

**Calaveras Superior Court  
Civil Law & Motion Calendar  
Friday, July 23, 2021; 9:00 AM  
Hon. David M. Sanders, Courtroom 2**

9:00 AM      16CV41853                      Motion to Dismiss for Delay in Prosecution                      09/01/2016      08/18/2021      Case Management Conference

X-C:            Schulz, Elizabeth  
Def/Res:      Hyatt, Dylan P.

Atty:   Sternfeld, David I.  
Atty:   Huber, Jonathan Paul

TENTATIVE RULING:            Dylan P. Hyatt, as personal representative of the estate of Jonathan Alan Hughes (Hyatt) moves, pursuant to Code of Civil Procedure sections 583.410 and 583.420, subdivisions (1) and (2)(A), for an order dismissing Elizabeth Schulz' (Schulz) action with prejudice on the grounds that Schulz has failed to properly serve moving party with a summons and complaint within two years of commencing her action, and that Schulz has delayed prosecuting the action and failed to bring it to trial within three years after its commencement.

"The court may in its discretion dismiss an action for delay in prosecution pursuant to this article on its own motion or on motion of the defendant if to do so appears to the court appropriate under the circumstances of the case." (Code Civ. Proc., § 583.410, subd. (a).)

The Court construes Hyatt's stipulation to an extension of time to answer the Amended Cross-Complaint as a waiver of the short-comings in service asserted as the basis for the motion. (See Stipulation filed June 1, 2021.) The Court declines to exercise its discretion and dismiss the action.

The Court further notes that should the conditions for dismissal provided for in Code of Civil Procedure section 583.310 be satisfied, such dismissal will be processed in due course through the Court's Case Management calendar and is not, therefore, a proper subject for motion by a party.

Based on the foregoing, the Motion is DENIED.

The clerk shall provide notice of this ruling to the parties forthwith. Elizabeth Schulz to prepare a formal Order pursuant to Rule of Court 3.1312 in conformity with this ruling.

9:00 AM      18PR8058                      Motion to Dismiss for Delay in Prosecution                      06/22/2018                      08/18/2021      Case Management Conference

Petrn:            Lombino, Jaimee  
Decedent:      Hughes, Jonathan

Atty:   Huber Law Group APC  
Atty:

TENTATIVE RULING: Dylan P. Hyatt, as personal representative of the estate of Jonathan Alan Hughes (Hyatt) moves, pursuant to Code of Civil Procedure sections 583.410 and 583.420, subdivisions (1) and (2)(A), for an order dismissing Elizabeth Schulz' (Schulz) action with prejudice on the grounds that Schulz has failed to properly serve moving party with a summons and complaint within two years of commencing her action, and that Schulz has delayed prosecuting the action and failed to bring it to trial within three years after its commencement.

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The Court further notes that should the conditions for dismissal provided for in Code of Civil Procedure section 583.310 be satisfied, such dismissal will be processed in due

course through the Court's Case Management calendar and is not, therefore, a proper subject for motion by a party.

Based on the foregoing, the Motion is DENIED.

The clerk shall provide notice of this ruling to the parties forthwith. Elizabeth Schulz to prepare a formal Order pursuant to Rule of Court 3.1312 in conformity with this ruling.

9:00 AM 19CV44365 Motion for Leave to File First Amended Complaint 10/07/2019 09/15/2021 Case Management Conference

Ptff/Pet: Bailey-Paich, Carolyn  
Def/Res: FCA US Llc; Stockton Dodge Inc.

Atty: MLG Aplc  
Atty: Snell & Wilmer Llp

TENTATIVE RULING: Plaintiff Carolyn Bailey-Paich moves, pursuant to Code of Civil Procedure sections 473 (a)(1), and 576, for an order granting leave to file a First Amended Complaint and "deeming the First Amended Complaint filed and served as of the date of granting the Motion."

After reviewing the First Amended Complaint attached as Exhibit A to the Declaration of Afnan Shukry (FAC), the Court finds that the interests of justice would be furthered by granting Plaintiff the requested leave. (See CCP § 473.) No opposition to the motion was timely filed.

For the foregoing reasons, Plaintiff's motion for an order granting leave to file the FAC is GRANTED. However, the Court declines Plaintiff's request to deem the First Amended Complaint filed and served as of the date of granting the Motion. Rather, Plaintiff is given 10 days' leave from the date of notice of entry of order to file and serve the FAC in the form attached as Exhibit A to the Declaration of Afnan Shukry.

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.

