

Tentative Rulings for January 6, 2022
Department 403

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).)

19CECG00395 *Canalez v. Segovia et al.* (Dept. 403)

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

(Tentative Rulings begin at the next page)

Tentative Rulings for Department 403

Begin at the next page

(03)

Tentative Ruling

Re: ***Tranquility Pistachio, LLC v. Kilsdonk***
Superior Court Case No. 19CECG02385

Hearing Date: January 6, 2022 (Dept. 403)

Motion: Defendant's Demurrer to Amended Complaint

Tentative Ruling:

To sustain defendant's demurrer to the second, third, fifth, sixth, seventh, and ninth causes of action in the amended complaint for failure to state facts sufficient to constitute a cause of action. (Code Civ. Proc. § 430.10, subd. (e).) To overrule the demurrer to the fourth and eighth causes of action. To grant leave to amend as to the second, third, fifth, and sixth causes of action. To deny leave to amend as to the seventh and ninth causes of action. Plaintiff shall serve and file her second amended complaint within 10 days of the date of service of this order. All new allegations shall be in **boldface**.

Explanation:

Second Cause of Action: The second cause of action fails to state a valid claim for breach of the implied covenant because it merely duplicates the first cause of action for breach of contract without alleging any additional facts.

“‘Every contract imposes on each party a duty of good faith and fair dealing in each performance and in its enforcement.’ Simply stated, the burden imposed is “‘that neither party will do anything which will injure the right of the other to receive the benefits of the agreement.’” Or, to put it another way, the ‘implied covenant imposes upon each party the obligation to do everything that the contract presupposes they will do to accomplish its purpose.’ This rule was developed ‘in the contract arena and is aimed at making effective the agreement’s promises.’ The ‘precise nature and extent of the duty imposed ... will depend on the contractual purposes.’” (*Careau & Co. v. Security Pacific Business Credit, Inc.* (1990) 222 Cal.App.3d 1371, 1393, internal citations omitted.)

“A “breach of the implied covenant of good faith and fair dealing involves something beyond breach of the contractual duty itself” and it has been held that ‘[b]ad faith implies unfair dealing rather than mistaken judgment...’” (*Id.* at p.1394, internal citations omitted.)

“Thus, allegations which assert such a claim must show that the conduct of the defendant, whether or not it also constitutes a breach of a consensual contract term, demonstrates a failure or refusal to discharge contractual responsibilities, prompted not by an honest mistake, bad judgment or negligence but rather by a conscious and deliberate act, which unfairly frustrates the agreed common purposes and disappoints the reasonable expectations of the other party thereby depriving that party of the benefits of the agreement. Just what conduct will meet these criteria must be determined on a case by case basis and will depend on the contractual purposes and

reasonably justified expectations of the parties.” (*Id.* at p. 1395.) However, “[i]f the allegations do not go beyond the statement of a mere contract breach and, relying on the same alleged acts, simply seek the same damages or other relief already claimed in a companion contract cause of action, they may be disregarded as superfluous as no additional claim is actually stated.” (*Ibid.*)

Here, plaintiff's first cause of action for breach of contract and second cause of action for breach of the implied covenant rely on identical allegations regarding defendant's alleged breach. “By knowledge, action, and intent Defendant breached its agreement with Tranquility by, among other things, misuse of the care and maintenance clause of the deed of trust by the imposition of unreasonable and outrageous requirements which were far beyond the normal and traditional husbandry practices of the Property.” (Compare Amended Complaint, ¶¶ XVIII a and XIX a.) The second cause of action adds a conclusory allegation that the defendant also ignored the implied covenant of good faith and fair dealing in the contract (Amended Complaint, ¶ XIX b), but plaintiff alleges no other facts that would tend to support its conclusion that defendant breached the implied covenant.

In other words, plaintiff has not alleged that defendant did anything to breach the implied covenant beyond the same acts that allegedly constituted a breach of the contract terms. The only facts alleged in support of the first and second causes of action are identical, namely that defendant imposed “unreasonable and outrageous requirements” on plaintiff that were “far beyond the normal and traditional husbandry practices” for farming the property. Plaintiff has not alleged that defendant did any intentional act to frustrate the purpose of the contract and to prevent plaintiff from benefitting from it that was not also a breach of the contract terms themselves. Thus, the breach of the implied covenant claim fails to state a valid cause of action, as it is duplicative of the contract claim. Consequently, the court intends to sustain the demurrer to the second cause of action with leave to amend.

