ARIZA v. LAKESIDE VENTURES, LLC

22CV46059

MOTIONS TO WITHDRAW AS COUNSEL

This is a contract dispute involving a proposed transaction for the sale of a mobile home park in Mokelumne Hill. Before the Court is a motion by the Carlson Law Group to withdraw from representing Lakeside Ventures and Bonnie Tuckerman-Aho.

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.)

Counsel's submitted MC-052 declarations meet the statutory requirement. Absent proper LR 3.3.7 notice and appearance to present oral argument the Court GRANTS Counsel's motions to withdraw.

The Clerk shall provide notice of this Ruling to the parties forthwith. The Court intends to sign the submitted proposed orders.

ROCKY TOP RENTALS v. ENGLAND et al

23CF14161

PLAINTIFF'S APPLICATION FOR WRIT OF POSSESSION

In this contract dispute, plaintiff alleges that defendants have breached a written "rent-to-own" agreement involving plaintiff's portable storage building by failing to make the required monthly payments since October of 2022. Before the Court is plaintiff's application for a writ to possess said storage building. For the reasons which follow, the writ cannot yet be granted.

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).)

On 07/20/20, plaintiff and defendant England entered into a written contract, the salient terms of which are: if defendant (a) made 36 consecutive payments of $609.04, by the 15th of each successive month; (b) paid a total of $20,348.28 in some form or fashion, or (c) paid $12,209.00 plus monthly arrears, defendant would acquire full ownership of the storage building. (See Paragraphs 6-8, and 12.) Based thereon, defendant arguably has until 08/15/23 to complete the purchase. Although the written agreement states that the failure to make a single payment results in "automatic" termination of the agreement (see Paragraph 15.b.), the same agreement provides that in the case of any dispute the parties will first try to resolve things with "friendly consultation." (See Paragraph 30.) This clearly implies some communication from plaintiff to defendant regarding the alleged default. The agreement provides that defendant can override the "automatic" termination by curing the arrears within 10 days (see Paragraph 15.a) which further implies some notice of a default. Since there is no evidence of notice or plaintiff's attempt to engage in "friendly consultation" with defendant (see generally Zelenka-Diatikar Declaration), this Court notes that defendant still has time (through 08/25/23) to conclude the transaction. For that reason, defendant retains an equitable ownership interest in the storage building equal to the amount already paid

($13,155.20). What percentage that represents remains to be calculated, but for present purposes her continued possession is not yet wrongful, and plaintiff is not yet entitled to immediate possession. Moreover, trial courts do not condone outright forfeitures, and the loss of all equitable interest plus the immediate surrender of all contents (see Paragraph 15.c.) represents an unwarranted forfeiture and is quite possibly unconscionable. Since it is impossible to know the value of what remains inside, a bond would be guesswork. Those issues remain for another day.

Finally, there is an issue of notice and personal jurisdiction. This action was commenced on 05/22/23. Pursuant to CRC 3.110(b), plaintiff had 60 days to both effectuate service of the summons and file proof thereof. A review of the Court's file fails to reveal any proof of service. In the ordinary course of events, defendant would already be a party to the action, and would have been heard on the concerns raised herein. Additionally, there is no proof of service as to the application itself (the Court file contains only a "Notice" but no proof of that having been served). As it presently stands, it appears to this Court that defendant may be entirely in the dark about this lawsuit, and the risk she faces regarding forfeiture of both her equitable interest in the storage building, as well as her personal belongings inside the storage building. She has a due process right to notice. (CCP §1005.)

Application DENIED without prejudice to renewal. 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.

LENIOR, et al v. PACIFIC GAS & ELECTRIC CO.

22CV46442

DEMURRER TO COMPLAINT

This is a dispute between utility customers and the utility company. At issue is an unpaid bill in the amount of $126,691.66, concerning which plaintiffs dispute any responsibility. Defendant explains that the bill is bona fide based on suspicious (and possibly illegal) use and/or tampering with meter equipment. The bill does not seem to represent the delivery and consumption of any actual commodity/product, or use of any service; instead, the bill appears to be based on Electric Rule 17.2.

