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11 SUPERIOR COURT OF THE STATE OF CALIFORNIA
12 COUNTY OF SAN BERNARDINO

13 STUBBLEFIELD PROPERTIES, a
14 California General Partnership, dba
15 Mountain Shadows Mobile Home
16 Community

17 Plaintiff,

18 v.

19 BONNIE SHIPLEY,

20 Defendant

21

action filed: 8-27-12

22 Case No. **UDDS1204130**

23 NOTICE of/and DEMURRER and MOTION
24 TO STRIKE PLAINTIFF'S COMPLAINT
25 and MOTION TO QUASH SUMMONS

26 Date: **Sept. 27, 2012 (Limited Civil Case)**

27 Time: **7:30 a.m.** **Hon. Wilfred Schneider**

28 Place: 303 W. 3rd. St. San Bernardino **S-31**

PLEASE NOTE THAT at the above time and place defendant BONNIE SHIPLEY will
move the court to sustain a demurrer, motion to strike and motion to quash the complaint.
Motions are based on this notice, Points & Authorities, and evidence presented at hearing:

SUMMARY OF STATUTORY BASES FOR MOTIONS (Notice)

Unlawful detainer is governed generally by Code of Civil Procedure §§1161-1179a.
The summary nature of unlawful detainer proceedings mandate strict compliance with the
governing statutory provisions. *De La Vara v. Municipal Court* (1979) 98 C.A. 3d 638, 640.
see also *Cal-American Income Property Fund IV v. Ho* (1984) 161 C.A. 3d 583, 585. (Un-
lawful detainer is highly summary in nature; code requirements must be followed strictly)
Schulman v. Vera (1980) 108 C.A. 3d 552, 563-564

1 A person seeking to avail himself of the unlawful detainer statute [CCP§1161] must
2 bring himself clearly within the terms of the relationship between himself and occupier of
3 the property. *Goetze v. Hanks* (1968) 261 C.A.2d 615, 616; *Marvell v. Marina Pizzeria*
4 (1984) 155 C.A.3d Supp. 1, 7. Statutes permitting incidental relief, such as damages, are
5 strictly construed. *Highland Plastics, Inc. v. Enders* (1980) 109 CA. 3d Supp. 1.

6 **Relief not authorized by the statutes may not be granted and will be stricken by court.**

7 *Castle Park No. 5 v. Katherine* (1979) 91 C.A. 3d Supp. 6. (see Motion to Strike below)

8 Because CCP §1167 provides a response time of only five days, as contrasted to the
9 30 days normally allowed a defendant in a civil action [CCP§412.20(a)(3)], service of a five
10 days summons on a complaint that fails to state a cause of action for unlawful detainer
11 (or forcible entry or forcible detainer) is defective in illegally purporting to shorten the
12 defendants time to plead and hence does not give the court jurisdiction over the defendant.

13 *Greene v. Municipal Court* (1975) 51 C.A. 3d 446, 451-452. Service of summons is subject
14 to a Motion to Quash. [CCP §418.10] see Motion to Quash below, following Demurrer P&A

15 A party may object by Demurrer to a pleading on the grounds it does not state facts
16 sufficient to constitute a cause of action [CCP §430.10(a)(e)] [see General Demurrer below]

17 A party may object by Special Demurrer [CCP §430.10(a) [see Special Demurrer below].

18 CCP §430.10(d) There is a defect or misjoinder of parties.

19 CCP §430.10(f) The pleading is uncertain. As used in this subdivision, uncertain includes ambiguous
and unintelligible.

20 CCP §430.10(g) In an action founded upon a contract, it cannot be ascertained from the pleading
21 whether the contract is written, is oral, or is implied by conduct

22 Matters judicially noticed may be read into a complaint to determine its sufficiency to
23 state a cause of action. *E.H. Morrill Co. v. State of California* (1967) 65 Cal. 2d 787, 795.

24 [see Request for Judicial Notice filed herewith, as grounds to dismiss with prejudice].

25 Grounds are Evidence Code §§452-453 and cases cited in P&A. [see RJN filed herewith]

26
27 **MOTION TO STRIKE** [CCP §436(a); 437] Irrelevant or false matters may be stricken or
28 relief not authorized under the strict interpretation of UD statutory scheme.

