

**UNITED STATES DISTRICT COURT FOR THE CENTRAL DISTRICT OF
CALIFORNIA**

Brian M. Lowenthal v. Wilshire Commercial Properties LLC, et al.

Lowenthal v. Wilshire Commercial Properties LLC · No. 2:25-cv-04547-CV-JDE · Decided July 23, 2025

OPINION

Brian Lowenthal v. Wilshire Commercial Properties LLC

PER CURIAM.

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8 UNITED STATES DISTRICT COURT

9 CENTRAL DISTRICT OF CALIFORNIA

10 WESTERN DIVISION

11 12 BRIAN M. LOWENTHAL,) Case No. 2:25-cv-04547-CV-JDE)) 13 Plaintiff,

) ORDER ACCEPTING FINDINGS

)

14 v.) AND RECOMMENDATION OF

) UNITED STATES MAGISTRATE

15 WILSHIRE COMMERCIAL) JUDGE

16 PROPERTIES LLC, et al.,))) 17 Defendants.)) 18 19 Pursuant to 28 U.S.C. § 636, the Court
has reviewed the records on file, 20 including the Complaint (Dkt. 1), the Order re Complaint
issued by the 21 assigned magistrate judge (Dkt. 7, “Order re Complaint”), and the Report and 22
Recommendation of the magistrate judge (Dkt. 9, “Report”). Plaintiff did not 23 file a timely
objection to the Report or seek additional time in which to do so. 24 The Report is approved and
accepted. 25 After the deadline to file objections to the Report, Plaintiff filed an 26 “Amended
Complaint” (Dkt. 11, “Amended Complaint”), a Motion to 27 Reopen Dismissed Action” (Dkt.
12, “Motion to Reopen”), and an Emergency 28 Motion for Temporary Restraining Order (Dkt.
13, “TRO Request”). 1 As the case had not been closed or dismissed, the assigned magistrate 2
judge denied the Motion to Reopen as moot. Dkt. 13. 3 As to the Amended Complaint, although
the magistrate judge, in the 4 Order re Complaint, provided Plaintiff an option to file an amended
complaint 5 by June 11, 2025, Plaintiff did not do so. As such, the Amended Complaint 6 was
filed in violation of the Order re Complaint, rendering it subject to being 7 stricken. Even were the
Court to consider the substance of the Amended 8 Complaint, it cannot proceed. The Amended
Complaint asserts a single claim 9 for “Declaratory Judgment” under the Declaratory Judgment
Act, 28 U.S.C. 10 §§ 2201 and 2202, naming U.S. Department of Housing and Urban 11
Development (“HUD”), the U.S. Department of Veteran Affairs (the “VA”), 12 and “Wilshire
Properties” as defendants. Dkt. 11 at 1-2. As to HUD and the 13 VA, “[a]bsent a waiver, sovereign

immunity shields the Federal Government 14 and its agencies from suit.” Fed. Deposit Ins. Corp. v. Meyer, 510 U.S. 471, 15 475 (1993). Further, “[t]he Declaratory Judgment Act . . . does not provide a 16 waiver of sovereign immunity.” Alter v. U.S. Supreme Ct., 2023 WL 4873627, 17 at *3 (C.D. Cal. July 31, 2023). Thus, Plaintiff may not sue HUD or the VA 18 under the Declaratory Judgment Act. As to Wilshire Properties, the 19 Declaratory Judgment Act does not create an independent cause of action or 20 independently confer jurisdiction; rather, it gives district courts discretion to 21 award declaratory relief. See Countrywide Home Loans, Inc., v. Mortgage 22 Guar. Ins. Corp., 642 F.3d 849, 853 (9th Cir. 2011). Federal courts must 23 “properly derive [jurisdiction] from the underlying controversy between 24 litigants.” Id. The Amended Complaint sets forth no viable, independent basis 25 for federal jurisdiction as to any purported controversy between Plaintiff and 26 Wilshire Properties. As such, the Amended Complaint cannot proceed. 27 Lastly, in his TRO Request, Plaintiff seeks an order preventing a state 28 court unlawful detainer action and eviction from proceeding. “[I]njunctive 1 relief [is] an extraordinary remedy that may only be awarded upon a clear 2 showing that the plaintiff is entitled to such relief.” Winter v. Nat. Res. Def. 3 Council, Inc., 555 U.S. 7, 22 (2008). A preliminary injunction is appropriately 4 used to preserve a party’s rights pending resolution of the merits of the case. 5 See Big Country Foods, Inc. v. Bd. of Educ. of the Anchorage Sch. Dist., 6 Anchorage, 868 F.2d 1085, 1087 (9th Cir. 1989). To obtain such relief, a 7 moving party must show: (1) a likelihood of success on the merits; (2) a 8 likelihood of irreparable harm in the absence of preliminary relief; (3) that the 9 balance of equities tips in favor of the moving party; and (4) that an injunction 10 is in the public interest. Winter, 555 U.S. at 20. The same standard applies to 11 both preliminary injunctions and temporary restraining orders. See Henry 12 Schein, Inc. v. Cook, 191 F. Supp. 3d 1072, 1076 (N.D. Cal. 2016); Niu v. 13 United States, 821 F. Supp. 2d 1164, 1167 (C.D. Cal. 2011). A request for 14 injunctive relief should be denied when based on a complaint that fails to state 15 a claim. See, e.g., Smith v. Cal. Dep’t of Corr. & Rehabs., 2020 WL 1503431, 16 at *4 (E.D. Cal. Mar. 30, 2020) (“[W]ithout a viable complaint the court 17 cannot assess plaintiff’s likelihood of success on the merits[.]”), adopted by 18 2020 WL 2126831 (E.D. Cal. May 5, 2020); Jaax v. United States, 2008 WL 19 4630559, at *2 (C.D. Cal. Oct. 17, 2008) (denying ex parte motion for a TRO 20 where movant did not show “a probability of success on the merits because his 21 complaint, as presently formulated, fails to state a claim on which relief may 22 be granted”); Most v. Pritzker, 2020 WL 4582593, at *2 (S.D. Ill. Aug. 10, 23 2020) (denying motion for TRO and preliminary injunction because, “[a]s 24 Plaintiff has failed to state a viable claim for relief, he has no reasonable 25 likelihood of success on the merits”). Here, as Plaintiff has not alleged a viable 26 claim, injunctive relief is not available. As such, the TRO Request is denied. 27 / / / 28 / / / 1 Therefore, for the foregoing reasons, IT IS HEREBY ORDERED that: 2 ||(1) the TRO Request (Dkt. 13) is DENIED; and (2) Judgment shall be entered 3 || dismissing this action with prejudice. 4 5 6 ||Dated: _ 7/23/25 lath aA Valongusla

7 CYNTHIA VALENZUELA

3 United States District Judge 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28

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