SUPERIOR COURT OF CALIFORNIA
COUNTY OF MARIN

DATE: 01/27/26 TIME: 1:30 P.M. DEPT: A CASE NO. CV0006691

PRESIDING: HON. STEPHEN P. FRECCERO

REPORTER: CLERK: CAMILO IBARRA

PLAINTIFF: YOSHIMORI TOME vs. DEFENDANT: VICTRON ENERGY, B.V., ET AL	

NATURE OF PROCEEDINGS: MOTION – ENTRY OF DEFAULT

RULING

This matter is **continued to February 24, 2026 at 1:30 pm in Courtroom A.**

All parties must comply with Marin County Superior Court Local Rules, Rule 2.10(B) to contest the tentative decision. Parties who request oral argument are required to appear in person or remotely by ZOOM. Regardless of whether a party requests oral argument in accordance with Rule 2.10(B), the prevailing party shall prepare an order consistent with the announced ruling as required by Marin County Superior Court Local Rules, Rule 2.11.

The Zoom appearance information for January, 2026 is as follows:
https://marin-courts-ca-gov.zoomgov.com/j/1605267272?pwd=908CbP6TV2mhCAyai1nzo6lyz2dKaw.1

Meeting ID: 160 526 7272
Passcode: 026935

If you are unable to join by video, you may join by telephone by calling (669) 254-5252 and using the above-provided passcode. Zoom appearance information may also be found on the Court's website: https://www.marin.courts.ca.gov

SUPERIOR COURT OF CALIFORNIA
COUNTY OF MARIN

DATE: 01/27/2026 TIME: 1:30 P.M. DEPT: A CASE NO. CV0007171

PRESIDING: HON. STEPHEN P. FRECCERO

REPORTER: CLERK: CAMILO IBARRA

PLAINTIFF: DEMERGASSO RANCHES, INC. vs. DEFENDANT: ETHOS VETERINARY HEALTH LLC, A DELAWARE LIMITED LIABILITY COMPANY	

NATURE OF PROCEEDINGS: MOTION – ANTI-SLAPP 425.16

RULING

Plaintiff and Cross-Defendant Demergasso Ranches, Inc.'s ("Cross-Defendant") special motion to strike Defendant and Cross-Complainant GSV Holdings, LLC's ("Cross-Complainant") Cross-Complaint is **GRANTED** as to the whole pleading and all three causes of action therein in their entirety. (Code Civ. Proc., § 425.16, subd. (b)(1).) Cross-Complainant's request for leave to amend is denied. Cross-Defendant is entitled to recover its attorney's fees and costs, and the Court understands that the amount of that award will be litigated through a separate noticed motion. (Code Civ. Proc., § 425.16, subd. (c)(1).)

Background

This is an action for breach of a commercial lease. Cross-Defendant's First Amended Complaint ("FAC") alleges that Cross-Defendant leases property at 901 E. Francisco Boulevard in San Rafael ("Premises") to Cross-Complainant pursuant to a written lease dated June 20, 2019 ("Lease"). (FAC, ¶ 8.) The original landlord under the Lease was Marin Veterinary Facilities, LLC, but Cross-Defendant succeeded to the Lease as landlord after purchasing the Premises. (*Id.* at ¶ 8 & Ex. A.) The original tenant under the Lease was Ethos Veterinary Health, LLC. (*Id.* at Ex. A.) Cross-Defendant alleges that the Lease was assigned to Cross-Complainant as tenant in June 2022. (*Id.* at ¶ 10.) The Lease expires in 2029. (*Id.* at ¶ 11.)

From before the Lease's execution until February 2025, the Premises were used as a veterinary facility doing business as Pet Emergency & Specialty Services of Marin ("PESSM"). (FAC, ¶ 12.) In February 2025, PESSM allegedly abandoned the Premises, moving to another location in San Rafael. (*Id.* at ¶ 13.) Cross-Defendant's FAC alleges that under Section 22(f) of the Lease, abandonment of the Premises entitles Cross-Defendant to declare the tenant in default and reclaim the property under certain circumstances. (*Id.* at ¶ 14.) Alleging that the parties dispute

the meaning of the language of Section 22(f), Cross-Defendant brought a single cause of action for declaratory relief.

Cross-Complainant has filed a cross-complaint regarding a separate provision of the Lease. Section 16(a) of the Lease provides, in pertinent part:

> "All Trade Fixtures installed in the Premises by Tenant shall be the property of Tenant and may be removed at the expiration of the Term or any extension, provided that any damage to the Premises caused by the removal of the Trade Fixtures shall be repaired by Tenant, and further provided that Landlord shall have the right to keep any Trade Fixtures or to require Tenant to remove any Trade Fixtures that Tenant might otherwise elect to abandon."

In July 2025, Cross-Defendant, through counsel, sent Cross-Complainant's counsel an email asserting ownership over certain items of personal property at the Premises. (Cross-Complaint, ¶ 10.) The Cross-Complaint refers to these items variably as "the Fixtures" or the "FF&E" (for "furniture, fixtures, and equipment"). (*Id.* at ¶ 12.) Cross-Complainant maintains that the FF&E belongs to Cross-Complainant, and its counsel responded to the email by stating as much. (*Id.* at ¶ 11.) Cross-Defendant has refused to alter its position that Cross-Defendant owns the FF&E under the terms of the Lease. (*Id.* at ¶ 12.) Cross-Complainant has refrained from accessing these items "for fear of legal action or retaliation" by Cross-Defendant. (*Id.* at ¶ 13.) The Cross-Complaint asserts causes of action for breach of contract (the Lease), conversion, and claim and delivery/possession of personal property. All three of these claims are based exclusively on the allegation that Cross-Defendant asserted ownership over the FF&E. (Cross-Complaint, ¶¶ 18, 22, 26.)

