



Brothers and Sisters:

Yesterday, the Sacramento Superior Court denied Robert McFarland's motion to dismiss the National Grange's complaint in particular, the Court rejected McFarland's arguments that the National Grange is trying to seize the California State Grange's property. Instead, the judge found that the National Grange "is not seeking to obtain property but rather seeks declarations regarding Plaintiff's rules as to who may own and control Grange property following revocation of a state Grange charter."

The Court also denied McFarland's motion for judgment against one of the California State Grange's claims in the complaint-in-intervention, for "conversion," which is the wrongful taking of another's property. The Court granted McFarland's motion for judgment as to the last claim in the complaint-in-intervention, for "ejectment," or the removal of the McFarland Group from Grange property. However, the basis for the court's decision was that the California State Grange had not specifically identified the property at issue (for example, the complaint said all Grange property held by the McFarland Group, instead of saying "the real estate at 3830 U Street"). The judge ruled that the California State Grange could amend its complaint-in-intervention to more specifically describe the property, and re-file the claim. We intend to do so shortly.

Also, today we filed our reply in support of our motion for summary judgment. I will be sending you the papers early next week. In the meantime, for your reading pleasure, here are the Court's rulings denying McFarland's motions. As always, please read and decide for yourself what the Grange's rules require of all of us.



Ed Kowski, President, Master and CEO

California State Grange

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Item 4 2012-00130439-CU-MC

The National Grange vs. The California State Grange

Nature of Proceeding: Hearing on Demurrer to the 2nd Amended Complaint

Filed By: Griffith, Amanda N.

Defendant Robert McFarland's demurrer to Plaintiff the National Grange of the Order of Patrons of Husbandry's second **amended complaint is overruled.**

Defendant's request for judicial notice is granted.

In this declaratory relief action, Plaintiff alleges that it was the parent organization of the Unchartered California State Grange ("UCSG") for which Defendant McFarland served as the Master beginning in 2012. (SAC ¶¶ 3-5.) In September 2012, McFarland and the UCSG allegedly rejected Plaintiff's authority and Plaintiff suspended its charter. (SAC ¶¶ 26-28.) Plaintiff alleges that the UCSG continued to operate as if its charter was valid. (Id. ¶¶ 29-30.) Plaintiff revoked UCSG's charter in April 2013 under the Bylaws of the Order. (Id. ¶ 31.) Defendants did not appeal the revocation and instead confirmed their disaffiliation in writing. (Id. ¶ 34.) Plaintiff alleges that pursuant to the Bylaws, all real and personal property in UCSG's possession and control was to be delivered to Plaintiff to be held in trust pending reorganization and restoration of the Charter of the California State Grange. In 2014, Plaintiff assisted certain Community Granges in good standing

reorganize and restore the Charter and by July 2014 the current duly authorized officers were installed in office. (SAC ¶ 35.)

In the First Cause of Action for Declaratory Relief, Plaintiff seeks a declaration that Defendant McFarland and the other leaders of the UCSG have no grounds to retain Grange property because they acknowledged their disaffiliation from Plaintiff in writing, the charter was revoked and such revocation was not appealed. In the Third Cause of Action, Plaintiff seeks a declaration that the property should revert to possession and/or control of the Chartered State Grange under the Bylaws.

Defendant demurs to the first and third causes of action on the grounds that they are uncertain because Plaintiff fails to describe the real and personal property at issue. The demurrer on this basis is overruled. "[D]emurrers for uncertainty are disfavored, and are granted only if the pleading is so incomprehensible that a defendant cannot reasonably respond." (Lickiss v. Financial Industry Regulatory Authority (2012) 208 Cal.App.4th 1125, 1135.) The favored approach is to clarify theories in the complaint through discovery. (Khoury v. Maly's of Calif., Inc. (1993) 14 Cal.App.4th 612, 616.) While Defendant cites to CCP § 455 to support his uncertainty argument, that section governs actions for recovery of real property and requires that in such an action, the real property "must be identified in the complaint with such certainty as to enable an officer, upon execution, to identify it." This is not an action to recover real property but rather a declaratory relief action seeking a declaration regarding who may properly own and possess the property.

Defendant next demurs to the first and third causes of action on the basis that Plaintiff lacks standing because it is not the real party in interest. "Standing is typically treated as a threshold issue, in that without it no justiciable controversy exists." [Citation.] Holmes v. California Nat. Guard (2001) 90 Cal.App.4th 297 summarized the general requirement of standing: "As a general principle, standing to invoke the judicial process requires an actual justiciable controversy as to which the complainant has a real interest in the ultimate adjudication because he or she has either suffered or is about to suffer an injury of sufficient magnitude reasonably to assure that all of the relevant facts and issues will be adequately presented to the adjudicator. [Citations.] To have standing, a party must be beneficially interested in the controversy; that is, he or she must have "some special interest to be served or some particular right to be preserved or protected over and above the interest held in common with the public at large." [Citation.] The party must be able to demonstrate that he or she has some such beneficial interest that is concrete and actual, and not conjectural or hypothetical. A complaining party's demonstration that the subject of a particular challenge has the effect of infringing

some constitutional or statutory right may qualify as a legitimate claim of beneficial interest sufficient to confer standing on that party. [Citation.]' ([Holmes v. California Nat. Guard, supra, 90 Cal.App.4th] at pp. 314-315.)" (Cash Call, Inc. v. Superior Court (2008) 159 Cal.App.4th 273, 286.)

