

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

BEN TAVAKOLI,

No. Civ. S-07-0096 RRB EFB

Plaintiff,

Memorandum of Opinion  
and Order

v.

CBS OUTDOOR INC. and DOES 1-10,  
inclusive,

Defendants. \_\_\_\_\_/

Plaintiff Ben Tavakoli brings this claim against defendant CBS Outdoor Inc. to invalidate a lease for defendant's billboard on plaintiff's property. Plaintiff argues that the lease and an addendum are unenforceable and that the addendum should be cancelled. Defendant filed a motion to dismiss all claims. For the following reasons, the court GRANTS the motion to dismiss.

I.

In May 1993, defendant's predecessor-in-interest, National Advertising Company, entered into a written lease with Fred

1 Cullincini Sr. for the operation and maintenance of an outdoor  
2 advertising sign on Cullincini's property along Highway 99 in  
3 Stockton, California.<sup>1</sup> The lease had an initial term of ten  
4 years, was renewable at the option of the lessee for a second  
5 term of ten years, and thereafter ran year-to-year.  
6

7 On an unspecified date before February 1997, Cullincini  
8 died. In October 2006, Maxwell and Maria Burton purchased the  
9 property from Cullincini's heirs. The same month, the Burtons  
10 signed an addendum to the 1993 billboard lease, extending the  
11 lease 20 years and establishing new rent rates. In December  
12 2006, plaintiff purchased the property from the Burtons.  
13 Defendant provided plaintiff a copy of the lease and addendum  
14 "at or near the time of purchase."  
15

16 Plaintiff alleges that the addendum should be cancelled  
17 because (1) the underlying lease expired before the addendum was  
18 signed; (2) plaintiff and his predecessor-in-interest did not  
19 accept the terms of the lease or approve the assignment of the  
20 lease to defendant from its predecessor-in-interest; (3)  
21 defendant did not submit a probate claim regarding the lease  
22 following the original lessor's death; (4) the billboard lacks  
23 necessary government approval; (5) the billboard is a nuisance;  
24  
25

---

26  
27 <sup>1</sup> Plaintiff attached the lease and addendum to his complaint.  
28 The court considers these documents as part of the complaint for  
purposes of defendant's motion to dismiss. See Knievel v. ESPN,  
393 F.3d 1068, 1076 (9th Cir. 2005).

1 and (6) plaintiff's predecessor-in-interest signed the addendum  
2 based upon a mistaken belief that the underlying lease was  
3 valid. Plaintiff seeks declaratory relief and cancellation of  
4 the addendum. Defendant now moves to dismiss all claims or, in  
5 the alternative, for a more definite statement.  
6

7 II.

8 Under Federal Rule of Civil Procedure 12(b)(6), to avoid  
9 dismissal a plaintiff must provide "enough facts to state a  
10 claim to relief that is plausible on its face." Bell Atl. Corp.  
11 v. Twombly, 127 S.Ct. 1955, 1960 (2007). The court "must accept  
12 as true all of the factual allegations contained in the  
13 complaint," Erickson v. Pardus, 127 S.Ct. 2197, 2200 (2007), but  
14 need not "accept as true allegations that contradict matters  
15 properly subject to judicial notice or by exhibit," see Sprewell  
16 v. Golden State Warriors, 266 F.3d 979, 988 (9th Cir. 2001).  
17 Dismissal can be based on the lack of a cognizable legal theory  
18 or the absence of sufficient facts alleged under a cognizable  
19 legal theory. Balistreri v. Pacifica Police Dep't, 901 F.2d  
20 696, 699 (9th Cir. 1990). Plaintiff claims as to the  
21 unenforceability of the lease and addendum are discussed  
22 individually below.  
23  
24  
25

26 First, plaintiff argues that the underlying lease expired  
27 before the addendum was signed. Plaintiff assumes that the  
28 lease only ran from May 6, 1993 for two ten-year terms. The

1 lease, however, states that following the second ten-year term,  
2 it runs "from year to year, on the same terms." The lease does  
3 not prescribe a specific manner for acceptance, so the lessee  
4 may employ any mode. Cal. Civ. Code § 1582. Plaintiff does not  
5 dispute that defendant continued to pay rent according to the  
6 lease's terms and maintained the billboard after May 6, 2003.  
7 These actions are sufficient to constitute acceptance of the  
8 lease's year-to-year option. Id. at § 1584. Therefore,  
9 plaintiff fails to state a claim as to the expiration of the  
10 lease.  
11

