

October 17, 2025, Civil Law & Motion Tentative Rulings

1. CU0000634 Carla Marie Vieira vs. California Department of Transportation, et al.

No appearances are required. Defendant Tyrell Resources, Inc.'s May 20, 2025, motion for summary judgment is dropped as moot. Plaintiffs' request for dismissal as to Tyrell Resources, Inc. was entered on September 22, 2025.

2. CU19-083770 James L. Butler vs. Ralph Mullican

Plaintiff's July 24, 2025, request for remedies pursuant to constitutional and statutory law, to void the deed, etc., was executed by Michael Charles School, an individual who does not appear to be a licensed attorney in the State of California based on a review of the records of the State Bar. "No person shall practice law in California unless the person is an active licensee of the State Bar." Bus. & Prof. Code, § 6125. Under the statute, a person who is not a licensed attorney cannot appear in court for another person." *Estate of Sanchez* (2023) 95 Cal.App.5th 331, 339 (parentheses deleted). Moreover, if an individual files briefs and other pleadings as part of the unlicensed practice of law, "those pleadings must be stricken." *Id.* In the absence of proof that Michael Charles School is an attorney admitted to practice law in California or is a licensed attorney of some other state admitted to practice *pro hac vice* in California, the July request is ordered stricken.

3. CU0002046 Glenn Kalaveras, et al. vs. Kelly Purves

Defendant Kelly Purves' July 25, 2025, unopposed demurrer to plaintiffs' first amended complaint (FAC) is sustained in part without leave to amend, sustained in part with leave to amend and otherwise overruled. Plaintiffs may serve and file a *third* amended complaint within ten (10) days of this court's order. Additionally, on its own motion, the court strikes the second amended complaint (SAC) filed without required leave of the court.

Legal Standard on Demurrer

"A demurrer tests the sufficiency of the complaint as a matter of law." *Berg & Berg Enterprises, LLC v. Boyle* (2009) 178 Cal.App.4th 1020, 1034. "It has been consistently held that "a plaintiff is required only to set forth the essential facts of his case with reasonable precision and with particularity sufficient to acquaint a defendant with the nature, source and extent of his cause of action.""" *Doheny Park Terrace Homeowners Assn. Inc. v. Truck Ins. Exchange* (2005) 132 Cal.App.4th 1076, 1099, *cited with approval by Doe v. City of Los Angeles* (2007) 42 Cal.4th 531, 550. The pleadings are to be liberally construed with "a view towards substantial justice between the parties[.]" and any specific allegations control the general pleadings. *Gentry v. EBay* (2002) 99 Cal.App.4th 816, 827.

Facts that may be inferred from those alleged are properly taken as true. *Harvey v. City of Holtville* (1969) 271 Cal.App.2d 816, 819. The complainant's ability to prove the allegations does not concern the court. *Del E. Webb Corp. v. Structural Materials Co.* (1981) 123 Cal.App. 3d 593, 604. Rather, the court must construe the complaint liberally by drawing reasonable inferences from the facts pleaded. *Wilner v. Sunset Life Ins. Co.* (2000) 78 Cal.App.4th 952,

958. Contentions, deductions, and conclusions of law, however, are not presumed as true. *Aubry v. Tri-City Hospital Dist.* (1992) 2 Cal.4th 962, 967.

First Cause of Action for Breach of Contract as to All Three Properties

Chattering Pines Property

Defendant argues the first cause of action for breach of contract is barred by the statute of frauds because plaintiffs allege an implied verbal agreement to rent real property for three years with an exclusive right to purchase said property, and no document was produced and attached to the complaint. The court agrees.

To state a claim for breach of contract, a plaintiff must allege (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. *D'Arrigo Bros. of California v. United Farmworkers of America* (2014) 224 Cal.App.4th 790, 800. The statute of frauds provides that contracts for the sale of real property or of an interest therein "are invalid, unless they, or some note or memorandum thereof, are in writing and subscribed by the party to be charged or by the party's agent." Civ. Code § 1624(a)(3). The defense of the statute of frauds must be anticipated in the complaint. *Darbun Enterprises v. San Fernando Community Hosp.* (2015) 239 Cal.App.4th 399, 409, n. 5; *Loper v. Flynn* (1946) 72 Cal.App.2d 619, 621.

The FAC alleges the parties entered into a valid oral/implied contract to rent the property for over three years and then have the exclusive right to purchase it. Such a verbal contract is invalid under the statute of frauds. *See* Civ. Code § 1624(a)(3). While plaintiffs did not oppose the demurrer, the improperly filed SAC indicates the defect may be subject to potential remedy. Therefore, the court sustains the demurrer with leave to amend.

Drake Avenue Property

Defendant argues again that this contract claim is barred by the statutes of frauds and limitations. The court concurs.

