
PARTIES/ATTORNEYS

Plaintiff	Penny Lane Equity Inc.	Michaela Cotton Andre, Morris, and Buttery
Defendant	Jessica Young	Self-Represented
Defendant	Carlos Sosa	Self-Represented
Defendant	Manara Inc.	William L. Alexander Marshall T. Thomas Alexander & Associates, PLC

TENTATIVE RULING

All pleadings have been considered. For all the reasons stated below, the court grants plaintiff's motion for leave to amend the complaint. A court can deny a motion to dismiss and allow the plaintiff to file an amended complaint, provided plaintiff gives an excuse for the delay. (*Contreras v. Blue Cross of California* (1988) 199 Cal.App.3d 945, 948.) The court is satisfied with the explanation provided by plaintiff's current counsel and does not find the unexplained six-week delay under former counsel's guidance to be dispositive. The court further finds *Leader v. Health Indus. of America, Inc.* (2001) 89 Cal.App.4th 603 to be distinguishable, as discussed below. Although plaintiff has not complied with California Rules of Court rule 3.1324 jot-for-jot, defendant has failed to identify how such failure has prejudiced it. Ultimately, the court is persuaded by the policies that support liberality in allowing amendments.

MEMORANDUM

This action pertains to two written Agreements for the Purchase and Sale of Real Estate, by which defendant Jessica Young agreed to sell plaintiff, Penny Lane, two pieces of real property: one located at 3355 Via Dona, Lompoc, California ("Lompoc Property") and the other at 631 South Pine Street, Santa Maria, California ("Santa Maria Property"). After executing the agreements, Young, at the encouragement of, and in collaboration with, her realtor, defendant Carlos Sosa, breached each of the agreements and refused to complete the sale of the Via Dona Property and South Pine Property to Penny Lane. Young, with Sosa's assistance,

then sold the Via Dona Property to defendant Manara Inc., who is alleged to have had constructive and actual knowledge of the preexisting agreement between Penny Lane and Young.

On July 5, 2022, Penny Lane, through its prior attorney Matthew K. Nash (“Nash”), filed a Complaint relating to the Santa Maria Property against defendants, Young and Sosa for (1) Breach of Contract against Young; (2) Specific Performance against Young and Sosa; and (3) Tortious Interference with Business Contract against Young and Sosa. (Case No. 22CV02524).

On July 8, 2022, Penny Lane filed a Complaint against defendants Young, Sosa and Manara relating to the Lompoc Property for (1) Breach of Contract against Young; (2) Specific Performance against Young, Sosa, and Manara; and (3) Fraudulent Transfer against Young, Sosa, and Manara. (Case No. 22CV02609.) This is the matter pending before the court.

On September 20, 2023, in the instant matter concerning the Lompoc Property (Case No. 22CV02609), Judge Staffel sustained Manara’s unopposed demurrer to the 2nd and 3rd causes of action and granted leave to amend the 3rd cause of action for fraudulent transfer no later than October 27, 2023. At an October 25, 2023 CMC, Judge Staffel “ordered that case nos. 22CV02609 and 22CV02524 be consolidated, and that case no. 22CV02609 be the lead case,”¹ and “confirm[ed] its prior order that Mr. Nash [plaintiff’s attorney] file an amended complaint by October 27, 2023.” An amended complaint was not filed by October 27, 2023, leaving no pending causes of action against Manara.

On December 1, 2023, Matthew Nash substituted out as attorney for Penny Lane and Michaela Cotton of Andre, Morris, and Buttery substituted in. On January 29, 2024, plaintiffs, now represented by Ms. Cotton, filed a first amended complaint against defendants Young, Sosa, and Manara for (1) breach of contract against Young; (2) breach of the covenant of good faith and fair dealing against Young and Sosa; (3) intentional interference with contractual relations against Sosa and Manara; (4) violation of the Uniform Voidable Transactions Act against Young and Sosa; (5) imposition of constructive trust against Manara.

On January 30, 2024, at a CMC with this court, it was ordered: “Unless the other party is willing to agree to a stipulation, there will need to be a review on the 1st Amended Complaint.”

¹ All documents filed in the consolidated case shall include the caption and case number of the lead case, followed by the case numbers of all of the other consolidated cases. (Cal. Rules Court, rule 3.350(d).) Neither party has complied. Plaintiff’s filings indicate the cases are related. Related cases maintain their separate identities, but are heard by the same trial judge. Consolidated cases, on the other hand, essentially merge and proceed under a single case number. (See Cal. Rules Court, rule 3.350(d).) Judge Staffel ordered the cases “consolidated” and all filings should be so captioned.

On Calendar

1. Plaintiff's Motion for Leave to Amend the First Amended Complaint and File a Second Amended Complaint. Opposition was filed May 2, 2024. Reply was filed May 22, 2024.
2. Manara's Motion to Dismiss based for plaintiff's failure to timely amend following the sustaining of the demurrer. Opposition was filed May 22, 2024.
3. Manara's Motion to Strike the First Amended Complaint. Opposition was filed May 22, 2024.

