SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

Civil Division

West District, Beverly Hills Courthouse, Department 207

21SMCV01310 June 28, 2022
KRESIMIR EMIL KADRNKA vs WESLEY CHU, et al. 8:30 AM

Judge: Honorable Helen Zukin
Judicial Assistant: Joyia Young
Courtroom Assistant: None

CSR: None
ERM: None
Deputy Sheriff: None

APPEARANCES:

For Plaintiff(s): Jeff Berke

For Defendant(s): Faryan Andrew Afifi

Other Appearance Notes: Both parties appear remotely

NATURE OF PROCEEDINGS: Hearing on Demurrer - without Motion to Strike

The matter is called for hearing.

The Court's tentative ruling is as follows: Background

On August 3, 2021, Plaintiff Kresimir Emil Kadrnka, Trustee of the Kresimir Emil and Vladimira Kadrnka Family Trust Dated December 3, 1998 ("Plaintiff") filed a Complaint against Defendants Wesley Chu and Christina Chu (collectively, "Defendants") for (1) breach of the CC&Rs for unreasonable view obstruction by structures, (2) breach of the CC&Rs for unreasonable view obstruction by vegetation, (3) breach of oral contract, and (4) declaratory relief regarding prescriptive and/or equitable easement.

Plaintiff subsequently filed a First Amended Complaint ("FAC") asserting those same four causes of action and Defendants demurred. In an April 15, 2022, order following supplemental briefing by the parties, the Court sustained Defendants' demurrer to the first two causes of action for breach of the CC&Rs with leave to amend, overruled it as to the cause of action for declaratory relief, and found Plaintiff had withdrawn the cause of action for breach of oral contract.

Plaintiff filed the operative Second Amended Complaint ("SAC") on May 4, 2022, alleging causes of action for (1) breach of the CC&Rs for unreasonable view obstruction by structures, (2) breach of the CC&Rs for unreasonable view obstruction by vegetation, (3) declaratory relief. Defendants bring this demurrer to Plaintiff's two causes of action for violation of the CC&Rs, alleging they fail to state sufficient facts to constitute causes of action against Defendants and are uncertain under Code Civ. Proc. § 430.10(e)-(f).

Demurrer Standard

When considering demurrers, courts read the allegations liberally and in context. (Wilson v. Transit Authority of City of Sacramento (1962) 199 Cal.App.2d 716, 720-21.) In a demurrer proceeding, the defects must be apparent on the face of the pleading or via proper judicial notice. (Donabedian v. Mercury Ins. Co. (2004) 116 Cal.App.4th 968, 994.) "A demurrer tests the pleading alone, and not on the evidence or facts alleged." (E-Fab, Inc. v. Accountants, Inc. Servs. (2007) 153 Cal.App.4th 1308, 1315.) As such, the court assumes the truth of the complaint's properly pleaded or implied factual allegations. (Id.) However, it does not accept as true deductions, contentions, or conclusions of law or fact. (Stonehouse Homes LLC v. City of Sierra Madre (2008) 167 Cal.App.4th 531, 538.)

A special demurrer for uncertainty under Section 430.10(f) is disfavored and will only be sustained where the pleading is so unintelligible a defendant cannot reasonably respond—i.e., cannot reasonably determine what issues must be admitted or denied, or what counts or claims are directed against him/her. (Khoury v. Maly's of Calif., Inc. (1993) 14 Cal.App.4th 612, 616.) Moreover, even if the pleading is somewhat vague, "ambiguities can be clarified under modern discovery procedures." (Id.)

Analysis

1. Meet and Confer Requirement

Before filing a demurrer, "the demurring party shall meet and confer in person or by telephone with the party who filed the pleading that is subject to demurrer for the purpose of determining whether an agreement can be reached that would resolve the objections to be raised in the demurrer." (C.C.P. §§ 430.41.) No such in person or telephonic meet and confer occurred here. (Afifi Decl. at ¶ 2; Ex. 1 to Afifi Decl.) Rather, counsel for Defendants sent a single letter to counsel for Plaintiff. (Id.) This does not satisfy Defendants' meet and confer obligation under Code Civ. Proc. § 430.41. Nonetheless, the Court will consider the merits of Defendants' demurrer. (C.C.P. § 430.41(a)(4).)

