GENESIS PVB LLC et al v. GRAFER et al

18CV43485

ATTORNEY'S MOTION TO WITHDRAW

This case involves a failed venture to cultivate marijuana for profit. There is a related action (20CV45040), which has already been consolidated herewith. Before the Court this day is a motion by counsel for co-plaintiff Craig Borden to withdraw. This is not a request to withdraw from representing the *corporate* plaintiffs. No response from Borden is noted in the court file.

An attorney may withdraw as counsel of record if the client breaches the agreement to pay fees, insists on pursuing invalid claims or an illegal course of conduct, or when other conduct by the client renders it unreasonably difficult for the attorney to do his job, including when there is a breakdown in the attorney-client relationship. If the attorney does not have the client's consent, he or she must proceed by way of noticed motion consistent with CCP §§ 284 and 1005, CRPC 1.16 and CRC 3.1362. The motion must be verified, must utilize the designated Judicial Council forms MC-051 – MC-053, and must set forth sufficient detail to permit a trial court to discharge its duty of inquiry regarding the grounds for the motion. (See *Flake v. Neumiller & Beardslee* (2017) 9 Cal.App.5th 223, 230; *Manfredi & Levine v. Superior Court* (1998) 66 Cal.App.4th 1128, 1134-1136; *Aceves v. Superior Court* (1996) 51 Cal.App.4th 584, 592-593.)

The declaration submitted by counsel, which must provide the factual predicate for withdrawing, is barren (see Notice Paragraph 3 and Declaration Paragraph 2). The only information regarding counsel's desire – in the entire court file – is the Joint Stipulation filed 03/10/23. Therein, counsel advises that he wishes to withdraw "because irreconcilable differences have arisen between the client and the attorney, making it unreasonably difficult to carry out the employment effectively." (Stipulation at 2:15-17.) There is no indication that the client was ever served a copy of the Joint Stipulation, and so from the perspective of the client counsel has provided no factual basis for the request. On that ground alone, the motion must be DENIED without prejudice.

In addition, a proper motion to withdraw may be denied when it is reasonably foreseeable that the client would suffer prejudice, such as when the unrepresented client would be unable to fairly respond to dispositive motions. (CRPC 1.16(d); *Mossanen v. Monfared* (2000) 77 Cal.App.4th 1402, 1409.) In this instance, since co-plaintiff Craig Borden was not part of the agreement to dismiss the 1st, 2nd, 3rd, 5th and 6th causes of action, the assumption is that he will be pursuing those additional five causes of action on his own, and further be obligated to agree to a "firm" (CRC 3.1332(a)) trial date. Since it appears that counsel intends to protect the corporate

plaintiffs' interests, but not Borden, there exists a risk of prejudice to Borden with granting the motion to withdraw *at this time*.

Motion DENIED without prejudice. The Clerk shall provide notice of this Ruling to the parties forthwith. No further formal Order shall be required.

GUARANTY HOLDINGS v. RESORT AT LAKE TULLOCH et al

20CV44713

PLAINTIFF'S MOTION FOR LEAVE TO FILE FIRST AMENDED COMPLAINT

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. Before the Court is a motion by plaintiff for leave to file a First Amended Complaint.

Procedure

To amend a pleading already at issue, the sponsoring party is required first to seek leave of court by way of noticed motion. (CCP §473(a)(1).) Pursuant to CRC 3.1324, the moving party must: (a) specify in the moving papers by page, paragraph, and line number the allegations proposed to be added and/or deleted; and (b) include with the moving papers a copy of the proposed amended pleading and a declaration specifying (1) the effect of the amendment(s); (2) why the amendment is necessary and proper; (3) when the facts giving rise to the amended allegations were discovered; and (4) the reasons why the request was not made earlier. From this Court's read of the papers, the motion is procedurally proper is all respects. Since defendants do not contend otherwise, this Court will move on to the substantive merits.