The Court now considers Cross-Defendant's motion to strike the Cross-Complaint under the anti-SLAPP statute.

Legal Standard

"A cause of action against a person arising from any act of that person in furtherance of the person's right of petition or free speech under the United States Constitution or the California Constitution in connection with a public issue shall be subject to a special motion to strike, unless the court determines that the plaintiff has established that there is a probability that the plaintiff will prevail on the claim." (Code Civ. Proc., § 425.16, subd. (b)(1).) The purpose of this statute is to identify and dispose of lawsuits brought to chill the valid exercise of a litigant's constitutional right of petition or free speech. (Code Civ. Proc., § 425.16, subd. (a); *Sylmar Air Conditioning v. Pueblo Contracting Services, Inc.* (2004) 122 Cal.App.4th 1049, 1055-1056.)

Courts use a two-step process to evaluate anti-SLAPP motions. (*Equilon Enterprises v. Consumer Cause, Inc.* (2002) 29 Cal.4th 53, 67.) First, the moving defendant must show that the challenged lawsuit arises from protected activity. (*Ibid.*) If the defendant makes this "threshold showing[,]" the court proceeds to the second step, where the plaintiff must demonstrate a probability of prevailing on the merits of the claims at issue. (*Id.* at p. 67.) "Only a cause of action that satisfies *both* prongs of the anti-SLAPP statute – i.e., that arises from protected

speech or petitioning *and* lacks even minimal merit – is a SLAPP, subject to being stricken under the statute." (*Navellier v. Sletten* (2002) 29 Cal.4th 82, 89 [emphasis in original].)
Except as provided otherwise by statute, a "prevailing defendant" on an anti-SLAPP motion "shall be entitled to recover that defendant's attorney's fees and costs." (Code Civ. Proc., § 425.16, subd. (c)(1).)

Discussion

Cross-Defendant's Evidentiary Objections

White Declaration

1 – Sustained. (Evid. Code, § 1200, subd. (b) [hearsay].)

2 – Sustained. (Evid. Code, §§ 1200, subd. (b) [hearsay]; 702 [lack of personal knowledge].)

3 – Overruled.

4 – Sustained. (Evid. Code, § 1200, subd. (b) [hearsay].)

5 – Sustained. (Evid. Code, § 350 [relevance].)

6 – Overruled.

Clark Declaration

1 – Sustained. (Evid. Code, §§ 720, 803 [improper legal opinion].)

Protected Activity

To establish protected activity, the defendant must demonstrate that "the act or acts underlying the plaintiff's claim falls within one of the four categories [of protected activity] identified in section 425.16, subdivision (e)." (*Lee v. Silveira* (2016) 6 Cal.App.5th 527, 538; *accord Howard Jarvis Taxpayers Assn. v. Powell* (2024) 105 Cal.App.5th 955, 968.) In determining whether a complaint or a subset of it "arises from" protected activity, "[t]he critical consideration is whether the cause of action is *based on* the defendant's free speech or petitioning activity." (*Navellier, supra,* 29 Cal.4th 82, 89 [emphasis added]; see also *Baral v. Schnitt* (2016) 1 Cal.5th 376, 396.) "[T]he defendant's act underlying the plaintiff's cause of action must *itself* have been an act in furtherance of the right of petition or free speech." (*City of Cotati v. Cashman* (2002) 29 Cal.4th 69, 78 [emphasis in original].) "Courts deciding an anti-SLAPP motion . . . must consider the claim's elements, the actions alleged to establish those elements, and whether those actions are protected." (*Bonni v. St. Joseph Health System* (2021) 11 Cal.5th 995, 1015; accord *Park v. Board of Trustees of California State University* (2017) 2 Cal.5th 1057, 1062.)

The anti-SLAPP statute "protects litigation-related activity, i.e., 'any written or oral statement or writing made before a . . . judicial proceeding' or 'in connection with an issue under consideration or review by a . . . judicial body.'" (*Cocoa AJ Holdings, LLC v. Schneider* (2025)

115 Cal.App.5th 980, 991 [quoting Code Civ. Proc., § 425.16, subd. (e)(2)].) Courts have interpreted protected "litigation-related activity" to include not merely the filing of a lawsuit, but " 'conduct that relates to such litigation, including statements made in connection with or in preparation of litigation.' " (*Alfaro v. Warehouse Management Corp.* (2022) 82 Cal.App.5th 26, 33 [quoting *Kolar v. Donahue, McIntosh & Hammerton* (2006) 145 Cal.App.4th 1532, 1537.) That litigation has not yet commenced at the time the conduct occurs does not necessarily preclude the conduct from constituting protected activity. (*Neville v. Chudacoff* (2008) 160 Cal.App.4th 1255, 1268.) "[A]lthough litigation may not have commenced, if a statement 'concern[s] the subject of the dispute' and is made 'in anticipation of litigation "contemplated in good faith and under serious consideration",' then the statement may be petitioning activity protected by section 425.16." (*Id.* at p. 1268 [quoting *Rohde v. Wolf* (2007) 154 Cal.App.4th 28, 36] [internal citations omitted]; *Cocoa AJ Holdings*, *supra*, 115 Cal.App.5th 980, 991.) Where a statement concerning the subject of an anticipated litigation is made at a time at which "the spectre of litigation loom[s] over all communications between the parties[,]" making the statement is probably protected activity. (See *Rohde, supra,* 154 Cal.App.4th 28, 36.)