Merits

Plaintiff moves to amend the first amended complaint and file a second amended complaint, “which is based on the exact same facts as are alleged in Penny Lane’s original complaints and the same causes of action that were included in the FAC, as described above In the SAC, the second cause of action for breach of the covenant of good faith and fair dealing is no longer being asserted as to Sosa and is asserted as to Young only.” (Motion, p. 5, ll. 8-10 & fn. 1.) The court will construe this as the requisite motion to file an amended pleading. (*Leader v. Health Indus. of America, Inc.* (2001) 89 Cal.App.4th 603, 612-613—after expiration of the time allowed by the court after demurrer is sustained with leave to amend, a noticed motion should be made for permission to file an amended pleading.)

Manara moves to strike the first amended complaint on the basis it was not filed timely. A motion to strike can be used where the complaint or other pleading has not been drawn or filed in conformity with applicable rules or court orders. (Code Civ. Proc., § 436, subd. (b).) (All further statutory references are to the Code of Civil Procedure.) It also moves to dismiss the complaint against it on the basis that an amended complaint was not timely filed. The court may dismiss the complaint as to a defendant when “after demurrer to the complaint is sustained with leave to amend, the plaintiff fails to amend it within the time allowed by the court and either party moves for dismissal.” (., § 581, subd. (f)(2); *Sierra Inv. Corp. v. Sacramento County* (1967) 252 Cal.App.2d 339; *Leader v. Health Industries of America, Inc.*, *supra*, 89 Cal.App.4th at p. 603.)

The court will consider these motions simultaneously. (See *Leader v. Health Industries of America, Inc.*, *supra*, 89 Cal.App.4th at p. 610—trial court heard plaintiff's motion for leave to amend simultaneously with defendant's motions to strike and dismiss.)

A court can deny a motion to dismiss and allow the plaintiff to file an amended complaint, provided plaintiff gives an excuse for the delay. (*Contreras v.*

Blue Cross of California (1988) 199 Cal.App.3d 945, 948.) “The law is well settled that a long deferred presentation of the proposed amendment without a showing of excuse for the delay is itself a significant factor to uphold the trial court's denial of the amendment. [Citation.] [Citation.]” (*Leader, supra*, at p. 613.) This is true even if the plaintiff proposes a good amendment in proper form. (*Ibid.*) The court is “required to evaluate the reasons for plaintiffs' delay in determining whether to allow filing of the belated amended pleading (§ 473, subd. (a)(1)), whether to strike the pleading filed in violation of court orders (§ 436), and/or whether to dismiss the action where demurrers had been sustained with leave to amend but plaintiffs failed to amend within the time specified (§ 581, subd. (f)(2)).” (*Leader, supra*, 89 Cal.App.4th at pp. 619–620.)

In *Leader*, the appellate court considered whether the trial court's decision to strike the late filed fourth amended complaint and dismiss the action was an abuse of discretion and concluded it was not: “The action had been pending for nearly six years. Demurrers had been sustained to the third amended complaint, and plaintiffs make no claim the trial court erred in that regard. Plaintiffs did not amend within the time allowed by the court, and did not even attempt to do so until more than a month after the deadline had passed. If, as counsel declared, the reason for the failure to timely file was a search for missing documents [containing patient names], there is no apparent reason why plaintiffs did not bring the issue to the court's or opposing counsel's attention or seek any further extension of the time in which to plead. Moreover, without passing on the propriety of the ruling sustaining the demurrers, we note that if the trial court ruled as set forth in the notice of ruling, it does not appear that a list of actual patient names (as opposed to descriptive factual allegations concerning classes of persons and types or characteristics of their economic relationships with plaintiffs) was in any way critical to the ability to file an amended pleading that would withstand demurrer.”

Defendant argues that “[t]his case bears a remarkable resemblance to the facts in *Leader*,” pointing out that in both cases, the amended pleading was offered more than a month after the deadline had passed and arguing “plaintiff has offered no excuse or explanation for any delay for the period of October 27, 2023 through December 1, 2023 before plaintiff's current counsel substituted into the matter, and no explanation for the six-week delay between December 14, 2023 (when plaintiff's new counsel was able to gain access to court records) and January 29, 2024 (when plaintiff filed the first amended complaint).”

Plaintiff's counsel states “On December 1, 2023, I was substituted as counsel for Penny Lane in this action. I first received access to the Court's Attorney Portal for this matter on December 14, 2023.” (Cotton Decl. filed May 22, 2024, ¶ 4.) “After further review of the facts and legal issues in this matter, on January 29, 2024, I caused to be filed on behalf of Penny Lane a First Amended Complaint against Defendants.” (*Id.*, ¶ 6.) After being informed that Manara intended to file a motion

to strike the first amended complaint and being ordered to do so by the court, “[o]n February 16, I caused to be filed a Motion for Leave to Amend the First Amended Complaint, with an attached Second Amended Complaint.” (*Id.*, ¶ 9.) While the proper procedural response would have been to file a motion to amend the complaint in the first instance instead of directly filing the first amended complaint, the court finds nothing in this sequence of events that suggests undue delay attendant to the change in counsel. Plaintiff and her current attorney have no control over the actions of previous counsel. In fact, Ms. Cotton states: “Since taking over this matter, both my client and I have made repeated attempts to contact Mr. Nash for additional details regarding the delay in filing an amended consolidated complaint pursuant to the Court’s order. Mr. Nash has failed to provide any such explanation or information.” (*Id.*, ¶ 12.) The court declines defendant’s invitation to find that six-week delay to be dispositive.

