

Daniel Ruiz v. Alix Wexler, 17CV-0422

Hearing: Demurrer

Date: January 18, 2018

Plaintiff Daniel Ruiz (“Plaintiff”) filed this action on August 7, 2017 against Defendants Alix Wexler, Jessica Rocha (“Rocha”) and Donald Ruiz. Plaintiff filed his first amended complaint on October 18, 2017 (“FAC”).¹ Plaintiff’s FAC pleads two causes of action: general negligence and intentional tort. Both causes of action are based on allegations that Defendants Rocha, Ruiz and Wexler conspired to give false oral testimony at a hearing in March 2017 in the family law department of this Court, in order to deny Plaintiff his parental rights and due process of law, with the intention of gaining child custody for Rocha.

Wexler and Ruiz have both filed general denials to the FAC. Rocha demurs here to the FAC. Rocha’s notice of demurrer states that it is made on the ground that the causes of action fail to state sufficient facts to constitute causes of action. Rocha’s points and authorities argue that the causes of action for general negligence and intentional tort fail to state facts sufficient to constitute causes of action and they fail to allege the required elements with the required specificity. She further argues that the facts of the complaint contradict each other, making it impossible to determine what the complaint actually is. She further argues that the FAC references exhibits which were not attached to the complaint.² Plaintiff fails to oppose the demurrer.

Rocha argues that the FAC is too uncertain. A demurrer for uncertainty is disfavored and only appropriate where the complaint is so bad that the defendant cannot reasonably respond. (*Khoury v. Maly’s of Calif. Ins.* (1993) 14 Cal.App.4th 612.) In this instance, the basic facts that Plaintiff alleges are sufficiently clear. However, it is unclear whether the FAC can state a cause of action based upon the facts alleged. There is no civil cause of action for perjury or conspiracy to commit perjury. (*Taylor v. Bidwell* (1884) 65 Cal. 489; *Pollock v. Univ. of S. California* (2003) 112 Cal.App.4th 1416, 1429.) To the extent the complaint is attempting to allege fraud, Rocha is correct that it is not pleaded with sufficient specificity.

On December 21, 2017, this Court held that the unopposed demurrer would be sustained without leave to amend unless Plaintiff could show that there is a reasonable possibility

¹ In the FAC, Donald Ruiz is no longer named as a defendant, but instead Charles Ruiz is named.

² As to Rocha’s argument that the FAC fails to attach exhibits, the FAC states at the beginning that it includes six pages including exhibits, and the FAC is in fact six pages long. Moreover, the lack of exhibits is not a basis on which to sustain the demurrer.

that he can amend the complaint to state a viable cause of action against Defendants. The hearing was continued until January 18, 2017, to give Plaintiff time to review the tentative ruling and address the issues within. Plaintiff was to file a brief by January 8 showing how he could amend the complaint. Rocha's reply, if any, was due by January 12. Plaintiff failed to file a brief. Rocha's demurrer is sustained without leave to amend.