The statements underlying these causes of action were made by Cross-Defendant's counsel on his client's behalf in email exchanges between counsel for the parties that began on July 3, 2025 and continued throughout that month.[1] (Cross-Complaint, ¶¶ 10-12.) That counsel for both sides were actively engaged in discussing the FF&E issues at this time is, by itself, compelling evidence that the spectre of litigation was looming when these statements were made. Cross-Defendant additionally presents evidence that it began looking for an attorney to represent it in

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[1] Cross-Complainant argues that the specific statements on which its claims are based were not made exclusively by Cross-Defendant's counsel, but also by Cross-Defendant's president, Bonnie Demergasso, on various occasions in May 2025. (The practical effect of this argument, if successful, would be that for Cross-Defendant to meet its burden, it would have needed to establish that *Ms. Demergasso's* statements were protected activity, not just her attorney's.) This contention is without a basis in Cross-Complainant's own pleading. The Cross-Complaint describes various communications among counsel in July 2025 and alleges that counsel for Cross-Defendant asserted Cross-Defendant's right to ownership of the FF&E throughout those communications. (Cross-Complaint, ¶¶ 10-12.) There is no mention of anyone other than counsel for Cross-Defendant saying anything at all about the subject. "[T]he act or acts underlying a claim for purposes of an anti-SLAPP statute is determined from the plaintiffs' allegations." (*Medical Marijuana, Inc. v. ProjectCBD.com* (2020) 46 Cal.App.5th 869, 883.) A court may not " 'insert into a pleading claims for relief based on allegations of activities that plaintiffs simply have not identified.' " (*Ibid.* [quoting *Medical Marijuana, Inc. v. ProjectCBD,com* (2016) 6 Cal.App.5th 602, 621].) Cross-Complainant is confined to defending the pleading on file with the Court, not a pleading it would file today if given a second chance.

"inevitable" litigation against Cross-Complainant in late June, and upon hiring the attorney whose statements are at issue here, Cross-Defendant immediately brought his attention to the FF&E issues. (Demergasso Dec., ¶¶ 13-14; Rahmil Dec., ¶ 7.)

Upon review of the email exchange itself, it is abundantly clear from a directive to "cease and desist from removing any fixtures," from a threat that Cross-Defendant and its counsel would need to "move forward as appropriate" if Cross-Complainant would not make certain assurances about the FF&E, and from the tenor of the exchange that Cross-Defendant's counsel was speaking about this issue in serious consideration of litigation. (Rahmil Dec., Ex. D.) There is nothing to suggest that such consideration was not in good faith. On July 9, 2025, Cross-Complainant's counsel responded to "the issues raised in [Cross-Defendant's counsel's] July 3rd email" with a formal letter stating Cross-Complainant's legal positions as to the FF&E, inviting a "conversation to discuss resolution of the various issues between the parties" (a euphemism for a conversation to discuss a resolution without resorting to litigation), and contemplating that Cross-Defendant planned to "commence[]" an "action" over purported violations of the Lease, including the FF&E issues. (Rahmil Dec., Ex. F.) There is no serious argument to be made that Cross-Complainant's own counsel did not understand Cross-Defendant's counsel's emailed statements as an initial salvo in an anticipated lawsuit. Making the statements described at Paragraphs 10-12 of the Cross-Complaint was protected litigation-related activity.

This does not end the inquiry at the first step of the anti-SLAPP analysis. "Although litigation-related activities constitute protected activity, 'it does not follow that *any* claims associated with those activities are subject to the anti-SLAPP statute. To qualify for anti-SLAPP protection, the moving party must [also demonstrate] the claim 'arises from' those activities.'" (*ValueRock TN Properties, LLC v. PK II Larwin Square SC LP* (2019) 36 Cal.App.5th 1037, 1046 [quoting *Kolar, supra,* 145 Cal.App.4th 1532, 1537] [emphasis in original].) "[A] claim is not subject to a motion to strike simply because it contests an action or decision that was arrived at following speech or petitioning activity, or that was thereafter communicated by means of speech or petitioning activity. Rather, a claim may be struck only if the speech or petitioning activity itself is the wrong complained of, and not just evidence of liability or a step leading to some different act for which liability is asserted." (*Park v. Board of Trustees of California State University* (2017) 2 Cal.5th 1057, 1060.) "Courts must 'respect the distinction between activities that form the basis for the claim and those that merely . . . provide evidentiary support for the claim.'"(*ValueRock, supra*, 36 Cal.App.5th 1037, 1047 [quoting *Park, supra*, 2 Cal.5th 1057, 1064, 1067].) Relying on these principles, Cross-Complainant argues that none of its causes of action "aris[es] from" the attorney communications discussed in its Cross-Complaint. (See Code Civ. Proc., § 425.16, subd. (b)(1).)

In *Ulkarim v. Westfield LLC* (2014) 227 Cal.App.4th 1266, the defendant landlord served the plaintiff commercial tenant with a written notice of termination of tenancy and ultimately filed an unlawful detainer complaint against her. (227 Cal.App.4th 1266, 1270.) The tenant sued, alleging (among other things) that the landlord had served her with a notice of termination for the bad faith purpose of giving her space to a competitor. (*Id.* at p. 1271-1272.) The trial court granted the defendant's anti-SLAPP motion on the theory that all of the plaintiff's causes of action arose out of the defendant's serving a notice of termination, which is protected litigation-related activity. (*Id.* at p. 1272.)

