

AMADOR SUPERIOR COURT LAW AND MOTION TENTATIVE RULINGS

Monday, September 13, 2021

TO REQUEST A HEARING ON ANY MATTER ON THIS CALENDAR, YOU MUST CALL THE COURT AT (209) 257-2692 BY 4:00 P.M. ON THE DAY PRECEDING THE HEARING. NOTICE OF THE INTENTION TO APPEAR MUST ALSO BE GIVEN TO ALL OTHER PARTIES.

IF THE CLERK IS NOT NOTIFIED OF A PARTY'S INTENTION TO APPEAR, THERE WILL BE NO HEARING AND THE TENTATIVE RULING WILL BECOME THE ORDER OF THE COURT. NO FURTHER NOTICE OF THE COURT'S RULING WILL BE PROVIDED.

18-CVC-10813 PIERSON, RAYMOND VS. RUSHING, PHYLISS

CIVIL MISCELLANEOUS MOTION

TENTATIVE RULING:

Defendant RUSHING's Motion to Lift Automatic Stay, if any, to Perform Necessary Discovery and Request for Monetary Sanctions is GRANTED, in part.

The court notes that on August 6, 2021 the court issued a tentative ruling continuing the matter to September 13, 2021 in order to provide Plaintiff with the opportunity to submit further responsive pleadings to Defendant RUSHING's Reply filed July 30, 2021. No oral argument was requested as to that tentative ruling and it was adopted by the court on August 9, 2021.

"... the pendency of an appeal does not divest the trial court of jurisdiction to determine ancillary or collateral matters which do not affect the judgment on appeal. (Silver v. Gold (1989) 211 Cal.App.3d 17, 26.) Whether a matter is "embraced" in or "affected" by a judgment within the meaning of section 916 depends upon whether postjudgment trial court proceedings on the particular matter would have any impact on the "effectiveness" of the appeal. If so, the proceedings are stayed; if not, the proceedings are permitted. (In re Marriage of Horowitz, supra, 159 Cal.App.3d at p. 381.)

The court finds Defendant RUSHING is not a party to the appeal, is of advanced age, and the incident in question occurred over five (5) years ago. Proceeding with this case as to Defendant RUSHING does not impact the effectiveness of Plaintiff's appeal against Defendant CSAA.

The court declines to award sanctions pursuant to CCP § 2023.030.

The court shall sign the proposed Order consistent with this ruling.

Unless a hearing is requested, this ruling is effective immediately. Neither further notice of the ruling nor a formal order per CRC 3.1312 is required.

19-CVC-11388 JACKSON VIEW OWNERS ASSOCIATION VS. JACKSON VIEW LLC A CALIFORNIA
LIMITED LIABILITY CO

DEMURRER - DEFENDANT'S

TENTATIVE RULING:

Defendants request the court take judicial notice of the following recorded documents pursuant to Evidence Code Sections 452 and 453:

1. Construction Deed of Trust, dated December 28, 2005, and recorded January 6, 2006, with the Amador County Recorder as Document No. 2006-0000155-00. (Defendant's RJN Exh. A.)
2. Declaration of Covenants, Conditions and Restrictions of Jackson View, recorded December 19, 2006 with the Amador County Recorder as Document No. 2006-0014765-00. (Defendant's RJN Exh. B.)
3. Deed of Trust, recorded June 29, 2007, with the Amador County Recorder as Document No. 2007-0007342-00. (Defendant's RJN Exh. C.)
4. Modification of Deed of Trust, recorded December 31, 2007, with the Amador County Recorder as Document No. 2007-0013669-00. (Defendant's RJN Exh. D.)
5. California Department of Real Estate Final Subdivision Public Report for Jackson View issued March 23, 2007 and amended June 26, 2007. (Defendant's RJN Exh. E.)

