

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF NEVADA

Marion Wilcox Combs, as Trustee of 2646 S. Madison Street Trust, et al. v. Bethany Harrell, et al.

Combs · No. 2:25-CV-2066 JCM (MDC) · Decided December 29, 2025

OPINION

Combs

PER CURIAM.

1 2 3

4 UNITED STATES DISTRICT COURT

5 DISTRICT OF NEVADA

6 * * * 7 MARION WILCOX COMBS, as Trustee of the Case No.2:25-CV-2066 JCM (MDC)
2646 S, MADISON STREET TRUST, et al., 8 Plaintiff(s), ORDER 9 v. 10 BETHANY
HARRELL, et al., 11 Defendant(s). 12 13 Presently before the court is defendants Bethany
Harrell, William Van Horn, Shelly Dill 14 Combs, and Van Horn Family Law, P.C.’s motion to
dismiss. (ECF No. 10). Plaintiffs Marion 15 16 Wilcox Combs, as Trustee of 2646 S. Madison
Street Trust (“MST”) and Marion Wilcox Combs, 17 as Trustee of the Guy St. Clair Combs 2013
Trust (“GSC”) filed a response (ECF No. 11), to which 18 defendants replied (ECF No. 13). 19
Also before the court is plaintiffs’ motion to file a sur-reply. (ECF No. 16). No responses 20 were
filed. 21 22 I. Background 23 The instant motion arises from a series of fraud allegations by
plaintiffs. 24 Plaintiff GSC owned 2646 S. Madison Street since January 2020 and planned to sell
it in 25 early 2023. (ECF No. 10, Ex. 1 ¶ 9). It obtained a buyer for \$1,950,000. (Id. ¶ 10). 26
Before plaintiff could sell the real property at that price, defendants filed and recorded a lis 27 28
pendens against the property as part of a Colorado divorce action between defendant Shelly Dill 1
Combs and Scott Combs, GSC’s beneficiary. (Id. ¶ 11; ECF No. 11, Ex. 6 ¶ 2). Plaintiffs were 2
not parties to the divorce case. 3 To discharge the lis pendens, plaintiff GSC decanted the property
into a newly formed 4 trust: plaintiff MST. (ECF No. 10, Ex. 1 ¶ 12). As a result, plaintiff MST
became the owner of 5 6 the entire interest in the property by warranty deed recorded April 5,
2024. (Id. ¶ 13). 7 Plaintiff MST initiated an action in Nevada state court to determine the validity
of the lis 8 pendens. (Id. ¶ 14). On August 19, 2024, Judge Gloria Sturman issued an oral ruling
from the 9 10 bench. (Id. ¶ 15). Judge Sturman then issued her findings of fact and conclusions of
law in

11 December 2024, finding that the lis pendens was improperly filed and “must be expunged,”
that

12 defendant Dill Combs “filed the lis pendens solely to secure an anticipated future money
judgment; 13 and that “her substantive claim for relief in the Colorado divorce action does not