9:00 AM 21CF13407 Plaintiff's Motion to Deem Requests for Admissions Admitted 02/08/2021 09/01/2021 Case Management Conference

Ptff/Pet: Lvnv Funding Llc  
Def/Res: Seagraves, Deborah L

Atty: Law Office Of Harris And Zide  
Atty: Pro Se

TENTATIVE RULING: Plaintiff has not complied with Local Rule 3.3.7 enacted January 1, 2018, by failing to include the mandatory language in the notice of motion regarding the Court's tentative ruling system. Pursuant to said local rule, lack of compliance provides a specific ground to deny any such procedurally-deficient motion. Based solely upon Plaintiff's failure to comply with Local Rule 3.3.7, this motion is DENIED without prejudice to refile, to the extent it otherwise is timely and appropriate pursuant to relevant statutes.

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

9:00 AM 21CV45365 Demurrer Hearing 05/21/2021

Ptff/Pet: Moffett, Marty Jo  
Def/Res: Calaveras County Animal Services

Atty: Frye, Charles W  
Atty: Calaveras County Counsel

TENTATIVE RULING: Respondent Calaveras County demurs generally to Petitioner Marty Jo Moffett's Petition for Writ of Mandamus pursuant to Code of Civil Procedure

section 430.10 (e), on the grounds that Petitioner lacks standing to bring the action, and that Petitioner fails to state a cause of action in mandamus, and pursuant to Code of Civil Procedure section 430.10 (a), on the grounds that the action is moot.

A party may demur to a CCP 1085 petition for writ of mandate (CCP §1089.) In ruling on a demurrer, the Court must accept as true all allegations of fact contained in the petition. (Sheehan v. San Francisco 49ers, Ltd. (2009) 45 Cal.4th 992, 998.) The Court must also accept as true facts that may be inferred from those expressly alleged. (Cundiff v. GTE Cal., Inc. (2002) 101 Cal.App.4th 1395, 1405.) The Court may also consider as grounds for a demurrer any matter that is judicially noticeable under Evidence Code sections 451 or 452. (CCP § 430.30 (a).) While all material facts properly pleaded, and factual inferences therefrom are presumed true, contentions, deductions or conclusions of fact or law are not. (Blank v. Kirwan (1985) 39 Cal.3d 311, 318.) “A demurrer tests only the legal sufficiency of the pleading. It admits the truth of all material factual allegations in the [pleading]; the question of [petitioner’s] ability to prove these allegations, or the possible difficulty in making such proof does not concern the reviewing court.” (Comm. on Children’s Television, Inc. v. Gen. Foods Corp. (1983) 35 Cal.3d 197, 213 14.) In reviewing a demurrer, the Court must “construe the allegations of a [petition] liberally in favor of the pleader.” (Skopp v. Weaver (1976) 16 Cal.3d 432, 438.) A general demurrer will also lie “where the [petition] has included allegations that clearly disclose some defense or bar to recovery.” (Cryolife, Inc. v. Super. Ct. (2003) 110 Cal.App.4th 1145, 1152.) Finally, a demurrer may only be sustained if the petition fails to state a cause of action under any possible legal theory. (Fox v. Ethicon Endo-Surgery, Inc. (2005) 35 Cal.4th 797, 810.)

Respondent’s request for judicial notice is DENIED. None of the subject matters of the request are relevant to the Court’s resolution of the issues raised by the demurrer.

“A writ of mandate may be issued by any court to any inferior tribunal, corporation, board, or person, to compel the performance of an act which the law specially enjoins, as a duty resulting from an office, trust, or station ....” (CCP § 1085 (a).) “The writ must be issued in all cases where there is not a plain, speedy, and adequate remedy, in the ordinary course of law ... upon the verified petition of the party beneficially interested.” (CCP§ 1086.) “Mandamus lies to compel the performance of a clear, present, and ministerial duty where the petitioner has a beneficial right to performance of that duty.” (Carrancho v. California Air Resources Board (2003) 111 Cal.App.4th 1255, 1265.) “A duty is ministerial when it is the doing of a thing unqualifiedly required.” (Redwood Coast Watersheds Alliance v. State Bd. of Forestry & Fire Protection (1999) 70 Cal.App.4th 962, 970.)

A so-called “administrative writ” is one “issued for the purpose of inquiring into the validity of any final administrative order or decision made as the result of a proceeding in which by law a hearing is required to be given, evidence is required to be taken, and discretion in the determination of facts is vested in the inferior tribunal, corporation, board, or officer.” (Code Civ. Proc., § 1094.5.)

The Petition does not clearly articulate whether Petitioner seeks a traditional writ or an administrative writ. Related to this, the Petition does not clearly identify what action by Respondent Petitioner is challenging – whether performance of a ministerial duty or issuance of a valid administrative order or decision.

