04-28-23
Dept. 9
Tentative Rulings

1. MERCADO v. EL DORADO HILLS PARTY RENTALS 22CV1817

On January 3, 2023, Plaintiff in this action caused a Summons and Complaint in this action against named Defendants El Dorado Hills Party Rentals (EDHPR) and Louis Mansour, to be served on "El Dorado Hills party Rentals, an unknown business entity." The proof of service attested that service had been accomplished by substituted service to a receptionist at its offices, and then:

> [A]fter substituted service under section CCP 415.20(a) or 415.20(b) . . . was made . . . I mailed copies . . . to the person to be served at the place where the copies were left by placing a true copy thereof enclosed in a sealed envelope, with First Class postage thereon fully prepaid, in the United States Mail at Petaluma, California, addressed as follows: El Dorado Hills Party Rentals, an unknown business entity, 4663 Golden Hills Pkwy, 108, El Dorado Hills CA 95762

There is no proof of service on file as to named individual Defendant Louis Mansour.

The business entity El Dorado Hills Party Rentals ("Defendant") has filed a Motion to Quash Summons in this action for improper service pursuant to Code of Civil Procedure § 415.95(b).

Louis Mansour is the registered agent for service of process for Colou Enterprises, LLC, a corporation that is registered with the Secretary of State. Declaration of Adam Weiner, dated March 23, 2023, Exhibit C. The Defendant EDHPR was until recently a dba of that corporation. Id. at 2:1-4. According to the Declaration of Adam Weiner filed in support of Defendant's Motion to Quash, Plaintiff's attorney correctly addressed correspondence pre-dating to this litigation on September 12, 2022 to "Colou Enterprises, LLC dba El Dorado Hills Party Rentals, Agent for Service: Louis A. Mansour, Sr Id. at Exhibit A.

However, on November 1, 2022, a few weeks after the above referenced letter was sent to EDHPR through Colou Enterprises, EDHPR was sold to Dussin LLC. Id. at 2. Dussin LLC first registered with the Secretary of State on November 8, 2022, with a registered agent named Sergei Surenkov. Id. at 2:8-9.

Defendant asserts that the receptionist who received service of process of the Summons and Complaint was an employee of Dussin, LLC, and was not an employee of EDHPR on the date that the Summons and Complaint were served.

While it might not be expected that Plaintiff's attorney would be aware of recent corporate changes that occurred between September and December, 2022, Plaintiff was at least aware that Colou Enterprises had been registered with the Secretary of State, with Louis A. Mansour as the individual designated to receive service of process. As such, Code of Civil Procedure § 416.10 does require service of a corporation registered with the Secretary of State

be made on the designated agent for service of process, and § 415.95(b) invalidates service of summons by the alternative means utilized by Plaintiff in this case. Plaintiff did not serve the wrong corporation in the correct manner, which might have been understandable under the shifting circumstances; rather, an incorrect method of service was used that would have invalidated the service even if it had been served on the correct corporation.

Request for Judicial Notice

Due to the conclusion above that delivery of a Summons and Complaint on a registered corporation must be directed to the registered agent for the corporation, it is not necessary to rule on Defendant's Requests for Judicial Notice.

TENTATIVE RULING # 1: DEFENDANT'S MOTION TO QUASH IS GRANTED.

NO HEARING ON THIS MATTER WILL BE HELD UNLESS A REQUEST FOR ORAL ARGUMENT IS TRANSMITTED ELECTRONICALLY THROUGH THE COURT'S WEBSITE OR BY TELEPHONE TO THE COURT AT (530) 621-6551 BY 4:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED. CAL. RULE CT. 3.1308; LOCAL RULE 8.05.07; SEE ALSO LEWIS V. SUPERIOR COURT, 19 CAL.4TH 1232, 1247 (1999).

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2. GENDRON V. SOLARCITY CORP. 22CV0663

In 2016 the Plaintiff entered into an agreement whereby SolarCity Corp. would install and maintain a leased solar power system on Plaintiff's property in accordance with the terms of the agreement. Subsequent to that agreement, SolarCity was acquired by Tesla, and SolarCity's rights and obligations under the agreement were assigned to Tesla. Declaration of Ariel Miller-Mayo in Support of Defendant Tesla Inc.'s Motion to Compel Arbitration, December 8, 2022 at ¶4. Plaintiff filed a First Amended Complaint on September 28, 2022 naming Tesla as a Defendant. On October 26, 2022, Defendant requested Plaintiff to stipulate to resolve the dispute through arbitration in accordance with the agreement, but Plaintiff declined. Declaration of Ali Ameripour in Support of Defendant Tesla, Inc.'s Motion to Compel Binding Arbitration, December 21, 2022.

Request for Judicial Notice

Defendant has requested judicial notice of the Plaintiff's Complaint, filed on September 28, 2022. It is not necessary for the parties to request judicial notice of the pleadings in the case unless the moving party is bringing the court's attention to some judicial admission, "i.e. admissions and inconsistent statements in the same case." In other words, "a court may take judicial notice of admissions or inconsistent statements by [a party] in earlier pleadings in the same lawsuit" and "may *disregard conflicting factual allegations* in the [challenged pleading]." (Weil & Brown, *supra*, ¶ 7:47, citing *Larson v. UHS of Rancho Springs, Inc.* (2014) 230 Cal.App.4th 336, 344, 179 Cal.Rptr.3d 161 [demurrer]; *Pang v. Beverly Hospital Inc.* (2000) 79 Cal.App.4th 986, 989-990, 94 Cal.Rptr.2d 643 [motion for judgment on pleadings].) Alameda Cnty. Waste Mgmt. Auth. v. Waste Connections US, Inc., 67 Cal. App. 5th 1162, 1174–75, as modified (Sept. 8, 2021) (emphasis in original).

Here there is no allegation of inconsistencies between statements in Plaintiff's pleadings; it appears that the Request is brought solely to bring the court's attention to the fact or contents of the Complaint that initiated the instant action. For this purpose the additional effort of judicial notice is not required. However, presented with a Request for Judicial Notice, the court finds no reason not to take judicial notice of the Plaintiff's Complaint.

Motion to Compel Arbitration

The contract document Plaintiff signed, which Plaintiff filed with the court on March 28, 2022, and as an attachment to the First Amended Complaint on September 28, 2022, contains a mandatory arbitration provision for disputes arising under the contract. That provision specifies that arbitration of disputes would be administered by JAMS Mediation, Arbitration and ADR Services and governed by the Federal Arbitration Act.

The Federal Arbitration Act, § 2, provides:

> A written provision in any . . . contract evidencing a transaction involving commerce to settle by arbitration a controversy thereafter arising out of such contract or transaction, or the refusal to perform the whole or any part thereof, or an agreement in writing to submit to arbitration an existing controversy arising out of such a contract, transaction, or refusal, shall be valid, irrevocable, and enforceable, ...

Section 3 of the Federal Arbitration Act further provides:

> If any suit or proceeding be brought . . . upon any issue referable to arbitration under an agreement in writing for such arbitration, the court in which such suit is pending, upon being satisfied that the issue involved in such suit or proceeding is referable to arbitration under such an agreement, shall on application of one of the parties stay the trial of the action until such arbitration has been had in accordance with the terms of the agreement, . . .

