

Tentative Rulings for November 18, 2021
Department 501

There are no tentative rulings for the following cases. The hearing will go forward on these matters. If a person is under a court order to appear, he/she must do so. Otherwise, parties should appear unless they have notified the court that they will submit the matter without an appearance. (See California Rules of Court, rule 3.1304(c).)

21CECG00780 *Jason Thompson v. Esmeralda Reyes* (Dept. 501) – Hearing will be conducted at 2:30 p.m.

The court has continued the following cases. The deadlines for opposition and reply papers will remain the same as for the original hearing date.

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Tentative Ruling

Re: **California Farm Management, Inc. v. Bazan Vineyard Management, LLC**
Superior Court Case No. 20CECG01735

Hearing Date: November 18, 2021 (Dept. 501)

Motion(s):

- 1) Demurrer of Cross-Defendant California Farm Management, Inc. ("CFM") to Second Amended Cross-Complaint
- 2) by CFM to Strike Portions of the Second Amended Cross-Complaint
- 3) by Bazan Vineyard Management, LLC (Bazan) for Leave to File a Third Amended Cross-Complaint

Tentative Ruling(s):

To sustain CFM's demurrer to the second cause of action in the Second Amended Cross-Complaint, with leave to amend. Bazan is granted 10 days' leave to file a Third Amended Cross-Complaint, which will run from service by the clerk of the minute order. New allegations/language must be set in **boldface** type.

To sustain CFM's demurrers to the fourth and fifth causes of action in the Second Amended Cross-Complaint, without leave to amend. CFM is directed to submit to this court, within 7 days of service of the minute order, a proposed judgment dismissing the Cross-Complaint as to it.

To order the motion to strike off calendar as moot given the ruling on the demurrer.

To deny Bazan's motion for leave to file a Third Amended Cross-Complaint, without prejudice, in light of the foregoing. (Code Civ. Proc. § 473, subd. (a).)

If a timely request for oral argument is made, such argument will be entertained at 2:30 p.m.

Explanation:

Second Cause of Action: Breach of the covenant of good faith and fair dealing

"Every contract contains an implied covenant of good faith and fair dealing providing that no party to the contract will do anything that would deprive another party of the benefits of the contract. The implied covenant protects the reasonable expectations of the contracting parties based on their mutual promises. The scope of conduct prohibited by the implied covenant depends on the purposes and express terms of the contract." (*Digerati Holdings, LLC v. Young Money Entertainment, LLC* (2011) 194 Cal.App.4th 873, 885, internal citations omitted; see CACI 325.)

To the extent Bazan bases this cause of action on there being an insured/insurer relationship (which it does, according to its opposition argument), the claim is actionable as either a tort or a breach of contract. If the insured (here, as alleged, Bazan) proceeds on a breach of contract theory, the longer 4-year statutory period applicable to contract claims applies. (Code Civ. Proc., § 337, subd. (a).) If proceeding in tort, the shorter two-year period applies. (Code Civ. Proc., §339.)

In the Second Amended Cross-Complaint (SACC) it is alleged that Bazan was sufficiently aware of CFM's alleged mismanagement and was sufficiently concerned over unexplained and precipitous rate hikes that Bazan first raised the possibility of terminating its membership in CFM in 2014. (SACC ¶ 29.) It is also alleged that at the end of 2013, Self-Insured Solutions, Inc. (SIS) abruptly terminated the safety consultant who had worked with Bazan for five years and assigned someone else as a Loss Prevention Specialist Consultant who was clearly dissatisfactory (he was "not capable" and lied about important job qualifications). (FACC ¶ 18; SACC ¶ 17.) The rate hikes were implemented beginning 2012 and the basis for the "Loss Sensitive Multiplier/Rate Adjustment" and the addition of a "Surplus Contribution" fee went unexplained by CFM. (SACC ¶ 24 at 10:26-11:13.) Throughout 2014 to 2016, Bazan "continued to make CFM aware of BAZAN's concerns over the mismanagement, mishandling, and the rising costs of the claims." (FACC ¶ 29.) This particular fact was not included in the SACC. However, the SACC does confirm "[i]n 2014-2015, Bazan's concerns about the skyrocketing Loss Sensitive Multiplier/Rate Adjustment appearing on its invoices increased. Bazan learned that Intercare had been keeping Bazan's claims open for surprisingly long periods of time and suspected that this could relate to higher experience-based rate adjustments." (SACC ¶ 30.)

