SUPERIOR COURT, STATE OF CALIFORNIA
COUNTY OF SANTA CLARA

Department 16
(Dept 16 is now hearing cases that were formerly in Dept 2)
Honorable Amber Rosen, Presiding

Felicia Samoy, Courtroom Clerk
191 North First Street, San Jose, CA 95113
Telephone: 408.882.2270

DATE: 01-16-24 TIME: 9 A.M.

All those intending to speak at the hearing are requested to appear by video.

To contest the ruling, call (408) 808-6856 before 4:00 P.M.
Make sure to let the other side know before 4:00 P.M. that you plan to contest the ruling, in accordance with California Rule of Court 3.1308(a)(1) and Local Rule 8.E.
The prevailing party shall prepare the order unless otherwise ordered. (See California Rule of Court 3.1312.)

TO CONTEST THE RULING: Before 4:00 p.m. today you must notify the:

(1) Court by calling (408) 808-6856 and
(2) Other side by phone or email that you plan to appear and contest the ruling
(California Rule of Court 3.1308(a)(1) and Local Rule 8.E.)

TO APPEAR AT THE HEARING: The Court strongly prefers in person appearances. If you must appear virtually, please use video. To access the link, click on the below link or copy and paste into your internet browser and scroll down to Department 16.
https://www.scscourt.org/general_info/ra_teams/video_hearings_teams.shtml

TO SET YOUR NEXT HEARING DATE: You no longer need to file a blank notice of motion to obtain a hearing date. Phone lines are now open for you to call and reserve a date before you file your motion. If moving papers are not filed within 5 business days of reserving the date, the date will be released for use in other cases. Where to call for your hearing date: 408-882-2430 When you can call: Monday to Friday, 8:30 am to 12:30 pm

FINAL ORDERS: The prevailing party shall prepare the order unless otherwise ordered. (See California Rule of Court 3.1312.)

COURT REPORTERS: The Court no longer provides official court reporters. If any party wants a court reporter, the appropriate form must be submitted. See court website for policy and forms.

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LINE #	CASE #	CASE TITLE	RULING
LINE 1	22CV397744 Hearing: Demurrer	577 CAMPBELL LLC vs YIN MIN LI et al	See Tentative Ruling. Court shall prepare the final order.
LINE 2	22CV397744 Hearing: Demurrer	577 CAMPBELL LLC vs YIN MIN LI et al	See Tentative Ruling. Court shall prepare the final order.
LINE 3	22CV408993 Motion: Quash	JOSEPH DOE 7DC vs DOE 1 et al	Entry of Dismissed regarding moving party. Off Calendar.
LINE 4	19CV343789 Motion: Summary Judgment/Adjudication	Richard Pierce et al vs RAINCROSS FUEL & OIL, INC. et al	See Tentative Ruling. Moving Defendant shall submit the final order.

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The prevailing party shall prepare the order unless otherwise ordered. (See California Rule of Court 3.1312.)

LINE 5	21CV382253 Motion: Compel	Veronica Elliott vs Santa Clara Valley Transportation Authority	Notice appearing proper and good cause appearing, Defendant's unopposed motion to compel is GRANTED. Plaintiff shall provide verified, code-compliant responses and pay to Defendant $668 in sanctions, both within 20 days of the final order. Defendant shall submit the final order.
LINE 6	23CV416198 Motion: Admissions Deemed Admitted	GCFS, INC. vs THOMAS BURG et al	Notice appearing proper and good cause appearing, Plaintiff's unopposed motion to deem admissions admitted is GRANTED. Defendant shall pay to Defendant $460 in sanctions, within 20 days of the final order. Plaintiff shall submit the final order.
LINE 7	16CV291294 Hearing: Claim of Exemption	Federated Mutual Insurance Company vs Ronald Spotts et al	Based on the papers, Debtor must pay $100 per pay period to Creditor. Creditor shall submit the final order.
LINE 8	22CV403486 Hearing for ADR Continuance	Michael Nikitas vs Financial Indemnity Company	Plaintiff has cited no legal authority in support of his motion. The motion is DENIED. Defendant shall submit the final order.

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DATE: 01-16-24 TIME: 9 A.M.

All those intending to speak at the hearing are requested to appear by video.

To contest the ruling, call (408) 808-6856 before 4:00 P.M.
Make sure to let the other side know before 4:00 P.M. that you plan to contest the ruling, in accordance with California Rule of Court 3.1308(a)(1) and Local Rule 8.E.
The prevailing party shall prepare the order unless otherwise ordered. (See California Rule of Court 3.1312.)

