DEPARTMENT 37 LAW AND MOTION RULINGS

Case Number: 20STCV31700 **Hearing Date:** February 24, 2021 **Dept:** 37

HEARING DATE:	February 24, 2021
CASE NUMBER:	20STCV31700
CASE NAME:	*Judith Sheindlin v. Richard Lawrence, et al.*
MOVING PARTIES:	Defendants, Richard Lawrence and Rebel Entertainment Partners, Inc.
OPPOSING PARTY:	Plaintiff, Judith Sheindlin
TRIAL DATE:	None
PROOF OF SERVICE:	OK

MOTION:	Defendants' Demurrer to the Complaint
OPPOSITION:	February 9, 2021
REPLY:	February 17, 2021

TENTATIVE:	Defendants' demurrer is sustained. Plaintiff is granted 30 days leave to amend. Defendants are to give notice.

Background

This action is in connection with Defendants, Richard Lawrence ("Lawrence") and Rebel Entertainment Partners, Inc.'s ("Rebel") allegedly wrongful collection of fees from daytime television series "Judge Judy." (the "Series") Plaintiff, Judith Sheindlin, p/k/a Judge Judy ("Plaintiff") alleges that Defendants are not entitled to fees from the Series because Defendants only work was to represent non-writing producers, Kaye Switzer ("Switzer") and Sandi Spreckman. ("Spreckman") Plaintiff alleges that Lawrence only obtained packaging fees in connection with the Series despite not representing a package because he "sold out his clients in order to gain a lucrative advantage" in the form of an allegedly fraudulent agreement (the "ARL Agreement") with the Series' syndicator, Big Ticket Television, Inc. ("Big Ticket") According to the Complaint, Big Ticket entered into the ARL Agreement with Abrams Rubaloff & Lawrence ("ARL") in 1995, and Rebel is the successor to ARL.

Plaintiff further alleges that all payments to Defendants for over 24 years, totaling more than $22,000,000 are wrongful because such payments are deducted from Plaintiff's share of the Adjusted Gross Receipts and should not be made due to Defendants' allegedly never having been entitled to fees.

Plaintiff's Complaint alleges the following causes of action: (1) declaratory relief, (2) violation of Business and Professions Code § 17200, *et. seq.*, (3) unjust enrichment.

Defendants now demur to all causes of action of the Complaint. Plaintiff opposes the demurrer.

Request for Judicial Notice

Defendants request that the court take judicial notice of the following in support of their demurrer:

1. The Fourth Amended Complaint for Damages of Plaintiffs Kaye Switzer and Sandi Spreckman in Switzer, et al. v. Big Ticket Pictures, Inc., et al., Los Angeles Superior Court Case No. BC179394, filed in this Court on September 24, 1998. (Exhibit 1);

2. The Request for Dismissal with Prejudice filed on October 23, 2000 by Plaintiffs Kaye Switzer and Sandi Spreckman in Switzer, et al. v. Big Ticket Pictures, Inc., et al., Los Angeles Superior Court Case No. BC179394. (Exhibit 2);
3. The Declaration of Benjamin O. Aigboboh in Support of Defendants' Motion for Summary Adjudication filed in this Court on August 11, 2017 in Rebel Entertainment Partners, Inc. v. Big Ticket Television, Inc., et al., Los Angeles Superior Court Case No. BC179394. (Exhibit 3);
4. The Unredacted Compendium of Evidence in Support of Defendants' Motion for Summary Adjudication filed in this Court on August 11, 2017 in Rebel Entertainment Partners, Inc. v. Big Ticket Television, Inc., et al., Los Angeles Superior Court Case No. BC179394. (Exhibit 4);
5. The Court Ruling on Defendants' Motion for Summary Adjudication filed in this Court on April 3, 2018 in Rebel Entertainment Partners, Inc. v. Big Ticket Television, Inc., et al., Los Angeles Superior Court Case No. BC179394. (Exhibit 5);
6. The First Amended Complaint for Damages of Plaintiffs Kaye Switzer and The Sandi Spreckman Trust in Switzer, et al. v. Big Ticket Pictures, Inc., et al., Los Angeles Superior Court Case No. BC690564. (Exhibit 6).

Plaintiff objects to this request on the grounds that the court may only take judicial notice of the existence of court records, not of the truth of any factual asserting appearing within. Plaintiff's objection is noted.

Defendants' request is granted. The existence and legal significance of these documents is a proper matter for judicial notice. (Evidence Code § 452, subds. (d), (h).)