Third Cause of Action: While it is entitled “slander of title”, the third cause of action only contains allegations that seem to relate to a breach of contract claim. Plaintiff alleges that defendant “by knowledge, action, and intent breached its agreement with Plaintiff by, among other things, failing to provide any prospects and leads whatsoever, in either timely, competent, or satisfactory fashion and further, taking moneys from Plaintiff from sales which were not the result whatsoever of any effort or action on the part of [Defendant].” (Amended Complaint, ¶ XX a.) “As a result of this breach (these breaches), Plaintiff has been damaged in an amount to be determined at trial.” (Amended Complaint, ¶ XX, b.)

The allegations here are confusing, as they only seem to relate to a breach of contract terms that are not alleged anywhere else in the amended complaint, and are not contained in the attached contract. They appear to be cut and pasted from an entirely different complaint in a different case. In any event, they do not set forth any of the elements of a slander of title claim or provide any facts that would tend to support

such elements.¹ As a result, the court intends to sustain the demurrer to the third cause of action for failure to state facts sufficient to constitute a cause of action, with leave to amend.

Fourth Cause of Action: Defendant also demurs to the fourth cause of action for “false light.” “‘False light is a species of invasion of privacy, based on publicity that places a plaintiff before the public in a false light that would be highly offensive to a reasonable person, and where the defendant knew or acted in reckless disregard as to the falsity of the publicized matter and the false light in which the plaintiff would be placed.’ ‘A “false light” claim, like libel, exposes a person to hatred, contempt, ridicule, or obloquy and assumes the audience will recognize it as such.’ “‘A ‘false light’ cause of action is in substance equivalent to a libel claim, and should meet the same requirements of the libel claim, including proof of malice [where malice is required for the libel claim].”’” (*Jackson v. Mayweather* (2017) 10 Cal.App.5th 1240, 1264, internal citations omitted.)

Here, plaintiff alleges that defendant made false and defamatory statements, “including but not limited to those set forth in paragraph X above”, which placed plaintiff “in a false light before the business and general public.” (Amended Complaint, ¶ XVI 1.) Paragraph X alleges that defendant visited local businesses with whom plaintiff was either affiliated or doing business and advised them not to do business with plaintiff, as they were “deadbeats” and she was going to foreclose on them. (*Id.* at ¶ X.) Plaintiff alleges that these comments had a chilling effect on its ability to procure goods and services in the area. (*Ibid.*) “As a result of Defendant’s actions, Tranquility has suffered general damages in the form of loss of reputation and goodwill in an amount to be determined at trial; but in any event, not less than \$100,000.00 in loss.” (*Id.* at ¶ XXI d.) Plaintiff also alleges that it lost income as a result of defendant’s actions. (*Id.* at ¶ XXI e.)

In her demurrer, defendant argues that any statements that she made about intending to foreclose on plaintiff were true, as she did in fact file a notice of default and commence foreclosure proceedings against plaintiff. In any event, defendant contends that a notice of default is a privileged publication under Civil Code section 47 and thus cannot support a false light, slander, or libel cause of action.

It is true that the filing of the notice of default is a privileged publication under Civil Code sections 47 and 2924, subdivision (d)(1). (*Schep v. Capital One, N.A.* (2017) 12 Cal.App.5th 1331, 1136.) Thus, plaintiff cannot base its slander of title or false light claims on the filing of the notice of default.

However, here plaintiff has also alleged that defendant told plaintiff’s business partners or affiliates that plaintiff was a “deadbeat” and that she was going to foreclose on them. (Amended Complaint, ¶ X.) Such statements were allegedly false and caused harm to plaintiff by loss of business goodwill and reputation, as well as loss of income. (*Id.* at ¶ XXI d, e.) While the statement that defendant was going to foreclose on plaintiff was in fact true, the statement that plaintiff was a “deadbeat” was not.

¹ “The elements of a cause of action for slander of title are (1) a publication, which is (2) without privilege or justification, (3) false, and (4) causes pecuniary loss.” (*La Jolla Group II v. Bruce* (2012) 211 Cal.App.4th 461, 472, internal citations omitted.)

Merriam-Webster defines a "deadbeat" "as one who persistently fails to pay personal debts or expenses." (See <https://www.merriam-webster.com/dictionary/deadbeat>.) Thus, defendant essentially told plaintiff's business associates that plaintiff was not paying its debts, which cast doubt on plaintiff's reliability as a customer or business affiliate. Yet here the notice of default was not based on plaintiff failing to pay on the mortgage, but rather on its failure to maintain the property in good condition. There are no facts in the amended complaint that indicate that plaintiff was behind on mortgage payments or failed to pay any money that it owed to defendant. Also, the statements about plaintiff being a "deadbeat" allegedly harmed plaintiff by damaging its relationships with other local businesses and causing it to lose income. Therefore, plaintiff has adequately alleged its claim for false light, and the court intends to overrule the demurrer to the fourth cause of action.