Before the Court is a demurrer to the operative Complaint, which includes a challenge to each cause of action stated therein. A demurrer presents an issue of law regarding the sufficiency of the allegations set forth in the complaint. The challenge is limited to the "four corners" of the pleading (which includes exhibits attached and incorporated therein), or from matters outside the pleading which are judicially noticeable. The complaint is read as a whole. Material facts properly pleaded are assumed true, but contentions, deductions or conclusions of fact/law are not. In general, a pleading is adequate if it contains a reasonably precise statement of the ultimate facts, in ordinary and concise language, and with sufficient detail to acquaint a defendant with the nature, source and extent of the claim. (CCP §§ 425.10(a), 459; in accord, *Blank v. Kirwan* (1985) 39 Cal.3d 311, 318; *Gray v. Dignity Health* (2021) 70 Cal.App.5th 225, 236 n.10.)

According to defendant, "adjudication of customer disputes regarding utility bills and termination of electric service are within the exclusive jurisdiction of the CPUC … This Court does not have subject matter jurisdiction to review, restrain, or interfere with the CPUC's regulation, authority, or supervision of billing disputes or termination of electric service." Defendants cite to Public Utility Code §1759(a), which provides as follows:

> "No court of this state, except the Supreme Court and the court of appeal, to the extent specified in this article, shall have jurisdiction to review, reverse, correct, or annul any order or decision of the commission or to suspend or delay the execution or operation thereof, or to enjoin, restrain, or interfere with the commission in the performance of its official duties, as provided by law and the rules of court."

According to plaintiffs, the claims asserted herein do not fall within the established parameters for CPUC preemption. Plaintiffs cite Pub. Util. Code §2106, which provides as follows:

> "Any public utility which does, causes to be done, or permits any act, matter, or thing prohibited or declared unlawful, or which omits to do any act, matter, or thing required to be done … shall be liable to the persons or corporations

affected thereby for all loss, damages, or injury caused thereby or resulting therefrom. If the court finds that the act or omission was wilful, it may, in addition to the actual damages, award exemplary damages. An action to recover for such loss, damage, or injury may be brought in any court of competent jurisdiction by any corporation or person."

There is an obvious overlap/conflict between §1759 and §2106. While §1759 was enacted to limit judicial review of CPUC actions, it was never intended to immunize or insulate a public utility from all civil actions brought in superior court. Instead, courts are instructed to engage in a three-part test to determine if the alleged wrongdoing is embraced within the preemption, or subject to civil litigation. To find preemption, defendant must establish that all three of the following questions are to be answered, as a matter of law, in the affirmative:

1) Does the litigation involve a regulatory policy?
2) Did the CPUC have the authority to promulgate said policy?
3) Does a civil action hinder, frustrate or interfere with the exercise of that authority?

(See *San Diego Gas & Elec. Co. v. Superior Court* (1996) 13 Cal.4th 893, 902-903; *Uber Technologies Pricing Cases* (2020) 46 Cal.App.5th 963, 970-972; *PegaStaff v. Pacific Gas & Electric* (2015) 239 Cal.App.4th 1303, 1315-1316; *Wilson v. Southern California Edison Co.* (2015) 234 Cal.App.4th 123, 150; *Mata v. Pacific Gas & Electric Co.* (2014) 224 Cal.App.4th 309, 315; *Koponen v. Pacific Gas & Electric* (2008) 165 Cal.App.4th 345, 350-354; *Anchor Lighting v. Southern California Edison Co.* (2006) 142 Cal.App.4th 541, 550; *Cundiff v. GTE California Inc.* (2002) 101 Cal.App.4th 1395, 1405; *Schell v. Southern California Edison Company* (1988) 204 Cal.App.3d 1039,1046.)

Although our Supreme Court has previously held that §1759 preempts §2106 only if the ensuing award of damages would "hinder or frustrate" CPUC's supervisory and regulatory policies, that line in the sand has been sometimes hard to see. There has been an abundance of published opinions on just what the *Covalt test* (and usually the third element) means. The Ninth Circuit recently certified to the California Supreme Court the question of how best to deal with preemption when the harm claimed is the byproduct of the utilities' negligent undertaking of its own obligations rather than the implementation of its own regulations (in that case, managing the power grid). (See *Gantner v. PG&E Corp.*, 26 F.4th 1085, 1089-1090 (9th Cir. 2022).) As explained therein, "in *Covalt* and *Hartwell*, and every other California Supreme Court case addressing section 1759 preemption, the utility's allegedly unlawful conduct giving rise to the claim was the same conduct that directly caused the plaintiffs' alleged injuries." (*Id*.)

Here, plaintiffs' claims may appear in some aspects to relate to defendant's decision to investigate an alleged unauthorized use, and to terminate service thereon, but other aspects (namely slander, intentional infliction of emotional distress, and spoliation) do

not. Simply put, it is one thing to investigate and adjudicate, but quite another to defame and spoliate.

