

1. FRANKLIN, ET AL. v. TAHOE KEYS MARINA & YACHT CLUB, LLC, ET AL., 22CV1114**Motion for Summary Judgment**

Before the court is defendant Tahoe Keys SMI, LLC's ("TKSMI") motion for summary judgment as to the third cause of action in the First Amended Complaint ("FAC") for negligence.

1. Factual Background

In May 2020, plaintiffs Alvin Franklin ("Mr. Franklin") and Sonia Franklin, also known as Pawan Puneet Franklin ("Mrs. Franklin") purchased a 40-foot Chris Craft powerboat (the "Boat") for \$12,000, taking title to the Boat in the name of Petrichor Assets, LLC, a California limited liability company owned by plaintiffs. (Def.'s Separate Stmt. Of Undisputed Material Facts ("UMF") No. 1.) After purchasing the Boat, plaintiffs invested an additional approximately \$25,000 making repairs and improvements to the Boat. (Def.'s UMF No. 2.)

In May 2021, plaintiffs entered into a Summer Slip Rental Agreement with defendant Tahoe Keys Marina & Yacht Club, LLC ("TKM&YC") to store their Boat at the Tahoe Keys Marina (the "Marina"). (Def.'s UMF No. 14.) On October 31, 2021, the 2021 Summer Slip Rental Agreement expired. (Def.'s UMF No. 36.) Before the expiration of the 2021 Summer Slip Agreement, plaintiffs requested that TKM&YC provide them with a winterization and winter storage agreement. (Def.'s UMF No. 34.) Although TKM&YC acknowledged the request for winterization services and a winter storage contract, TKM&YC did not provide plaintiffs with a written agreement, an invoice, or pricing. (Def.'s UMF No. 35.)

On November 5, 2021, Assistant Harbor Master Chad Holdren sent Mr. Franklin an email stating that the Marina was working on a winterization agreement for Mr. Franklin, and would send it to him as soon as possible. (Pltfs.' UMF No. 2.)

On December 22, 2021, TKSMI purchased the Marina from TKM&YC. (Def.'s UMF No. 39.) TKSMI acquired only the assets of TKM&YC; it did not purchase TKM&YC or its

ongoing business. (Def.'s UMF No. 40.) Mr. Holdren continued working at the Marina after the change in ownership. (Pltfs.' UMF No. 11.) At no time relevant to this case did anyone at the Marina say, indicate, or imply that the Franklins were not allowed to have their Boat there. (Pltfs.' UMF No. 17.)

Marina staff never shrink-wrapped plaintiffs' Boat. (Pltfs.' UMF No. 26.) Plaintiffs claim their Boat was destroyed as a result of not being shrink-wrapped and being exposed to the winter elements. (Pltfs.' UMF No. 27.)

2. Request for Judicial Notice

Pursuant to Evidence Code section 452, subdivision (c), the court grants TKSMI's unopposed request for judicial notice of Exhibit 1 (Grant Deed, recorded on December 27, 2021, Doc. No. 2021-0077856) and Exhibit 2 (Grant Deed, recorded on December 11, 2008, Doc. No. 2008-0058854-00).

The court denies TKSMI's request for judicial notice of Exhibit 3 (recorded weather report from December 2021 through April 2022).

3. Evidentiary Objections

The court sustains TKSMI's objections to plaintiffs' UMF Nos. 13 and 14 on hearsay grounds.

4. Legal Standard

A defendant moving for summary judgment bears the burden of persuasion that one or more elements of the cause of action at issue cannot be established, or that there is a complete defense to the cause of action. (*Aguilar v. Atl. Richfield Co.* (2001) 25 Cal.4th 826, 850.) The moving party bears the initial burden of making a prima facie showing of the nonexistence of a triable issue of material fact, and only if the moving party carries the initial burden does the burden shift to the opposing party to produce a prima facie showing of the existence of a triable issue of material fact. (*Ibid.*)

"The court focuses on issue finding; it does not resolve issues of fact. The court seeks to find contradictions in the evidence, or inferences reasonably deducible from the

evidence, which raise a triable issue of material fact.” (*Raven H. v. Gamette* (2007) 157 Cal.App.4th 1017, 1024.) The evidence of the moving party is strictly construed, and the evidence of the opposing party liberally construed. Doubts as to the propriety of granting the motion must be resolved in favor of the party opposing the motion. (*Stationers Corp. v. Dun & Bradstreet, Inc.* (1965) 62 Cal.2d 412, 417.)

