

ALMANOR LAKEFRONT, LLC V. HAWS, Case No. LC15-00057

Tentative Ruling: **Denied.** The motion for summary judgment on the Amended Complaint (“AC”), brought by defendant, Sallie Haws (“Haws”), is denied. The request for judicial notice is granted, and the Settlement Agreement, proffered as evidence by plaintiff, Almanor Lakefront, LLC (“LLC”), shall be sealed pending further motion.

Haws seeks summary judgment on the grounds that LLC lacks standing, and is barred by the doctrine of *res judicata*, to bring this action, in which LLC seeks rents alleged to be due under a lease agreement. (AC, para. BC-1, Exhibit A (“Lease”).) In support, Haws presents material facts suggesting that (1) when this action was filed, LLC was not operating in compliance with its operating agreement and had failed to file reports required under Nevada law (UMF Nos. 3-25); and (2) LLC sought to recover rents for the same time periods in a prior action, which was dismissed with prejudice. (UMF Nos. 1, 2 and 26.)

The Lease was executed by a representative of LLC, as the lessor (*id.*, p.31); thus, LLC has standing to bring an action for its breach. (*See, Kanno v. Marwit Capital Partners II, L.P.* (2017) 18 Cal.App.5th 987, 1019 (party to contract has standing); *Wyatt v. Bowers* (1987) 103 Nev. 593, 595-596 (incidental beneficiaries under contract lack standing).)¹ Haws has not presented any material fact or evidence suggesting that LLC is not the lessor under the Lease and thus has not met her initial burden on this issue. (*Code of Civil Procedure section 437c(p)*.)²

The doctrine of *res judicata* “. . . ‘operates as a bar to the maintenance of a second suit between the same parties on the same cause of action.’ ” (*Boeken v. Philip Morris USA, Inc.* (2010) 48 Cal.4th 788, 797.) For purposes of applying the doctrine, “The cause of action is the right to obtain redress for the harm suffered.” (*Id.*, at 798.)

In the present action, LLC alleges that Haws breached the Lease with the payment which fell due on February 1, 2012, and every month thereafter. (AC, para. BC-2.) In an earlier action, LLC sought unpaid rents, arising from a breach of the Lease, commencing with the payment which fell due in January 2011. (UMF No. 1, First Amended Complaint, *LLC v. Owens, et al.*, CV 12-00008, Exhibit H, para.17.) Haws contends that CV12-00008 was dismissed with prejudice, thus

¹ Nevada law governs with respect to LLC’s internal business affairs (*Corporations Code section 17708.01(a)*); however, the Court will apply California substantive law as to all other issues, since neither party has invoked Nevada law. (*See, Hurtado v. Superior Court* (1974) 11 Cal. 3d 574, 581 (courts generally apply California substantive law).) It also appears that the laws of both states are the same on the issue of standing.

² At most, the material facts presented by Haws go to the issue of LLC’s capacity to sue. (*See, Color-Vue Inc. v. Abrams* (1996) 44 Cal.App.4th 1599, 1603-1604 (suspension results in lack of capacity, not lack of standing, to sue); *AA Primo Builders, LLC v. Washington* (2010) 126 Nev. 578, 581 fn. 1 (same).) Further, Haws is neither a party to, nor intended beneficiary of, LLC’s operating agreement, which she argues was breached, and thus lacks standing to enforce it. (*Kanno v. Marwit Capital Partners II, L.P., supra*, 18 Cal.App.5th at 1019; *Wyatt v. Bowers, supra*, 103 Nev. at 595-596.)

barring this action. (UMF No. 2, Exhibit I.) LLC disputes that the evidence establishes that its claims in CV12-00008 were dismissed, because the request for dismissal it filed was in CV09-00243.

The Court takes judicial notice of its files and records in *Owens, et al. v. Kerns, et al.*, CV09-00243, which establish that *LLC v. Owens, et al.*, CV12-00008, was consolidated, for all purposes, with CV09-00243, which became the lead case. (Stipulation and Order, filed February 1, 2013, p. 4.) Accordingly, these cases are to be treated as if all causes were “united originally,” and LLC’s request for dismissal in CV09-00243 thus dismissed all of its claims in the consolidated cases. (See, *Didier v. American Casualty Company* (1968) 261 Cal.App.2d 742, 752 (consolidated actions to be determined by a single set of findings and judgment, and to be treated as if causes “had been united originally”).)

Hence, LLC’s request for dismissal, after settlement, of its cross-complaint in CV09-00243, bars LLC from bringing another action for rents accrued up to February 21, 2014, the date the Court’s Register of Actions in both consolidated cases reflect a case disposition of “Dismissal: Aft other ADR on 2/21/2014.” (See, *Eichman v. Fotomat Corporation* (1983) 147 Cal.App.3d 1170, 1177 (judgment after settlement bars future action on same cause).)

However, LLC may pursue, as damages, the rents which fell due, and were allegedly unpaid, after that date. (See, *Pringle v. Fassler*(1917) 176 Cal. 264, 265 (complaint adequate to state cause for breach of lease and recovery of unpaid rents); *Knight v. Marks* (1920) 183 Cal. 354, 357 (measure of damages for breach of lease is unpaid rents).) Accordingly, Haws’ motion for summary judgment on the grounds of *res judicata* is denied.

The Settlement Agreement, attached as Exhibit 3 to the Declaration of Mark Nicholson filed on November 28, 2017, contains confidentiality provisions, and the copy thereof that is in the Court’s files shall be conditionally sealed pending further motion. (See, *Rules 2.550 and 2.551* of the *California Rules of Court*.)