

**THE LAKES TREATMENT CENTER v. THE RESORT AT LAKE
TULLOCH, et al**

21CV45585

**PLAINTIFF'S MOTION FOR LEAVE
TO FILE FIRST AMENDED COMPLAINT**

This is a dispute involving a commercial lease with a purported option to buy. Plaintiff (tenant) contends that defendants (current and former owners) failed to honor a right of first refusal or to maintain the property consistent with the terms of the lease agreement. Before the Court is a motion by plaintiff for leave to file a First Amended Complaint ("FAC"). Plaintiff seeks permission to add new defendants and new causes of action. There is, at present, no trial date set.

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. Although the supporting declaration fails to explain when the new facts came to light, and why the amendment was not made earlier in this action (see Young Decl Para 9-11), the opposition does not take issue with these procedural omissions. Thus, this Court will reach the merits.

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.) Here, defendant Resort opposes the motion for leave on the singular ground that the FAC runs afoul of Civil Code §1714.10. Plaintiff disagrees, but of course this is neither the time nor the place for that debate. Unless a proposed amendment is a sham or fatally flawed on its face, a court may not consider the validity of the proposed amendment in deciding whether to grant leave to amend. (*Garcia v. Roberts* (2009) 173 Cal.App.4th 900, 912; *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.) Defendant is free to challenge the pleading through appropriate means.

Motion GRANTED. Plaintiff to file FAC within 5 days, and effectuate service on all defendants within 20 days. Mandatory Settlement Conference is continued from 8/14/23 to January 22, 2024, at 8:30 a.m. in Dept. 2, and to include the new defendants, with plaintiff ordered to provide notice of the Conference at the time of service of the FAC.

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.

WILLIAMS v. MININ

21CV45674

DEFENDANTS' MOTION TO COMPEL RESPONSES

This is a neighbor dispute over ingress and egress via a dirt road cutting through many private parcels, which plaintiff describes as an easement.

Before the Court is defendants' motion to compel responses to outstanding form interrogatories (the original motion also included a demand for verifications, but that concern has since been resolved). Plaintiff filed a "partial opposition" conceding the propriety of the motion to compel, but asked that the sanction award be cut in half. Defendants are basically in agreement.

Motion GRANTED. Plaintiff is ordered to serve verified, substantive, objection-free answers to form interrogatories within 10 calendar days, and to reimburse defendants the reasonable fees and costs associated with the motion to compel said response. That amount shall be \$485.00 (1 hour lawyer, 1 hour paralegal, filing fee), also to be paid within 10 calendar days.

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

TORMEY et al v. JENNINGS et al

22CV46038

PLAINTIFF'S MOTION TO COMPEL FURTHER RESPONSES

This is a quiet title action involving an easement for ingress and egress between adjoining parcels APN 012-004-005 and APN 012-004-019, which plaintiffs describe as an easement of necessity given the remoteness of the cabin thereon and the loss of an access bridge previously available to plaintiffs. Before the Court is plaintiffs' commingled motion for further discovery responses.

The motion is DENIED, Without Prejudice, as being procedurally defective. Pursuant to Calaveras County Superior Court Local Rule 3.3.7 (adopted 1/1/18), "all matters noticed for the Law & Motion calendar shall include" specified language in the Notice of Motion pertaining to the Court's tentative ruling procedure, and "failure to include this language in the notice may be a basis for the Court to deny the motion."

The Clerk shall provide notice of this Ruling to the parties forthwith. No further formal order pursuant to Rule of Court 3.1312 is required.

FASOLIS v. GLADYS

22CV46130

CROSS-MOTIONS RE DEFAULT

This is a breach of contract action involving an agreement to transfer title for APN 064-037-004 from defendant to plaintiff for the sum total of \$13,000.00. According to plaintiffs, title required additional documentation from defendant, which was delayed due to defendant's health. Plaintiffs allege that while waiting for defendant to recover, they learned that defendant re-listed the property and entered into an agreement to sell to a third-party for more than double what plaintiffs offered. Before the Court is plaintiffs' motion for entry of a default judgment (specific performance), and defendant's motion to set aside entry of default. Neither motion is opposed. Procedurally, the Court will decide first on defendant's motion for reasons that will become clear in the ruling.