Substance

Motions for leave to amend a pleading are directed to the sound discretion of the court. (CCP §§ 473(a)(1) and 576.) This discretion, however, is to be exercised liberally in favor of allowing amendments. (*Howard v. County of San Diego* (2010) 184 Cal.App.4th 1422, 1428; *Central Concrete Supply Co v. Bursak* (2010) 182 Cal.App.4th 1092, 1101-1102.) Courts may permit amendments at any stage in the proceedings, up to and including trial, so long there is no prejudice to the adverse party. (*Atkinson v. Elk Corp.* (2003) 109 Cal.App.4th 739, 761.) Prejudice exists where amendment would require delaying the trial, resulting in loss of critical evidence, or significant added litigation burden/costs. (*Magpali v. Farmers Group* (1996) 48 Cal.App.4th 471, 486-488.) Prejudice is rare when the facts supporting a new cause of action first come to light during discovery. (*South Bay Building Enterprises, Inc. v. Riviera Lend-Lease, Inc.* (1999) 72 Cal.App.4th 1111, 1124-1125.) Although unexcused delays and lack of diligence may be considered, they alone are insufficient to deny leave. (See *Melican v. Regents of University of California* (2007) 151 Cal.App.4th 168, 175; *Honig v. Financial*

Corp. of America (1992) 6 Cal.App.4th 960, 967; *Leader v. Health Industries of America, Inc.* (2001) 89 Cal.App.4th 603, 613.)

Defendants appear to believe that plaintiff has a "heavy" burden to justify leave to amend when sought almost three years post-commencement, but there is no pending trial date, no pending defense motions, and no suggestion of any prejudice to these moving parties (or others) with having to respond to plaintiff's "new" theories of the case. In fact, the proposed amendments are not really "new" theories at all – just alternative ways to plead theories of liability. It seems that defendants' real beef with the proposed amended pleading is that – according to defendants – the evidence does not support the claims or the continued prosecution of these claims against certain named defendants. In other words, defendants are frustrated with the case as a whole, not necessarily the proposed amendments per se. For better or worse, a court will not consider the validity of the proposed amendment in deciding whether to grant leave to amend and may not condition leave upon the submission of evidence substantiating the new claim(s). (*Sanai v. Saltz* (2009) 170 Cal.App.4th 746, 769-770; *Edwards v. Superior Court* (2001) 93 Cal.App.4th 172, 180; *Yee v. Mobilehome Park Rental Review Board* (1998) 62 Cal.App.4th 1409, 1429.)

In closing analysis, the published authorities affirming a trial court's decision to *deny* leave to amend are few and far between. (See, *e.g., Melican v. Regents of University of California* (2007) 151 Cal.App.4th 168, 175-176 [leave to add breach of contract claim five years later, and on the eve of MSJ, denied]; *Huff v. Wilkins* (2006) 138 Cal.App.4th 732, 746 [leave to add allegations of recklessness brought three days before hearing on MSJ denied]; *Emerald Bay Community Assn v. Golden Eagle Ins Co.* (2005) 130 Cal.App.4th 1078, 1097 [leave to amend to add assignment/ contribution claim brought post-trial denied].) This is not one of those rare cases.

Motion for leave to file a First Amended Complaint is GRANTED. Plaintiff shall file and serve the FAC within 10 days. The Clerk shall provide notice of this Ruling to the parties forthwith. Plaintiff to prepare a formal Order pursuant to Rule of Court 3.1312 in conformity with this ruling.

CERRUTI v. DEVOTO et al

21CV45366

PLAINTIFFS' MOTION FOR LEAVE TO FILE FIRST AMENDED COMPLAINT

This is an unlimited jurisdiction quiet title action involving potential clouds over the chain of title associated with APN 052-016-009, commonly referred to as the Garibaldi Quartz Lode Mining Claim, Lot Number 45, Survey No. 3502 embracing a portion of Section 24, Township 3 North of Range 12 East M.D.M. in the Angels Mining District, Calaveras County, California (hereinafter referred to as "subject property"). There is a related action (17CV42758).

