

HUNTER v. FISHER**DEMURRERS TO COMPLAINT**

Date of Hearing: January 15, 2014
Department: D

Trial Date: None
Case No.: LC100771

MOTIONS

Wior and Fisher have demurred to each cause of action in the complaint.

NBPA has also demurred to the first four causes of action in the complaint.

Plaintiff has filed one consolidated opposition to the demurrers.

TENTATIVE: 1) OVERRULED BUT WITH LEAVE TO AMEND TO CONFORM TO PROOF AS TO NPBA.

2) SUSTAINED WITHOUT LEAVE TO AMEND AS TO WIOR.

3) SUSTAINED WITHOUT LEAVE TO AMEND AS TO FISHER ON ALL CAUSES OF ACTION BUT FOR THE 5th AND 6th CAUSES OF ACTION. THE DEMURRERS TO THE 5th AND 6th CAUSES OF ACTION ARE OVERRULED.

ALLEGED FACTS

The allegations of the complaint are set forth in the work-up/tentative ruling regarding the SLAPP motions.

On May 16, 2013, plaintiff filed in Alameda County Superior Court a complaint alleging

1. Breach of Express Contract (NBPA and Fisher)
2. Breach of Express Contract by Repudiation (NBPA and Fisher)
3. Breach of Implied in Fact Contract (NBPA and Fisher)
4. Breach of Covenant of Good Faith and Fair Dealing (NBPA and Fisher)
5. Inducing Breach of Contract (Fisher and Wior)
6. Intentional Interference with Contractual Relations (Fisher and Wior)

7. Intentional Interference with Prospective Economic Relations (Fisher and Wior)
8. Negligence Interference with Prospective Economic Relations (Fisher and Wior)
9. Intentional Misrepresentation (Fisher)
10. Intentional Misrepresentation (Fisher)
11. Concealment (Fisher)
12. Negligent Misrepresentation (Fisher)
13. Defamation per se (Fisher)
14. Defamation per quod (Fisher)

In response to defendant NBPA's motion to transfer venue, the case was ordered transferred to LASC on or around August 15, 2013.

Discussion:

DEMURRER OF NBPA

The demurrer of the NBPA is overruled for the reasons discussed in the analysis of the NBPA's SLAPP motion. The court finds that Hunter has pled the elements of a breach of contract claim as to NPBA and is permitted to plead claims in the alternative to the extent that these claims appear to be inconsistent.

However, as noted in the SLAPP ruling, this court notes that Hunter's allegations with regard to the breach are more specific than are alleged in the complaint. This court will allow Hunter leave to amend in order to more specifically describe the nature of the breach.

DEMURRER OF FISHER AND WIOR

The court has ruled that many of the claims to which Wior and Fisher have demurrer should be dismissed pursuant to the SLAPP statute. These causes of action are the 5th and 6th with regard to Wior only, the 7th, 8th, 9th, 11th, 13th and 14th. Furthermore, for the reasons discussed in the analysis of the Interference claims in the SLAPP ruling, the demurrer to the 5th and 6th causes of action as they are alleged against Fisher are overruled.

The remainder of this ruling will discuss the 1st – 4th causes of action as they are alleged against Fisher and the 10th and 12th causes of action.

Contract Claims

An essential element of a breach of contract claim is that the plaintiff must demonstrate contract between itself and the defendant. *Filippo Indus. Inc. v. Sun Ins. Co. of New York* (1999) 74 Cal App 4th 1429, 1443. Here, the language of the contract demonstrates that Fisher signed the employment agreement on behalf of the NBPA and not on behalf of himself individually. See Compl. Ex. D at pg 1. An agent signing a contract may not be held liable for the action of a disclosed principal. See *Sackett v. Wyatt* (1973) 32 Cal App. 3d 592, 597. Accordingly the breach of contract claims against Fisher fail for the simple reason that Fisher did not enter a contract with Hunter.

Misrepresentation Claims

The basis of the 10th and 12th causes of action are that Fisher misrepresented his authority to sign the 2010 extension on behalf of the NBPA and bind the NBPA to the terms of the agreement.

These claims fail for a number of reasons. Accordingly the conclusory statement that Hunter reasonably relied on Fisher, an NBA player and not a lawyer, are contradicted by the factual section in the complaint where Hunter touts his legal prowess and experience. See *Guido v. Koopman* (1991) 1 cal. App. 4th 837, 843-44. Further, the representation that Fisher could sign on behalf of the NPBA does not negate that even with that signature, the contract had to be approved by the board, (which as discussed in the SLAPP ruling, the court does not agree that the contract necessarily provided that the board had to approve the extension and has accordingly overruled the NBPA's demurrer.)

Finally, misrepresentation claims must be pled with particularity. In this case, it is not clear to the court whether Hunter appears to allege that Fisher made affirmative express representations in writing that Fisher had the authority to bind the NPBA to the 2010 Extension but Hunter does not state with any particularity the exact words that were stated in writing to him. This is important because as noted simply signing the contract on behalf of the NBPA is not necessarily a representation that no further ratification of the contract is necessary.