On appeal, the Second District recognized that the fact that an instance of protected conduct precedes, or even triggers, a cause of action does not necessarily mean that the cause of action *arises from* the protected conduct. (*Ulkarim, supra*, 227 Cal.App.4th 1266, 1275.) Instead, "[c]ourts distinguish a cause of action based on the service of a notice in connection with the termination of a tenancy or filing of an unlawful detainer complaint from a cause of action based on the decision to terminate or other conduct in connection with the termination." (*Id.* at p. 1275-1276.) "[I]f the gravamen[2] of the tenant's complaint challenges the decision to terminate the tenancy[,] or [challenges] other conduct in connection with the termination apart from the service of a notice of termination or filing of an unlawful detainer complaint[,]" the cause of action does not arise out of such service or filing for purposes of the anti-SLAPP statute. (*Id.* at p. 1279.) The appellate court concluded that the "gravamen" of the only causes of action even referencing the service of the notice or the filing of the unlawful detainer complaint was not an attack on those actions, but instead that the defendant breached the lease by terminating it in bad faith and contrary to its terms. (*Id.* at p. 1281.) That conduct was not protected, so the anti-SLAPP motion should not have been granted. (*Ibid.*)

Cross-Complainant clearly perceives some parallel between *Ulkarim* and the instant case, but the Court is not seeing it. In *Ulkarim*, the defendant was accused of doing multiple things in relation to the plaintiff's tenancy. Some of those things obviously did not constitute protected activity because there was no speech or petitioning aspect to the conduct. Other actions defendant was alleged to have taken did constitute protected activity (e.g., serving plaintiff with a notice of termination and filing an unlawful detainer). Given these allegations, there was room to question which conduct served as the basis for the plaintiff's causes of action, and the motion turned on whether that conduct fell into the protected category or the unprotected category. Here, by contrast, Cross-Defendant is accused of exactly one thing: communicating (through counsel) its position that it (Cross-Defendant) owns the FF&E. (Cross-Complaint, ¶¶ 18, 22, 26.) This clearly protected conduct is the only conduct any of Cross-Complainant's causes of action could possibly arise out of, because it is the only conduct alleged. *Ulkarim* is inapposite here. The same considerations distinguish this case from two more Cross-Complainant relies on, *Copenbarger v. Morris Cerullo World Evangelism* (2013) 215 Cal.App.4th 1237, and *ValueRock TN Properties, LLC v. PK II Larwin Square SC LP* (2019) 36 Cal.App.5th 1027.

The Court recognizes that its reasoning here is the same as the First District's reasoning in *Feldman v. 1100 Park Lane Associates* (2008) 160 Cal.App.4th 1467 and *Birkner v. Lam* (2007) 156 Cal.App.4th 275. The First District subsequently criticized those cases for what it viewed as their failure " 'to recognize that the critical consideration is whether the claim is *based on* defendant's protected free speech or petitioning activity. The mere fact that a claim may have been *triggered by* protected activity (such as service of unlawful detainer papers) does not necessarily mean it *arose from* that activity.' " (*Oakland Bulk & Oversized Terminal, LLC v. City of Oakland* (2020) 54 Cal.App.5th 738, 747, fn. 6 [quoting Weil & Brown, Cal. Practice Guide: Civil Procedure Before Trial (The Rutter Group 2019) ¶ 7:598] [emphasis in original].) This Court questions whether that criticism is fair given the express language of *Feldman* and *Birkner*, but that is beside the point. *Feldman/Birkner* or not, Cross-Complainant's three causes of action necessarily have to be based on some alleged conduct by Cross-Defendant, or else they

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[2] This "gravamen" aspect of *Ulkarim* is no longer good law. (See *Bonni, supra,* 11 Cal.5th 995, 1011.)

don't allege anything at all. The sole conduct alleged in the pleading is Cross-Defendant's protected assertion, through counsel, of ownership in the FF&E.

As pleaded, the allegation that Cross-Defendant asserted ownership over the FF&E supplies the "breach" element of Cross-Complainant's breach of contract claim (Cross-Complaint, ¶ 18) and the "wrongful act or disposition" element of its conversion claim (*id.* at ¶ 22). (See *Oasis West Realty, LLC v. Goldman* (2011) 51 Cal.4th 811, 821 [elements of breach of contract]; *Lee v. Hanley* (2015) 61 Cal.4th 1225, 1240 [elements of conversion].) As to the cause of action for claim and delivery, this is not a tort, but a remedy " 'by which a party with a superior right to a specific item of personal property . . . may recover possession of that specific property before judgment.' " (*Ananda Church of Self-Realization v. Massachusetts Bay Ins. Co.* (2002) 95 Cal.App.4th 1273, 1281 [quoting *Waffer Internat. Corp. v. Khosandi* (1999) 69 Cal.App.4th 1261, 1271].) The parties agree that to be entitled to this remedy, a plaintiff must make the same showing required of a conversion claim. (Memorandum, p. 15; Opposition, p. 15; see also *Ananda Church*, *supra*, 95 Cal.App.4th 1273, 1281 [like conversion, claim and delivery "too is grounded in the concept of interference with personal property rights"].) As pleaded, the wrongful interference with personal property underlying this cause of action is Cross-Defendant's "wrongful[] assert[ion] [of] ownership over the FF&E." (Cross-Complaint, ¶ 26.) Because "the actions alleged to establish [the] elements" of all three of Cross-Complainant's causes of action consist of protected activity, all three causes of action arise out of protected activity within the meaning of the anti-SLAPP statute. (*Bonni*, *supra*, 11 Cal.5th 995, 1015; *Park*, *supra*, 2 Cal.5th 1057, 1062.)