6. Trustee's Deed Upon Sale, recorded July 20, 2009, with the Amador County Recorder as Document No. 2009-0005982-00. (Defendant's RJN Ex. F.)
7. Trustee's Deed Upon Sale, recorded July 20, 2009, with the Amador County Recorder as Document No. 2009-0005983-00. (Defendant's RJN Ex. G.)
8. City of Jackson Permit Inspection detail, dated August 11, 2010. (Defendant's RJN Ex. H.)
9. Grant Deed, recorded December 22, 2010, with the Amador County Recorder as Document NO. 2010-0010271-00. (Defendant's RJN Ex. I.)
10. Grant Deed, recorded February 11, 2011, with the Amador County Recorder as Document NO. 2011-0001336-00. (Defendant's RJN Ex. J.)
11. Jackson View Recreational Facility Use and Maintenance Agreement, recorded August 17, 2012, with the Amador County Recorder as Document No. 2012-0007304-00. (Defendant's RJN Ex. K.)

There are no objections. Defendant's requests for judicial notice are GRANTED.

In opposition to the demurrer, Plaintiff requests the court takes judicial notice of the following recorded documents pursuant to Evidence Code Sections 452 and 453:

1. Notice of Completion, recorded May 26, 2011, Document No. 2011-004207-00. (Plaintiff's RJN Ex. A.)
2. Declaration of Annexation (Phase 2), recorded May 10, 2017, Document No. 2017-003456-00. (Plaintiff's RJN Ex. B.)
3. First Amendment to Declaration of Annexation (Phase 2), recorded July 7, 2017, Document No. 2017-005099. (Plaintiff's RJN Ex. C.)
4. Second Amendment to Declaration of Annexation (Phase 2), September 14, 2012, Document NO. 2017-0007128-00. (Plaintiff's RJN Ex. D.)
5. First Amendment to the Declaration of Covenants for Reciprocal Access Over and maintenance of a Private Common Driveway Easement and Storm Drainage Improvements Within Final Map of Jackson View, Jackson Senior Development Subdivision No. 106, [etc.], Document No. 2017-0007949-00, Recorded July 31, 2019. (Plaintiff's RJN Ex. E.)
6. Declaration of Annexation for Jackson View (Phase 3), Recorded July 31, 2019, Document No. 2017-0007949-00, Recorded July 31, 2019. (Plaintiff's RJN Ex. F.)
7. Notice of Prolitigation Procedures, Recorded May 10, 2017, Document No. 2017-0003466-00. (Plaintiff's RJN Ex. G.)
8. September 18, 2012, Final Subdivision Public Report Planned Development, issued by the California Department of Real Estate. (Plaintiff's RJN Ex. H.)
9. July 21, 2017 Final Subdivision Public Report Planned Development, issued by the California Department of Real Estate, as amended on September. (Plaintiff's RJN Ex. I.)
10. Jackson View Recreational Facility Use and Maintenance Agreement, Recorded August 17, 2012, Document No. 2012-0007304. (Plaintiff's RJN Ex. J.)

There are no objections. Plaintiff's requests for judicial notice are GRANTED.

DEMURRER

Defendants specially and generally demur to Plaintiff's Second Amended Complaint pursuant to CCP 430.10(e) and (f) on the following grounds:

1. Plaintiff's First Cause of Action for Breach of Governing Documents fails to state a cause of action because, among other things, it fails to sufficiently plead the applicable law and the applicable law's elements;
2. Plaintiff's Third Cause of Action for Negligence fails to state a cause of action because, among other things, it fails to sufficiently plead the applicable law and the applicable law's elements;
3. Plaintiff's Fourth Cause of Action for Negligent Misrepresentation fails to state a cause of action because, among other things, it fails to sufficiently plead the applicable law and the applicable law's elements;
4. Plaintiff's Fifth Cause of Action for Breach of Implied Warranty fails to state a cause of action because, among other things, it fails to sufficiently plead the applicable law and the applicable law's elements;
5. Plaintiff's Sixth Cause of Action for Strict Liability fails to state a cause of action because, among other things, it fails to sufficiently plead the applicable law and the applicable law's elements;
6. Plaintiff's Seventh Cause of Action for Breach of Fiduciary Duty fails to state a cause of action because, among other things, it fails to sufficiently plead the applicable law and the applicable law's elements; and
7. Plaintiff's Tenth Cause of Action for Violation of Building Standards for Original Construction fails to state a cause of action because, among other things, it fails to sufficiently plead the applicable law and the applicable law's elements.