Discussion[1]

I. Legal Authority

A demurrer is an objection to a pleading, the grounds for which are apparent from either the face of the complaint or a matter of which the court may take judicial notice. (Code Civ. Proc., § 430.30, subd. (a); see also *Blank v. Kirwan* (1985) 39 Cal.3d 311, 318.) The purpose of a demurrer is to challenge the sufficiency of a pleading "by raising questions of law." (*Postley v. Harvey* (1984) 153 Cal.App.3d 280, 286.) The court "treat[s] the demurrer as admitting all material facts properly pleaded, but not contentions, deductions or conclusions of fact or law. . . ." (*Berkley v. Dowds* (2007) 152 Cal.App.4th 518, 525 (*Berkley*).) "In the construction of a pleading, for the purpose of determining its effect, its allegations must be liberally construed, with a view to substantial justice between the parties." (Code Civ. Proc., § 452; see also *Stevens v. Sup. Ct.* (1999) 75 Cal.App.4th 594, 601.) "When a court evaluates a complaint, the plaintiff is entitled to reasonable inferences from the facts pled." (*Duval v. Board of Trustees* (2001) 93 Cal.App.4th 902, 906.)

The general rule is that the plaintiff need only allege ultimate facts, not evidentiary facts. (*Doe v. City of Los Angeles* (2007) 42 Cal.4th 531, 550.) "All that is required of a plaintiff, as a matter of pleading, even as against a special demurrer, is that his complaint set forth the essential facts of the case with reasonable precision and with sufficient particularity to acquaint the defendant with the nature, source and extent of his cause of action." (*Rannard v. Lockheed Aircraft Corp*. (1945) 26 Cal.2d 149, 156-157.) "[D]emurrers for uncertainty are disfavored and are granted only if the pleading is so incomprehensible that a defendant cannot reasonably respond." (*Mahan v. Charles W. Chan Ins. Agency, Inc.* (2017) 14 Cal.App.5th 841, 848, fn. 3, citing *Lickiss v. Fin. Indus. Regulatory Auth.* (2012) 208 Cal.App.4th 1125, 1135.) In addition, even where a complaint is in some respects uncertain, courts strictly construe a demurrer for uncertainty "because ambiguities can be clarified under modern discovery procedures." (*Khoury v. Maly's of California, Inc*. (1993) 14 Cal.App.4th 612, 616.)

Demurrers do not lie as to only parts of causes of action where some valid claim is alleged but "must dispose of an entire cause of action to be sustained." (*Poizner v. Fremont General Corp.* (2007) 148 Cal.App.4th 97, 119.) "Generally it is an abuse of discretion to sustain a demurrer without leave to amend if there is any reasonable possibility that the defect can be cured by amendment." (*Goodman v. Kennedy* (1976) 18 Cal.3d 335, 349.

I. Analysis

A. First Cause of Action: Declaratory Relief

California Courts have recognized that "[t]he existence of an 'actual controversy relating to the legal rights and duties of the respective parties,' suffices to maintain an action for declaratory relief."¿ (*Ludgate Ins. Co. v. Lockheed Martin Corp.*¿(2000) 82 Cal.App.4th 592, 605 (*Ludgate*).)¿ "Any person interested under a written instrument, ... or under a contract, or who desires a declaration of his or her rights or duties with respect to another, or in respect to, in, over or upon property,¿ ... may, in cases of actual controversy relating to the legal rights and duties of the respective parties, bring an original action or cross-complaint in the superior court ... for a declaration of his or her rights and duties in the premises, including a determination of

any question of construction or validity arising under the instrument or contract."¿ (*Ibid.*, quoting Code Civ. Proc., § 1060.) ¿¿¿

"Generally, an action in declaratory relief will not lie to determine an issue which can be determined in the underlying tort action.¿¿'The declaratory relief statute should not be used for the purpose of anticipating and determining an issue which can be determined in the main action.¿¿The object of the statute is to afford a new form of relief where needed and not to furnish a litigant with a second cause of action for the determination of identical issues.' "¿ (*Cal. Ins. Guar.¿Ass'n¿v. Sup. Ct.¿*(1991) 231 Cal.App.3d 1617, 1623-1624.)¿¿¿

Defendants first contend that Plaintiff's first cause of action is insufficiently pled because Plaintiff lacks standing to attack a contract to which she is not a party. (Demurrer, 2-4.) Defendants cite to *Fladeboe v. American Isuzu Motors Inc.* (2007) 150 Cal.App.4th 42, 54-55 (*Fladeboe*) for the argument that a Plaintiff lacks standing to sue for declaratory relief on a contract to which she is not a party.