Merits

At this step, the plaintiff shoulders the burden of "establish[ing] that there is a probability that [it] will prevail on the claim." (Code Civ. Proc., § 425.16, subd. (b)(1).) This is not a particularly weighty burden. (See *Overstock.com, Inc. v. Gradient Analytics, Inc.* (2007) 151 Cal.App.4th 688, 699; *Navellier, supra,* 29 Cal.4th 82, 95 [only "minimal merit" is "required to survive an anti-SLAPP motion].) The plaintiff must merely " 'demonstrate that the complaint is both legally sufficient and supported by a sufficient prima facie showing of facts to sustain a favorable judgment if the evidence submitted by the plaintiff is credited.' " (*Soukup v. Law Offices of Herbert Hafif* (2006) 39 Cal.4th 260, 291 [quoting *Matson v. Dvorak* (1995) 40 Cal.App.4th 539, 548]; see also *Bergman v. Drum* (2005) 129 Cal.App.4th 11, 18 [standard is similar to that governing a plaintiff's burden in opposition to a defendant's motion for summary judgment].) The plaintiff is not entitled to rely on the allegations in its complaint; it "must set forth evidence that would be admissible at trial." (*Overstock.com, supra,* 151 Cal.App.4th 688, 699.) The court does not weigh the credibility of the evidence or evaluate its weight, but accepts all evidence favorable to the plaintiff as true and asks whether it makes the required prima facie showing. (*Id.* at pp. 699-700.) The court should consider evidence presented by the defendant at the merits stage, but only to the extent of determining whether such evidence defeats the plaintiff's case as a matter of law. (*Ibid.*)

Breach of Contract

"[T]he elements of a cause of action for breach of contract are (1) the existence of the contract, (2) plaintiff's performance or excuse for nonperformance, (3) defendant's breach, and (4) the resulting damages to the plaintiff." (*Oasis West Realty, supra*, 51 Cal.4th 811, 821.)

The theory underlying this cause of action is that "Cross-Defendants breached the Lease by wrongfully asserting ownership over the FF&E." (Cross-Complaint, ¶ 18.) To make the required prima facie showing, Cross-Complainant needs to identify a provision of the Lease that prohibits Cross-Defendant from stating its position that it owns the FF&E. It points to Section 16(a), explaining that this section "provides that the FF&E at issue is the property of GSV." (Opposition, p. 14; see also Cross-Complaint, Ex. A at § 16(a) ["All Trade Fixtures installed in the Premises by Tenant shall be the property of Tenant[.]"].)

Nothing about Section 16(a) prohibits Cross-Defendant from stating its opinion that it owns the FF&E. A breach of Section 16(a) could only take the form of Cross-Defendant taking some action that interfered with Cross-Complainant's rights in property that met the contractual definition of "Trade Fixtures" and was installed at the Premises by Cross-Complainant or its predecessor in interest. There is no allegation or evidence that Cross-Defendant has done anything to prevent Cross-Complainant from doing whatever it wants with the FF&E. On the contrary, Cross-Complainant alleges that it "has not accessed" the items "for fear of legal action or retaliation of Cross-Defendant" (Cross-Complaint, ¶ 13) – in other words, Cross-Complainant is free to pick up the items, but has refrained from doing that because it does not want to trigger Cross-Defendant to take action in accordance with its mere statements that it owns this property. (See also White Dec., ¶ 14 ["Because of the position taken by Demergasso Ranches, Inc., in the FF&E and under the Lease, which I deem to be a wrongful assertion of ownership in the FF&E, *I have refrained from removing* the FF&E from the Premises to use at another location or sell."] [emphasis added].) Cross-Defendant presents undisputed evidence that Cross-Complainant "still has keys and/or access codes to the Premises and accesses it regularly." (Demergasso Dec., ¶ 16.) Cross-Defendant's forming a legal opinion and describing it to Cross-Complainant through counsel is not an act of interference with Cross-Complainant's purported rights to this property and does not breach the contract.

The Court also notes that Cross-Complainant has not addressed whether the FF&E qualifies as "Trade Fixtures" as that term is defined in the Lease, nor has it presented admissible evidence as to who installed these items at the Premises. Both of those elements would need to be addressed to establish that anything Cross-Defendant does with regard to the FF&E constitutes a breach of Section 16(a). (See Cross-Complaint, Ex. A at § 16(a).)

In a tacit admission that nothing Cross-Defendant has done actually breached the Lease, Cross-Complainant states that it is pursuing a theory of anticipatory breach. The Court is not persuaded that Cross-Complainant is permitted to move the goalpost in this manner. As pleaded, Cross-Complainant's theory is that the breach of contract already happened, it consisted of Cross-Defendant stating its position that the FF&E belongs to Cross-Defendant, and Cross-Complainant has already been damaged by such breach: "Cross-Defendants breached the Lease by wrongfully asserting ownership over the FF&E. Cross-Complainant has been damaged by Cross-Defendants' breach in an amount to be proven at trial." (Cross-Complaint, ¶¶ 18-19.) The Court stresses again that on an anti-SLAPP motion, the plaintiff must argue within the confines of the pleading on file.

Regardless, this theory is unavailing. As Cross-Complainant acknowledges, a required element in an anticipatory breach is that that offending party " 'positively repudiates the contract by acts or statements indicating that he will not or cannot substantially perform essential terms thereof.'" (*Guerreri v. Severini* (1958) 51 Cal.2d 12, 18 [quoting *Crane v. East Side Canal etc. Co.* (1935) 6 Cal.App.2d 361, 367].) " 'Anticipatory breach must appear only with the clearest terms of repudiation of the obligation of the contract.' " (*Id.* at p. 18 [*Hertz Driv-Ur-Self Stations, Inc. v. Schenley Distilleries Corp.* (1953) 119 Cal.App.2d 754, 760].) Again, Cross-Defendant's obligation under Section 16(e) is to refrain from taking action that would interfere with Cross-Complainant's ownership rights in Trade Fixtures Cross-Complainant or its predecessor in interest affixed to the Premises. This might look like Cross-Defendant damaging, removing, selling, or preventing Cross-Complainant from accessing property by that description. Cross-Defendant's merely stating its legal position is not an indication that it plans to do any of these things. As a matter of law, Cross-Complaint has neither alleged nor evidenced conduct comprising an anticipatory breach of contract.