All objections must be raised *simultaneously before answering* or they are waived. *Id.*

1 STATEMENT OF FACTS (verified below and admitted by plaintiff – see RJN “B3”)

2 On 1-05-2005 Nancy Duffy (McCarron) bought a mobile home (“the premises”) at
3 Mountain Shadows Mobile Home Community at 4040 E. Piedmont Dr. #333, Highland.
4 Duffy is 100% sole owner of the premises [see SB Cty certified tax records- RJN “A1 –A2”]
5 Duffy entered into a lease agreement with MSMHC on 1-05-2005 governed by the MRL.
6 [Mobile Home Residency law]. Under MRL Duffy is a “homeowner” defined at Civ §798.9.
7 **Plaintiff admitted above facts are undisputed in Freeman Trial Brief** [see RJN – “B2”]

8 As these facts are **undisputed** the court must apply MRL, UD law, and lease contract law.
9 Court must apply mandatory authority. *Auto Equity Sales v. Supr Court*, 57 Cal. 2d 450.
10 http://en.wikipedia.org/wiki/California_Courts_of_Appeal#cite_note-1 (commonly known).

11 The controlling cases in this Second Appellate District which must be applied to the facts:

12 **1** *Otanez v. Blue Skies Mobile Home Park* (1991 2nd.District) 1 C.A4th.1521 holding:

13 **We hold that the tenant need not live in the**
14 **premises full-time in order to be a resident**

15
16 **2** *City of Santa Barbara v. Adamson* (1980) 27 Cal.3d 123, holding: “people have an
17 inalienable right to life... liberty...happiness...**privacy**. (any 2 or more can live together).

18 **3** *Rancho Santa Paula Mobile Homes v. Evans* (1994) 26 CA4th. 1129 (no *ex post facto*)
19 holding that a new park “rule” can’t be applied to deprive a resident of a right expressly
20 included in her original lease unless the resident executed a “modification to lease.”

21 The court must apply all statutes included in MRL, specifically **Civil Code §798.34 (b)**

22 **A homeowner who is living alone and who wishes to share his or her**
23 **mobilehome with one person may do so, and a fee shall not be imposed**
24 **by management for that person.**

25 The court must apply Clause 10 in 1-05-2005 Duffy lease which was never modified.

26 **No persons other than those listed on the signature page of this Lease,**
27 **and one guest (where resident would otherwise be living alone) may**
28 **reside at the Space without Park’s prior written consent.**

At all times Duffy had an MRL statutory **and** contractual right to have one co-resident.

I declare all above facts on personal knowledge under penalty of perjury, executed 8-31-12

1 APPLYING THE LAW TO ABOVE VERIFIED FACTS AS ADMITTED BY PLAINTIFF
2 GENERAL DEMURRER [CCP §430.10(a)(e)] failure to state a cause of action

3 The court should dismiss this hybrid UD summons with “forcible detainer” caption
4 with prejudice as plaintiff can’t amend it to state a forcible detainer or UD cause of action.
5 Plaintiff admitted that MRL must be applied to this case as it governs Duffy’s tenancy.
6 Plaintiff admitted it is bound by the **unmodified** Duffy/MSMHC lease since 1-05-2005.
7 Accordingly, plaintiff is in *privity* of contract with Duffy----not in *privity* with SHIPLEY.

8 Shipley is in *privity* of contract *with Duffy* under an agreement to **share** premises.
9 This is such basic hornbook contract law it is not even necessary to cite case authorities.
10 As Shipley testified in CD1208367 on 8-31-12 she shares the home as Duffy’s co-resident
11 under MRL statutory authority of **Civil Code §798.34 (b)** and **Clause 10** of Duffy’s lease.

12 Shipley testified Duffy uses the second bedroom and bath with her own furniture.
13 Shipley testified Duffy made sharing clear to her when she signed the 6-month agreement.
14 Shipley testified that since she moved in 8-1-12 Duffy has slept there 9-10 times. (1/3 mo).
15 There is no question this proved Duffy regularly resides in the home when in the area.
16 Under *Adamson, Evans, and Otanez* which have interpreted MRL on exactly this issue,
17 there can be no question SHIPLEY has the right to live at #333. This “forcible detainer”
18 complaint was knowingly filed without any basis in law or fact by a law firm who, as
19 specialists in representing Mobile Home Parks, knows it is invalid. The firm conspired
20 with plaintiff to continue its campaign to HARASS Shipley & Duffy not only to punish
21 Duffy for protesting unconstitutional rules in May 2010, but also as an example to
22 intimidate other residents from protesting any “new rules” the park arbitrarily imposes.

23 2012 CEB (2nd Ed.) Eviction Defense at, §6.12, p. 557-558, as to co-resident, recites:

24 The resident who is not a homeowner is entitled to many of the protections of
25 the MRL, but the special restrictions on termination of the tenancy apply only to the
26 rental agreement between the park management and the homeowner, and not to the
27 agreement between the resident and the homeowner. If eviction of the resident is
28 necessary, **the park management must rely only on the homeowner to
evict the tenant...** or terminate...under CC §798.56, in order to evict the resident.