LINE 9	23CV412721 Hearing: Petition Compel Arbitration	Brandon Byrd vs Solaredge Technologies, Inc.	Notice appearing proper and good cause appearing, Defendant's unopposed motion to compel arbitration and stay the case pending arbitration is GRANTED. Defendant shall submit the final order.
LINE 10	23CV414023 Motion: Stay	TEKNATIO INC vs ECONOSOFT, INC.	See Tentative Ruling. Defendant shall submit the final order.
LINE 11	23CV418525 Hearing: Petition Compel Arbitration	Michael Flores vs Jonna Corporation Inc.	The unopposed petition to compel arbitration is GRANTED. Plaintiff shall submit the final order.
LINE 12			

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Calendar Lines 1-2

Case Name: *577 Campbell LLC v. Li et al.*
Case No.: 22CV397744

Demurrer to Ying-Min Li's Second Amended Cross-Complaint

Factual and Procedural Background

Cross-complainant Ying-Min Li ("Li") brings his Second Amended Cross-Complaint ("Li SAXC") for invasion of privacy against 577 Campbell, LLC ("577 Campbell"), California South Bay University, Inc. ("CSBU"), and Roes 1 to 20 (collectively, "Cross-Defendants").

577 Campbell is the owner of real property located at 577 Salmar Ave., Campbell, CA ("the Property"). (Li SAXC, ¶ 8.) The Property consists of a two-floor commercial building with office spaces. (*Id.* at ¶ 10.) Jialin Niu ("Niu"), the owner of 577 Campbell, also owns CSBU, occupying the lower floor of the Property. (*Id.* at ¶ 9.)

Li, who owns and works for GSI Homes and GSI Properties (collectively, "GSI Entities") executed a written lease ("2018 Lease") with CSBU for Room 107 in the Property. (Li SAXC, ¶¶ 11-12.) Since the execution of the 2018 Lease, GSI Entities and CSBU executed three additional leases including the 2019 Lease, 2020 Lease, and 2021 Lease. (*Id.* at ¶ 13.) The 2021 Lease covered October 2021 through October 15, 2022. (*Id.* at ¶¶ 13-14.) Room 107 was occupied exclusively by Li while working for GSI Entities and Li kept records and documents in Room 107. (*Id*. at ¶¶ 16, 19.) He always locked the door before leaving and no one else had access to Room 107. (*Id.* at ¶ 16.)

On or about April 3, 2022, Cross-defendants changed all exterior door locks without notice or providing keys to GSI Entities. (Li SAXC, ¶ 20.) On or about April 7, 2022, Niu demanded GSI Entities vacate the Property immediately, despite the remaining term of the 2021 Lease. (*Id.* at ¶ 21.)

GSI Entities refused Niu's demand to vacate, noting the six-month term remaining in the 2021 Lease, and demanded restoring access to Room 107. (Li SAXC, ¶ 22.) Despite repeated requests by GSI Entities, Cross-Defendants refused to provide a key to any exterior door on the Property. (*Id.* at ¶ 23.) Cross-Defendants only allowed GSI Entities to access the Property between 9 AM and 5 PM, Monday through Friday by asking permission of a security guard at the Property. (*Id.* at ¶ 24.) As a result of this conduct, GSI Entities vacated the Property on May 24, 2022, giving their keys to a security guard employed by CSBU, 577 Campbell, and Niu. (*Id.* at ¶ 17.)

On July 31, 2023, Li filed his SAXC asserting a single cause of action for invasion of privacy against Cross-Defendants.

On September 6, 2023, Cross-Defendants filed a demurrer to the SAXC. Li opposes the motion.

Demurrer

Cross-Defendants demur generally to the SAXC on the ground it fails to state facts sufficient to constitute a cause of action. They specially demur to the SAXC on the ground it is uncertain, ambiguous, or unintelligible.

Invasion of Privacy - Intrusion

"The cause of action 'for intrusion has two elements: (1) intrusion into a private place, conversation or matter, (2) in a manner highly offensive to a reasonable person.'" (*Spinks v. Equity Residential Briarwood Apartments* (2009) 171 Cal.App.4th 1004, 1044 (*Spinks*).) The plaintiff must plead defendants "'penetrated some zone of physical or sensory privacy surrounding' [him] and that [he] had an objectively reasonable expectation of privacy." (*Belen v. Ryan Seacrest Productions, LLC* (2021) 65 Cal.App.5th 1145, 1163.) The tort is proven only

if the plaintiff had an objectively reasonable expectation of seclusion or solitude in the place or zone. (*Spinks, supra,* at p. 1044.)

As the Court explained in its prior order to Cross-Defendants' demurrer to Li's FAXC, "[i]t is generally agreed that the right to privacy is one pertaining only to individuals, and that a corporation cannot claim it as such." (*Roberts v. Gulf Oil Corp.* (1983) 147 Cal.App.3d 770, 793, fn. 16 [internal citations omitted].) This Court previously noted that Li's cause of action for invasion of privacy therefore cannot be premised on any allegations regarding GSI Entities. (July 14 Order, p. 6:21-23.) The Court's July 14 Order further determined that Li's pleading failed to sufficiently allege 1) a reasonable expectation of seclusion or solitude by the employee of a corporate tenant in a commercial setting (*id.* at p. 7:5-11, citing *Sanchez-Scott v. Alza Pharms.* (2001) 86 Cal.App.4th 365, 372 (*Sanchez*)); and 2) intrusion of a highly offensive manner (*id.* at 9:1-3).