Eighth Cause of Action: Defendant has also demurred to the eighth cause of action for business slander, which again relies on the same alleged statements that support the fourth cause of action. Defendant contends that any statements that it made about foreclosing on plaintiff were in fact true, and thus cannot be defamatory. Also, defendant contends that the notice of default was a privileged publication under Civil Code section 47 and 2924, subdivision (d)(1). Therefore, defendant concludes that the eighth cause of action fails to state facts to constitute a valid cause of action for business slander.

However, as discussed above with regard to the false light claim, defendant allegedly told plaintiff's business associates and affiliates that plaintiff was a "deadbeat", when in fact plaintiff had not failed to pay any debts it owed to defendant. (Amended Complaint, ¶ X.) Thus, even though the statements about filing foreclosure proceedings may have been true and privileged, the statement about plaintiff being a deadbeat was not, and can form the basis for a slander claim. As a result, the court intends to overrule the demurrer to the eighth cause of action.

Fifth and Sixth Causes of Action: Defendant next demurs to the fifth and sixth causes of action for intentional interference with existing business relations and prospective economic advantage. Defendant contends that plaintiff has not alleged the existence of a contractual relationship, or any actual breach of such a relationship. Defendant also argues that plaintiff has not alleged the existence of an existing economic relationship that held the probability of a future economic benefit to plaintiff, so plaintiff has not alleged a sufficient claim for interference with prospective economic advantage.

"The elements which a plaintiff must plead to state the cause of action for intentional interference with contractual relations are (1) a valid contract between plaintiff and a third party; (2) defendant's knowledge of this contract; (3) defendant's intentional acts designed to induce a breach or disruption of the contractual relationship; (4) actual breach or disruption of the contractual relationship; and (5) resulting damage." (*Pacific Gas & Electric Co. v. Bear Stearns & Co.* (1990) 50 Cal.3d 1118, 1126, internal citations omitted.)

On the other hand, the elements of the tort of intentional interference with prospective economic advantage are "(1) the existence, between the plaintiff and

some third party, of an economic relationship that contains the probability of future economic benefit to the plaintiff; (2) the defendant's knowledge of the relationship; (3) intentionally wrongful acts designed to disrupt the relationship; (4) actual disruption of the relationship; and (5) economic harm proximately caused by the defendant's action." (*Roy Allan Slurry Seal, Inc. v. American Asphalt South, Inc.* (2017) 2 Cal.5th 505, 512, internal citation omitted.)

"The tort of interference with prospective economic advantage protects the same interest in stable economic relationships as does the tort of interference with contract, though interference with prospective advantage does not require proof of a legally binding contract." (*Pacific Gas & Electric v. Bear Stearns & Co.*, *supra*, at p. 1126, internal citations omitted.)

"[A] cause of action for intentional interference with contract requires an underlying enforceable contract. Where there is no existing, enforceable contract, only a claim for interference with prospective advantage may be pleaded. To do otherwise unnecessarily confuses the two torts and fails to recognize their inherent differences. The tort of interference with contractual relations protects an existing, formally cemented economic relationship. The tort of interference with prospective business relations protects nonformalized or anticipated business relationships which are reasonably certain to occur, but which are nonetheless prospective. Thus, if a plaintiff is to be successful in the former, it is necessary that an enforceable contract be pled and proven." (*PMC, Inc. v. Saban Entertainment, Inc.* (1996) 45 Cal.App.4th 579, 601, italics omitted.)

"However, as a matter of law, a threshold causation requirement exists for maintaining a cause of action for either tort, namely, proof that it is reasonably probable that the lost economic advantage would have been realized but for the defendant's interference." (*Youst v. Longo* (1987) 43 Cal.3d 64, 71, italics omitted.)

Here, plaintiff alleges that it had "ongoing business relationships with existing clients, customers, and associates, who continually do business with Tranquility." (Amended Complaint, ¶ XXII a.) Defendant is not a party to these relationships. (*Ibid.*) Defendant knew of these business relationships and intentionally interfered with them by communicating false and defamatory information, including telling the business associates that plaintiff was a "deadbeat" and that defendant was going to foreclose on plaintiff. (*Id.* at ¶¶ XXII b, X.) Defendant made these false statements with the intent to interfere with plaintiff's business and its relationships with its business associates. (*Id.* at ¶ XXII c.) Plaintiff suffered harm to its business relationships "by diminishing the esteem, respect, goodwill, and confidence in which Tranquility is held by its business associates." (*Id.* at ¶ XXII d.) Plaintiff alleges that it suffered damages as a result in the amount of at least \$100,000, as well as harm to its reputation. (*Id.* at ¶ XXII e.) Plaintiff makes similar allegations with regard to its interference with prospective economic advantage claim, except that it also alleges that it had "a prospective business relationship with many potential business associates" and that defendant interfered with these prospective relationships as well. (*Id.* at ¶ XXIII a-h.)

