SUPERIOR COURT OF CALIFORNIA,
COUNTY OF VENTURA
VENTURA

MINUTE ORDER

DATE: 11/03/2020 TIME: 09:00:00 AM DEPT: 43

JUDICIAL OFFICER PRESIDING: Benjamin Coats
CLERK: H McIntyre
REPORTER/ERM:

CASE NO: **56-2018-00507733-CU-BC-VTA**
CASE TITLE: **Garcia v Community Action of Ventura**
CASE CATEGORY: Civil - Unlimited CASE TYPE: Breach of Contract/Warranty

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EVENT TYPE: Ruling on Submitted Matter

APPEARANCES

The Court, having previously taken the defendant Community Action of Ventura's November 2, 2020 motion for summary judgment or, in the alternative, summary adjudication under submission, now rules as follows:

Ruling on defendant's objections:

Objection 1: Sustained. Evid. Code §§ 310, 403.
Objection 2: Sustained. Evid. Code § 403.
Objection 3: Sustained. Evid. Code §§ 403, 1200.
Objection 4: Sustained. Evid. Code §§ 350, 403.
Objection 5: Sustained. Evid. Code § 350.

UMFs 1-7, 9, 11, 14, 17 and 18 are undisputed. UMFs 8, 9, 12, 13, 15 and 16 are established.

DISCUSSION

Where plaintiff seeks summary judgment, the burden is to produce admissible evidence on each element of a "cause of action" entitling him or her to judgment. (§ 437c, subd. (p)(1); *Hunter v. Pacific Mechanical Corp.* (1995) 37 Cal.App.4th 1282, 1287; *S.B.C.C., Inc. v. St. Paul Fire & Marine Ins. Co.* (2010) 186 Cal.App.4th 383, 388.) A plaintiff who bears the burden of proof at trial by a preponderance of evidence must produce evidence that would require a reasonable trier of fact to find any underlying material fact more likely than not. "[O]therwise, [the plaintiff] would not be entitled to judgment as a matter of law." (*Aguilar v. Atlantic Richfield Co.* (2001) 25 Cal.4th 826,851.) If plaintiff makes this showing, the burden shifts to the defendant "to show that a triable issue of one or more material facts exists as to that cause of action or a defense thereto." (§ 437c, subd. (p)(1).) The opposing party must do more than attack the credibility of the moving party's evidence. (§ 437c, subd. (e).)

With respect to the First Cause of Action for Breach of Contract, Defendant Community Action of Ventura has produced evidence showing that it did not authorize work beyond the scope of the initial estimate, and it did not agree to pay more than the initial estimate of $4,324. Plaintiff has not produced evidence supporting a triable issue of any material fact on this subject. Specifically, defendant

established that Alejandro Topete did not have authority to approve any additional work at issue in this action. Plaintiff failed to produce any admissible evidence showing that Topete had actual or ostensible authority to authorize the work. While Plaintiff disputes UMFs 8, 9, 12, 13, 15 and 16 based on the declaration of Mr. Garcia, objections to that testimony were sustained, and those facts are deemed established.

An agency is either actual or ostensible. Civ.Code § 2298. "Actual authority stems from conduct of the principal which causes the agent reasonably to believe that the principal has consented to the agent's act; ostensible authority, from conduct of the principal which leads the third party reasonably to believe that the agent is authorized to bind the principal." *Mannion v. Campbell Soup Co.* (1966) 243 Cal.App.2d 317, 320.

"[T]he burden of proving agency, as well as scope of the agent's authority, rests upon the party asserting the existence thereof and seeking thereby to charge the principal upon representations of the agent. Thus, it is incumbent upon the party seeking to charge the principal for the acts of its agent to show (1) existence of the agency relationship, and (2) authority of the agent to bind the principal to the transaction upon which the action is brought." *California Viking Sprinkler Co. v. Pacific Indem. Co.* (1963) 213 Cal.App.2d 844, 850. The burden is the same for ostensible agency. *Ermoian v. Desert Hospital* (2007) 152 Cal.App.4th 475, 502–503.

Community Action of Ventura met its summary judgment burden by producing evidence showing that Topete did not have the authority to authorize additional work. (Olsen depo., page 80:21-81:6). This shifted the burden to plaintiff to produce evidence which would support a finding that Topete did have the authority or that there was ostensible authority. Although plaintiff may have believed Topete was authorized to approve the repairs, he provides no evidence showing his belief was "generated by some act or neglect of the principal." *Associated Creditors' Agency v. Davis* (1975) 13 Cal.3d 374, 399. Even if plaintiff's declaration were considered by the court, it refers only to actions by Topete, not Community Action of Ventura. And while plaintiff states that David Olsen told him "it was very important that I complete all necessary repairs and get the homeowners back in their home," plaintiff does not establish that Olsen had authority to bind Community Action of Ventura. So, even if the court were to consider this testimony, it would be insufficient.

Community Action of Ventura is entitled to judgment on the First Cause of Action for Breach of Contract.

With respect to the Second Cause of Action for Work, Labor and Materials, the Third Cause of Action for Work, Labor and Services, the Fourth Cause of Action for Quantum Meruit and the Fifth Cause of Action for Unjust Enrichment, the court rules as follows:

"[I]n order to recover under a quantum meruit theory, a plaintiff must establish both that he or she was acting pursuant to either an express or implied request for such services from the defendant and that the services rendered were intended to and did benefit the defendant." *Day v. Alta Bates Medical Center* (2002) 98 Cal.App.4th 243, 248.

"The phrase 'unjust enrichment' is used in law to characterize the result or effect of a failure to make restitution of or for property or benefits received under such circumstances as to give rise to a legal or equitable obligation to account therefor." California Emergency Physicians Medical Group v. PacifiCare of California (2003) 111 Cal.App.4th 1127, 1136, disapproved of on other grounds by *Centinela Freeman Emergency Medical Associates v. Health Net of California, Inc.* (2016) 1 Cal.5th 994.

Regardless of whether it is a cause of action, a theory of recovery, or an effect, "[t]he elements of an unjust enrichment claim are the 'receipt of a benefit and [the] unjust retention of the benefit at the expense of another.'" *Peterson v. Cellco Partnership* (2008) 164 Cal.App.4th 1583, 1593 (citation omitted).

The Second Cause of Action for Work, Labor and Materials, the Third Cause of Action for Work, Labor and Services are common counts, duplicative of the Third and Fourth Causes of Action. Thus they also include the essential element that a benefit must be received.

UMF 17 which states that the property was not owned by Community Action of Ventura and Community Action of Ventura did not obtain any benefit from the additional work performed by plaintiff is not disputed. Because Community Action of Ventura has established that it received no benefit, that element of the Second, Third, Fourth and Fifth Causes of Action cannot be established and those claims must fail.

Community Action of Ventura is entitled to judgment on the Second Cause of Action for Work, Labor and Materials, the Third Cause of Action for Work, Labor and Services, the Fourth Cause of Action for Quantum Meruit and the Fifth Cause of Action for Unjust Enrichment.

The clerk is directed to give notice.