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8 EMMETT 1997, LLC

**FILED**  
Superior Court of California  
County of Los Angeles

DEC 24 2015

Sherri R. Carter, Executive Officer/Clerk  
By Natasha Rose, Deputy

9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
10 **FOR THE COUNTY OF LOS ANGELES**

11 ROBERT L. GLUSHON,  
12 Plaintiff,

13 vs.

14 DOUGLAS EMMETT 1997, LLC, a Delaware  
15 limited liability company; DOUGLAS  
16 EMMETT MANAGEMENT, INC., a Delaware  
17 corporation; and DOES 1-50, inclusive,  
18 Defendants.

CASE NO. BC598918  
[Complaint filed 10/23/15; Dept. 28]

**NOTICE OF DEMURRER AND  
DEMURRER TO PLAINTIFF'S  
FIRST AMENDED COMPLAINT;  
MEMORANDUM OF POINTS AND  
AUTHORITIES**

**Date: 8/5/2016  
Time: 8:45 a.m.  
Dept.: 28**

**RESERVATION ID: 151223091775**

18 **TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD HEREIN:**

19 PLEASE TAKE NOTICE that on **August 5, 2016 at 8:45 a.m.**, or as soon  
20 thereafter as counsel may be heard in Department 28 of the above-entitled court  
21 located at 111 North Hill Street, Los Angeles, CA 90012, Defendants, DOUGLAS  
22 EMMETT MANAGEMENT, INC. and DOUGLAS EMMETT 1997, LLC will and  
23 hereby does demur to Plaintiff's First Amended Complaint For Damages  
24 ("Complaint") on the following grounds:

25 **AS TO THE FIRST CAUSE OF BREACH OF CONTRACT**

- 26 1. The First Cause of Action fails to state facts sufficient to constitute a cause  
27 of action. [California Code of Civil Procedure Section 430.10 (e)]  
28 2. The First Cause of Action is uncertain. [California Code of Civil Procedure

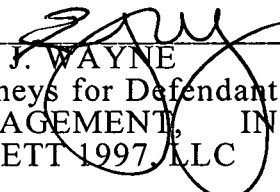
1 Section 430.10 (f)]

2 **AS TO THE THIRD CAUSE OF FRAUD-**  
3 **CANCEALMENT/SUPPRESSION OF FACTS**

- 4 1. The Third Cause of Action fails to state facts sufficient to constitute a cause  
5 of action. [California Code of Civil Procedure Section 430.10 (e)]  
6 2. The Third Cause of Action is uncertain. [California Code of Civil Procedure  
7 Section 430.10 (f)]

8 DATED: December 23, 2015

WAYNE & ASSOCIATES

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12 ERIC J. WAYNE  
13 Attorneys for Defendants, DOUGLAS EMMETT  
14 MANAGEMENT, INC. and DOUGLAS  
15 EMMETT 1997, LLC  
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1 MEMORANDUM OF POINTS AND AUTHORITIES

2 I.

3 ALLEGATIONS - FACTS

4 This matter arises out of a written Office Lease agreement entered into by  
5 Plaintiff with Douglas Emmett 1997, LLC (Owner) on October 20, 2011 with Plaintiff  
6 at the premises known as "Suite 1016" at 16255 Ventura Blvd., Encino, California  
7 ("Subject Premises"). (Complaint, paragraphs 9).

8 Simply put, Plaintiff is attempting to get out of his office lease. The First  
9 Amended Complaint fails to mention all of the efforts that have been made by the  
10 Landlord (DOUGLAS EMMETT 1997, LLC) to appease Plaintiff.

