

Tentative Rulings for October 5, 2022
Department 503

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).)

20CECG03421 *Blount v. Cheema Transport, Inc.*

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

22CECG00222 *Pulliam v. Fresno Community Hospital and Medical* (demurrer) is continued to Thursday, October 27, 2022, at 3:30 p.m. in Department 503

19CECG02939 *Romero v. California Automobile Ins. Co. et al.* is continued to Thursday, November 3, 2022, at 3:30 p.m. in Department 503

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Tentative Ruling

Re: ***Mullen Technologies, Inc. v. Doug Alavezos***
Superior Court Case No. 21CECG03352

Hearing Date: October 5, 2022 (Dept. 503)

Motion: Defendant Doug Allen Alavezos' Demurrer and Motion to Strike
Portions of Complaint

Tentative Ruling:

To sustain the demurrer as to the third cause of action without leave to amend. To overrule the demurrer as to the first, second, fifth, and sixth causes of action. To deny the motion to strike. Defendant Alavezos shall file and serve his answer to the complaint within 10 days of service of this order.

Explanation:

These motions arise out of a complaint filed November 10, 2021 for (1) breach of written contract; (2) breach of the implied covenant of good faith and fair dealing; (3) unjust enrichment; (4) violation of Business and Profession Code section 17200 et seq.; (5) declaratory relief, with request for temporary, preliminary, and permanent injunctive relief; and (6) money had and received (common count). This action is primarily concerning a loan from plaintiff to defendants. Defendant Alavezos demurs and moves to strike on the basis that he should not be a party to this action in his individual capacity.

Demurrer

The function of a demurrer is to test the sufficiency of a plaintiff's pleading by raising questions of law. (*Plumlee v. Poag* (1984) 150 Cal.App.3d 541, 545.) The test is whether the plaintiff has succeeded in stating a cause of action; the court does not concern itself with the issue of the plaintiff's possible difficulty or inability in proving the allegations of his complaint. (*Highlanders, Inc. v. Olsan* (1978) 77 Cal.App.3d 690, 697.) In assessing the sufficiency of the complaint against the demurrer, we treat the demurrer as admitting all material facts properly pleaded. (*Glaire v. LaLanne-Paris Health Spa, Inc.* (1974) 12 Cal.3d 915, 918.)

A general demurrer admits not only the facts expressly alleged, but also facts essential to a cause of action which the facts alleged supply by implication or inference. (*Harvey v. Holtville* (1969) 271 Cal.App.2d 816, 819; *Rodas v. Spiegel* (2001) 87 Cal.App.4th 513, 517.) Where the essential facts are stated defectively or without clearness or appear by necessary implication, the defects may only be reached by special demurrer. (*Semi-Tropic Spiritualists' Association v. Johnson* (1912) 163 Cal. 639, 641.) In ruling on a demurrer, the trial court is obligated to look past the form of the pleading to its substance; erroneous or confusing labels attached by the inept pleader are to be ignored if the complaint pleads facts that would entitle the plaintiff to relief. (*Saunders v. Cariss* (1990) 224 Cal.App.3d 905, 908.)

A demurrer is not the appropriate procedure for determining the truth of disputed facts or what inferences should be drawn when competing inferences are possible. (*Crosstalk Productions, Ltd. v. Jacobson* (1998) 65 Cal.App.4th 631, 635.)

Misjoinder of Party

Defendant Alavezos initially demurred to each of the causes of action based on misjoinder of party. Code of Civil Procedure section 379 permits all defendants to be joined in one action where:

(1) Any right to relief jointly, severally, or in the alternative, in respect of or arising out of the same transaction, occurrence, or series of transactions or occurrences and if any question of law or fact common to all these persons will arise in the action; or

(2) A claim, right, or interest adverse to them in the property or controversy which is the subject of the action.

(Code Civ. Proc., § 379, subd. (a).)