The FAC alleges the parties entered into a valid oral/implied agreement with plaintiffs to renovate and flip this property, with defendant funding the purchase and plaintiff performing the labor and renovation work in exchange for a 50% share of the profits upon sale. Such a verbal contract is again invalid under the statute of frauds, because it is an agreement for an interest in the sale of real property. *See* Civ. Code § 1624(a)(3). Additionally, plaintiffs allege an oral agreement entered into in 2022, which falls outside the statute of limitations for a cause of action made upon a contract not founded upon a written agreement. *See* Code Civ. Proc. § 339. Therefore, the demurrer as to this property is sustained. The defects at issue may be subject to remedy; leave to amend is permitted.

Euclid Street (Slater, Missouri) Property

Defendant argues the court lacks jurisdiction over this property. The court agrees. The demurrer as to this cause of action and this property is sustained. *See Taylor v. Taylor* (1923) 192 Cal. 71,

76; Code Civ. Proc. § 430.10. This defect does not appear to be subject to potential remedy; leave to amend is denied.

Second Cause of Action for Promissory Estoppel as to Chattering Pines Property

Defendant demurs to the second cause of action because any reliance by plaintiffs on a verbal promise was unreasonable and in violation of the statute of frauds. The court disagrees.

The doctrine of promissory estoppel is equitable in nature, and arises from the principle that ““he who by his language or conduct leads another to do what he would not otherwise have done shall not subject such person to loss or injury by disappointing the expectations upon which he acted.”” *Garcia v. World Savings, FSB* (2010) 183 Cal.App.4th 1031, 1041 (citations omitted); see *Jones v. Wachovia Bank* (2014) 230 Cal.App.4th 935, 944-945. ““The elements of a promissory estoppel claim are ‘(1) a promise clear and unambiguous in its terms; (2) reliance by the party to whom the promise is made; (3) [the] reliance must be both reasonable and foreseeable; and (4) the party asserting the estoppel must be injured by his reliance.’” *Advanced Choices, Inc. v. State Dept. of Health Services* (2010) 182 Cal.App.4th 1661, 1672 (citation omitted). “Promissory estoppel applies whenever a ‘promise which the promisor should reasonably expect to induce action or forbearance on the part of the promisee or a third person and which does induce such action or forbearance’ would result in an ‘injustice’ if the promise were not enforced.” *Lange v. TIG Ins. Co.* (1998) 68 Cal.App.4th 1179, 1185. Reliance by the party to whom a promise is made must be justifiable, and that party’s “misguided belief or guileless action in relying on a statement on which no reasonable person would rely is not justifiable reliance.” *Kruse v. Bank of America* (1988) 202 Cal.App.3d 38, 54. “A party is estopped to assert the statute of frauds as a defense ‘where [the] party, by words or conduct, represents that he will stand by his oral agreement, and the other party, in reliance upon that representation, changes his position, to his detriment.’” *Garcia v. World Savings, FSB* (2010) 183 Cal.App.4th 1031, 1041, quoting *Associated Creditors’ Agency v. Haley Land Co.* (1966) 239 Cal.App.2d 610, 617.

The allegations of the FAC are sufficient to show more than just a hopeful expectation that plaintiffs would have the right to purchase the property after a period of three years of paying rent on the property. It can be inferred from the express allegations of the FAC that plaintiffs knew defendant was the owner of the property and paid rent to him. These allegations are sufficient to show that plaintiffs could have reasonably relied on a promise giving them an exclusive right to purchase the property after three years of paying rent. Defendant fails to explain why the allegations, on their face, demonstrate plaintiffs’ reliance on the purported promise made by defendant was in any way misguided, considering plaintiffs also allege they agreed to and performed the conditions imposed by defendant. The allegations of the FAC are sufficient to show reasonable reliance. Lastly, statute of frauds is barred as a defense if promissory estoppel is established. The demurrer for this claim is overruled.

Second Cause of Action for Promissory Fraud as to Drake Avenue Property

“[I]n a promissory fraud action, to sufficiently allege[] defendant made a misrepresentation, the complaint must allege (1) the defendant made a representation of intent to perform some future action, i.e., the defendant made a promise, and (2) the defendant did not really have that intent at

the time that the promise was made, *i.e.*, the promise was false.” *Beckwith v. Dahl* (2012) 205 Cal.App.4th 1039, 1060 (citations omitted).

The FAC alleges defendant made a representation to give plaintiffs a 50% share of profits made upon the sale, and that defendant had no intention of following through on the agreement. This claim is sufficiently pled; the demurrer is overruled.

Second Cause of Action for Unjust Enrichment as to Euclid Street Property

Defendant argues the court lacks jurisdiction over this property. The court again agrees. The demurrer as to this cause of action and this property is sustained without leave to amend. *See Taylor*, 192 Cal. at 76; Code Civ. Proc. § 430.10.

Fourth Cause of Action for Constructive Eviction as to Chattering Pines Property

Defendant argues plaintiffs’ lack of a valid written lease means the cause of action for constructive eviction must fail based on the statute of frauds. The court disagrees.