A demurrer challenges the sufficiency of a complaint based on defects that appear on its face or from matters that are subject to judicial notice. (Blank v. Kirwan (1985) 39 Cal.3d 311, 318; CCP §430.10.) To survive a demurrer, a complaint must plead specific facts to establish every element of a cause of action. (Cantu v. Resolution Trust Corp. (1992) 4 Cal.App.4th 857, 879.) A court should treat a demurrer as admitting all material facts that are properly pled, but need not accept conclusions, contentions or deductions of law or fact. (Blank, 39 Cal.3d at 318.) A court may consider judicially noticeable facts in ruling on a demurrer. (CCP §430.30(a); Stormedia Inc., v. Superior Court (1999) 20 Cal.4th 449, 457 n.9.)

Plaintiff is required to plead factual allegations addressing the elements of each cause of action. Although pleadings are to be liberally construed, they must nonetheless set forth essential facts with reasonable precision. (Semole v. Sansoucie (1972) 28 Cal.App.3d 714.) Further, a court in examining the sufficiency of a complaint should "treat the demurrer as admitting all material facts properly pleaded, but not contentions, deductions or conclusions of law or fact." (Blank v. Kirwan (1985) 39 Cal.3d 311, 318.)

First Cause of Action for Breach of Governing Documents:

Plaintiff's SAC alleges Defendant breached the CCRs, Article IV, Paragraph 4.16, nuisance clause by "among other things, failing to comply with Calderon and the Right to Repair Act, and failing to adequately construct, maintain, repair, replace and adequately reserve for the Phase 2 – Streets, Curbs, and Gutters, Lot A, and their respective components and improvements." (SAC p.15, lines 4-7.)

Civil Code § 5975 provides:

(a) The covenants and restrictions in the declaration shall be enforceable equitable servitudes, unless unreasonable, and shall inure to the benefit of and bind all owners of separate interests in the development. Unless the declaration states otherwise, these servitudes may be enforced by any owner of a separate interest or by the association, or by both.

(b) A governing document other than the declaration may be enforced by the association against an owner of a separate interest or by an owner of a separate interest against the association.

JVP claims they are not a "Declarant" in the CCR's because they were not expressly deeded those rights. Plaintiff disputes the argument that JVP is not a successor "Declarant" under the CCR's and the cause of action sets forth facts regarding actions and inactions by JVP regarding Phase 2, which JVP performed.

Plaintiff's SAC sets forth sufficient facts to support a cause of action of Breach of Governing Documents.

Defendant's demurrer to the First Cause of Action for Breach of Governing Documents is **OVERRULED**.

Third Cause of Action for Negligence:

Plaintiff's SAC alleges JVP owed a duty to Plaintiff "as a result of its representations in various Subdivision Final Reports and applications for the same and arising from the Improvement Agreement". (SAC ¶ 69.) Further, the SAC sets forth that JVP, as a developer, (1) failed to properly inspect, repair, and maintain Lot A and the Phase 2 – Streets, Curbs, and Gutters; (2) negligently advised ASSOCIATION that all Projects Defects had been repaired; (3) performed inspection and repairs using methods and materials which were below applicable industry standards; (4) negligently inspected and/or negligently failed to reserve and budget for maintenance, repair and replacement of Lot A and the Phase 2 – Streets, Curbs, and Gutters; and (5) negligently represented they had adequately be reserved for and/or budgeted reserves for Lot A and the Phase 2 – Streets, Curbs, and Gutters. (SAC ¶ 71.)