2. The Court's Prior Ruling

The parties are bound by the CC&Rs. (SAC ¶¶ 5-6, Ex. D.) In part, the CC&Rs state as follows:

(1) All said lots shall be known and described as residential lots, no structure shall be erected, altered, placed or permitted to remain on any building plot other than one detached single-family dwelling not to exceed one story in height and a private garage, for not more than three cars; except; where, in the judgment of the Declarant and approved by the Architectural Committee,

one two-story single-family dwelling may be erected where said dwelling will not detract from the view of any other lot.

(2) No building shall be erected, placed or altered on any building plot in this subdivision until the building plans, specifications, and plot plan showing the location of such building have been approved in writing as to the conformity and harmony of exterior design with existing structures in the subdivision, and as to location of the building with respect to topography and finished ground elevation by an Architectural Committee…

…

(11) No fences or hedges exceeding three feet in height shall be erected or permitted to remain between the street and the front set-back line nor shall any tree, shrub, or other landscaping be planted or any structures erected that may at present on in the future obstruct the view from any other lot, and the right of entry is reserved by the Declarants to trim any tree obstructing the view of any lot.

(SAC, Ex. D, ¶¶ 1-2, 11.)

Plaintiff alleges Defendants violated the CC&Rs in two ways: by demolishing their existing home to build a new structure which would obstruct Plaintiff's view and by allowing their vegetation to grow to the point that it obstructed Plaintiff's view. Defendants allege the CC&Rs are not enforceable. In determining whether the CC&Rs are enforceable and could form the basis for a claim for breach of contract, the Court turned to the recent appellate decision in Eisen v. Tavangarian (2019) 36 Cal.App.5th 626. Eisen involved a view protection dispute between neighbors in the same development at issue here: Marquez Knolls. Plaintiff sued defendants alleging their remodeling of their two-story home unreasonably blocked plaintiff's ocean view in violation of the same paragraphs—1, 2, and 11—which are at issue here. (Id. at 629-632.)

The Eisen Court first reviewed paragraph 1 of the CC&Rs and found it required approval for the initial construction of a two-story home, and after approval was granted, paragraph 1 played no further role and had no continuing authority. The Court made its finding on two principles: (1) generally, restrictive covenants are strictly construed against the party seeking to enforce them, and any doubts will be resolved in favor of the free use of land; and (2) finding otherwise would fail to give full effect to paragraph 2, which sets forth requirements for the initial construction and subsequent alterations of a permitted single-family residence. Defendants' remodeling project would have been subject to paragraph 2, but the provision was no longer in effect. The Architectural Committee ceased to exist at the end of 1966, and the homeowner's association

assumed the Architectural Committee's approval authority until December 31, 1980, when it's Architectural Committee authority expired. These entities had the power to grant approval under the CC&Rs. As there was no longer an entity with the power to grant approval, the covenant was no longer enforceable. (Id. at 635-636, 638-642.) The Court then reviewed paragraph 11 and found it did not restrict renovating or altering existing residences. According to the Court, the term "structure" is limited to outbuildings or similar objects surrounding the residence which detract from the views, rather than to renovations to the residence itself. The Court also found this paragraph required street-facing hedges to be trimmed to a height of three feet or under, and required strict compliance with these limits. (Id. at 643-647.) As a result, defendants were permitted to maintain their home as remodeled except for the hedges, which required trimming.

Plaintiff urged this Court to disregard Eisen and instead adopt the earlier ruling in Zabrucky v. McAdams (2005) 129 Cal.App.4th 618, which analyzed the same CC&Rs and reached the conclusion they prohibited the construction of a structure which "unreasonably" obstructed the view from another lot. Based on its review of both cases, the Court found Eisen controlling and declined to follow Zabrucky.

Finding Eisen applicable to the facts at hand, this Court then applied Eisen to the ordinary rules of contract interpretation, finding there was no ambiguity in the CC&Rs, and the extrinsic evidence offered by Plaintiff did not reveal any such ambiguity. Plaintiff also claimed additional extrinsic evidence could be presented on this question "based on recent depositions of members of the Lachman family (the Declarants/Developers)…." (Order at 7-8.) Based on this representation, the Court granted Plaintiff leave to amend to state a cause of action for violation of the CC&Rs based on the building of a new residence.

On the question of whether Plaintiff could state a cause of action based on Defendants' vegetation, the Court found Plaintiff had not sufficiently alleged where the vegetation in question was located, which is relevant as Defendants allege paragraph 11 contains two different provisions requiring different levels of compliance. Plaintiff agreed to amend to clarify the location of the offending vegetation.

