

TENTATIVE RULINGS: CIVIL LAW & MOTION

Wednesday, December 4, 2024 at 3:00 p.m.
Courtroom 18 –Hon. Christopher M. Honigsberg
Civil and Family Law Courthouse
3055 Cleveland Avenue
Santa Rosa, California 95403

The Court's Official Court Reporters are "not available" within the meaning of California Rules of Court, Rule 2.956, for court reporting of civil cases.

CourtCall is not permitted for this calendar.

If the tentative ruling does not require appearances, and is accepted, no appearance is necessary.

Any party who wishes to be heard in response or opposition to the Court's tentative ruling **MUST NOTIFY** the Court's Judicial Assistant by telephone at **(707) 521-6602** and **MUST NOTIFY all other parties of their intent to appear, the issue(s) to be addressed or argued and whether the appearance will be in person or by Zoom.** Notifications must be completed no later than 4:00 p.m. on the court (business) day immediately before the day of the hearing.

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Unless notification of an appearance has been given as provided above, the tentative ruling shall become the ruling of the Court the day of the hearing at the beginning of the calendar.

1. 23CV00186, Jooblay, Inc. v. Skolnik

Defendants' unopposed motion for judgment on the pleadings is GRANTED IN PART and DENIED IN PART. Judgment on the pleadings is GRANTED as to the First, Fifth and Sixth causes of action only. It is DENIED as to the Ninth and Twelfth causes of action. Leave to amend is GRANTED as to the First and Sixth causes of action only. It is DENIED as to the Fifth cause of action. Defendants' request for judicial notice is GRANTED. Counsel for the moving defendants shall submit a written order consistent with this tentative ruling. Due to the lack of opposition, compliance with Rule 3.1312 is excused.

The Court notes that former counsel for Plaintiff, Kevin Carey, attempted to file a late opposition to this motion, but it was rejected twice by the Clerk of Court. The opposition was rejected because Kevin Carey no longer represents Plaintiff since he was relieved as counsel in October, pursuant to Mr. Carey's own motion to be relieved as counsel. Since the opposition was rejected, and thus not filed into the case, the Court has not considered it. Accordingly, the Court has also not considered Defendants' reply that was filed

on November 25th.

Analysis:

I. Standard for Judgment on the Pleadings

A defendant may move for judgment on the pleadings on the grounds that (1) “the court has no jurisdiction of the subject of the cause of action alleged in the Complaint” or (2) “the complaint does not state facts sufficient to constitute a cause of action against that defendant.” (CCP § 438(c).)

“A motion for judgment on the pleadings performs the same function as a general demurrer....” (*Cloud v. Northrop Grumman Corp.* (1998) 67 Cal.App.4th 995, 999, 79 Cal.Rptr.2d 544.) “It is axiomatic that a demurrer lies only for defects appearing on the face of the pleadings.” (*Harboring Villas Homeowners Assn. v. Superior Court* (1998) 63 Cal.App.4th 426, 429.) “The grounds for motion provided for in this section shall appear on the face of the challenged pleading or from any matter of which the court is required to take judicial notice.” (CCP § 438(d).) “A trial court's determination of a motion for judgment on the pleadings *accepts as true* the factual allegations that the plaintiff makes.” (*Gerawan Farming, Inc. v. Lyons* (2000) 24 Cal. 4th 468, 515. Emphasis added.) “In addition, it gives them a liberal construction.” (*Ibid.*)

Presentation of extrinsic evidence is therefore not proper on a motion for judgment on the pleadings. (*Cloud v. Northrop Grumman Corp., supra*, at p. 999; *Sykora v. State Dept. of State Hospitals* (2014) 25 Cal.App.4th 1530, 1534.) The complaint must be viewed in isolation; accordingly, matters set forth in the Answer will not be considered. (*Hughes v. Western MacArthur Co.* (1987) 192 Cal.App.3d 951.

II. First Cause of Action – Wrongful Foreclosure

The basic elements of a wrongful foreclosure cause of action are, ““(1) the trustee or mortgagee caused an illegal, fraudulent, or willfully oppressive sale of real property pursuant to a power of sale in a mortgage or deed of trust; (2) the party attacking the sale (usually but not always the trustor or mortgagor) was prejudiced or harmed; and (3) in cases where the trustor or mortgagor challenges the sale, the trustor or mortgagor tendered the amount of the secured indebtedness or was excused from tendering.’ ” (*Daniels v. Select Portfolio Servicing, Inc.* (2016) 246 Cal.App.4th 1150, 1184–85.)

In support of this cause of action, Plaintiff alleges that the concurrent foreclosure sales of the Ross Station Property and the Laguna Road Property were wrongful for two reasons. First, Plaintiff alleges that both notices of default wrongfully sought a purported arrearage amount of \$2,118,381.54 which was comprised of unlawful usurious interest in an approximate amount of \$315,000. Plaintiff alleges that because the interest component of the amount in arrears as stated in the default notices was illegal and invalid as a matter of law, the underlying debt was not valid. Second, Plaintiff alleges that the foreclosure sale was wrongful because Defendant Hanf, as executive officer of the original Trustee, Pacific Private Money, assured Plaintiff that the foreclosure sale would be postponed and not proceed as noticed during the time that Plaintiff and Defendant Hanf were discussing and negotiating a work-out. According to Plaintiff, Defendant

Hanf represented to Plaintiff that in the event a work-out or restructuring of the Original Loan could not be achieved, then Defendant Hanf would provide Plaintiff with sufficient time to obtain third-party financing with which to pay off the indebtedness owed to the Lender Beneficiaries before re-instituting foreclosure proceedings. As such, Plaintiff alleges that it was excused from tendering all amounts that were purportedly due.

Regarding Plaintiff's first allegation, usurious interest does not render the entire debt invalid. (*Forte v. Nolfi* (1972) 25 Cal.App.3d 656, 692 ["the lender may recover his principal..."].) Thus, even if the interest amounts were usurious as Plaintiff alleges, Plaintiff would still need to allege tender of the principal. Plaintiff has not done so.

Plaintiff argues that it is excused from tendering because of Defendant Hanf's representations to it. Plaintiff first alleges that Defendant Hanf assured Plaintiff that foreclosure proceedings would be postponed while they negotiated a work-out. There are no facts alleged in support of this cause of action suggesting that this did not happen. Plaintiff does not allege when Defendant Hanf made this "assurance." The Court notes that additional facts regarding these representations are alleged later in the complaint in support of Plaintiff's intentional misrepresentation cause of action, but those facts are not incorporated into this cause of action. SBS Sent the Notice of Default and Election to Sell in April of 2021, a Beneficiary Demand for Payoff in May of 2021, but the Notice of Trustee's Sale was not recorded until August of 2021 and the public auction did not occur until September of 2021. Thus, according to the facts alleged in support of this cause of action, several months lapsed between the notice of default and the notice of trustee's sale during which time negotiations could have occurred. There are also no facts alleged regarding Plaintiff's engagement in meaningful negotiations during that time.

Plaintiff next alleges Defendant Hanf represented that in the event a work-out or restructuring of the Original Loan could not be achieved, then Defendant Hanf would provide Plaintiff with sufficient time to obtain third-party financing. However, as noted, there are no facts alleged regarding Plaintiff's cooperation with these negotiations. There are also no facts alleged regarding whether Plaintiff accepted this alleged offer of more time to obtain third-party financing or communicated to Defendant Hanf an intention to do so. Rather, according to the facts alleged, Plaintiff made no efforts to obtain third-party financing. Accordingly, Plaintiff has failed to adequately allege that it tendered the amount of the indebtedness or was excused from tendering. As such, judgment on the pleadings is granted as to this cause of action.

III. Fifth Cause of Action - Voiding Usurious Interest Provisions

Plaintiff alleges in this cause of action that the interest rate of Plaintiff's loan was usury because it exceeded the 10% maximum set forth by the California Constitution and the loan was not arranged by a licensed real estate loan broker, but was rather arranged by Defendant Hanf. Civil Code § 1916.1 provides an exception to the 10% maximum interest rate when the loan is brokered by a licensed real estate broker.

“The restrictions upon rates of interest contained in Section 1 of Article XV of the California Constitution shall not apply to any loan or forbearance made or arranged by any person licensed as a real estate broker by the State of California, and secured, directly or collaterally, in whole or in part by liens on real property.” (Civ. Code, § 1916.1.)

According to judicially noticed documents, Defendant Hanf is a California licensed real estate loan broker. His broker license was issued in 2010 and expires in 2026. At other points in the Complaint, Plaintiff also alleges that Pacific Private Money, Inc. brokered the Note and loan. According to judicially noticed documents, PPM is also a licensed broker. Its broker license was issued in 2011 and expires in 2027. Thus, judgment on the pleadings is granted as to this cause of action. Since it is clear that Plaintiff will not be able to allege this cause of action since the note and loan were arranged by a licensed real estate loan broker, leave to amend this cause of action is denied.

IV. Sixth Cause of Action – Declaratory Relief

Plaintiff’s declaratory relief cause of action is derivative of the Wrongful Foreclosure, Quiet Title and Cancellation of Void Deeds of Trust in Plaintiff’s First, Second, Third, Fourth and Eighth causes of action. Plaintiff has dismissed its Second, Third, Fourth, and Eighth causes of action. The Wrongful Foreclosure cause of action remains. However, because judgment on the pleadings is being granted as to that claim and this declaratory relief cause of action is derivative of it, judgment on the pleadings is also granted as to this cause of action.

V. Ninth Cause of Action – Intentional Misrepresentation

“The essential elements of a count for intentional misrepresentation are (1) a misrepresentation, (2) knowledge of falsity, (3) intent to induce reliance, (4) actual and justifiable reliance, and (5) resulting damage.” (*Chapman v. Skype Inc.* (2013) 220 Cal.App.4th 217, 230–231.) “Each element of a fraud count must be pleaded with particularity so as to apprise the defendant of the specific grounds for the charge and enable the court to determine whether there is any basis for the cause of action, although less specificity is required if the defendant would likely have greater knowledge of the facts than the plaintiff.” (*Id.* at 231.) Less specificity in pleading fraud is required “when ‘it appears from the nature of the allegations that the defendant must necessarily possess full information concerning the facts of the controversy....’” (*Cansino v. Bank of Am.* (2014) 224 Cal.App.4th 1462, 1469.)

Here, Plaintiff alleges that between the time of April 2021 and September 2021, Plaintiff and Defendant Hanf were engaged in multiple communications in an attempt to work out or restructure the original note. During these communications, Defendant Hanf represented to Plaintiff that he would agree to a restructuring of the Original Note, as modified, and the accrued interest thereunder, and would not foreclose on either the Ross Station Property or the Laguna Road Property without first informing Plaintiff with sufficient time to acquire and obtain alternative financing. Plaintiff alleges that these representations were

false, that Defendant Hanf knew that they were false or made them with reckless disregard for the truth, but Defendant Hanf desired to make a wind-fall profit from the foreclosures. Plaintiff alleges that it relied on these false representations to its detriment because they induced Plaintiff not to seek alternative financing in time to prevent the foreclosures. As such, Plaintiff has sustained damages of approximately \$4,558,000.

Defendants argue that judgment on the pleadings should be granted in their favor for this cause of action because Plaintiff has only alleged Defendants had a willingness to consider further modification and allow more time, not that Defendants agreed to such things. As such, Plaintiff has failed to allege a misrepresentation. However, this cause of action does not require that an *agreement* be alleged. It requires only that a false representation be alleged. Plaintiff alleged that Defendant Hanf represented falsely that he would agree to restructuring the note and allowing more time to obtain alternative financing. Plaintiff has sufficiently alleged a false representation.

Defendants next argue that the cause of action fails for lack of specificity. The Court does not agree. The facts alleged are sufficiently specific. This especially so considering that less specificity is required when it appears that the defendant possesses full information concerning the facts of the controversy. Judgment on the pleadings is denied as to this cause of action.

VI. Twelfth Cause of Action – Civil Conspiracy

“Conspiracy is not a separate tort, but a form of vicarious liability by which one defendant can be held liable for the acts of another.” (*IIG Wireless, Inc. v. Yi* (2018) 22 Cal.App.5th 630, 652.) “To establish conspiracy, a plaintiff must allege that the defendant had knowledge of and agreed to both the objective and the course of action that resulted in the injury, that there was a wrongful act committed pursuant to that agreement, and that there was resulting damage.” (*Ibid.*) “A conspiracy requires evidence ‘that each member of the conspiracy acted in concert and came to a mutual understanding to accomplish a common and unlawful plan, and that one or more of them committed an overt act to further it.’” (*Ibid.*) “[C]onspiracy provides a remedial measure for affixing liability to all who have ‘agreed to a common design to commit a wrong’ when damage to the plaintiff results.” (*Ibid.*) “A complaint for civil conspiracy states a cause of action only when it alleges the commission of a civil wrong that causes damage. Though conspiracy may render additional parties liable for the wrong, the conspiracy itself is not actionable without a wrong.” (*Okun v. Superior Ct.* (1981) 29 Cal.3d 442, 454.)

Defendants argue that because Plaintiff has not plead sufficient facts to support the other causes of action, the claim for conspiracy fails. However, the civil wrong that Plaintiff alleges as underlying this conspiracy cause of action is fraud. Plaintiff alleges that the defendants conspired together to induce Plaintiff and its President into believing that Defendant Hanf, acting on behalf of Pacific Private Fund and as authorized agent for the Lender Beneficiaries, had agreed with Utnehmer to postpone the foreclosure of the both the Ross Station Property and the Laguna Road Property so as to allow the negotiation of a further

modification of the Original Note. Thus, because Plaintiff has alleged sufficient facts supporting intentional misrepresentation, and has alleged that the defendants conspired together to induce Plaintiff into relying on the misrepresentations, Plaintiff has also sufficiently alleged a civil conspiracy.

VII. Leave to Amend

“In the case of either a demurrer or a motion for judgment on the pleadings, leave to amend should be granted if there is any reasonable possibility that the plaintiff can state a good cause of action.” (*Gami v. Mullikin Med. Ctr.* (1993) 18 Cal.App.4th 870, 876.) “Where a demurrer is sustained or a motion for judgment on the pleadings is granted as to the original complaint, denial of leave to amend constitutes an abuse of discretion if the pleading does not show on its face that it is incapable of amendment.”

Here, Plaintiff has failed to file an opposition, thus has failed to demonstrate how the defects in the pleading can be cured by amendment. However, considering the fact that Plaintiff’s counsel was relieved from representing Plaintiff merely a few weeks prior to this motion being heard and considering that it would be an abuse of discretion to deny leave to amend where there is any possibility that the defects could be cured by amendment, leave to amend is granted for the First and Sixth causes of action.

2. 23CV01478, Looney v. JM Ventures, Inc.

Plaintiff’s unopposed motion to compel answers to post judgment discovery is GRANTED. Plaintiff’s request for monetary sanctions is granted in the amount of \$60.00. Defendant is ordered to pay Plaintiff \$60.00 within 30 days of service of the Court’s order on this motion. Defendant is also ordered to respond to Plaintiff’s discovery requests within 30 days of service of the order on this motion. Because Defendant failed to timely respond to Plaintiff’s discovery requests, objections to such discovery are waived. (CCP § 2031.300.) If no hearing is requested, the Court will sign the proposed order lodged with the moving papers.