Tentative Rulings for May 8, 2024
Department 403

For any matter where an oral argument is requested and any party to the hearing desires a remote appearance, such request must be timely submitted to and approved by the hearing judge. In this department, the remote appearance will be conducted through Zoom. If approved, please provide the department's clerk a correct email address. (CRC 3.672, Fresno Sup.C. Local Rule 1.1.19)

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).) ***The above rule also applies to cases listed in this "must appear" section.***

24CECG01140 ***Jay Fowler v. Khalid Alsaber*** **(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.

23CECG03293 ***Scott Raven v. The Testate and Intestate Successors of George Rocha (Deceased) and All Persons Claiming by, through, or under such decedent*** **is continued to Wednesday, July 17, 2024, at 3:30 p.m. in Department 403**

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Tentative Ruling

Re: ***Pardis Orchards LP v. Nor-Cal Pump & Well Drilling, Inc. et al.***
Superior Court Case No. 23CECG01183

Hearing Date: May 8, 2024 (Dept. 403)

Motion: By Defendant Western Farm Management for Judgment on the Pleadings

Tentative Ruling:

To deny.

Explanation:

A motion for judgment on the pleadings has the same function as a general demurrer but is made after the time for demurrer has expired, and so the rules governing demurrers apply. (*Cloud v. Northrop Grumman Corp.* (1998) 67 Cal.App.4th 995, 999.)

As in demurrers, grounds for the motion must appear on the face of the challenged pleading or on facts which the court may judicially notice. (*Saltarelli & Steponovich v. Douglas* (1995) 40 Cal.App.4th 1, 5.)[1]

When reviewing a pleading, a demurrer or motion for judgment on the pleadings admits the truth of all material allegations and a court will "give the complaint a reasonable interpretation by reading it as a whole and all its parts in their context." (*People ex rel. Lungren v. Superior Court* (1996) 14 Cal.4th 294, 300.) The standard of pleading is very liberal and a plaintiff need only plead "ultimate facts." (*Perkins v. Superior Court* (1981) 117 Cal.App.3d 1, 6.)

Defendant Western Farm Management ("Defendant") seeks judgment on the pleadings of the First Amended Complaint ("FAC") by plaintiff Pardis Orchards LP ("Plaintiff") as to the first cause of action for failure to state facts sufficient to support a cause of action. (Code Civ. Proc. § 438, subd. (c)(1)(B)(ii).) The first cause of action is for breach of contract, and is stated solely as to Defendant.

Defendant does not dispute whether the FAC adequately alleges facts sufficient to support a cause of action for a breach of contract. Rather, Defendant challenges the pleading based on an indemnification provision. Defendant submits that the indemnification provision precludes the present cause of action against it as a matter of law.

[1] The matter was previously set for March 27, 2024. The court continued hearing to confirm the meet and confer efforts by the parties, which is a statutory requirement. (Code Civ. Proc. § 439, subd. (a).) On March 27, 2024, a declaration addressing the statutory requirement was filed. Accordingly, the court proceeds to the merits.

In support, Defendant cites to *Columbia Casualty Company v. Northwestern National Insurance Company*, 231 Cal.App.3d 457. At the pincite offered of page 470, the opinion reads "Given the liberality of California's parol evidence rule, a judgment on the pleadings granted in reliance on the terminology of an incorporated complex contract to negate an express allegation of its meaning is highly suspect." (*Columbia Casualty Co. v. Northwestern National Ins. Co.* (1991) 231 Cal.App.3d 457, 470.) The case continues that judgment on the pleadings may only be granted if the instrument incorporated by reference conclusively negates the express allegation in the pleading, and except in the ordinary case, conclusive negation is unlikely because of the inevitable prospect that parol evidence may lead to an interpretation of the contract consistent with the pleading's express allegation. (*Ibid.*)

This finding is consistent with Defendant's other offered case, *Rooz v. Kimmel*, 55 Cal.App.4th 573. As Defendant acknowledges, whether an indemnity agreement covers a given case turns primarily on contractual interpretation, and it is the intent of the parties as expressed in the agreement that should control. (*Rooz v. Kimmel* (1997) 55 Cal.App.4th 573, 583.) When the parties knowingly bargain for the protection, the protection should be afforded; this requires an inquiry into the circumstances of the damage or injury and the language of the contract. (*Ibid.*) Each case will turn on its own facts. (*Ibid.*) In *Rooz*, the court there noted the terms of the agreement, which stated, as the court summarized, that: the indemnitee did not derive any commercial gain from the actions designated to be held harmless; that the action was a favor to the indemnitor; that the indemnitee was unwilling to perform the action; that the indemnitee would not have done the action in the normal course of its business; and that the indemnitee would perform the action only upon the express agreement that the indemnitor hold the indemnitee harmless of all consequences of the performance of the action. (*Id.* at pp. 585-586.) Under those circumstances, the indemnity agreement in writing clearly, explicitly, and comprehensively sets forth the intent and effect of the document. (*Id.* at pp. 586-587.)