As pled in the SACC, the benefit of the contract that was unfairly interfered with by CFM was "affordable worker's compensation coverage, with effective and accurate claims administration and relevant loss prevention safety programs." (SACC ¶ 52.) The facts giving rise to Bazan's concerns over affordability, claims administration and loss prevention were known as early as 2013 and certainly no later than 2014. Therefore, it does appear from the face of the SACC that by sometime in 2014, Bazan knew enough about the lack of affordability and mismanagement of claims that it knew it had actionable injury sufficient to cause it to threaten to leave the CFM group. That Bazan alleges that the rate increases and fees factored into the large special assessment in 2016 does not change their knowledge of the fees and rate increases and mismanagement by 2014 in order to have an actionable injury based upon the contract benefit as pleaded.

Whether the relevant statutory period was four years or two years, the time period had already passed by the time the original Cross-Complaint was filed in 2019.

In opposition to the demurrer based on the statute of limitations, Bazan argues that whether the statute of limitations has run is encompassed in its appeal of the previously entered demurrers of the Cross-Complaint as to cross-defendants SIS and Intercare Holdings, Inc. ("Intercare") and the issue must be stayed. (Code Civ. Proc. § 916, subd. (a).) CFM asserts that Bazan's claims against it were not resolved in the demurrers and subsequent judgments entered in favor of SIS and Intercare and, as such, the scope of the appeal is limited to the parties whose claims were resolved in those

judgments. (*Hedwall v. PCMV, LLC* (2018) 22 Cal.App.5th 564, 572, 580, fn. 11.) As there are different actions by each of the cross-defendants that would form the basis of the Cross-Complaint against them, the court determines that the demurrer sustained as to SIS and Intercare does not resolve the claims by Bazan against CFM, including the appropriate statute of limitations.

The second cause of action is subject to demurrer, with leave to amend. The opposition argues that the cause of action is based upon the special assessment first introduced in 2016 and the scheme to target Bazan. (Opp. at 5:14-6:13.) This is not what is reflected in the SACC. In theory, Bazan can better clarify the benefit of the contract interfered with to possibly state a viable cause of action.

Fourth Cause of Action: Negligent Supervision and Retention

The claim for negligent supervision is subject to a two-year statute of limitations. (Code Civ. Proc. § 339.) As pled, the basis for the cause of action is CFM's failure to correct Intercare's deficiencies or terminate Intercare and the harm created by Intercare's misconduct. (SACC ¶¶ 63, 64.) Bazan alleges it was aware of the basis of the negligent supervision claim as early as 2014 and no later than July 22, 2016, when it learned Intercare had been keeping Bazan's claims open for surprisingly long periods of time. (SACC ¶¶ 20, 30, 32.) Specifically, by July 22, 2016, Bazan "learned a number of new disturbing facts concerning the handling of Bazan's claims" and learned that numerous claims had been mishandled by Intercare. (SACC ¶¶ 20, 32.)

Therefore, as it appears on the face of the SACC that as early as July 22, 2016, Bazan had an actionable claim for negligent supervision. The time to bring this cause of action passed in July 2018. The original Cross-Complaint was not filed until December 2019.

The demurrer to the fourth cause of action is sustained without leave to amend.

Fifth Cause of Action: Unfair Competition under Business & Professions Code section 17200

In opposing the demurrer to the fifth cause of action based on the statute of limitations, Bazan directs the court to the Special Assessment levied beginning July 1, 2016, in response to the Corrective Action Plan necessitated to correct the insufficiency of the security funds. (SACC, ¶¶ 22-28, 30-31.)