Moreover, this case differs from *Leader* in at least one other significant aspect. Unlike this case, in *Leader* the complaint had been through several amendments and an appeal before dismissal was entered. The trial court sustained demurrers to the original, first amended, and second amended complaints. The court’s order sustaining the demurrer of the second amendment without leave to amend was appealed and overturned. Defendants successfully demurred to the third amended complaint, allowing 30 days leave to amend. Shortly before expiration of that period, plaintiffs’ counsel obtained defendants’ counsel’s stipulation to extend the period by several days. The stipulated date passed without an amended pleading being filed. Plaintiffs’ counsel did not request a further extension from the court or opposing counsel. (*Leader, supra*, 89 Cal.App.4th at pp. 608.) The trial court was alerted to the absence of a timely amended pleading when the parties failed to appear for a scheduled status conference. The court summoned counsel to a status conference on 24 hours’ notice. Although the court-imposed amendment deadline had expired more than a month earlier, plaintiffs’ counsel arrived at the status conference with a fourth amended complaint, handed a copy to defendants’ counsel, and (in the words of the trial court) “just dropped it” on the court. The court instructed plaintiffs’ counsel to bring a motion for leave to file the pleading. (*Id.*) Plaintiff did so, and defendant opposed the motion and simultaneously moved to strike the amended pleading and dismiss the case. The court granted the motion to dismiss, observing: “I think that at this point that you have had ample opportunity to amend this complaint. This has been—this is painful.” (*Leader, supra*, 89 Cal.App.4th at pp. 608.) Unlike in *Leader*, this is plaintiff’s first attempt at amendment. The procedural history in this case is far from the protracted history in *Leader*.

Ultimately, the court is persuaded by the policies that support liberality in allowing amendments. “Generally, leave to amend must be liberally granted [citation], provided there is no statute of limitations concern, nor any prejudice to the opposing party, such as delay in trial, loss of critical evidence, or added costs of

preparation. [Citation.]” (*Solit v. Tokai Bank* (1999) 68 Cal.App.4th 1435, 1448.) No such prejudice has been identified by Manara.

Procedurally, a motion for leave to file an amended pleading must include (1) a copy of the proposed and numbered amendment, (2) specific reference to pages and lines concerning the allegations that would be deleted and added, and (3) a declaration specifying the effect of the amendment, why the amendment is necessary and proper, when the facts giving rise to the amended allegations were discovered, and why the request for amendment was not made earlier. (CRC, Rule 3.1324(a) – (b).) Manara argues that plaintiff failed to comply with this rule, specifically that “while Plaintiff’s motion does include a copy of the proposed amended pleading to the motion, the motion and/or amended pleading fails to state or identify the deleted or additional allegations, if any.” (Opposition to Motion to Amend, p. 5, ll. 1-3.) The court, however, is persuaded by plaintiff’s observation that “this matter involves two prior cases that were ordered to be consolidated, so strict compliance with California Rule of Court, Rule 3.1324 is impossible.” In any event, the motion to amend asserts that the proposed SAC is based on the exact same facts and causes of action as included in the FAC, except that the second cause of action for breach of covenant of good faith and fair dealing is no longer being asserted as to Sosa and is asserted as to Young only (Motion, page 5, footnote 1.) Defendant has not identified how failure to strictly comply with this Rule of Court has prejudiced it. Therefore, the court will not elevate form over substance.

The judge undoubtedly has discretion to deny leave to amend where a proposed amendment fails to state a valid cause of action or defense. (See *California Cas. Gen. Ins. Co. v. Sup.Ct. (Gorgei)* (1985) 173 Cal.App.3d 274, 280-281 (disapproved on other grounds by *Kransco v. American Empire Surplus Lines Ins. Co.* (2000) 23 Cal.4th 390, 407, fn. 11.) Defendant did not challenge the substance of the proposed amended pleading. However, in its reply, it observes that the fraudulent transfer cause of action had been replaced with a constructive trust cause of action and argues that this new cause of action is outside the scope of the court’s order sustaining the demurrer. The court nevertheless finds the addition of this cause of action to be within the motion to amend the complaint and will allow it.

Disposition

Plaintiff’s motion to amend is granted. Plaintiff is directed to submit another copy of the proposed Second Amended Complaint for filing with a caption that properly identifies the consolidated nature of the actions. Manara’s motions to strike and dismiss are denied.