Here, we have no similar conclusive effect. The contract at issue is for farm management, and not for the express purpose of indemnification. (FAC, Attachment 1.) The purpose of the contract was for farm management. (*Ibid.*) The breach alleged thereon was for failure to protect crop. (*Id.*, ¶ 25.) The contract is not so explicit to conclude that the indemnity provision clearly, explicitly, and comprehensively sets for the intent to hold harmless under the present circumstances and as a matter of law. (*See Rooz v. Kimmel*, *supra*, 55 Cal.App.4th at p. 583.) Rather, the obligations of the contract, liberally construed with the allegations of paragraph 25 regarding protection of the crop, are that Defendant "will do and perform all acts and services reasonably necessary to farm the Property in a good and farmer-like manner in accordance with good farming practices." (FAC, Attachment 1.) Whether these allegations amount to triggering the indemnity provision, which covers when Plaintiff fails to discharge and pay costs, or when an act or omission by Plaintiff causes the damage, facts on the face of the FAC or the terms of the agreement do not support the conclusion as a matter of law. Moreover, Defendant improperly relies on its affirmative defenses while seeking judgment on the pleadings of the FAC. (*Compare* Code Civ. Proc. § 438, subd. (c)(2)(B).)

Finally, to the extent that Defendant argues improper venue, improper venue is not a grounds for judgment on the pleadings. (*See generally* Code Civ. Proc. § 438; *see also* Code Civ. Proc. § 392 *et seq*.)

For the above reasons, the motion for judgment on the pleadings as to the first cause of action for breach of contract is denied.

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: JS on 5/6/2024.
(Judge's initials) (Date)

(20)

Tentative Ruling

Re: ***Palm v. Hiller Aircraft Corp.***
Superior Court Case No. 20CECG00763

Hearing Date: May 8, 2024 (Dept. 403)

Motion: Plaintiff's Motion for Order Directing Sheriff to Seize Property From Private Place

Tentative Ruling:

To deny without prejudice.

Explanation:

Plaintiff has obtained judgment against defendant and judgment debtor Hiller Aircraft Corporation ("Hiller") in the amount of $257,473.42, with $256,588.42 still owing after a minimally successful bank levy.

Plaintiff moves for an order directing the sheriff to seize 31 items of property (mostly shipping containers and helicopter manufacturing equipment) from Hiller at 925 M Street in Firebaugh, California. This noticed motion was followed the denial of plaintiff's ex parte application for the same relief.

The motion is brought pursuant to Code of Civil Procedure section 699.030, which provides,

> The judgment creditor may apply to the court ex parte, or on noticed motion if the court so directs or a court rule so requires, for an order directing the levying officer to seize the property in the private place. The application may be made whether or not a writ has been issued and whether or not demand has been made pursuant to subdivision (a). The application for the order shall describe with particularity both the property sought to be levied upon, and the place where it is to be found, according to the best knowledge, information, and belief of the judgment creditor. The court may not issue the order unless the judgment creditor establishes that there is probable cause to believe that property sought to be levied upon is located in the place described.

(Code Civ. Proc., § 699.030, subd. (b).)

In denying the ex parte application, the court required plaintiff to file a noticed motion, in part so that a prior judgment creditor of Hiller would be notified of plaintiff's attempt to have this property seized. Hiller owes potentially millions of dollars to Daquan Jones.

"Generally, the equitable doctrine of unclean hands applies when a plaintiff has acted unconscionably, in bad faith, or inequitably in the matter in which the plaintiff

seeks relief." (*Salas v. Sierra Chem. Co.* (2014) 59 Cal.4th 407, 432.) The moving party "must come into court with clean hands, and keep them clean, or he will be denied relief, regardless of the merits of his claim." (*Kendall-Jackson Winery, Ltd. v. Superior Court* (1999) 76 Cal.App.4th 970, 978.) "Any conduct that violates conscience, or good faith, or other equitable standards of conduct is sufficient cause to invoke the doctrine." (*Id*. at p. 979.) Unclean hands are sufficient grounds to refuse to enforce a judgment. (*In re Marriage of Boswell* (2014) 225 Cal.App.4th 1172, 1175.) "The clean hands rule is of ancient origin and given broad application. It is the most important rule affecting the administration of justice." (*In re Marriage of Boswell* (2014) 225 Cal.App.4th 1172, 1175.) "The defense is available in legal as well as equitable actions." (*Kendall-Jackson Winery, Ltd. v. Superior Court* (1999) 76 Cal.App.4th 970, 978.)