A dispute between CFM and Bazan relating to the security deposit or adequacy of security must be resolved by the Director of the Department of Labor Relations. (Lab. Code § 3701.5, subd. (f).) The Director of the Department of Industrial Relations may initiate or hold a hearing regarding disputes specified in Labor Code section 3701.5, subdivision (f). (Cal. Code Regs. Tit. 8, § 15430, subd. (a).) Labor Code section 3701.5, subdivision (f), describes disputes concerning the security deposit, liability arising out of the posting or failure to post security, or *adequacy of security*, or reasonable administrative costs arising between a surety, the issuer of an agreement of assumption and guarantee of workers' compensation liabilities, the issuer of a letter of credit, any custodian of the security deposit, a self-insured employer, or the Self-Insurers' Security Fund. The relationship of Group Self-Insurer (the role of CFM as alleged in the SACC) in

this context is described as “issuer of an agreement of assumption and guarantee of worker's compensation liabilities” as this is required of the Indemnity Agreement between the members of a group self insurer. (Cal. Code. Regs., tit. 8, § 15479, subdivision (b)(1).) As such, the dispute as characterized by the SACC would fall into this category as it involved a special assessment calculated to correct insufficient security funds and such disputes “shall be resolved by the director.” (Lab. Code §3701.5, subd. (f).)

As the dispute is to be resolved by the Department of Industrial Relations and its administrative and enforcement powers over Group Self Insurers, the demurrer to the fifth causes of action is sustained without leave to amend.

Motion for Leave to File a Third Amended Cross-Complaint

“The court may, in furtherance of justice, and on any terms as may be proper, allow a party to amend any pleading or proceeding by adding or striking out the name of any party, or by correcting a mistake in the name of a party, or a mistake in any other respect; and may, upon like terms, enlarge the time for answer or demurrer. The court may likewise, in its discretion, after notice to the adverse party, allow, upon any terms as may be just, an amendment to any pleading or proceeding in other particulars...” (Code Civ. Proc., § 473, subd. (a).)

“Code of Civil Procedure section 473, which gives the courts power to permit amendments in furtherance of justice, has received a very liberal interpretation by the courts of this state.... In spite of this policy of liberality, a court may deny a good amendment in proper form where there is unwarranted delay in presenting it.... On the other hand, where there is no prejudice to the adverse party, it may be an abuse of discretion to deny leave to amend. In the furtherance of justice, trial courts may allow amendments to pleadings and if necessary, postpone trial.... Motions to amend are appropriately granted as late as the first day of trial ... or even during trial ... if the defendant is alerted to the charges by the factual allegations, no matter how framed ... and the defendant will not be prejudiced.” (*Rickley v. Goodfriend* (2013) 212 Cal.App.4th 1136, 1159, citations omitted.)

On the other hand, it is not an abuse of discretion to deny leave to amend where the proposed amended complaint clearly fails to state a valid cause of action, such as where the statute of limitations bars the proposed claims against defendant. (*Soderberg v. McKinney* (1996) 44 Cal.App.4th 1760, 1773; *Foxborough v. Van Atta* (1994) 26 Cal.App.4th 217, 230.)

Here, Bazan seeks leave to add what it characterizes as clarifying information regarding when it acquired knowledge of the actions of cross-defendants as well as reflecting the status of SIS and Intercare as having been dismissed from the cross-complaint. However, as discussed above in ruling on the demurrers to the second and fourth causes of action, the proposed Third Amended Cross-Complaint does not change the fact that the second and fourth causes of action, as pled, are barred by the

applicable the statute of limitations. Therefore, the motion for leave to amend is denied without prejudice.

Pursuant to California Rules of Court, rule 3.1312(a), and Code of Civil Procedure section 1019.5, subdivision (a), no further written order is necessary. The minute order adopting this tentative ruling will serve as the order of the court and service by the clerk will constitute notice of the order.

Tentative Ruling

Issued By: DTT **on** 11/15/2021.
(Judge's initials) (Date)