Defendant reasons that Plaintiff is essentially seeking to recover UCSG's property and give it to Plaintiff-in-Intervention the Chartered California State Grange and thus the causes of action are basically for quiet title and conversion as to property which Plaintiff does not own. The demurrer on this basis is overruled. By way of these causes of action, Plaintiff is not seeking to obtain property but rather seeks declarations regarding Plaintiff's rules as to who may own and control Grange property following revocation of a state Grange charter. Plaintiff has alleged that it is the entity with the responsibility to enforce its rules given it is the head of the organization. Plaintiff alone is the entity with the authority to grant and revoke State Grange charters. The authorities cited by Defendant deal with quiet title actions or conversion actions. The first and third causes of action are not such actions. Instead, Plaintiff seeks declarations that Defendant and UCSG lost the right to own and possess Grange property and that the property should revert to control of the Chartered State Grange under the Bylaws. Plaintiff clearly has a beneficial interest in the controversy regarding enforcement of its rules.

While Defendant argues that Plaintiff is essentially seeking to enforce the rights of Plaintiff-in-Intervention Chartered State Grange, it is seeking to enforce its rules, even though that may directly benefit the Chartered State Grange. These claims are on Plaintiff's own behalf though they may overlap somewhat with Chartered State Grange's claims against Defendant. This is not a situation like in the authority cited by Defendant where a defendant was subject to the same demand by multiple claimants in multiple lawsuits. (Keru Investments, Inc. v. Cube Co. (1998) 63 Cal.App.4th 1412, 1424.) Here there is no such danger as Plaintiff does not seek monetary recovery, just a declaration of rights under its rules. While it may be that Chartered State Grange seeks possession of the property, such relief is not identical to that requested by Plaintiff and in any event all claims are being made in the context of the same lawsuit.

The demurrer is overruled.

Defendant shall file and serve its answer to the SAC no later than May 4, 2015.

The minute order is effective immediately. No formal order pursuant to CRC Rule 3.1312 or further notice is required.

Item 5 2012-00130439-CU-MC

The National Grange vs. The California State Grange

Nature of Proceeding: Motion for Judgment on the Pleadings to Complaint in Intervention

Filed By: Griffith, Amanda N.

Defendant Robert McFarland's motion for judgment the pleadings as to Plaintiffs-in- Intervention California State Grange ("CSG") and Ed Kowski's Complaint-in- Intervention (CII) is denied, in part, and granted, in part with leave to amend.

Plaintiffs-in-Intervention allege that Defendant and others are no longer members or officers of the California State Grange and yet they continue to improperly retain control of CSG's real and personal property. At issue on the instant motion are the fourth and fifth causes of action for conversion and ejectment.

Fourth Cause of Action (Conversion)

Defendant's motion is denied. The elements of a conversion action "are the plaintiff's ownership or right to possession of the property at the time of the conversion; the defendant's conversion by a wrongful act or disposition of property rights; and damages." (Shopoff v. Cavallo LLP v. Hyon (2008) 167 Cal.App.4th 1489, 1507.) The thrust of Defendant's motion is that Plaintiffs failed to adequately describe the property allegedly converted. The Court disagrees.

Plaintiffs allege that the CSG's property "consists of the real property and personal property of the California State Grange, including records, reports, meeting minutes, books, books of accounts, bank accounts, trust accounts, securities, equipment, computers, furniture, furnishings, objects used in the Grange's code of ritual, ritual degrees, and regalia, and all other property in which the California State Grange has an interest, wherever located and whether or not held by the nonprofit corporations "California State Grange" and "California Grange Foundation." (CII ¶ 95.) They allege that Defendants are in control of the CSG's property. (CII ¶ 129.) These allegations are incorporated into the conversion cause of action. (CII ¶ 144.) Plaintiffs allege that Defendants converted "the property" of the CSG. (CII ¶ 146.) Plaintiffs have essentially alleged that Defendant and others have converted all of CSG's property.

Plaintiffs have described the property allegedly converted. None of the authority cited by Defendant requires any further level of specificity.

In reality, Defendant is arguing that what constitutes the alleged property is uncertain. “[D]emurrers for uncertainty are disfavored, and are granted only if the pleading is so incomprehensible that a defendant cannot reasonably respond.” (Lickiss v. Financial Industry Regulatory Authority (2012) 208 Cal.App.4th 1125, 1135.) The favored approach is to clarify theories in the complaint through discovery. (Khoury v. Maly’s of Calif., Inc. (1993) 14 Cal.App.4th 612, 616.) The same standards that govern demurrers govern motions for judgment on the pleadings. (County of Orange v. Association of Orange County Deputy Sheriffs (2011) 192 Cal.App.4th 21, 32.) The Court disagrees that the pleading is uncertain as it is alleged that all of CSG’s property is at issue. In any event, Defendant can obtain further details regarding the property through discovery but there is no authority requiring any further level of specificity than what has been pled.