In its opening paragraph the Petition asserts that “Petitioner Marty Jo Moffett, by and through counsel, files this Petition for Writ of Mandate and/or Prohibition to stop any adoption or euthanization of Ms. Moffett’s animals seized by Animal Services; to have a fair and impartial party inspect Ms. Moffett’s property; and to delay the 5/21/2021 compliance deadlines in the March 10, 2021 Settlement Agreement with the county, to accommodate a new inspection.” (See Petition at 1:25-2:2.)

The Petition identifies several actions taken by Respondents. It does not, however, identify which of these, if any, Petitioner is challenging. In the Prayer for Relief section of the Petition, Petitioner prays for the following:

1. [A]n immediate stay of any Calaveras County Animal Services’ proceedings to adopt out or euthanize Petitioner Moffett’s goats;
2. That Animal Services properly care for Petitioner Moffett’s goats while these goats are in the custody of Animal Services;
3. That Animal Services be prohibited from assessing costs and fees during the pendency of this Petition;
4. That this Court direct any Stay to remain in place during the pendency of this Petition;
5. An Order appointing a neutral, third-party inspector to inspect Ms. Moffett’s leased parcel. (Petition at 3:20-4:1.)

Petitioner further prays for reasonable costs of suit, an award of attorneys’ fees and “such other relief as this Court may deem just and proper.” (See id. at 4:2-4.)

There are no allegations in the Petition relating to whether Respondent has a ministerial duty to undertake any of the foregoing actions, and/or that Petitioner has a beneficial

right to that performance. (See Carrancho v. California Air Resources Board, supra, 111 Cal.App.4th at 1265.)

Moreover, although not argued by Respondent, the first and third forms of relief prayed for by Petitioner are prohibitory in nature. As noted above, mandamus lies to compel the performance of some duty. In California, writs of prohibition are limited to the purpose of “arrest[ing] the exercise of judicial functions in excess of jurisdiction.” (Aronoff v. Franchise Tax Board (1963) 60 Cal. 2d 177, 181; see also CCP § 1102.) As such, the Court is without authority to construe the Petition as one for a writ of prohibition.

Respondent argues that Petitioner lacks standing to bring the instant action. “Where, as here, it is alleged that a party lacks standing to sue, the complaint can be challenged by general demurrer for failure to state a cause of action in this plaintiff.” (County of Fresno v. Shelton (1998) 66 Cal. App. 4th 996, 1009. [Emphasis in original.]) Respondent argues that Petitioner lacks standing because she “voluntarily relinquished ownership of the goats to a third party pursuant to a bargained-for settlement agreement....” (See Support Memo at 4:21-23. [Emphasis omitted.])

Petitioner specifically alleges in the Petition that she entered into a Settlement Agreement with Respondent. (See Petition at 2:4-6.) The Petition contains a section titled, “SUMMARY OF RELEVANT EVENTS.” (Id. at 3:15-16.) That section provides, in its entirety that “[a] detailed summary is contained within Counsel’s Declaration in Support of Petition, which is attached.” (Id. at 3:16-17.) Based on the foregoing, the Court reasonably concludes that the matters set forth in the Counsel’s Declaration attached to the Petition are incorporated into the Petition. Counsel’s Declaration alleges that “[o]n March 10, 2021, a Settlement Agreement (hereafter, ‘Agreement’) was reached between the County and Ms. Moffett (See Exhibit A attached: March 10, 2021 Agreement.” (Id. at Declaration of Susan Israel in Support of Petition at ¶ 2.)

The Court finds that Petitioner relinquished ownership of the goats by and through the terms of the Settlement Agreement. (See Petition at Exh. A, § C (1).) Pursuant to those terms, Petitioner had an exclusive right to regain ownership of the subject goats subject to specific conditions. (See id. at § C (2).) In the body of the Petition, however, Petitioner alleges that “she has been unable to meet the conditions of the Settlement Agreement....” (Id. at 2:15.)

Petitioner appears to concede that she lacks standing by failing to timely file any opposition to the demurrer. Based on the foregoing, the Court finds that Petitioner lacks standing as to the first and second forms of relief prayed for through the Petition.

Respondent next argues that it bears no ministerial duty to appoint a neutral, third-party inspector to inspect Ms. Moffett’s leased parcel. (Support Memo at 6:8-18.) As noted herein above, Petitioner failed to identify any such duty in the Petition and appears to concede the point by failing to timely file any opposition to the demurrer.