“A constructive eviction occurs when the acts or omissions to act of a landlord, or any disturbance or interference with the tenant’s possession by the landlord, renders the premises, or a substantial portion thereof, unfit for the purposes for which they were leased, or which has the effect of depriving the tenant for a substantial period of time of the beneficial, enjoyment or use of the premises.” *Groh v. Kover’s Bull Pen, Inc.* (1963) 221 Cal.App.2d 611, 614. An interference by the landlord, “or by someone claiming under the landlord” that deprives the tenant of the beneficial enjoyment of the premises amounts to a constructive eviction. *Andrews v. Mobile Aire Estates* (2005) 125 Cal.App.4th 578, 590.

This cause of action is adequately alleged and is not barred under the statute of frauds. Plaintiffs alleged a right to the leasehold based on, *inter alia*, a theory of promissory estoppel and further alleged interference with quiet enjoyment of the same by various purported wrongful acts. This is sufficient. The demurrer as to this cause of action is overruled.

Fifth Cause of Action for Retaliatory Eviction as to Chattering Pines Property

Defendant argues this claim violates the statute of frauds. The court disagrees for the reasons noted in connection with the fourth claim as to a leasehold theory via promissory estoppel.

Defendant also argues that plaintiffs fail to allege facts sufficient to establish this cause of action. The court agrees.

“The retaliatory eviction doctrine is founded on the premise that “[a] landlord may normally evict a tenant for any reason or for no reason at all, but he may not evict for an improper reason” *Barela v. Superior Court* (1981) 30 Cal.3d 244, 249. Pursuant to Civil Code section 1942.5(a), a cause of action may arise if a lessor retaliates against a lessee within 180 days after the tenant exercises one or more of five delineated rights, *e.g.*, making an oral/written complaint to the lessor or an agency regarding tenantability.

At bar, plaintiffs state they “objected to unsafe and unpermitted construction and Defendant’s ongoing harassment,” but there is no allegation of which right they exercised and timing of the same. Therefore, the court sustains the demurrer. This defect potentially might be remedied; leave to amend is permitted.

Sixth Cause of Action: Fraud/Intentional Misrepresentation as to Chattering Pines Property

Defendant argues plaintiffs’ claim fails to plead sufficient facts to support intent to deceive or induce reliance. The court disagrees.

“The elements of a cause of action for fraud are (1) a misrepresentation, (2) with knowledge of its falsity, (3) with the intent to induce another’s reliance on the misrepresentation, (4) actual and justifiable reliance, and (5) resulting damage.” *Orcilla v. Big Sur, Inc.* (2016) 244 Cal.App.4th 982, 1007; *see Lazar v. Superior Court* (1996) 12 Cal.4th 631, 638. “[I]n California, fraud must be pled specifically; general and conclusory allegations do not suffice.” *Robinson Helicopter Co., Inc. v. Dana Corp.* (2004) 34 Cal.4th 979, 993. Particularity requires a showing of “how, when, where, to whom, and by what means the representations were tendered.” *Ibid.* (quotations omitted). “[T]he requirement of specificity is relaxed when the allegations indicate that ‘the defendant must necessarily possess full information concerning the facts of the controversy’ or ‘when the facts lie more in the knowledge of the’ defendant.” *Id.* (citation omitted). In addition, plaintiffs only need to allege the ultimate facts—not evidentiary facts. *Doe v. City of Los Angeles* (2007) 42 Cal.4th 531, 550.

Plaintiffs have alleged defendant entered into a contract for plaintiffs to rent a property and have the exclusive right to purchase the home after a 3-year term, while knowingly misrepresenting his intention to sell the property to a third party, with the intent for plaintiffs to rely on his misrepresentation, that plaintiffs in fact relied upon his misrepresentation, and after the property was sold to a third party they were damaged. Plaintiffs have sufficiently alleged ultimate facts sufficient to state a claim; the demurrer is overruled as to this cause of action.

Second Amended Complaint

A party may amend its complaint once without leave of the court at any time before the answer or demurrer is filed. Code Civ. Proc. § 472(a). Thereafter, leave is required.

“The court may, upon a motion made pursuant to Section 435, or at any time in its discretion, and upon terms it deems proper: ... (b) Strike out all or any part of any pleading not drawn or filed in conformity with the laws of this state, a court rule, or an order of the court.” Code Civ. Proc. § 436. A trial court has discretion to strike a pleading filed in disregard of established procedural requirements, such as where an amendment is filed without obtaining leave to amend. *Leader v. Health Industries of America, Inc.* (2001) 89 Cal.App.4th 603, 613; *see also Loser v. E. R. Bacon Co.* (1962) 201 Cal.App.2d 387, 390.

Here, plaintiffs filed a FAC on May 5, 2025 and then, after defendant filed the instant demurrer, filed a SAC on July 28, 2025 *without* leave of court. That being the case, the SAC is ordered stricken.