Reasonable Expectation of Privacy in Commercial Setting

Cross-Defendants again argue Li has not sufficiently alleged a right to privacy in a commercial setting "which he admits he was not occupying in his individual capacity but as an owner and employee of the GSI Entities." (Demurrer, p. 8:12-14.)

In opposition, Li argues there is "long-standing legal precedent" that an employee has a right to privacy in a closed commercial setting. (Opposition, p. 2:23-26, citing *Tucker v. Superior Court* (1978) 84 Cal.App.3d 43, 47 (*Tucker*).) *Tucker* is not helpful. There the petitioner sought a writ of mandate that would order the Superior Court of Fresno County to suppress evidence seized by a police officer from the petitioner's work locker after the superior court denied petitioner's motion to suppress the evidence under Penal Code section 1538.5 in the prosecution of a petition for robbery. (*Tucker*, *supra*, at p. 45.) The Appellate Court determined the Fourth Amendment of the United States Constitution applies whenever the police intrude into an area where the citizen has a reasonable expectation of privacy. (*Id.* at p. 47.) Here, there was no police search and the *Tucker* court does not address landlords entering a leased premises.

Again, as this Court previously stated, Li cites to no authority suggesting the existence of an individual employee's reasonable expectation of seclusion or solitude in such an environment where the landlord has the right to enter the premises. (July 14 Order, p. 7:11-14; SAXC, Ex. 1, ¶ 10 ["Landlord shall have the right to enter upon the Leased Premises at reasonable hours to inspect the same, provided Landlord shall not thereby unreasonably interfere with Tenant's business on the Leased Premises"].)[1] Nevertheless, "it is not necessary that there be absolute or completely privacy" for an expectation of privacy to be reasonable in the intrusion context. (*Sanchez, supra,* 86 Cal.App.4th at p. 374.)

Intrusion into Private Matters

Li next argues the SAXC alleges a legally cognizable privacy interest in his personal belongings because the pleading contains facts that Cross-Defendants went through cabinets belonging to GSI Entities (Li SAXC, ¶¶ 26, 27); GSI Entities allowed Li to store personal items in the cabinets (*id.* at ¶¶ 29-30); Li did store personal financial documents and medications in the cabinets (*id.* at ¶ 31); Cross-Defendants opened and viewed the contents of the closed cabinets including Li's personal financial documents and medications (*id.* at ¶¶ 33-36); and that the building owner is a developer who took Li and GSI Entities' confidential business information for her own profit (*id.* at ¶ 38).

Li cites to *SCC Acquisitions, Inc. v. Superior Court* (2015) 243 Cal.App.4th 741, 754 (*SCC*) and *Kirchmeyer v. Helios Psychiatry, Inc.* (2023) 89 Cal.App.5th 352, 354 (*Kirchmeyer*)

[1] As will be explained in greater detail below, the written lease is invalid, and the parties may not rely on it.

to support his argument that California recognizes a privacy right in personal financial information and personal medical information. (Opposition, p. 3:3-5.)

In *SCC*, the Court of Appeal, in ruling on a discovery issue, explained that the "right of privacy protects against the unwarranted, compelled disclosure of private or personal information and extends to one's confidential financial affairs as well as to the details of one's personal life. Personal financial information comes within the zone of privacy protected by article I, section 1 of the California Constitution." (*SCC*, *supra*, at p. 754 [internal quotations omitted].) Similarly, in *Kirchmeyer*, the Court of Appeal noted that the California state Constitution "guarantees patients a right to privacy in their medical information." (*Kirchmeyer*, *supra*, at p. 360, fn. 3, citing *Medical Bd. of California v. Chiarottino* (2014) 225 Cal.App.4th 623, 631.)

Accordingly, for pleading purposes, Li has sufficiently alleged an intrusion of a legally recognized privacy interest. (See *Bader v. Anderson* (2009) 179 Cal.App.4th 775, 787 [in considering the merits of a demurrer, the facts alleged in the pleading are deemed true, however improbable they may be]; see also *Alcorn v. Anbro Engineering, Inc.* (1970) 2 Cal.3d 493, 496 [court reviewing propriety of ruling on demurrer is not concerned with the "plaintiff's ability to prove . . . allegations, or the possible difficulty in making such proof"].)

Highly Offensive Intrusion

"Actionable invasions of privacy . . . must be 'highly offensive' to a reasonable person, and 'sufficiently serious' and unwarranted as to constitute an 'egregious breach of the social norms.'" (*Hernandez v. Hillsides, Inc.* (2009) 47 Cal.4th 272, 295, citing *Shulman v. Group W. Productions, Inc.* (1998) 18 Cal.4th 200, 236 [internal citations omitted].) "In determining whether offensiveness exists, a court must consider a variety of circumstances of the intrusion" including: "(1) the degree of intrusion; (2) the context, conduct and circumstances surrounding the intrusion; (3) the intruder's motives and objectives; (4) the setting into which the intrusion occurs; and (5) the expectations of those whose privacy is invaded." (*Sanchez*, *supra*, 86 Cal.App.4th at pp. 376-377.)

