

**PLACER COUNTY SUPERIOR COURT
CIVIL LAW AND MOTION TENTATIVE RULINGS
FRIDAY, OCTOBER 9, 2020, AT 8:30 A.M.**

These are the tentative rulings for civil law and motion matters set at **8:30 a.m., Friday, October 9, 2020**. The tentative ruling will be the court's final ruling unless notice of appearance and request for oral argument are given to all parties and the court by **4:00 p.m., Thursday, October 8, 2020**. Notice of request for oral argument to the court must be made by calling (916) 408-6481. Requests for oral argument made by any other method will not be accepted. Prevailing parties are required to submit orders after hearing to the court within 10 court days of the scheduled hearing date, and after approval as to form by opposing counsel. Court reporters are not provided by the court. Parties may provide a court reporter at their own expense.

Except as otherwise noted, these tentative rulings are issued by the **HONORABLE MICHAEL W. JONES** and if oral argument is requested, it will be heard Friday, October 9, 2020, at 8:30 a.m. in Department 3, located at 101 Maple Street, Auburn California.

PLEASE NOTE: TELEPHONIC APPEARANCE IS STRONGLY ENCOURAGED FOR ALL CIVIL LAW AND MOTION MATTERS. (Emergency Local Rule 10.28; see also Local Rule 20.8.) More information is available at the court's website: www.placer.courts.ca.gov.

1. M-CV-0067944 Story Rentals, Inc. vs. Knowlton, George C. III

This tentative ruling is issued by the Honorable Alan V. Pineschi. If oral argument is requested, it shall be heard on Friday October 9, 2020, at 11:00 a.m. in Department 33.

Motion for Leave to Amend Cross-Complaint

Defendant and cross-complainant George Knowlton's motion for leave to amend cross-complaint is granted. The second amended cross-complaint shall be filed on or before October 23, 2020.

Motion to Continue Trial

Defendant and cross-complainant George Knowlton's motion to continue the trial is granted. **The civil trial conference scheduled October 9, 2020, is continued to January 15, 2021, at 8:30 a.m. in Department 42. The current trial date of October 19, 2020, is continued to January 25, 2021, at 8:30 a.m.**

2. S-CV-0034273 Griggs, William, et al vs. Centex Homes, et al

As a preliminary matter, the court notes that plaintiffs' motion includes an incorrect tentative ruling advisement.

Plaintiffs' motion to enter case management order is granted as set forth below.

Case Management Order No. 1 shall be modified to include special interrogatory Nos. 1 and 2, as requested by cross-defendant Timberlake Cabinetry, with plaintiffs' responses due within 30 days of entry of the order. The request to add additional discovery requests related to *Crawford* claims by Larry Methvin Installations Inc. is denied as premature at this time.

Plaintiffs shall submit an amended proposed Case Management Order No. 1 which reflects the identified modifications.

3. S-CV-0039929 Jarvis, Todd Henry vs. Calder, Robin Elizabeth

The motion to quash trial subpoenas is continued to October 16, 2020, at 8:30 a.m. in Department 3.

4. S-CV-0040173 Campus Oaks Apartments 1, LLC vs. Dahlin Group, Inc., et al

Plaintiff Campus Oaks Apartments, 1, LLC ("COA") and cross-defendants Scott I. Canel, individually and as trustee of the Scott I Canel 2011 Family Trust ("Canel") request that the court enter judgment on Canel's affirmative defense of unclean hands, and on COA's cause of action for declaratory relief. The court finds that moving parties' request does not violate Code of Civil Procedure section 1008, and that the arguments have not been waived. Accordingly, the court proceeds on the merits.

Unclean Hands

The jury determined that Canel is liable to BBC under the terms of the Guaranty, in the amount of \$2,116,000. Canel contends that BBC is barred from recovery under the Guaranty based on the doctrine of unclean hands.

Under the unclean hands doctrine, the plaintiff must "act fairly in the matter for which he seeks a remedy. He must come into court with clean hands, and keep them clean, or he will be denied relief, regardless of the merits of his claim." *Kendall-Jackson Winery, Ltd. v. Superior Court* (1999) 76 Cal.App.4th 970, 978 (*Kendall-Jackson*). "Any conduct that violates conscience, or good faith, or other equitable standards of conduct is sufficient cause to invoke the doctrine." *Id.* at 979. Unclean hands is designed "to prevent a finding of merit in situations where one of the parties planned and executed fraud or inequitable devices to obtain an improper advantage over the other side". *Delfino v. Delfino* (1969) 272 Cal.App.2d 556, 562-563. "Whether the particular misconduct is a bar to the alleged claim for relief depends on (1) analogous case law, (2)

the nature of the misconduct, and (3) the relationship of the misconduct to the claimed injuries. *Kendall-Jackson, supra*, 76 Cal.App.4th at 979 (cit. omit.) “The decision of whether to apply the defense based on the facts is a matter within the trial court’s discretion.” *Dickson, Carlson & Campillo v. Pole* (2000) 83 Cal.App.4th 436, 447.