Cross-Complainant has not demonstrated a probability that it will prevail on its breach of contract claim. The motion is granted as to this cause of action.

Conversion

"'Conversion is the wrongful exercise of dominion over the property of another. The elements of a conversion claim are: (1) the plaintiff's ownership or right to possession of the property; (2) the defendant's conversion by a wrongful act or disposition of property rights; and (3) damages.'" (*Lee, supra*, 61 Cal.4th 1225, 1240 [quoting *Welco Electronics, Inc. v. Mora* (2014) 223 Cal.App.4th 202, 208] [internal quotation marks omitted].)

In order to prevail on this claim on the allegations and evidence presented, Cross-Complainant needs to establish that a party's bare act of pointing at someone else's property and saying, "That's mine" constitutes conversion, even though the rightful owner at all times retains the ability to do anything it chooses with the property. Cross-Complainant's authorities do not support that.

Beverly Finance Co. v. American Cas. Co. of Reading, Pa. (1969) 273 Cal.App.2d 259 recognized that "an unjustified assertion of title in . . . chattel may in and of itself constitute a conversion" and no "actual manual taking" is necessary. (273 Cal.App.2d 259, 264.) But what the court described as an "unjustified assertion of title" did not consist of the defendant simply stating that it owned the property. A car dealership assigned defendant Beverly Finance a contract between the dealership and a purchaser for a financed sale of a Cadillac. (*Ibid.*) Such an assignment necessarily carries with it the dealership's ownership rights in the car and the right, as its owner, to collect the purchaser's payments on it. (See *Beverly Finance, supra*, 273 Cal.App.2d 359, 263.) In reality, the car dealership did not own the Cadillac and so had no ownership right to assign. (*Id.* at pp. 262-263.) The true owner was the plaintiff insurance company. (*Ibid.*) The case's act of conversion was Beverly Finance's accepting the assignment of the contract, "which carried with it a claim of legal title to the vehicle adverse to that of the true owners[.]" (*Id.* at p. 264.) The defendant acquired legal rights for itself that were predicated on the false premise that it owned the chattel. This was something only the true owner of the car was entitled to do, so it was an "act of dominion wrongfully exerted" over someone else's

property, an act "inconsistent with the plaintiff's property rights." (*Ibid.*; *Fremont Indemnity Co. v. Fremont General Corp.* (2007) 148 Cal.App.4th 97, 119.) Beverly Finance was not held liable for conversion merely for stating a belief that it owned the Cadillac. *Plummer v. Day/Eisenberg, LLP* (2010) 184 Cal.App.4th 38 is similarly distinguishable. There, the Fourth District held that the defendant's fraudulently endorsing a check in order to deceive a bank into honoring it without the endorsement of the true owner of the funds could constitute conversion. (184 Cal.App.4th 38, 50.)

Cross-Complainant has not carried its burden on this cause of action and the motion is granted as to the conversion claim.

Claim and Delivery

Cross-Complainant rests on its showing on the conversion claim in support of this cause of action. Because that showing was unsuccessful, this one is necessarily unsuccessful as well. The motion is granted as to this cause of action, and as to the Cross-Complaint as a whole.

Leave to Amend

Cross-Complainant requests that if the Court grants the motion, it permit Cross-Complainant to amend its pleading, relying on *Nguyen-Lam v. Cao* (2009) 171 Cal.App.4th 858. The anti-SLAPP statute makes no provision for leave to amend, and the general rule is that once the court concludes (as this Court has) that the moving defendant has met its first-prong burden, the plaintiff is precluded from amending its pleading. (*Simmons v. Allstate Ins. Co.* (2001) 92 Cal.App.4th 1068, 1073-1074.) *Nguyen* recognized an exception: Where a plaintiff fails to plead a necessary element of one of its causes of action, but then, in opposition to the anti-SLAPP motion, presents evidence that the element is satisfied and that plaintiff would prevail on the claim but for the pleading issue, the plaintiff may amend the complaint to conform it to that proof. (*Nguyen, supra*, 171 Cal.App.4th 858, 871, 873; see also *Johnson v. Ralphs Grocery Co.* (2012) 204 Cal.App.4th 1097, 1105 [discussing *Nguyen*].) There is no indication that the *Nguyen* rule applies in this case.

Fees

Cross-Defendant is a "prevailing defendant" on this motion and so is "entitled" to recover its attorney's fees and costs. (Code Civ. Proc., § 425.16, subd. (c)(1).) Cross-Defendant has elected to seek such fees through a subsequent noticed motion. (See Memorandum, p. 15.) This is permissible procedure, although a prevailing defendant may save itself some time by simply seeking the fee award simultaneously with the motion itself. (*American Humane Ass'n v. Los Angeles Times Communications* (2001) 92 Cal.App.4th 1095, 1103 [setting forth the "three ways the special motion to strike attorney fee issue can be raised"].)

All parties must comply with Marin County Superior Court Local Rules, Rule 2.10(B) to contest the tentative decision. Parties who request oral argument are required to appear in

person or remotely by ZOOM. Regardless of whether a party requests oral argument in accordance with Rule 2.10(B), the prevailing party shall prepare an order consistent with the announced ruling as required by Marin County Superior Court Local Rules, Rule 2.11.