11 Plaintiff's Complaint is comprised of thinly pled allegations that the Defendants  
12 were aware that his office suite was allegedly too noisy before he signed his Lease and  
13 therefore guilty of fraud. Plaintiff suggests that a prior tenant, Brain Schall, was  
14 aware of these noise issues, however, Plaintiff fails to allege when Ms. Schall was a  
15 tenant, the nature of his complaints, to whom or when Mr. Schall spoke to someone  
16 employed by Defendants, what was stated, what the alleged issue was, how the  
17 Defendants allegedly concealed or suppressed the alleged material facts, who had this  
18 knowledge when were they made, where were they made, or how were they made.

19 In regards to the Breach of Contract cause of action, Plaintiff names both  
20 Defendants despite the fact that he attached the Office Lease agreement which clearly  
21 states that his Office Lease was solely with Defendant DOUGLAS EMMETT 1997,  
22 LLC. Defendant DOUGLAS EMMETT MANAGEMENT, INC. was not a party to the  
23 Office Lease, there is no privity of contract, and as a result, the Demurrer should be  
24 sustained to the First Cause of Action as to DOUGLAS EMMETT MANAGEMENT,  
25 INC. without leave to amend.

26 As such, it is respectfully submitted that this Court should sustain this demurrer  
27 as to the first and third causes of action of plaintiff's first amended complaint, without  
28 leave to amend.

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II.

**A DEMURRER IS PROPER WHEN THE COMPLAINT DOES NOT  
STATE FACTS SUFFICIENT TO CONSTITUTE A CAUSE OF ACTION  
OR WHEN IT IS UNCERTAIN**

A party against whom a complaint has been filed may object by demurrer to the pleading on the grounds that “[t]he pleading does not state facts sufficient to constitute a cause of action and/or the pleading is uncertain. As used in this subdivision, “uncertain includes ambiguous and unintelligible.” *California Code of Civil Procedure* Sections 430.10 (e) and (f).

*California Code of Civil Procedure* Section 430.30 (a) provides:

“When any ground for an objection to a complaint...appears on the face thereof, or through any matter of which the court is required to or may take judicial notice, the objection on that ground may be taken by demurrer to the pleading.”

To withstand a demurrer, a complaint must allege ultimate facts and not evidentiary facts or conclusions of law. *Logan v. Southern California Rapid Transit District* (1982) 136 Cal.App.3d 116, 126. Every element of a cause of action asserted must be alleged with particularity, and not by vague references to facts that may or may not be shown “according to proof” at a later date. *Goldrich v. Natural Surgical Specialists* (1994) 25 Cal.App.4th 772, 782. Thus, if a defendant establishes the absence of any essential element of a cause of action, the court should sustain the demurrer to that cause of action. *Sher v. Leiderman* (1986) 181 Cal.App.3d 867, 885-886.

As established below, each and every cause of action of plaintiffs’ complaint is inadequately pled and does not state facts sufficient to constitute a legally cognizable cause of action against defendants.

Moreover, a complaint which contains ambiguities and/or is unintelligible is subject to special demurrer for uncertainty. *Code of Civ.Proc.* Section 430.10(f) The court in *Ankeny v. Lockheed Missiles & Space Co.* (1979) 88 Cal.App.3d 531, 537

1 emphasized the importance of clarity in pleading when it held:

2 “Plaintiff’s complaint is also uncertain...It is settled law that a pleading must  
3 allege facts and not conclusions, and that material facts must be alleged directly and  
4 not by way of recital. Also, in pleading, the essential fact upon which a determination  
5 of the controversy depends should be stated with clearness and precision so that  
6 nothing is left to surmise. Those recitals, references to, or allegations of material facts  
7 which are left to surmise are subject to special demurrer for uncertainty.” (Citations  
8 omitted.)

9 The nature and extent of the plaintiff’s claims as to Douglas Emmett 1997, LLC  
10 and Douglas Emmett Management, Inc. cannot be ascertained from the allegations of  
11 the first amended complaint. Douglas Emmett 1997, LLC and Douglas Emmett  
12 Management, Inc. are left to surmise what it purportedly did or failed to do as well as  
13 the manner or method by which the purported actions or failures occurred. Simply put,  
14 the complaint fails to provide any specific factual allegations to support any of the  
15 causes of action as against defendants. For these reasons, the demurrer to the first  
16 amended complaint should be sustained in its entirety without leave to amend.

