

# SUPERIOR COURT OF CALIFORNIA, COUNTY OF RIVERSIDE

Palm Springs Courthouse  
Hearing re: Demurrer on

01/19/2023  
8:30 AM  
Department PS1

**CVPS2104820**  
**NOROOZI vs GIBBS**

Honorable Kira L. Klatchko, Judge  
D. Elless, Courtroom Assistant  
Court Reporter: None

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## APPEARANCES:

NOROOZI, PEJMAN [PLA] represented by Taylor Marks, is present telephonically.

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This matter is being live streamed for public access.

Court inquires of counsel if notice was given to defendant regarding request for oral argument.

Plaintiff's counsel informs Court no notice was given.

Court informs counsel no argument can be heard with notice not given to defendant.

Court makes the following order(s):

Tentative ruling shall become the ruling of the court.

Demurrer by JOHN GIBBS on 1st Amended Complaint for Breach of Contract/Warranty (Over \$25,000) of PEJMAN NOROOZI sustained without leave to amend as to first cause(s) of action.

Demurrer by JOHN GIBBS on 1st Amended Complaint for Breach of Contract/Warranty (Over \$25,000) of PEJMAN NOROOZI sustained as to fourth cause(s) of action

Leave to amend 1st Amended Complaint for Breach of Contract/Warranty (Over \$25,000) of PEJMAN NOROOZI granted, with 20 days to leave to amend.

Demurrer by JOHN GIBBS on 1st Amended Complaint for Breach of Contract/Warranty (Over \$25,000) of PEJMAN NOROOZI overruled as to second, third and fifth cause(s) of action.

Sustain without leave as to the first cause of action for breach, sustain with 20 days leave to amend as to 4th cause of action, otherwise overrule. The First Amended Complaint alleges damages of \$56,972 for: (1) breach of contract; (2) Negligence; (3) Conversion; (4) Damage to Real Property; and (5) Breach of Covenants of Good Faith and Fair Dealing. Defendant Gibbs demurrers. The basic allegation underlying these causes of action is that Defendant removed and destroyed property at the premises he leased from Plaintiff, his step-son.

To withstand a demurrer the complaint must contain "a statement of the facts constituting the cause of action, in ordinary and concise language." (Code Civ. Proc., § 425.10.) "[T]he complaint need only allege facts sufficient to state a cause of action, each evidentiary fact that might eventually form part

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of the plaintiff's proof need not be alleged. (C.A. v. William S. Hart Union High School Dist. (2012) 53 Cal.4th 861, 872.) Generally, a plaintiff need only plead facts necessary "to acquaint a defendant with the nature, source and extent of his claims." (Doe v. City of Los Angeles (2007) 42 Cal.4th 531, 549-550.) A demurrer on the ground of uncertainty will only be sustained where a defendant cannot reasonably determine what issues must be admitted or denied, or what claims are directed against them. (Khoury v. Maly's of California, Inc. (1993) 14 Cal.App.4th 612, 616.)

Plaintiff does not oppose the demurrer to the first cause of action for breach of contract, which demurrer is sustained without leave to amend.

The second cause of action is for negligence. Here, Defendant and his wife resided at the Subject Property from 2015 through 2021. (FAC, ¶8.) Plaintiff alleges that, upon vacating the property, Defendant removed items that were included with the property at the time he moved in, including, the stove range, refrigerator, marble statues and paintings and that in doing so Plaintiff further alleges that Defendant caused significant damage to the walls, floors, pool and outside areas. (Ibid.) This is sufficient to state a cause of action for negligence. The demurrer is overruled.

The third cause of action is for conversion. Conversion is generally described as the wrongful exercise of dominion over the personal property of another. (Fremont Indemnity Co. v. Fremont General Corp. (2007) 148 Cal. App. 4th 119.) The elements of a conversion claim are: (1) the ownership or right to possession of the property; (2) the defendant's conversion by a wrongful act or disposition of property rights; and (3) damages. (Berlesci v. Petersen (1998) Cal. App. 4th 1062, 1066.) The plaintiff does not need to establish legal title or absolute ownership as long as he or she is entitled to immediate possession at the time of the conversion. (Spates v. Dameron Hospital Assn. (2003) 114 Cal. App. 4th 208, 222.) A defendant's mistaken belief that she or he had a valid right to the property is not a defense to a cause of action for conversion. (Newhart v. Pierce (1967) 254 Cal. App. 2d 783, 793.) Plaintiff alleges that Defendant stole numerous items from the property, including, those items listed above, which belonged to Plaintiff and were fixtures existing on the premises prior to the lease. (FAC, ¶29.) While the Lease vaguely states that no appliances or furniture were included, it is not clear that this provision was intended to indicate that no personal property or fixtures were present. This cause of action is sufficiently pleaded for purposes of demurrer, where the Court must accept all facts pleaded as true. The demurrer is overruled.

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The fourth cause of action is for intentional damage to real property. To the extent the Court understands this cause of action it is for willful misconduct. Willful misconduct is an aggravated form of negligence where the defendant has intentionally done an act of unreasonable character in disregard of known or obvious risk. (*Morgan v. Southern Pacific Trans.* (1974) 37 Cal. App. 3d 1006, 1011.) The elements of willful misconduct are: (1) actual or constructive knowledge of the peril to be apprehended; (2) actual or constructive knowledge that injury is a probable, as opposed to possible, result of the danger; and (3) conscious failure to act to avoid the peril. (*Id* at 1012.) "Willful misconduct is not marked by a mere absence of care. Rather, it involves a more positive intent actually to harm another or to do an act with a positive, active and absolute disregard of its consequences." (*Doe v. United States Youth Soccer Assn.* (2017) 8 Cal. App. 5th 1118, 1140.) The pleading requirements for willful misconduct are similar to negligence but stricter. The plaintiff must plead specific facts showing willfulness. (*Snider v. Whitson* (1960) 184 Cal. App. 2d 211, 214-215.) This cause of action is unclear, and premised on conclusory language by Plaintiff that Defendant intentionally damaged property. The demurrer is sustained with 20 days leave to amend as to this cause of action.

The fifth cause of action is for breach of the covenant of good faith and fair dealing in the Lease. This cause of action essentially alleges that Defendant damaged the property causing so much damage that Plaintiff's ability to benefit from the rental agreement was frustrated. Although the facts pleaded are thin, they sufficiently allege a breach of the covenant. (See *Third Story Music, Inc. v. Waits* (1995) 41 Cal. App. 4th 798, 804.) The demurrer to this cause of action is overruled.

The Court finds that the parties' efforts to meet and confer were not in strict conformity with the Code of Civil Procedure, but that in this instance they are sufficient. Parties are reminded that they are required by Code to meet and confer in person, telephonically, or on video in the future and that their failure to do so will result in sanctions of up to \$1500 against parties and counsel.

The Trial Setting Conference and OSC set for hearing on January 19, 2023 at 8:30 a.m. are continued to March 23, 2023 at 8:30 a.m. The OSC is returnable to this Department per Local Rule 3116. The parties are ordered to file a joint trial setting declaration per Department PS1 Rules for Law and Motion and in accord with this Court's order of May 19, 2022, at least 10 days prior to the continued TSC.

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Notice to be given by Clerk to JOHN GIBBS, DARYOOSH KHASHAYAR.