1. FRANKLIN, ET AL. v. TAHOE KEYS MARINA & YACHT CLUB, LLC, ET AL., 22CV1114

Motion for Summary Judgment

TENTATIVE RULING # 1: BASED ON THE JOINT STIPULATION OF THE PARTIES, THE COURT CONTINUES THE MATTER TO 1:30 P.M., FRIDAY, OCTOBER 25, 2024, IN DEPARTMENT FOUR.

2. BUGAISKI v. SONNY'S BARBEQUE SHACK, ET AL., SC20190161

Final Accounting of Settlement

TENTATIVE RULING # 2: APPEARANCES ARE REQUIRED AT 1:30 P.M., FRIDAY, SEPTEMBER 20, 2024, IN DEPARTMENT FOUR RE: STATUS OF FINAL ACCOUNTING.

3. NATIONAL CREDIT ACCEPTANCE v. OWEN, ET AL., SCL20070084

Order of Examination Hearing

To date, there is no proof of service in the court's file showing that judgment debtor Mike Owen was personally served with the order to appear for examination. (Code Civ. Proc., § 708.110, subd. (c).)

TENTATIVE RULING # 3: THE PERSONAL APPEARANCE OF THE DEBTOR IS REQUIRED, PROVIDED PROOF OF SERVICE OF THE ORDER TO APPEAR FOR EXAMINATION IS FILED PRIOR TO THE HEARING SHOWING THAT PERSONAL SERVICE ON THE DEBTOR WAS EFFECTED NO LATER THAN TEN (10) DAYS PRIOR TO THE HEARING DATE. (CODE CIV. PROC., § 708.110, SUBD. (d).) IF THE APPROPRIATE PROOF OF SERVICE IS NOT FILED, NO EXAMINATION WILL TAKE PLACE.

4. ON SKI RUN, LLC, ET AL. v. MOUNTAIN MEN, LLC, ET AL., 24CV1953

Motion for Preliminary Injunction

Before the court is plaintiffs' motion for preliminary injunction (1) enjoining defendants from interfering with plaintiffs' right to possess and operate their restaurant at the leased premises; and (2) ordering defendants to execute and deliver to plaintiffs and the City of South Lake Tahoe a Property Owner Authorization for purposes of obtaining a permit to bring the subject-property in compliance with the American Disabilities Act ("ADA").

1. Evidentiary Objections

As it relates to the declaration of Galen Gentry, the court overrules Objection Numbers 1 and 2.

As it relates to the declaration of Lynn Odvody, the court overrules Objection Numbers 1, 2, 5, 8; and sustains Objection Numbers 3, 4, 6, 7, 9, and 10.

As it relates to the declaration of Troy Milburn, the court overrules Objection Number 1.

2. Request for Judicial Notice

Pursuant to Evidence Code section 452, subdivision (c), the court grants defendants' unopposed request for judicial notice of Exhibit A (Articles of Organization).

3. Discussion

3.1. Standing

As an initial matter, the court finds that plaintiff On Ski Run, LLC, doing business as Thai On Ski Run ("On Ski Run") is a third-party beneficiary that may enforce the parties' lease agreement. Code of Civil Procedure section 367 provides, "[e]very action must be prosecuted in the name of the real party in interest, except as otherwise provided by statute." Civil Code section 1559 provides, "[a] contract, made expressly for the benefit of a third person, may be enforced by him at any time before the parties thereto rescind

it." Here, the court finds that the lease agreement was made expressly for the benefit of On Ski Run.

3.2. Preliminary Injunction

"As its name suggests, a preliminary injunction is an order that is sought by a plaintiff prior to a full adjudication of the merits of its claim. [Citation.]" (*White v. Davis* (2003) 30 Cal.4th 528, 554.) The purpose of such an order is to preserve the status quo pending a determination on the merits of the action. (*Id.* at p. 553; *Continental Baking Co. v. Katz* (1968) 68 Cal.2d 512, 528.)