Defendant filed a Motion to Compel Arbitration based on the contract terms on December 23, 2022, which was duly served on Plaintiff, and that Motion is unopposed. There is no allegation that the arbitration requirement is unconscionable or oppressive or that Plaintiff was unaware of the arbitration provision. *See* AT&T Mobility LLC v. Concepcion, 563 U.S. 333, 131 S. Ct. 1740 (2011); Sanchez v. Valencia Holding Co., LLC, 61 Cal. 4th 899 (2015); Rodriguez v. Am. Techs., Inc., 136 Cal. App. 4th 1110 (2006). Accordingly, Defendant's Motion to Compel Arbitration is sustained.

TENTATIVE RULING # 2: DEFENDANT'S MOTION FOR JUDICIAL NOTICE OF PLAINTIFF'S COMPLAINT IS GRANTED. DEFENDANT'S MOTION TO COMPEL ARBITRATION IS GRANTED. THIS MATTER IS STAYED PENDING THE OUTCOME OF ARBITRATION.

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REQUESTS WILL BE SET FOR HEARING ON ONE OF THE THREE MUTUALLY AGREEABLE DATES ON FRIDAY AFTERNOONS AT 2:30 P.M. THE COURT WILL ADVISE THE PARTIES OF THE LONG CAUSE HEARING DATE AND TIME BY 5:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED. PARTIES MAY PERSONALLY APPEAR AT THE HEARING. IF A PARTY OR PARTIES WISH TO APPEAR BY ZOOM PLEASE CONTACT THE COURT AT (530) 621-5867 AND MEETING INFORMATION WILL BE PROVIDED.

3. CIELO ESTATE LLC v. PONDEROSA WINERY LLC PC20210392

This dispute arose from a proposed commercial real estate transfer between the parties. The parties entered into a series of agreements over the course of several months to address a purchase option, financing and management arrangements for the subject property while the proposed purchase was pending. The matter is currently in the discovery phase, and disputes have arisen over certain requests contained in Plaintiff's Request for Production of Documents, Set One. Monetary sanctions are requested.

Plaintiff's Request for Production of Documents, Set One, was served on Defendant on December 2, 2022. Declaration of Nilesh Choudhary, February 16, 2023. Responses were received on January 4, 2023. On February 2, 2023, Plaintiff sent a meet and confer email and the resulting discussions failed to resolve the dispute. Id., Exhibit C.

Relevance

To each contested discovery request, Defendant contends that the request is not related to the material facts in this action and is not reasonably calculated to lead to the discovery of admissible evidence or facilitate resolution of the case, citing Evidence Code § 210 ("'Relevant evidence' means evidence, including evidence relevant to the credibility of a witness or hearsay declarant, having any tendency in reason to prove or disprove any disputed fact that is of consequence to the determination of the action.")

Plaintiff counters that the rules of discovery are not coequal with the evidentiary rules of admissibility, and that even matters that might not be admissible at trial may still be "relevant to the subject matter" under the rules of discovery. Code of Civ. Pro. § 2017.010 ("[A]ny party may obtain discovery regarding any matter, not privileged, that is relevant to the subject matter involved in the pending action or to the determination of any motion made in that action, if the matter either is itself admissible in evidence or appears reasonably calculated to lead to the discovery of admissible evidence.")

On this point, Plaintiff cites Garamendi v. Golden Eagle Ins. Co., 116 Cal. App. 4th 694, 10 Cal. Rptr. 3d 724 (2004), note 8:

> California's discovery process allows for discovery of all relevant material and is designed to eliminate the element of surprise. "For discovery purposes, information is relevant if it 'might reasonably assist a party in evaluating the case, preparing for trial, or facilitating settlement....' Admissibility is not the test and information unless privileged, is discoverable if it might reasonably lead to admissible evidence. These rules are applied liberally in favor of discovery, and (contrary to popular belief), fishing expeditions are permissible in some cases."

Garamendi v. Golden Eagle Ins. Co., 116 Cal. App. 4th 694, 712 (2004) (citations omitted).

This *dicta* is supported by cases in which similar discovery disputes were squarely before the court. In Pac. Tel. & Tel. Co. v. Superior Ct., 2 Cal. 3d 161 (1970), Defendants refused to answer discovery questions which Defendant argued were "irrelevant to the litigation and therefore not proper matters for discovery." Id. at 167. The court in that case discussed the "broad, flexible nature of the relevancy standard", "the liberal policies of the discovery rules" and the "wide discretion of the trial court in granting or denying discovery." Id. at 171. Specifically, the court held:

> Although we have not been able to articulate a single, comprehensive standard of relevancy, we have established a few guidelines. Past cases make clear that the 'relevancy of the subject matter' criterion is 'a broader concept than 'relevancy to the issues," the test which prevailed prior to the enactment of the current discovery scheme. Matters sought are properly discoverable if they will aid in a party's preparation for trial. In addition, because all issues and argument that will come to light at trial often cannot be ascertained at a time when discovery is sought, courts may appropriately give the applicant substantial leeway, especially when the precise issues of the litigation of the governing legal standards are not clearly established; a decision of relevance for purposes of discovery is in no sense a determination of relevance for purposes of trial.

Pac. Tel. & Tel. Co. v. Superior Ct., 2 Cal. 3d 161, 172–73 (1970) (citations omitted).

The court will evaluate Defendant's relevance arguments with this standard in mind.

Overbroad/Undue Burden

To each contested discovery request, Defendant responds that the request is overbroad and would represent an undue burden on Defendant to respond to the request. Defendant cites Code of Civil Procedure § 2030.090(b) in support of this argument, but that section applies to interrogatories, not to the production of documents at issue in this case. Defendant further cites Columbia Broad. Sys., Inc. v. Superior Ct. for Los Angeles Cnty., 263 Cal. App. 2d 12 348 (Ct. App. 1968). In that case, also involving interrogatories, the court did articulate a useful standard for an overbroad or burdensome discovery inquiry:

> "if interrogatories are reasonably subject to objection as calling for the disclosure of matters so remote from the subject matter of the action as disclosed by the issues framed by the pleadings as to make their disclosure of little or no practical benefit to the party seeking the disclosure or if to answer them would place a burden and expense upon the parties to whom the interrogatories are propounded which should be equitably borne by the propounder or if the interrogatories are so framed as to require

> the disclosure of relevant as well as irrelevant matter, the trial court in the exercise of its discretion may refuse to order such interrogatories answered.

Columbia Broad. Sys., Inc. v. Superior Ct. for Los Angeles Cnty., 263 Cal. App. 2d 12, 19, 69 Cal. Rptr. 348 (Ct. App. 1968).

Privacy

To each contested discovery request, Defendant contends that the request infringes on Defendant's privacy rights and the privacy rights of third parties and argues that the privacy rights outweigh the probative value of the requests. On that point the court reiterates that there is a difference between a determination of admissibility of evidence at trial, which may involve a balancing test under Evidence Code § 352, and the broader subject matter relevance standard of discovery rules. Pac. Tel. & Tel. Co. v. Superior Ct., 2 Cal. 3d 161 (1970).

