1. NICHOLS, ET AL. v. YAGHLEGIAN, ET AL., 24CV1217

Motion for Preliminary Injunction

On June 21, 2024, the court granted plaintiffs' ex parte request for a temporary restraining order enjoining defendants from foreclosing on plaintiffs' residence. Pending is plaintiffs' motion for preliminary injunction to halt the non-judicial foreclosure sale.

1. Background

Plaintiffs Steve and Ashley Nichols are the sole shareholders, officers, and directors of Fall Line Tree Service, Inc., a California corporation. Fall Line owns and operates a retail sporting goods business located in South Lake Tahoe, California, known as "The Village Board Shop." In 2018, the Yaghlegians sold the business's assets ("Assets") to Fall Line in a seller-financed transaction. The Asset purchase price, including the inventory, was approximately $700,000. Fall Line paid a down payment and executed two promissory notes for the remainder of the purchase price: (1) the $386,849 "Inventory Note," which was for the inventory of the business; and (2) the $270,000 "Purchase Price Note," which was for the goodwill of the business. Both notes state they were secured by the Assets. Additionally, the Inventory Note states that plaintiffs personally guaranteed Fall Line's performance with a deed of trust against plaintiffs' real property commonly known as 4063 Union Town Road in Lotus, California.

On March 13, 2020, Fall Line filed for Chapter 11 Bankruptcy in the United States Bankruptcy Court for the Eastern District of California. (Bankr. E.D. Cal., Case No. 20-21548-C-11.) Defendants filed two proofs of claim in the bankruptcy case. Defendants' Proof of Claim 4 evidenced the petition date balance on the Inventory Note ($246,246), and Claim 5 evidenced the petition date balance on the Purchase Price Note ($125,750) for a total of $371,996.

Fall Line objected to Claims 4 and 5 by filing a nine-count adversary proceeding under the bankruptcy case, which was given adversary proceeding no. 2:20-ap-02128, and titled *Fall Line Tree Service*, *Inc. v. Yaghlegian*, *et al.* Fall Line generally alleged that the purchase

price substantially exceeded the value of the Assets and that the Yaghlegians, through fraud, induced plaintiffs to agree to the price. As it relates to Claim 4, Fall Line alleged that defendants falsely represented to Fall Line that defendants would sell the business's inventory based on a sliding scale depending on the age of the inventory items.

The adversary proceeding went to trial and the court entered a judgment regarding Claims 4 and 5. The judgment was appealed. The final decision is that Claim 5 is disallowed. Claim 4 is allowed for $122,921.88 as a general unsecured claim (meaning that the Inventory Note is not secured by the Assets).

However, the adversary proceeding determined only the amount of the "allowed claim." Any allowed claim must then be paid under the Plan of Reorganization. Fall Line's Plan of Reorganization was confirmed on December 2, 2020, and it provided for the payment of claims.

Under the Plan of Reorganization, the DLSK Family Trust dated June 2, 2008, is paid 59 percent of its allowed claims. Therefore, the Plan of Reorganization provides that Fall Line is obligated to pay the DLSK Family Trust dated June 2, 2008, 59 percent of the allowed amount of $122,921.88, which is $72,523.91.

On May 29, 2024, defendants recorded a Notice of Default and Election to Sell under Deed of Trust, claiming that the principal sum of $122,921.88 was due on the Inventory Note.

On June 12, 2024, plaintiffs filed an original Complaint against defendants in the above-entitled action. On July 3, 2024, plaintiffs filed a verified First Amended Complaint ("FAC") against defendants for: (1) quiet title; (2) cancellation of instrument; (3) rescission based on fraud; (4) equitable accounting and unfair business practices; (5) misrepresenting or concealing facts in a public office; and (6) restitution and unjust enrichment.

2. Request for Judicial Notice

Defendants object to plaintiffs' request for judicial notice on the ground that plaintiffs failed to attach a copy of the proposed material to their request. However, the court notes that each exhibit plaintiffs request judicial notice of is attached to the original Complaint and incorporated by reference into the verified FAC. Plus, the exhibits related to the federal bankruptcy proceedings are readily ascertainable. Therefore, the court overrules defendants' objection on this ground.

Pursuant to Evidence Code section 452, subdivisions (c) and (d), the court grants plaintiffs' request for judicial notice of Exhibits C, D, E, F, G, H, K, and L; and denies plaintiffs' request for judicial notice of Exhibits A, B, I, and J.