17 III.

18 PLAINTIFF’S FIRST CAUSE OF ACTION FOR BREACH OF  
19 CONTRACT FAILS TO STATE FACTS SUFFICIENT TO STATE A  
20 CAUSE OF ACTION AND IS UNCERTAIN

21 The elements of a cause of action Breach of Contract include the allegation that  
22 a contract existed between the parties.

23 Plaintiff’s First Cause of Action for Breach of Contract is against all  
24 Defendants. Plaintiff’s First Cause of Action is subject to demurrer because there is a  
25 lack of any factual description of the purported actions giving rise to this cause of  
26 action in regards to Defendant DOUGLAS EMMETT MANAGEMENT, INC.  
27 Plaintiff alleges that on or about October 20, 2011, DOUGLAS EMMETT 1997, LLC  
28 entered into a written Office Lease agreement with Plaintiff for the lease of the

1 premises known as Suite 1016 at 16255 Ventura Blvd., Encino, California.  
2 (Complaint 3:7 – 10) Plaintiff attaches the Office Lease as Exhibit 1.

3 The most cursory review of the Office Lease reveals that the Office Lease was  
4 an agreement between the Landlord DOUGLAS EMMETT 1997, LLC and Plaintiff  
5 ROBERT L. GLUSON. DOUGLAS EMMETT MANAGEMENT, INC. was not a  
6 party to this Office Lease agreement. There is no privity of contract between Plaintiff  
7 and DOUGLAS EMMETT MANAGEMENT, INC.

8 As such, the First Amended Complaint lacks the necessary facts to state a cause  
9 of action for breach of contract against DOUGLAS EMMETT MANAGEMENT, INC.

10 For these reasons, the demurrer to the First Cause of Action of the First  
11 Amended Complaint for Breach of Contract should be sustained as to defendant  
12 DOUGLAS EMMETT MANAGEMENT, INC. without leave to amend.

13 **IV.**

14 **PLAINTIFF'S THIRD CAUSE OF ACTION FOR FRAUD-**  
15 **CANCEALMENT/SUPPRESSION OF FACTS FAILS TO STATE FACTS**  
16 **SUFFICIENT TO STATE A CAUSE OF ACTION AND IS UNCERTAIN**

17 **A. Fraud Claims Are Disfavored And Must Be Specifically Pleaded**

18 Fraud claims are disfavored and subject to strict requirements of particularity in pleading.  
19 The policy of liberal construction of the pleadings thus is ordinarily not invoked on a fraud claim. 5  
20 *Witkin, Cal. Proc., Pleading*, § 711 (5<sup>th</sup> Ed. 2008) (hereinafter "*Witkin*") (citations omitted).

21 Thus, every element of a fraud claim must be alleged specifically and the policy of liberal  
22 construction of pleadings cannot save a defectively pleaded fraud claim. *Wilhelm v. Pray, Price,*  
23 *Williams & Russell* (1986) 186 Cal.App.3d 1324, 1331-32. Fraud claims must allege facts to show  
24 "how, when, where, to whom, and by what means the representations were tendered." *Stansfield v.*  
25 *Starky* (1990) 220 Cal.App.3d 59, 73 (citation omitted). Moreover, where fraud is alleged as against  
26 an entity, the plaintiff must allege the names of the persons making the representations, their  
27 authority to speak for the entity, to whom they spoke, what they said or wrote, and when. *State Farm*  
28 *Mut. Auto. Ins. Co.* (1991) 2 Cal.App.4<sup>th</sup> 153, 157.