However, these allegations are insufficient to state claims for interference with existing or prospective business relationships. While plaintiff alleges that it had existing

economic relationships with unnamed third parties, it does not allege that it had any actual, enforceable contracts with the third parties, or that defendant's statements resulted in the termination or any of the existing contracts it had with customers or business associates. Plaintiff never alleges that it lost any contracts or customers because of defendant's false statements.

Plaintiff also never alleges any facts showing that it had existing business relationships with third parties that were reasonably likely to lead to future economic advantage to it, or that defendant's conduct interfered with any such likely future advantage. Plaintiff only alleges that defendant's statements caused a diminution of the "esteem, respect, goodwill and confidence" that plaintiff's business associates once had for it. (Amended Complaint, ¶ XXIII e.) These allegations are not sufficient to show that defendant actually interfered with plaintiff's existing or future business relationships, and that plaintiff suffered any damages from the interference. Therefore, the court intends to sustain the demurrer to the fifth and sixth causes of action, with leave to amend.

Seventh and Ninth Causes of Action: Plaintiff seeks to state claims for conversion of real property and conspiracy to convert real property based on the allegation that defendant "used unreasonable care and maintenance requirements for the Property to reclaim it via the mechanism of foreclosure" and that defendant intended to resell the property for a significantly higher price per acre than plaintiff paid in September of 2017. (Amended Complaint, ¶ XXIV, b.)

However, "conversion is a tort that may be committed only with relation to personal property and not real property." (*Munger v. Moore* (1970) 11 Cal.App.3d 1, 7; *Graner v. Hogsett* (1948) 84 Cal.App.2d 657, 662.) Thus, plaintiff cannot state a claim for conversion based on defendant's attempted foreclosure on the subject real property, and the ninth cause of action fails to state a valid claim.

Also, to the extent that plaintiff seeks to hold defendant liable for conspiring to convert the property, "conspiracy" is not a separate civil cause of action under California law. Instead, it is merely a vehicle for holding one person liable for conspiring to assist another person in committing a tort.

"'Conspiracy is not a cause of action, but a legal doctrine that imposes liability on persons who, although not actually committing a tort themselves, share with the immediate tortfeasors a common plan or design in its perpetration.... [¶] Standing alone, a conspiracy does no harm and engenders no tort liability. It must be activated by the commission of an actual tort.' 'A conspiracy cannot be alleged as a tort separate from the underlying wrong it is organized to achieve.'" (*Moran v. Endres* (2006) 135 Cal.App.4th 952, 954-955, quoting *Applied Equipment Corp. v. Litton Saudi Arabia Ltd.* (1994) 7 Cal.4th 503, 510-511, 513.)

Thus, plaintiff cannot state a separate cause of action against defendant for "conspiracy" to commit conversion of the real property. As discussed above, it is not possible to state a claim for conversion of real property. Nor can plaintiff allege a separate claim for conspiracy based on such conversion. Furthermore, plaintiff has not alleged that defendant actually conspired with another person who committed a

separate tort. Indeed, based on the amended complaint's allegations, defendant apparently conspired with herself to commit the alleged conversion. Therefore, plaintiff has failed to allege facts sufficient to support either its conspiracy or its conversion claim. Nor does it appear to be reasonably likely that plaintiff will be able to cure the defects in the seventh and ninth causes of action if given leave to amend. As a result, the court intends to sustain the demurrer to the seventh and ninth causes of action, without leave to amend.

Plaintiff's Request for Further Time to Amend Complaint: Finally, to the extent that plaintiff requests additional time to amend the complaint, the court intends to deny the request. The amended complaint has been on file for over a year, and plaintiff's counsel has been on notice for many months that defendant was challenging the sufficiency of the complaint's allegations. While plaintiff's counsel alleges that plaintiff has been sick and unable to assist counsel with the amendment until recently, counsel has now had several weeks in which to confer with his client and draft a second amended complaint. Therefore, the court intends to require the second amended complaint to be filed and served within ten days of service of this order.

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: KCK on 01/03/22
(Judge's initials) (Date)