SUPERIOR COURT OF CALIFORNIA,
COUNTY OF SAN BERNARDINO
San Bernardino District
247 West 3rd St
San Bernardino, CA 92415
www.sb-court.org

PORTAL MINUTE ORDER

Case Number: CIVSB2203398 **Date: 2/8/2023**

Case Title: **Coyote Aviation Corporation**
-v -
City of Redlands et al

Department S33 - SBJC	Date: 2/8/2023	Time: 10:00 AM	Ruling on Submitted Matter

Judicial Officer: Winston Keh
Judicial Assistant: Amie Arroyo
Court Reporter: Not Reported or Recorded

Appearances
No Appearances

Proceedings
The Court having taken the matter of Defendant City of Redlans Demurrer under submission on 2/2/2023 now rules as follows:
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Court finds:
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After consideration of Counsel's arguments and further review the Court will adopt it's tentative ruling as the final ruling
-
Court orders Demurrer Sustained in full, without leave to amend
-
The Court finds there was a proper meet and confer
-
The Court Denies the request for judicial notice as unnecessary
-
Counsel for Defendant is ordered to prepare a judgment and submit it directly to department S33 for review
-
Court sets matter for an OSC regarding status of Judgment as follows:
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PROCEDURAL/FACTUAL BACKGROUND
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Currently before the Court is the City of Redland's demurrer to the first amended complaint filed by Plaintiff Coyote Aviation Corp.
On February 8, 2022, Plaintiff Coyote Aviation Corporation ("Plaintiff" or "Coyote") filed this breach of contract action against Defendant City of Redlands ("Defendant" or "Redlands"). Plaintiff's complaint included five causes of action: (1) breach of contract; (2) breach of implied covenant of good faith and fair dealing; (3) reformation; (4) declaratory relief; and (5) promissory estoppel.
On August 5, 2022, the Court denied the notice of related cases filed by Coyote and found this action was not related to LLTVA2200544. On October 12, 2022, after demurrer, opposition, and reply, the Court sustained the City of

Redland's demurrer with leave to amend. (See October 12, 2022 Minute Order and October 14, 2022 Notice of Ruling.)

On November 4, 2022, Plaintiff Coyote filed a first amended verified complaint ("FAC") asserting causes of action for: (1) breach of contract; (2) specific performance; (3) breach of the implied covenant of good faith and fair dealing; (4) declaratory relief under Cal. Code Civ. Proc., §1060; and (5) promissory estoppel/detrimental reliance.

On December 14, 2022, the City of Redlands filed a demurrer together with the declaration of Dustin Nirchl, Esq. and a request for judicial notice. Coyote filed an opposition on January 20, 2023 together with the declaration of Gil Brown. Redlands filed a reply on January 26, 2023.

Analysis

Request for Judicial Notice. The City of Redlands seeks to have the Court take judicial notice of the verified complaint filed in this action on February 8, 2022 and the Court's tentative ruling issued on October 12, 2022. While these documents are all entitled to judicial notice pursuant to Evid. Code, §452, subd. (d), the request is unnecessary since the Court has the authority to look through its own file. (See Davis v. Southern California Edison Company (2011) 236 Cal.App.4th 619, 632, fn. 11 [judicial notice of document included in appellate record is unnecessary]; Roth v. Plikaytis (2017) 15 Cal.App.5th 283 [court was required to consider previously filed materials incorporated by reference into attorney fee motion].)

Sham Pleading Doctrine. Under the sham pleading doctrine, plaintiffs are precluded from amending complaints to omit harmful allegations, without explanation, from previous complaints to avoid attacks raised in demurrers or motions for summary judgment." (Deveny v. Entropin, Inc. (2006) 139 Cal.App.4th 408, 425-426; see also Colapinto v. County of Riverside (1991) 230 Cal. App. 3d 147, 151 ["If a party files an amended complaint and attempts to avoid the defects of the original complaint by either omitting facts which made the previous complaint defective or by adding facts inconsistent with those of previous pleadings, the court may take judicial notice of prior pleadings and may disregard any inconsistent allegations."].) "A noted commentator has explained, 'Allegations in the original pleading that rendered it vulnerable to demurrer or other attack cannot simply be omitted without explanation in the amended pleading. The policy against sham pleadings requires the pleader to explain satisfactorily any such omission.'" (Deveny v. Entropin, Inc. (2006) 139 Cal.App.4th 408, 425-426, citing Weil & Brown, Cal. Practice Guide: Civil Procedure Before Trial (The Rutter Group 2005) ¶ 6.708, p. 6-142.1.)

