

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

Civil Division

Central District, Stanley Mosk Courthouse, Department 58

21STCV23999

**SCOTT DOUGLAS ORA vs HOLLYWOOD CHAMBER OF
COMMERCE, et al.**

February 16, 2022

9:30 AM

Judge: Honorable Upinder S. Kalra
Judicial Assistant: M.F. Lopez
Courtroom Assistant: R.E. Lee

CSR: None
ERM: None
Deputy Sheriff: None

APPEARANCES:

For Plaintiff(s): Scott Douglas Ora - In Pro Per (via LACC)

For Defendant(s): VIOLAINE BRUNET (via LACC)

NATURE OF PROCEEDINGS: Hearing on Demurrer - with Motion to Strike (CCP 430.10)

Due to the unavailability of Judge John P. Doyle, the matter is called for hearing by Judge Upinder S. Kalra in Department 58.

The matter is called for hearing.

The Court gives the following tentative ruling:

*****DEMURRER WITH MOTION TO STRIKE**

BACKGROUND:

Plaintiff Scott Douglas ("Plaintiff") filed a complaint against the Hollywood Chamber of Commerce, the Hollywood Chamber's Board of Directors, the Hollywood Walk of Fame, and the Walk of Fame Committee ("Defendants") for a breach of contract claim regarding a posthumous star on the Hollywood Walk of Fame awarded in 1990. (Complaint ¶ 26.) The complaint alleges two causes of action: 1) Breach of Contract and 2) Negligence. (Complaint p. 21 and 23.)

Timeline of important events:

Application made by Plaintiff's grandmother – 1988

Death of Plaintiff's grandmother -- May 28, 1989

Letter awarding the star sent to Plaintiff's grandmother -- June 18, 1990

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The complaint alleges that a contract was formed after an application for a star was sent in by

LEGAL STANDARD

A demurrer for sufficiency tests whether the complaint states a cause of action. (Hahn v. Mirda (2007) 147 Cal.App.4th 740, 747.) When considering demurrers, courts read the allegations liberally and in context. In a demurrer proceeding, the defects must be apparent on the face of the pleading or via proper judicial notice. (Donabedian v. Mercury Ins. Co. (2004) 116 Cal.App.4th 968, 994.) A demurrer tests the pleadings alone and not the evidence or other extrinsic matters. Therefore, it lies only where the defects appear on the face of the pleading or are judicially noticed. (CCP § 430.30, 430.70.) At the pleading stage, a plaintiff need only allege ultimate facts sufficient to apprise the defendant of the factual basis for the claim against him. (Semole v. Sansoucie (1972) 28 Cal. App. 3d 714, 721.) A “demurrer does not, however, admit contentions, deductions or conclusions of fact or law alleged in the pleading, or the construction of instruments pleaded, or facts impossible in law.” (S. Shore Land Co. v. Petersen (1964) 226 Cal.App.2d 725, 732 [internal citations omitted].)

DISCUSSION

Breach of Contract

Plaintiff alleges his grandmother made an offer to contract to Defendants by submitting an application in 1988. (Complaint p. 17.) Plaintiff further alleges that the offer was accepted by a letter sent on June 18, 1990. (Complaint p. 19.) However, Plaintiff also states that his grandmother passed away on May 28, 1989. (Complaint p. 18.) CCP §1587(d) states that an offer is revoked by the death of the offeror. Thus, assuming Defendants did attempt to accept the contract in 1990, the Plaintiff’s grandmother’s offer had already been revoked as of May 28, 1989. Defendants have thus correctly pointed out that Plaintiff’s have failed to identify a valid contract exists.

Further, Plaintiff alleges that a contract was formed, that Defendant violated the contract. However, an examination of the complaint reveals that if a contract existed at all, it was Plaintiff who breached the contract. Plaintiff alleges that a contract was formed when after Plaintiff’s grandmother submitted a nomination packet to Defendants in 1988 (offer), Defendant accepted the offer by sending a letter back stating the nomination was accepted in 1990 (acceptance.) (Complaint p. 17-19.)

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However, the complaint further states that Defendants' purported acceptance in 1990 came with the following two conditions: 1) The recipient pay \$4,000 dollars, and 2) that an award ceremony be scheduled by the recipient within five years of the award, or the application must be resubmitted. (Complaint p. 4.) Plaintiff alleges that he completed said requirement in 2018. As Plaintiff alleges that he completed his end of the bargain 13 years after the deadline of 1995 (five years after the award was granted), it was in fact Plaintiff that breached the contract per their complaint. Plaintiff's remedy is also luckily included in the terms of his complaint: resubmit an application. As Defendants correctly point out, Defendants' acceptance was conditioned on payment and scheduling of a ceremony. A lack of performance on those requirements excuses a lack of performance by Defendants.

Plaintiff states that because he only discovered the acceptance in 2017, California's discovery rule should delay tolling of the statute of limitations until his cause of action was discovered. However, no such rule exists delaying Plaintiff's need to perform on their obligations under the contract.

Finally, as stated above, Plaintiff's theory as to when the contract was accepted by Defendants came with conditions (\$4,000 and scheduling a ceremony.) (Id. at p. 4.) A "acceptance" with conditions is not an acceptance, but an offer. (See Roth v. Malson (1998) 67 Cal.App.4th 552, 556-557.) "A qualified acceptance is a new proposal." (CCP § 1585.) Thus, as Defendants point out, no contract was formed on the sending of the 1990 letter, but rather at most an offer was made. As Plaintiff did not schedule a ceremony within 5 years or pay the fee, as the "offer" required, Plaintiff never accepted the offer and no contract was ever formed.

For the above three reasons, Plaintiff's breach of contract claim has failed to allege a claim on which the Court can grant relief, and the Demurrer is SUSTAINED with regard to breach of contract with leave to amend the complaint.

Negligence

Plaintiff further alleges that Defendants acted negligently in not attempting to re-send the letter informing Plaintiff's grandmother of the award in 1990. (Complaint p. 23-25.) Negligence claims require a special relationship between the parties in which a duty is owed to the injured party. (Bily v. Arthur Young & Co. (1992) 3 Cal.4th 370, 398.) Plaintiff alleges that a duty was created by the formation of the contract. (Complaint p. 23-25.) However, as discussed above, no such contract was formed, meaning that Plaintiff has alleged no duty for Defendants to violate. Thus, the demurrer is SUSTAINED with regard to negligence for failure to state a cause of

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action with leave to amend.

Permanent Injunctive Relief

Plaintiffs also allege a third cause of action titled “permanent injunctive relief”. (Complaint, p. 31-32.) However, Plaintiffs describe this cause of action as arising from Defendant “failing to fulfill its obligation in accordance with the agreement”. (Complaint, p. 31.) Thus, this “cause of action” is actually a request for a type of remedy (injunctive relief) for the alleged breach of contract. As there does not appear to have been a contract, there is no legal theory by which Plaintiffs may obtain injunctive relief.

CONCLUSION

The Court SUSTAINS the demurrer with 30 days leave to amend.

The matter is argued and the tentative ruling becomes the order of the Court.

The defendant's Demurrer - with Motion to Strike (CCP 430.10) filed by Hollywood Chamber of Commerce on 01/10/2022 is Sustained with Leave to Amend.

Moving party is to give notice.