If the threshold requirement of irreparable injury is established, then the court must examine two interrelated factors: (1) the likelihood that the moving party will ultimately prevail on the merits, and (2) the relative interim harm to the parties from issuance or nonissuance of the injunction. (*Butt v. State of Cal.* (1992) 4 Cal.4th 668, 677–678.) It is settled law that a preliminary injunction may not issue unless the proponent shows they establish they have a reasonable probability of prevailing on the merits. (*Choice-in-Education League v. Los Angeles Unified School Dist.* (1993) 17 Cal.App.4th 415, 422.)

Plaintiffs claim that defendants are in breach of the lease agreement where defendants refuse to sign the Property Owner Authorization required by the City of South Lake Tahoe to issue a permit for plaintiffs to complete ADA-related parking lot repairs to the subject-property. Due to the ADA deficiencies, On Ski Run's certificate of occupancy expired on August 23, 2024. On Ski Run immediately suspended operations. As a result, plaintiffs claim that they have lost employees and goodwill of the business, and risk permanent closure.

The court finds that plaintiffs have established irreparable harm. (See *Dingley v. Buckner* (1909) 11 Cal.App. 181, 183 ["No proceeding at law can afford an adequate remedy for the destruction of one's business."]; *Greenfield v. Bd. of City Plan Comm'rs* (1935) 6 Cal.App.2d 515, 519 ["The destruction of one's business is manifestly an irreparable injury."].)

The court also finds that there is a reasonable possibility of plaintiffs succeeding on the merits. Plaintiffs' complaint states causes of action for breach of contract, breach of implied covenant of good faith and fair dealing, and breach of implied covenant of quiet enjoyment. The lease agreement contains a "Further Assurances" clause, which obligates defendant Mountain Men, LLC ("Mountain Men") to, at the request of plaintiffs, "execute and deliver such additional documents, instruments, conveyances and assurances and to take such further actions as may be required to carry out the provisions [of the lease] and give effect to the transactions contemplated [by the lease]." (T. Starr Decl., filed Sep. 13, 2024, Ex. 4, ¶ 13 ["Further Assurances"].) This is necessary for plaintiffs to close the permit for ADA improvements to the premises, as required under Paragraph 5 of the lease. (T. Starr Decl., filed Sep. 13, 2024, Ex. 4, ¶ 5 ["Additional Agreements of Parties"].) The court finds that the circumstances warrant the issuance of a mandatory injunction. (*Teachers Ins. & Annuity Ass'n v. Furlotti* (1999) 70 Cal.App.4th 1487, 1493.)

The motion for preliminary injunction is granted. Because the court finds that defendants will not sustain damages by reason of the injunction, the court does not impose any undertaking. (Code Civ. Proc., § 529, subd. (a).)

TENTATIVE RULING # 4: THE MOTION FOR PRELIMINARY INJUNCTION IS GRANTED. DEFENDANTS SHALL EXECUTE AND DELIVER TO PLAINTIFFS THE REQUESTED PROPERTY OWNER AUTHORIZATION NO LATER THAN 10 DAYS AFTER SERVICE OF NOTICE OF ENTRY OF THIS ORDER. NO BOND IS REQUIRED. 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.

5. BAIRD v. LUX VACA LUXURY RENTALS, 23CV2063

Motion to Quash

Before the court is specially appearing defendant F&B, Inc.'s ("defendant") motion to quash plaintiff's summons and complaint due to lack of personal jurisdiction. Defendant also moves to dismiss the complaint due to forum non-conveniens and failure to serve the summons and complaint and provide proof of that service within 60 days of filing the complaint.

1. Background

This is a personal injury action arising from a slip and fall incident that allegedly occurred on January 21, 2022. Plaintiff filed his unverified complaint on November 27, 2023.

Defendant is a Nevada corporation and has its principal place of business in Stateline, Nevada. (Manchester Decl., ¶¶ 4, 6.)