When viewed in the context of the policy underlying the sham pleading doctrine, namely, to prevent abuse, the FAC is not a sham pleading. Case law also instructs that the sham pleading doctrine is not '"intended to prevent honest complainants from correcting erroneous allegations … or to prevent correction of ambiguous facts."' (Larson v. UHS of Rancho Springs, Inc. (2014) 230 Cal.App.4th 336, 344.)

First Cause of Action for Breach of Contract. The elements of a cause of action for breach of contract and for breach of the implied covenant of good faith and fair dealing are similar. "The essential elements of a breach of contract claim are: '(1) the contract, (2) plaintiff's performance or excuse for nonperformance, (3) defendant's breach, and (4) the resulting damages to plaintiff.'" (Hamilton v. Greenwich Investors XXVI, LLC (2011) 195 Cal.App.4th 1602, 1614.) "[A] pleader must state with certainty the facts constituting a breach of contract." (Melican v. Regents of Univ. of Calif. (2007) 151 Cal.App.4th 168, 174-175 (emphasis added).)

Under its first cause of action, Plaintiff alleges Riverside "breached the September Lease by refusing to honor [Plaintiff's] exercised Extension Option and by voting to terminate the lease." (FAC, ¶ 90.)

The April Lease is Exhibit 1 and states:

2. Term. This term of this Lease shall be for a period of twenty (20) years and shall commence on the date first written above. This Lease shall remain in full force and effect during its Term, unless earlier terminated for herein, or as otherwise terminated or superseded by mutual written agreement of City and Tenant.

2.1. Tenant shall have two (2) successive options for extending the Tem of this Lease for periods of fifteen (15) additional years each. Provided Tenant is in compliance with all terms of the Lease, Tenant may exercise such options by providing written notice to City forty-five (45) days prior to the termination date of this Lease. Except for the terms and conditions related to Rent, which shall be renegotiated as hereinafter provide, any extension of the Term of this Lease pursuant to this section shall be on the same terms and conditions contained in the Lease.

The September 2000 Lease is at Exhibit 6 and states in pertinent part (including the recorded Recitals which states in part: "Whereas, Tenant and City previously entered into a lease of the property identified herein and located at the Airport on April 4, 20090, and the parties now wish to rescind that lease and enter into this new lease in its place;")

2. Term. This lease shall remain in full force and effect until April 4, 2020 at which time it shall terminate, unless extended as otherwise provided herein.

2.1. Tenant shall have two (2) successive options for extending the Term of this Lease for periods of fifteen (15) additional years each. Provided Tenant is in compliance with all terms of the Lease, Tenant may exercise such options by providing written notice to City forty-five (45) days prior to the termination date of this Lease. Any extension of the Term of this Lease pursuant to this section shall be on the same terms and conditions contained in this Lease.

25. Notices. Any notice required by this Lease shall, unless otherwise specified in this Lease, be served by deposit in the United States mail with first-class postage prepaid, addressed to the person and address listed below….

(FAC, Ex. 6 (bold emphasis added).)

The contracts are clearly different. Under this express provision of the September Lease, Plaintiff would have had to send written notice to the City at least 45 days prior to April 4, 2020. Plaintiff alleges it sent written notice of its intent to exercise the extension option over two months later, on June 22, 2020. (FAC, ¶ 45.) Plaintiff argues it properly provided notice as specified in FAC, ¶53 and if its written notice in June was ineffective, it provide notice no later than January 2020, however, it admits that written notice was not provided until June 2020 (FAC, ¶¶ 45, 95, 102.) Despite the allegations in the first amended complaint, the contract is attached as Ex. 6 and clearly contradicts the allegations of the first amended complaint. Notice is to be in writing 45 days prior to April 4, 2020. The section is not ambiguous.

Plaintiff also argues "the demurrer should still be denied because Coyote sufficiently alleged that the City waived its right to insist upon strict compliance with the claimed February 19, 2020 notice deadline." (Opp. at 16:1-2.) But Plaintiff separately pleaded a promissory estoppel cause of action. (See Fifth Cause of Action [discussed below].) Plaintiff's first cause of action is not based on waiver or estoppel; rather, it is based on Plaintiff's allegation that Plaintiff "fully performed all duties and obligations under the September Lease." Because Plaintiff's own allegations and exhibits demonstrate Plaintiff failed to timely exercise the lease extension as set forth in the September lease, Plaintiff's first cause of action for breach of contract fails. The Court SUSTAINS the City's demurrer to Plaintiff's first cause of action.