In *Fladeboe*, Plaintiffs, an individual and various entities, alleged that Defendant, American Isuzu Motors, Inc. unreasonably withheld consent to Plaintiffs' request to transfer an Isuzu dealership. (*Fladeboe, supra,* 150 Cal.App.4th at 48.) The trial court found that none of the Plaintiffs had standing to seek declaratory relief against Isuzu arising out of its alleged refusal to consent to transfer the dealership. (*Id.*) The Court of Appeal concluded that the individual Plaintiff, a shareholder, had no standing to seek declaratory relief on behalf of the corporation other than in a derivative action. (*Id.* at 55.) However, the Court of Appeal found that two of the other entity Plaintiffs had standing, since one was the proposed transferee of the dealership and stood to benefit, while the other's status as a dissolved corporation did not mean that it lacked standing to assert a declaratory relief action. (*Id.*) Thus, *Fladeboe* stands for the proposition that Plaintiffs do not have standing to bring a declaratory relief action if they were not an intended beneficiary of the contract at issue in that action.

In opposition to Defendants' first argument, Plaintiff contends that she has standing to assert a declaratory relief action because the Complaint alleges that she suffered an "actual injury" as a result of the ARL Agreement or that she is "beneficially interested in the controversy." (Opposition, 5.) Plaintiff cites to *City of San Diego v. San Diego NORML*, (2008) 165 Cal.App. 4th 798, 814 (*San Diego*) for this argument. Plaintiff's reliance on *San Diego* is misplaced, as *San Diego* examined whether government entities had standing to challenge state enactments and if so, the extent of their standing. (*Id.*) Such facts are inapposite to the issues presented in this motion.

In reply, Defendants contend that the holdings in *Schauer v. Mandarin Gems of Cal., Inc.* (2005) 125 Cal.App.4th 949 (*Schauer*) and *Lafferty v. Wells Fargo Bank* (2013) 213 Cal.App.4th 545 (*Lafferty*) are fatal to Plaintiff's arguments that she has standing to bring a declaratory relief action because they stand for the proposition that Plaintiff may not bring a declaratory relief action regarding a contract to which she is not a party or third party beneficiary.

In *Lafferty*, the Court of Appeal held that buyers of a vehicle lacked standing to state a declaratory relief cause of action based on a contract between a dealer and a bank, because the contract was not made for the benefit of the buyer. (*Id.* at 569-570.) In *Schauer,* the court held that the plaintiff was the third-party beneficiary of a contract to purchase and engagement ring, and only because of that did she have standing to bring the actions. (125 Cal.App.4th at 958-959.)

Defendants next contend that Plaintiff's first cause of action is time-barred because the four-year statute set forth in Code of Civil Procedure section 343 applies to this action, and the ARL agreement at issue was entered into 24 years ago. (Demurrer, 4-5.) Defendants cite to various cases, including *Costa Serena Owners Coalition v. Costa Serena Architectural Com.* (2009) 175 Cal.App.4th 1175, 1195 (*Costa*) for this argument.

In *Costa*, the Court of Appeal concluded that Code of Civil Procedure section 343's four-year catch-all statute of limitations applies because it has previously been applied to actions to set aside instruments for a variety of reasons. (*Id.* at 1195.) The Court of Appeal concluded the statute of limitations had run on Plaintiffs' challenge to amendments to the Declaration of Restrictions governing their development community, as the recording of these amendments triggered the statute of limitations period to begin running. (*Id.* at 1196.)

In opposition to Defendants' second argument, Plaintiff contends that the statute of limitations has not run because the Complaint alleges that harms to Plaintiff are ongoing and continuing through the present day. (Opposition, 6-7.)

Third, Defendants contend that Plaintiff's first cause of action is insufficiently pled because Plaintiff has failed to join indispensable parties. (Demurrer, 5-6.) Defendants cite to *Martin v. City of Corning* (1972) 25 Cal.App.3d 165 (*Martin*) for this argument. In that case, the court held that the trial court did not have jurisdiction over the action due to the failure to name an indispensable party—one of the parties to the contract in question.

