1. ARCTIC ELECTRICIANS v. SLT REAL ESTATE HOLDINGS, LLC, ET AL., 22CV0917

Further Issues Conference

TENTATIVE RULING # 1: APPEARANCES ARE REQUIRED AT 1:30 P.M., FRIDAY, MARCH 29, 2024, IN DEPARTMENT FOUR.

2. WAGNER v. FIRSTPV INC., ET AL., 23CV0893

Motion to Compel Further Responses

Pending before the court is plaintiff's motion to compel further responses to its first set of requests for production of documents propounded upon defendant Service Finance Company ("defendant"). Plaintiff also seeks sanctions against defendant in the amount of $3,313.00. (Valdez Decl., ¶ 12.)

1. Background

This case arises from the installation of a solar panel system at plaintiff's home. Defendant provided plaintiff a loan to finance the transaction. Plaintiff's complaint asserts causes of action for (1) violation of the Consumer Legal Remedies Act; (2) unfair competition; (3) violation of the Song-Beverly Consumer Warranty Act; (4) breach of implied warranty of merchantability; (5) breach of implied warranty of fitness; and (6) violation of Business and Professions Code section 7071.5.

On October 10, 2023, plaintiff propounded his first set of requests for production of documents on defendant. (Valdez Decl., ¶ 2 & Ex. 1.) On November 27, 2023, defendant served a timely response and asserted objections to each of the four requests for production. (Valdez Decl., ¶ 3 & Ex. 2.) As pertinent here, defendant objected to production of materials containing defendant's confidential business information (e.g., the Master Dealer Agreement entered into between defendants Service Finance Company and FirstPV[1]) but indicated that it would produce the documents following the entry of a stipulated protective order. (Bodzin Decl., ¶¶ 3, 4.) At the time, however, plaintiff was unwilling to stipulate to a protective order and defendant did not move for one.

Defendant extended the deadline for plaintiff to file the instant motion while the parties met and conferred on the protective order issue. (Bodzin Decl., ¶ 11.) Plaintiff filed

[1] Plaintiff claims that his requests for production do not call for the Master Dealer Agreement.

his motion on January 29, 2024. Shortly thereafter, the parties reached a stipulation designating the Master Dealer Agreement as confidential. (See Valdez Decl., Ex. H, ¶ 1, subd. (d).) On February 21, 2024, the court approved the stipulated protective order. On February 22, 2024, defendant produced the Master Dealer Agreement pursuant to the protective order. (Bodzin Decl., ¶ 18.)

On March 1, 2024, defendant served a verified supplemental response to plaintiff's requests for production. (Bodzin Decl., ¶ 19 & Ex. J.) Plaintiff took the position that defendant still failed to produce certain responsive documents. (Bodzin Decl., ¶ 21.) Thereafter, defendant searched for and located additional responsive documents. (Bodzin Decl., ¶ 22.) Defendant indicated that it would produce said documents on or before March 8, 2024, along with an amended response. (Bodzin Decl., ¶ 22.) The parties have not informed the court whether this occurred.

2. Discussion

After receiving a response to a demand for production, the party making the demand may move to compel further response to the demand if a statement of compliance with the demand is incomplete, a representation of the party's inability to comply is inadequate, incomplete, or evasive, or an objection in the response is without merit or too general. (Code Civ. Proc., § 2031.310, subd. (a).) Except in cases of certain electronically stored information, "the court shall impose a monetary sanction under Chapter 7 (commencing with Section 2023.010) against any party, person, or attorney who unsuccessfully makes or opposes a motion to compel further response to a demand, unless it finds that the one subject to the sanction acted with substantial justification or that other circumstances make the imposition of the sanction unjust." (Code Civ. Proc., § 2031.310, subd. (h).)

Here, defendant initially served a timely verified response with objections. After plaintiff filed the instant motion, the parties stipulated to a protective order. Thereafter, defendant produced the Master Dealer Agreement. Nonetheless, plaintiff claimed that

defendant still failed to produce certain responsive documents. Defendant indicated that it would produce said documents on or before March 8, 2024.

The court will ask the parties for a status update at the hearing.

TENTATIVE RULING # 2: APPEARANCES ARE REQUIRED AT 1:30 P.M., FRIDAY, MARCH 29, 2024, IN DEPARTMENT FOUR.