Second Cause of Action for Specific Performance. Specific performance is an equitable remedy available after a contractual breach. (Wong v. Jing (2010) 189 Cal. App. 4th 1354, 1361, fn. 2; Real Estate Analytics, LLC v. Vallas (2008) 160 Cal. App. 4th 463, 472.) Equitable remedies are dependent on a substantive basis for liability, and if no substantive cause of action exists, then the equitable remedy "claims" also fail. (Glue-Fold, Inc. v. Slautterback Corp. (2000) 82 Cal. App. 4th 1018, 1023, fn. 3.)

On a claim for breach of contract-specific performance, Plaintiffs needs to plead: (i) contract breach, (ii) inadequacy of a legal remedy, (iii) underlying contract reasonable and supported by adequate consideration, (iv) existence of a mutuality of remedies, (v) contractual terms sufficiently definite to know what it is to enforce, and (vi) substantial similarity between requested performance and promised performance. (Real Estate, supra, 160 Cal. App. 4th at 472.) Given the Court's reasoning above, the Court sustains this cause of action as well.

Third Cause of Action for Breach of Implied Covenant. While the third element of a breach of contract cause of action is the defendant's actual breach, a breach of the implied covenant of good faith and fair dealing cause of action requires proof the defendant unfairly interfered with plaintiff's right to receive the benefits of the contract. The implied covenant is supplemental to the express contractual covenants. (Racine & Laramie, Ltd. v. Department of Parks & Recreation (1992) 11 Cal.App.4th 1026, 1031-1032.) It imposes upon each contracting party the duty to do everything the contract presupposes he or she will do to accomplish its purpose but cannot be used to create obligations not contemplated by the contract. (Pasadena Live v. City of Pasadena (2004) 114 Cal.App.4th 1089, 1093-1094.)

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As discussed by Redlands, it is questionable whether breach of the implied covenant of good faith and fair dealing is a cause of action which Plaintiff could viably allege against the City. As a general rule, "[b]ecause the [implied] covenant is a contract term . . . compensation for its breach has almost always been limited to contract rather than tort remedies." (Foley v. Interactive Data Corp. (1988) 47 Cal. 3d 654, 684.) Typically, this cause of action is limited to insurance contracts and cases involving fiduciary relationships. (See, e.g., Freeman & Mills, Inc. v Belcher Oil Co. (1995) 11 Cal.4th 85, 102 [establishing a "general rule precluding tort recovery for noninsurance contract breach, at

least in the absence of violation of an independent duty arising from principles of tort law other than the bad faith denial of the existence of, or liability under, the breached contract"]; Careau & Co. v. Security Pacific Business Credit, Inc. (1990) 222 Cal. App. 3d 1371, 1399 [". . . it seems clear to us that the recognition of a tort remedy for a breach of the implied covenant in a noninsurance contract has little authoritative support."].)

In opposition to the demurrer, Plaintiff cites Racine & Laramie, Ltd. v. Department of Parks & Recreation, supra, 11 Cal.App.4th 1026; however, as stated above the contract provided a termination date and a deadline by which Plaintiff failed to deliver written notice of its intent to exercise the renewal option. Plaintiff is correct that "an implied covenant of good faith and fair dealing cannot contradict the express terms of a contract." (Storek & Storek, Inc. v. Citicorp Real Estate, Inc. (2002) 100 Cal.App.4th 44, 55.) However, as shown above and under the express provisions of the September Lease, Plaintiff was required to timely exercise the option, which it failed to do. Thus, Plaintiff's implied covenant cause of action contradicts the express terms of the contract. Therefore, the Court sustains the City's demurrer to plaintiff's third cause of action.

Fourth Cause of Action for Declaratory Relief. Declaratory relief is proper when an actual controversy exists and is requested by a (1) person interested under a written instrument or contract or (2) person seeking a declaration of his rights or duties with respect to another. (Code Civ. Proc. § 1060.)

Plaintiff "seeks a declaration that the Exercised Option was timely under the express terms of the September Lease" (FAC, ¶109); "that the notice provision contained in Section 2.1 of the September lease is ambiguous or unenforceable against Coyote Aviation" (FAC, ¶ 110); or "that its singular written notice was effective to exercise the Extension Option due to REDLANDS' clear and definite promise that it would disregard the express deadline and accept notice of the Extension Option any time on or before July 22, 2020" (FAC, ¶ 111). However, these remedies are attached to and wholly derivative of Plaintiff's other substantive causes of action. Because Plaintiff's substantive causes of action fail, so too does its claim for declaratory relief. (See Ochs v. PacifiCare of California (2004) 115 Cal.App.4th 782, 794 [trial court properly sustained the demurrer as to declaratory relief claim because it was "wholly derivative of" other nonviable causes of action].) Thus, the Court sustains the City's demurrer to Plaintiff's fourth cause of action.