Fourth, Defendants contends that Plaintiff's first cause of action is insufficiently pled because it is barred by the doctrines of release and preclusion. (Demurrer, 6-7.) According to Defendants, Plaintiff cannot bring this cause of action because it is not personal to her and is instead based on rights belonging to either Big Ticket, or Switzer and Spreckman. (*Id.*)

Finally, Defendants contend that the first cause of action is insufficiently pled because it fails to allege a cause of action for declaratory relief against Lawrence. However, Defendants' argument fails, as the first cause of action is alleged against "all defendants," including Lawrence.

Here, the Complaint alleges that the ARL Agreement is wrongful, and that Plaintiff is harmed due to Defendants being paid fees because the fees are deducted from her share of the Adjusted Gross Receipts for the Series. (see Complaint, ¶¶ 6, 18-20, 23.) Further, the Complaint admits that Plaintiff was never represented by Defendants and had no business relationship with Lawrence. (Complaint, ¶ 17.) Additionally, the Complaint specifically alleges that the ARL Agreement is wrongful because it grants Defendants packaging fees when they "never packaged the Series," and that therefore, there is "no basis to have any portion of the packaging fee deducted" against Plaintiff's profit participation. (Complaint ¶ 23.) The Complaint thus seeks a determination that the ARL Agreement is wrongful. (Complaint ¶ 24.) But Plaintiff is not a party of the ARL Agreement and is not a third-party beneficiary of it.

Therefore, Plaintiff has not alleged facts showing that she has standing to bring this cause of action. Thus, Plaintiff cannot bring cause of action seeking a determination that the ARL Agreement is wrongful.

For these reasons, Defendants' demurrer is sustained.

A. Second Cause of Action: Violation of Business and Professions Code § 17200

Business and Professions Code section 17200 ("UCL") prohibits "unfair competition," which is defined to include "any unlawful, unfair or fraudulent business act or practice" and "unfair, deceptive, untrue or misleading advertising" and any act prohibited by business and professions code section 17500. A cause of action under the UCL must be stated with "reasonable particularity." (*Gutierrez v. Carmax Auto Superstores California* (2018) 19 Cal.App.5th 1234, 1261.)

The UCL prohibits: (1) unlawful conduct; (2) unfair business acts or practices; (3) fraudulent business acts or practices; (4) unfair, deceptive, untrue or misleading advertising; and (5) any act prohibited under sections 17500-77.5.¿ UCL actions based on "unlawful" conduct may be based on violations of other statutes.¿ (See¿*Klein v. Chevron U.S.A., Inc*. (2012) 202 Cal.App.4th 1342, 1383.) Private citizens have standing to bring an action under either Business and Professions Code section 17200 if they have "suffered injury in fact and ha[ve] lost money or property" as a result of unfair competition. (*Kwikset Corp v. Superior Court* (2011) 51 Cal.4th 310, 320 (*Kwikset*)) A party who has lost money or property generally has suffered injury in fact. (*Id.* at 322.)

Defendants contend that the second cause of action is insufficiently pled because Plaintiff has not alleged any business practice by Defendants or that Plaintiff is an "actual direct victim" entitled to restitution under the UCL. (Demurrer, 8-11.) Specifically, Defendants' contend that the UCL claim improperly seeks to "disgorge" Defendants' "ill-gotten gains," which is not permitted under the UCL. (*Id.*)

In opposition, Plaintiff contends that the second cause of action is sufficiently pled because the Complaint alleges an ongoing pattern of conduct over 20 years, which constitutes a business practice. (Opposition, 11.) Additionally, Plaintiff contends that the Complaint sufficiently alleges a claim for restitution because it alleges that she has a vested interest in money that was wrongfully given to Defendants. (Opposition, 11.) Plaintiff cites to *Korea Supply Co. v. Lockheed Martin Corp.*, (2003) 29 Cal.4th 1134, 1149 (*Korea Supply*) for this argument.

In *Korea Supply*, the California Supreme Court found that disgorgement of profits could not be properly recovered as restitution under the UCL because Plaintiff did not have an ownership interest in the money it sought to recover. (*Id.*) Specifically, the *Korea Supply* court noted that the expected commission in this case is merely a "contingent interest," since payment was expected if the contract at issue was awarded. (*Id.* at 1149-1150.) As such, the court concluded that allowing Plaintiff to recover relief under the UCL in this situation would be contrary to the language and history of the UCL and held that "nonrestitutionary disgorgement of profits is not an available remedy in an individual action under the UCL." (*Id.* at 1152.)