involve title to 14 the real property.” (ECF No. 10, Ex. 1 ¶ 16). She also noted that the “[d]ecanting of [GSC] to 15 16 form [MST was] appropriate to address the one asset owned by [MST]” (that being the subject 17 property). (ECF No. 11, Ex. 6 ¶ 7). 18 Plaintiffs claim that the property was unmarketable due to the recorded lis pendens. (Id. ¶ 19 19). They allege that defendants knew, since Judge Sturman’s August 2024 oral ruling, that the 20 21 lis pendens was improper. (Id. ¶ 17). Indeed, in May 2023, defendant Van Horn left a voice 22 message for the settlor of both trusts, demanding money in exchange for the release of the lis 23 pendens. (Id.). Defendants did not cancel or release the lis pendens until March 24, 2025, despite 24 plaintiffs’ requests that they do so. (Id. ¶ 18). 25 26 Plaintiff MST sold the property for \$1,830,267 in August 2025—\$119,733 less than 27 expected. (Id. ¶ 20). 28 1 As a result, plaintiffs brought this suit in state court alleging various fraud-based state law 2 claims. Defendants then timely removed to this court (ECF No. 1) and now move to dismiss the 3 complaint in its entirety. (ECF No. 10). 4 II. Legal Standards 5 6 The court may dismiss a plaintiff’s complaint for “failure to state a claim upon which relief 7 can be granted.” Fed. R. Civ. P. 12(b)(6). A properly pled complaint must provide “[a] short and 8 plain statement of the claim showing that the pleader is entitled to relief.” Fed. R. Civ. P. 8(a)(2). 9 Although rule 8 does not require detailed factual allegations, it does require more than labels and 10 conclusions. *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007). Furthermore, a formulaic 11 12 recitation of the elements of a cause of action will not suffice. *Ashcroft v. Iqbal*, 556 U.S. 662, 13 677 (2009) (citation omitted). Rule 8 does not unlock the doors of discovery for a plaintiff armed 14 with nothing more than conclusions. *Id.* at 678–79. 15 To survive a motion to dismiss, a complaint must contain sufficient factual matter to “state 16 a claim to relief that is plausible on its face.” *Id.* A claim has facial plausibility when the plaintiff 17 18 pleads factual content that allows the court to draw the reasonable inference that the defendant is 19 liable for the misconduct alleged. *Id.* When a complaint pleads facts that are merely consistent 20 with a defendant’s liability, and shows only a mere possibility of entitlement, the complaint does 21 not meet the requirements to show plausibility of entitlement to relief. *Id.* 22 In *Iqbal*, the Supreme Court clarified the two-step approach district courts are to apply 23 24 when considering a motion to dismiss. *Id.* First, the court must accept as true all of the allegations 25 contained in a complaint. However, this requirement is inapplicable to legal conclusions. *Id.* 26 Second, only a complaint that states a plausible claim for relief survives a motion to dismiss. *Id.* 27 at 678. Where the complaint does not permit the court to infer more than the mere possibility of 28 1 misconduct, the complaint has “alleged – but not shown – that the pleader is entitled to relief.” *Id.* 2 at 679. When the allegations in a complaint have not crossed the line from conceivable to 3 plausible, plaintiff’s claim must be dismissed. *Twombly*, 550 U.S. at 570. 4 The Ninth Circuit addressed post-*Iqbal* pleading standards in *Starr v. Baca*, 652 F.3d 1202, 5 6 1216 (9th Cir. 2011). The *Starr* court held as follows: 7 First, to be entitled to the presumption of truth, allegations in a complaint or 8 counterclaim may not simply recite the elements of a cause of action, but must 9 contain sufficient allegations of underlying facts to give fair notice and to

enable 10 the opposing party to defend itself effectively. Second, the factual allegations that 11 12 are taken as true must plausibly suggest an entitlement to relief, such that it is not 13 unfair to require the opposing party to be subjected to the expense of discovery and 14 continued litigation. 15 16 Id. 17 A heightened pleading standard applies to claims of fraud. Under Federal Rule of Civil 18

19 Procedure 9(b), “[i]n alleging fraud or mistake, a party must state with particularity the 20 circumstances constituting fraud or mistake.” Rule 9(b) provides that “[m]alice, intent, 21 knowledge, and other conditions of a person’s mind may be alleged generally.” Fed. R. Civ. P. 22 9(b). However, “[t]he complaint must specify such facts as the times, dates, places, benefits 23 received, and other details of the alleged fraudulent activity.” *Neubronner v. Milken*, 6 F.3d 666, 24 25 671 (9th Cir. 1993). 26 If the court grants a Rule 12(b)(6) motion to dismiss, it should grant leave to amend unless 27 the deficiencies cannot be cured by amendment. *DeSoto v. Yellow Freight Sys., Inc.*, 957 F.2d 28 655, 658 (9th Cir. 1992). Under Rule 15(a), the court should “freely” give leave to amend “when 1 justice so requires,” and absent “undue delay, bad faith, or dilatory motive on the part of the 2 movant, repeated failure to cure deficiencies by amendments . . . undue prejudice to the opposing 3 party . . . futility of the amendment, etc.” *Foman v. Davis*, 371 U.S. 178, 182 (1962). The court 4 should grant leave to amend “even if no request to amend the pleading was made.” *Lopez v. Smith*, 5 6 203 F.3d 1122, 1127 (9th Cir. 2000) (en banc) (internal quotation marks omitted). 7 III. Materials That a Court May Consider 8 In ruling on a motion to dismiss, a district court generally “may not consider any material 9 beyond the pleadings.” *Hal Roach Studios, Inc. v. Richard Feiner & Co.*, 896 F.2d 1542, 1555 10 n.19 (9th Cir. 1990). If the district court relies on materials outside the pleadings in making its 11 12 ruling, it must treat the motion to dismiss as one for summary judgment and give the non-moving 13 party an opportunity to respond. Fed. R. Civ. P. 12(b); see *United States v. Ritchie*, 342 F.3d 903, 14 907 (9th Cir. 2003). “A court may, however, consider certain materials—documents attached to 15 the complaint, documents incorporated by reference in the complaint, or matters of judicial 16 notice—without converting the motion to dismiss into a motion for summary judgment.” *Ritchie*, 17 18 342 F.3d at 908. 19 If adjudicative facts or matters of public record meet the requirements of Fed. R. Evid. 201, 20 a court may judicially notice them in deciding a motion to dismiss. Id. at 909; see Fed. R. Evid. 21 201(b) (“A judicially noticed fact must be one not subject to reasonable dispute in that it is either 22