3. TAHOE EVENTS CO., LLC v. BUDGELL, ET AL., 24CV0277

Motion for Preliminary Injunction

This is an action for judicial dissolution of Meyers Sled Company, LLC, a California limited liability company doing business as Tube Tahoe, pursuant to Corporations Code section 17707.03. Before the court is plaintiff's motion for a preliminary injunction requiring the parties to maintain the company's status quo, absent unanimous approval of the members or court order. Defendant Mark Budgell opposes.

1. Background

Meyers Sled is comprised of three members with equal membership interests: (1) Mark Budgell; (2) Stephen MacLauchlan; and (3) Tahoe Event Company, LLC ("Tahoe Event"). Leon Abravanel ("Leon"[2]) and Kristen Abravanel ("Kree") are the members and managers of Tahoe Event.

Since shortly after its formation, Meyers Sled has done business under the name "Tube Tahoe," offering its customers sledding and other snow activities on the grounds of the Tahoe Paradise Golf Course in Meyers, California. The company operates seasonally between roughly November 1 through March 31 each year.

On January 8, 2021, the members of Meyers Sled entered into a written Operating Agreement, which sets forth certain rights and responsibilities of the members and managers of Meyers Sled. (Mtn. at 3:28–4:3.)

Until January 9, 2024, Leon worked as the primary operational manager of Tube Tahoe and Kree worked as the "primary back-end manager overseeing human resources, IT, accounting/bookkeeping, office and retail management, and other behind the scenes operations of Tube Tahoe." (Mtn. at 4:4–7.)

Since the company's formation, Meyers Sled has paid Tahoe Event a guaranteed payment of $90,000 per season for the services that Leon and Kree performed on behalf

[2] The court refers to the Abravanel parties by first name for clarity. The court intends no disrespect.

of Meyers Sled. (Mtn. at 4:10–11.) Additionally, since its formation, Meyers Sled made monthly profit distributions to each of its members for each month the company was in operation during the season. (Mtn. at 4:11–14.)

During a meeting held on January 9, 2024, Meyers Sled fired Leon as the operational manager of Tube Tahoe.[3] In the days following January 9, Kree was also allegedly forced out of "most" of her employment roles with Tube Tahoe. (Mtn. at 5:4–5.)

Since January 9, Budgell and his wife, Deana, have taken over Leon and Kree's roles operating Tube Tahoe.

Tahoe Event believes that Budgell and MacLauchlan intend to pay themselves and Mrs. Budgell significantly increased salaries in lieu of the previously issued monthly profit distributions. (Reply at 2:21–22.)

2. Legal Principles

"When ruling on a motion for preliminary injunction, 'trial courts should evaluate two interrelated factors when deciding whether or not to issue a preliminary injunction. The first is the likelihood that the plaintiff will prevail on the merits at trial. The second is the interim harm that the plaintiff is likely to sustain if the injunction were denied as compared to the harm that the defendant is likely to suffer if the preliminary injunction were issued. [Citations.]' [Citations.]" (*Best Friends Animal Society v. Macerich Westside Pavilion Property LLC* (2011) 193 Cal.App.4th 168, 174.) "The trial court's determination must be guided by a 'mix' of the potential-merit and interim-harm facts; the greater the plaintiff's showing on one, the less must be shown on the other to support an injunction. [Citation.]" (*Butt v. State of California* (1992) 4 Cal.4th 668, 678.)

[3] Leon objected at the January 9, 2024, meeting that Meyers Sled's actions were not valid under the Operating Agreement or Corporations Code section 17704.07, subdivision (l) which provides: "Any action approved at a meeting, other than by unanimous approval of those entitled to vote, shall be valid only if the general nature of the proposal so approved was stated in the notice of meeting or in any written waiver of notice." (Corp. Code, § 17704.07, subd. (l).)

The trial court's ruling on a motion for preliminary injunction is reviewed for an abuse of discretion. (*Amgen Inc. v. California Correctional Health Care Services* (2020) 47 Cal.App.5th 716, 731.)

