

## Plaintiffs' Demurrer to Defendant's Answer (Judge Deborah C. Servino)

Plaintiffs Devinder Singh and Manjeet Singh's Demurrer to Mid-Century Insurance Company's Answer is overruled in part and sustained in part, with 15 days leave to amend.

### **SPECIAL DEMURRER FOR UNCERTAINTY**

The Court overrules the special demurrer for uncertainty (Code Civ. Proc., § 430.20, subd. (b)). A demurrer for uncertainty is strictly construed, even where a pleading is in some respects uncertain, because ambiguities can be clarified under modern discovery procedures. (*Khoury v. Maly's of California, Inc.* (1993) 14 Cal.App.4th 612, 616.) A party attacking a pleading on "uncertainty" grounds must specify how and why the pleading is uncertain, and where that uncertainty can be found in the challenged pleading. (*Fenton v. Groveland Community Services Dept.* (1982) 135 Cal.App.3d 797, 809, disapproved on other grounds in *Katzberg v. Regents of the University of California* (2002) 29 Cal.4th 300.) Here, affirmative defense number 12, 13, and 16 are not so unintelligible that Plaintiffs cannot understand what is being asserted. Any ambiguity can be cleared up in discovery. As such, Plaintiffs' demurrer on the ground of uncertainty to these three affirmative defenses is overruled.

### **GENERAL DEMURRER**

In general, whatever a defendant bears the burden of proving at trial is "new matter" (also referred to as an "affirmative defense"), and thus must be specially pleaded in the answer. (See *California Academy of Sciences v. County of Fresno* (1987) 192 Cal.App.3d 1436, 1442 [failure to plead equitable defenses waived those defenses].) A defendant raising such new matters must allege ultimate facts sufficient to prove the defense with the same level of detail that a plaintiff is required to allege ultimate facts to support a cause of action in a complaint. (*FPI Development, Inc. v. Nakashima* (1991) 231 Cal.App.3d 367, 384; 5 Witkin, Cal. Proc. (5th

ed. 2008) Pleading, § 1082, p. 515.) In contrast, a denial needs no support. (*State Farm Mut. Auto Ins. Co. v. Superior Court* (1991) 228 Cal.App.3d 721, 725.) Furthermore, a demurrer based on an affirmative defense cannot be properly sustained where the action might be barred by the affirmative defense, but is not necessarily barred. (*Cross Talk Productions, Inc. v. Jacobsen* (1998) 65 Cal.App.4th 631, 635.)

In *South Shore Land Co. v. Petersen* (1964) 226 Cal.App.2d 725, 733, the court noted differences between a demurrer to a complaint and a demurrer to an answer. When demurring to an answer, “the defect in question need not appear on the face of the answer. The determination of the sufficiency of the answer requires an examination of the complaint because its adequacy is with reference to the complaint it purports to answer..This requirement, however, does not mean that the allegations of the complaint, if denied, are to be taken as true, the rule being that the demurrer to the answer admits all issuable facts pleaded therein and eliminates all allegations of the complaint denied by the answer . . . . Another rule, particularly applicable to the case of a demurrer to the answer, is that each so-called defense must be considered separately without regard to any other defense. . . . Accordingly, a ‘separately stated defense or counterclaim which is sufficient in form and substance when viewed in isolation does not become insufficient when, upon looking at the answer as a whole, that defense or counterclaim appears inconsistent with or repugnant to other parts of the answer.’. . . .Therefore, if one of the defenses or counterclaims is free from the objections urged by demurrer, then a demurrer to the entire answer must be overruled.” (*South Shore Land Co. v. Petersen* (1964) 226 Cal.App.2d 725, 733-734 [internal citations omitted].)

Here, Defendants’ affirmative defense numbers 7, 8, and 10, require facts to be alleged. The court sustains the demurrer as to these affirmative defenses with 15 days leave to amend.

A copy of the insurance policy was attached to the notice of errata regarding plaintiffs’ first amended complaint. Presumably, the conditions

precedent, exclusions, limitations, restrictions, and policy defenses is located within the four corners of the policy. The demurrer as to affirmative defense numbers 12, 13, and 16, is overruled.

Plaintiffs shall give notice of the ruling.

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