This hybrid “unlawful detainer” summons, with a “forcible detainer” complaint is invalid.

1 Plaintiff is not authorized to evict SHIPLEY under either an unlawful detainer claim
2 (in which filing a 3-day notice to pay/quit is a prerequisite) or a “forcible detainer” which
3 is designed to evict a trespasser who has “broken and entered.” Under the authorities cited
4 above, the court should dismiss the complaint with prejudice as plaintiff cannot possibly
5 amend the complaint to state a cause of action for Unlawful detainer or forcible detainer.

6 **A trial court does not abuse its discretion by sustaining a general demurrer without**
7 **leave to amend if it appears from the complaint that under applicable substantive law**
8 **there is no reasonable possibility that an amendment could cure the complaints defect**
9 *Coffman Specialties, Inc. v. Dept. of Transp.* (2009) 176 C.A. 4th 1135, 1144, *Heckendorn*
10 *v. City of San Marino* (1986) 42 Cal.3d 481, 486; *Dalton v. East Bay Mun. Utility District*
11 (1993) 18 C.A. 4th 1566, 1570-1571, Moreover, when a complaint is successfully challenged
12 by a general demurrer, **the burden is on the plaintiff to demonstrate how the complaint**
13 **might be amended to cure it of the defect** . *Nazir v. United Airlines* (2009) 178 C.A.4th 243.
14 *Assn of Com Org for Reform Now v. Dept of Indust. Relations* (1995) 41 C.A. 4th 298, 302.

15 SPECIAL DEMURRER

16 **CCP §430.10(d) There is a defect or misjoinder of parties.**

17 As explained above, plaintiff has no standing to evict Shipley as its lease is with DUFFY, and the
18 rent for August 2012 was paid. There can be no UD as there is no privity of contract with SHIPLEY.
19 There can be no “forcible detainer” as SHIPLEY resides lawfully. Duffy is the sole owner of premises.
20 The park can only evict a resident under only few authorized reasons as expressly recited in CC §798.56
21 (failure to comply with state law or local ordinances; being substantial annoyance to other residents;
22 conviction of prostitution; failure to comply with a **reasonable** rule or regulation **which is part of the**
23 **rental agreement or any amendment thereto**; or for nonpayment of rent.) None of these apply to
24 Duffy or Shipley. Plaintiff will argue they imposed a “new rule” in May 2010 not allowing roommates,
25 but that can’t be used as a justification because such rule must be part of Duffy’s rental agreement or
26 “amendment thereto.” Duffy’s clause 10 permits co-resident without prior park approval.
27 Finally, the park may not impose a rule which deprives residents of rights afforded to
28 them by our legislature; i.e. Civil Code §798.34 (b) which expressly authorizes a
homeowner to have a co-resident. Demurrer should be sustained for misjoinder of parties.

1 **CCP §430.10(g) In an action founded upon a contract, it cannot be ascertained from the**
2 **pleading whether the contract is written, is oral, or is implied by conduct**

3 The summons recites this is an “Unlawful Detainer” case. There can be no such
4 cause of action as it cannot be ascertained from the pleading whether the contract is
5 written, oral or implied by conduct. A contract is a prerequisite to “unlawful detainer.”
6 Demurrer should be sustained as it cannot be ascertained whether contract even exists.

7 **CCP §430.10(f) The pleading is uncertain.** As used in this subdivision, uncertain includes
8 ambiguous and unintelligible.

9 The summons recites it is an “unlawful detainer.” Yet, there are no UD allegations, no Notice to Quit.
10 The complaint is labeled “forcible detainer” which does not apply to these facts for several reasons.

11 First, complaint alleges plaintiff is owner of “the premises.” Legal definition of premises is
12 “in real estate, land and the improvements on it, **a building**, store, shop, apartment, or
13 **other designated structure.**” Matters judicially noticed may be read into the complaint in
14 determining its sufficiency to state a cause of action. *E.H. Morrill Co. v. State of California*
15 (1967) 65 Cal. 2d 787, 795. See RJN “A” which is a certified copy of County Tax record
16 showing that Duffy is the 100% sole owner of the premises commonly known as 4040 E.
17 Piedmont Drive #333. Duffy leases the land from the park pursuant to the 1-5-05 Duffy
18 lease and her August rent check was cashed by MSMHC.