Turning now to the specific causes of action, the first cause of is titled "Wrongful Termination of Utility Services." By the title alone, but also with reference to the averments therein, it is clear to this Court that plaintiffs are complaining about how defendant has implemented Electric Rule 17.2, which is a regulatory policy that defendant was clearly authorized to promulgate. Since plaintiffs are seeking an order which in effect finds that defendant is "wrong" and that the billing amount is incorrect, and that something more is required anytime a Rule 17.2 concern arises, which would clearly hinder, interfere or frustrate the policy of controlling unauthorized use and meter tampering. Plaintiffs' recourse was to exhaust the CPUC administrative process to have the bill reduced. The fact that defendant failed to preserve metering tests and the alleged tampered meter suggests to this Court that plaintiffs may have prevailed at the CPUC – but that remains conjecture, and therefore is not germane to this decision.

Defendant's own policy provides that plaintiffs were to have an opportunity to have their concerns heard by PG&E – which implies some good faith effort on the part of PG&E to resolve said dispute rather than forcing plaintiffs to exhaust the CPUC process. This is particularly apt when a "failure to pay the bill" is a direct result of an expected bill resulting from an alleged unauthorized use. Pursuant to defendant's own policies, a customer is engaged in an "unauthorized use" when the customer uses connections, alterations or modifications to either meters or the electric supply lines in order to secure unmetered electricity (i.e. stealing). As alleged, PG&E became suspicious of unauthorized use when plaintiffs' monthly electricity bills were cut dramatically. According to PG&E, given the modest size of the home, the amount of electricity being used in "high months" suggested to investigators some kind of illicit marijuana growing was taking place, and that the rapid reduction (as much as 90%) could only be explained by some tampering of the meter (rather than, say, complete cessation of said illicit activity). Investigators also claimed to have found some physical evidence of tampering. However, PG&E's policy in such instances is to "collect and preserve evidence in the matter, test the meter and obtain connected load information." (Rule 17.2.B.) PG&E is supposed to "document the reasons why" evidence was not secured, and to provide the customer "an opportunity to respond to the claim" – which can only be done when the evidence is preserved. Plaintiffs allege that PG&E spoliated all the evidence, making it impossible for them to disprove the claim (but equally impossible for PG&E to directly prove wrongdoing). Lastly, while PG&E is permitted to discontinue service for an unauthorized use, it can also skip this part and terminate after unilaterally issuing an impossible bill, based on the assumption that unauthorized use in fact occurred. However, Rule 11.J. requires service to be restored once the "unauthorized use" has ceased (which occurred immediately here) and the "stolen electricity" paid for – which means that PG&E can be totally wrong about the "unauthorized use" and still withhold all services until the CPUC steps in. Thus, while the allegations will need to be refined, it does appear to this Court that plaintiffs may be able to restate the claim that defendant's failure to comply with its own existing policy regarding preservation of

evidence and giving the customer an opportunity to review and challenge the evidence does not offend the CPUC's regulatory powers and is a ministerial duty this Court could enforce (even if doing so is without monetary damages).

As for the slander cause of action, this is clearly not preempted in favor of the CPUC. There is no authority granted to the CPUC to regulate speech by employees of public utility companies, and no policy covering the topic (at least not one identified by the parties). Defendant separately contends that plaintiffs failed to state sufficient facts, though the memorandum of points and authorities fails to provide much support for the contention.

Defendant opines that calling plaintiffs drug cultivators and criminals was privileged. The litigation privilege, which is codified at Civil Code §47(b), applies to any statement made by parties in official proceedings, provided that the statement has some connection or logical relation thereto. The principal purpose of the litigation privilege is to afford interested parties the utmost freedom to conduct government business. As such, the privilege is broad and expansive, and any doubt as to whether it applies must be resolved in favor of applying it. (See *Action Apartment Association, Inc. v. City of Santa Monica* (2007) 41 Cal.4th 1232, 1241-1242; *Bonni v. St. Joseph Health System* (2022) 83 Cal.App.5th 288, 300-301; *Klem v. Access Insurance Co.* (2017) 17 Cal.App.5th 595, 613; *Greco v. Greco* (2016) 2 Cal.App.5th 810, 826.) This is not ripe for demurrer. The allegations do not show how those statements were part of an official proceeding.