Further, Defendant is a fictitious entity that does not hold a constitutional right of privacy. SCC Acquisitions, Inc. v. Superior Ct., 243 Cal. App. 4th 741, 755–56 (2015). Defendant has not identified any third parties whose privacy rights might be implicated by the scope of discovery requests. While the SCC Acquisitions case does recognize some corporate privacy rights not based in the Constitution, whether they are implicated by a discovery request is balanced against whether the proposed discovery "appears reasonably calculated to lead to the discovery of admissible evidence", SCC Acquisitions at 756.

During the meet and confer process, Plaintiff offered to enter into a stipulation for a protective order, to which Defendant did not respond. Declaration of Nilesh Choudhary, Exhibit C. Defendant asserts that a protective order would not prevent harm to the Defendant because Plaintiff's intent in requesting financial information is to seek a competitive commercial advantage.

Specific Contested Requests

> Request for Production #4: All documents regarding communications between [Defendant] and David Bolster or any real estate professional regarding offers or solicitations for offer for purchase of the subject property between April 2021 and July 2021.
>
> Request for Production #5: All documents regarding communication between LLC members of Responding Party regarding offers or solicitations for offer for purchase of the subject property between April 2021 and July 2021.
>
> Request for Production #6: All documents regarding communication between [Defendant] and anyone other than [Defendant's] legal counsel regarding offers or

solicitations for offer for purchase of the subject property between April 2021 and July 2021 including but not limited to family members.

The court finds that RFP #4, #5 and #6 are relevant to the subject matter of the action, limited in time to a period that includes a negotiation period leading up to the execution of an agreement, and limited to the property that is the subject matter of this action. However, in order to limit the burden of any unnecessary discovery on the Defendant, the court limits the scope of Request #4 and #6 to communications other than those exchanged between the Defendant and the Plaintiff, regarding which Plaintiff is already informed.

Request for Production #7: All documents regarding communication between [Defendant] and David Bolster or any other real estate professional regarding Waqar Khan or [Plaintiff].

Request for Production #8: All documents regarding communication between LLC members of [Defendant] regarding Waqar Khan or [Plaintiff].

In order to limit the burden of any unnecessary discovery on the Defendant, the court limits the scope of Requests #7 and #8 to communications during the relevant time period between April 2021 and July 2021.

Request for Production #9: All documents regarding offers or [solicitations] for offers for purchase of the subject property between April 2021 and July 2021.

In order to limit the burden of any unnecessary discovery on the Defendant, the court finds that RFP #9 is duplicative of RFP #6.

Request for Production #12 All documents regarding [Defendant's] profit and loss from June 2021 to present.

Request for Production #13: All documents regarding [Defendant's] income from June 2021 to present.

The court finds that RFP #12 is relevant to the subject matter of the lawsuit and within the boundaries of allowable discovery; however, in order to restrict the inquiry to a time period that is not too far removed from the contract performance that is at issue, the court limits the date range for the requested information to June 2021 through June 2022.

The court finds that RFP #13 is overbroad and duplicative of relevant information requested in RFP #12.

Request for Monetary Sanctions

Plaintiff requests sanctions in the amount of $1,860 against Defendant. This represents 6 hours at $300 per hour, plus a $60 filing fee. Declaration of Nilesh Choudhary, February 16, 2023.

Code of Civil Procedure § 2023.030 provides that, following notice and an opportunity for a hearing, monetary sanctions may be imposed against a party who unsuccessfully makes or opposes a motion to compel discovery responses unless the court finds substantial justification or other circumstances that would make such sanctions unjust.

The court finds that Defendant responded to the bulk of discovery without objection and that Defendant's opposition was not unreasonable and partially successful. Accordingly, the parties should bear their own costs and the court declines to award monetary sanctions.

TENTATIVE RULING #3: PLAINTIFF'S MOTION TO COMPEL RESPONSES TO REQUESTS FOR PRODUCTION OF DOCUMENTS, SET ONE, NUMBERS 4-9 AND 12 IS GRANTED, SUBJECT TO THE PARAMETERS SET FORTH IN THIS OPINION. PLAINTIFF'S MOTION TO COMPEL RESPONSES TO REQUESTS FOR PRODUCTION OF DOCUMENTS, SET ONE, NUMBERS 9 AND 13 IS DENIED. PLAINTIFF'S REQUEST FOR MONETARY SANCTIONS IS DENIED.

DEFENDANT IS ORDERED TO PROVIDE RESPONSES TO THE AFOREMENTIONED DISCOVERY NO LATER THAN MAY 12, 2023.

NO HEARING ON THIS MATTER WILL BE HELD UNLESS A REQUEST FOR ORAL ARGUMENT IS TRANSMITTED ELECTRONICALLY THROUGH THE COURT'S WEBSITE OR BY TELEPHONE TO THE COURT AT (530) 621-6551 BY 4:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED. CAL. RULE CT. 3.1308; LOCAL RULE 8.05.07; SEE ALSO LEWIS V. SUPERIOR COURT, 19 CAL.4TH 1232, 1247 (1999).

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5. CITY OF ROCKLIN v. LEGACY FAMILY ADVENTURES PC20190309

The hearing on this Motion for Summary Judgment was originally scheduled for March 24, 2023. However, due to a calendaring error on the part of the court, the matter was not placed on calendar for that date and was continued to April 28, 2023.

Given the complexity of this case as well as the volume of cases on the court's calendar on April 28, 2023, the court requires more time to complete its analysis and to draft the tentative ruling. As such, this matter is continued for one week to May 5, 2023.

TENTATIVE RULING # 5: THE HEARING ON THE MOTION FOR SUMMARY JUDGMENT IS CONTINUED TO MAY 5, 2023 AT 8:30 A.M. IN DEPARTMENT 9.

6. ENSWIDA ROFLOX MUSCI v. BANK OF AMERICA 22CV1028

The issue before the court is whether or not to uphold the March 28, 2023 dismissal of Plaintiff's First Amended Complaint (FAC) without leave to amend, which also resulted in the dismissal of all causes of action against Defendant Quality Loan Service Corporation with prejudice. Plaintiff has filed a Motion to set aside that judgment.

Procedural Background

Plaintiff's original Complaint was filed on July 26, 2022. Defendants filed a demurrer, and at the December 9, 2022, hearing on Defendant's demurrer Plaintiff was given leave to amend the Complaint within ten court days of the hearing. The deadline to file the FAC was December 23, 2022, but the FAC was not filed until December 31.

Defendants filed a Motion to Strike the FAC as untimely on January 9, 2023. A hearing on the Motion to Strike the FAC was scheduled for March 3, 2023, and notice of the Motion and hearing date was mailed to Plaintiff's attorney on January 11, 2023. Any opposition pleadings to Defendants' Motion to Strike were due to be filed nine court days prior to the hearing date. Local Rules of the El Dorado County Superior Court § 7.10.02.B. Plaintiff's opposition pleadings were filed with the court on March 1, 2023, two days prior to the hearing. The date of Plaintiff's counsel's signature on the opposition pleadings is February 25, 2023.

The court recorded no appearances at the March 3, 2023 hearing on Defendants' Motion to Strike the FAC. Plaintiff's counsel filed a declaration stating that she had attempted to attend the March 3, 2023 hearing remotely but was prevented from participating due to technical difficulties. Declaration of Safora Nowrouzi, dated March 31, 2023.