Li argues the SAXC alleges Cross-Defendants entered a locked premises, opened and viewed cabinet contents, and did so without consent. (Opposition, p. 3:10-11.) Li argues that taken together with allegations that Cross-Defendants restricted the hours Li could access Room 107, changed the locks, and took Li's information for their own benefit, he has sufficiently alleged an intrusion that was highly offensive. (*Id.* at p. 3:12-17.)

In Reply, Cross-Defendants merely assert no new conduct is alleged that is sufficiently serious in a landlord-tenant context and further relies on the invalid lease to contend Cross-Defendants had a right to enter and inspect Room 107. (See Reply, pp. 2:20-3:1; see also *People v. Dougherty* (1982) 138 Cal.App.3d 278, 282 [a point asserted without citation to authority will be disregarded].) Accordingly, the Court finds that the allegations Cross-Defendants went through Li's personal medical and financial documents in his personal cabinets within Room 107, without consent or reason, to be sufficient for pleading purposes.

The demurrer to the invasion of privacy cause of action for failure to state sufficient facts is OVERRULED.

Uncertainty

Cross-Defendants previously demurred to the FAXC on the ground it was uncertain. The Court overruled the special demurrer. Cross-Defendants' special demurrer to the SAXC for uncertainty is identical to their prior special demurrer. For the same reasons the Court previously overruled on uncertainty grounds, the demurrer for uncertainty is OVERRULED.

Conclusion

The demurrer is OVERRULED in its entirety.

Demurrer to GSI Entities' Second Amended Cross-Complaint

Factual and Procedural Background

GSI Entities have also filed a SAXC ("GSI SAXC"). GSI Entities allege similar facts as cross-complainant Li, but include the following additional allegations:

Prior to October 10, 2018, Niu, on behalf of 577 Campbell, verbally authorized certain CSBU staff to perform property management, lease, maintenance of the Property, including identifying prospective tenants to sublease from CSBU the office space that it was no longer using, including Room 107. (GSI SAXC, ¶ 12.) On November 8, 2018, this authorization was reduced to a written authorization, which was emailed to Li Ling and Sunny Zhang by Niu. (*Id.* at ¶ 13; Ex. 1.)

From October 2018 through May 2022, GSI Entities entered into leases with CSBU and made payments for the rental of Room 107. (SAXC, ¶¶ 14, 18, 23; Ex.7 [copies of rent checks].) At all times, 577 Campbell and Niu were aware of the leases, were aware that GSI Entities occupied the premises, and were aware that checks were being received by CSBU for payment under the leases. (*Id.* at ¶¶ 16, 19-25.) At the time the checks were deposited, Niu and 577 Campbell were verbally made aware that GSI Entities were tenants at the premises. (*Id.* at ¶ 26.)

On or about April 3, 2022, after a change of personnel, Cross-Defendants changed all exterior door locks without notice and on or around April 7, 2022, Niu demanded GSI Entities vacate the Property despite being aware that the 2021 Lease still had several months left on its term. (GSI SAXC, ¶¶ 29-31.) Niu refused to provide GSI Entities with a key but made promises and representations that someone would be there to open the door for them. (*Id.* at ¶ 31.)

The guard and other personnel constantly peered into Room 107 from the hallway, intimidating, taunting, and harassing GSI Entities' personnel and visitors. (GSI SAXC, ¶ 33.) As a result, GSI Entities were forced to vacate the premises on May 24, 2022. (*Id.* at ¶ 34.)

On July 31, 2023, GSI Entities filed their SAXC, alleging causes of action for:

1) Breach of Contract (Quiet Possession) [against CSBU];
2) Breach of Contract (Internet) [against CSBU];
3) Trespass [against all Cross-defendants];
4) Conversion [against all Cross-defendants];
5) Wrongful Eviction [against all Cross-defendants]; and
6) Intentional Interference with Contractual Relations [against 577 Campbell].

On September 5, 2023, 577 Campbell and CSBU filed a demurrer to the SAXC. GSI Entities oppose the motion.

Request for Judicial Notice

In support of their demurrer, 577 Campbell and CSBU request judicial notice of the following:

1) The underlying verified Complaint [Ex. 1];
2) The Cross-Complaint filed by GSI Entities [Ex. 2];
3) January 23, 2023 Court Order on Demurrers to the Cross-Complaints [Ex. 3];
4) The FAXC filed by GSI Entities [Ex. 4];
5) July 14, 2023 Court Order on Cross-Defendants' demurrers and motion to strike Cross-Complainant's FAXC [Ex. 5];
6) The SAXC filed by GSI Entities [Ex. 6]; and
7) Proofs of Service on Defendants [Cross-Complainants] on May 16, 2022 [Ex. 7].

