



Superior Court of California County of San Benito

Tentative Decisions for April 18, 2025

Courtroom #2: Judge Pro Tempore Page Galloway

CL-24-00107 Wells Fargo Bank, N.A. v. Barbara A. Lewis 4-18-25

On Calendar for Plaintiff's 3-17-25 Motion for Judgment on the Pleadings.

Plaintiff: Jon O. Blanda, Angela A. Velen, Ashley Mulhorn

Defendant: Self-Represented (Barbara A Lewis)

Notice of Motion filed 3-17-25 service by mail on Defendant 3-11-25

2-21-24 Plaintiff filed complaint for breach of contract and common counts for defendant's failure to pay a debt in the amount of \$5569.29. The Defendant filed answer 5-10-24, denying the allegations. The answer is unsigned by the Defendant.

11-22-24 The court granted Plaintiff's motion to deem admitted matters specified in Plaintiff's request for admissions.

2-14-25 The court denied the Plaintiff's motion for summary judgment without prejudice and without reaching the merits of the motion based on failure to comply with statutory notice requirements of CCP§437c(a)(2).

Argument: 3-17-25 This is an action for collection on a debt; Plaintiff alleges Defendant owed \$5569.29 on this credit card debt. Defendant filed an Answer which did not deny the Complaint's allegations. The Plaintiff propounded discovery, The Defendant did not respond and on 11-26-24 the court granted Plaintiff's request to deem matters admitted. The Plaintiff may file a motion for judgment on the pleadings on the grounds that the complaint states facts sufficient to state a cause of action against the defendant and the answer does not state facts

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any objections or concerns**

sufficient to constitute a defense to the complaint. (CCP§438(c)(1)(A).) The records of any court of this state are judicially noticeable. (Ev. §452(d).) Additionally, documents attached to and incorporated by reference into pleadings are properly considered in a motion for judgment on the pleadings. (*Burnett v Chimney Sweep* (2004) 123 Cal. App. 4th 1057, 1064.) The court may also take judicial notice of facts deemed admitted in considering judgment on the pleadings. (*Columbia Casualty Co. v. Northwestern Nat. Ins. Co.* (1991) 231 Cal. App. 3rd 457, 468, *Acre v. Kaiser Foundation Health Plan, Inc.* (2010) 181 Cal. App. 4th 471, 485.) This court on 11-26-24 entered orders deeming admitted specific matters which confirm the content of the complaint and admit the elements of the same. The court should grant the motion.

Legal Authority: A motion for judgment on the pleadings is subject to the same rules governing demurrers, and like demurrer, the grounds for the motion must appear on the face of the challenged pleading, or from any matter of which the court is required to take judicial notice. (CCP§438(d); *Ventura Coastal LLC. v. Occupational Safety and Health Appeals Bd.* (2020) 58 Cal. App. 5th 1, 14; *Davis v. Fresno Unified Sch. Dist.* (2020) 57 Cal App. 5th 911, 925.) In ruling on the motion the court is confined to the facts alleged in the challenged pleading. Generally, extrinsic evidence is improper (*Gerawan Farming, Inc. v. Lyons* (2020) 24 Cal. 4th 468, 515-516.) However, the court may take notice of documents attached and incorporated by reference into the pleadings and may consider them in a motion for judgment on the pleadings. (*Burnett v. Chimney Sweep* (2004) 123 Cal. App. 4th 1057, 1064.) The court may also rely on facts established through a party's admissions (*Thomson v. Canyon* (2011) 198 Cal. App. 4th 594, 602-603.)

A motion for judgment on the pleadings may only be made on the grounds set forth in CCP§438 (c)(1). Plaintiffs may also move for judgment on the pleadings only on the grounds that the complaint states sufficient facts to constitute a cause of action against the defendant, and that the answer fails to state facts sufficient to constitute a defense to the complaint. (CCP§438(c)(1)(A).) The motion by the plaintiff is the equivalent to a demurrer to the answer. (*Sebago, Inc. v. City of Alameda* (1989) 211 Cal. App. 3rd 1372, 1379.) The appropriate time for the plaintiff to make the motion for judgment on the pleadings is after the defendant has filed an answer to the complaint and the time for the plaintiff to demur to the answer has expired. This is usually ten days after service of the answer (CCP§§430.40(b); 438(f) (1).) If the motion for judgment on the pleadings is based on a matter subject to judicial notice under the evidence code sections 452-453, the matter must be specified in the notice of motion or in the supporting memorandum, save as the court otherwise permits. (CCP§438(d).)

Analysis: The motion is timely served. The Plaintiff has made a proper motion for judgment on the pleadings on the only grounds available to them, and that the complaint states facts sufficient to constitute a cause of action against the defendant and the answer fails to state facts sufficient to constitute a defense to the complaint. This is a complaint sounding in contract, wherein the complaint frames all elements of the cause of action for breach of contract, both written and implied in fact, the facts are clearly alleged without contradiction in the answer. Similarly sufficient facts are pled to state a cause of action for money lent and

paid to the Defendant, for account stated, and for open book account. To all of these the answer fails to state facts sufficient to state a defense to these causes of action. In assessing whether to grant the motion for Judgment on the Pleadings, the court assesses the matter in much the same manner as a demurrer to the answer. The court's inquiry is confined to matters stated in the pleadings and to those matters which are subject to judicial notice. (CCP§438(d); *Ventura Coastal, LLC v. Occupational Safety & Health Appeals Bd.* (2020) 58 Cal. App. 5th 1, 14; Ev. Code §452(d), *Burnett v. Chimney Sweep* (2004) 123Cal. App. 4th 10057, 1064; *Acre v. Kaiser Foundation Health Plan, Inc.* (2010) 181 Ca. App. 4th 471, 485.) Here, the court previously deemed admitted the matters in the Plaintiff's request for admission, including that the Defendant was issued the subject credit card, that she used it to make charges, and they contracted to repay the Plaintiff the principal balance plus interest and other charges to the card, that regular statements were received for the card, and that she had never disputed these charges. Finally, it was deemed admitted that the Defendant has not repaid the balance due and that they have no defenses to the complaint. The court notes that the Plaintiff has made efforts to meet and confer with the Defendant in a timely way as mandated by statute, without response from the Defendant. The court therefore finds that it is proper to grant the motion.

Proposed ruling: The Plaintiff's motion for judgment on the pleadings is granted.

END OF TENTATIVE RULING