3. Discussion

Corporations Code section 17707.03 authorizes any manager or member of a limited liability company to file an action to dissolve the company in certain specified circumstances. Under this section, a court of competent jurisdiction may decree the dissolution of a limited liability company whenever: (1) it is not reasonably practicable to carry on the business in conformity with the articles of organization or operating agreement; (2) dissolution is reasonably necessary for the protection of the rights or interests of the complaining members; (3) the business of the limited liability company has been abandoned; (4) the management of the limited liability company is deadlocked or subject to internal dissension; or (5) those in control of the limited liability company have been guilty of, or have knowingly countenanced, persistent and pervasive fraud, mismanagement, or abuse of authority. (Corp. Code, § 17707.03, subd. (a), (b)(1)–(5).)

Here, plaintiff claims that dissolution is reasonably necessary for plaintiff's protection; the management of the company is subject to internal dissension; and those in control of the company have knowingly countenanced mismanagement and abuse of authority.

As an initial matter, the court finds there is no likelihood that plaintiff will succeed on its claim against defendants Budgell and MacLauchlan because an action for judicial dissolution of a company is directed against the company, itself.

Plaintiff claims that pervasive mismanagement and abuse of authority are occurring at the company as follows: (1) engaging in activities on Tube Tahoe's premises that are neither authorized under the Lease nor covered or allowed under Meyers Sled's insurance policies, including offering snowmobile rides; (2) employing underage workers in violation of federal and state law; (3) instructing Meyers Sled's accountant not to share any information with Tahoe Events, Leon, or Kree, in violation of the Operating Agreement;

and (4) announcing that Meyers Sled would cease paying monthly profit distributions, in violation of the Operating Agreement and despite the company's custom and practice for the past four years. (Mtn. at 5:12–24.)

In their opposition, defendants claim that (1) no snowmobile rides have been offered at the company's site (Budgell Decl., ¶ 58); (2) there are no underage workers at Tube Tahoe, and all federal and state laws are being followed (Budgell Decl., ¶ 60); (3) all financial information is currently being shared, and will continue to be shared for the life of the company (Budgell Decl., ¶ 60); and (4) long before Leon was removed as operational manager, all members of Meyers Sled had extensively discussed the need to preserve enough cash to cover operating costs to start next season (Budgell Decl., ¶ 40).

Nonetheless, the court finds a reasonable likelihood that plaintiff will succeed on the merits because it appears that the management of the company is subject to internal dissension. Tahoe Event states that it disagrees with Budgell and MacLauchlan's plan to cease paying monthly profit distributions and to retroactively increase the salaries of Budgell, his wife, and MacLauchlan.

The court next considers the interim harm that plaintiff is likely to sustain if the injunction were denied as compared to the harm that defendant Myers Sled is likely to suffer if the preliminary injunction were issued. In its motion, plaintiff identifies 17 requests for interim relief, which the court addresses separately below.

3.1. That Budgell and MacLauchlan be enjoined from taking any action at the March 10, 2024, meeting without the consent of TEC.

The March 10, 2024, meeting already occurred. Therefore, this request for relief is moot. Further, the court has found no reasonable likelihood of success on the merits as to the claim against Budgell or MacLauchlan.

3.2. That Budgell and MacLauchlan be enjoined from taking any further action on any other matters absent unanimous consent of the members or court approval.

Again, the court has found no reasonable likelihood of success on the merits as to the claim against Budgell or MacLauchlan. Therefore, this request for relief is denied.

3.3. Confirmation of the previously guaranteed payments for Tahoe Event and Mr. Budgell for the remainder of the 2024 season at the previously established rates.

This request seeks an affirmative action by defendant. "The judicial resistance to injunctive relief increases when the attempt is made to compel the doing of affirmative acts. A preliminary mandatory injunction is rarely granted, and is subject to stricter review on appeal." (*Board of Supervisors v. McMahon* (1990) 219 Cal.App.3d 286, 295.) The granting of a mandatory injunction pending trial ' "is not permitted except in extreme cases where the right thereto is clearly established." ' (*People ex rel. Herrera v. Stender* (2012) 212 Cal.App.4th 614, 630.)

The court denies this request for injunctive relief.

3.4. Confirmation that Ms. Budgell's salary / guaranteed payment for the remainder of the 2024 season will remain unchanged.

For the reasons discussed above, the court denies this request for injunctive relief.

3.5. Confirmation that no further payments will be made to the members in the form of guaranteed payments, salaries, consulting fees, etc., without the approval of all three members or court order.

For the reasons discussed above, the court denies this request for injunctive relief.

3.6. Confirmation of the current operational status quo, including Kree's role, Budgell's role, and Ms. Budgell's role for the remainder of the 2024 season.