(1) generally known within the territorial jurisdiction of the trial court or (2) capable of accurate 23 24 and ready determination by resort to sources whose accuracy cannot reasonably be questioned.”); 25 see also *Carstarphen v. Milsner*, 594 F. Supp. 2d 1201, 1207 (D. Nev. 2009). “Court orders and 26 filings are the type of documents that are properly noticed under [Rule 201(b)].” *Neilson v. Union 27 Bank of Cal.*, 290 F. Supp. 2d 1101, 1112 (C.D. Cal. 2003). 28 1 Plaintiffs attach an order from the Eighth Judicial District of Nevada, case no. P-24- 2 120512-T (“Judge Sturman’s order”), to their response, pursuant to Federal Rule of Evidence 3 201(b)(2) as

a publicly filed and recorded document. (ECF No. 10, Ex. 6). Defendants do not object. (ECF No. 13 at 3 n.11). Accordingly, the court takes judicial notice of Judge Sturman's order. IV. Discussion As an initial matter, plaintiffs' motion for leave to file a sur-reply is denied. (ECF No. 16). 9 Plaintiffs assert five claims for relief, all of which are rooted in allegations of fraudulent 10 conduct by defendants: state law claims of civil conspiracy to defraud, common law fraud, 11 12 negligence per se (based on extortion), interference with (prospective) contractual relations, and a 13 violation of Nevada's RICO statute (based on extortion). Defendants argue that the court should 14 dismiss plaintiffs' case in its entirety on the grounds that plaintiffs (1) have not sustained any 15 damages; (2) fail to state any claim upon which relief can be granted; and (3) rely on penal statutes 16 that do not provide a private civil right of action. 17 18 A. Damages 19 Defendants argue that plaintiff GSC has not sustained any damages because it was not the 20 owner of the property at the time of sale. It conveyed all interest in the property to MST in April 21 2024, who then sold it for the below-expected value in August 2025. Defendant further argues 22 that MST has not suffered any damages because it was GSC that received the higher \$1.95 million 23 24 offer; MST did not receive a similar offer while it owned the property. 25 Plaintiffs rebut that the reason that MST exists, and that GSC ever transferred the property 26 to it, was due to the defendants placing an allegedly fraudulent lis pendens on the property that 27 affected its salability. MST would not have existed otherwise. Indeed, Judge Sturman found that 28 1 the decanting of GSC to form MST was appropriate. (ECF No. 11, Ex. 6 ¶ 7). 2 Moreover, GSC and MST share the same trustee, concern the same real property, and share 3 a beneficiary in common. MST is functionally the same as GSC. The court finds defendants' 4 arguments as to damages unpersuasive. 5 6 B. Claims for Relief 7 1. Common Law Fraud 8 The elements of common law fraud are: (1) a false representation made by the defendant; 9 (2) defendant's knowledge or belief that its representation was false or that defendant has an 10 insufficient basis of information for making the representation; (3) defendant intended to induce 11 12 plaintiff to act or refrain from acting upon the misrepresentation; and (4) resulting damage. 13 *Barmettler v. Reno Air*, 956 P.2d 1382, 1386 (Nev. 1998). 14 Plaintiffs allege that defendants falsely represented themselves as having a legal interest in 15 16 the property, when they did not. They further allege that defendants knew that the lis pendens was 17 "improper" as of August 19, 2024, yet continued to represent themselves as having a legal interest 18 in the property by refusing to record a cancellation of the lis pendens. (ECF No. 11, Ex. 6 ¶ 6). 19 Realtors and title companies reasonably relied on this misrepresentation, resulting in damage to 20 the plaintiffs. 21 22 However, plaintiffs have not pled this claim for relief with particularity to survive the 23 motion to dismiss, as they fail to set forth how defendant intended to induce plaintiff to act or 24 refrain from acting upon the alleged misrepresentation. Plaintiffs can cure this deficiency by 25 amending the complaint. 26 27 2. Civil Conspiracy to Defraud 28 To state a claim for civil conspiracy to defraud, the plaintiffs must allege: (1) a conspiracy 1 agreement (i.e., "a combination of two or more persons who, by some concerted action, intend to 2 accomplish an

