

Superior Court of California County of San Benito



Tentative Decisions for September 13, 2024

Courtroom #2: Judge Pro Tempore Page Galloway

CL-24-00131 **Wells Fargo Bank, N.A. v. Michael J. Rubalcaba** **9-13-24**

On calendar for Plaintiff's motion for Judgment on the Pleadings

Plaintiff: Ashley Mulhorn

Defendant: In Pro Per

This case arises from Plaintiff's efforts to collect a debt. On March 5, 2024, the Complaint was filed seeking \$10,440.80 for damages for breach of contract. Specifically, that on or about October 20, 2002, the Plaintiff issued Defendant a credit card which Defendant accepted and used to purchase goods and/or services and/or for cash advances. The Defendant, in exchange for the use of the credit card agreed to repay the principal balance along with interest and other charges. The Plaintiff alleges that the contract was breached on or about March 8, 2023, when the Defendant failed to make any further payments on the balance of the account. Plaintiff further adds causes of action for common counts for money lent and paid out or expended at Defendant's request, for open book account, and asks in addition to the damages pled for their costs of suit.

Defendant filed his answer on May 10, 2024, in pro per, and states that he had enrolled in a debt consolidation plan and had assumed no further action was needed premised on the assurances of the debt consolidator that they would work out any negotiations with the Plaintiff.

On 7-25-24 Plaintiff moved for Judgment on the Pleadings. The motion is unopposed.

7-25-24 Plaintiff requests the court take judicial notice of the Complaint filed in this matter and the Defendant's answer to the complaint, attached as Exhibits 1 and 2, respectively.

7-25-24 Plaintiff notes that the underlying case is for the collection of a credit card debt for \$10,440.80, as alleged in the complaint. Defendant's answer does not deny the allegations in the complaint. Nor are any defenses raised.

Legal Standard: A motion for judgment on the pleadings may be made on the grounds that the Complaint states sufficient facts constituting a cause of action against the Defendant, and that the Answer does not state facts sufficient to constitute a defense to the complaint. (CCP§438 sub. (c)(1)(A).) The court must accept as true the factual allegations made in the Complaint and must interpret them liberally. (*Gerawan Farming, Inc. v. Lyons* (2000) 24 Cal. 4th 468, 515-516.) Moreover, as with a demurrer, a motion for judgment on the pleadings restricts the court's consideration to the face of the pleadings and to matters which may be judicially noticed. The court may not consider extrinsic evidence. (*Walter Jayasinghe v. Ki Young Lee* (1993) 13 Cal. App. 4th 33, 36 citing to *Ion Equip. Corp. v. Nelson* (1980) 110 Cal. App. 3rd 868, 881.).

Analysis:

The Plaintiff has adequately presented the elements of a breach of contract claim which stand unchallenged by the Defendant's answer. Here, contract is the credit card agreement which the Defendant breached when he ceased making payments on the obligations, he incurred by using the credit card to transact purchases of goods or services, or to make cash advances. The Plaintiff has extended credit to the Defendant to make those purchases, and until 2023, the Defendant appears to have honored the contract and made prior payments. Alternatively, the claims for common counts for money lent or paid alleges a debt for money lent by the plaintiff to the defendants, or money paid or expended for the defendant are adequately pled, alleging clearly that the Defendant incurred a debt to the Plaintiff for monies lent to him at his request. This claim is not denied by the Defendant, nor has any defense been presented. Similarly, the claim for an open book account is established by the series financial transactions by the Defendant by which he became indebted to the Plaintiff, which kept a book account for the monies due, or for an account stated as supported by these same fact patterns.

Proposed Ruling: The court grants the request for judicial notice. The court grants the motion for Judgment on the Pleadings as prayed, and judgment for \$10, 440,80 plus court costs of \$430.00, totaling \$10,870.80 shall issue.

END OF TENTATIVE RULING