19 Accordingly, only Duffy has the legal power and authority, as she has exclusive
20 control over the land and structure (mobile home) built upon it, and protected by MRL.
21 The park may only evict Duffy under the 7 allowable causes cited above which don’t apply.
22 Secondly, the complaint is ambiguous and unintelligible because the summons recites it is
23 a UD case, the caption on the complaint recites it is a “forcible detainer;” the body of the
24 complaint recites “the action is brought under Section **1159 et seq .** of the California Code
of Civil Procedure.” CCP 1159 is **followed by** specific codes, only one of which can be used.

25 1159. Forcible entry

26 1160. Forcible detainer

27 1161. Unlawful detainer

28 1161a. Removal of person holding over after notice to quit

1161b. Written notice to quit required before removal from foreclosed property;

1161c. Foreclosure on residential property; Cover sheet and notice of termination of tenancy

1161.1. Unlawful detainer; Commercial real property

1 Unlawful detainer (which is what this defendant's summons recite) is a statutory
2 remedy and statutory requirements must be strictly complied with at law.
3 *Schulman v. Vera* (1980) 108 C.A. 3d 552, 563-564. No reasonable defendant could be
4 expected to respond (answer) this completely unintelligible and uncertain complaint.
5 It cannot be UD as there is no contract alleged, no prerequisite 3-day notice to pay/quit.
6 It cannot be "forcible detainer" as Shipley did not "force her way in" by breaking/entering.
7 (no criminal report was filed against her.) Is she supposed to guess which of above it is?

8 Further, at Par. 11 it alleges that notice was given per CCP §1162, which applies to
9 UD under §1161. Yet it cannot be UD as no contract or 3-day notice and this conflicts with
10 the caption which recites "forcible detainer" another code section CCP §1159. Then at
11 Par. 15 it recites plaintiff has violated CC §798.75 which cannot possibly apply because
12 that section prohibits residency where a **purchaser** has not been approved by the park.
13 Shipley is not a **purchaser**. Duffy already owns the home and did not sell it to Shipley.
14 At **par. 17** it claims plaintiff alleges to be entitled to attorney fees under CC §798.85
15 arising out of "MRL" as a "prevailing party." If MRL applies the 5-day notice was invalid.
16 [see Notice (compl. Exh. A) which is procedurally and substantively deficient]. If MRL
17 applies then plaintiff could ONLY evict for the 7 enumerated reasons under CC §798.56.
18 As explained above, none of the 7 applies to Duffy or Shipley so it is legally invalid.
19 If the Notice of not legally valid the derivative UD or "forcible detainer" is also invalid.
20 The court must sustain demurrer for uncertainty as no reasonable person could answer it.

21
22 **MOTION TO QUASH SERVICE OF DEFECTIVE SUMMONS** [CCP §418.10]

23 Because CCP §1167 provides a response time of only five days, as contrasted to the
24 30 days normally allowed a defendant in a civil action [CCP §412.20(a)(3)], service of a five
25 days summons on a complaint that fails to state a cause of action for unlawful detainer (or
26 forcible entry or forcible detainer) is defective in illegally purporting to shorten the
27 defendants time to plead and hence does not give the court jurisdiction over the defendant
28 *Greene v. Municipal Court* (1975) 51 C.A. 3d 446, 451452 (unlawful detainer). Service of
the summons in such a case is subject to a motion to quash under CCP§418.10.

1 As explained above, the court should sustain the demurrer without leave to amend
2 because plaintiff cannot amend to plead a cause of action for UD or forcible detainer.

3 Plaintiff asks the court to quash the summons under CCP§418.10 and *Greene. Id.*

4 **MOTION TO STRIKE [CCP §436(a); 437] Irrelevant or false matters may be stricken.**

5 Motions to strike are usually not allowed in limited civil cases, except when damages or
6 relief sought are not supported by the allegations of the complaint or law. CCP§ 91, 92(d).

7 *Allerton v. King* (1929) 96 Cal. App. 230, 233. Motion to strike is appropriate vehicle for
8 attacking allegations in complaint requesting improper relief. *Satz v. Superior Court*

9 (1990) 225 C. A. 3d 1525, 1533 n.9; *Saberi v. Bakhtiari* (1985) 169 CA. 3d 509, 517, 215

10 The court must strike a complaint if it is not drawn in conformity to rules. CCP§436-437.

11 Here, the complaint seeks attorney fees as damages (**Par. 17**). Shipley never signed
12 a lease with plaintiff and plaintiff did not file for eviction under MRL. If so, they would
13 have been compelled to follow the proper Notice under MRL which is a 60-day notice.

14 Plaintiff is not in privity of contract with Shipley, but rather with Duffy-not a party herein
15 Accordingly, there is no basis to seek attorney fees from Shipley. **Par 17** must be stricken.

