Wells Fargo Bank, N.A. v. Juarez 24CV02172
Hearing Date: April 29, 2025
Motion for Judgment on the Pleadings

PROPOSED TENTATIVE

On April 18, 2024, plaintiff Wells Fargo Bank, N.A. (plaintiff), filed a verified complaint for breach of contract and common counts (an open book account for money due and an account stated in writing), against defendant Oscar C. Juarez (defendant), for damages of $5,717.04. Defendant opened a credit card account and ultimately defaulted. The first cause of action is breach of contract, and Exhibit 1 is a document entitled "Consumer Credit Card Customer Agreement and Disclosure Statement Visa[.]" Defendant filed an answer on May 16, 2024. He did not file a general denial, but a specific denial. He admitted that all of the statements in the complaint were true, except "defendant claims the following statements are false. . . . [¶] If any all the alleged debt [*sic*], no proof has provided to show that I signed any agreement with the other party, no evidence has been show to prove any of the alleged debt." Additionally, in the answer defendant raised an "affirmative defense" – "lack of privity between the parties."

Plaintiff has filed a motion for judgment on the pleadings. It asks the court to grant the motion because on January 23, 2025, the court previously granted defendant's motion to deem 11 requests for admission (RFAs) admitted as true against defendant.[1] It separately asks the court to take judicial notice of three documents (plaintiff's answer, the motion to deem the 11 RFAs admitted as true, and the court's order deeming the RFAs admitted as true). Defendant has also submitted a declaration from attorney Pearse F. Early, detailing all meet and confer efforts, as well as a declaration of service (indicating all documents to date have been served on defendant by mail at the address listed in defendant's answer). Plaintiff argues that the 11 RFAs – deemed admitted as true – are judicially admissions, and thus are conclusive to show that defendant breached the contract and owes $5,717, and further, undermines defendant's specific denial and affirmative defenses advanced in the answer. Plaintiff will appear remotely at today's hearing. Defendant has filed no opposition.

[1] The 11 RFAs are as follows:1) admit that you never notified plaintiff of a dispute involving the balance of any account statement; 2) admit that as of April 18, 2024, there was a balance owning of a least $5,717.04; 3) admit that you never notified Plaintiff of a dispute involving the balance of any Account Statement; 4) Admit that as of April 18, 2024, there was a balance owing of at least $5,717.04; 5) admit that since April 18, 2024, you have not paid this propounding party $5,717.04 or any other amount on the account; 6) admit that you owe this propounding party at least $5,717.04 on the Account exclusive of any amount incurred after April 18, 2024; 7) admit that the Consumer Credit Card Customer Agreement and Disclosure Statement, applicable to the Account in this action is attached hereto as "Exhibit A"; 8) admit that "Exhibit A" contains a provision entitling the prevailing party to attorney fees; 9) admit that You do not have Credit Defense (for purposes of these requests, Credit Defense refers to any debt cancellation agreement between You and Plaintiff wherein Plaintiff has agreed to cancel any portion of a debt You owe on your Account); 10) if you have Credit Defense, admit You do not qualify for its benefits; and 11) admit that the affirmative defenses you have asserted in this matter lack merit and evidentiary support.

A statutory motion for judgment on the pleadings (Code Civ. Proc., § 438) is an appropriate means of obtaining an adjudication of the rights of the parties when either breach of contract or common count is pleaded, as both are here. The motion should be denied if the pleadings (the complaint and answer) raise a material issue or set up an affirmative matter constituting a defense. "The determination of the sufficiency of the answer requires an examination of the complaint because its adequacy is with reference to the complaint it purports to answer." (*South Shore Land Co. v. Petersen* (1964) 226 Cal.App.2d 725, 733; see *People ex rel. Becerra v. Superior Court* (2018) 29 Cal.App.5th 486, 499; accord, *Allstate v. Kim W.* (1984) 160 Cal.App.3d 326, 220-331.)

The court takes judicial notice of all three documents as requested by plaintiff. Specifically, and most significantly, the court agrees with plaintiff that the court can take judicial notice of the 11 RFAs deemed admitted by plaintiff as evidenced in the court's discovery order, and can rely on this evidence in determining the merits of the motion for judgment on the pleadings, as their import cannot reasonably be disputed. (*Del E. Webb Corp. v. Structural Materials Co.* (1981) 123 Cal.App.3d 593, 604-605 [the court can take judicial notice of records such as admissions, when considering a demurrer or motion for judgment on the pleadings where the evidence contains statements of defendant which are inconsistent with the allegation in the answer]; see also *Tucker v. Pacific Bell Mobile Services* (2012) 208 Cal.App.4th 201, 218, fn. 11 [a court may take judicial notice of a party's admissions in cases where the admission cannot reasonably be controverted, such as requests for admission].)