Plaintiff's counsel's pleadings in support of the Motion to set aside the judgment declare that she was unaware of the March 3, 2023 hearing date as of January 16, 2023. However, she became aware of the March 3 hearing date by February 5, because that was the date that she arranged a telephonic appearance for the hearing. Plaintiff's Motion to Set Aside Judgment; Memorandum of Points and Authorities at 3:23-28.

Plaintiff's counsel further states that she attempted to request oral argument after the tentative ruling were issued for the March 3, 2023 hearing, but she received no response from the clerk's office. She continues that she attempted to appear telephonically, not ever having been informed that the appearance should have been via Zoom. Plaintiff's Motion to Set Aside Judgment; Memorandum of Points and Authorities at 5:3-7.

Respondent contends that Plaintiff's motion is procedural defective and lacks merit. Respondent further contends that Plaintiff never gave notice of a request for oral argument for the March 3, 2023 hearing.

On March 3, 2023, the court sustained the Motion to Strike Plaintiff's FAC with prejudice and entered a judgment of dismissal with prejudice as to Defendant Quality Loan Service Corporation. Plaintiff then filed a Motion to set aside that judgment.

Legal Basis for Setting Aside Judgment

Plaintiff's argument in favor of setting aside the dismissal is based on Code of Civil Procedure § 473(b) and the court's equitable power to set aside judgments based on fraud, mistake or accident. Plaintiff also argues that setting aside the dismissal would be in the interests of public policy and fairness.

First, while it is true that the policy underlying § 473 is to decide cases on their merits, Austin v. Los Angeles Unified School District, 244 Cal.App.4th 918, 928 (2016), it is also true that "[p]ublic policy requires that pressure be brought upon litigants to use great care in preparing cases for trial and in ascertaining all the facts." Kulchar v. Kulchar, 1 Cal. 3d 467, 472, 462 P.2d 17 (1969). "Courts deny relief, therefore, when the fraud or mistake is "intrinsic"; that is, when it "goes to the merits of the prior proceedings, which should have been guarded against by the plaintiff at that time." Id. at 472–73. *See also* In re Margarita D., 72 Cal. App. 4th 1288, 1295 ("Intrinsic fraud goes to the merits of the prior proceeding and is 'not a valid ground for setting aside a judgment when the party has been given notice of the action and has had an opportunity to present his case . . . but has unreasonably neglected to do so. [Citation.] Such a claim of fraud goes to the merits of the prior proceeding which the moving party should have guarded against at the time.' (City and County of San Francisco v. Cartagena*, supra,* 35 Cal.App.4th at pp. 1067-1068.)"

In this case, the origin of this chain of pre-trial motions began when Plaintiff's Complaint failed to state facts sufficient to establish that Plaintiff was legally entitled to relief on theories of implied contract, declaratory relief, promissory estoppel, predatory lending, negligence, unfair competition, truth in lending laws and fair debt collection practices. The court's tentative ruling included detailed legal analysis on the defects in the pleadings, but Plaintiff's counsel failed to amend the Complaint within the time granted by the court. When given an opportunity to oppose the Defendants' resulting Motion to Strike, Plaintiff again failed to file a timely argument.

As to the mistake of counsel, Plaintiff's Motion states that such mistake was based on illness that led to the late filing of the FAC. However, that was the asserted basis for untimely filing of the FAC in December, not the reason for failure to respond to the Motion to Strike in February. Plaintiff's Opposition to Defendants' Motion to Strike Plaintiff's First Amended Complaint, March 1, 2023.

Mindful of the public policy in favor of resolving cases on their merits, the court orders the parties to appear at the April 28, 2023 hearing so that the court can further inquire of

Plaintiff as to the circumstances surrounding her failure to meet timelines and thereafter rule on the motion.

TENTATIVE RULING # 6: PARTIES ARE ORDERED TO APPEAR.

NO HEARING ON THIS MATTER WILL BE HELD UNLESS A REQUEST FOR ORAL ARGUMENT IS TRANSMITTED ELECTRONICALLY THROUGH THE COURT'S WEBSITE OR BY TELEPHONE TO THE COURT AT (530) 621-6551 BY 4:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED. CAL. RULE CT. 3.1308; LOCAL RULE 8.05.07; SEE ALSO LEWIS V. SUPERIOR COURT, 19 CAL.4TH 1232, 1247 (1999).

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7. GARBERO ET. AL. V. JEFFREY JEAN ET. AL. PC20200370

Defendant Greg Lindsay (hereinafter "Defendant") moves for summary judgment on the Complaint filed by Dina and Don Garbero (collectively "Plaintiffs"). In support of Defendant's Motion, he has filed a Memorandum of Points and Authorities in Support Thereof, Defendant Greg Lindsay's Separate Statement of Undisputed Material Facts in Support of Motion for Summary Judgment, and the Declaration of Katie Smith in Support of Motion for Summary Judgment. The moving papers were served on December 27th and filed thereafter on December 28th.

Plaintiffs oppose the Motion by way of their Memorandum of Points and Authorities in Opposition to Defendant Greg Lindsay's Motion for Summary Judgment. Plaintiffs filed declarations of Kirk J. Wolden and Van Ness Bogardus III in support of their opposition. They have also filed their Response to Separate Statement of Undisputable Material Facts as well as a Separate Statement of their own asserted undisputed material facts. All opposition documents were filed and served on April 14th.

This matter stems from a dog bite incident that occurred on May 26, 2020. At the time of the incident Plaintiff Dina Garbero was attempting to deliver a package to property located at 2400 Swansboro Rd. in Placerville. The property in question was owned by Defendant but was leased to Co-Defendant Jeffrey Jean. It was Mr. Jean who owned the dog involved in the incident, Kai.

The causes of action alleged against Defendant include strict liability pursuant to Civil Code § 3342, general negligence, and loss of consortium. Defendant argues he cannot be held strictly liable as § 3342 applies only to the owner of the dog and he was not the owner. Further, Defendant asserts that he cannot be held liable on a theory of general negligence as there is no evidence that Defendant had reason to believe the dog posed any danger nor did Defendant have control of the dog. Thus, Plaintiffs cannot establish a breach of Defendant's duty of care. Without establishing claims for strict liability or general negligence there can be no claim for loss of consortium.

Plaintiff, on the other hand, opines that Defendant did have reason to believe the dog had dangerous propensities because of its breed coupled with the fact that Defendant had not seen the dog interact with animals or persons other than its owner, Defendant had never seen the dog off leash or outside of its crate, and Defendant knew that Mr. Jean treated Kai as a guard dog. Plaintiffs also point to the fact that the dog would bark when Defendant and others arrived at the property. Plaintiff states that Defendant did exercise control over Kai sufficient to establish common law strict liability. Plaintiff further argues that regardless of whether Kai was known to have dangerous propensities, the fact that Defendant supplied the tether which was long enough to allow Kai to reach the garage where packages were left constituted a dangerous condition on the property which would give rise to a claim for general negligence. Plaintiff

points out that Defendant has filed a Motion for Summary Judgment and not a Motion for Summary Adjudication therefore if Plaintiff can establish a disputed material fact on just one cause of action then the Motion must be denied in its entirety.