As for the elements, the essential elements for plaintiffs' defamation claim are (1) publication to a third person (2) of what appears to a reasonable person to be a statement of fact (as opposed to an opinion) that is (3) provably false, (4) unprivileged, and (5) has a natural tendency to injure or causes special damage. In general, a statement that is false, not protected by any privilege, and that exposes a person to contempt or ridicule or certain other reputational injuries, constitutes defamation. (See *Taus v. Loftus* (2007) 40 Cal.4th 683, 720; *Sanchez v. Bezos* (2022) 80 Cal.App.5th 750, 763; *Laker v. Board of Trustees of California State University* (2019) 32 Cal.App.5th 745, 763; *John Doe 2 v. Superior Court* (2016) 1 Cal.App.5th 1300, 1312.) The averments suggest that PG&E employees were talking to themselves, and plaintiffs' son overheard them saying unkind things that likened plaintiffs to criminals and drug addicts. This is not a publication to a third-party unless the employees knew the son was present and without ear-shot. Additional facts will be needed. (Compare *Dickinson v. Cosby* (2017) 17 Cal.App.5th 655, with *Chaker v. Mateo* (2012) 209 Cal.App.4th 1138.)

As for the intentional infliction of emotional distress cause of action, defendant's memorandum is equally barren. Nevertheless, the cause of action is insufficient as pled. The essential elements of a cause of action for intentional infliction of emotional distress are:

1) conduct which is extreme/outrageous, that is conduct which exceeds all bounds of decency and is more than mere insults, indignities, threats or annoyances;
2) directed at the plaintiff and carried out with the intent to cause, or with reckless disregard for the probability of causing, emotional distress;
3) resulting in severe emotional distress, that is emotional distress of such substantial quality or enduring quality that no reasonable person in civilized society should be expected to endure it; and
4) harm actually caused by the defendant's conduct.

(See *Hughes v. Pair* (2009) 46 Cal.4th 1035, 1050-1051; *Barker v. Fox & Associates* (2015) 240 Cal.App.4th 333, 356; *Ragland v. U.S. Bank National Association* (2012) 209 Cal.App.4th 182, 204.) The properly plead "extreme and outrageous conduct," the alleged conduct must be pled with reasonable particularity. (*Hughes, supra*, 46 Cal.4th at 1051; *McMahon v. Craig* (2009) 176 Cal.App.4th 1502, 1516.) "There is no bright line standard for judging outrageous conduct and its generality hazards a case-by-case appraisal of conduct filtered through the prism of the appraiser's values, sensitivity threshold, and standards of civility. The process evoked by the test appears to be more intuitive than analytical. Thus, whether conduct is 'outrageous' is usually a question of fact." (*So v. Shin* (2013) 212 Cal.App.4th 652, 671-672. See also *Johnson v. Ralphs Grocery Co.* (2012) 204 Cal.App.4th 1097, 1108-1109.)

Assuming plaintiffs can adequately plead a cause of action for defamation, this Court would permit a claim for IIED to stand if plaintiffs can also allege emotional distress of substantial or enduring quality. However, based on the allegations, doing so seems dubious. The emotional distress cannot be the unpaid bill and the loss of electricity, but only the slander and – if purposeful – the spoliation of evidence necessary to exonerate plaintiffs.

Finally, while the parties speak of a fourth cause of action for injunctive relief, injunctive relief is not a cause of action. (*Martin v. Aimco Venezia, LLC* (2007) 154 Cal.App.4th 154, 162; *Roberts v. Los Angeles County Bar Association* (2003) 105 Cal.App.4th 604, 618; *McDowell v. Watson* (1997) 59 Cal.App.4th 1155, 1160.) As one federal court recently explained: "an injunction is a remedy, not a separate claim or cause of action. A pleading can request injunctive relief in connection with a substantive claim, but a separately pled claim or cause of action for injunctive relief is inappropriate." (*Jensen v. Quality Loan Service Corp.*, 702 F.Supp.2d 1183, 1201 (E.D. Cal. 2010).) More importantly, injunction lies only to prevent threatened injury, not to punish past wrongs. (*Huntingdon Life Sciences, Inc. v. Stop Huntingdon Animal Cruelty USA, Inc.* (2005) 129 Cal.App.4th 1228, 1266.) When the wrongful conduct has already occurred, injunction is fruitless. However, plaintiffs will be given leave to amend to include a prayer for injunctive relief tied to their other claims.

Demurrer SUSTAINED to all causes of action; With 30 days leave to amend. 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.