With this, the court grants the motion for judgment on the pleadings, without leave to amend. The motion was timely. (Code Civ. Proc., § 438(e).) Service of the complaint had summons were personally made by a registered California process server. The motion was properly served on defendant (as evidenced by the proof of service). Plaintiff has satisfied its meet and confer obligations. (Code Civ. Proc., § 439, subd. (a)).

On the merits, plaintiff has adequately pleaded a breach of contract cause of action. (*D'Arrigo Bros. of California v. United Farmworkers of America* (2014) 224 Cal.App.4th 790, 800 [establishing a breach of contract claim requires a showing of "(1) the existence of the contract, (2) plaintiff's performance or excuse for nonperformance, (3) defendant's breach, and (4) the resulting damages to the plaintiff"].) Plaintiff claims the contract was in writing, has attached a copy of it to the complaint, alleges it has performed all obligations thereunder, asserted defendant breached the agreement, and indicated damages were incurred.

Additionally, plaintiff's motion for judgment on the pleadings is the functional equivalent of a demurrer to the answer. (*Engine v. Manufacturers Association v. California Air Resources Board* (2014) 231 Cal.App.4th 1022, 1034.) ***If*** defendant had advanced a general denial in the answer (notably because plaintiff pleaded common count in the alternative to a breach of

contract), this would have been sufficient to raise almost any kind of defense, including some that ordinarily require special pleading. (5 Witkin California Procedure (6th ed. 2024), Pleading, § 1115.; see also *Title Ins. Co. v. State Bd. of Equalization* (1992) 4 Cal.4th 715, 731 [citing Witkin favorably for the proposition that in the common count context, a general denial is sufficient to raise "almost any kind of defense"].) But defendant did not advance a general denial – he advanced a specific denial and one affirmative defense, and the import of the 11 RFAs undercuts, undermines and/or counters these defenses under the standards enunciated above. When a party propounds requests for admission, any facts admitted by the responding party constitute a judicial admission. And a judicial admission is conclusive both as to the admitting party and as to the party's opponent- because once a factual allegation is treated as a judicial admission, neither party may attempt to contradict it. (*Barsegian v. Kessler & Kessler* (2013) 215 Cal.App.4th 446, 452.)

In his answer, defendant claimed with regard to his specific denial that there was no evidence he entered into a contract and thus owed the amount claimed. In the RFAs, which were deemed admitted as true, plaintiff admitted that he owed money on the credit card account of $5,717.04, and that the credit card account at issue was created by him and defendant via the "Consumer Credit Card Customer Agreement and Disclosure Statement" attached as Exhibit 1 to the complaint. Defendant further admitted that he has never contested the amounts owed as detailed in the monthly credit card statements sent to him, and has never paid down the amounts owed at least since April 18, 2024, which is the alleged date of default. As for the affirmative defense advanced in the answer, defendant claimed a "lack of privity between the parties." Although this claim maybe uncertain, one assumes defendant claims that there was no evidence of a privity of contract between the parties as creditor and debtor, meaning there was no contractual obligation between plaintiff and defendant. The RFAs detailed above wholly undermine this claim, underscored by RFA 11, which provides that any affirmative defenses "asserted in this matter lack merit and evidentiary support." Defendant at no point has demanded a demanded a bill of particulars.[2] And defendant has not filed opposition. All elements of a breach of contract have been established based on the judicially noticed documents, and no defenses articulated in the answer can be advanced at this juncture as a matter of law given the RFAs deemed as admitted. (See, e.g., *Va. G. v. ABC Unified School Dist*. (1993) 15 Cal.App.4th 1848, 1852.)

Accordingly, the court grants the motion for judgment on the pleadings without leave to amend, and awards plaintiff damages of $5,717.04. The court will sign the proposed order as submitted. Defendant indicates in the proposed order that it will submit "judgment paperwork" "forthwith upon the granting of Plaintiff's motion." This leaves much unsaid. What is clear, however, is that defendant has not asked for costs and/or fees to date, and at this stage costs/fees

[2] Code of Civil Procedure section 454 provides that a debtor may request a bill of particulars, which is a detailed account of the transactions and the nature, following a request by debtor.

can only be sought via ***post-judgment*** motions pursuant to California Rules of Court, rules 3.1700 [fees] and 3.1702 [costs]. Plaintiff should explain how it foresees the case proceeding after today's grant of the motion for judgment on the pleadings, and if fees and costs are being sought, plaintiff should first offer a proposed judgment and then file the appropriate post-judgment motions within the appropriate deadlines.

The parties are directed to appear at the hearing either in person or by Zoom.