

SUPERIOR COURT OF CALIFORNIA, COUNTY OF ALAMEDA
Hayward Hall of Justice

<p>George Matthews et al Plaintiff/Petitioner(s) VS. Acts Full Gospel Church Defendant/Respondent (s)</p>	<p>No. RG19005474</p> <p>Date: 02/09/2024 Time: 5:08 PM Dept: 512 Judge: Eumi Lee</p> <p style="text-align: center;">ORDER re: Ruling on Submitted Matter filed by Acts Full Gospel Church (Defendant) on 11/30/2023</p>
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The Court, having taken the matter under submission on 02/09/2024, now rules as follows:

The motion of defendant Acts Full Gospel Church for summary judgment on the Second Amended Complaint of plaintiffs George Matthews and Julius Van Hook is GRANTED.

SECOND AMENDED COMPLAINT

In the operative Second Amended Complaint, plaintiffs George Matthews (“Matthews”) and Julius Van Hook (“Van Hook”) (collectively, “Plaintiffs”) allege they provided services to Alameda County under a November 2016 contract to provide chaplaincy services to inmates in Alameda County and Glenn Dyer County Jails (“2016 Contract”), and a March 2018 contract to provide chaplaincy and account management services to the Alameda County Probation Department (“2018 Contract”). Plaintiffs assert three claims for breach of contract and three claims for breach of the implied covenant of good faith and fair dealing as to both contracts, on the theory that they were third party beneficiaries thereto. The remaining causes of action have been dismissed.

Defendant Acts Full Gospel Church (“Acts” or “Defendant”) moves for summary judgment on the Second Amended Complaint, or in the alternative, for summary adjudication of three issues: (1) that Matthews was not an intended third party beneficiary of the 2016 Contract and may not sue for breach of that contract; (2) that Matthews was not an intended third party beneficiary of the 2018 Contract and may not sue for breach of that contract; and (3) that Van Hook was not an intended third party beneficiary of the 2018 Contract, and may not sue for breach of that contract.

LEGAL STANDARD ON SUMMARY JUDGMENT

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Under Code of Civil Procedure section 437c(f), a party may move for summary adjudication of one or more causes of action, affirmative defenses, claims for damages under 3294 or as otherwise stipulated), or issues of duty. “A motion for summary adjudication shall be granted only if it completely disposes of a cause of action, an affirmative defense, a claim for damages, or an issue of duty.” (Code Civ. Proc., § 437c(f)(1).) As a preliminary matter, although the issues for which Acts seeks summary adjudication do not specifically address a cause of action, duty, or issue of damages, they satisfy subdivision 437c(f) because granting summary adjudication as to any one of the issues would necessarily dispose of the related causes of action for breach of contract and breach of the implied covenant of good faith and fair dealing. Accordingly, the motion complies with section 437c.

A moving party defendant has met its burden of showing that a cause of action has no merit if the party has shown that one or more elements cannot be established, or that there is a complete defense to the cause of action. Once the defendant has met that burden, the burden shifts to the plaintiff to show that a triable issue of material fact exists as to the cause of action or a defense thereto. (Code Civ. Proc., § 437c(p)(1).)

The purpose of a motion for summary judgment or summary adjudication “is to provide courts with a mechanism to cut through the parties’ pleadings in order to determine whether, despite their allegations, trial is in fact necessary to resolve their dispute.” (Aguilar v. Atlantic Richfield Co. (2001) 25 Cal.4th 826, 843.) “Code of Civil Procedure section 437c, subdivision (c), requires

the trial judgment to grant summary judgment if all the evidence submitted, and ‘all inferences reasonably deducible from the evidence’ and uncontradicted by other inferences or evidence, show that there is no triable issue as to any material fact and that the moving party is entitled to judgment as a matter of law.” (Adler v. Manor Healthcare Corp. (1992) 7 Cal.App.4th 1110, 1119.)

