

Susan Warren v. Tamara Z. Righetti

17LCP0556

Re: Motion to Strike/Quash Unlawful Detainer Complaint

Date: November 7, 2017

Susan Warren, in her capacity as trustee of the Susan L. Warren Family Trust (Plaintiff), brings this unlawful detainer action against her daughter Tamara Righetti (Defendant) to gain possession of 1895 San Simeon Creek Road in Cambria. Defendant's oral month-to-month tenancy with Plaintiff was terminated based upon a 60-day notice to quit.

Defendant now moves to quash the summons and strike the complaint for lack of summary jurisdiction. Pursuant to CCP §418.10, a defendant in an unlawful detainer proceeding may move to quash the service of summons on the ground the Court lacks jurisdiction over the defendant. Here, Defendant appears to assert that the 60-day notice to quit served on her was defective and secondarily that service of the summons was invalid.

As to the notice to quit Defendant argues it is invalid because it was served by Plaintiff in her capacity as manager of Rancho Tres W. LLC, which is suspended. Defendant also contends the 1895 San Simeon Creek address is not a valid address for the property. Defendant claims the property is actually owned by the Maria Warren Revocable Trust whose trustee is Clyde T. Warren.

Typically, motions to quash are limited to the issue of whether the defendant was properly served with the summons and complaint. Despite Defendant's titling of the motion as a motion to quash she does not contend that she was not served with the summons and complaint, the motion is essentially a demurrer as it is challenging the validity of the notice to quit and certain allegations in the complaint. As such, a demurrer only tests the sufficiency of the pleading and cannot challenge the truthfulness of the allegations. (*Serrano v. Priest* (1971) 5 Cal.3d 584, 591) Here, in support of the motion Defendant submits her declaration which amounts to "speaking demurrer."

The motion to quash/strike is denied as the complaint alleges the necessary facts to state a valid claim for unlawful detainer and any alleged defects are not on the face of the complaint or can be judicially noticed. Defendant shall file her answer within 5 days of service of notice of the order.