12  
13 Second, plaintiff argues that neither the Burtons nor  
14 plaintiff accepted the terms of the lease or approved the  
15 lease's assignment from defendant's predecessor-in-interest to  
16 defendant. The lease, however, specifically states that it  
17 binds all successors and assigns. As successive owners of the  
18 property, the Burtons and plaintiff did not need to accept the  
19 terms of the lease to be bound by it. Hudson Oil Co. v.  
20 Shortstop, 111 Cal.App.3d 488, 496 (1980) ("The use of the  
21 general [binding upon successors] language evinces an intent to  
22 burden with the restriction all successors in interest of the  
23 [original owners], including successive owners."). Moreover,  
24 plaintiff provides no authority or lease language requiring  
25 approval by the lessor for an assignment of the lease by the  
26 original lessee. The lease requires the lessor to notify the  
27  
28

1 lessee of any change in ownership of the property and to notify  
2 the new owner of the lease. Contrary to plaintiff's claim, the  
3 lease requires nothing of an assigning lessee.  
4

5 Third, plaintiff argues that defendant's predecessor-in-  
6 interest never submitted a probate claim regarding the lease  
7 after Cullincini, the original lessor, died. According to the  
8 terms of the lease attached to the complaint, however, no  
9 probate claim was necessary. See Wright v. Superior Court, 85  
10 Cal.App.2d 151, 153-54 (1948) (holding a probate claim to be  
11 unnecessary when a party does not make a legal demand for money  
12 to be paid out of the estate). The original parties agreed that  
13 the lease "shall inure to the benefit of and be binding upon the  
14 parties hereto and to their respective tenants, heirs,  
15 successors, personal representatives, executors, administrators,  
16 and assigns." Under its terms, the lease became binding upon  
17 Cullincini's heirs upon his death.  
18  
19

20 Fourth, plaintiff argues that the lease is invalid because  
21 the billboard lacks appropriate government approval. Plaintiff  
22 alleges no factual basis to support the claim that the billboard  
23 does not comply with government standards. Pleading legal  
24 conclusions is not sufficient to avoid dismissal on a 12(b)(6)  
25 motion. See Western Mining Council v. Watt, 643 F.2d 618, 624  
26 (9th Cir. 1981).  
27  
28

1 Fifth, plaintiff argues that the lease is invalid because  
2 it is a nuisance. As with plaintiff's government approval  
3 claim, the argument is a legal conclusion lacking factual  
4 support in the complaint or opposition. On a motion to dismiss,  
5 the court does not "assume the truth of legal conclusions merely  
6 because they are cast in the form of factual allegations."  
7 Western Mining Council, 643 F.2d at 624.

8  
9 Sixth, plaintiff argues that predecessor-in-interest Burton  
10 signed the addendum based upon the mistaken belief that the  
11 underlying lease was valid.<sup>2</sup> However, as discussed above,  
12 plaintiff's factual allegations, when considered in light of the  
13 documents attached to the complaint, cannot sustain a finding  
14 that the underlying lease was invalid at the time of the  
15 addendum's signing. See Sprewell, 266 F.3d at 988 (holding that  
16 the court need not accept as true allegations contradicted by  
17 attached exhibits). Therefore, the factual predicate to  
18 Burton's alleged mistake does not exist.  
19  
20  
21  
22  
23  
24  
25  
26

---

27 <sup>2</sup> The court does not consider the declaration of Maxwell  
28 Burton attached to plaintiff's opposition. The declaration is  
neither signed nor dated. See 28 U.S.C. 1746.

1 Because plaintiff has failed to state a claim for  
2 declaratory relief or cancellation of the addendum, the court  
3 GRANTS the motion to dismiss.<sup>3</sup>  
4

5 III.

6 For the reasons above, the court DISMISSES plaintiff's  
7 claims as to the enforceability of the lease and addendum. The  
8 court GRANTS plaintiff twenty-one days to amend the complaint.  
9

10 IT IS SO ORDERED.

11 ENTERED this 9<sup>th</sup> day of July, 2007.

12 s/RALPH R. BEISTLINE  
13 United States District Judge  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23

---

24  
25 <sup>3</sup> Plaintiff argues in his opposition that the lease is an  
26 illusory contract. Although plaintiff attached a copy of the  
27 lease to the complaint, he did not raise the illusory contract  
28 argument in the original pleading. Merely attaching a document  
to a complaint does not give plaintiff the right to raise new  
arguments concerning the document's language at any point. To  
challenge the lease as an illusory contract, plaintiff must  
amend the complaint. See Fed. R. Civ. P. 15(a).