The motion for summary judgment shall be granted if all the papers submitted show that there is no triable issue as to any material fact and that the moving party is entitled to a judgment as a matter of law. (Code Civ. Proc., § 437c(c); DeCastro West Chodorow & Burns, Inc. v. Superior Court (1996) 47 Cal.App.4th 410, 422.)

DISCUSSION

A. Breach of Contract Claims

The issue before the Court is whether Plaintiffs have standing to sue for breach of the 2016 and 2018 Contracts as third party beneficiaries. The evidence demonstrates that they do not.

In *Goonewardene v. ADP, LLC* (2019) 6 Cal.5th 817, the California Supreme Court established a three-part test for determining third-party beneficiary status. Under this test, the non-signatory must prove that (1) the third party would in fact benefit from the contract; (2) a motivating purpose of the contracting parties was to provide a benefit to the third party; and (3) permitting the third party to bring its own breach of contract action against a contracting party is consistent with the objectives of the contract and the reasonable expectations of the contracting parties.

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(Goonewardene, 6 Cal.5th at 830.) The third element “does not focus upon whether the parties specifically intended third party enforcement but rather upon whether, taking into account the language of the contract and all of the relevant circumstances under which the contract was entered into, permitting the third party to bring the proposed breach of contract action would be ‘consistent with the objectives of the contract and the reasonable expectations of the contracting parties.’” (Id.) “In other words, this element calls for a judgment regarding the potential effect that permitting third party enforcement would have on the parties’ contracting goals, rather than a determination whether the parties actually anticipated third party enforcement at the time the contract was entered into.” (Id. at 831.)

It appears to be undisputed that Plaintiffs arguably satisfy the first prong of the Boonewardene test because both Matthews and Van Hook performed some services under the contracts and were paid for their services.

The Court turns to the second prong, i.e., whether a motivating purpose of the contracting parties was to provide a benefit to the third party. Acts submits evidence establishing that it was awarded the 2016 and 2018 Contracts after competitive bidding processes concluded, and that Acts and the County were the sole parties and signatories to those contracts, although Matthews signed the 2018 Contract on behalf of Acts, as the named “Contractor.” (Undisputed Material Fact (“UMF”) Nos. 1-2, 12-13; Jackson Decl., Ex. A (2016 Contract) and Ex. H (2018 Contract); Youngkin Decl., Ex. D (Jackson Trans. at pp. 97-98).) Acts’ undisputed evidence establishes that the purpose of the 2016 Contract was to provide inmate chaplaincy services to the Alameda

County Sheriff’s Office. (UMF No. 3; Jackson Decl., Ex. A at p.1; Ex. B (Letter dated 11/18/2016).)

The 2016 Contract does not expressly identify any third party beneficiary. (UMF No. 4; Jackson Decl., Ex. A.) The 2016 Contract identified four individuals as “Key Personnel,” including Matthews. (Jackson Decl., Ex. A.) Exhibit A (“Definition of Services”) to the 2016 Contract states, in relevant part: “Contractors agrees that it shall not transfer or reassign the individuals identified above as Key Personnel or substitute subcontractors without the express written agreement of County, and an approved site clearance, which agreement shall not be unreasonably withheld. Should such individual or individuals in the employ of Contractor no longer be employed by Contractor during the term of this Agreement, Contractor shall make a good faith effort to present to County an individual with greater or equal qualifications as a replacement subject to County’s approval, which approval shall not be unreasonable withheld.”

Acts’ undisputed evidence also establishes that the purpose of the 2018 Contract was to provide religious program services to the County. (UMF No. 14; Jackson Decl., Ex. H at p. 1.) The 2018 Contract does not expressly identify any third party beneficiary. (UMF No. 15; Jackson Decl., Ex. H.) The 2018 Contract identified seven “Key Personnel and subcontractors,” including George Matthews as Account Manager and plaintiff Van Hook (erroneously identified as Julius Van Nook) as Chaplain. (Jackson Decl., Ex. H.) Exhibit A (“Definition of Services”) to the 2018 Contract contains identical language as Exhibit A to the 2016 Contract, quoted above.