Defendant claims that the only relationship it has to the underlying incident is a contract for snow removal for the parking lot at the property where plaintiff allegedly fell. (Manchester Decl., ¶ 12.) That contract is a contract between defendant and Tahoe Valley Homeowners Association, a Nevada Corporation with its principal place of business in Nevada. (Lodged Ex. D [Oxford Decl.], ¶ 7.) The agreement does not include snow removal in California; it only provides for snow removal at Nevada properties. (Manchester Decl., ¶ 12.) Defendant claims it did not travel to California for any purpose related to the agreement, including its negotiation, execution, or performance. (*Ibid.*) Additionally, defendant claims that the property where plaintiff allegedly fell is one of the Nevada properties subject to this agreement. (*Id.*, ¶ 13.)

Defendant states that it has a separate contract for snow removal with Heavenly Valley Limited Partnership, a Nevada limited partnership. (Manchester Decl., ¶ 11.) That

contract involves snow removal from Heavenly Mountain Resort in Nevada, "which includes the portion of the mountain on the California side (Kirkwood)."[1] (*Id.*, ¶ 12.)

Defendant also states it participated in litigation in California in 2008. (Manchester Decl., ¶ 18.) However, a copy of defendant's complaint in that matter shows it was filed in the United States District Court for the Eastern District of California (see Weinberger Decl., Ex. A.), which is a federal court, not a California court. Defendant claims it has not been involved in any California litigation since that time.

On July 12, 2024, plaintiff served the summons and complaint on defendant through its Nevada registered agent. (Manchester Decl., ¶ 16.)

2. Discussion

Defendant contends there is no general or specific jurisdiction over defendant, and the matter should be dismissed due to forum non-conveniens and failure to serve the summons and complaint and provide proof of that service within 60 days of filing the complaint.

If a defendant properly files a motion to quash service of summons for lack of personal jurisdiction, the plaintiff has the burden of establishing by a preponderance of the evidence the prima facie facts entitling the court to assume jurisdiction. (*Viaview, Inc. v. Retzlaff* (2016) 1 Cal.App.5th 198, 209–210.) The plaintiff must come forward with affidavits and other competent evidence to carry this burden and cannot simply rely on allegations in an unverified complaint. (*In re Automobile Antitrust Cases I & II* (2005) 135 Cal.App.4th 100, 110.) If the plaintiff meets this burden, "it becomes the defendant's burden to demonstrate that the exercise of jurisdiction would be unreasonable." (*Vons Companies, Inc. v. Seabest Foods, Inc.* (1996) 14 Cal.4th 434, 449.) A judge has jurisdiction to make an initial determination about the court's alleged lack of personal jurisdiction

[1] The court's understanding is that defendant performs at least some snow removal in California. (See also, Mtn. at 13:13–21.)

where, as here, it is challenged by a "specially appearing" defendant. (*Ziller Electronics Lab GmbH v. Superior Court* (1988) 206 Cal.App.3d 1222, 1228.)

California's long-arm statute authorizes courts to exercise personal jurisdiction "on any basis not inconsistent with the Constitution of this state or of the United States." (Code Civ. Proc., § 410.10; *Pavlovich v. Superior Court* (2002) 29 Cal.4th 262, 268; *Vons*, *supra*, 14 Cal.4th at p. 444.) The statute " 'manifests an intent to exercise the broadest possible jurisdiction,' limited only by constitutional considerations of due process." (*Integral Development Corp. v. Weissenbach* (2002) 99 Cal.App.4th 576, 583, quoting *Sibley v. Superior Court* (1976) 16 Cal.3d 442, 445.) A state court's assertion of jurisdiction comports with due process requirements "if the defendant has such minimum contacts with the state that the assertion of jurisdiction does not violate ' "traditional notions of fair play and substantial justice." ' " (*Vons*, *supra*, at p. 444, quoting *International Shoe Co. v. Washington* (1945) 326 U.S. 310, 316.) The primary focus of that inquiry is "the defendant's relationship to the forum State." (*Bristol-Myers Squibb Co. v. Superior Court* (2017) 582 U.S. 255.)