A Motion for Summary Judgment shall be granted if there is no triable issue as to any material fact and the papers submitted show that the moving party is entitled to judgment as a matter of law. Cal. Civ. Pro. § 437c. A Defendant moving for summary judgment need only show that one or more elements of the cause of action cannot be established. Aguilar v. Atlantic Richfield Co., (2001) 25 Cal.4th 826, 849. This can be done in one of two ways, either by affirmatively presenting evidence that would require a trier of fact *not* to find any underlying material fact more likely than not; or by simply pointing out "that the plaintiff does not possess and cannot reasonably obtain, evidence that *would* allow such a trier of fact to find any underlying material fact more likely than not." *Id.* at 845; Brantly v. Pisaro, 42 Cal. App. 4th 1591, 1601 (1996). Because of the drastic nature of a Motion for Summary Judgment, the moving party's evidence is to be strictly construed, while the opposing party's evidence is to be liberally construed. A-H Plating, Inc. v. American National Fire Ins. Co., 57 Cal. App. 4th 427, 433-434 (1997).

The moving party bears the burden of making a prima facie case for summary judgment. White v. Smule, Inc., 75 Cal. App. 5th 346 (2022). In other words, the party moving for summary judgment must show that it is entitled to judgment as a matter of law on any theory of liability reasonably embraced within the allegations of the Complaint. Doe v. Good Samaritan Hospital, 23 Cal. App. 5th 653, 661 (2018). Where the Defendant makes the required showing, the burden shifts to plaintiff to make a prima facie showing that there exists a triable issue of material fact. Zoran Corp. v. Chen, 185 Cal. App. 4th 799, 805 (2010).

Here, Plaintiffs argue two theories of liability, strict liability and general negligence. To hold a landlord liable for the actions of a tenant's pet, *both* theories require a showing that the landlord had actual knowledge of the dangerous propensities of the animal.

The parties agree that statutory strict liability pursuant to Civil Code § 3342 applies only to the owner of the dog and Defendant was not the owner. Thus, we turn to common law strict liability which requires a showing of each of the following: (1) That Defendant "owned, kept or controlled" the animal; (2) That the animal "had an unusually dangerous nature or tendency;" (3) That Defendant knew or should have known that the animal had such dangerous nature or tendency; (4) That Plaintiff was harmed; and (5) That the animal's unusually dangerous nature or tendency was a substantial factor in causing the harm. Cal. Civ. Jury Instruction 462.

Just as common law strict liability requires actual knowledge of a dangerous propensity, so too does general negligence regardless of whether it is couched in a premises liability argument as Plaintiffs assert. The existence of a legal duty is a necessary element to both premise liability and general negligence causes of action. Chee v. Amanda Goldt Property

Management, 143 Cal. App. 4th 1360, 1369 (2006). The determination of whether or not a duty exists is an issue of law. Bugess v. Sup. Ct., 2 Cal. 4th 1064 (1992).

While it is inarguable that a landlord owes a duty to keep the premises in a reasonably safe condition, when the alleged dangerous condition is the presence of a dog on the premises "[i]t is well established that a landlord does not owe a duty of care to protect a third party from his or her tenant's dog unless the landlord has actual knowledge of the dog's dangerous propensities, and the ability to control or prevent the harm." Chee v. Amanda Goldt Property Management, 143 Cal. App. 4th 1360, 1369 (2006); Yuzon v. Collins, 116 Cal. App. 4th 149 (2004); Lundy v. California Realty, 170 Cal. App. 3d 813, 821 (1985); Uccello v. Laudenslayer, 44 Cal. App. 3d 504 (1975). Rationale for the actual knowledge requirement is "[b]ecause the harboring of pets is such an important part of our way of life, … actual knowledge and not mere constructive knowledge is required. For this reason, … a landlord is under no duty to inspect the premises for the purpose of discovering the existence of a tenant's dangerous animal..." Uccello v. Laudenslayer, 44 Cal. App. 3d 504, 514 (1975).

"Actual knowledge can be inferred from the circumstances, only if, in light of the evidence, such inference is not based on speculation or conjecture. Only where the circumstances are such that the Defendant 'must have known' and not 'should have known' will inference of actual knowledge be permitted." Id. at 514 FN. 4. Knowledge of the dog's name and breed alone are not sufficient to impute actual knowledge. *See* Lundy v. Cal. Realty, 170 Cal. App. 3d 813.

Plaintiffs rely on Drake v. Dean, 15 Cal. App. 4th 915 (1993) for the proposition that general negligence can be established without the need for a showing of dangerous propensities. However, Drake establishes the standard of liability for the owner or keeper of the dog. It does not address liability of the landlord of the premises where the dog resides, such as the case here. Specifically, the court in Lundy v. California Realty, 170 Cal. App. 3d 813 states "[a]n *owner* of a dog may be held liable for injuries inflicted by it on another person without any showing the dog had any especially dangerous propensities or that the owner knew of any such dangerous propensities. [Citations]. However, to impose liability on someone other than the owner, even a keeper, '*previous knowledge of the dog's vicious nature must appear.'*" Lundy v. California Realty, 170 Cal. App. 3d 813, 821 (1985) (italics in original).

Plaintiffs' claim regarding the tether seems akin to Lundy v. California Realty wherein the Plaintiff was attacked by the tenant's dog and alleged liability on the part of the landlord on the basis that the landlord, among other things, failed to enclose the backyard and failed to post a sign or signs warning of the dog's presence. Here, Plaintiffs maintain that Defendant was negligent by keeping a tether on the property which he allowed Mr. Jean to use for Kai. But without actual knowledge that Kai posed a threat to anyone on the property, the fact that he

supplied a tether which allowed Kai to reach the garage where packages were left is insufficient to establish a duty of care owed by Defendant.

Given that actual knowledge of the dog's dangerous propensity is a necessary factor under a strict liability and a general negligence theory, the court turns to the issue of whether or not there is a triable issue of fact in establishing Kai's alleged dangerous propensity and Defendant's knowledge thereof. "There is a triable issue of material fact if, and only if, the evidence would allow a reasonable trier of fact to find the underlying fact in favor of the party opposing the motion in accordance with the applicable standard of proof." *Aguilar, Supra* 25 Cal. 4th at 850. According to Plaintiffs, Defendant lives with Mr. Jean and Kai and in that capacity often observed Kai's actions. Plaintiffs set forth a myriad of facts to establish Kai's dangerous propensity, including his breed and lack of training, however the facts relevant to the issue of Defendant's liability are those that he had actual knowledge of prior to the incident. Such facts include: (1) Defendant described Kai as not a social dog whom he had not seen interact with other animals or individuals other than his owner; (2) Defendant never saw Kai unrestrained in any way, whether it be by leash, tether, or crate; (3) Defendant stated that he did not know and could not assume whether Kai would bite someone; (5) Kai would bark at him and at other individuals on or around the premises; and (6) Kai and Defendant's dog were always kept separate from one another. In light of the foregoing, and because Defendant lived on the premises where he could observe Kai's behavior on a day-to-day basis, it is not outside the realm of reason that a trier of fact could find, more likely than not, that Kai had dangerous propensities of which Defendant was actually aware. As such, Defendant's Motion for Summary Judgment is denied.

TENTATIVE RULING #7: DEFENDANT'S MOTION FOR SUMMARY JUDGMENT IS DENIED.

