

1. DE LOIA, ET AL. v. CEFALU, ET AL., 23CV2066**(A) Demurrer to Plaintiff's First Amended Complaint****(B) Motion to Strike Portion of Plaintiff's First Amended Complaint****Demurrer**

Pursuant to Code of Civil Procedure section 430.10, subdivision (f), defendants demur to plaintiff's First Amended Complaint ("FAC") on the ground of uncertainty. Specifically, defendants claim that the FAC is uncertain as to which allegations constitute the basis for which causes of action.

1. Background

This is a shareholder derivative lawsuit brought by Gina De Loia ("Gina") and Chris Cefalu ("Chris") against JARS Linen, Inc. ("JARS"), as well as John Cefalu ("John") and Jonathon Cefalu ("Joby"), who are both shareholders and directors of JARS. (FAC, ¶ 1.)

In addition to several residential properties, JARS owns several commercial properties, including two in South Lake Tahoe, located at 824 Tallac Street and 3100 Nevada Avenue, respectively. (*Id.*, ¶ 12.)

In 2011, plaintiffs began to suspect that John and Joby were mishandling JARS funds. (*Id.*, ¶ 14.)

In 2012, John filed a California Statement of Information from JARS. (*Id.*, ¶ 15.) When Gina reviewed the filing, she discovered she had been temporarily removed from her officer position. (*Ibid.*) Gina believes this was done in retaliation for her questions regarding the propriety of JARS's finances. (*Ibid.*)

In 2015, Gina allegedly noticed payments from JARS to Joby's sons. (*Id.*, ¶ 16.) Gina claims she had no knowledge nor reason to believe that John Tyler was earning the money in exchange for services he provided to JARS because John Tyler was in college at the time. (*Ibid.*)

In 2018, Gina allegedly discovered that JARS was paying funds to another one of Joby's sons, apparently for college expenses. (FAC, ¶ 17.) When Gina inquired about the payments, John allegedly told her she was "snooping around again," became enraged, and physically threatened Gina. (*Ibid.*)

In 2019, Chris allegedly found and took pictures of JARS's fiscal year-end documents, which showed that JARS had allegedly disbursed \$25,925 in Director's Fees. (*Id.*, ¶ 18.) Plaintiffs claim they were unable to find evidence of any approval of this distribution. (*Id.*, ¶ 19.) At a board meeting held on July 15, 2021, John and Joby allegedly told Gina that the disbursement was a "mistake" by their accountant. (*Id.*, ¶ 20.) However, in October 2021, Joby allegedly claimed he was advised by JARS's accountant that the disbursement would help "them" take advantage of a tax deduction, and that the amount of the disbursement had been subtracted from "their" salaries (plaintiffs claim they were never provided documentation showing who received the Director's Fees). (*Id.*, ¶¶ 23, 24.)

The FAC also alleges that "[i]n or about June 2021, there was a major leak in a JARS water main. Chris discovered that Joby included the installation of a valve on the 824 Tallac Avenue property with the cost to repair the leak. [¶] Plaintiffs believe Joby installed the valve on the 824 Tallac Avenue property to circumvent a moratorium on landscape watering in Tahoe Keys, imposed due to water contamination. Gina believes Joby was using JARS water to landscape his own lawn and those of his neighbors. Gina also believes Joby allowed one of his sons to water other lawns in the area with JARS' water, for profit. Plaintiffs have not seen any documentation showing JARS received any of that income." (*Id.*, ¶¶ 25, 26.)

In October 2021, Joby allegedly advised Gina that Joby planned to instruct Laura to pay \$9,000.00 from JARS's funds for the appraisal of the Cefalu Family Trust. (*Id.*, ¶ 27.) Gina allegedly told Joby this was not a proper use of JARS funds, but Joby continued with the transaction. (*Ibid.*)

On March 15, 2024, plaintiffs filed their FAC against defendants, stating causes of action for (1) breach of fiduciary duty; (2) corporate waste; (3) conversion; (4) civil theft under Penal Code section 496, subdivision (c); and (5) accounting.

2. Request for Judicial Notice

Plaintiffs request the court take judicial notice of: (1) defendants' demurrer to plaintiffs' complaint (Ex. A); (2) the court's tentative ruling issued in this matter on February 15, 2024 (Ex. B); and (3) the final order regarding defendants' demurrer to plaintiffs' complaint (Ex. C). Pursuant to Evidence Code section 452, subdivision (d), the court grants plaintiffs' request.