On their face, the 2016 and 2018 Contracts permitted Acts to substitute new “Key Personnel”

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with the County's consent, and required Acts, as Contractor, to provide replacement personnel "with greater or equal qualifications." Nothing in the 2016 or 2018 Contracts states or suggests, as Plaintiffs argue, that a "motivating factor" in forming the agreements was to provide Plaintiffs with employment, or to specifically benefit Plaintiffs financially or in any other way, and nothing in the 2016 or 2018 Contracts states or suggests that permitting Plaintiffs to sue Acts for breach of either contract would be consistent with the Contracts' objectives or the contracting parties' reasonable expectations. (Goonewardene, 6 Cal.5th at 830.)

In opposition, Plaintiffs assert three theories in support of the argument that they were intended third party beneficiaries to the 2016 and 2018 Contracts: first, their designation as "Key Personnel" made them third party beneficiaries; second, that plaintiff Matthews assisted to some extent in the negotiation and drafting of portions of the contracts; and third, that Alameda County did not expressly approve their termination or removal as "Key Personnel."

None of these theories – or the evidence Plaintiffs cite in support thereof – satisfies the Goonewardene test, and none of Plaintiffs' evidence creates a triable issue of fact sufficient to overcome summary judgment. There is no evidence before the court that in designating individuals as "Key Personnel," the contracting parties intended to ensure a benefit to those specific individuals. Rather, the plain language of the contracts reflects the opposite – that the purpose of the contracts was to provide chaplaincy services to incarcerated individuals, and that "Key Personnel" could be replaced with the County's consent. Even if there were evidence indicating that the County failed to consent to the replacement or termination of either plaintiff,

there is no basis for concluding that the withholding of consent would provide Plaintiffs with the right to sue for breach of the contracts as third party beneficiaries.

Plaintiffs purport to dispute nearly all of the facts included in Acts' separate statement. Specifically, Ps purport to dispute Fact Nos. 1 and 3-11, pertaining to Issue 1, and Nos. 12-21, pertaining to Issues 2 and 3, by citing the same portions of the Matthews and Van Hook declarations, and the same lengthy series of excerpts from the Jackson, Matthews, and Van Hook deposition transcripts. The evidence cited by Plaintiffs is not tailored to the facts in the separate statement, and does not truly dispute those facts.

"The requirement of a separate statement from the moving party and a responding statement from the party opposing summary judgment serves two functions: to give the parties notice of the material facts at issue in the motion and to permit the trial court to focus on whether those facts are truly undisputed." (Parkview Villas Assn., Inc. v. State Farm Fire & Cas. Co. (2005) 133 Cal.App.4th 1197, 1210, quoting North Coast Business Park v. Nielsen Construction Co. (1993) 17 Cal.App.4th 22, 31.) As explained in United Community Church v. Garcin (1991) 231 Cal.App.3d 327, "[s]eparate statements are required not to satisfy a sadistic urge to torment lawyers, but rather to afford due process to opposing parties and to permit trial courts to expeditiously review complex motions for ... summary judgment to determine quickly and efficiently whether material facts are in dispute." (Id. at 335.)

Plaintiffs' non-tailored and seemingly obfuscatory responsive separate statement undermines these two functions. Despite this, a review of the cited evidence reveals that Act's material facts

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are not truly disputed. Plaintiffs fail to create a disputed issue of fact as to whether they have standing to sue for breach of the 2016 and 2018 Contracts.

B. Breach of the Implied Covenant of Good Faith and Fair Dealing

As noted above, the Second Amended Complaint contains three causes of action for breach of the 2016 Contract and 2018 Contract, and three related claims for breach of the implied covenant of good faith and fair dealing as to each Contract. All of these claims are subject to summary judgment.

