1. IMPERIUM BLUE TAHOE HOLDINGS v. TAHOE CHATEAU LAND HOLDINGS, 22CV1204

Demurrer to Third Amended Complaint

Before the court is the demurrer of defendants Tahoe Chateau Land Holding, LLC ("Tahoe Chateau") and Propriis, LLC (collectively, "defendants") to the First,[1] Second, and Fourth causes of action ("C/A") in plaintiff's Third Amended Complaint ("TAC").

This matter was continued from May 10, 2024, because the parties had not met and conferred, as required under Code of Civil Procedure section 430.41, subd. (a)(2). On May 20, 2024, defendants submitted a declaration indicating they met and conferred with plaintiff on May 14, 2024, but were unable to reach a resolution. (Bluto Decl., filed May 20, 2024, ¶ 4.)

1. Factual Background

This action involves two adjoining property owners (as well as the agent and general contractor for Tahoe Chateau) and the written and recorded contracts governing their relationship.

Plaintiff is the successor in interest to Tahoe Stateline Venture, LLC ("TSV"), the prior owner of Chateau Retail. (TAC, ¶ 11.) As such, plaintiff claims it is entitled to enforce the Maintenance and Easement Agreement ("M&E Agreement") entered into between TSV and Tahoe Chateau.[2] (TAC, ¶ 11.)

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[1] The First cause of action for breach of contract includes "Count One" and "Count Two." Count One relates to Paragraph 1, subdivision (h) of the parties' Maintenance and Easement Agreement (requiring Tahoe Chateau to "conduct their activities and otherwise use the temporary construction easement in such a manner so as not to unreasonably interfere with [plaintiff's], the Chateau Retail tenants', their guests' and invitees' use of the Chateau Retail or the operation of their businesses"). Count Two relates to Paragraph 4 of the parties' Maintenance and Easement Agreement. Of these two counts, defendants demur to Count Two only.

[2] Defendants do not dispute this point in their demurrer or reply brief.

Section 4 of the M&E Agreement provides in relevant part:

> 4. Maintenance Costs Allocation. All expenses incurred by the TCLH, including without limitation, maintenance, management, operation, repair, and replacement (including funding reserves), for the Shared Facilities or the Shared Utility Facilities shall be referred herein as the 'Shared Maintenance Costs'. TCLH shall bill and TSV shall pay the Shared Maintenance Costs based on the allocations more particularly described in this Section 4….
>
> (a) Prior to Completion of Construction of Chateau Resort. For Thirty-Six (36) months after close of escrow…, TSV shall be responsible for funding one hundred percent (100%) of the Shared Maintenance Costs, including, without limitation, building utilities, snow melt systems, snow removal, custodian and other outsourced maintenance expenses, but excluding any expenses related to the maintenance of the Chateau Parking Area.
>
> (b) Completion of Construction of Chateau Resort. Thirty-Six (36) months after the Close of Escrow, the allocation of Shared Maintenance Costs shall be determined by ratio of the square footage of the Chateau Retail improvements relative to the total square footage of all approved structures within the Chateau Resort per TRPA permit dated May 23, 2007, provided that Buyer's total square footage shall be based upon the final design approved by TRPA.

(TAC, Ex. A at ¶ 4, subd. (a)–(b).)

The close of escrow occurred on April 20, 2017. (TAC, ¶ 17.) Accordingly, plaintiff claims that beginning on April 20, 2020, Tahoe Chateau has been obligated under Section 4 of the M&E Agreement to pay its allocation of Shared Maintenance Costs. (TAC, ¶ 24.) Based on the final design approved by the TRPA, the ratio of the square footage of the Chateau Retail improvements relative to all the improved structures is 30,494/373,866 (or 8.18 percent) and Tahoe Chateau's square footage is 342,372/372/866 (or 91.82 percent). (TAC, ¶ 25.)

Imperium Blue's Chateau Retail tenants have allegedly suffered substantial damages as a result of Tahoe Chateau's and its agents' use of the temporary construction easement and have demanded (and are demanding) relief from Imperium Blue in the form of expense reimbursement, abatement of rent, termination of lease and other claims arising from Tahoe Chateau's use of the easement. (TAC, ¶ 43.)

