

ALMANOR LAKEFRONT, LLC V. HILTON, Case No. LC15-00055

Tentative Ruling: **Denied.** The motion for summary judgment on the Amended Complaint (“AC”), brought by defendants, Michael Hilton and Kathleen Hilton (collectively “Hiltons”), is denied. Hiltons’ request for judicial notice is granted.

Hiltons seek summary judgment on the grounds that plaintiff, Almanor Lakefront, LLC (“LLC”), lacks standing 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, Hiltons present material facts suggesting that, 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. 1-23).

The Lease states that LLC is the lessor thereunder (*id.*, p.1); 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 Hiltons have not presented any material fact or evidence suggesting that LLC is not the lessor under the Lease,² and thus have not met their initial burden on this issue. (*Code of Civil Procedure section 437c(p)*).³

LLC did not file the Settlement Agreement in this action, rendering the Hiltons’ request to have it sealed moot.

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 The Court notes that the signature line of the Lease identifies “Almanor Lakefront Village, LLC” as the lessor. (*Id.*, p.3.) This may create a triable issue of fact as to which entity is the lessor, but it does not constitute an undisputed material fact that LLC is not the entity with standing to bring an action under the Lease.

³ At most, the material facts presented by Hiltons 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, Hiltons are neither parties to, nor intended beneficiaries of, LLC’s operating agreement, which they argue was breached, and thus lack 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.)