

**SUPERIOR COURT OF CALIFORNIA,  
COUNTY OF SAN DIEGO  
CENTRAL**

**MINUTE ORDER**

DATE: 08/19/2022

TIME: 09:00:00 AM

DEPT: C-75

JUDICIAL OFFICER PRESIDING: James A Mangione

CLERK: Richard Day

REPORTER/ERM: Not Reported

BAILIFF/COURT ATTENDANT: Adrian Cervantes

CASE NO: **37-2021-00050889-CU-AT-CTL** CASE INIT.DATE: 12/03/2021

CASE TITLE: **Sherlock vs Austin [EFILE]**

CASE CATEGORY: Civil - Unlimited CASE TYPE: Antitrust/Trade Regulation

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**EVENT TYPE:** Demurrer / Motion to Strike

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**APPEARANCES**

Andrew Flores, counsel, present for Plaintiff(s).

Amy Sherlock, Plaintiff is present.

Andrew Hall, counsel, present for Defendant(s) via remote audio conference.

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The Court hears oral argument and MODIFIES the tentative ruling as follows:

Defendant Steven Lake's Demurrer to Plaintiffs' First Amended Complaint is overruled in part and sustained leave to amend in part.

*Cartwright Act (First Cause of Action)*

The Cartwright Act prohibits combinations in restraint of trade. (Bus. & Prof. Code, § 16720.) Under the act, "[a]ny person who is injured in his or her business or property by reason of anything forbidden or declared unlawful by this chapter, may sue therefor . . ." (Bus. & Prof. Code, § 16750, subd. (a).) Antitrust standing is required under the Cartwright Act. (See *Kolling v. Dow Jones & Co.* (1982) 137 Cal.App.3d 709, 723.) To establish such standing, a plaintiff must show: (1) the existence of an antitrust violation with resulting harm to the plaintiff; (2) an injury of a type which the antitrust laws were designed to redress; (3) a direct causal connection between the asserted injury and the alleged restraint of trade; (4) the absence of more direct victims so that the denial of standing would leave a significant antitrust violation unremedied; and (5) the lack of a potential for double recovery." (*Vinci v. Waste Management, Inc.* (1995) 36 Cal.App.4th 1811, 1814 (footnotes removed).)

Here, Plaintiffs have not shown that the injuries caused by Defendant-the alleged theft of Mr. Sherlock's interests in the Partnership Agreement, LERE, and the Balboa and Ramona CUPs ("the Sherlock Property")-constitute the type of antitrust injury required to establish standing. Furthermore, to the extent Plaintiffs are relying on the alleged "Proxy Practice" to establish the Cartwright Act violations, they have failed to demonstrate any connection between their injuries and the Proxy Practice, as the FAC alleges that Mr. Sherlock obtained the Ramona and Balboa CUPs legally, outside of any such practice. Finally, Plaintiffs have not alleged sufficient facts to establish Defendant's participation in the Proxy Practice.

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Therefore, the demurrer on this cause of action is sustained with leave to amend.

Conversion (Second Cause of Action)

"Conversion is the wrongful exercise of dominion over the property of another. The elements of a conversion claim are: (1) the plaintiff's ownership or right to possession of the property; (2) the defendant's conversion by a wrongful act or disposition of property rights; and (3) damages." (*Lee v. Hanley* (2015) 61 Cal.4th 1225, 1240 (alterations and quotation marks omitted).) Plaintiffs allege that Defendant and Harcourt worked together to illegally obtain ownership of the Sherlock Property, which Plaintiffs were entitled to under probate law after Mr. Sherlock's death. Specifically, Plaintiffs allege that Defendant and Harcourt falsified documents dissolving LERE and transferring Mr. Sherlock's interest in the CUPs. These are personal property rights, subject to a claim of conversion. (See *Malibu Mountains Recreation, Inc. v. County of Los Angeles* (1998) 67 Cal.App.4th 359, 367–368 ("A CUP creates a property right which may not be revoked without constitutional rights of due process."); *Holistic Supplements, L.L.C. v. Stark* (2021) 61 Cal.App.5th 530, 542 ("Kersey's membership interest in the LLC was personal property belonging to her as an individual.") (citing Corp. Code, § 17701.02(r)).) Plaintiffs have sufficiently pled that Defendant wrongfully dispossessed them of their personal property rights. Therefore, the demurrer on this cause of action is overruled.

Civil Conspiracy (Third and Seventh Causes of Action)

"The elements of an action for civil conspiracy are the formation and operation of the conspiracy and damage resulting to plaintiff from an act or acts done in furtherance of the common design." (*Richard B. LeVine, Inc. v. Higashi* (2005) 131 Cal.App.4th 566, 574 (quotation marks omitted).) "There is *no separate tort* of civil conspiracy, and there is *no civil action* for conspiracy to commit a recognized tort unless the *wrongful act* itself is committed and damage results therefrom." (*Id.* (quotation marks and alterations omitted).)

Here, the third cause of action appears to allege a civil conspiracy between Defendant and Harcourt to steal the Sherlock Property. As discussed above, the FAC alleges that Defendant and Harcourt worked together to illegally obtain ownership of the Sherlock Property through, among other things, submitting falsified documents. This is sufficient to allege a civil conspiracy claim between Defendant and Harcourt. Therefore, the demurrer to this cause of action is overruled.

However, the seventh cause of action appears to be either duplicative of the third cause of action or allege Defendant was a member of the conspiracy engaged in the "Proxy Practice." As discussed above, Plaintiffs' allegations fail to tie Defendant to the alleged Proxy Practice. Therefore, the seventh cause of action is either duplicative or fails to state a claim upon which relief can be granted. Regardless, the demurrer to this cause of action is sustained without leave to amend.

Declaratory Relief (Fourth Cause of Action)

Defendant demurs to this cause of action based on the claim that Mr. Sherlock "did not have an interest in the Balboa CUP" and that Defendant did not have "an interest in LERE" or participate in its dissolution. However, this argument is directly contradicted by facts pled in the FAC, which the Court must accept as true when ruling on a demurrer. Therefore, the demurrer to this cause of action is overruled.

Unfair Competition (5th Cause of Action)

"California's unfair competition law permits civil recovery for any unlawful, unfair, or fraudulent business act or practice and unfair, deceptive, untrue, or misleading advertising. Cal. Bus. & Prof. Code § 17200. A private person may assert a UCL claim only if she (1) has suffered injury in fact and (2) has lost money

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or property as a result of the unfair competition." (*Golden State Seafood, Inc. v. Schloss* (2020) 53 Cal.App.5th 21, 39, *reh'g denied* (Aug. 6, 2020), *review denied* (Oct. 28, 2020) (citations and quotation marks omitted).) Here, Plaintiffs allege that "[t]he filing of all documents with public offices effectuating the transfer of the Sherlock Property after the death of Mr. Sherlock are based on forged documents and violate Penal Code § 115." (FAC ¶ 313.) This is sufficient to state a claim under Business and Professions Code section 17200. Therefore, the demurrer to this cause of action is overruled.

The minute order is the order of the Court.

Plaintiffs are directed to serve notice on all parties within five (5) court days.

*James A. Mangione*

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Judge James A Mangione