2. Legal Principles

"[A] demurrer challenges only the legal sufficiency of the complaint, not the truth or the accuracy of its factual allegations or the plaintiff's ability to prove those allegations. [Citations.]" (*Amarel v. Connell* (1988) 202 Cal.App.3d 137, 140.) A demurrer is directed at the face of the complaint and to matters subject to judicial notice. (Code Civ. Proc., § 430.30, subd. (a).) All properly pleaded allegations of fact in the complaint are accepted as true, however improbable they may be, but not the contentions, deductions, or conclusions of fact or law. (*Blank v. Kirwan* (1985) 39 Cal.3d 311, 318; *Del E. Webb Corp. v. Structural Materials Co.* (1981) 123 Cal.App.3d 593, 604.) A judge gives "the complaint a reasonable interpretation, reading it as a whole and its parts in their context." (*Blank*, *supra*, 39 Cal.3d at p. 318.)

3. Discussion

As an initial matter, plaintiff claims that defendants' demurrer is procedurally defective because the only ground stated in their demurrer relates to a C/A for tortious breach of the covenant of good faith and fair dealing, which plaintiff has not alleged. Defendants' demurrer states:

> GENERAL DEMURRER TO THE FIRST CAUSE OF ACTION, COUNT ONE
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> 1. IBTH's First Cause of Action, Count One fails to state facts sufficient to constitute a cause of action for *tortious breach of the covenant of good faith and fair dealing*. [Citation.]
>
> GENERAL DEMURRER TO THE SECOND CAUSE OF ACTION

2. IBTH's Second Cause of Action fails to state facts sufficient to constitute a cause of action for *tortious breach of the covenant of good faith and fair dealing*. [Citation.]

GENERAL DEMURRER TO THE FOURTH CAUSE OF ACTION

3. IBTH's First Cause of Action fails to state facts sufficient to constitute a cause of action for *tortious breach of the covenant of good faith and fair dealing*. [Citation.]

(Defs.' Notice of Dem. to TAC at 2:13–23 [emphasis added].)

Defendants argue that the demurrer's reference to "tortious breach of the covenant of good faith and fair dealing" was a clerical error, as defense counsel failed to fill a placeholder phrase with the causes of action identified in defendants' memorandum of points and authorities. (Reply at 2:14–17.) As such, defendants argue that the court should exercise its discretion under Code of Civil Procedure section 473, subdivision (a)(1)[3] and allow defendants to correct this mistake. (Reply at 2:21–27.)

The court grants defendants' request. Not only have the parties now met and conferred, but defendants' memorandum of points and authorities clearly articulates the grounds upon which defendants seek relief; and plaintiff responded substantively to those arguments. The court finds good cause to grant leave to correct the clerical error and address the demurrer on its merits.

3.1. Count Two of the First C/A for Breach of the M&E Agreement

Count Two of the First C/A relates to Paragraph 4 of the parties' Maintenance and Easement Agreement. As an initial matter, defendants argue that Count Two is not drawn in conformity with California Rules of Court, rule 2.112, which requires each cause of action to have its own name and number. (Dem. at 4:7–9.) While plaintiff's numbering in the TAC may not be ideal, the court does not find reason to sustain the demurrer on this

[3] Code of Civil Procedure section 473, subdivision (a)(1) provides in relevant part: "The court may, in furtherance of justice, and on any terms as may be proper, allow a party to amend any pleading or proceeding by adding or striking out the name of any party, or by correcting a mistake in the name of the party, or a mistake in any other respect…."

ground. Counts One and Two of the First C/A are both claims for breach of the M&E Agreement on different grounds. The court finds that Count Two is sufficiently named and numbered.

Next, defendants argue that: (1) plaintiff has not alleged facts showing the costs it incurred are actually shared maintenance costs (Dem. at 4:19–25); and (2) the terms of the M&E Agreement do not provide for payment of costs incurred by plaintiff, but only Tahoe Chateau. (Dem. at 5:4–8.)

In opposition, plaintiff argues that the TAC alleges that "Shared Maintenance Costs" include maintenance, management, operation, repair, and replacement costs and that plaintiff has paid all the Shared Maintenance Costs since April 20, 2020 (the date that Tahoe Chateau was allegedly required under the M&E Agreement to begin paying its allocation of the Shared Maintenance Costs). (Opp. at 5:13–19.)

