SUPERIOR COURT OF CALIFORNIA
COUNTY OF VENTURA

Tentative Ruling

2025CUOR050464: VERDANT THOUSAND OAKS, LLC vs THOUSAND OAKS MARKETPLACE, LP, et al.
05/05/2026 in Department 21
Demurrer

Tentative Rulings. Parties and counsel appearing for oral argument should address the tentative decision. Parties may submit on the tentative decision by email, with a copy to all other parties in the matter, to courtroom21@ventura.courts.ca.gov before 8:00 a.m. on the day set for the hearing, with a subject line that includes "SUBMISSION ON TENTATIVE", Case Number, Title and Party. If fewer than all parties submit on the tentative, the hearing will proceed, and the tentative ruling is subject to change. The clerk cannot advise if you should still appear or not. The decision of whether to appear for a hearing is to be made by the parties and their counsel. (Dept. 21 Rules & Procedures, p. 4, § II.I.)

The following is a statement of the Court's tentative ruling. The Court may adopt, modify or reject the tentative ruling after hearing. The tentative ruling has no legal effect unless and until adopted by the Court.

Motion: Demurrer by Defendant/Cross-Defendant Thousand Oaks Marketplace, LP ("Seller") and Cross-Defendants Maxxam Enterprises, L.P., George Daneshgar, and Soheila Daneshgar, as trustees (collectively, "Cross-Defendants") to the cross-complaint filed by Defendant/Cross-Complainant TerraCotta Five, LLC ("TerraCotta") and Cross-Complainant TerraCotta Twelve, LLC ("TerraCotta12") (collectively, "Cross-Complainants") (*opposed*).

Tentative Ruling: Cross-Defendants' demurrer to the first, second, and fourth causes of action in the cross-complaint is SUSTAINED, with leave to amend, and OVERRULED as to the third and fifth causes of action.

Cross-Complainant has 15 days leave to amend from the date of service of the notice of ruling on this motion to file a First Amended Cross-Complaint.

Counsel for moving party/Cross-Defendants is to give notice within two (2) court days.

Background: This is an action for breach of contract and related claims pertaining to real property located at 173-285 N. Moorpark Road in Thousand Oaks, commonly known as Janss Marketplace.

On 12/15/25, TerraCotta and TerraCotta12 filed their cross-complaint against Plaintiff, Seller, Maxxam Enterprises, L.P., George Daneshgar, and Soheila Daneshgar, as trustees. Cross-Defendants recently dismissed Plaintiff. The cross-complaint is still pending against Cross-Defendants.

The cross-complaint asserts causes of action for (1) breach of contract, (2) breach of contract, (3) equitable indemnity, (4) quiet title, and (5) declaratory relief. The cross-complaint alleges

that Cross-Defendants entered into a loan agreement (with Seller) and guaranty (with the other cross-defendants). Those agreements were later assigned to TerraCotta, then to TerraCotta12. Thereafter, a non-judicial trustee's sale of the property occurred. As a result, TerraCotta purchased the property on September 18, 2025, and the transfer of title to TerraCotta12 was recorded. Plaintiff now claims contractual and lien rights over the property. Cross-Defendants believe that they are entitled to recover from Cross-Defendants all losses, damages, etc. related to Plaintiff's claims pursuant to the loan agreement, guaranty, and related instruments.

There are no contracts attached to the cross-complaint. The terms of the agreements are not alleged verbatim in the body of the cross-complaint.

Discussion:

I. Legal Standard

A demurrer tests the legal sufficiency of other pleadings – i.e. it raises issues of law, not fact, regarding the form or content of the opposing party's pleading. (Code Civ. Proc., § 589; see *Donabedian v. Mercury Ins. Co.* (2004) 116 Cal.App.4th 968, 964.) It is not the function of the demurrer to challenge the truthfulness of the complaint; and for purposes of the ruling on the demurrer, all facts pleaded in the complaint are assumed to be true . . . however improbable they may be. (See *Ferrick v. Santa Clara University* (2014) 231 Cal.App.4th 1337, 1341.)

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 Cal.3d 311.) Consideration of extrinsic evidence by the court is error. (*Ion Equip. Corp. v. Nelson* (1980) 110 Cal.App.3d 868, 881.)