The request for judicial notice of Ex. 1, Ex. 2, Ex. 3, Ex. 4, Ex. 6, and Ex. 7 is DENIED. (*Jordache Enterprises, Inc. v. Brobeck, Phleger & Harrison* (1998) 18 Cal.4th 739, 748, fn. 6 [declining to take judicial notice of materials not "necessary, helpful, or relevant"].)

The request for judicial notice of Ex. 5 is GRANTED. (See Evid. Code § 452, subd. (d); see also *Stepan v. Garcia* (1974) 43 Cal.App.3d 497, 500 [court may take judicial notice of its own files].)

Demurrer

Cross-Defendants demur to all six causes of action on the ground they fail to state facts sufficient to constitute a cause of action.

Breach of Contract – First and Second Causes of Action

Valid Lease

Cross-Defendants first argue the SAXC fails to allege a valid lease because Exhibit 1 of the pleading does not comply with the legal requirements for creating a valid power of attorney. (See Demurrer, p. 6:1-6.)

The Court previously determined that GSI Entities failed to allege a valid power of attorney because it did not contain a date of execution and was not notarized or witnessed. (See July 14 Order.) The SAXC now includes Exhibit 1, containing an email from Niu to Ling Li and Sunny Zhang with the Limited Power of Attorney apparently attached to the email. (See SAXC, Ex. 1.) This email is insufficient to support the creation of a valid power of attorney for the same reasons the Court previously stated. It still does not include a date of execution and is not signed by a notary public or at least two witnesses. (See e.g., *Kaneko v. Yager* (2004) 120 Cal.App.4th 970, 979 [power of attorney invalid on its face where it was neither witnessed nor notarized].) Thus, in the alternative, the SAXC must allege a valid lease through ostensible agency.

Ostensible Agency

Cross-Defendants next contend the amended allegations do not establish ostensible agency particularly where the GSI Entities rely on express authorization. (Demuurer, p. 6:11-14.)

In opposition, GSI Entities argue the SAXC alleges facts showing 1) GSI Entities had belief that the person who signed the 2021 Lease was acting as an agent for CSBU; 2) the belief was reasonable; 3) the belief was generated by the act or neglect of CSBU; and 4) GSI Entities was not negligent in holding that belief. (Opposition, p. 4:25-28.)

"Before recovery can be had against the principal for the acts of an ostensible agent, three requirements must be met: The person dealing with an agent must do so with a reasonable belief in the agent's authority, such belief must be generated by some act or neglect by the principal sought to be charged and the person relying on the agent's apparent authority must not be negligent in holding that belief. . . . Ostensible agency cannot be established by the representations or conduct of the purported agent; the statements or acts of the principal must be such as to cause the belief the agency exists." (*J.L. v. Children's Institute, Inc.* (2009) 177 Cal.App.4th 388, 403-404.) The existence of agency is a factual question for the trier of fact; however, the pleading must still allege facts to support ostensible agency. (See e.g., *Whitlow v. Rideout Memorial Hospital* (2015) 237 Cal.App.4th 631, 637 [issue of ostensible agency must be left to the trier of fact].)

Reasonable Belief in Agent's Authority

GSI Entities first contend they allege a belief in the agent's authority because they entered into two previous leases with someone signing on behalf of CSBU (GSI SAXC, Exs. 3-5); they were able to occupy the premises under those leases; and CSBU accepted rent from GSI Entities beginning in 2017. (SAXC, ¶¶ 22, 24-26.) Thus, the Court may infer GSI Entities had a reasonable belief in the signer's authority. (See *Poseidon Development, Inc. v. Woodland*

Lane Estates, LLC (2007) 152 Cal.App.4th 1106, 1111-1112 [in reviewing sufficiency of complaint against general demurrer, court treats as true "not only the complaint's material factual allegations, but also facts that may be implied or inferred from those expressly alleged"].)

Act or Neglect by Principal

GSI Entities next assert they believed the agent had authority to enter into the 2021 Lease because CSBU accepted GSI Entities' rent checks and that because it was accepting these rent checks it "had the obligation to inquire into why it was receiving the checks if it did not know it was in a lease." (SAXC, ¶¶ 23-24, Ex. 7.) In Reply, Cross-Defendants argue that conclusory statements of Niu's awareness of their occupancy is not sufficient to allege an act by the principal that GSI Entities relied upon. (See Reply, p. 3:18-21.)

To allege the second element of ostensible agency, there must be facts of a representation or omission by the principal leading the plaintiff to reasonably believe the third person was the principal's agent. (*Kaplan v. Coldwell Banker Residential Affiliates, Inc.* (1997) 59 Cal.App.4th 741, 747; *Emery v. Visa Internat. Service Assn.* (2002) 95 Cal.App.4th 952, 961 [stating that "ostensible authority must be based on the acts or declarations of the principal and not solely upon the agent's conduct"].) In other words, "the principal must intentionally communicate this [agency] relationship to the third party, or negligently cause the third person to believe that there is an agency relationship." (*Howell v. Courtesy Chevrolet, Inc.* (1971) 16 Cal.App.3d 391, 401.)

