Jami Dick dba JBD CONSTRUCTION, et al v LISA SAHLMAN, et al

24CV47140

U S BANK, N.A.'S AMENDED MOTION FOR INTERPLEADER AND ATTORNEY FEES; ATTORNEY CHANNEVEERAPPA'S MOTION TO WITHDRAW

This action arises out of a construction project dispute between Jami Dick dba JBD Construction and Rod Scott ("Plaintiffs") and Lisa Sahlman and Milton Brown ("Defendants.") 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.

Now before the Court are U.S. Bank's Motion for Interpleader and Plaintiff's Counsel's Motion to Withdraw.

U.S. Bank's Motion for Interpleader and Attorney's Fees:

I. Facts

On May 2, 2020, Defendants entered into a written agreement with Plaintiffs to build a house for Defendants on the Property. (Complaint ¶ 12.) The Agreement provides a contract price of'$496,900.00 to be paid through disbursements from a construction loan obtained by the Defendants at US Bank. (*Id.* ¶ 13.) On or about July I, 2020, Defendants obtained a construction loan with US Bank in the amount of $ 496,900.00 for the purpose of financing the construction wherein the Plaintiffs were identified as the contractor for the project. (*Id*. ¶ 14.) On or about March 8, 2022, Plaintiffs prepared a Construction Loan Disbursement Request/Authorization., a US Bank form used to make a draw against the construction loan for $52,650.00 (the "Funds.") (*Id.* ¶ 16.) Defendants refused to authorize payment of the Funds or to allow Plaintiffs back onto the worksite. (*Id.* ¶17.)

II. Legal Standard and Analysis

The Motion is brought pursuant to the interpleader statutes at Code Civil Procedure sections 386 and 386.5. Interpleader is a procedure whereby a person holding money or personal property to which conflicting claims are being made by others, or may be made, can join the adverse claimants and force them to litigate their claims among themselves. (Code Civ. Proc., § 386, subd. (b); *Hancock Oil Co. v. Hopkins* (1944) 24 Cal.2d 497, 508.) This is typically brought by a separate complaint or cross-complaint in interpleader. (Code Civ. Proc. § 386(b) ["Any person, firm, corporation, association or other entity against whom double or multiple claims are made, or may be made, by two or more persons which are such that they may give rise to double or multiple liability, may bring an action against the claimants to compel them to interplead and litigate their several claims."].)

Pursuant to Code Civil Procedure section 386.5:

> Where the only relief sought against one of the defendants is the payment of a stated amount of money alleged to be wrongfully withheld, such defendant may, upon affidavit that he is a mere stakeholder with no interest in the amount or any portion thereof and that conflicting demands have been made upon him for the amount by parties to the action, upon notice to such parties, apply to the court for an order discharging him from liability and dismissing him from the action on his depositing with the clerk of the court the amount in dispute and the court may, in its discretion, make such order.

"Interpleader is an equitable proceeding by which an obligor who is a mere stakeholder may compel conflicting claimants to money or property to interplead and litigate the claims among themselves instead of separately against the obligor. … After admitting liability and depositing the money or property with the court, the obligor is discharged from liability and freed from the necessity of participating in the litigation between the claimants." (*Southern California Gas Co. v. Flannery* (2014) 232 Cal.App.4th 477, 486.) "The true test of suitability for interpleader is the stakeholder's disavowal of interest in the property sought to be interpleaded, coupled with the perceived ability of the court to resolve the entire controversy as to entitlement to that property without need for the stakeholder to be a party to the suit." (*Ibid*.)

The interpleader process involves a two-step procedure. (*City of Morgan Hill v. Brown* (1999) 71 Cal.App.4th 1114, 1126.) First, the Court determines whether the moving party has the right to interplead the funds or property. (*Id*. at p. 1126-27.) If that right is sustained, then an interlocutory decree is entered which requires the defendants to

interplead and litigate their claims to the funds." (*Southern California Gas Co.*, supra 232 Cal.App.4th at 487.) Thus, the interpleader proceeding is traditionally viewed as two lawsuits in one. The first between the stakeholder and the claimants to determine the right to interplead the funds and the second dispute to be resolved is who is to receive the interpleaded funds. [Citations.]" (*Dial 800 v. Fesbinder* (2004) 118 Cal.App.4th 32, 42–43.)