3. Breach of the CC&Rs for Unreasonable View Obstruction by Structures

As set forth above, Plaintiff was given leave to amend to present extrinsic evidence in the form of deposition testimony from members of the Developer's family. This deposition testimony is discussed in paragraph 8 of the SAC, which states in pertinent part:

[T]he depositions of David Tellem and Steve Lachman have recently been taken in another case

pending in the West District of the Los Angeles Superior Court which involves similar issues of view protection under the Marquez Knolls CC&Rs. Mr. Tellem and Mr. Lachman are the cousin, son and nephew of the Declarants under the CC&Rs, respectively, and each worked extensively in the family business during the tract's development in the 1960s and 1970s. Both Mr. Tellem and Mr. Lachman testified from personal knowledge that the Developers were devoted to maximizing the views of the lots throughout the Marquez Knolls development and intended that those views be permanently protected for the benefit of the property owners. Both testified that they understood that the CC&Rs were intended and designed to ensure such view protection.

(SAC at ¶ 7.) Defendants do not address these new factual allegations in their moving papers. Instead, Defendants claim "Plaintiff's only attempt to modify the First Cause of Action from that which was demurred to in the FAC was this futile attempt to rely on extrinsic evidence of an oral discussion" between Plaintiff and the Developer. (Demurrer at 8.) These allegations regarding an oral discussion between Plaintiff and the Developer were alleged in the FAC and are not newly asserted in the SAC. (FAC at ¶ 7.)

"The proper interpretation of a contract is disputable if the contract is susceptible of more than one reasonable interpretation, that is, if the contract is ambiguous. An ambiguity may appear on the face of a contract, or extrinsic evidence may reveal a latent ambiguity." (Fremont Indemnity Co. v. Fremont General Corp. (2007) 148 Cal.App.4th 97, 114.) As our Supreme Court made clear in Pacific Gas & E. Co., however, "[a] court cannot determine based on only the four corners of a document, without provisionally considering any extrinsic evidence offered by the parties, that the meaning of the document is clear and unambiguous." (Fremont Indemnity Co., at 114 [discussing Pacific Gas & E. Co. v. G. W. Thomas Drayage etc. Co. (1968) 69 Cal.2d 33, 37].)

However, "extrinsic evidence cannot be used to contradict the contract's terms unless the language is 'reasonably susceptible' to the proposed interpretation." (Thrifty Payless, Inc. v. Mariners Mile Gateway, LLC (2010) 185 Cal.App.4th 1050, 1061 [quoting Pacific Gas & E. Co. v. G.W. Thomas Drayage etc. Co. (1968) 69 Cal.2d 33, 40].) Accordingly, such evidence cannot be used "to flatly contradict the express terms of the agreement. [Citation.] Thus if the contract calls for the plaintiff to deliver to defendant 100 pencils by July 21, 1992, parol evidence is not admissible to show that when the parties said 'pencils' they really meant 'car batteries' or that when they said 'July 21, 1992' they really meant May 13, 2001." (Consolidated World Investments, Inc. v. Lido Preferred Ltd. (1992) 9 Cal.App.4th 373, 379.)

The Court notes this extrinsic evidence in the form of deposition testimony from the Developer's family members who were involved in the family's development business was not before the

Court in Eisen. Having provisionally considered the new extrinsic evidence contained in the SAC, the Court finds it fails to establish any ambiguity in the CC&Rs as interpreted by the Court in Eisen. Plaintiff contends the deposition testimony establishes the Developer intended owners' views to be protected in perpetuity, yet this interpretation of the CC&Rs is contradicted by the language of paragraph 2, which makes such protections contingent on actions taken by the Architectural Committee or Property Owner's Association prior to certain clearly defined expiration dates: December 31, 1980, for the Architectural committee and December 31, 1995, for the Property Owner's Association. Having contemplated end points for the exercise of this oversight over alterations impacting neighboring views, the deposition testimony offered by Plaintiff is inadmissible to show the drafters of the CC&Rs actually intended to protect neighbors' views in perpetuity from alterations made by owners such as Defendants.

For the reasons set forth in Eisen, the Court finds the CC&Rs are unambiguous. As Eisen found:

[T]he plain language of paragraph 1 is properly interpreted as defining the character of the development (residential, limited to detached single-family dwellings) and establishing basic limitations on the types of homes permitted (not to exceed one story in height, except where a two-story residence was authorized by Marquez Knolls Inc. and the architectural committee, with a private garage for not more than three cars); paragraph 2 as regulating the initial construction and subsequent alterations of a permitted single-family residence (by requiring approval of building plans by the architectural committee and, when that committee ceased to exist at the end of 1966, until December 31, 1980 by the Marquez Knolls property owner's association); and paragraph 11 as controlling the height of fences, hedges, other landscaping and outbuildings other than a detached garage.