Here, the SAXC still lacks allegations of acts or statements made by 577 Campbell or Niu upon which GSI Entities relied. Allegations that CSBU was accepting rent checks or that Niu was aware of these checks are insufficient to allege 577 Campbell or Niu intentionally, or by want of ordinary care, caused GSI Entities to believe the signer of the lease was their agent. (See Civ. Code, § 2300; *Luft v. Arakelian* (1917) 33 Cal.App. 463, 466 ["it is well settled that he who seeks to charge a supposed principal with the obligations resulting from the acts and conduct of an alleged ostensible agent must show that he himself was cognizant of the facts which gave color to the alleged ostensible agency, and caused him to believe that the person he dealt with was acting in the capacity of an agent rather than as a principal"].)

Accordingly, GSI Entities have not sufficiently alleged ostensible agency.

Ratification

Additionally, in their opposition, GSI Entities contend that because CSBU took their rent checks, as the principal, it is deemed to have ratified the lease. (Opposition, p. 5:27-28.) The SAXC, however, contains no allegations regarding ratification. Nor are there allegations that any specified agent was authorized to act either on behalf of CSBU, 577 Campbell, or Niu. (See *Vasik v. Speese* (1914) 26 Cal.App. 129, 130 ["[N]o written agreement or lease made or signed by the defendant, or by any person authorized in writing by the defendant to act for him. Under the rules declared in sections 1624, 2309, and 2310 of the Civil Code, the alleged contract is invalid and not binding upon the defendant. There being no valid contract, it follows of course that there can be no damages for breach thereof."].)

Lease Without Writing

GSI Entities next assert that a lease does not have to be in writing but may be created by consent and acceptance of rent. (Opposition, p. 6:3-4, citing *Getz v. City of West Hollywood* (1991) 233 Cal.App.3d 625, 629 (*Getz*).)

"An agreement for the leasing for a longer period than one year . . . such an agreement, *if made by an agent of the party sought to be charged*, is invalid, unless the authority of the agent is in writing, subscribed by the party sought to be charged." (Civ. Code, § 1624, subd. (a)(3) [emphasis added].) One who enters into possession of a premises and pays rent under an

invalid or defective lease under the statute of frauds becomes tenant from month to month. (*Kingston v. Colburn* (1956) 139 Cal.App.2d 623, 625; see also Civ. Code, § 1946.)

Thus, while the *Getz* Court does state that a "*tenancy* may be created without a formal agreement, by consent and acceptance of rent" it does not stand for the proposition that a lease is created, but rather that a landlord-tenant relationship is created such that the tenant may be entitled to protection of rent control laws. (*Getz*, *supra*, 233 Cal.App.3d at pp. 629-630.)

Therefore, even if GSI Entities' payment of rent created a month-to-month tenancy, they are still unable to state a cause of action for breach of the written lease. (See e.g., *Parkmerced Co. v. San Francisco Rent Stabilization & Arbitration Bd.* (1989) 215 Cal.App.3d 490, 494 ["'It is well established that a tenancy *need not be created by a lease* but *may be created by occupancy by consent*'"][emphasis added in part]; *Ellingson v. Walsh, O'Connor & Barneson* (1940) 15 Cal.2d 673, 675 [One may become a tenant at will or a periodic tenant under an invalid lease, or without any lease at all, by occupancy. Such tenancies carry with them the identical obligation of rent, and the liability therefore arises *not from contract* but from the relationship of landlord and tenant.].)

Based on the foregoing, GSI Entities have failed to sufficiently allege a valid lease and therefore any breach of contract cause of action based on the lease, including the SAXC's sixth cause of action, fails.

Accordingly, the demurrer to the first, second, and sixth causes of action is SUSTAINED without leave to amend. (See *Eghtesad v. State Farm General Ins. Co.* (2020) 51 Cal.App.5th 406, 411 ["denial of leave to amend constitutes an abuse of discretion unless the complaint 'shows on its face that it is incapable of amendment'"].)

Second Through Fifth Causes of Action

The second through fifth causes of action are similarly based, at least in part, on the existence of a valid lease. Because the lease is invalid and there are no further allegations to support the remaining causes of action, the demurrer may be sustained to the second through fifth causes of action. Accordingly, the demurrer to the remaining causes of action is SUSTAINED without leave to amend. (See *Goodman v. Kennedy* (1976) 18 Cal.3d 335, 349 [it is an abuse of discretion to sustain a demurrer without leave to amend if there is any possibility that the defect can be cured by amendment; however, "the burden is on the plaintiff to demonstrate that the trial court abused its discretion. . . . Plaintiff must show in what manner he can amend his complaint and how that amendment will change the legal effect of his pleading"].)

Conclusion

The demurrer is SUSTAINED in its entirety without leave to amend.