NO HEARING ON THIS MATTER WILL BE HELD UNLESS A REQUEST FOR ORAL ARGUMENT IS TRANSMITTED ELECTRONICALLY THROUGH THE COURT'S WEBSITE OR BY TELEPHONE TO THE COURT AT (530) 621-6551 BY 4:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED. CAL. RULE CT. 3.1308; LOCAL RULE 8.05.07; SEE ALSO LEWIS V. SUPERIOR COURT, 19 CAL.4TH 1232, 1247 (1999).

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LONG CAUSE HEARINGS MUST BE REQUESTED BY 4:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED AND THE PARTIES ARE TO PROVIDE THE COURT WITH THREE MUTUALLY AGREEABLE DATES ON FRIDAY AFTERNOONS AT 2:30 P.M. LONG CAUSE ORAL ARGUMENT

REQUESTS WILL BE SET FOR HEARING ON ONE OF THE THREE MUTUALLY AGREEABLE DATES ON FRIDAY AFTERNOONS AT 2:30 P.M. THE COURT WILL ADVISE THE PARTIES OF THE LONG CAUSE HEARING DATE AND TIME BY 5:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED. PARTIES MAY PERSONALLY APPEAR AT THE HEARING. IF A PARTY OR PARTIES WISH TO APPEAR BY ZOOM PLEASE CONTACT THE COURT AT (530) 621-5867 AND MEETING INFORMATION WILL BE PROVIDED.

8. NAPOLEON v. PACIFIC GAS & ELECTRIC PC20210080

This wrongful death case arises from a fire and explosion, not necessarily in that order, at Plaintiff's residence on August 4, 2019. Plaintiff's spouse lost his life as a result of the fire, and a central issue the in the case is the question of how the fire started and how the conditions that created the fire and explosion came to exist. The two named Defendants are Pacific Gas and Electric, which provided utility service, including natural gas service, to the property, and Tesla, which had recently installed a solar energy system at Plaintiff's residence.

Tesla's Motion for Summary Judgment asserts that because there is no evidence in the record that any act or omission of Tesla was responsible for proximate causation or contribution to the fire and/or explosion, Tesla should be dismissed from the case on a pre-trial motion as a matter of law.

Request for Judicial Notice

Defendant Tesla requests the court to take judicial notice of the CalFire Investigation Report, the El Dorado County Sheriff's Office Incident Report and the Folsom Fire Department's Report, all of which related to the fire at issue in this case.

Judicial notice is appropriate for "[o]fficial acts of the legislative, executive and judicial departments of the United States and of any state", Cal. Evid. Code § 452(c). However, acknowledging the existence of these documents does not amount to acceptance of their contents. Even if the court were to accept the contents of those documents as true, it would not dispose of the issue. Nothing in the documents that are the subject of the Request for Judicial Notice supports or negates Tesla's position in this case.

The CalFire Report concerns a grass fire that ignited near and was caused by the "fully involved structure fire" at Plaintiff's residence. It does not purport to investigate or reach any conclusion as to the cause of the grass fire or of the nearby structure fire.

The Sheriff's Office Incident Report documented an extensive arson investigation by that office but did not reach a conclusion as to the cause of the fire or explosion and it reports the investigation remains active.

The Folsom and El Dorado Hills Fire Departments' Reports documented the response to the incident but did not address causation.

None of these documents asserts the conclusion that neither Tesla's system installed within the residence, nor Tesla's activities in installing that system, were related to the cause of the fire or explosion.

Separate Statement of Undisputed Material Facts

A Motion for Summary Judgment "shall include a separate statement setting forth plainly and concisely all material facts that the moving party contends are undisputed." Cal. Civ. Pro. § 437c(b)(1).

Defendant Tesla's Separate Statement of Undisputed Material Facts states only that 1) "[t]here is no evidence that any act of omission by Tesla in any way contributed to" the explosion and fire that resulted in the death of Plaintiff's spouse, and 2) Tesla's investigation "revealed that no component of the [Tesla] System contributed to" the explosion and fire. For these negative assertions Tesla relies upon the Declaration of Joshua Bastien.

The Declaration of Joshua Bastien, dated August 29, 2022, declares that he inspected "the aftermath" of the fire three months after the incident, in conjunction with an inspection that he understood to be "hosted by Plaintiff's counsel and attended by Plaintiff's experts." Based upon that inspection and review of the relevant reports from CalFire, the responding local fire departments and the El Dorado County Sheriff's Department's arson investigation report, Mr. Bastien concludes that "to a reasonable engineering probability that no aspect of the [Tesla] System installed by [Tesla], or any act or omission of Tesla, was a substantial factor in causing the Incident." That statement constitutes the entirety of the evidence underlying Tesla's Motion.

Motion for Summary Judgment Standard

A Motion for Summary Judgment shall be granted if there is no triable issue as to any material fact and the papers submitted show that the moving party is entitled to judgment as a matter of law. Cal. Civ. Pro. § 437c. A Defendant moving for summary judgment need only show that one or more elements of the cause of action cannot be established. Aguilar v. Atlantic Richfield Co., (2001) 25 Cal.4th 826, 849. This can be done in one of two ways, either by affirmatively presenting evidence that would require a trier of fact *not* to find any underlying material fact more likely than not; or by simply pointing out *"that the plaintiff does not possess and cannot reasonably obtain, evidence that would allow such a trier of fact to find any underlying material fact more likely than not*." *Id.* at 845 (emphasis added); Brantly v. Pisaro, 42 Cal. App. 4th 1591, 1601 (1996). Because of the drastic nature of a Motion for Summary Judgment, the moving party's evidence is to be strictly construed, while the opposing party's evidence is to be liberally construed. A-H Plating, Inc. v. American National Fire Ins. Co., 57 Cal. App. 4th 427, 433-434 (1997).

The moving party bears the burden of making a prima facie case for summary judgment. White v. Smule, Inc., 75 Cal. App. 5th 346 (2022). In other words, the party moving for summary judgment must show that it is entitled to judgment as a matter of law on any theory of liability reasonably embraced within the allegations of the Complaint. Doe v. Good Samaritan Hospital, 23 Cal. App. 5th 653, 661 (2018). Given the moving party's burden of proof, even a Motion for Summary Judgment which is left unopposed may still be denied if the moving party fails to meet its burden. Harman v. Mono General Hospital, 131 Cal. App. 3d 607, 613 (1982). Nevertheless, where the Defendant makes the required showing, the burden shifts to Plaintiff to make a *prima facie* showing that there exists a triable issue of material fact. Zoran Corp. v. Chen, 185 Cal. App. 4th 799, 805 (2010).

A party moving for summary judgment may rely on the affidavit of that party's expert if the expert's testimony would be admissible at trial. Fernandez v. Alexander, 31 Cal. App. 5th 770, 779 (2019). "When the moving party produces a competent expert declaration showing there is no triable issue of fact on an essential element of the opposing party's claims, the opposing party's burden is to produce a competent expert declaration to the contrary. [Citations]." Id. However, the "moving party's burden…cannot be satisfied by an expert declaration consisting of ultimate facts and conclusions that are unsupported by factual detail and reasoned explanation, even if it is admitted unopposed." Doe v. Good Samaritan Hospital, 23 Cal. App. 5th 653, 661 (2018).