3. Legal Principles

"[A] demurrer challenges only the legal sufficiency of the complaint, not the truth or the accuracy of its factual allegations or the plaintiff's ability to prove those allegations." (*Amarel v. Connell* (1998) 202 Cal.App.3d 137, 140.) A demurrer is directed at the face of the complaint and to matters subject to judicial notice. (Code Civ. Proc., § 430.30, subd. (a).) All properly pleaded allegations of fact in the complaint are accepted as true, however improbable they may be, but not the contentions, deductions, or conclusions of fact or law. (*Blank v. Kirwan* (1985) 39 Cal.3d 311, 318; *Del E. Webb Corp. v. Structural Materials Co.* (1981) 123 Cal.App.3d 593, 604.) A judge gives "the complaint a reasonable interpretation, reading it as a whole and its parts in their context." (*Blank, supra*, 39 Cal.3d at p. 318.)

4. Discussion

As an initial matter, plaintiff argues that defendant's demurrer is barred by Code of Civil Procedure section 430.41 where defendant raised the same uncertainty argument in its previous demurrer and the court omitted said argument from its ruling.

Code of Civil Procedure section 430.41, subdivision (b) provides: "A party demurring to a pleading that has been amended after a demurrer to an earlier version of the pleading was sustained shall not demur to any portion of the amended complaint, cross-complaint,

or answer on grounds that could have been raised by demurrer to the earlier version of the complaint, cross-complaint, or answer.” (Code Civ. Proc., § 430.41, subd. (b).) But, that is not what happened here. In their original demurrer, defendants claimed that the original complaint was uncertain where defendants could not tell which allegations pertained to which cause(s) of action. The fact that the court did not address said argument in its previous ruling does not bar defendants from reasserting the argument here.

Turning to the merits, demurrers for uncertainty under Code of Civil Procedure section 430.10, subdivision (f) are disfavored. (*Likiss v. Financial Industry Regulatory Authority* (2012) 208 Cal.App.4th 1125, 1135.) “A demurrer for uncertainty is strictly construed, even where a complaint is in some respects uncertain, because ambiguities can be clarified under modern discovery procedures.” (*Khoury v. Maly’s of California, Inc.* (1993) 14 Cal.App.4th 612, 616.) “[W]here the complaint contains substantive factual allegations sufficiently apprising defendant of the issues it is being asked to meet, a demurrer for uncertainty should be overruled....” (*A.J. Fistes Corp. v. GDL Best Contractors, Inc.* (2019) 38 Cal.App.5th 677, 695.)

Under the First Cause of Action for breach of fiduciary duty, the FAC alleges, “Defendants breached their fiduciary duties owed to JARS by, among other things, using JARS funds for personal projects, personally benefitting at the expense of JARS, improperly disbursing Director’s Fees, and taking retaliatory action against Plaintiffs for questioning JARS’ misappropriation of funds.” (FAC, ¶ 48.) In support of these contentions, plaintiffs incorporate all previously alleged paragraphs. (*Id.*, ¶ 44.) Defendants claim that the problem with this cause of action is that “it is entirely unclear to John and Joby which of these breaches are attributable to each of them individually or both of them such that they cannot respond to the claims brought.” (Dem. at 7:20–22.) However, the court finds that any ambiguity can be clarified through discovery. The demurrer to the First Cause of Action is overruled.

The Second Cause of Action for corporate waste alleges, “[a]s a result of their misuse of corporate funds and improper disbursements, Defendants were unjustly enriched at the expense of and to the detriment of JARS and its shareholders.” (FAC, ¶ 52.) In support of this contention, plaintiffs incorporate all previously alleged paragraphs. (*Id.*, ¶ 51.) Defendants argue that “Plaintiffs’ specific allegations indicate that Joby and John are each responsible for their own alleged misconduct while then refusing to differentiate between them for purposes of asserting causes of action.” Again, the court finds that any ambiguity can be clarified through discovery. The demurrer to the Second Cause of Action is overruled.

The Third Cause of Action for conversion alleges, “Defendants, by means of improper, fraudulent, and illegal disbursements and inappropriate expenditures, misappropriated and converted to their personal use and possession, without the knowledge or proper authority or consent of the corporation, monies which belonged to JARS. [Citation.]” (FAC, ¶ 55.) Defendants claim this cause of action is “wholly uncertain, unintelligible, and ambiguous with respect to which Defendant misused corporate funds, which Defendant received improper disbursements, which defendant took corporate monies, and which Defendant was unjustly enriched at the expense of JARS.” The court disagrees. The FAC alleges that both John and Joby committed these acts. Further, any ambiguity can be clarified through discovery. The demurrer as to the Third Cause of Action is overruled.