The Court shall prepare the final order.

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Calendar line 4

Case Name: Pierce v. Raincross Fuel & Oil, Inc., et al.

Case No.: 19CV343789

According to the allegations of the first amended complaint ("FAC"), on February 27, 2017, decedent Stacey Pierce ("Stacey") was a seat-belted passenger aboard the subject aircraft, piloted by defendant Nouri D. Hijazi ("Hijazi"), bound for the Norman Y. Mineta, San Jose International Airport ("SJC") from Riverside Municipal Airport. ("RAL"). (See FAC, ¶ 16.) Stacey was returning home to San Jose after a brief visit in Southern California to attend a cheerleading competition at Disneyland that involved her daughter. (See FAC, ¶ 18.) Hijazi and Does 1-20 completed a walk-around inspection of the subject aircraft before it was boarded, started the right engine, and then unsuccessfully attempted several times to start the left engine. (See FAC, ¶ 19.) Passengers were deplaned twice before he was able to start the left engine. (Id.) The plane eventually took off and upon lift-off, the aircraft began an ascending left turn as it entered the clouds, and then descended toward the ground with its left wing lowered, crashing into residential homes that ignited flames engulfing the plane and homes. (See FAC, ¶¶ 22-23.) As a result of the crash, Stacey sustained grave physical injuries and burns throughout her entire body which eventually killed her on March 9, 2017.

On October 1, 2019, plaintiffs Richard Pierce, individually and as successor-in-interest to the Estate of Stacey Pierce, Brooke Pierce, by her Guardian Ad Litem, Richard Pierce, Blaine Pierce, by his Guardian Ad Litem, Richard Pierce and Brandon Pierce, filed the FAC against Raincross Fuel & Oil, Inc., Hijazi, Estate of Danuta Hijazi, Mark Scheck, as personal representative of the Estate of Nouri Hijazi, Lori Scheck, as personal representative of the Estate of Nouri Hijazi, Monterey Bay Aviation, Inc. dba United Flight Services, Serco, Inc., Serco Group, PLC, Darrell Bloomer and Does 5-100, asserting causes of action for:

1) Negligence (against Raincross Fuel & Oil, Inc., Monterey Bay Aviation, Inc. dba United Flight Services, Serco, Inc., Serco Group, PLC, Darrell Bloomer and Does 21-100);

2) Strict products liability (against Raincross Fuel & Oil, Inc., Monterey Bay Aviation, Inc. dba United Flight Services and Does 21-75);

3) Wrongful death pursuant to C.C.P. § 337.60—negligence (against Raincross Fuel & Oil, Inc., Monterey Bay Aviation, Inc. dba United Flight Services, Serco, Inc., Serco Group, PLC, Darrell Bloomer and Does 21-100); and,

4) Survivor's action pursuant to C.C.P. § 337.30 (against all defendants).

On July 23, 2020, the Court [Hon. Folan] granted the motion to substitute Scott F. Garl as successor in interest to the Estate of Stacey Pierce. On December 7, 2020, plaintiff Richard Pierce filed an amendment to the FAC, substituting Corporate Aviation

Associates dba Corporate Air Technology ("CAT") for Doe 7, and an amendment to the FAC, substituting Steve Frost ("Frost") as Doe 8.1

Defendants CAT and Steve Frost (collectively, "moving defendants") move for summary judgment, or, in the alternative, for summary adjudication of the first, third and fourth causes of action and the claim for punitive damages because there is no triable issue of material fact that the maintenance assistance provided by CAT to Nouri Hijazi caused the accident. In support of their motion, the moving defendants present: the FAC; the NTSB Aviation Investigation Final Report; excerpts of the deposition testimony of Steve Frost; notes from Steve Frost; excerpts of the deposition testimony of Victor Franco; CAT invoices; the declaration of Douglas Stimpson; the declaration of Steven Magginetti; NTSB witness statements; excerpts of the deposition of Darrell Bloomer; excerpts of the deposition of Nasser Michael Elsaleh; excerpts of the deposition of Carlos Prado Quiroz; the declaration of Wayne R. Sand; NTSB airframe& engine examination report; excerpts of the deposition of Silvia Farelas; NTSB record of conversations, interviews with Silvia Farelas; letters of special administration and order for Probate, dated October 3, 2019 in Estate of Stacey L. Pierce (Super. Ct. Santa Clara County, 2017, No. 17PR180990); the July 23, 2020 order granting the motion to substitute Scott F. Garl as successor in interest to Estate of Stacey Pierce; and, the declaration of Rebekka R. Martorano. Moving defendants argue that: the accident was not caused by a mechanical failure of the aircraft or maintenance assistance but rather pilot error, and thus any causes of action against CAT fail for lack of causation; Richard Pierce lacks standing to assert the fourth cause of action for survivor's action as Scott F. Garl was substituted in as special administrator of the Estate of Stacey Pierce; and, there is no factual basis to support the claim for punitive damages as there is no evidence of any intention to harm the decedent or willful and conscious disregard of the safety of others. Moving defendants meet their initial burden.