The court finds that the drastic remedy of dismissing the Plaintiff's case before discovery has commenced is not justified where competing theories of causation might yet be supported. This case has not yet reached a stage where "the plaintiff does not possess and cannot reasonably obtain, evidence that would allow . . . a trier of fact to find any underlying material fact more likely than not." Aguilar v. Atlantic Richfield Co., (2001) 25 Cal.4th 826, 845. Rather, Tesla has timed its Motion for Summary Judgment at such an early stage that its only argument in support of its Motion is that the evidence in the record, consisting of conclusory and unsupported expert testimony, doesn't prove the case against it. Tesla's only statement of "material facts not in dispute" in the case is, in essence, that there are no facts in evidence. This Motion would be better timed after the parties have had an opportunity to develop the factual record.

TENTATIVE RULING # 8: DEFENDANT'S REQUEST FOR JUDICIAL NOTICE OF PLAINTIFF'S COMPLAINT IS GRANTED. DEFENDANT'S MOTION FOR SUMMARY JUDGMENT IS DENIED.

NO HEARING ON THIS MATTER WILL BE HELD UNLESS A REQUEST FOR ORAL ARGUMENT IS TRANSMITTED ELECTRONICALLY THROUGH THE COURT'S WEBSITE OR BY TELEPHONE TO THE COURT AT (530) 621-6551 BY 4:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED. CAL. RULE CT. 3.1308; LOCAL RULE 8.05.07; SEE ALSO LEWIS V. SUPERIOR COURT, 19 CAL.4TH 1232, 1247 (1999).

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9. LORD v. CLARK 22CV0689

Pursuant to Penal Code § 2623, Plaintiff has filed a Motion for leave to depose an incarcerated party, Defendant Jonas Clark. As required by Penal Code § 2623, Plaintiff's counsel has submitted an affidavit "showing the nature of the action or proceeding, the testimony expected from the witness, and its materiality."

The affidavit of William Jeanney, dated February 17th, 2023, states that the Plaintiff seeks to depose the Defendant Jonas Daniel Clark. Jonas Clark was the driver of the ATV that overturned, killing passenger Jason Dean Lord on May 24, 2020, resulting in this wrongful death action against Jonas Clark and U.S. Trenchless, Inc. Plaintiff seeks testimony from Defendant Jonas Clark regarding the ownership of the ATV, authority for its operation, the relationship between the ownership/registration of the ATV and co-Defendant US Trenchless, Inc., and details of how the operation of the vehicle caused the death of Lord. The affidavit states that such information is material to the issues of liability and damages in the wrongful death action.

TENTATIVE RULING # 9: ABSENT OBJECTION, PLAINTIFF'S MOTION IS GRANTED.

NO HEARING ON THIS MATTER WILL BE HELD UNLESS A REQUEST FOR ORAL ARGUMENT IS TRANSMITTED ELECTRONICALLY THROUGH THE COURT'S WEBSITE OR BY TELEPHONE TO THE COURT AT (530) 621-6551 BY 4:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED. CAL. RULE CT. 3.1308; LOCAL RULE 8.05.07; SEE ALSO LEWIS V. SUPERIOR COURT, 19 CAL.4TH 1232, 1247 (1999).

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10. PEOPLE OF THE STATE OF CALIFORNIA v. KRYLOV PC20200443

On August 21, 2020, Claimant Victor Krylov filed a claim opposing forfeiture in response to a notice of administrative proceedings to determine that certain funds are forfeited. The People responded by filing a petition for forfeiture. The unverified petition contends: $25,510 in U.S. Currency was seized by the El Dorado County Sheriff's Office; such funds are currently in the hands of the El Dorado County District Attorney's Office; and the property became subject to forfeiture pursuant to Health and Safety Code, § 11470(f), because that money was a thing of value furnished or intended to be furnished by a person in exchange for a controlled substance, the proceeds was traceable to such an exchange, and the money was used or intended to be used to facilitate a violation of Health and Safety Code, § 11358. The People pray for judgment declaring that the money is forfeited to the State of California.

This matter has been continued since the original filings in order to allow time for the criminal proceeding to conclude.

On February 10, 2023, a competing claim of ownership was filed by Claimant Eugene Ivanov.

TENTATIVE RULING # 10: APPEARANCES ARE REQUIRED AT 8:30 A.M. ON FRIDAY, APRIL 28, 2023, IN DEPARTMENT NINE.

NO HEARING ON THIS MATTER WILL BE HELD UNLESS A REQUEST FOR ORAL ARGUMENT IS TRANSMITTED ELECTRONICALLY THROUGH THE COURT'S WEBSITE OR BY TELEPHONE TO THE COURT AT (530) 621-6551 BY 4:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED. CAL. RULE CT. 3.1308; LOCAL RULE 8.05.07; SEE ALSO LEWIS V. SUPERIOR COURT, 19 CAL.4TH 1232, 1247 (1999).

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ISSUED. PARTIES MAY PERSONALLY APPEAR AT THE HEARING. IF A PARTY OR PARTIES WISH TO APPEAR BY ZOOM PLEASE CONTACT THE COURT AT (530) 621-5867 AND MEETING INFORMATION WILL BE PROVIDED.

11. PETITION FOR NAME CHANGE OF ERICA AND JUSTIN JABALI 23CV0182

TENTATIVE RULING # 11: ABSENT OBJECTION, THE PETITION IS GRANTED.

NO HEARING ON THIS MATTER WILL BE HELD UNLESS A REQUEST FOR ORAL ARGUMENT IS TRANSMITTED ELECTRONICALLY THROUGH THE COURT'S WEBSITE OR BY TELEPHONE TO THE COURT AT (530) 621-6551 BY 4:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED. CAL. RULE CT. 3.1308; LOCAL RULE 8.05.07; SEE ALSO LEWIS V. SUPERIOR COURT, 19 CAL.4TH 1232, 1247 (1999).

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12. STUART v. CORDANO PC20210448

A Complaint related to a residential purchase agreement of real property that contained construction defects was filed on August 3, 2021, and included causes of action for breach of contract, intentional and negligent misrepresentation, concealment against the sellers of the property, and for negligence as to the contractor that built the home.

An Answer to the Complaint was filed by general contractor and Defendant T.L. Stigall, Inc. asserting various affirmative defenses. Defendants David Cordano, Jeanne Cordano, and Chris Fusano filed a Cross-Complaint against T.L. Stigall, Inc. on December 23, 2021, for equitable indemnity, contribution and declaratory relief.

On March 15, 2022, Defendant T.L. Stigall also filed a Cross-Complaint against Plaintiff and the sellers that included causes of action for express and implied indemnity, contribution, apportionment, and declaratory relief, and subsequently, on April 25, 2022, filed a First Amended Cross-Complaint naming 13 subcontractors, including Cross-Defendant KS Plumbing.

On July 25, 2022, Cross-Defendant K&L Crawford, Inc. dba Dick's Carpet Outlet filed a Cross-Complaint for equitable indemnity, declaratory relief, and apportionment against Dan Gallagher Floor Covering and Shacks Floor Covering.

A Motion for Summary Judgment filed by Defendant sellers is pending hearing on June 2, 2023.

