.3d 474, 478-479 [citation omitted].)

Defendant moves for relief on four grounds: 1) the summons was defective because it failed to properly serve the LLC under applicable statutes; 2) Plaintiff's conduct caused confusion which resulted in excusable neglect; 3) the Complaint fails to state a cause of action for breach of contract, and 4) the default was based on a declaration not supported by evidence. As not all arguments are relevant to the relief sought, the Court will not examine them all.

Although not raised by the parties, the Court first notes that there is no evidence that the service of summons contained the requisite language under Code Civil Procedure section 412.30. Pursuant to that code section:

> In an action against a corporation or an unincorporated association (including a partnership), the copy of the summons that is served shall contain a notice stating in substance: "To the person served: You are hereby served in the within action (or special proceeding) on behalf of (here state the name of the corporation or the unincorporated association) as a person upon whom a copy of the summons and of the complaint may be delivered to effect service on said party under the provisions of (here state appropriate provisions of Chapter 4

(commencing with Section 413.10 of the Code of Civil Procedure)." If service is also made on such person as an individual, the notice shall also indicate that service is being made on such person as an individual as well as on behalf of the corporation or the unincorporated association.

If such notice does not appear on the copy of the summons served, no default may be taken against such corporation or unincorporated association or against such person individually, as the case may be.

Here, the service of summons which has been given to the Court does not contain the requisite language. Rather, the summons simply reflects that Defendant was served as an individual and as an LLC. Checking two boxes that Defendant is being served as both an individual and as an LLC, and lacking any of the necessary notice language, does not amount to substantial compliance. (*MJS Enterprises, Inc. v. Superior Court*, (1984) 153 Cal.App.3d 555, 557 [the failure to include any of the required language of CCP §412.30 rendered the summons "fatally defective."].)

Additionally, the Court agrees that regardless of the notice language, the summons was defective. Corporations Code section 17701.16 requires personal service upon the designated agent of the LLC. If the agent cannot be located, then the service can be made by hand delivery upon the secretary of state or his agent. If service is to be made by mail, then it must include "two copies of the notice and acknowledgment provided for in subdivision (b) and a return envelope, postage prepaid, addressed to the sender." (Code Civ. Proc. § 415.30(a).) Subdivision (b) provides specific language that must be included:

NOTICE

To: (Here state the name of the person to be served.)

This summons is served pursuant to Section 415.30 of the California Code of Civil Procedure. Failure to complete this form and return it to the sender within 20 days may subject you (or the party on whose behalf you are being served) to liability for the payment of any expenses incurred in serving a summons upon you in any other manner permitted by law. If you are served on behalf of a corporation, unincorporated association (including a partnership), or other entity, this form must be signed in the name of such entity by you or by a person authorized to receive service of process on behalf of such entity. In all other cases, this form must be signed by you personally or by a person authorized by you to acknowledge receipt of summons. Section 415.30 provides that this

summons is deemed served on the date of execution of an acknowledgment of receipt of summons.

There is no evidence that two copies (or even one copy) of such notice was provided in the attempted service by U.S. mail. As such, the attempted service by mail was defective.

Finally, the Court finds that Defendant's conduct was not unreasonable and that any delay in responding was the result of inadvertence or mistake. Defendant requested that the Complaint be forwarded via email to both the CEO and Ms. Bartel so that they could review the items. Plaintiff refused or ignored this reasonable request. Defendant thereafter requested that Plaintiff refrain from filing a motion for default so that the parties could amicably come to a resolution on the service issue, but Plaintiff failed to respond. Instead, Plaintiff moved immediately to seek default judgment. There is no evidence that Defendants are attempting to avoid service or this lawsuit.

Courts do not reward gamesmanship, particularly in instances like this, where default is sought despite Plaintiff knowing that Defendants intended to actively litigate and participate in the process. (*Solorzano v. Koutures* (2021) 2021 Cal. Super LEXIS 116272 [relief from default is almost routinely given at early stages of proceedings, and going through the process of filing for default "increases the costs of litigation and wastes precious judicial resources and smacks of gamesmanship."].)

For the foregoing reasons, Defendant's motion to vacate default judgment is **GRANTED.** Defendant is to file a responsive pleading within 30 (thirty) calendar days of this Ruling..

The Clerk shall provide notice of this Ruling to the parties forthwith. Defendant to prepare a formal Order complying with Rule 3.1312 in conformity with this Ruling.