The Fourth Cause of Action for civil theft under Penal Code section 496, subdivision (c) alleges, “Defendants used JARS’ funds and property for personal reasons, including side businesses, paid salaries from JARS’ funds to non-JARS employees and/or for non-JARS work, distributed JARS’ funds to others, and improperly disbursed JARS revenues.” (FAC, ¶ 60.) In support of these contentions, plaintiffs incorporate all previously alleged paragraphs. (FAC, ¶ 59.) Defendants argue that, “[g]iven these patent inconsistencies as to what Plaintiffs accuse the Defendants individually and jointly, it is impossible for Defendants to respond to this intentionally ambiguous First Amended Complaint.” (Dem.

at 11:18–20.) The court disagrees and finds that the FAC contains enough facts to apprise defendants of the issues they are being asked to meet. The demurrer to the Fourth Cause of Action is overruled.

Motion to Strike

Pursuant to Code of Civil Procedure section 435, defendants move to strike the following portion of the FAC: “In 2015, Gina noticed payments from JARS to Joby’s sons. Neither John nor Joby informed Gina why the payments were being made. Gina had no knowledge nor reason to believe John Tyler was earning the money in exchange for services he provided to JARS, because John Tyler was in college. To date, Plaintiffs have no clarity on the reason for these payments. When Plaintiffs were finally able to access JARS’ records, they discovered these payments were ongoing for years. Plaintiffs discovered payments from JARS to John Tyler Cefalu in the amount of \$1500.00 for the 2016–2017 academic year, in addition to payments of \$300.00 per month year round from Fall 2014 to Spring 2017.” (FAC, ¶ 16.)

On February 16, 2024, the court granted defendants’ motion to strike Paragraph 18 of the original Complaint, which alleged: “In 2015, Gina noticed JARS was paying Joby’s son, John Tyler, approximately \$900.00 per month. Neither John nor Joby informed Gina why the payments were being made. Gina had no knowledge nor reason to believe John Tyler was earning the money in exchange for services he provided to JARS, because John Tyler was in college. To date, Plaintiffs have no clarity on the reason for these payments.” The court reasoned that the allegations in Paragraph 18 of the original Complaint were time-barred.

The court finds that the challenged portion of the FAC is substantially similar to the stricken portion of the original Complaint. The motion to strike is granted without leave to amend.

TENTATIVE RULING # 1: THE DEMURRER IS OVERRULED. THE MOTION TO STRIKE IS GRANTED WITHOUT LEAVE TO AMEND. DEFENDANTS MUST FILE AND SERVE THEIR

ANSWER TO THE FIRST AMENDED COMPLAINT NO LATER THAN 10 DAYS FROM THE DATE OF SERVICE OF THE NOTICE OF ENTRY OF ORDER. NO HEARING ON THIS MATTER WILL BE HELD (*LEWIS v. SUPERIOR COURT* (1999) 19 CAL.4TH 1232, 1247), UNLESS A NOTICE OF INTENT TO APPEAR AND REQUEST FOR ORAL ARGUMENT IS TRANSMITTED ELECTRONICALLY THROUGH THE COURT'S WEBSITE OR BY TELEPHONE TO THE COURT AT (530) 573-3042 BY 4:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED. NOTICE TO ALL PARTIES OF AN INTENT TO APPEAR MUST BE MADE BY TELEPHONE OR IN PERSON. PROOF OF SERVICE OF SAID NOTICE MUST BE FILED PRIOR TO OR AT THE HEARING.

2. NAME CHANGE OF ARMITAGE, 24CV0818

OSC Re: Name Change

To date, there is no proof of publication in the court's file.

**TENTATIVE RULING # 2: APPEARANCES ARE REQUIRED AT 1:30 P.M., FRIDAY,
JUNE 21, 2024, IN DEPARTMENT FOUR.**

3. NAME CHANGE OF SZUMEL, 24CV0920

OSC Re: Name Change

TENTATIVE RULING # 3: PETITION GRANTED AS REQUESTED.

4. WILSON v. MUCCILLO, 23CV0451

(A) Motion for Summary Judgment

(B) Motion to Stay Proceedings

(C) Motion for Preliminary Injunction

On the court's own motion, the matter is continued to June 28, 2024. The court apologizes for any inconvenience to the parties.

TENTATIVE RULING # 4: ON THE COURT'S OWN MOTION, MATTER IS CONTINUED TO 1:30 P.M., FRIDAY, JUNE 28, 2024, IN DEPARTMENT FOUR.

5. BRITT v. LAYMANCE, SC20210093

Motion to Set Aside Default and Default Judgment

On the court's own motion, the matter is continued to July 12, 2024. The court apologizes for any inconvenience to the parties.

TENTATIVE RULING # 5: ON THE COURT'S OWN MOTION, MATTER IS CONTINUED TO 1:30 P.M., FRIDAY, JULY 12, 2024, IN DEPARTMENT FOUR.