The only other form of potential writ relief that Petitioner prays for (other than costs, attorney’s fees, and the generic “such other relief as the Court may deem just and proper”) is “[t]hat this Court direct any Stay to remain in place during the pendency of this Petition.” (Petition at 3:27.) The only stay sought by Petitioner is one to prohibit Respondent from adopting or euthanizing Petitioner’s goats. As noted herein above, however, Petitioner does not have standing to petition for this type of relief, and it does not appear to be available through any form (mandamus or prohibition) of writ relief.

Based on the foregoing, Respondent’s demurrer is SUSTAINED.

It is an abuse of discretion for a court to deny leave to amend where there is any reasonable possibility that a Plaintiff can state a good cause of action. (Goodman v. Kennedy (1976) 18 Cal.3d 335, 349.) However, the pleading party bears the burden of showing such reasonable possibility. (Ibid.) Here, the burden is on Petitioner to show in what manner she can amend the Petition and how that amendment will change the legal effect of the pleading. (Ibid; Medina v. Safe Guard Products (2008) 164 Cal.App.4th 105, 112 n.8; see also Heritage Pac. Fin’l, LLC v. Monroy (2013) 215 Cal.App.4th 972, 994 [court did not abuse discretion in denying leave to amend where, despite ample opportunity, plaintiff failed to demonstrate it could cure defect].)

As noted herein, Petitioner failed to timely file any opposition to the demurrer. As such, Petitioner fails to show in what manner she can amend the Petition. The Court interprets this failure as a tacit admission that petitioner cannot articulate any such potential amendment. Moreover, the Court is unable to find, from reviewing the Petition itself, any reasonable possibility that Plaintiff can state a good cause of action for writ of mandamus. For the foregoing reasons, the demurrer is SUSTAINED WITHOUT LEAVE TO AMEND.

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

Ptff/Pet: Ford Construction Company

Atty: Murphy Austin Adams Schoenfeld LLP

Def/Res: Gold Creek Homes & Development; Motherlode LLC; Old Golden Oaks LLC

Atty:

TENTATIVE RULING: Plaintiff Ford Construction Company, Inc. moves, pursuant to Code of Civil Procedure section 1281.2, for an order to compel arbitration and stay further proceedings in this action on the grounds that the written agreement at issue in the litigation contains a mandatory arbitration provision for which no exception applies.

California law strongly favors arbitration. (*Prima Donna Development Corp. v. Wells Fargo Bank, N.A.* (2019) 42 Cal.App.5th 22, 35 (Prima Donna).) A proceeding to compel arbitration is, in essence, a suit in equity to compel specific performance of a contract. (*California Teachers Assn. v. Governing Bd.* (1984) 161 Cal.App.3d 393, 399.) Generally, on a motion to compel arbitration supported by prima facie evidence of a written agreement to arbitrate the underlying controversy, the Court must determine whether the agreement exists and, if any defense to its enforcement is raised, whether the agreement is enforceable. (*Rosenthal v. Great Western Financial Sec. Corp.* (1996) 14 Cal.4th 394, 413.) The moving party bears the burden of proving the existence of the agreement by a preponderance of the evidence. (*Ibid.*) The opposing party bears the burden of producing evidence of and proving by a preponderance any fact necessary to any defense raised. (*Ibid.*)

The Court finds that the claims set forth in the Complaint arise out of and relate to the terms of that certain written agreement by and between Plaintiff and Defendant Gold Creek Homes & Development LLC (Gold Creek). (See Complaint at ¶ 11, Exh. A.) That agreement contains an arbitration provision that provides as follows. "Any controversy or claim arising out of or relating to this Contract or its alleged breach, which can not [sic] be resolved by mutual agreement, shall be settled by arbitration in accordance with Construction Industry Rules of the American Arbitration Association in effect on the date of the Contract, and judgment upon the award rendered by arbitrator(s) may be entered in court in San Joaquin County, California." (Complaint at Exh. A, § 15.)

Based on the foregoing, the Court finds that Plaintiff has carried its burden of making a prima facie showing that the agreement exists and through it the parties have agreed to arbitrate the present controversy. (*Rosenthal v. Great Western Financial Sec. Corp.*, *supra*, 161 Cal.App.3d at 399.)

No opposition to the motion was timely filed. Therefore, there is no evidence before this Court of any defense to enforceability of the arbitration clause.

Based on the foregoing, plaintiff's motion is GRANTED. The parties are ordered to arbitrate the claims set forth in the Complaint. The present action is STAYED pending resolution of the arbitration. The Case Management Conference scheduled for 9/29/21 is continued to January 19, 2022, at 1:30 p.m. in Courtroom 1.

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.