

2017 WL 11680958

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United States District Court, C.D. California.

Thomas KIM; Kim Family Ventures, LLC, Plaintiffs,

v.

TESORO REFINING & MARKETING COMPANY LLC; [Treasure Franchise Company LLC](#), Defendants.

Case No. 2:17-cv-06241-AB (RAOx)

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Signed 12/13/2017

Attorneys and Law Firms

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ORDER GRANTING DEFENDANTS' MOTION TO DISMISS

[ANDRÉ BIROTTE JR.](#), UNITED STATES DISTRICT JUDGE

*1 Pending before the Court is the Motion to Dismiss Plaintiffs' second cause of action to quiet title, filed by Defendants Tesoro Refining & Marketing Company LLC and Treasure Franchise Company LLC (collectively, "Defendants"). Dkt. No. 16. Plaintiffs Thomas Kim ("Kim") and Kim Family Ventures, LLC ("KFV") (collectively, "Plaintiffs") filed an opposition and Defendants filed a reply. The Court deems this matter appropriate for decision without oral argument and vacates the hearing scheduled for December 15, 2017. See [Fed. R. Civ. P. 78](#); LR 7-15. For the following reasons, the Court **GRANTS** the Motion.

I. BACKGROUND

This action concerns Plaintiffs' operation of an am/pm convenience store (the "Mini Market") and an ARCO-branded retail motor fuel facility (the "Gas Station") in Pomona, California. The Court takes the following allegations as true in evaluating Defendants' Motion. See [Wolfe v. Strankman](#), 392 F.3d 358, 362 (9th Cir. 2004).

In December 2006, KFV purchased the property housing the Mini Market and Gas Station (the "Station Premises") from NAZM, LLC. Complaint, ¶ 13 (Dkt. No. 1). NAZM, LLC had purchased the Station Premises from BP West Coast Products LLC ("BP"), Defendants' predecessor-in-interest. *Id.* The deed for the Station Premises prohibits the operation of (1) a convenience food store other than one operated under a franchise agreement with BP, (2) a gas station other than one operated under a franchise agreement with BP, and (3) a fast food takeout restaurant. Complaint, ¶ 13, Ex. 1.¹

Kim entered into two franchise agreements with BP, one for the operation of the Mini Market and one for the operation of the Gas Station. Complaint, ¶ 12. Among other things, the agreements require Kim to purchase ARCO-branded gasoline and keep the Station Premises in a safe, sanitary, and operable condition. Complaint, ¶ 14, Ex. 2.

Around July 7, 2017, Defendants sent Kim a Notice of Termination. Complaint, ¶ 15. The Notice of Termination asserted that Kim had failed to comply with Defendants' "standards relating to housekeeping, safety, and maintenance." *Id.* It stated that Defendants' franchise relationship with Kim would terminate on October 9, 2017. *Id.*

Based on these allegations, Plaintiffs' Complaint asserts two causes of action. First, Kim claims that Defendants' attempt to terminate the franchise agreements violates the Petroleum Marketing Practices Act ("PMPA"), 15 U.S.C. § 2801, *et seq.* Complaint, ¶¶ 21-22. Kim seeks injunctive relief to prevent Defendants from terminating the franchise agreements, as well as damages. Complaint, ¶¶ 37.1-37.6. Second, KfV asserts a quiet title claim against Defendants. Complaint, ¶¶ 32-37. It seeks a declaration that the Deed Restrictions are unenforceable. Complaint, ¶ 37.

II. DISCUSSION

Defendants claim KfV's quiet title claim is not ripe for review, therefore depriving the Court of subject matter jurisdiction to review it. The Court agrees.²

*2 A court cannot exercise subject matter jurisdiction over a claim unless it presents an adequate case or controversy under Article III of the United States Constitution. *Am. States Ins. Co. v. Kearns*, 15 F.3d 142, 143 (9th Cir. 1994). To present a justiciable case or controversy, a claim must be ripe for review. *Principal Life Ins. Co. v. Robinson*, 394 F.3d 665, 669 (9th Cir. 2005). The plaintiff bears the burden of establishing a justiciable case or controversy for each claim and each form of relief sought. *Davis v. Fed. Election Comm'n*, 554 U.S. 724, 734 (2008).