5. Discussion

Plaintiffs’ third cause of action in their FAC is a claim for negligence. Specifically, plaintiffs claim that TKSMI negligently failed to winterize plaintiffs’ boat or “exercise even the most minimal care to insure [sic] that the Boat was not damaged by freezing conditions.” (FAC, ¶ 45.)

To establish negligence, a plaintiff must prove: (1) the defendant had a legal duty of care towards plaintiff; (2) the defendant breached that duty; (3) the plaintiff suffered injury as a proximate result of the breach; and (4) damage to the plaintiff. (*Wallman v. Suddock* (2011) 200 Cal.App.4th 1288, 1308.)

TKSMI argues plaintiffs cannot establish that TKSMI owed a legal duty to winterize plaintiffs’ Boat or exercise minimal care to ensure that the Boat was not damaged by freezing conditions.

In their opposition brief, plaintiffs claim that TKSMI owed them a duty under theories of an implied-in-fact contract and bailment. Additionally, plaintiffs contend that TKSMI “negligently failed to provide a contract despite its assurances” that it would do so. (Opp. at 12:19.)

5.1. Implied-in-Fact Contract

In their opposition brief, plaintiffs raise an alternative theory of liability based on an implied-in-fact contract. However, as the court shall explain, plaintiffs cannot rely on this alternative theory to defeat summary judgment. (*Jacobs v. Coldwell Banker Residential Brokerage Co.* (2017) 14 Cal.App.5th 438, 444.)

It is well settled that the pleadings set the boundaries of the issues to be resolved at summary judgment. (*Conroy v. Regents of University of California* (2009) 45 Cal.4th 1244, 1254; *Oakland Raiders v. National Football League* (2005) 131 Cal.App.4th 621, 648.) “Thus, a ‘defendant moving for summary judgment need address only the issues raised by the complaint; the plaintiff cannot bring up new, unpleaded issues in his or her opposing papers.’ [Citation.] ‘To create a triable issue of material fact, the opposition evidence must be directed to issues raised by the pleadings. [Citation.] If the opposing party’s evidence would show some factual assertion, legal theory, defense or claim not yet pleaded, that party should seek leave to amend the pleadings before the hearing on the summary judgment motion. [Citations.]’ [Citation.] ‘[T]he pleadings “delimit the scope of the issues” to be determined and “[t]he complaint measures the materiality of the facts tendered in a defendant’s challenge to the plaintiff’s cause of action.” [Citation.] [The plaintiff’s] separate statement of material facts is not a substitute for an amendment of the complaint.’ ” (*Laabs v. City of Victorville* (2008) 163 Cal.App.4th 1242, 1253; see *Jacobs v. Coldwell Banker Residential Brokerage Co.* (2017) 14 Cal.App.5th 438, 444 [since the pleadings define the scope of summary judgment, “ ‘[a] party may not oppose a summary judgment motion based on a claim, theory, or defense that is not alleged in the pleadings,’ and ‘[e]vidence offered on an unpleaded claim, theory, or defense is irrelevant because it is outside the scope of the pleadings’ ”].)

As relevant here, the operative complaint alleges that TKSMI negligently “fail[ed] to winterize [plaintiffs’] boat” or “exercise even the most minimal care to insure [sic] that the Boat was not damaged by freezing conditions.” (FAC, ¶ 45.) In their opposition to TKSMI’s motion, plaintiffs recharacterize their negligence claim. They argue that their negligence claim involves an implied-in-fact contract based on the conduct of the parties. (Opp. at 10:17–11:20.) However, the third cause of action alleges negligence, not breach of contract. Therefore, plaintiffs cannot rely on this alternative theory to defeat summary judgment.

5.2. Bailment

In their opposition, plaintiffs argue their negligence claim involves “a duty of care to [plaintiffs] under a bailment theory.” (Opp. at 2:3.)