Canel argues that the doctrine of unclean hands applies here in light of the jury’s determination that BBC breached the Agreement of Purchase and Sale (“the Agreement”). Canel asserts that any material breach of contract constitutes inequitable conduct which gives rise to the doctrine of unclean hands. Such a conclusion is not in accord with the requirement that the court examine the nature of the misconduct in order to determine if relief is barred. It has been held that a willful and deliberate breach of contract is “tantamount to a finding of bad faith within the meaning of the doctrine of clean hands.” *DeGarmo v. Goldman* (1942) 19 Cal.2d 755, 764. While a showing of willfulness may not necessarily be a requirement, it is a factor that is consistently present in cases examining the issue, including in the cases cited by the moving parties. *See Kendall-Jackson, supra* (plaintiff’s employment of unfair marketing strategies in violation of the Alcoholic Beverage Control Act in order to gain a competitive advantage in the industry could support an unclean hands defense); *Pond v. Ins. Co. of N. Am.* (1984) 151 Cal.App.3d 284 (plaintiff’s malicious prosecution claim barred where evidence showed plaintiff knowingly failed to disclose critical evidence in the prior action); *Saks v. Int’l Longshore & Warehouse Union Pac. Maritime Ass’n Benefit Plans* (9th Cir. 2015) 637 F.App’x 282 (surgeon engaged in misconduct by failing to report criminal convictions and suspensions of his medical license); *Fladeboe v. American Isuzu Motors Inc.* (2007) 150 Cal.App.4th 42 (plaintiff knowingly violated the law and withheld information). On the other hand, in *A.I. Gage Plumbing Supply Co. v. Local 300 of Int’l Hod Carriers* (1962) 202 Cal.App.2d 197, the appellate court affirmed a trial court’s determination that plaintiff’s claim was not barred where defendant argued that plaintiff had induced breach of contract because plaintiff acted in good faith. Thus the court concludes that it must examine the nature of the claimed breaches in order to determine whether these particular actions give rise to the doctrine of unclean hands.

In this case, the jury found that BBC breached the Agreement with COA. Although several breaches were alleged, the jury was not asked to identify what specific conduct constitutes a breach of the Agreement. Moving parties argue that BBC breached the Agreement because the roads were not construction-ready by August 1, 2016, and they were not “substantially complete” by December. Moving parties also argue that BBC breached its agreement to “reasonably cooperate with” and “not materially impede” COA’s construction activities. Assuming that the jury determined that the foregoing actions constituted breaches of the Agreement, it is important to note that the jury also determined that COA was not harmed by such actions.

To invoke the doctrine of unclean hands, a plaintiff’s “misconduct must be so intimately connected to the injury of another with the matter for which he seeks relief, as to make it inequitable to accord him such relief. It must have been conduct which, if permitted, inequitably affects the relationship between the plaintiff and the defendant...” *Moriarty v. Carlson* (1960) 184 Cal.App.2d 51, 56. Further, a party seeking to invoke the unclean

hands doctrine must also show that its rights were prejudiced in some way by the misconduct. See *Bartley v. Karas* (1983) 150 Cal.App.3d 336, 341-342 (disapproved on other grounds in *Petersen v. Hartell* (1985) 40 Cal.3d 102). Here, Canel argues that he was harmed because the Guaranty obligates him to pay the remaining purchase price under the Agreement, and because BBC failed to fulfill its promises to complete the roads on time and cooperate in construction activities.

As noted, the jury has determined that COA was not harmed by BBC's breach of the Agreement, and was not entitled to damages on its claim. The purported harm suffered by Canel arises from a determination after trial that Canel must comply with his contractual obligations under the Guaranty to pay the remaining purchase price owed under the Agreement. This obligation was triggered by COA's refusal to pay the remaining purchase price, and the jury's determination that although COA had breached the Agreement, BBC was not harmed by that breach.

The evidence submitted at trial supports the conclusion that the claimed breaches did not constitute willful, unconscionable or inequitable misconduct utilized to obtain an improper advantage in the parties' transaction. Considering the nature of the alleged breaches of the Agreement, the connection between those breaches and the separate and independent obligations owed by Canel under the Guaranty, and the harm claimed by Canel as a result, the court finds that the breaches asserted by moving parties do not support a determination of unclean hands.

Canel alternatively argues that unclean hands bars BBC's recovery based on BBC's failure to act in good faith in connection with the Guaranty. Canel asserts that BBC induced Canel to execute the Guaranty through willful misrepresentations regarding BBC's ability or willingness to perform its obligations under the Agreement. "[T]he creditor must not misrepresent or conceal facts so as to induce or permit the surety to enter or continue in the relationship in reliance on a false impression as to the nature of the risk." *Sumitomo Bank of Cal. v. Iwasaki* (1968) 70 Cal.2d 81, 85.