For the reasons discussed above, the court denies this request for injunctive relief.

3.7. That the ordinary course of business will remain unchanged, including that there would be no changes to guarantee payments, new salaries, or other fees being paid to the members/their spouses or affiliates without the consent of all three members or court approval.

The court finds the interim harm that plaintiff is likely to sustain if the injunction were denied outweighs the harm that defendant Myers Sled is likely to suffer if the preliminary injunction were issued. Therefore, the court grants this request for preliminary injunctive relief.

3.8. A mutual restraint on all parties from transferring, encumbering, hypothecating, concealing, or in any way disposing of any property, except in the usual course of business, as well as a mutual restraint on incurring any large expenditures on equipment, equipment leases, or other debt in excess of $5,000 without unanimous member approval or court order.

The court finds the interim harm that plaintiff is likely to sustain if the injunction were denied outweighs the harm that defendant Myers Sled is likely to suffer if the preliminary injunction were issued. Therefore, the court grants this request for preliminary injunctive relief.

3.9. That absent the unanimous consent of the members, distributions and/or manager fees would be subject to court approval.

The court finds the interim harm that plaintiff is likely to sustain if the injunction were denied outweighs the harm that defendant Myers Sled is likely to suffer if the preliminary injunction were issued. Therefore, the court grants this request for preliminary injunctive relief.

3.10. That cash is to be deposited into the Meyers Sled bank account on at least a weekly basis, every Monday, with documentation of the deposits and a cash ledger provided to Tahoe Event.

This request seeks an affirmative action by defendant. “The judicial resistance to injunctive relief increases when the attempt is made to compel the doing of affirmative acts. A preliminary mandatory injunction is rarely granted, and is subject to stricter review on appeal.” (*Board of Supervisors v. McMahon* (1990) 219 Cal.App.3d 286, 295.) The granting of a mandatory injunction pending trial ‘ “is not permitted except in extreme

cases where the right thereto is clearly established." ' (*People ex rel. Herrera v. Stender* (2012) 212 Cal.App.4th 614, 630.)

The court denies this request for injunctive relief.

3.11. Confirmation that Tahoe Event's ongoing access to information will remain unchanged.

For the reasons discussed above, the court denies this request for injunctive relief.

3.12. That Tahoe Event shall receive copies of any notices that come in, government or otherwise, including anything relating to taxes, payroll, permits, licenses, and the lease within three business days of Meyers Sled receiving any such notices.

The court finds the interim harm that plaintiff is likely to sustain if the injunction were denied outweighs the harm that defendant Myers Sled is likely to suffer if the preliminary injunction were issued. Therefore, the court grants this request for preliminary injunctive relief.

3.13. That no equipment or other lease extension go beyond the remainder of the current 2024 season.

The court finds the interim harm that plaintiff is likely to sustain if the injunction were denied outweighs the harm that defendant Myers Sled is likely to suffer if the preliminary injunction were issued. Therefore, the court grants this request for preliminary injunctive relief.

3.14. That no prepayment of expenses goes beyond the remainder of the current 2024 season.

The court finds the interim harm that plaintiff is likely to sustain if the injunction were denied outweighs the harm that defendant Myers Sled is likely to suffer if the preliminary injunction were issued. Therefore, the court grants this request for preliminary injunctive relief.

3.15. That no use of Meyers Sled funds be used to pay for Budgell or MacLauchlan's lawyers.

The court finds the interim harm that plaintiff is likely to sustain if the injunction were denied outweighs the harm that defendant Myers Sled is likely to suffer if the preliminary injunction were issued. Therefore, the court grants this request for preliminary injunctive relief.

3.16. That if Myers Sled is to have a lawyer, such lawyer must be independent of any member and unanimously approved by the members or approved by court order.

For the reasons discussed above, the court denies this request for injunctive relief.

3.17. That the McCaulley Law Group must disclose if and how much funds it has received from Meyers Sled and disgorge such funds by issuing a full refund to the company.

The McCaulley Law Group is not a party to this case. The court does not have jurisdiction to make this requested order.

TENTATIVE RULING # 3: APPEARANCES ARE REQUIRED AT 1:30 P.M., FRIDAY, MARCH 29, 2024, IN DEPARTMENT FOUR.