In construing the allegations, the court is to give effect to specific factual allegations that may modify or limit inconsistent general or conclusory allegations. (*Financial Corporation of America v. Wilburn* (1987) 189 Cal.App.3rd 764, 769.) And, if the facts pled in the complaint are inconsistent with facts which are incorporated by reference from exhibits attached to the complaint, the facts in the incorporated exhibits control. (*Holland v. Morse Diesel Int'l, Inc.* (2001) 86 Cal.App.4th 1443, 1447.) Further, irrespective of the name or label given to a cause of action by the plaintiff, a general demurrer must be overruled if the facts as pled in the body of the complaint state some valid claim for relief. (*Quelimane Co. Inc. v. Stewart Title Guar. Co.* (1998) 19 Cal.4th 26, 38-39.)

"A demurrer shall distinctly specify the grounds upon which any of the objections to the complaint, cross-complaint, or answer are taken. Unless it does so, it may be disregarded." (CCP, § 430.60.) "Each ground of demurrer must be in a separate paragraph and must state whether it applies to the entire complaint, cross-complaint, or answer, or to specified causes of action or defenses." (Cal. Rules of Court, rule 3.1320(a).)

Leave to amend must be allowed where there is a reasonable possibility of successful amendment. (*Goodman v. Kennedy* (1976) 18 Cal.3d 335, 348.) The burden is on the complainant to show the Court that a pleading can be amended successfully. (*Id.*)

When considering a demurrer to an original complaint, it is generally considered an abuse of discretion to deny leave to amend unless the complaint "shows on its face" that amendment would be futile, even in the absence of a request for leave to amend. (*Tarrar Enterprises, Inc. v. Associated Indemnity Corp.* (2022) 83 Cal.App.5th 685, 688-689.)

II. Analysis

The elements of a cause of action for breach of contract are (1) the existence of the contract, (2) plaintiff's performance or excuse for nonperformance, (3) defendant's breach, and (4) the resulting damages to the plaintiff. (*Reichert v. General Ins. Co.* (1968) 68 Cal.2d 822, 830.)

Here, Cross-Complainants allege that the subject agreements are written instruments. Therefore, they must either attach the contracts to the complaint, allege the terms of the agreements verbatim, or allege their legal effect. "'A written contract may be pleaded either by its terms—set out verbatim in the complaint or a copy of the contract attached to the complaint and incorporated therein by reference—or by its legal effect. [Citation.] In order to plead a contract by its legal effect, plaintiff must 'allege the substance of its relevant terms. This is more difficult, for it requires a careful analysis of the instrument, comprehensiveness in statement, and avoidance of legal conclusions." [Citation.]' ([Citation].)" (*Heritage Pacific Financial, LLC v. Monroy* (2013) 215 Cal.App.4th 972, 993; see also *Otworth v. Southern Pac. Transportation Co.* (1985) 166 Cal.App.3d 452, 459.)

Contrary to Cross-Complainants' contention, they have not alleged the legal effect of the contracts. The allegations are too conclusory to plead the legal effect. Therefore, the demurrer as to the first, second, and fourth causes of action will be SUSTAINED.

Since leave to amend has not previously been granted in response to a demurrer, leave to amend will be granted.

As to the third and fifth causes of action for equitable indemnity and declaratory relief, based on the four corners of the cross-complaint, these causes of action are sufficiently plead. As for equitable indemnity, the cross-complaint alleges that Verdant is asserting that Thousand Oaks Marketplace and Cross-Complainants are liable to it due to Thousand Oaks' breach of its contractual obligations under a Purchase and Sale Agreement ("PSA"). Cross-Complainants further allege that to the extent Verdant has incurred recoverable damages (including damages due to any liens imposed on the property, and any diminution in value of the property) due to the conduct of Thousand Oaks Marketplace with respect to the PSA, such damages are due to Thousand Oaks' conduct and thus Cross-Complainants are entitled to equitable indemnity from them.

The fifth cause of action for declaratory judgment states "controversies have arisen and now exist between Cross-Complainants and Cross-Defendants concerning their respective rights and duties" pertaining to the equitable indemnity amounts they are entitled to from Seller and as to whether Verdant has any rights, title, or interest in the property. In essence, there is a real dispute, and the parties have conflicting positions regarding their rights and obligations for which a judicial determination is sought.

These allegations are sufficient at the pleading stage as to both causes of action. The demurrer as to the third and fifth causes of action is OVERRULED.

Conclusion: Cross-Defendants' demurrer to the first, second, and fourth causes of action in the cross-complaint is SUSTAINED, with leave to amend, and OVERRULED as to the third and fifth causes of action.