Here, the Complaint alleges that "Defendants, and each of them" engaged in "unlawful and/or unfair business practices" by "knowingly and willfully obtaining packaging fees for the Series" without providing packaging services. (Complaint ¶ 27.) Additionally, "Defendants" allegedly engaged in a "malicious and unlawful breach of fiduciary duty" to Spreckman and Switzer. (*Id.*) Further, the Complaint alleges that it was "unfair and unjust" for Defendants to receive packaging fees.

(Complaint ¶ 31.) The Complaint also alleges that Defendants receiving packaging fees is an intrusion on Plaintiff's rights because such fees are deducted from Plaintiff's profit participation. (Complaint ¶ 24.)

The court finds the second cause of action insufficiently pled. Pursuant to the guidance from *Kwikset*, Plaintiff has not alleged that she suffered injury in fact as a result of Defendants' actions or alleged receipt of packaging fees. Additionally, Plaintiff's alleged injury due to Defendants' receipt of packaging fees is more like the Plaintiff's expected commission in *Korea Supply*, as the Complaint alleges that Defendants' fees were deducted from Plaintiff's profit participation. Thus, the Complaint does not allege that Plaintiff had a vested interest in the fees paid to Defendants, but merely a contingent interest. Such allegations are insufficient to state a cause of action for violation of the UCL.

For these reasons, Defendants' demurrer to the second cause of action is sustained.

A. Third Cause of Action: Unjust Enrichment

Under California law, unjust enrichment is not a cause of action. Rather, it is a general principle underlying various doctrines and remedies, including quasi-contract. (*Jogani v. Superior Court* (2008) 165 Cal.App.4th 901, 911 (*Jogani*).) It is the law that "when one obtains a benefit which may not be justly retained, unjust enrichment results, and restitution is in order." (*Marina Tenants Ass'n v. Deauville Marina Dev. Co.* (1986) 181 Cal.App.3d 122, 134 (*Marina*).) Although there is no cause of action titled "unjust enrichment," California Courts have allowed recovery for an unjust enrichment claim for restitution of an underlying wrong. (See *Durell v. Sharp Healthcare* (2010) 183 Cal.App.4th 1350, 1370; see also *Melchior*, 106 Cal.App.4th at p. 793 [recognizing that unjust enrichment "is synonymous with restitution"].)

Defendants' contend that Plaintiff's third cause of action is insufficiently pled because unjust enrichment is not a cause of action. (Demurrer, 14-15.) In opposition, Plaintiff contends that there is a split regarding whether unjust enrichment is considered a cause of action, and therefore, the court should exercise its discretion to find this cause of action valid. (Opposition, 13-14.)

In reply, Defendants contend that the court should find Plaintiff's unjust enrichment cause of action insufficiently pled because Plaintiff admits that she never had any business relationship with Defendants and thus, should not be permitted to seek restitution through an unjust enrichment claim. (Reply, 10.)

Plaintiff is correct that some California courts have allowed recovery for an unjust enrichment claim in certain factual situations. However, the Complaint alleges that Plaintiff was never represented by Defendants and never had any business relationship with Lawrence, or anyone at ARL. (Complaint ¶ 17.) Additionally, as discussed above, the Complaint alleges that Plaintiff is damaged by Defendants receiving packaging fees because such fees are deducted from her profit participation. The court previously found that such allegations were insufficient to support a claim for restitution under the UCL. As such, because the Complaint fails to state a claim for restitution, the court also finds that the Complaint's third cause of action is insufficiently pled.

For these reasons, Defendants' demurrer to the third cause of action is sustained.

Conclusion

Defendants' demurrer is sustained. Plaintiff is granted 30 days leave to amend. Defendants are to give notice.

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[1] Defendants submit the declaration of their counsel, Sean M. Hardy ("Hardy") to demonstrate that they have fulfilled their statutory meet and confer obligations prior to filing the instant demurrer. Hardy attests that on September 28, 2020 and October 9, 2020, he met and conferred with Plaintiff's counsel by telephone regarding the arguments raised in the instant demurrer but that the parties were unable to reach an agreement. (Hardy Decl. ¶¶ 3-4.) Additionally, Hardy attests that the parties stipulated to extend Defendants' deadline to respond to the Complaint to November 5, 2020 during their meet and confer telephone conversations. (Hardy Decl. ¶ 4.) The Hardy Declaration is sufficient for purposes of Code of Civil Procedure, section 430.41.