4. KOVACH, ET AL. v. FAUMUINA, ET AL., PC20210367

Motion for Reconsideration

Pursuant to Code of Civil Procedure section 1008, defendants Roman Faumuina and Enlighticare, Inc. (collectively, "defendants") move for reconsideration of the court's January 12, 2024, order concerning defendants' motion to re-open discovery.

1. Background

This is a bodily injury action arising from a November 2020 motor vehicle accident. Plaintiff alleges a traumatic brain injury, as well as neck and lower back pain. The complaint was filed on July 15, 2021.

On February 1, 2022, the court set a jury trial for March 13, 2023.

On January 19, 2023, the parties submitted a stipulation to continue the March 13, 2023, trial to either July 31 or August 7, 2023. On February 21, 2023, the court continued the jury trial to August 7, 2023.

On July 3, 2023, defendants moved for another trial continuance. Defendants' motion was silent as to the discovery cutoff date. On July 7, 2023, the court granted defendants' request to continue the August 7, 2023, jury trial. The July 7, 2023, order was silent as to the discovery cutoff date. The court set a Case Management Conference for August 15, 2023, to select a new trial date.

At the August 15 Case Management Conference, the court set a new trial date of June 24, 2024.

On November 30, 2023, defendants moved to re-open discovery pursuant to Code of Civil Procedure section 2024.050. At the hearing on January 12, 2024, the court granted the motion in part and denied the motion in part. The court re-opened discovery to allow for the deposition of previously-noticed parties and the subpoena of medical records since July 2023.

2. Legal Principles

Code of Civil Procedure section 1008 "governs reconsideration of court orders" and provides, as relevant here: "[A]ny party affected by [an] order may, … based upon new or different facts, circumstances, or law, make application to the same judge or court that made the order, to reconsider the matter." (Code Civ. Proc., § 1008, subd. (a).) If the movant asserts " 'new or different facts,' " they "must provide a satisfactory explanation for failing to present the evidence sooner." (*California Correctional Peace Officers Assn. v. Virga* (2010) 181 Cal.App.4th 30, 46, fn. 15; accord, *Garcia v. Hejmadi* (1997) 58 Cal.App.4th 674, 690.)

3. Discussion

Defendants claim the instant motion is based on the following "new" facts: (1) an email from defense counsel dated January 15, 2024 (see Ullrich Decl., Ex. 2); and (2) a transcript of the July 7, 2023, hearing (see Ullrich Decl., Ex. 1). These are not new facts that would support the motion for reconsideration. First, the email from defense counsel merely outlines the discovery which defendants seek. Second, the transcript of the July 7, 2023, hearing is not new evidence. Where evidence addressed in the motion for reconsideration was available to a party before the initial motion was heard, such evidence is not considered "new" evidence for purposes of a motion for reconsideration. (See *Lucas v. Santa Maria Public Airport Dist.* (1995) 39 Cal.App.4th 1017, 1028.) Here, the defense does not provide any reason as to why it was unable to obtain the transcript before the hearing on the motion to re-open discovery.

Next, defendants cite two cases as "new" law: (1) *Fairmont Ins. Co. v. Superior Court* (2000) 22 Cal.4th 245; and (2) *Wagner v. Superior Court* (1993) 12 Cal.App.4th 1314. However, these cases were issued decades ago and are not new law that would support the motion for reconsideration.

Because defendants have failed to present any new facts or evidence, the court lacks jurisdiction to entertain reconsideration. (Code Civ. Proc., § 1008, subd. (e).) The motion is denied.

TENTATIVE RULING # 4: MOTION FOR RECONSIDERATION IS DENIED. NO HEARING ON THIS MATTER WILL BE HELD (*LEWIS v. SUPERIOR COURT* (1999) 19 CAL.4TH 1232, 1247), UNLESS A NOTICE OF INTENT TO APPEAR AND REQUEST FOR ORAL ARGUMENT IS TRANSMITTED ELECTRONICALLY THROUGH THE COURT'S WEBSITE OR BY TELEPHONE TO THE COURT AT (530) 573-3042 BY 4:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED. NOTICE TO ALL PARTIES OF AN INTENT TO APPEAR MUST BE MADE BY TELEPHONE OR IN PERSON. PROOF OF SERVICE OF SAID NOTICE MUST BE FILED PRIOR TO OR AT THE HEARING.