Before the Court is a motion by plaintiff for leave to file a First Amended Complaint. No opposition is noted, though it is further noted that plaintiffs have not served any of the defendants and apparently intend to seek permission to serve by publication at some point into the future. Since plaintiffs "may amend [their] pleading once without leave of the court at any time before the answer, demurrer, or motion to strike is filed," and since none of those events occurred, there is no need to seek leave of Court and plaintiffs can simply file a First Amended Complaint. (See, *e.g.*, *Hedwell v. PCMV, LLC* (2018) 22 Cal.App.5th 564, 573-575.) However, since plaintiffs are here seeking judicial intervention, it is important to point out that counsel's declaration does not adequately track CRC 3.1324. In addition, while counsel's candor regarding the impetus behind the newly-filed 2021 case is much appreciated, the named parties in the 2017 action were already dismissed, and the current parties in the 2021 action (Charles Devoto, Christina Huberty, Annie Austin, and Sarah Singer) were entitled as a matter of law to dismissal in the 2017 action for failure to effectuate service of the summons. (See CCP §§ 583.210, 583.250.) This is a mandatory dismissal without many exceptions. (See *Inversiones Papaluchi S.A.S. v. Superior Court* (2018) 20 Cal.App.5th 1055, 1061.) Moreover, the statute provides that "no further proceedings shall be held in the action." (§583.250(a)(1).) Thus, it appears as though most of the 2021 action – including the desire to add more parties – would ultimately be improper. The fact that some or many of the defendants will not make a claim to the property and could serve simply as nominal parties is important (i.e., Vickie already giving a quit claim), but that is not to be assumed at this juncture. Plaintiffs will either have to navigate around estoppel issues or secure consent from the others for the sake of having a clean title.

Motion for leave to file a First Amended Complaint is deemed MOOT and not ruled upon as plaintiffs can proceed without leave of court. The Clerk shall provide notice of this Ruling to the parties forthwith. No further order is required.

GRANADA v. BURGESS et al

21CV45760

PLAINTIFF'S DISCOVERY MOTIONS

This is a construction defect and breach of contract dispute involving a residential roofing project. Before the Court are the following discovery motions, directed at co-defendant Level 1 Roofing: (1) plaintiff's motion to compel initial responses to Form Interrogatories; (2) plaintiff's motion to compel initial responses to requests for production of documents; and (3) plaintiff's motion to deem admitted matters contained in requests for admissions. Plaintiff also seeks monetary sanctions. There is no opposition on file.

First, the discovery motion is technically deficient in that it combines three distinct motions in one. (See CCP §1003.) Pursuant to Govt Code §70617, plaintiff was required to tender $60 for each motion seeking an order even if the motions are heard together. In other words, although one commingled memorandum is permissible (CRC 3.1112(c)), counsel still had to tender three filing fees. Plaintiff is directed to the clerk's office to pay the requisite additional $120 in filing fees.

As for the motions themselves, service is defective. The proof of service on the motion indicates service upon Level 1 Roofing's Chief Executive Officer at two different mail addresses (Murietta and Loomis). Pursuant to CCP §1015, "in all cases where a party has an attorney in the action or proceeding, the service of papers, when required, must be upon the attorney instead of the party." Although counsel for Level 1 Roofing did secure an order allowing it to withdraw its representation of Level 1 Roofing just six days prior to the pending motion being served, Carno Law Group did not file the required proof of service and as such is still counsel of record for Level 1 Roofing. (See Order Paragraph 5.a. and CRC 3.1362(e).)

Finally, there is a disconnect regarding service of the discovery requests themselves. The papers reflect that the discovery was served on Carno Law Group, as would be expected. There is further evidence in the papers that Carno Law Group was working on draft responses for, and communicating with, the client in early 2023. However, the law firm's motion to withdraw was based in part on a lack of regular contact with defendant. The sum total of all this is that this Court will require evidence that Level 1 Roofing actually knew about the discovery before imposing sanctions. An order compelling a response is warranted, but sanctions (or the order deeming admitted) on the present record are unjust.

Motion GRANTED in part. Defendant Level 1 Roofing is hereby ordered to serve verified *answers* to plaintiff's form interrogatories, response and production of

documents, and responses to the requests for admissions, without objections, within 30 days of service of this order. The order shall be mail-served on counsel of record (Carno Law Group) and personally served on Level 1 Roofing. The request for monetary sanctions is denied without prejudice at this time, but can be reasserted if responses are not forthcoming.

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

LOPEZ v. ROSE

23CF14110

PLAINTIFF'S APPLICATION FOR WRIT OF POSSESSION

This a civil action for conversion of personal property between former romantic partners and cohabitators. Before the Court is plaintiff's application for a writ of possession for his French bulldog. There is a related action between the parties (22DV46201).