1 The essential allegations of an action for fraud are a misrepresentation, knowledge of  
2 its falsity, intent to defraud, justifiable reliance, and resulting damage. *Roberts v. Ball, Hunt,*  
3 *Hart, Brown & Baerwitz, 57 Cal.App.3d 104,109 (1976).* "Every element of the cause of  
4 action for fraud must be alleged in the proper manner and the facts constituting the fraud  
5 must be alleged with sufficient specificity to allow defendant to understand fully the nature of  
6 the charge made." *Id.* General pleading of the legal conclusion of fraud is insufficient; every  
7 element of the cause of action for fraud must be alleged in full, factually and specifically, and  
8 the policy of liberal construction of pleading will not usually be invoked to sustain a pleading  
9 that is defective in any material respect. *Wilhelm v. Pray, Price, Williams & Russell, 186*  
10 *Cal.App.3d 1331,1324 (1986).* "This particularity requirement necessitates pleading facts  
11 which "show how, when, where, to whom, and by what means the representations were  
12 tendered." *Stansfield v. Starker, 220 Cal.App.3d 59, 73 (1990).*

13 Additionally, where a corporate or business defendant is involved, the pleading  
14 standards for fraud are even greater. *Tarmann v. State Farm Mutual Auto Ins. Co., 2*  
15 *Cal.App.4th 153, 157 (1991).* "The requirement of specificity in a fraud action against a  
16 corporation requires the plaintiff to allege the names of the persons who made the allegedly  
17 fraudulent representations, their authority to speak, to whom they spoke, what they said or  
18 wrote, and when it was said or written." *Id.*

19 It is evident from the face of the First Amended Complaint, Plaintiff's cause of action  
20 fails to allege fraud with the required degree of specificity. The complaint does not  
21 specifically identify any particular defendant who made any alleged representation, his or her  
22 authority to speak, when the alleged representation was made. As indicated above, where a  
23 corporate or business defendant is involved, the pleading for fraud are even greater.

24 Plaintiff alleges generally that a single person, Katherine DeFevere, made inspections  
25 with Plaintiff. However, Plaintiff does not allege that any misrepresentations were made by  
26 Ms. DeFevere. In fact, Plaintiff does not allege any statements being made by Mr. DeFevere  
27 at that time. None whatsoever. Plaintiff fails to allege that Ms. DeFevere herself had any  
28 knowledge of any prior issues with noise. Plaintiff is assuming that Ms. DeFevere was aware

1 and possessed knowledge of this alleged noise issue.

2 **B. The Fraud Claim Is Uncertain as to DOUGLAS EMMETT 1997, LLC**

3 At a bare minimum, the fraud claim is uncertain. Plaintiff does not specify who Ms. DeFevere was  
4 employed by at the time of the alleged concealment. Specifically, Plaintiff has failed to allege, and cannot  
5 alleged, that Ms. DeFevere was an employee of DOUGLAS EMMETT 1997, LLC. The reason for this is  
6 simple - DOUGLAS EMMETT 1997, LLC is a limited liability corporation without any employees. Absent  
7 any allegation that any individual acting as a representative of DOUGLAS EMMETT 1997, LLC made any  
8 false representation to Plaintiff prior to entering into the subject Lease, Plaintiff's cause of action for Fraud  
9 against DOUGLAS EMMETT 1997, LLC must fail.

10 Plaintiff has failed to allege even how or in what manner the alleged representations  
11 were made, e.g., orally or in writing.

12 In essence, however it appears, although it is not clear, plaintiff is alleging that  
13 "defendants" made a promise to plaintiff to provide a sound-proof suite without intention of  
14 performing it. A promise made without any intention of performance constitutes actual fraud  
15 and deceit. *Bedell Engineering Co. v. Rouse*, 57 Cal.App.2d 734,737 (1943). Yet, failure to  
16 perform a promise is not sufficient to prove fraud; if plaintiff adduces no further evidence of  
17 fraudulent intent other than proof of nonperformance of oral promise, plaintiff should never  
18 reach jury. *Conrad v. Bank of America*, 45 Cal.App.4th 133,157(1996) rehearing denied,  
19 review denied. A promise to be fraudulent must be made in bad faith, without any intention  
20 of performing it. *O'Melia v. Adkins*, 73 Cal.App.2d 14,149 (1946). Furthermore, the mere  
21 violation of a contract is not a fraud. *Bradley v. Duty*, 73 Cal.App.2d 522,525 (1946).