In support of its motion, U.S. Bank provides a declaration from Tammy Zbichorski as an "authorized representative" of U.S. Bank. (Declaration of Tammy Zbichorski ("Zbichorski Decl.") ¶ 1.) Ms. Zbichorski states that U.S. Bank desires to deposit the Funds with the Court (*Id.* ¶ 2) and that U.S. Bank "takes no position on whether Plaintiffs or Defendants are entitled to the Funds and faces potential double liability if they release the Funds to either disputing party while the Funds are in dispute." (*Id.* ¶ 3.) Ms. Zbichorski further avers that "U.S. Bank is disinterested and stands ready to deposit the funds with the Court." (*Id*. ¶ 5.)

In their opposition, Plaintiffs take issue with U.S. Bank's failure to file an interpleader action, as well as the failure to provide an affidavit that gives the basis for U.S. Bank's position, articulates the amount at issue, and affirmatively disavow any interest. Plaintiffs also argue that the claims against U.S. Bank go beyond their status as simply the holder of the funds at issue. Specifically, Plaintiffs assert that U.S. Bank holds a loan to Defendants, secured by the Property, which protects U.S. Bank against the Defendants' refusal to release the funds. (Opp. p. 3.) Plaintiffs' complaint also alleges that U.S. Bank itself engaged in negligent and fraudulent behavior.

The Court finds that U.S. Bank has not followed all the requirements of the interpleader process. First, U.S. Bank has not provided an affidavit which describes Ms. Zbichorski's relationship to U.S. Bank, her role or knowledge of the Funds, nor the amount of funds to be deposited with the Court. Second, U.S. Bank has not deposited or delivered the funds at issue to the Clerk of Court. Finally, the affidavit does not affirmatively state that U.S. Bank is "a mere stakeholder with no interest in the amount or any portion thereof." (Code Civ. Proc. § 386.5.)

Accordingly, and for all the foregoing reasons, the Motion for Interpleader is **DENIED**, without prejudice.

Attorney Channeveerappa's Motion to Withdraw:

Counsel's Declaration meets the statutory requirements and the Motion to Withdraw is **GRANTED**.

The clerk shall provide notice of these rulings to the parties forthwith. No further formal Order is required on the Motion for Interpleader. The Court intends to sign the submitted Order on the Motion to Withdraw..

HUGHES v FCA US, LLC, et al

24CV47640

DEFENDANT FCA'S MOTION FOR JUDGMENT ON THE PLEADINGS

This case involves a dispute over a vehicle warranty dispute between Andrew Hughes ("Plaintiff") and FCA US, LLC ("Defendant"). Now before the Court is Defendant's motion for judgment on the pleadings.

I. Facts

On or about September 21, 2022, Plaintiff entered into a warranty contract with Defendant regarding a 2022 Ram 1500 (hereafter "Vehicle"), manufactured and/or distributed by Defendant FCA. (Complaint ¶ 11, Ex. A.) The warranty was a "bumper to bumper warranty." (*Ibid*.) Plaintiff has primarily used the Vehicle for personal use. (*Id*. ¶ 12.) Within the applicable express warranty period, however, defects and nonconformities to warranty manifested themselves, including but not limited to, engine defects, transmission defects, and electrical defects.

Plaintiff alleges that Defendant knew since prior to Plaintiff purchasing the Vehicle, that the 2022 Ram 1500 vehicles equipped with the 5.7L engine had one or more defects that can result in loss of power, stalling, engine running rough, engine misfires, failure or replacement of the engine (the "Engine Defect"). (Complaint ¶ 19.) Plaintiff alleges that the Engine Defect is a safety concern because it can suddenly affect the driver's ability to control the vehicle or cause a non-collision vehicle fire, among other safety hazards. (*Id.* ¶ 20.)

II. Legal Standard

A motion for judgment on the pleadings serves the same function as a demurrer but is made after the time for demurrer has expired. (Code Civ. Proc., § 438(c)(2); *Cloud v. Northop Grumman Corp*. (1998) 67 Cal.App.4th 995, 999.) Except as provided by statute, the rules governing demurrers apply. (*Id*.) The court must accept as true the

factual allegations of the complaint and must give them a liberal interpretation. (*Gerawan Farming, Inc., v. Lyons* (2000), 24 Cal. 4th 468, 515-516.) In addition, the court is limited in its consideration to the face of the pleadings or matters entitled to judicial notice. (Code Civ. Proc.§ 438(d).)