Defendant seeks discretionary relief under CCP §473. To qualify for discretionary relief, the party seeking relief must show (1) a proper ground for relief, and that (2) the party has raised that ground in a procedurally proper manner, within any applicable time limits. (*Cruz v. Fagor America, Inc.* (2007) 146 Cal.App.4th 488, 495; *English v. IKON Business Solutions, Inc.* (2001) 94 Cal.App.4th 130, 149.) The sole substantive basis offered by defendant is advanced age and infirmity (aka inadvertence or excusable neglect), which can support a request for relief. (See *Kesselman v. Kesselman* (1963) 212 Cal.App.2d 196, 207-208.) The evidence is slight, but it is the policy of the law to favor, whenever possible, a hearing 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, with all doubts resolved in favor of the defaulted party. (See *Shamblin v. Brattain* (1988) 44 Cal.3d 474, 478-479; *Lasalle v. Vogel* (2019) 36 Cal.App.5th 127, 134; *Bonzer v. City of Huntington Park* (1993) 20 Cal.App.4th 1474, 1478.) Procedurally, however, there is a timing issue. A motion for discretionary relief must be filed within six months of the clerk's entry of default. The clerk entered default on 08/17/22, and the motion to set aside was not filed until 10 months later. However, fortuitously for defendant, this is an action involving "ownership or right to possession of real or personal property" (CCP §473(b)) and the Court's file does not reflect any notice from plaintiffs to defendant that default had been entered. The file also lacks any documentation that plaintiffs ever served defendant with any of the requests to set a default hearing. The absence of notice(s), coupled with plaintiffs' failures to appear at Case Management Conferences, provided defendant a false sense of complacency. Finally, as there is no opposition to the motion filed, the statutory deadline – even if it did pass – ought not be enforced. (Civil Code §§ 3513, 3516.)

Defendant's motion to set aside entry of default GRANTED. Defendant to file an answer to the complaint within 10 calendar days.

Plaintiffs' motion for default judgment prove up hearing is denied as MOOT

The parties are ordered to immediately participate in settlement talks.

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

MUNDALE v. LIMIT PARTNERS, LLC

23CV46758

PETITION RE UNLAWFUL USE OF IDENTITY

HEARING REQUIRED

This is a special summary proceeding pursuant to Civil Code §1798.201 to secure a court order requiring a business entity to explain and justify the use of personal identifying information in its entity filings. The facts alleged are as follows:

On 04/20/23, plaintiffs received ordinary mail at their residence, addressed to Limit Partners LLC, c/o Murphy Parker. They went online and discovered that Ashley Agasi caused Limit Partners LLC to be registered with the Secretary of State using plaintiffs' home address as its principal physical address.

On 04/21/23, plaintiffs reported the mail and alleged false registration filing to the Sheriff's Department. They also reported same to the Attorney General, the Secretary of State, and the Postmaster General. According to plaintiffs, their prompt reaction was guided in large part from a fear that they might (again) be the victims of some identity theft.

Pursuant to Civil Code §1798.201, a person who has learned that his or her personal identifying information (including one's home address per Penal Code §530.55(b)) has been used "unlawfully" in a business entity filing "may petition the superior court in the county in which the person resides for an order, which may be granted ex parte, directing the alleged "perpetrator" and the person using the personal identifying information in the business entity filing to appear at a hearing before the court and show cause for (1) why the personal identifying information should not be labeled to show the information is impersonated and does not reflect the person's identity [and] (2) why the personal identifying information should be associated with the business entity.

The requirement that the address be used "unlawfully" presents a potential issue for plaintiffs. According to Penal Code §530.5, "unlawful" use requires a prima facie showing that respondents used plaintiffs address "with the intent to defraud" or "to commit a crime" or "to obtain, or attempt to obtain, credit, goods, services, real property, or medical information without the consent of that person." There is nothing proffered by plaintiffs to support any theory of illegal use of plaintiffs' address. Although it does clearly appear that Ms. Agasi had no permission to use plaintiffs' home address as the

physical business address for Limit Partners, LLC, there is no indication that Ms. Agasi did so intentionally, let alone with criminal intentions.

Nevertheless, something here is amiss. The *mailing* address listed by Ms. Agasi on the Articles of Organization (2907 Shelter Island Drive #108) belongs to the The Wine Pub – “a family-owned-and-operated wine bar in San Diego, CA, featuring handcrafted food and handpicked wines”. The address listed by Ms. Agasi for the LLC’s agent for service of process (Murphy Parker) belongs to the International Sports Bar (fka New Amsterdam), “a trendy and eclectic watering hole in the Russian Hill area of San Francisco”. The Articles of Organization are filed under penalty of perjury, and yet Ms. Agasi seems to have inserted as many as three incorrect addresses.

On 06/23/23, this Court issued an OSC to Ashley Agasi,, Murphy Parker and all managers/members of Limit Partners LLC to appear in this Court on this day and to show cause as to why plaintiffs’ residence address should be associated with Limit Partners LLC. Plaintiffs were ordered to give courtesy notices to The Wine Pub and International Sports Bar, which they apparently did. However, plaintiffs were further ordered to effectuate service upon the citees by either personal delivery or certified (signature required or return receipt), and as yet there is no proof of that service having been made. Proof of good service of the OSC citation is a prerequisite to any hearing on the merits.

At the hearing (if one takes place in the event plaintiffs file the necessary proof(s) of service), all interested parties are entitled to be heard from, and to have considered by this Court “declarations, affidavits, police reports, or other material, relevant, and reliable information.” If this Court determines the petition is meritorious and there is no reasonable cause to believe that the plaintiffs’ residence address has been used lawfully in the business entity filing, this Court may issue an order certifying this determination and order that the address either be redacted, removed and/or labeled “impersonated” on the business filings. (Civil Code §1798.202.)