JVP argues that it did not owe a duty to Plaintiff to budget and maintain reserves and that under *McMillin Albany LLC v. Superior Court* (2018) 4 Cal.5th 241, Plaintiff cannot maintain both a negligence or strict liability claims because California's Right to Repair Law preempted those common law claims.

Plaintiff's SAC sets forth sufficient facts to support a cause of action of negligence.

Defendant's demurrer to the Third Cause of Action for Negligence is **OVERRULED**.

Fourth Cause of Action for Negligent Misrepresentation:

A cause of action for negligent misrepresentation requires that Plaintiff allege the Defendant 1) made representations of material fact, 2) that the representations were false, 3) Defendant knew or had no reasonable grounds for believing the facts to be true, 4) Plaintiff's reliance, and 5) resulting damage. (*Lazar v. Superior Court* (1996) 12 Cal.4th 631, 638.)

The SAC alleges that prior to selling and transferring property to Association members, and transfer of Lot A and Phase 2 Streets to the Association, Defendant performed inspections and received records containing information about Lot A and Phase 2 and withheld that information from Plaintiff. Plaintiff then relied on that information and purchased separate interests and accepted the transfer of Lot A and the Phase 2 – Streets, Curbs, and Gutter and the duties and obligations under the Governing Documents, and suffered financial consequences in an amount to be determined at trial (SAC ¶¶ 79-93.)

Defendant argues that the SAC does not rise to the level of heightened pleading required for negligent misrepresentation, which must be pleaded with the same particularity as a case of action for fraud. (*Continental Airlines v. McDonnell Douglas Corp.* (1989) 216 Cal.App.3d 388, 403.)

The fourth cause of action fails to state with peculiarity the elements of negligent misrepresentation.

Defendant's demurrer to the Fourth Cause of Action for Negligent Misrepresentation is **SUSTAINED WITH LEAVE TO AMEND**.

Fifth Cause of Action for Breach of Implied Warranty:

Plaintiff alleges that the Defendant impliedly warranted that Lot A and the Phase 2 –Streets, Curbs, and Gutters transferred to the Association would be (a) free from defects, (b) fit for ordinary community purposes, (c) capable of being operated through a normal maintenance and reserve program as contemplated by the Governing Documents. (SAC ¶ 95.)

Defendant argues that as a subsequent purchaser of the property, no implied warranty applies.

Plaintiff's SAC sets forth sufficient facts to support a cause of action for Breach of Implied Warranty

Defendant's demurrer to the Fifth Cause of Action for Breach of Implied Warranty is **OVERRULED**.

Sixth Cause of Action for Strict Liability:

Plaintiff's SAC alleges Defendants are strictly liable for reserve shortfalls and defects including defects to Lot A and the Phase 2 – Streets, Curbs and Gutters and that Defendants knew or should have known about such shortfalls and defects and disclosed them to Plaintiff.

Defendant argues that it cannot be held strictly liable for portions of the development it did not build and that Plaintiff cannot have a common law claim for strict liability separate and apart from the requirements of the right to Repair Act if the Act applies. Defendant further argues that the Right to Repair Act does not apply.

Plaintiff alleges Defendant engaged in planning, development, design, construction and/or reconstruction of the unsold portions of the Project including Lot A and Phase 2 Streets and executed and recorded a Notice of Completion for Lot A and entered into an Amended and Restated Subdivision Improvement Agreement with the City of Jackson and that these actions, among others, satisfy Defendant as a "builder" under Civil Code § 911, Right to Repair Law. (SAC ¶¶ 29, 32, 43.)

Plaintiff's SAC sets forth sufficient facts to support a cause of action for Strict Liability.

Defendant's demurrer to the Sixth Cause of Action for Strict Liability is **OVERRULED**.

Seventh Cause of Action for Breach of Fiduciary Duty:

