

Hearing: California Department of Housing's Demurrer to First Amended Verified Cross-Complaint

Date: January 16, 2018

Barbara Wilkins (“Wilkins”) brings this action against William Austin dba Pacific Properties-Home Estate Investment, Anthony Alvarez and Eric Wilson (“Wilson”) for the cancellation of an allegedly fraudulent transfer of title of Wilkins’ mobile home from her to Wilson.

On October 10, 2017, Cross-Complainant Eric Wilson (“Wilson”) filed his First Amended Verified Cross-Complaint for Breach of Contract; Promissory Estoppel-Detrimental Reliance; Negligent Interference with Prospective Business Advantage; Negligent Interference with Contractual Relationship; Intentional Interference with Contractual Relationship; Declaratory Relief against cross-defendants Barbara Wilkins, California Department of Housing and Community Development (“HCD”), Fidelity National Title Company and William Pardee Austin (“FACC”). Wilson alleges that Wilkins gifted the mobile home to him.

Defendant HCD demurs here to the FACC pursuant to Code of Civil Procedure section 430.10(e), on the ground that the FACC fails to state a cause of action against HCD.¹ The demurrer is unopposed.

A demurrer can be used only to challenge defects that appear on the face of the pleading under attack; or from matters outside the pleading that are judicially noticeable. (*Blank v. Kirwan* (1985) 39 C3d 311, 318.) The court must draw all reasonable inferences in favor of the plaintiff, not the defendant. (*Perez v. Golden Empire Transit Dist.* (2012) 209 Cal.App.4th 1228, 1239.)

The FACC alleges six causes of action, three of which are alleged against HCD: the fourth cause of action for negligent interference with contractual relationship, the fifth cause of action for intentional interference with contractual relationship, and the sixth cause of action for declaratory relief. HCD demurs to all three causes of action.

HCD demurs to the fourth cause of action on the ground that California does not recognize the tort of negligent interference with contractual relationship. (*Fifield Manor*

¹ HCD submits a declaration showing their meet and confer attempts, which consisted of an email to Wilson stating that it intended to send meet and confer correspondence, followed by a letter detailing the reasons HCD believed the FACC failed to state a cause of action. The letter contained a provision asking Wilson to email to coordinate a time to discuss by telephone. While HCD declares that Wilson never responded to the letter, the Court encourages counsel to attempt to call Wilson in any subsequent meet and confer efforts to encourage a meaningful meet and confer discussion.

v. Finston (1960) 54 Cal. 2d 632, 636 [California Supreme Court holding that California law recognizes a cause of action for intentional interference with contractual relationship, but not negligent interference]; *see also Davis v. Nadrich* (2009) 174 Cal.App.4th 1, 9.) Because no such cause of action is recognized under California law, the FACC fails to state a claim for negligent interference with contractual relationship against HCD.

HCD demurs to the fourth and fifth causes of action on the ground that Wilson failed to plead facts demonstrating or excusing compliance with the Government Claims Act (“Act”). (Gov. Code, § 900 et seq.) As explained above, the fourth cause of action for negligent interference with contractual relationship fails to state a claim on its face. The fifth cause of action, however, is for intentional interference with contractual relationship, a recognized cause of action in California. (*Fifield Manor v. Finston, supra*, 54 Cal. 2d at p. 636.) The Act generally requires any claimant seeking money or damages from a public entity under a tort or contract remedy to first present a claim to the Department of General Services. (Gov. Code, § 905.2; *Lozada v. City & Cty. of San Francisco* (2006) 145 Cal. App. 4th 1139, 1152.) A complaint in a suit subject to the Act must allege facts demonstrating or excusing compliance with the claim presentation requirement, otherwise the complaint is subject to a general demurrer. (*State v. Superior Court (Bodde)* (2004) 32 Cal. 4th 1234, 1243.) Here, the FACC clearly seeks money damages against a public entity pursuant to its fifth cause of action. The FACC fails, however, to allege any facts demonstrating or excusing compliance with the Act. Therefore, the fifth cause of action fails to state a claim as a matter of law.²

Finally, HCD demurs to the sixth cause of action for declaratory relief on the ground that it improperly requests relief to address past wrongs, rather than declare prospective rights, and that it is derivative of the other causes of action, all of which fail to state a claim, and that therefore Wilson fails to state a claim for declaratory relief. Declaratory relief operates prospectively to declare future rights, rather than to redress past wrongs, and where a party has a fully matured cause of action for money, the party must seek the remedy of damages, rather than a declaratory relief claim. (*Canova v. Trustees of Imperial Irr. Dist. Employee Pension Plan* (2007) 150 Cal. App. 4th 1487, 1497, as modified on denial of reh'g (June 8, 2007), as modified (June 11, 2007).) Here, HCD argues that the FACC does not seek to prevent any future wrongs or prospectively declare any rights. The sixth cause of action in fact requests the same monetary damages sought in the other causes of action, rather than any type of declaration. While the FACC does allege some facts showing there may be a controversy between Plaintiff and HCD (FACC, ¶¶ 35-37), the Court agrees that as pleaded, the sixth cause of action for declaratory relief fails to set forth the controversy it wants adjudicated and the prospective rights of the parties for which it seeks a declaration. Therefore, the sixth cause of action fails as a matter of law.³

² HCD further argues that the FACC fails to state a cause of action for intentional interference with contractual relationship because it fails to plead that defendant’s intentional acts were designed to induce a breach or disruption of the contractual relationship. However, the FACC alleges specifically that HCD intended to disrupt performance of the contract. (FACC, ¶ 75.) The Court must accept as true all of Plaintiff’s allegations for purposes of demurrer. Therefore, this ground for demurrer is overruled.

³ HCD also argues that the sixth cause of action fails because it is derivative of the other causes of action, and because the other causes of action fail that there is no controversy suitable for declaratory relief. The

HCD's demurrer to the fourth cause of action in the FACC is sustained without leave to amend. HCD's demurrer to the fifth and sixth causes of action in the FACC are sustained with leave to amend. HCD requests that the Court give Wilson 10 days to amend the FACC, however the Court notes that another demurrer to the FACC, filed by a different cross-defendant, is on calendar one week after the hearing on this demurrer. Therefore, the Court orders that the amended complaint shall be filed within 30 days of the service of notice of this order, such that should the later demurrer be granted with leave to amend, Wilson has sufficient time to make all necessary amendments at once.

Court does not agree that because the fifth cause of action fails for failure to comply with the Act, that the cause of action for declaratory relief necessarily fails. If properly pleaded, a cause of action for declaratory relief can be stated independently of the other causes of action.