Defendant also argues that the cause of action is deficient because it alleges that CSG’s real property was converted. Defendant is of course correct that real property cannot be the subject of a conversion cause of action. (Salma v. Capon (2008) 161 Cal.App.4th 1275, 1295.) Plaintiffs indicate that inclusion of real property in this cause of action was inadvertent. In any event, including real property in amongst the property alleged to have been converted does not render the entire cause of action deficient given the other allegations with respect to CSG’s personal property. Again, the rules governing demurrers apply and a demurrer does not lie to a part of a cause of action. Campbell v. Genshlea (1919) 180 Cal. 213, 217.

Finally Defendant argues that Plaintiffs did not adequately allege a claim for conversion of monies because they did not allege a specific identifiable sum. Again, as with the real property, the “monies” were only a portion of what was allegedly converted by Defendant and a demurrer or motion for judgment on the pleadings does not lie to a portion of a cause of action.

The motion as to the fourth cause of action is denied. Fifth Cause of Action (Ejectment)

Defendant’s motion is granted with leave to amend.

Plaintiffs allege that Defendants are wrongfully in possession of the real property held by nonprofit corporations “California State Grange” and the “California Grange

Foundation.” (CII ¶ 151.) They allege that Plaintiffs are entitled to use the real property. (Id. ¶ 150.)

Defendant first argues that the cause of action fails because Plaintiffs did not allege that they have legal title to the real property and in fact alleged that other non-profit corporations hold title to the real property. An allegation of legal title is not required. Indeed, ejectment is a civil action to recover possession of real property by the owner or person entitled to possession against an unlawful occupier of the land. (Paap v. Von Helmholt (1960) 185 Cal.App.2d 823, 829.)

“While an action in ejectment may involve title because the right to possession may well depend upon the title of the plaintiff and lack of title in defendant, nevertheless it is not primarily designed as a vehicle of transferring title.” (Id.) “Ejectment is a mere possessory action in its inherent characteristics and does not necessarily try ultimate title, even though such trying of title does, in fact, occur in many cases due to its sometimes inextricable cohesion with the question of the right of possession.” (Whitaker v. Otto (1961) 188 Cal.App.2d 619, 626.) “Where neither party relies on actual fee title, prior possession by plaintiff and superior right of possession are sufficient to support the action.” (Id.) As seen below Plaintiffs’ allegations, at this stage of proceedings, are sufficient.

Plaintiffs expressly alleged that CSG was formed and chartered by the National Grange in 1873 and thereafter formed a corporation named the “California State Grange” and that corporation “holds and administers property owned by or under the control of the California State Grange. (CII ¶ 3.) It is also alleged that CSG formed a non-profit corporation called the “California Grange Foundation” which hold some of CSG’s property. (Id.) Plaintiffs also allege that CSG acquired real property after it was formed in 1873. (Id. ¶ 75.) Plaintiffs’ allege that Defendant has improperly retained possession of the real property despite the fact that he and the other defendants are no longer members or officers of CSG. Plaintiffs’ allegations are sufficient to show that CSG owns the real property at issue and has a superior right of possession.

Further, while Defendant argues that Plaintiffs failed to allege that they were in actual possession of the real property, this ignores the allegations that CSG is and has been entitled to use and possession of the real property at issue. (CII ¶ 150.) Indeed, what it required is an allegation of a superior right to possession in the name of the plaintiff. (Shusett, Inc. v. Home Sav. & Loan Assoc. (1964) 231 Cal.App. 146, 150.) As set forth above, Plaintiffs alleged such right. It is only where

a superior right has not been alleged that a complaint must allege “actual possession at the time of the alleged trespass or ouster” to survive demurrer. (Id.)

However, the Court agrees that Plaintiffs failed to adequately allege what real property they seek to eject Defendant from. In an action to recover real property, the property “ **must be identified in the complaint with such certainty as to enable an officer, upon execution, to identify it.**” [emphasis added] (CCP § 455.) Here, Plaintiffs simply identified "all" CSG's real property without any identification of the location. This does not comply with the requirements of CCP 455. As a result, the motion for judgment on the pleadings is granted as to the fifth cause of action on this limited ground alone.

As a result, the motion is denied as to the fourth cause of action and granted with leave to amend as to the fifth cause of action on the sole basis that Plaintiffs failed to identify the real property "in the complaint with such certainty as to enable an officer, upon execution, to identify it.”

Where leave was given, Plaintiffs in Intervention may file and serve an amended complaint in intervention no later than May 4, 2015. Defendant shall file and serve his response within 10 days thereafter, 15 days if the amended complaint is served by mail.

This minute order is effective immediately. No formal order pursuant to CRC rule 3.1312 or other notice is required.