“The covenant of good faith and fair dealing, implied by law in every contract, exists merely to prevent one contracting party from unfairly frustrating the other party's right to receive the benefits of the agreement actually made. [Citation.] The covenant thus cannot be endowed with an existence independent of its contractual underpinnings. [Citation.] It cannot impose substantive duties or limits on the contracting parties beyond those incorporated in the specific terms of their agreement.” (Guz v. Bechtel Nat. Inc. (2000) 24 Cal.4th 317, 349–50 [internal quotation marks omitted].)

Because Plaintiffs fail to demonstrate the existence of a triable issue of material fact as to their breach of contract claims, the related claims for breach of the implied covenant cannot proceed independently.

Accordingly, Defendant’s motion for summary judgment is GRANTED.

EVIDENTIARY OBJECTIONS

Acts objects to the Matthews and Van Hook declarations in their entirety on the ground that they are fatally defective because they violate CCP section 2015.5. Acts argues these defects cannot be cured, citing *Kulshrestha v. First Union Commercial Corp.* (2004) 33 Cal.4th 601, 610-11 [declaration is defective absent a facial link to California or its perjury laws and is properly excluded for purposes of summary judgment]).

Section 2015.5 provides that under any law that requires or permits a matter to be supported, evidenced, established, or proved by declaration, “such matter may with like force and effect be supported, evidenced, established or proved by the . . . declaration . . . in writing of such person which recites that it is certified or declared by him or her to be true under penalty of perjury, is subscribed by him or her, and (1), if executed within this state, states the date and place of execution, or (2), if executed at any place, within or without this state, states the date of execution and that it is so certified or declared under the laws of the State of California.”

Out-of-state declarations must follow section 2015.5’s literal terms. (*Kulshrestha*, supra, 33 Cal.4th at 610-11.) Declarations executed within California must also conform to section 2015.5 by stating that the declaration is signed, dated, and made under penalty of perjury at a particular place. “Based on the plain meaning of the statute, and consistent with the legislative history discussed below, the courts have made clear that a declaration is defective under section 2015.5 absent an express facial link to California or its perjury laws.” (*Id.* at 612.) Plaintiffs’

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declarations do not state where they were executed, or contain any reference to California or its perjury laws that would conform the declarations to the requirements of section 2015.5. Plaintiffs have not sought leave to correct the defect. Accordingly, the objections to the declarations in their entirety are SUSTAINED on the ground that they fail to comply with section 2015.5.

At hearing, Plaintiffs' counsel requested leave to correct the defective declarations. The court directed Plaintiffs' counsel to identify the portions of the Matthews and Van Hook declarations that Plaintiffs contend would create a triable issue of material fact, if considered. Plaintiffs' counsel was unable to cite any portions of the declarations, and instead cited excerpts from the deposition transcripts of plaintiffs Matthews (at pp. 79, 111-112) and Van Hook (at p. 21), which the court has already considered.

Even if the court were to grant Plaintiffs' request and permit Plaintiffs to correct the defects (see, e.g., *Ambriz v. Kelegian* (2007) 146 Cal.App.4th 1519) and consider the declarations on their merits, the Court's analysis would remain the same. Having reviewed the declarations, the Court concludes that the declarations do not dispute Acts' evidence or create triable issues of material fact regarding whether Plaintiffs were third party beneficiaries to the 2016 and 2018 Contracts. Rather they are cited in support of Plaintiffs' theories, addressed above, which fail as a matter of law. The court is not required to engage in idle acts. (Civ. Code, § 3532,)

Acts separately objects to many portions of Matthews' declaration on the ground that it includes self-serving statements that directly contradict his sworn deposition testimony (Evid. Obj. Nos. 5-10, 12, 14, 16). In light of *Kulshrestha*, the court does not need to consider the remaining objections.

Clerk is directed to serve copies of this order, with proof of service, to counsel and to self-represented parties of record.

Dated : 02/09/2024



Eumi Lee / Judge

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