(Eisen, supra, 36 Cal.App.5th at 638.) It follows then that paragraph 1 applies only to the initial construction of a two-story home and contains no continuing restrictions applicable to renovations or remodeling of such a home by Defendants here. Paragraph 11 is similarly inapplicable to Defendants' residence as the term "structure" as used in that paragraph is limited to outbuildings or similar objects surrounding the residence which detract from the views, rather than to renovations to the residence itself.

This leaves paragraph 2 as the sole potential basis for Plaintiff's cause of action. As in Eisen, the provisions of paragraph 2 would apply to Defendants' construction here, but cannot support Plaintiff's cause of action as it is no longer enforceable because there is no entity remaining with the power to grant approval as required by paragraph 2. This comports with the result reached by Eisen and there is no evidence before the Court which would compel a different result here. Accordingly, Plaintiff cannot state a cause of action for breach of contract based on any view

obstruction caused by the new residence erected by Defendants, and thus Defendants' demurrer to this cause of action is SUSTAINED.

Plaintiff bears the burden of demonstrating this cause of action in the SAC could be cured through further amendment. (Blank v. Kirwan (1985) 39 Cal.3d 311, 318.) Plaintiff has offered no evidence or argument to the Court as to how this cause of action would be cured if given further leave to amend. Indeed, given the unambiguous nature of the CC&R's in light of Eisen's interpretation, the Court has no basis to conclude Plaintiff could amend the SAC to sufficiently state a cause of action for breach of the CC&Rs. The Court thus sustains Defendants' demurrer to this cause of action without leave to amend.

4. Breach of the CC&Rs for Unreasonable View Obstruction by Vegetation

While Eisen is dispositive as to Plaintiff's cause of action for breach of the CC&Rs by construction of Defendants' new residence, the same is not true as to Plaintiff's second cause of action for breach of the CC&Rs stemming from alleged obstruction of Plaintiff's view through non-conforming vegetation growth. As Eisen recognized, the provisions of the CC&Rs regarding such vegetation remain applicable and binding on owners. (Eisen, supra, 36 Cal.App.5th at 646-647.) Instead, Defendants challenge Plaintiff's second cause of action for breach of the CC&Rs, arguing Plaintiff has not stated sufficient facts to constitute a cause of action because the SAC fails to allege Plaintiff's own performance under those CC&Rs.

As the Court acknowledged in its prior ruling, a cause of action for breach of contract requires the following elements: (1) existence of a contract; (2) plaintiff's performance of the contract or excuse for nonperformance; (3) defendant's breach; and (4) resulting damage. (Harris v. Rudin, Richman & Appel (1999) 74 Cal.App.4th 299, 307.) A review of the SAC shows Plaintiff does allege facts establishing his own performance under the CC&Rs: "Plaintiff has performed all of the obligations required by him in his contract with the developers." (SAC at ¶ 36.) Liberally construing the SAC, as the Court must in deciding Defendants' demurrer, the Court finds the word "contract" as used in this paragraph of the SAC is meant to refer to the CC&Rs. When read as a whole, it is clear the SAC is premised on Defendants' alleged non-compliance with the CC&Rs, not the sales contract between Plaintiff and the developers, and thus the reference to a contract in the context of the alleged breach can logically be construed to refer to the CC&Rs themselves rather than the sales contract between Plaintiff and the developer. Further, the SAC alleges the CC&Rs "are intended to run with the land and bind all property owners and their successors." (SAC at ¶ 6.) Accordingly, the CC&Rs would bind Plaintiff through Plaintiff's contract with the developers, and by alleging performance under the contract, Plaintiff must necessarily be alleging performance under the CC&Rs.

The Court finds the SAC cures the defect identified in its prior ruling regarding the location of the allegedly offending vegetation (SAC at ¶¶ 33-34), and sufficiently alleges Plaintiff's own performance under the CC&Rs. Accordingly, the Court OVERRULES Defendants' demurrer to this cause of action.

Conclusion

Defendants' demurrer to the first cause of action for breach of the CC&Rs is SUSTAINED without leave to amend. Defendants' demurrer to the second cause of action for breach of the CC&Rs is OVERRULED.

The Court takes the matter under submission.

Later, the court rules on the submitted matter. The Court's tentative ruling becomes the order of the Court.

The clerk is directed to give notice. Certificate of Mailing is attached.