The Court notes that the motion is unopposed, which may be construed as an abandonment of the claim. (*Herzberg v. County of Plumas* (2005) 133 Cal.App.4th 1, 20.) However, the integrity of the judicial process requires the Court to subject every motion to review before granting. (California Judge's Benchbook: Civil Proceedings Before Trial § 6.20 (Thomson Reuters Mar. 2022 update).)

III. Discussion

Defendant moves for judgment on the pleadings as to Plaintiff's Sixth Cause of Action for Fraudulent Inducement- Concealment. Defendant moves on the grounds that the cause of action does not meet the heightened pleading requirements for fraud and based on the economic loss rule.

To establish a claim for fraudulent concealment, a plaintiff must plead and prove the following elements: (1) concealment or suppression of a material fact; (2) by a defendant with a duty to disclose the fact to the plaintiff; (3) intent to defraud by intentionally concealing or suppressing the fact; (4) the plaintiff's lack of knowledge of the concealed or suppressed fact and resulting reliance; and (5) damages sustained as a direct result of the concealment or suppression. (*Hambridge v. Healthcare Partners Medical Group, Inc.* (2015) 238 Cal.App.4th 124, 162, quoting *Graham v. Bank of America, N.A.* (2014) 226 Cal.App.4th 594, 606.)

A cause of action for fraud based on nondisclosure or concealment must also establish that the defendant had a legal duty to disclose the withheld facts. (*OCM Principal Opportunities Fund, L.P. v. CIBC World Markets Corp*. (2007) 157 Cal.App.4th 835, 845.) Absent a fiduciary relationship between the parties, courts recognize three circumstances where nondisclosure or concealment may constitute actionable fraud: (1) where the defendant possesses exclusive knowledge of material facts unknown to the plaintiff; (2) where the defendant actively conceals a material fact from the plaintiff; and (3) where the defendant makes partial representations while suppressing other material facts. (*Bigler-Engler v. Berg, Inc.* (2017) 7 Cal.App.5th 276, 311, quoting *LiMandri v. Judkins* (1997) 52 Cal.App.4th 326, 336.)

Here Plaintiff alleges that Defendant concealed the known Engine Defect from Plaintiff. Plaintiff alleges that Defendant had a duty to disclose this fact because it had superior knowledge of the fact due to "pre-production testing data, early consumer complaints about the Engine Defect made directly to FCA and its network of dealers, aggregate warranty data compiled from FCA's network of dealers, testing conducted by FCA in response to these complaints, as well as warranty repair and part replacements data received by FCA from FCA's network of dealers, amongst other sources of internal information." (Complaint ¶ 67(a)(b).) Plaintiff alleges that in failing to inform Plaintiff of the Engine Defect, it intended to mislead Plaintiff. Plaintiff alleges it lacked any knowledge of the Engine Defect and relied on the representations made in Defendant's materials (which did not disclose the Engine Defect) in purchasing the Vehicle. (*Id*. ¶ 70.) Finally, Plaintiff alleges that he suffered damages as a result of the concealment.

Defendant, however, argues that the claim is not pled with specificity, including the date, time and place of the concealment. However, "less specificity is required where the defendant necessarily possesses the information." (*Bajaras v. Ford Motor Co.* 2025 Cal.Super.LEXIS 1185, *3-4, citing *Committee on Children's Television, Inc. v. General Foods, Inc.* (1983) 35 Cal.3d. 197, 216-217.) Further, "it is not practical to require allegations of specific facts showing how, when, and by what means something did not happen." (*Id.*) The Court finds the Plaintiff adequately pleads the elements of fraudulent concealment with enough particularity at this stage.

Defendant also argues that the claim is barred by economic loss rule. "The economic loss rule prohibits parties from recovering tort damages for what is essentially a breach of contract claim." (*Sheen v. Wells Fargo Bank* (2022), 12 Cal.5th 905, 922.) The rule "requires a purchaser to recover in contract for purely economic loss due to disappointed expectations, unless he can demonstrate harm above and beyond a broken contractual promise." (*Robinson Helicopter Co. v. Dana Corp*. (2004), 34 Cal.4th 979, 988.)