Party to the Contract

Defendant Alavezos argues that he was not a party to the agreement at issue. He asserts that the exhibits attached to the complaint demonstrate this fact. The court accepts as true facts appearing in the exhibits attached to the complaint, although if the facts in the exhibits contradict the facts in the complaint, the facts stated in the exhibits take precedence. (*Holland v. Morse Diesel Intern., Inc.* (2001) 86 Cal.App.4th 1443, 1446; *Mead v. Sanwa Bank California* (1998) 61 Cal.App.4th 561, 567-568—recital in deed of trust that Meads are trustors does not conflict with allegations in body of complaint that they are sureties; *Brenneric Associates v. City of Del Mar* (1998) 69 Cal.App.4th 166, 180; *Software Design & Application, Ltd. v. Hoefer & Arnett, Inc.* (1996) 49 Cal.App.4th 472, 484.)

“The interpretation of a contract is a question of law unless the interpretation turns upon the credibility of extrinsic evidence. [Citation.] The clear language of a provision governs unless it leads to an absurdity (Civ. Code, § 1638). The undisclosed belief or intention of a party is irrelevant in the absence of fraud or mistake.” (*Meyers v. Guarantee Sav. & Loan Association* (1978) 79 Cal. App. 3d 307, 311.)

The exhibits attached to the complaint demonstrate that the parties, particularly plaintiff, have been somewhat inconsistent in their naming of the parties to the contract. This is not a situation in which the exhibits contradict the allegations, at least not clearly or directly. Ultimately, defendant is asking the court to interpret the agreement and make a determination as to who the parties are/were. Defendant Alavezos' claim that the attached contract shows he was not a party is not compelling. The additional exhibits do not show a contradiction so much as they show inconsistent naming. However, a demurrer is not the appropriate procedure for determining the truth of disputed facts or the inferences that should be drawn here.

Alter Ego

“The basic rule stated by our Supreme Court as a guide in the application of the alter ego doctrine is as follows: (1) There must be such unity of interest and ownership that the separate personalities of the corporation and the individual no longer exist; and (2) that, if the acts are treated as those of the corporation alone, an inequitable result will follow.” (*Associated Vendors, Inc. v. Oakland Meat Co., Inc.* (1962) 210 Cal.App.2d 825, 837.) There is no requirement to use the term “alter ego,” but the complaint must include facts as to both prongs. (*Leek v. Cooper* (2011) 194 Cal.App.4th 399, 415.) Courts have consistently said that allegations that an individual owns all the stock and makes all the decisions is not enough to show the unity of interests. (*Ibid.*) Control does not, by itself, establish a unity of interests. (*A.J. Fistes Corp. v. GDL Best Contractors, Inc.* (2019) 38 Cal.App.5th 677, 696.) However, alter ego may be sufficiently pled where a plaintiff asserts the corporation is inadequately capitalized, failed to follow formalities of the corporate existence, and was controlled or used as a mere shell. (*Ibid.*)

Here, plaintiff has alleged that defendant Alavezos exercised control over defendant Clovis Auto Sales, Inc. However, control, by itself, is insufficient to establish a unity of interests. Plaintiff has sufficiently pled as to the second prong, that an inequitable result will follow where the corporation is now dissolved. Overall, the theory of alter ego has not been sufficiently pled here. Plaintiff survives the demurrer, however, as a result of the allegations that defendant Alavezos is a direct party to the contract.

Corporations Code sections 316 and 2011

Corporations Code section 316 provides for liability of directors where directors approve distribution of assets after dissolution proceedings, without first paying or providing for liabilities of the corporation. (Corp. Code, § 316 (a)(2).) Corporations Code section 2011, subdivision (a)(1)(B) provides that a cause of action against a dissolved corporation can be enforced against assets distributed to shareholders. Plaintiff has alleged that defendant Alavezos received 225,000 shares of plaintiff's common stock. However, plaintiff has not alleged facts that show these shares were an asset of defendant Clovis Auto Sales, Inc. Therefore, there is insufficient information to demonstrate that either Corporations Code sections are applicable here.