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SUPERIOR COURT OF CALIFORNIA
COUNTY OF MARIN

DATE: 01/27/26 TIME: 1:30 P.M. DEPT: A CASE NO: CV0007356

PRESIDING: HON. STEPHEN P. FRECCERO

REPORTER: CLERK: CAMILO IBARRA

PLAINTIFF: FIDELIS UNDERWRITING LIMITED, ET AL vs. DEFENDANT: WILLIS LEASE FINANCE CORPORATION	

NATURE OF PROCEEDINGS: 1) CASE MANAGEMENT CONFERENCE
2) PRO HAC VICE

RULING

The unopposed applications to admit Taryn M. Kadar and Paul L. Fields, Jr. as Counsel Pro Hac Vice for Plaintiff Fidelis Underwriting Limited are **GRANTED.** (Calif. Rules of Court, rule 9.40.)

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SUPERIOR COURT OF CALIFORNIA
COUNTY OF MARIN

DATE: 01/27/26 TIME: 1:30 P.M. DEPT: A CASE NO: CV0007390

PRESIDING: HON. STEPHEN P. FRECCERO

REPORTER: CLERK: CAMILO IBARRA

PETITIONER: WILLIS LEASE FINANCE CORPORATION, ET AL vs. DEFENDANT: CHUBB EUROPEAN GROUP SE, ET AL	

NATURE OF PROCEEDINGS: 1) DEMURRER
2) DEMURRER
3) CASE MANAGEMENT CONFERENCE

RULING

The demurrer of Defendant QBE Insurance Corporation's ("QBE") is **OVERRULED**.

The demurrer of Defendants Global Aerospace Underwriting Managers Limited; Great Lakes Insurance SE; Berkshire Hathaway International Insurance Ltd.; Houston Casualty Company; Mapfre Espana, Compania de Seguros y Reaseguros, S.A.; Mitsui Sumitomo Insurance Company (Europe) Limited; Swiss Re International SE; Faraday Capital Limited as the sole member and capital provider to Faraday Syndicate 0435 at Lloyd's; Starr Managing Agents Limited on its own behalf and on behalf of all underwriting members of Lloyd's Syndicate 1919; Convex Insurance UK Limited; AXIS Specialty Europe SE; Texas Insurance Company; and AU Insurance Services, Inc., dba Applied Underwriters Aviation, erroneously sued herein as AU Insurance Services, dba Applied Underwriters Aviation's (the "AR Insurers") is **OVERRULED**.

Requests for Judicial Notice

QBE's Requests for Judicial Notice Nos. 1-5 are **GRANTED**. (Evid. Code, § 452, subd. (d).)

AR Insurers' Requests for Judicial Notice Nos. 1-8 are **GRANTED**. (Evid. Code, § 452, subd. (f).)

Background

Plaintiffs Willis Lease Finance Corporation, Willis Mitsui & Co. Engine Support Limited, and Willis Engine Structured Trust VI (collectively, "WLFC" or "Plaintiffs") filed this complaint

against the named defendant insurance companies and providers (collectively, "Insurers") alleging that they have wrongfully and unreasonably refused to provide the coverage they promised under an aviation insurance policy ("the Policy") in the event WLFC's aircraft engines on aircraft operating in Russia were lost or damaged.

The Complaint alleges:

> The Policy protects against all risks of "physical loss of or damage to" engines as well as "loss of or damage to" engines caused by war allied perils. Among other things:
>
> a. The Policy covers "loss of or damage to" engines "caused by:"
>
> A. War, invasion, acts of foreign enemies, hostilities (whether war be declared or not), civil war, rebellion, revolution, insurrection, martial law, military or usurped power or attempts at usurpation of power.
>
> . . .
>
> C. Any act of one or more persons, whether or not agents of a sovereign power, for political or terrorist purposes and whether the loss or damage resulting therefrom is accidental or intentional.
>
> . . .
>
> E. Confiscation, nationalisation, seizure, restraint, detention, appropriation,
>
> requisition for title or use by or under the order of any government (whether civil military or de facto) or public or local authority.
>
> . . .
>
> b. There is also coverage for engines that are "outside the control of [WLFC] by reason of"'[c]onfiscation, nationalisation, seizure, restraint, detention, appropriation, requisition for title or use by or under the order of any Government (whether civil military or de facto) or public or local authority."
>
> c. The Policy also cover[s] losses that are not caused by the above war perils.
>
> d. When a claim is a total loss under the Policy, Insurers must pay the agreed value of the engines.

(*Id.*, ¶ 29.)

With respect to the potential causes of the loss, the Complaint alleges that following Russia's invasion of Ukraine on February 24, 2022, WLFC promptly demanded the return of three of its engines from Russian lessees. (Compl., ¶ 1.) Those three engines were not returned and are not subject to recovery. (*Ibid.*) Plaintiffs conclude that the insured engines are therefore lost and WLFC is entitled to the coverage promised by Insurers. (*Ibid.*) WLFC purchased the Policy to protect its aircraft, engines, and assets, including the Lost Engines, from all risks of loss or damage, including those caused by war allied perils. (*Id.*, ¶ 22.) The Policy is a single, seamless policy, subscribed to, underwritten, issued, and sold to WLFC collectively by Insurers, with Chubb as the lead for claims handling. (*Id.*, ¶ 28.)