However, the economic loss doctrine does not apply "where the contract was fraudulently induced." (*Erlich v. Menezes* (1999), 21 Cal.4th 543, 552.) Specifically, "concealment-based claims for fraudulent inducement are not barred by the economic loss rule." (*Dhital v. Nissan North America, Inc.* (2022) 84 Cal.App.5th 828, 840.) This is because "a defendant's conduct in fraudulently inducing someone to enter a contract is separate from the defendant's later breach of the contract or warranty provisions that were agreed to." (*Ibid.*) Here, Plaintiff's claim for fraudulent inducement by concealment is based on pre-sale concealment of facts known solely by Defendant which were not conveyed to Plaintiff. (*Id*. [stating, "we decline to hold that plaintiffs' fraud claim (based in part on presale concealment) is barred by the economic loss rule."].)

Accordingly, and for all the foregoing reasons, the Defendant's Motion for Judgment on the Pleadings is **DENIED**.

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

UNIVERSITY CREDIT UNION v BERRY

25CVF15100

DEFENDANT'S MOTION FOR RELIEF FROM DEFAULT

This is an action for judicial foreclosure, breach of contract, and declaratory relief brought by University Credit Union ("Plaintiff") against Yvonne L. Berry, individually and as the Trustee of the Yvonne L. Berry Trust Dated July 19, 2018 ("Defendant.")

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

I. RELEVANT PROCEDURAL HISTORY

On March 25, 2025, Plaintiff filed a complaint against Defendant. Proof of service was filed on May 5, 2025, reflecting that Defendant had been served, by personal service, on March 31, 2025, by a registered California process server who signed the document under penalty of perjury.

On May 5, 2025, Plaintiff filed a request for entry of default judgment which was entered by the Court. On May 6, 2025 the Court entered a judgment after default, awarding Plaintiff a total judgment of $38,925.39. It was further ordered that plaintiff is entitled to repossession of the solar energy system.

Defendant filed her motion for relief from default on June 27, 2025.

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 the grounds that the date provided in the service of summons is incorrect. She avers that she was actually served on April 5, 2025. (Declaration of Yvonne Berry ("Berry Decl.") ¶ 2.) Essentially, Defendant admits to being served on April 5, 2025, which would have rendered her Answer due on May 5, 2025 – the day Plaintiff moved for default.

It is unclear from the docket when Defendant became aware of the default against her, though she states it was not until she attempted to file an Answer. (Berry Decl. ¶ 3.) What is clear is that Defendant, who is representing herself *pro se*, did not wait an inordinate amount of time to seek relief from default. Instead, she filed her motion only a few weeks after the default was entered.

"The law favors judgments based on the merits, not procedural missteps. Our Supreme court has repeatedly reminded us that in this area doubts must be resolved in favor of relief, with an order denying relief scrutinized more carefully than an order granting it." (*Lasalle v. Vogel* (2019) 36 Cal.App.5th 127, 134.) Further, courts do not tend to reward gamesmanship. (*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."].)

Given the Defendant's assertion that she was not served until April 5, 2025, that she took reasonable steps to file an Answer, and then took relatively prompt steps to seek relief from default, the Court finds Defendant has presented substantial justification for setting aside the default.

For the foregoing reasons, Defendant's motion to vacate default judgment is **GRANTED**. Defendant must serve and file her Answer with the Court by 3:00 p.m. on August 15, 2025.

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

10:00 a.m.

MATTER OF SILVEIRA

21PR8357

OBJECTORS' MOTION FOR JUDGMENT ON THE PLEADINGS

This matter includes four consolidated probate petitions and one related civil complaint and a convoluted factual and procedural history.

Now before the Court is a Motion for Judgment on the Pleadings brought by "Objectors" Francille Elaine Peters, Individually, as Beneficiary, as Executor, and as Co-Trustee; Rodd Peters; and David J. Silveira, Jr., Individually and as Personal Representative (hereinafter "Objectors.")

The unopposed Request for Judicial Notice of the consolidation of all matters is granted.