While the alter ego and Corporations Code sections do not assist plaintiff in establishing defendant Alavezos as an appropriate party, he is alleged as a party to the agreement directly. Therefore, as to the first, second, third, fifth, and sixth causes of action, *where defendant Alavezos' basis for demurrer is the inclusion of himself*, defendant's assertions fail. Defendant Alavezos includes additional reasons for demurrer as to the second, third, and fifth causes of actions, addressed below.

Second Cause of Action—Breach of Implied Covenant and Fair Dealing

“The covenant of good faith and fair dealing, implied by law in every contract, exists merely to prevent one contracting party from unfairly frustrating the other party's right to *receive the benefits of the agreement actually made.*” (*Guz v. Bechtel Nat. Inc.* (2000) 24 Cal.4th 317, 349.) To establish a claim for breach of the implied covenant of good faith and fair dealing, the plaintiff must show: (1) the parties entered into a

contract; (2) the plaintiff's performance; (3) the conditions required for the defendant's performance were met or excused; (4) the defendant's conduct prevented the plaintiff from receiving the benefits under the contract; (5) by doing so, the defendant did not act fairly and in good faith; and (6) the plaintiff was harmed by the defendant's conduct. (Judicial Council of Cal. Civ. Jury Instructions (July 2022 rev.) CACI No. 325.)

A written contract between plaintiff and defendant Alavezos is sufficiently alleged. Consequently, the demurrer to the second cause of action is overruled.

Third Cause of Action—Unjust Enrichment

For the third cause of action, defendant Alavezos additionally argues that unjust enrichment is not a recognized cause of action in California.

[A]s the trial court observed, there is no cause of action in California for unjust enrichment. "The phrase 'Unjust Enrichment' does not describe a theory of recovery, but an effect: the result of a failure to make restitution under circumstances where it is equitable to do so." (*Lauriedale Associates, Ltd. v. Wilson* (1992) 7 Cal.App.4th 1439, 1448) Unjust enrichment is "'a general principle, underlying various legal doctrines and remedies,'" rather than a remedy itself. (*Dinosaur Development, Inc. v. White* (1989) 216 Cal.App.3d 1310, 1315) It is synonymous with restitution. (*Id.* at p. 1314)

(*Melchior v. New Line Productions, Inc.* (2003) 106 Cal.App.4th 779, 793.)

The weight of authority provides that unjust enrichment is not a cause of action, but that, if a cause of action the plaintiff brings supports restitution, then this can be requested as a remedy: "[R]estitution is a remedy and not a freestanding cause of action." (*Reid v. City of San Diego* (2018) 24 Cal.App.5th 343, 362, emphasis added.) Thus, it can only be sought in connection with a legally cognizable theory that can support restitutionary relief. (*McBride v. Boughton* (2004) 123 Cal.App.4th 379, 388 [construing plaintiff's unjust enrichment cause of action as "an attempt to plead a cause of action giving rise to a right to restitution," and finding his was not such a claim].) In *McBride v. Boughton, supra*, the court noted that typical causes of action warranting restitution were in cases of quasi-contract claim, i.e., "in lieu of breach of contract damages when the parties had an express contract, but it was procured by fraud or is unenforceable or ineffective for some reason," or where "the defendant obtained a benefit from the plaintiff by fraud, duress, conversion, or similar conduct." (*Ibid.*)

As a result, the demurrer to plaintiff's unjust enrichment cause of action is sustained without leave to amend.

Fifth Cause of Action—Declaratory Relief

A complaint is to be liberally construed where a plaintiff requests declaratory relief. (*Strozier v. Williams* (1960) 187 Cal.App.2d 528, 531.) The pleadings will be viewed as sufficient where it sets forth facts showing a controversy as to the rights and duties of the parties under a contract and requests those rights and duties be adjudged. (*Ibid.*)