22 Towards the end of the First Amended Complaint, Plaintiff alleges that there was a  
23 prior tenant that had complained about noise related issues. However, Plaintiff makes no  
24 reference to when these complaints were made, to whom these complaints were made,  
25 whether Ms. DeFevere was aware of these complaints, whether any other employee of  
26 Defendant DOUGLAS EMMETT MANAGEMENT, INC. had any knowledge of these  
27 alleged complaints, the nature and duration of these complaints, etc.

28 "The elements of an action for fraud and deceit based on concealment are: (1) the



1 defendant must have concealed or suppressed a material fact, (2) the defendant must have  
2 been under a duty to disclose the fact to the plaintiff, (3) the defendant must have  
3 intentionally concealed or suppressed the fact with the intent to defraud the plaintiff, (4) the  
4 plaintiff must have been unaware of the fact and would not have acted as he or she did if the  
5 plaintiff had known of the concealed or suppressed fact, and (5) as a result of the concealment  
6 or suppression of the fact, the plaintiff must have sustained damage." *Lovejoy v. AT&T*  
7 *Corp., 92 Cal.App.4th 85, 95 (2001)*. Even so, plaintiff has failed to allege that Ms.  
8 DeFevere herself, who made the alleged concealment or suppression of material facts, had  
9 this knowledge when were they made, where were they made, or how were they made.

10 Plaintiff's allegations on his cause of action for fraud and deceit fail to state facts  
11 sufficient to constitute a cause of action against any defendant as it fails to allege facts with  
12 the required degree of specificity. Moreover, plaintiff's cause of action is ambiguous,  
13 uncertain and unintelligible as it combines several different forms of fraud and deceit  
14 including a promise made without any intention of performing it and  
15 suppression/concealment of material fact which each have their own individual elements and  
16 requirements in pleading.

17 For these reasons, the demurrer to the Third Cause of Action must be sustained  
18 without leave to amend.


19 V.

20 CONCLUSION

21 For the reasons set forth above, the court should sustain the Demurrer without  
22 leave to amend.

23 DATED: December 23, 2015

WAYNE & ASSOCIATES

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ERIC J. WAYNE  
Attorneys for Defendants, DOUGLAS EMMETT  
MANAGEMENT, INC and DOUGLAS EMMETT  
1997, LLC

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**PROOF OF SERVICE**  
STATE OF CALIFORNIA  
COUNTY OF LOS ANGELES

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action; my business address is 21600 Oxnard Street, Suite 2060, Woodland Hills, California 91367.

On December 23, 2015, I served the foregoing documents described as  
**NOTICE OF DEMURRER AND DEMURRER TO PLAINTIFF'S FIRST AMENDED COMPLAINT; MEMORANDUM OF POINTS AND AUTHORITIES**

on all interested parties in this action:

by placing the true copies thereof enclosed in a sealed envelope with postage thereon fully prepaid, in the United States mail at Woodland Hills, California addressed as follows:

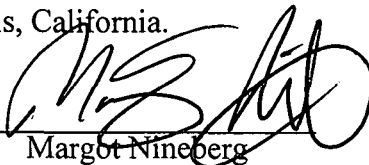
by personal service I delivered such envelope by hand, as follows:

Robert L. Glushon, Esq.  
Kristina Kropp, Esq.  
LUNA & GLUSHON  
16255 Ventura Blvd., Suite 1016  
Encino, California 91436  
Attorney for Plaintiff, ROBERT L. GLUSHON

(State) I declare under penalty of perjury under the law of the State of California that the above is true and correct.