"A claim is not ripe for adjudication if it rests on contingent future events that may not occur as anticipated, or indeed may not occur at all." *Texas v. United States*, 523 U.S. 296, 300 (1998) (quotations omitted). A private contractual dispute only ripens when "there is a substantial controversy, between parties having adverse legal interests, of sufficient immediacy and reality" to warrant resolution.³ *Principal*, 394 F.3d at 671. Ripeness concerns particularly arise when the plaintiff has yet to undertake "conduct that allegedly violates a contractual provision." *Golden v. Cal. Emergency Physicians Med. Grp.*, 782 F.3d 1083, 1087 (9th Cir. 2015). And where the need to resolve a dispute depends on the plaintiff first facing an adverse result in pending litigation, the plaintiff's claim is not ripe for review. See *Aydin Corp. v. Union of India*, 940 F.2d 527, 527-28 (9th Cir. 1991) (where the plaintiff sought a declaration that an award in a pending Indian arbitration would be unenforceable, holding that the claim was not ripe for review because "[plaintiff] may prevail in the Indian arbitration, leaving no award to enforce").

KfV does not assert a ripe dispute because it fails to allege that it is violating any of the Deed Restrictions. While KfV claims Defendants plan to terminate their franchise relationship with Kim, they do not claim that the franchise relationship has, in fact, been terminated. KfV will only violate the Deed Restrictions if (1) the franchise agreements between Kim and Defendants actually terminate, and (2) Kim continues to operate the Mini Market or Gas Station after that termination. But Plaintiffs have filed the instant lawsuit to prevent the termination of the franchise agreements, asking the Court to enjoin Defendants "from attempting termination of Kim's franchise" Complaint, ¶ 37.1. If Plaintiffs are successful and do obtain the relief they request, then KfV will continue to comply with the Deed Restrictions, and the Court would have no reason to decide whether the Deed Restrictions are enforceable. Thus, like in *Aydin*, a true controversy with respect to the Deed Restrictions may only materialize if Plaintiffs lose in pending litigation. KfV's quiet title claim therefore rests on contingent future events that "may not occur at all." *Texas*, 523 U.S. at 300.

*3 KfV points to *Latona v. Aetna U.S. Healthcare, Inc.*, 82 F. Supp. 2d 1089, 1093 (C.D. Cal. 1999), for the proposition that a court can determine the enforceability of a contract provision even if the defendant has not yet sought to enforce it. In *Latona*, the defendant employer began requiring all employees to sign a non-compete agreement. *Id.* at 1090-91. The plaintiff employee refused to sign the agreement, so the defendant fired her. *Id.* at 1091. When the plaintiff sought a declaration that the non-compete agreement was unenforceable, the defendant argued that the plaintiff failed to assert a ripe controversy because the defendant had not attempted to enforce the agreement. *Id.* at 1093. The court disagreed and held that plaintiff asserted a ripe

controversy. *Id.* Because the defendant fired the plaintiff for her failure to sign the non-compete agreement, the consequences of the agreement were “neither hypothetical nor conjectural.” *Id.*

But KJV's quiet title claim is different from the plaintiff's claim in *Latona*. While the defendant in *Latona* did not attempt to enforce the non-compete agreement, it still took action connected to the agreement by firing the plaintiff for refusing to sign it. Here, on the other hand, Defendants have taken no actions against KJV with respect to the Deed Restrictions. KJV agreed to the Deed Restrictions, and Defendants have had no occasion to enforce them. Any consequences stemming from the Deed Restrictions depend on Defendants actually terminating the franchise agreements with Kim. See *Riverdale Enters., Inc. v. Shell Oil Co.*, 41 F. Supp. 2d 56, 64 (D. Mass. 1999) (holding that the plaintiff did not assert a ripe PMPA claim based on the defendant oil company's failure to renew franchise agreements where the existing franchise agreements had not yet lapsed). The Court would risk adjudicating a hypothetical dispute if it were to review KJV's quiet title claim before the franchise agreements terminate. The quiet title claim is not ripe, and the Court lacks jurisdiction to decide it.

III. CONCLUSION

For the foregoing reasons, the Court **GRANTS** Defendants' Motion to Dismiss the Complaint's second cause of action to quiet title. This dismissal is without prejudice to KJV's ability to reassert its quiet title claim if it becomes ripe for review in the future.

IT IS SO ORDERED.

All Citations

Not Reported in Fed. Supp., 2017 WL 11680958

Footnotes

- 1 The Court will refer to these prohibitions as the “Deed Restrictions.”
- 2 Because the Court lacks subject matter jurisdiction over KJV's quiet title claim, it does not address Defendants' remaining arguments for dismissal.
- 3 While Plaintiffs seek to quiet title, they are asking the Court to determine the enforceability of the Deed Restrictions. Deeds are interpreted like “any other contracts” under California law. *City of Manhattan Beach v. Superior Court*, 13 Cal. 4th 232, 238 (1996). The Court therefore finds cases analyzing ripeness in declaratory judgment contract disputes analogous and instructive. See *Double Diamond Props., LLC v. BP Prods. N. Am., Inc.*, 277 Fed. App'x 312, 314-15 (4th Cir. 2008) (analyzing a plaintiff's request for a declaratory judgment that a restrictive covenant in a gas station deed was unenforceable).