Pursuant to Code of Civil Procedure §§ 512.060 and 515.010, a writ of possession "shall" issue if (1) the plaintiff has established the probable validity of its claim to possession of tangible property and (2) the plaintiff has provided an undertaking of not less than twice the value of defendant's interest, if any, in the property. To establish *probable validity*, plaintiff must show that it is "more likely than not" that the plaintiff will obtain a judgment against the defendant on the possession claim. (See *People v. Superior Court* (2002) 27 Cal.4th 888, 919.) To meet this standard, the plaintiff must show (1) that it is entitled to immediate possession of the property and (2) that defendant's continued possession is wrongful. (CCP §512.010(b)(1)-(2); see *Cassel v. Kolb* (1999) 72 Cal.App.4th 568, 575-576.) In addition, if the property is held at a private place, plaintiff must also establish probable cause to believe that the property is in fact located at the private place. (CCP §512.010(b)(4).)

Although plaintiff makes a compelling showing that the dog belongs to plaintiff and that defendant's continued possession is unlawful, that is not the end of the analysis. On 08/02/22, this Court issued a Temporary Restraining Order in 22DV46201 against plaintiff, obligating him to move out of the home at 5393 Spur Road, Angels Camp, to have no contact with defendant, and to stay 150 yards away from the subject dog, as this Court gave defendant sole possession, care and custody of the dog. The order was issued ex parte, without hearing plaintiff's side. Although plaintiff filed a response in that case explaining why he contended the dog belonged to him, that issue has yet to be adjudicated at an evidentiary hearing (currently scheduled for 5/31/23), resulting in repeated orders extending the TRO. Additionally, in another related case (22CH46222), plaintiff's mother secured a temporary civil harassment restraining order against defendant, prohibiting defendant from coming within 150 years of the same residence, and further to stay away from *Janice's* French Bulldog … another dog that the Court in 22DV46201 gave to defendant (as opposed to plaintiff).

Both 22DV46201 and 22CH46222 are set for an evidentiary hearing on 05/31/23. It seems to this Court that the most orderly method for resolving plaintiff's claimed possessory interest in the dog is to address the matter in the trial of those cases,

including the imposition of a bond requirement as to plaintiff if he is awarded possession of the dog. If granted, plaintiff may be required to post a bond. Hearing on application for writ of possession continued to 5/31/23 at 8:30 a.m. in Dept. 2.

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

BROWN, ET AL v. STATE OF CALIFORNIA

23CV46681

PETITION FOR ORDER PERMITTING LATE CLAIM

This is a special proceeding pursuant to Govt. Code §946.6 for leave to submit a late governmental claim for an incident involving a runaway golf cart.

The Governmental Claim Act's purpose is to provide the public entity sufficient information to enable it to (1) investigate/settle claims without the expense of litigation, (2) plan for potential fiscal liabilities, and (3) avoid similar liabilities in the future. (*City of Stockton v. Superior Court* (2007) 42 Cal.4th 730, 738; *E.M. v. LA Unified School Dist.* (2011) 194 Cal.App.4th 736, 748; *Westcon Construction Corp. v. County of Sacramento* (2007) 152 Cal.App.4th 183, 200.)+ As such, no suit for money or damages may be maintained against a governmental entity unless a formal claim has been presented to such entity within six months of accrual of the cause of action. (Govt. Code §911.2; *Munoz v. State of Calif.* (1995) 33 Cal.App.4th 1767, 1776.) If the claimant fails to file within six months, he or she may apply in writing to the public entity for permission to file a late claim. (Govt. Code §911.4; see *J.M. v. Huntington Beach Union High School Dist.* (2017) 2 Cal.5th 648, 656.) If the public entity denies the application to file a late claim, the claimant may petition the court for relief within 6 months thereafter. (Govt. Code §946.6; *Coble v. Ventura County Health Care Agency* (2021) 73 Cal.App.5th 417, 425.) A court may relieve a petitioner from the government claims requirements if the court finds that the claimant's failure was the result of mistake, inadvertence, surprise or excusable neglect, and that the public entity will not be prejudiced; or if the claimant was a minor throughout the claims-filing period. As a general rule, where the other timing requirements have otherwise been satisfied, and reasonable grounds stated, doubts are resolved in favor of the petitioners.

The hearing on this petition must be continued. The Court file contains only the opening petition and petitioners' reply, but not the State's opposition to the petition, which was rejected in an attempted e-filing for lack of a proper signature. The State is ordered to effect the filing of their opposition papers forthwith. Hearing continued to 05/26/23 at 9:00 a.m.

The Clerk shall provide notice of this Ruling to the parties forthwith. No further order will be required at this time.