I. Background

Carolyn Silveira ("Carolyn") [1] and David J. Silveira Sr. ("David, Sr.") were a married couple with five children: Audrey Petricevich ("Audrey"), Manuel Silveira ("Manuel"), Francille Elaine Peters ("Francille"), David Silveira Jr. ("David Jr. ") and "Dominick Silveira ("Dominick").

Relevant to the instant motion, on March 17, 2021, David, Sr. individually and as trustee of the David J. Silveira Revocable Living Trust dated January 8, 2020, Audrey, Manuel, and Dominick filed a Petition against Francille[2], Rodd Peters ("Rodd"),[3] the Estate of Carolyn Silveira ("Estate"), and David Jr. The Petition's third cause of action is for Quiet Title against Francille, as Trustee, only. The fourth cause of action is for Partition in Kind against all Respondents.

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[1] Due to the common surnames, first names will be used for all parties. No disrespect is intended.
[2] Against her individually and as successor Trustee of the Carolyn L. Silveira Separate Property Revocable Trust, dated August 2, 2016.
[3] Against him individually and as Co-Trustee of The Peters Family Trust, dated March 7, 2013.

According to the Petition, on or about March 24,1969, David Sr. and Carolyn Silveira, a married couple, and as Joint Tenants purchased an 80 acre parcel of real property from David Sr.'s parents, Clyde and Mildred Silveira (the “80 Acre Property.”) On or about October 31,1979, David Sr. and Carolyn purchased an adjoining 10 acre parcel holding the same as joint tenants (the “10 Acre Property.”) On or about March 23,1987, David Sr., Carolyn, Audrey, Francille, David Jr., Manuel and Dominick all purchased an adjoining 120 acre parcel with each to hold a 1/6 interest, except David and Carolyn who jointly held a 1/6 interest. (“120 Acre Property.”)

The cause of action for quiet title alleged that Respondents claimed adverse interests in three separate properties: 1) 120 Acre Property, 2) 80 Acre Property, and 3) 10 Acre Property. The cause of action for Partition in Kind sought to partition the Petitioners’ interest in the 120 Acre Property from Respondents.

II. Legal Standard

A motion for judgment on the pleadings serves the same function as a demurrer but is made after the time for demurrer has expired. (Code Civ. Proc., § 438(c)(2); *Cloud v. Northop Grumman Corp*. (1998) 67 Cal.App.4th 995, 999.) Except as provided by statute, the rules governing demurrers apply. (*Id*.) The court must accept as true the factual allegations of the complaint and must give them a liberal interpretation. (*Gerawan Farming, Inc., v. Lyons* (2000), 24 Cal. 4th 468, 515-516.) In addition, the court is limited in its consideration to the face of the pleadings or matters entitled to judicial notice. (Code Civ. Proc.§ 438(d).)

III. Discussion

Oddly, Objectors move for judgment on the pleadings, not in favor of themselves, but in favor of Petitioners.

On March 17, 2021, David Sr, filed a Verified First Amended Petition for (1) Recovery of Trust Property Pursuant to Probate Code § 850, (2) Conversion, (3) Quiet Title, and (4) Partition Action. Objectors state that they never objected to David Sr.’s causes of action for quiet title or the partition action. They assert that the partition of the 120 Acre Property has never been at issue and apparently do not object to its partition. Thus, Objectors state they have failed to present “any material issue or defense to the cause of action for quiet title [or the partition action].”

Where the moving party is a defendant (as is essentially Objector's position here), a motion for judgment on the pleadings may be granted where either of the following conditions exist: (1) the Court has no jurisdiction of the subject cause of action alleged in the complaint; and (2) the Complaint does not state facts sufficient to constitute a cause of action against that defendant. (Code Civ. Proc. § 438(c)(1)(B).)

Neither of these arguments are made by the Objectors. Thus, there are no grounds on which the Court may grant this particular Motion.

However, before the Court posted this intended tentative Ruling, Petitioners filed a dismissal of the third and fourth causes of action. Therefore, rather than Ruling on the merits of the Motion for Judgment on the Pleadings, the Court rules: The Motion for Judgment on the Pleadings is **DENIED as Moot**. Additionally, The Court admonishes all parties from engaging in unnecessary in unnecessary motion practice and appearances of gamesmanship, and strongly recommends substantive meet-and-confers before any future filings or hearings on any motions.

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