Hiller has made a compelling showing of unclean hands on the part of plaintiff. Initially, the judgment against Hiller and in favor of Mr. Jones arose because plaintiff assaulted Mr. Jones while he was acting as Hiller's general manager. As a result of plaintiff's conduct, Hiller has paid Mr. Jones $950,000 to date, and another party, City of Firebaugh, seeks to have Hiller pay an additional $4 million, all resulting from plaintiff's conduct.

Plaintiff points out that the doctrine of unclean hands applies "when a plaintiff has acted unconscionably, in bad faith, or inequitably *in the matter in which the plaintiff seeks relie*f." (*Salas v. Sierra Chem. Co.* (2014) 59 Cal.4th 407, 432.) However, the two matters are interrelated. Plaintiff sued Hiller for breach of his employment agreement, and eventually obtained a default judgment because Hiller was unable to afford an attorney due to the judgment in the Jones case. It was plaintiff's misconduct resulting in the Jones judgment that caused Hiller to be unable to defend itself in plaintiff's employment action.

Plaintiff now seeks to jump ahead of the other judgment creditors (particularly Mr. Jones) and seize all of the property at Hiller's facility to pay his own judgment. However, since he is the one who caused Hiller to be liable and to be in financial difficulty in the first place, the court will not allow plaintiff to seize its property, at least until Mr. Jones has had an opportunity to be heard on the matter. The ex parte application was denied in part so that notice of the hearing could be served on Mr. Jones, but plaintiff has not given him notice.

As further evidence of unclean hands, plaintiff appears to have illegally entered Hiller's property to take photos of the items at the facility, as shown by his own exhibits to his motion. (See Maslanka Decl., ¶ 7.) While plaintiff has replaced these photos submitted in support of the ex parte application with photos possibly taken from public spaces (see Palm Decl., ¶ 9), the conduct of apparently trespassing to obtain evidence for the ex parte application cannot be ignored. The court finds that the doctrine of unclean hands applies in this case and warrants denial of the motion, at least until Mr. Jones has had an opportunity to be heard on the matter.

Moreover, Hiller shows that many of the items plaintiff seeks to seize are fixtures. (See plaintiff's items 4-10, 12-14, 18-21, and 26-27; Maslanka Decl., ¶¶ 13-19, 21-23, 27-30, 35-36.) The motion is brought pursuant to Code of Civil Procedure section 699.030, which

applies to personal property, not real property. Real property includes both land and fixtures – things that are affixed to the land. (Civ. Code, § 658.)

There are three main factors to consider when determining whether personal property has become a fixture: "(1) physical annexation; (2) adaptation to use with real property; (3) intention to annex to realty. Of these, intention is the most significant, but the manner of annexation and the use to which the property is put are relevant in determining such intention." (*Vieira Enterprises, Inc. v. City of E. Palo Alto* (2012) 208 Cal.App.4th 584, 596–97.)

Hiller has submitted evidence that items 4-10, 12-14, 18-21, and 26-27 are fixtures, by showing that they are intended to be in a permanent location and affixed to Hiller's real property. Many were moved there by a 70-ton crane, while others are bolted to the ground and hardwired into the facility. (See Maslanka Decl., ¶¶ 13-19, 21-23, 27-30, 35-36.) Plaintiff disputes the characterization of items 18-21 as fixtures. (See Palm Reply Decl., ¶¶ 6-12.) The court need not resolve this factual dispute at this stage, give the other issues with the motion addressed above.

In the opposition Hiller contends that some of the items, specifically those used to manufacture and sell helicopter parts, cannot be levied without violating Hiller's regulatory approvals. However, Hiller cites to no authority or regulation prohibiting the possession, sale or divestment of such equipment without approval of the Federal Aviation Administration. The question of whether plaintiff can legally manufacture or sell parts with this equipment is a separate from possession of or liquidation of equipment used for such purposes.

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: JS on 5/6/2024.
(Judge's initials) (Date)