Section 4 of the M&E Agreement provides in relevant part:

> 4. Maintenance Costs Allocation. All expenses incurred by [Tahoe Chateau], including without limitation, maintenance, management, operation, repair, and replacement (including funding reserves), for the Shared Facilities or the Shared Utility Facilities shall be referred herein as the 'Shared Maintenance Costs'. [Tahoe Chateau] shall bill and TSV shall pay the Shared Maintenance Costs based on the allocations more particularly described in this Section 4 ….
>
> (a) Prior to Completion of Construction of Chateau Resort. For Thirty-Six (36) months after close of escrow …, TSV shall be responsible for funding one hundred percent (100%) of the Shared Maintenance Costs, including, without limitation, building utilities, snow melt systems, snow removal, custodian and other outsourced maintenance expenses, but excluding any expenses related to the maintenance of the Chateau Parking Area.
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> (b) Completion of Construction of Chateau Resort. Thirty-Six (36) months after the Close of Escrow, the allocation of Shared Maintenance Costs shall be determined

> by ratio of the square footage of the Chateau Retail improvements relative to the total square footage of all approved structures within the Chateau Resort per TRPA permit dated May 23, 2007, provided that Buyer's total square footage shall be based upon the final design approved by TRPA.

(TAC, Ex. A at ¶ 4, subd. (a)–(b).)

The court agrees with defendants that Paragraph 4 of the M&E Agreement does not provide for payment of costs incurred by plaintiff. Rather, the first sentence of Paragraph 4 provides in relevant part, "[a]ll expenses incurred by [*Tahoe Chateau*] … shall be referred herein as the 'Shared Maintenance Costs.' " (TAC, Ex. A at ¶ 4.) Moreover, Paragraph 4 is setup to require Tahoe Chateau to bill, and TSV (or, in this case, Imperium Blue) to pay the Shared Maintenance Costs based on the allocations more particularly described in Paragraph 4. (TAC, Ex. A at ¶ 4.) As such, the court sustains the demurrer to Count Two of the First C/A. Because there is no reasonable possibility that the defect can be cured by amendment, the court denies leave to amend. (See *Tarrar Enterprises, Inc. v. Associated Indemnity Corp.* (2022) 83 Cal.App.5th 685, 688–689.)

3.2. Second C/A for Breach of the Parking Agreement

Plaintiff's Second C/A for breach of the Parking Agreement alleges that, "[b]eginning in July 2022, Tahoe Chateau breached (and continues to breach) the Parking Agreement by, *inter alia*, charging parking rates for Imperium Blue's Chateau Retail Tenants and their customers rates that are not commercially reasonable, including but not limited to, charging Imperium Blue's tenants and customers $30.00 to park in Retail Parking for any time period in excess of 15 minutes." (TAC, ¶ 36.)

Defendants argue that the Parking Agreement does not impose a duty on defendants to charge reasonably commercial rates. (Dem. at 6:2–4.)

Plaintiff, on the other hand, argues that the provision in the Parking Agreement giving Tahoe Chateau the right to charge commercially reasonable rates is to be interpreted to

also mean that Tahoe Chateau cannot charge commercially unreasonable rates. (Opp. at 7:6–11, citing *Cundall v. Mitchell-Clyde* (2020) 51 Cal.App5th 571, 584, fn. 9.)

In the court's ruling on defendants' demurrer to the Second Amended Complaint, the court found that, technically, the Parking Agreement does not impose a duty on defendants to charge reasonably commercial rates.[4] However, the court is persuaded by plaintiff's argument. Absent a direct statement of exclusivity, one must infer that the parties would not have established Tahoe Chateau's right to charge reasonably commercial rates unless they also intended Tahoe Chateau to be prohibited from charging unreasonable rates. (See *Cundall*, *supra*, 51 Cal.App.5th at p. 584 & fn. 9.)

The demurrer to the Second C/A is overruled.