A bailment is generally defined as “the delivery of a thing to another for some special object or purpose, on a contract, express or implied, to conform to the objects or purposes of the delivery which may be as various as the transactions of men. [Citation.]” (*H.S. Crocker Co., Inc. v. McFaddin* (1957) 148 Cal.App.2d 639, 643.) Generally, the bailee is held to a standard of ordinary care in maintaining the bailor’s property, unless the parties otherwise agree to limit the bailee’s liability. (See *Haidinger-Hayes, Inc. v. Marvin Hime & Co.* (1962) 206 Cal.App.2d 46, 50; Civ. Code, § 1852 [“A depositary for hire must use at least ordinary care for the preservation of the thing deposited.”].) “Where the right of recovery rests on the existence of the bailment relationship and the fact of bailment is in issue ..., the burden of establishing a bailment rests on the plaintiff and includes the burden of proving the making of a valid contract of bailment between the parties, the delivery to the bailee under the contract, and acceptance by the bailee.” (*H.S. Crocker Co., Inc. v. McFaddin, supra*, 148 Cal.App.2d at p. 647.)

Even assuming that the FAC alleges a theory of negligent bailment,¹ plaintiffs have not produced admissible evidence in opposition to the motion that would establish a bailment existed between plaintiffs and TKSMI. Therefore, plaintiffs have not met their burden to produce a prima facie showing of the existence of a triable issue of material fact.

¹ The FAC alleges in relevant part, “After sale of the Marina to [TKSMI], Marina staff continued to allow and authorize [plaintiffs] to store their Boat the Tahoe Keys Marina. Marina staff exercised custody and control of the Boat, occasionally moving it within the Marina at their discretion.” (FAC, ¶ 44.) “[TKSMI] failed to exercise even the most minimal care to insure [sic] that the Boat was not damaged by freezing conditions.” (FAC, ¶ 45.)

5.3. Alleged Failure to Provide a Written Contract

In their opposition brief, plaintiffs claim TKSMI “negligently failed to provide a contract despite its assurances” that it would do so. (Opp. at 12:19.) However, plaintiffs did not allege this theory of negligence in the FAC. Additionally, plaintiffs do not provide, and the court is not aware of, any authority creating a legal duty to provide a written contract. Therefore, plaintiffs cannot rely on this alternative theory to defeat summary adjudication.

6. Conclusion

TKSMI met its initial burden of making a prima facie showing of the nonexistence of a triable issue of material fact; i.e., whether a legal duty of care existed to winterize the boat or exercise minimal care to ensure that the boat was not damaged by freezing conditions. Because plaintiffs have not produced evidence showing a triable issue of material fact on the issue, the motion for summary judgment is granted.

TENTATIVE RULING # 1: THE MOTION FOR SUMMARY JUDGMENT IS GRANTED. 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. REYES v. GIANQUENTO dba BLESSED HANDS BARBERSHOP, ET AL., 24CV1567**Demurrer**

Defendant Joseph Gianquento, doing business as Blessed Hands Barbershop (“Gianquento”), demurs to the first cause of action in plaintiff’s complaint for intentional tort. However, the court notes that the first cause of action does not name Gianquento as a defendant. Therefore, the demurrer is not ripe for judicial resolution.

TENTATIVE RULING # 2: THE DEMURRER IS NOT RIPE FOR JUDICIAL RESOLUTION. 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.

3. MARTEL CONSTRUCTION, INC. v. DRUM LODGE, LLC, SC20200114**Motion for Attorney Fees**

Before the court is plaintiff's motion for attorney fees against defendant in the amount of \$71,678.96² related to plaintiff's motion to confirm the arbitration award. On September 13, 2024, defendant filed a notice of appeal from the court's July 18, 2024, judgment confirming the arbitration award in favor of plaintiff against defendant, which appeal is currently pending.

Pursuant to California Rules of Court, Rule 3.1702, subdivision (d), the court finds good cause to extend the time for filing a motion for attorney fees, as defendant's pending appeal is centrally related to the propriety of awarding attorney fees in relation to plaintiff's motion to confirm the arbitration award. In the interest of judicial efficiency, the court concludes that any motion for attorney fees is best adjudicated on the merits following a final resolution of defendant's appeal.

It is therefore ordered that plaintiff's motion for attorney fees is denied without prejudice to renewal upon the final resolution of defendant's pending appeal.

TENTATIVE RULING # 3: PLAINTIFF'S MOTION FOR ATTORNEY FEES IS DENIED WITHOUT PREJUDICE TO RENEWAL UPON THE FINAL RESOLUTION OF DEFENDANT'S PENDING APPEAL. 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 Plaintiff's reply brief indicates that this amount has increased to \$80,015.71.