In opposition, Plaintiffs do not oppose the motion.

Accordingly, the motion for summary judgment is GRANTED. Moving defendants shall submit a proposed order and proposed judgment within 20 calendar days.

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1 On January 4, 2021, a request for dismissal was filed as to defendant Monterey Bay Aviation, Inc. dba United Flight Services. On January 8, 2021, a request for dismissal was filed as to Raincross Fuel and Oil, Inc. On January 26, 2021, another request for dismissal was filed as to defendant Monterey Bay Aviation, Inc. dba United Flight Services. On February 2, 2021, requests for dismissal were filed as to defendants Estate of Danuta Hijazi, Estate of Nouri D. Hijazi, Nouri D. Hijazi, Hijazi Living Trust, Richard Pierce as trustee of the Hijazi Living Trust, and Scott Garl as representative of the Hijazi Estate. On February 18, 2021, requests for dismissal were filed as to defendants Lori Sheck as personal representative of the Estate of Nouri Hijazi, and Mark Sheck as personal representative of the Estate of Nouri Hijazi. On April 9, 2021, a request for dismissal was filed as to plaintiffs Bradley Pierce, Brandon Pierce, Brooke Pierce, Blaine Pierce and the Estate of Joanne Stacey Pierce. On June 4, 2021, a request for dismissal was filed as to Serco, Inc., Serco Group, PLC and Darrell Bloomer.

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Case Name: Teknatio, Inc. v. Econosoft, Inc.
Case No.: 23CV414023

Defendant brings a motion to stay or dismiss the action for forum non conveniens. In this case, there is a forum-selection provision in the contract between the parties. That provision states that "all actions, regardless of who brings such action, must be litigated in the State of New Jersey." Ex. F, para. 13 attached to Decl. of Nahal.

By bringing his motion, Defendant seeks to enforce the forum-selection clause of the contract with Plaintiff. "A defendant may enforce a forum-selection clause by bringing a motion pursuant to sections 410.30 and 418.10, the statutes governing forum non conveniens motions, because they are the ones which generally authorize a trial court to decline jurisdiction when unreasonably invoked and provide a procedure for the motion." *Cal-State Business Products & Services, Inc. v. Ricoh* (1993)12 Cal.App.4th 1666, 1680 (*Cal-State Business*); see also *Korman v. Princess Cruise Lines, Ltd.* (2019) 32 Cal.App.5th 206, 214.

Where there is a clear contractual provision stating that any litigation must occur in a particular venue, such provisions "will be given effect unless it is unfair or unreasonable." *Cal-State Business*, 12 Cal.App.4th at 1678 (citations omitted). A forum-selection clause will only "be disregarded if it is the result of overreaching or of the unfair use of unequal bargaining power or if the forum chosen by the parties would be a seriously inconvenient one for the trial of the partic[u]lar action." *Id*. at 1679 (citations omitted).

In this case, Plaintiff's only arguments for disregarding the contract is that Defendant made no showing that any liability arose in New Jersey, that Defendant has not stated where in New Jersey the case should be brought, and that California is the proper venue. Opp. p4. Plaintiff provides no facts or legal authority in support of these arguments. None of these arguments demonstrates that the forum-selection clause is unfair or unreasonable. It is Plaintiff's burden to show that the forum-selection clause should not be enforced. *Cal-State Business*, 12 Cal.App.4th at 1680. Plaintiff has failed to meet this burden.

Because the contract provides for the proper forum and Plaintiff provides no evidence to suggest the contract provision should not be enforced, there is no need to resort to the discretionary analysis of the forum non conveniens. To apply the forum non conveniens factors would in effect rewrite the bargain struck between the parties. See *Cal-State Business*, 12 Cal.App.4th at 1683; but *cf. Lifeco Servs. Corp. v. Superior Court* (1990) 222 Cal. App. 3d 331, 335 (stating that in addition to the presence of a forum selection clause, some other relevant factors are the relative availability of evidence and burden of trial in one place rather than another; a state's interest in providing its residents a forum or regulating the activity involved; ease of access to alternative forums; avoidance of multiplicity of suits and conflicting adjudications; and closeness of connection between the cause of action and the defendant's local activities). Even if the Court were to examine these other factors, they do not outweigh the contractual agreement of the parties. Plaintiff is not a California corporation such that there is no state interest in providing Plaintiff a forum, there is ease of access to the New Jersey forum, and there is little to suggest that the evidence is not available in New Jersey or that trial there would be burdensome.

Therefore, because Plaintiff has failed to provide any basis to not enforce the forum-selection clause and is not a California resident, Defendant's motion for dismissal is GRANTED. New Jersey is an available forum for Plaintiff, as Defendant both consents to the jurisdiction of New Jersey for purposes of this litigation and agrees to toll the statute of limitations for the time this Action is pending against Defendant in California (Motion p8). Defendant shall submit the final order.

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