Fifth Cause of Action for Promissory Estoppel. "A promise which the promisor should reasonably expect to induce action or forbearance on the part of the promisee . . . and which does induce such action or forbearance is binding if injustice can be avoided only by enforcement of the promise." (Sheppard v. Morgan Keegan & Co. (1990) 218 Cal.App.3d 61, 67.)

The elements of promissory estoppel are: "(1) a clear promise, (2) reliance, (3) substantial detriment, and (4) damages measured by the extent of the obligation assumed and not performed." (Toscano v. Greene Music (2004) 124 Cal.App.4th 685, 692 (internal quotes omitted).) Plaintiff must also prove that defendant's breach caused the damages, as required in contract actions generally—i.e., that the breach was a substantial factor in causing the damages. (US Ecology, Inc. v. State of Calif. (2005) 129 Cal.App.4th 887, 904.)

The promise in this case appears to be that, on December 5, 2000, Redlands acknowledged the Term Error and made a clear promise that it would honor the full twenty year term ending September 5, 2020. Plaintiff's Opposition (20:7-15) argues:

Here, Coyote has alleged all of the requisite elements of estoppel against a public entity. The City made a clear and definite promise that the duration of the September Lease would be for twenty years with an Extension Option deadline of July 22, 2020 (Amended Comp. ¶¶ 39, 42, 95, 102, 111); Coyote relied on that promise by investing in structures and improvements including aircraft hangars and related structures (id at ¶ 40); and Coyote would not have constructed those structures had it believed the City would seek to terminate the lease and/or remove Coyote from the property prior to the aggregate fifty-year term. (Id) Coyote also alleges that the City has acted in bad faith and with the intention of mulcting Coyote of its highly—valuable aircraft storage facilities and related structures as well. (Id. at ¶¶ 72-78.)

However, Ponte v. County of Calaveras (2017) 14 Cal.App.5th 551, 556-557 states:

Promissory estoppel cannot be asserted against a public entity to bypass rules that require contracts to be in writing or be put out for bids, rules which reflect a public policy to preclude oral contracts or other exposures to liability, including claims of promissory estoppel. (See, e.g., Kajima/Ray Wilson v. Los Angeles County Metropolitan Transportation Authority (2000) 23 Cal.4th 305, 316–317 [96 Cal. Rptr. 2d 747, 1 P.3d 63] (Kajima) ["'neither the doctrine of estoppel nor any other equitable principle may be invoked against a governmental body where it would operate to defeat the effective operation of a policy adopted to protect the public.' [Citation.] We have stated that the competitive bidding statutes are '"enacted for the benefit of property holders and taxpayers, and not for the benefit or

enrichment of bidders, and should be so construed and administered as to accomplish such purpose fairly and reasonably with sole reference to the public interest"""]; Chaidez v. Board of Administration etc. (2014) 223 Cal.App.4th 1425, 1432 [169 Cal. Rptr. 3d 100] [public pension case, "estoppel does not apply to contravene statutory requirements"]; Poway Royal Mobilehome Owners Assn. v. City of Poway (2007) 149 Cal.App.4th 1460, 1476 [58 Cal. Rptr. 3d 153] (Poway) [rejecting oral contract; "Numerous cases hold promissory estoppel may not be raised against a public entity when it would defeat the public policy of requiring adherence to statutory procedures for entering into contracts"].)
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The City, as a public entity and particularly as a general law municipality, is governed by state statutory law ("Government Code") and its municipal code (the "Municipal Code"). This statutory authority establishes required contracting processes and determines which agreements are authorized and binding on the City. Pursuant to the Government Code, the Mayor "shall sign. . .[a]ll written contracts and conveyances." (Gov. Code, § 40602; Poway Royal Mobilehome Owners Assn. v. City of Poway (2007) 149 Cal.App.4th 1460, 1476 [denying enforcement of an oral contract pursuant to Section 40602 and noting that "numerous cases hold promissory estoppel may not be raised against a public entity when it would defeat the public policy of requiring adherence to statutory procedures for entering into contracts"] (emphasis added).) Likewise, Municipal Code Section 3.04.010 only authorizes contracts which are approved by the City Council, written, and signed by the Mayor. Plaintiff does not allege any promise that was reduced to writing, approved by the City Council, and signed by the Mayor. Therefore, the Court SUSTAINS the demurrer to the fifth cause of action.

Hearings
OSC re: Status of Judgment is set for 4/10/23 at 8:30am in S33 - SBJC
Correspondence Coversheet Generated to Mail:
RULING ON SUBMITTED MATTER

== Minute Order Complete ==