<u>Motion for Leave to File First Amended Complaint</u>

On March 15, 2023, Plaintiff filed a Motion for Leave to File a First Amended Complaint (FAC) for the purpose of adding Plaintiff's wife, Teresa Marie Stuart, to the Complaint and to all causes of action in the Complaint, and to add certain exhibits to the Complaint that had been referenced in the original Complaint but that had not been attached. Teresa Marie Stuart is a co-owner of the property and signatory to the sales contract, along with Plaintiff. The Plaintiff argues that allowing the FAC will not prejudice Defendants because no trial date has been set, the FAC will include the same causes of action, facts, and prayer for relief as the original Complaint, and very little discovery has occurred at this time.

On April 14, 2023, Defendants David Cordano, Jeanne Cordano and Chris Fusano filed a Notice of Non-opposition to Plaintiff Thomas James Stuart's Motion for Leave to File a First Amended Complaint.

On April 18, 2023, Defendant KS Plumbing filed a Notice of Opposition to Plaintiff Thomas James Stuart's Motion for Leave to File a First Amended Complaint as untimely and prejudicial to Cross-Defendants. KS Plumbing's Opposition notes that the state of limitations for Plaintiff's claims have passed.

As to the relation to the applicable statute of limitations, the proposed amendment does not change the factual allegations or the causes of action listed in the original Complaint. It merely adds a new party whose interests and legal standing is identical to the Plaintiff as purchaser of the home and signatory of the purchase contract, as well as adding documentation of factual allegations already in the original Complaint.

> An amended complaint is considered a new action for purposes of the statute of limitations only if the claims do not "relate back" to an earlier, timely-filed complaint. Under the relation-back doctrine, an amendment relates back to the original complaint if the amendment: (1) rests on the same general set of facts; (2) involves the same injury; and (3) refers to the same instrumentality.

Pointe San Diego Residential Cmty., L.P. v. Procopio, Cory, Hargreaves & Savitch, LLP, 195 Cal. App. 4th 265, 276–7750 (2011) (citations omitted).

With respect to prejudice against the existing Defendants that might be caused by the amendment to the Complaint, the court notes that only one of many Defendants has objected to the amendment of the Complaint, no discovery has been initiated at this stage of the proceedings, the legal standing of the party proposed to be added is identical to the existing Plaintiff as resident of the subject property and signatory of the contract for purchase of the property, there will be no change to the causes of action or factual allegations in the case, and discovery as to Teresa Marie Stuart is simplified for all parties if she is included as a party to the proceedings. The passage of approximately 18 months between the filing of the original Complaint and the request to amend the Complaint is understandable given that several Cross-Complaints and more than a dozen new parties have been added to the case since the Complaint was filed.

Motion to Appoint a Special Master and Enter Pre-Trial Order No. 1

Plaintiff filed a Motion to Appoint a Special Master on March 15, 2023. Prior to filing the Motion, on October 19, 2022, Plaintiff requested a stipulation from all parties to the case for the appointment of a Special Master, Peter H. Dekker on the grounds that the case is complex and involves specialized facts related to construction defects. Plaintiff's communication to all parties in the case regarding the appointment of a Special Master included a draft of Mr. Dekker's standard form of Pre-Trial Order. Plaintiff circulated a revised version of the proposed stipulation and order again on November 18, 2022, and re-sent it again on January 25, 2023, because of changes to the identities of the parties to the case and changes to their legal representation. All Defendants did stipulate to the appointment of Peter H. Dekker as Special Master, except Defendants David Cordano, Jeanne Cordano, and Chris Fusano. Declaration of Nicholas S. Seliger in Support of Motion to Appoint Special Master and Enter Pre-Trial Order No. 1, dated March 6, 2023.

Because this case involves a large number of separately represented parties and involves construction defect claims, the court finds that this case meets the definition of a complex case under California Rules of Court §§ 3.400(b)(3) and 3.400(c)(2).

The court is authorized by Code of Civil Procedure § 639(A)(5), on the motion of any party or on its own motion, to appoint a referee to oversee discovery where the court determines that it is necessary to hear and determine any and all discovery motions and disputes relevant to discovery in the action and to report findings and make recommendations thereon. *See also*, Local Rules of the El Dorado County Superior Court § 7.12.10(D)(7).

The court is further authorized by Code of Civil Procedure § 187 to adopt any means necessary to carry out its exercise of jurisdiction by any suitable mode of proceeding, including the appointment of a referee to conduct case management and settlement conferences. Lu v. Superior Ct., 55 Cal. App. 4th 1264, 1271 (1997).

TENTATIVE RULING # 12: PLAINTIFF'S MOTION FOR LEAVE TO FILE FIRST AMENDED COMPLAINT IS GRANTED. PLAINTIFF'S MOTION FOR APPOINTMENT OF PETER H. DEKKER AS SPECIAL MASTER AND DISCOVERY REFERREE IS GRANTED. THE SPECIAL MASTER SHALL HAVE AUTHORITY AS SET FORTH IN PRE-TRIAL ORDER NO. 1. PLAINTIFF SHALL PREPARE PRE-TRIAL ORDER NO. 1 FOR THE COURT'S SIGNATURE IN SUBSTANTIALLY THE FORM SET FORTH IN EXHIBIT 19 OF THE DECLARATION OF NICHOLAS S. SELIGER IN SUPPORT OF MOTION TO APPOINT SPECIAL MASTER AND ENTER PRE-TRIAL ORDER NO. 1.

NO HEARING ON THIS MATTER WILL BE HELD UNLESS A REQUEST FOR ORAL ARGUMENT IS TRANSMITTED ELECTRONICALLY THROUGH THE COURT'S WEBSITE OR BY TELEPHONE TO THE COURT AT (530) 621-6551 BY 4:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED. CAL. RULE CT. 3.1308; LOCAL RULE 8.05.07; SEE ALSO LEWIS V. SUPERIOR COURT, 19 CAL.4TH 1232, 1247 (1999).

NOTICE TO ALL PARTIES OF A REQUEST FOR ORAL ARGUMENT AND THE GROUNDS UPON WHICH ARGUMENT IS BEING REQUESTED MUST BE MADE BY TELEPHONE OR IN PERSON BY 4:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED. CAL. RULE CT. 3.1308; EL DORADO COUNTY LOCAL RULE 8.05.07. PROOF OF SERVICE OF SAID NOTICE MUST BE FILED PRIOR TO OR AT THE HEARING.

LONG CAUSE HEARINGS MUST BE REQUESTED BY 4:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED AND THE PARTIES ARE TO PROVIDE THE COURT WITH THREE MUTUALLY AGREEABLE DATES ON FRIDAY AFTERNOONS AT 2:30 P.M. LONG CAUSE ORAL ARGUMENT REQUESTS WILL BE SET FOR HEARING ON ONE OF THE THREE MUTUALLY AGREEABLE DATES ON FRIDAY AFTERNOONS AT 2:30 P.M. THE COURT WILL ADVISE THE PARTIES OF THE LONG CAUSE HEARING DATE AND TIME BY 5:00 P.M. ON THE DAY THE TENTATIVE RULING IS

ISSUED. PARTIES MAY PERSONALLY APPEAR AT THE HEARING. IF A PARTY OR PARTIES WISH TO APPEAR BY ZOOM PLEASE CONTACT THE COURT AT (530) 621-5867 AND MEETING INFORMATION WILL BE PROVIDED.