Courts have recognized two types of personal jurisdiction: general and specific. (*Bristol-Myers*, *supra*, 582 U.S. at p. 262.) "A nonresident defendant may be subject to the general jurisdiction of the forum if his or her contacts in the forum state are 'substantial ... continuous and systematic.' " (*Vons*, *supra*, 14 Cal.4th at p. 445, quoting *Perkins v. Benguet Mining Co.* (1952) 342 U.S. 437, 445.) "In such a case, 'it is not necessary that the specific cause of action alleged be connected with the defendant's business relationship to the forum.' " (*Vons*, at p. 445, quoting *Cornelison v. Chaney* (1976) 16 Cal.3d 143, 147.) "A state court may exercise general jurisdiction only when a defendant is 'essentially at home' in the State." (*Ford Motor Co. v. Montana Eighth Judicial Dist. Court* (2021) 592 U.S. 351.)

A defendant without such continuous contacts nevertheless may be subject to a court's specific jurisdiction if it "has purposefully availed [itself] of forum benefits

[citation], and the 'controversy is related to or "arises out of" a defendant's contacts with the forum' " (*Vons*, *supra*, 14 Cal.4th at p. 446, quoting *Helicopteros Nacionales de Colombia v. Hall* (1984) 466 U.S. 408, 414 (*Helicopteros*)), and " 'the assertion of personal jurisdiction would comport with "fair play and substantial justice." ' " (*Vons*, at p. 447.) Specific jurisdiction is thus contingent on the " 'relationship among the defendant, the forum, and the litigation.' " (*Helicopteros* at p. 414.)

Plaintiff contends that defendant has "consented" to jurisdiction by (1) filing a federal lawsuit in the Eastern District of California in 2008; and (2) entering into a snow-removal contract with Heavenly Mountain Resort, part of which is located in California. The court does not find that defendant has consented to personal jurisdiction in California. Rather, these factors are relevant to the issue of whether defendant has minimum contacts in the forum state such that it would not offend due process for it to be hauled into court. (*International Shoe*, *supra*, 326 U.S. at p. 316.)

Plaintiff contends that defendant has sufficient minimum contacts in the forum state because, in addition to the above, (1) defendant appears to have California employees; (2) defendant "is together with" C. Manchester Enterprises, a California corporation; (3) defendant's owners have a California corporation; and (4) defendant's owners have a California contractor's license. (Opp. at 4:18–5:1.)

Based on defendant's snow removal work at Kirkwood, which is in California, the court finds that defendant has continuous and systematic contacts with California that subject it to California's general jurisdiction. The court denies defendant's motion to quash for lack of personal jurisdiction, as well as the motion to dismiss for forum non conveniens.

Lastly, defendant argues that, pursuant to California Rules of Court, rule 3.110, subdivision (b), the action should be dismissed as to defendant where plaintiff failed to serve the summons and complaint and provide proof of that service within 60 days of filing the complaint. California Rules of Court, rule 3.110 addresses the time for serving a complaint and filing a proof of service. Rule 3.110, subdivision (b) states that a complaint

"must be served on all named defendants and proofs of service on those defendants must be filed with the court within 60 days after the filing of the complaint." And California Rules of Court, rule 3.110, subdivision (f) addresses noncompliance: "If a party fails to serve and file pleadings as required under this rule, and has not obtained an order extending time to serve its pleadings, the court may issue an order to show cause why sanctions shall not be imposed." (*Ibid.*) There is no express provision for imposing any sanction for delayed service of the complaint other than a monetary sanction. As such, the court denies defendant's request to dismiss the action.

TENTATIVE RULING # 5: THE MOTION TO QUASH AND/OR DISMISS THE ACTION AS TO DEFENDANT F&B, INC., IS DENIED. 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.