unlawful objective for the purpose of harming another”); (2) an overt act of fraud in furtherance of the conspiracy; and (3) resulting damages to the plaintiff. *Jordan v. State ex. Rel. 4 Dep’t of Motor Vehicles Pub. Safety*, 110 P.3d 30, 51 (Nev. 2005), overruled on other grounds by *5 6 Buzz Stew, LLC v. City of N. Las Vegas*, 181 P.3d 670 (Nev. 2008). “Thus, an underlying cause 7 of action for fraud is a necessary predicate to a cause of action for conspiracy to defraud.” *Id.* 8 Plaintiffs separately assert a separate action for fraud; however, as set forth in the previous 9 10 section, they have not pled fraud with particularity. Accordingly, plaintiffs fail to satisfy the 11 second element of civil conspiracy to defraud. This claim is dismissed without prejudice. 12 3. Negligence Per Se/Crimes Against Property 13 Plaintiffs’ third claim for relief is labeled “negligence per se,” but they cite to Nevada’s 14 criminal statute for extortion, NRS 205.320, as the basis for the claim. Because this is a civil 15 16 matter, not a criminal one, the statute does not provide plaintiff an avenue to relief. 17 Plaintiffs are incorrect when they argue that they can obtain relief under NRS 205.980(5) 18 for two reasons: (1) they did not plead that statute in their complaint and (2) even if they did, the 19 statute does not provide for a civil cause of action when there has not been a parallel criminal case. 20 The language of NRS 205.980(5) provides that “Nothing in this section prohibits a victim from 21 22 recovering additional damages from the defendant.” Plaintiffs have not pled that they are victims 23 in a criminal case brought under the relevant NRS provisions. See NRS 205.980(1). 24 This claim is dismissed without prejudice. 25

4. Interference with Contractual Relations

26 According to plaintiffs, the titling of this claim for relief was potentially a scrivener’s error 27 28 and should have been pled as “interference with prospective business advantage and contractual 1 relations,” rather than “interference with contractual relations.” (ECF No. 11 at 12). 2 To prove intentional interference with prospective contractual relationship, a plaintiff must 3 4 establish: “(1) a prospective contractual relationship between the plaintiff and a third party; (2) 5 knowledge by the defendant of the prospective relationship; (3) intent to harm the plaintiff by 6 preventing the relationship; (4) the absence of privilege or justification by the defendant; and (5) 7 actual harm to the plaintiff as a result of the defendant’s conduct.” *Wichinsky v. Mosa*, 847 P.2d 8 727, 729–30 (1993). 9 10 Plaintiffs fail to state a claim for intentional interference with contractual relations. There 11 is no allegation that GSC entered a contract with a third party to sell the property at the higher 12 price of \$1.95 million, as compared to the ultimate sale price of approximately \$1.83 million. 13 *Rimini St. v. Oracle Int’l Corp.*, 473 F. Supp. 3d 1158, 1223 (D. Nev. 2020) (“The absence of any 14 15 demonstrable breach or disruption of the existing contract defeats any cause of action for 16 intentional interference with contractual relations.”). 17 Plaintiffs also fail to plead a claim for intentional interference with prospective contractual 18 19 relations with the requisite particularity. Plaintiffs claim, among other things, that there was a 20 prospective business relationship between “plaintiff and a third party to sell the [property] in April 21 2023 and again after December 2024.” (ECF No. 10, Ex. 1 ¶ 49). The court understands the 22 plaintiffs’ position on the relationship between MST and GSC, but they need to specify “who” did

23 “what” and “when” to meet the particularity requirement. See Fed. R. Civ. P. 9(b); Neubronner,
24 25 6 F.3d at 671. This is an issue that can be corrected with amendment of the complaint. 26 5.
State Law RICO 27 Plaintiffs fifth and final claim for relief is under Nevada’s state civil RICO
statute. 28 Defendants argue that plaintiff’s claim for relief under Nevada RICO fails because they
are 1 Colorado residents and must be sued there. The court agrees. 2 Under NRS 207.470(3), civil
actions for damages resulting from racketeering “must be 3 instituted in the district court of the
[s]tate in the county in which the prospective defendant resides 4 or has committed any act which
subjects him or her to ... civil liability under...NRS 207.400.” 5 6 The defendants are all residents
of Colorado and filed the lis pendens in Colorado. Accordingly, 7 Nevada RICO law precludes
plaintiffs from suing defendants here. 8 This claim is dismissed. To properly amend, plaintiff must
provide supplemental briefing 9 explaining why this provision should not apply. 10 V. Conclusion
11 12 Accordingly, 13 IT IS HEREBY ORDERED, ADJUDGED, and DECREED that
defendants’ motion to 14 dismiss (ECF No. 10) be, and the same hereby is, GRANTED without
prejudice. Plaintiffs have 15 twenty-one days to seek leave to amend and must attach the proposed
amended complaint to the 16 motion. See Fed. R. Civ. P. 15(a)(2). 17 18 IT IS FURTHER
ORDERED that plaintiffs’ motion to file a sur-reply (ECF No. 16) be, 19 and the same hereby is,
DENIED. 20 DATED December 29, 2025. 21 22

23 UNITED STATES DISTRICT JUDGE

24 25 26 27 28