3. Legal Principles

" '[T]rial courts should evaluate two interrelated factors when deciding whether or not to issue a preliminary injunction. The first is the likelihood that the plaintiff will prevail on the merits at trial. The second is the interim harm that the plaintiff is likely to sustain if the injunction were denied as compared to the harm that the defendant is likely to suffer if the preliminary injunction were issued. [Citations.]' [Citations.]" (*Best Friends Animal Society v. Macerich Westside Pavilion Property LLC* (2011) 193 Cal.App.4th 168, 174.) "The trial court's determination must be guided by a 'mix' of the potential-merit and interim-harm facts; the greater the plaintiff's showing on one, the less must be shown on the other to support an injunction. [Citation.]" (*Butt v. State of Cal.* (1992) 4 Cal.4th 668, 678.)

4. Discussion

The grant or denial of a preliminary injunction "does not amount to an adjudication of the ultimate rights in controversy. It merely determines that the court, balancing respective equities of the parties, concludes that, pending a trial on the merits," exercise of the right claimed by the defendant should or should not be restrained. (*Jamison v. Department of Transp.* (2016) 4 Cal.App.5th 356, 361.)

"Given the drastic implications of a foreclosure, it is not surprising to find courts quite frequently granting preliminary injunctions to forestall this remedy while the court considers a case testing whether it is justified under the facts and law. [Citations.]" (*Baypoint Mortgage Corp. v. Crest Premium Real Estate etc. Trust* (1985) 168 Cal.App.3d 818, 825.) In this case, while the issuance of the preliminary injunction would cause defendants some delay in foreclosure, the refusal to issue the preliminary injunction would cause plaintiffs to lose their home through foreclosure. Therefore, plaintiffs are likely to suffer greater injury from the denial of the injunction than defendants are likely to suffer if it is granted.

Plaintiffs' FAC seeks to cancel the Inventory Note on the ground that the instrument is void or voidable due to fraud. Defendants allegedly promised to sell Fall Line the business's inventory on a sliding scale based on the product's age. Inventory that was less than one year old was to be sold at cost; inventory that was more than one year old was to be sold at a discount; and inventory that was more than three years old was not to be charged. However, defendants allegedly did not adhere to the terms of the sale inventory that had been originally agreed upon. There was no sliding scale. Defendants allegedly insisted that all items of retail inventory, including items that were more than three years old, would only be sold to plaintiff at original vendor cost. As a result, plaintiffs claim they significantly overpaid for the old and obsolete retail inventory because defendants refused the promise.

Plaintiffs also claim that defendants owe them $155,000, representing the amount of money that plaintiffs paid toward the Purchase Price Note, which the federal bankruptcy court ruled was unenforceable. Should the Inventory Note be found to be legally enforceable, plaintiffs claim that the $155,000 should be applied to the outstanding debt on the Inventory Note.

Based on the above, the court finds there is at least "some possibility" plaintiffs will prevail on the merits of the action. (See *Costa Mesa City Employees' Assn. v. City of Costa*

Mesa (2012) 209 Cal.App.4th 298, 309.) The motion for preliminary injunction is granted. Pursuant to Code of Civil Procedure section 529,[1] plaintiffs shall post a $75,000 bond. The preliminary injunction shall become effective upon securing bond and shall remain in full force and effect until the earlier of the following occurs: (i) a final judgment is ordered in this action; or (ii) further court order following a noticed motion or stipulation by the parties.

TENTATIVE RULING # 1: THE MOTION FOR PRELIMINARY INJUNCTION IS GRANTED. PLAINTIFFS SHALL POST A $75,000 BOND FORTHWITH. NO HEARING ON THIS MATTER WILL BE HELD (*LEWIS v. SUPERIOR COURT* (1999) 19 CAL.4TH 1232, 1247), UNLESS A NOTICE OF INTENT TO APPEAR AND REQUEST FOR ORAL ARGUMENT IS TRANSMITTED ELECTRONICALLY THROUGH THE COURT'S WEBSITE OR BY TELEPHONE TO THE COURT AT (530) 573-3042 BY 4:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED. NOTICE TO ALL PARTIES OF AN INTENT TO APPEAR MUST BE MADE BY TELEPHONE OR IN PERSON. PROOF OF SERVICE OF SAID NOTICE MUST BE FILED PRIOR TO OR AT THE HEARING.

[1] Code of Civil Procedure section 529, subdivision (a) provides in relevant part: "On granting an injunction, the court or judge must require an undertaking on the part of the applicant to the effect that the applicant will pay to the party enjoined any damages, not exceeding an amount to be specified, the party may sustain by reason of the injunction, if the court finally decides that the applicant was not entitled to the injunction." (*Ibid.*)