3.3. Fourth C/A for Equitable Indemnity

Plaintiff's Fourth C/A in the TAC is for equitable indemnity against defendants Propriis and DL Propriis Construction, Inc. (Tahoe Chateau's agent and general contractor, respectively). The right to indemnity flows from payment of a joint legal obligation on another's behalf. (*GEM Developers v. Hallcraft Homes of San Diego, Inc.* (1989) 213 Cal.App.3d 419, 426.) "The doctrine of comparative equitable indemnity is designed to do equity among defendants." (*Ibid.*) The purpose of equitable indemnification is to avoid the unfairness, under the theory of joint and several liability, of holding one defendant liable for the plaintiff's entire loss while allowing another potentially liable defendant to escape any financial responsibility for the loss. (*Ibid.*)

Defendants argue that equitable indemnity is only available among tortfeasors who are jointly and severally liable for a plaintiff's injury, and here, plaintiff has not alleged that it is a tortfeasor liable to any *plaintiff*. (Dem. at 6:7–14.)

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[4] Paragraph 7 of the Parking Agreement provides in relevant part: "Subsequent to Close of Escrow, [Tahoe Chateau] shall have the right to charge Chateau and Zalanta Retail tenants and their customers for Retail Parking and Zalanta Phase One Condo Owners for use of Temporary Zalanta Phase One Condos Parking Easement at commercially reasonable rates." (TAC, Ex. B at ¶ 7.)

Meanwhile, plaintiff argues that plaintiff and defendants are joint tortfeasors where the TAC alleges that plaintiff's tenants have made claims against, and demanded relief from, plaintiff for their loss of inventory and loss of revenue in excess of $110,000 due to the water infiltration and flooding caused by defendants Propriis and DL Propriis Construction, Inc. (Opp. at 8:10–13, citing TAC, ¶¶ 22, 43–44.)

The court rejects plaintiff's argument as premature. There is no allegation that the tenants have filed suit against plaintiff. If and when the tenants file suit, plaintiff can bring in other tortfeasors who are allegedly responsible for the tenant's action through a cross-complaint or by a separate complaint for equitable indemnification. (See *GEM Developers*, *supra*, 213 Cal.Ap..3d at p. 428.)

Based on the above, defendants' demurrer to the Fourth C/A is sustained. Because there is no reasonable possibility that the defect can be cured by amendment, the court denies leave to amend. (See *Tarrar Enterprises*, *supra*, 83 Cal.App.5th at pp. 688–689.)

TENTATIVE RULING # 1: THE DEMURRER IS SUSTAINED IN PART WITHOUT LEAVE TO AMEND AND OVERRULED IN PART. AS TO COUNT TWO OF THE FIRST CAUSE OF ACTION FOR BREACH OF THE MAINTENANCE AND EASEMENT AGREEMENT AND THE FOURTH CAUSE OF ACTION FOR EQUITABLE INDEMNITY, THE DEMURRER IS SUSTAINED WITHOUT LEAVE TO AMEND. AS TO THE SECOND CAUSE OF ACTION FOR BREACH OF THE PARKING AGREEMENT, THE DEMURRER IS OVERRULED. 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.

2. FLANAGAN, ET AL. v. ROCCA, 24CV0490

Petition to Release Property from Mechanic's Lien

This matter was continued from April 12, 2024, because petitioner had not filed a notice of hearing or proof of service for the notice of hearing. Thereafter, petitioner filed the required notice for the May 31, 2024, hearing date. Defendant did not file a response or opposition.

On April 23, 2024, the court in *Flanagan, et al. v. Rocca* (El Dorado County Superior Court case number 23CV0768) sustained without leave to amend plaintiffs' demurrer to the Second Cause of Action in defendant's Third Amended Cross-Complaint to foreclose on her mechanic's lien. The reason the court sustained the demurrer is because defendant did not timely commence her action to enforce the lien under Civil Code section 8460, subdivision (a).[5]

Because defendant's action to enforce the subject mechanic lien is time-barred, the court grants plaintiffs' petition to release the property from the mechanic's lien.

TENTATIVE RULING # 2: PETITION IS GRANTED AS REQUESTED. 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.

[5] Civil Code section 8460, subdivision (a) provides, "[t]he claimant shall commence an action to enforce a lien within 90 days after recordation of the claim of lien. If the claimant does not commence an action to enforce the lien within that time, the claim of lien expires and is unenforceable." Defendant recorded her mechanic's lien on May 11, 2023. However, defendant did not file a claim to foreclose on the mechanic's lien until her Third Amended Cross-Complaint, which was filed on January 29, 2024.