(Federal) I declare that I am employed in the office of member of the bar of this court at whose direction the service was made.

Executed on December 23, 2015, at Woodland Hills, California.

  
Margot Ninerberg

\*\* (For personal service signature must be that of messenger)

CRS RECEIPT

**INSTRUCTIONS**

Please print this receipt and attach it to the corresponding motion/document as the last page. Indicate the Reservation ID on the motion/document face page (see example). The document will not be accepted without this receipt page and the Reservation ID.

MEMORANDUM FOR THE CLERK

CASE NO: 151130083758

NOTICE OF MOTION AND PETITION  
TO CLERK ASSESSMENT FEE  
FOR PROCEEDURE

DATE: 11/30/2015

RES ID: 131112001085

RESERVATION INFORMATION

**Reservation ID:** 151130083758  
**Transaction Date:** November 30, 2015  
**Case Number:** BC598918  
**Case Title:** ROBERT L GLUSHON VS DOUGLAS EMMETT 1997 LLC ET AL  
**Party:** DOUGLAS EMMETT 1997 LLC (Defendant/Respondent)  
**Courthouse:** Stanley Mosk Courthouse  
**Department:** 28  
**Reservation Type:** Demurrer - without Motion to Strike  
**Date:** 8/1/2016  
**Time:** 08:45 am

FEE INFORMATION (Fees are non-refundable)

First Paper Fee: (See below)

Description	Fee
First Paper (Unlimited Civil)	\$435.00
<b>Total Fees:</b>	<b>Receipt Number: 1151130K0521</b> \$435.00

PAYMENT INFORMATION

**Name on Credit Card:** Eric Wayne  
**Credit Card Number:** XXXX-XXXX-XXXX-0497

**A COPY OF THIS RECEIPT MUST BE ATTACHED TO THE CORRESPONDING  
MOTION/DOCUMENT AS THE LAST PAGE AND THE RESERVATION ID INDICATED ON THE  
MOTION/DOCUMENT FACE PAGE.**

11/30/2015 9:21 A

CRS RECEIPT

**INSTRUCTIONS**

Please print this receipt and attach it to the corresponding motion/document as the last page. Indicate the Reservation ID on the motion/document face page (see example). The document will not be accepted without this receipt page and the Reservation ID.

CALIFORNIA, COUNTY OF LOS ANGELES

) CASE NO.: BC598918

) NOTICE OF MOTION AND MOTION

) TO COMPEL ANSWERS TO DISCOVERY

) INTERROGATORIES

) DATE: August 5, 2016

) TIME: 2:30 pm

) DEPT: 28

) RES ID: 131112001085

RESERVATION INFORMATION

**Reservation ID:** 151223091775

**Transaction Date:** December 23, 2015

**Case Number:** BC598918

**Case Title:** ROBERT L GLUSHON VS DOUGLAS EMMETT 1997 LLC ET AL

**Party:** DOUGLAS EMMETT 1997 LLC (Defendant/Respondent)

**Courthouse:** Stanley Mosk Courthouse

**Department:** 28

**Reservation Type:** Demurrer - without Motion to Strike

**Date:** 8/5/2016

**Time:** 08:45 am

FEE INFORMATION (Fees are non-refundable)

**First Paper Fee:** Party asserts first paper was previously paid.

Description	Fee
Demurrer - without Motion to Strike	\$60.00
<b>Total Fees:</b>	<b>Receipt Number: 1151223K3018</b> \$60.00

PAYMENT INFORMATION

**Name on Credit Card:** Eric Wayne

**Credit Card Number:** XXXX-XXXX-XXXX-0497

**A COPY OF THIS RECEIPT MUST BE ATTACHED TO THE CORRESPONDING MOTION/DOCUMENT AS THE LAST PAGE AND THE RESERVATION ID INDICATED ON THE MOTION/DOCUMENT FACE PAGE.**

151223091775