As further described, following Russia's invasion of Ukraine, Russia undertook a range of measures and actions intended to confiscate and/or steal aircraft, including the Lost Engines' Aircraft, and to prevent and restrict their recovery by owners like WLFC. (*Id.*, ¶ 31.) These actions, and others, resulted in Lessees not returning the Lost Engines after WLFC demanded their return and the leasing had terminated or lapsed. (*Ibid.*) Further, each of the Lost Engines' Aircraft have been reregistered by Lessees in Russia, despite the fact that such dual registration is in contravention of international law, which permits aircraft to be registered only in one country. (*Id.*, ¶ 45.) According to BCAA, approximately 500 BCAA-registered aircraft, including the Lost Engines' Aircraft, have been impermissibly assigned Russian dual registry marks. (*Ibid.*) Sanctions have also prevented the Lost Engines from being properly maintained. (*Id.*, ¶ 46.) Without proper maintenance, and proper records of that maintenance, the Lost Engines are rendered virtually without any value. (*Ibid.*)

Legal Standard

The function of a demurrer is to test the legal sufficiency of the challenged pleading. (*Hernandez v. City of Pomona* (1996) 49 Cal.App.4th 1492, 1497.) As a general rule, in testing a pleading against a demurrer, the facts alleged in the pleading are deemed to be true, however improbable they may be. (*Del E. Webb Corp. v. Structural Materials Co.* (1981) 123 Cal.App.3d 593, 604.) The court gives the pleading a reasonable interpretation by reading it as a whole and all of its parts in their context. *(Moore v. Regents of Univ. of Calif.* (1990) 51 Cal.3d 120, 125.)

In a demurrer proceeding, the defects must be apparent on the face of the pleading or via proper judicial notice. (*Donabedian v. Mercury Ins.* Co. (2004) 116 Cal.App.4th 968, 994.) The face of the complaint includes matters shown in exhibits attached to the complaint and incorporated by reference. (*Frantz v. Blackwell* (1987) 189 Cal.App.3d 91, 94.) "The only issue involved in a demurrer hearing is whether the complaint, as it stands, unconnected with extraneous matters, states a cause of action." (*Hahn v. Mirda* (2007) 147 Cal.App.4th 740, 747.)

Discussion

QBE demurs to the First Cause of Action for Breach of Contract on the grounds that it fails to state facts sufficient to constitute a cause of action against QBE. Specifically, QBE asserts that the Complaint and the attached Policy establish that WLFC's claimed losses arise from perils expressly excluded by the War Perils Exclusion under the Policy's All Risk Coverage and QBE does not subscribe to the War Perils Coverage portion of the Policy. QBE also argues that WLFC's Second Cause of Action fails to state facts sufficient to constitute a cause of action against it because Plaintiff's bad faith claim is barred where there is no breach of contract.

The AR Insurers demurrer on similar grounds. They assert that Plaintiffs' First Cause of Action fails to state a claim for breach of contract against the AR Insurers because the alleged losses fall within the War Perils Exclusion and are therefore expressly excluded under the All Risk Coverage to which the AR Insurers subscribe. They further assert that Plaintiffs' Second Cause of Action fails to state a claim for breach of the implied covenant of good faith and fair dealing against the AR Insurers because (1) no policy benefits are owed under the All Risk Coverage subscribed to by the AR Insurers, and (2) the "genuine dispute" doctrine bars any bad faith

liability where, as here, there is at least a genuine dispute over coverage. Further, AR Insurers claim the Complaint is fatally uncertain, ambiguous, and unintelligible as to the AR Insurers because it fails to differentiate among the Insurers who subscribe to different coverages.

The opposition counters that both demurrers incorrectly state that the Complaint alleges only one cause of its loss as a "single, distinct event" of "Russia's invasion of Ukraine and the resulting war." Plaintiffs contend that the Complaint does not describe a "single, distinct event," but rather a series of events that temporally occurred following Russia's invasion of Ukraine. Plaintiffs argue that the allegations include circumstances that implicate the War Risk coverage (e.g. the government orders as confiscation by the government) and others that implicate the All Risk coverage (e.g. the lessees acting to take the Lost Aircraft themselves in light of circumstances permitting it and re-registering the Lost Aircraft in Russia), as well as the Lessees failing to properly maintain the Engines. Plaintiffs argue that multiple bases for the loss are independently sufficient to state a cause of action for coverage under the All Risk coverage.

The opposition further argues that none of the orders cited in the Requests for Judicial Notice or Supplemental Authority are binding authority and that each decision differs from the present set of facts in one dispositive way: all had the benefit of discovery, and none were decided at the demurrer stage.

The Court finds that Plaintiffs have the better argument. Construing the allegations liberally, the complaint sufficiently states losses that are potentially covered by the Policy's All Risk Coverage. Defendants' arguments regarding the merits of these allegations - for example the actual cause of loss, whether coverage exists under the All Risk or "War and Allied Perils" portions of the Policy, and whether benefits are owed and by which insurers - are not appropriate for resolution at this stage in the pleadings.

Likewise, because the Complaint adequately alleges coverage, Plaintiffs have sufficiently alleged a cause of action for Breach of the Covenant of Good Faith and Fair Dealing. (Compl., ¶¶ 72-78.)

Finally, the Complaint is sufficiently clear to apprise defendants of the issues which they are to meet. (*Bacon v. Wahrhaftig* (1950) 97 Cal.App.2d 599, 605.) Additional clarification, if required, can come during discovery. (*Chen v. Berenjian* (2019) 33 Cal.App.5th 811, 822.)

For these reasons, both demurrers are overruled.

All parties must comply with Marin County Superior Court Local Rules, Rule 2.10(B) to contest the tentative decision. Parties who request oral argument are required to appear in person or remotely by ZOOM. Regardless of whether a party requests oral argument in accordance with Rule 2.10(B), the prevailing party shall prepare an order consistent with the announced ruling as required by Marin County Superior Court Local Rules, Rule 2.11.

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