16 **Par. 8** must be stricken because it is FALSE. Duffy is the owner of the premises within
17 which Shipley resides. (inside the mobilehome owned solely by Duffy). Although land
18 outside #333 may be owned by plaintiff Shipley does not reside on that land, but only uses
19 an *easement* to drive over that land (common areas) to get to her residence inside #333.

20 This *easement* to allow access to individual homes within the park is appurtenant to land.

21 Also, plaintiff is not entitled to “possession” of premises as they collected rent already for
22 the premises (\$958 for August rent) from Duffy and are not authorized to collect twice.

23 Plaintiff is limited to collect ONLY the amount of rent pursuant to its lease with Duffy.

24 **Par. 9** must be stricken as CCP §1159 does not apply as Shipley did not “break & enter.”

25 **Par. 11** must be stricken as it does not apply. Notice under CCP §1162 pertains to §1161.

26 UD--which is not the cause of action identified in caption. (caption reads forcible detainer)

27 **Par. 15** must be stricken as CC §798.75 does not apply as Shipley is not a “purchaser.”

28 **Par. 16** must be stricken as it asks for damages of (\$30.01) apparently written in a vacuum

1 The entire PRAYER must be stricken for the reasons just explained. Plaintiff is not
2 entitled to possession or damages for rental value (they already collected rent from Duffy)
3 P is not entitled to interest on illegal principal, and not entitled to attorney fees & costs.

4 The entire complaint must be stricken as it is not drawn in conformity with UD
5 statutory scheme, local or state rules. CCP §436-437. Unlawful detainer is a statutory
6 remedy and statutory requirements must be strictly complied with by plaintiff in UD.
7 *Schulman v. Vera* (1980) 108 C.A. 3d 552, 563-564.

8
9 CONCLUSION

10 Under the above stated authorities the court should sustain the Demurrer. The court
11 should dismiss the complaint with prejudice because under substantive law, undisputed
12 facts, and *stare decisis*, plaintiff cannot amend it to state a cause of action for either
13 Unlawful Detainer or Forcible Detainer.

14 The court should grant the Motion to Quash Service because the complaint fails to
15 state a cause of action and cannot be amended to state a UD cause of action.

16 The court should strike the complaint in its entirety as it fails to conform with rules
17 and procedures under the strictly enforced UD statutory scheme. The court should strike
18 false allegations, attorney fees not authorized under the law, relief and damages plaintiff
19 is not entitled to under the law.

20
21
22 Respectfully submitted 8-31-12:

Nancy Duffy McCarron

1 PROOF OF SERVICE

2 STATE OF CALIFORNIA,
3 COUNTY OF SAN BERNARDINO

4 Bonnie Shipley v. Marvin Freeman CIVDS 1208367
5 Nancy Duffy McCarron v. Marvin Freeman CIVDS 1208825

6 I am counsel for defendant: My address is 950 Roble Lane, Santa Barbara, CA 93103.
7 805-450-0450 fax 805-965-3492

8 On August 31, 2012 I served respondents with the following documents:

9 Notice of/and Demurrer, Motion to Strike Plaintiff's Complaint, and Quash Summons
10 Request for Judicial Notice, and Discovery: UD Form Rogs, Econ.Lit.Form Rogs, RFA, Request
11 for Statement of Witnesses & Evidence; Demand for Documentss; Special Interrogatories

12 **NOTE: YOU MUST RESPOND UNDER OATH TO DISCOVERY IN FIVE DAYS IN UD CASES**

13 [] (By Personal Delivery) as follows:

14 [] (By Fax) The fax machine I used complied with Rule 2003(3) and no error was reported by machine.
15 Pursuant to Rule CRC, 2008 [c](4). I caused the machine to maintain a record of same.

16 [] (By Electronic) to address below (agreement) & nancyduffysb@yahoo.com

17 [x] (By Mail) §1013a, §2015.5 CCP. I deposited the documents in a pre-paid stamped envelope to:

18 Robert G. Williamson, Attorney for Plaintiff
19 Hart, King, and Coldren
200 Sandpointe 4th Floor
Santa Ana, CA 92707

21 I am familiar with mail collection in San Bernardino. I deposited the envelope in the mail at San
22 Bernardino, CA. I am aware on a motion of the party served, service is presumed invalid if postal
23 cancellation date is more than one day after deposit date on affidavit.

24 [] (STATE) I declare under penalty of perjury and laws of California that the above is true.
25 Executed in Santa Barbara, CA on August 31, 2012

26 *Nancy Duffy McCarron*