Moving parties claim that none of the facts relevant to its request are contested. This assertion far from accurate. The court has previously noted that substantial evidence was presented regarding other factors which may have prevented COA from starting construction in late 2016, including COA's own actions, and the actions of third parties. The court also noted evidence of other factors, unrelated to BBC's actions, which may have resulted in continued delays after construction began. (June 19, 2020, Ruling on Submitted Matter at p. 3.) Evidence submitted at trial supports the conclusion that BBC did not willfully misrepresent facts so as to give a false impression of the nature of the risk. The risk at issue for the purpose of the Guaranty was the risk that COA would not fulfill its obligation to pay the remaining purchase price under the Agreement, a risk that Canel controlled. Further, Canel expressly agreed that he was not signing the Guaranty in reliance on any promise, condition, or the anticipation of the occurrence of any event. With respect to BBC's purported misrepresentations in connection with the Guaranty, the court finds that unclean hands has not been established.

Declaratory Relief

Moving parties request that the court enter judgment in COA's favor with respect to its claim for declaratory relief against BBC. Specifically, COA asks the court to declare that BBC is entitled to nothing with respect to its contract claim against COA. The court may refuse to grant declaratory relief where the declaration "is not necessary or proper at the time under all the circumstances." Code Civ. Proc. § 1061. Here, there is no reason to grant declaratory relief because the jury has already determined that BBC is entitled to nothing with respect to its contract claim against COA.

Moving parties also request that the court enter a declaratory judgment finding that BBC is entitled to nothing on its claims against Canel because COA has been found to have no remaining obligation under the Agreement. According to moving parties, BBC's breach of the Agreement, and the jury's determination that BBC suffered no harm from COA's breach of the Agreement, mean that Canel's obligation under the Guaranty was extinguished. The court has previously considered, and rejected, Canel's argument that his payment obligations were extinguished because "the liability of the surety is commensurate with that of the principal", finding that the Guaranty imposed a separate obligation on Canel which was independent of COA's obligation under the Agreement. The court sees no reason to reconsider that ruling with respect to BBC's breach of the Agreement.

Conclusion

COA and Canel's request to enter judgment is denied.

5. S-CV-0041159 Dragas Brewing Industries, Inc. vs. Souliyonh, Anu, et al

The scheduled hearing is dropped as no moving papers were filed with the court.

6. S-CV-0041357 CSAA Ins. Exchange vs. Leviton Manufacturing Co., Inc., et al

The motion for summary judgment is continued to October 16, 2020, at 8:30 a.m. in Department 3. The court finds good cause to permit the motion to be heard within 30 days of the scheduled trial date.

7. S-CV-0041538 Beaman, Michael, et al vs. City of Rocklin

This tentative ruling is issued by the Honorable Todd D. Irby. If oral argument is requested, it shall be heard at 8:30 a.m. in Department 30:

Defendant City of Rocklin's Demurrer to the Second Amended Complaint (SAC)

Ruling on Request for Judicial Notice

The City's request for judicial notice is granted under Evidence Code section 452.

Ruling on Demurrer

The demurrer is overruled. A party may demur to a complaint where the pleading does not state facts sufficient to constitute a cause of action. (Code of Civil Procedure section 430.10(e).) A demurrer tests the legal sufficiency of the pleadings, not the truth of the plaintiff's allegations or accuracy of the described conduct. (*Bader v. Anderson* (2009) 179 Cal.App.4th 775, 787.) The allegations in the pleadings are deemed to be true no matter how improbable the allegations may seem. (*Del E. Webb Corp. v. Structural Materials Co.* (1981) 123 Cal.App.3d 593, 604.) The allegations within the SAC, when read as a whole, are sufficient to allege each of the three causes of action.

The City shall file and serve its answer or general denial by October 30, 2020.

A case management conference is set for Tuesday, December 8, 2020 at 10:30 a.m. in Department 40.

8. S-CV-0042013 Morales, Allison vs. Van Duker, Cynthia

The motion to be relieved as counsel for plaintiff Allison Morales is denied without prejudice. Counsel's motion was not made on the mandatory Judicial Council forms as required by California Rules of Court, rule 3.1362.

9. S-CV-0042451 Penna, Cynthia Della vs. Peters, David

Paul Freese dba Paul Freese Construction's motion for good faith determination of settlement is granted. Based on the standards set forth in *Tech-Bilt v. Woodward Clyde & Associates* (1985) 38 Cal.3d 488, the settlement at issue is within the reasonable range of the settling party's proportionate share of liability for plaintiffs' injuries, and therefore is in good faith within the meaning of Code of Civil Procedure section 877.6.

10. S-CV-0043290 Duke, Susan vs. Hall, Gary H., et al

The motion to be relieved as counsel for plaintiff by Christopher Fry, Esq., Justin McManus, Esq. and the Fry Law Corporation, is granted effective upon the filing of proof of service of the signed order after hearing on plaintiff Susan Duke. Counsel is directed to lodge an amended proposed order which accurately reflects the next scheduled hearing date of November 3, 2020, at 11:30 a.m. in Department 40, for an order to show cause re arbitration.

11. S-CV-0043291 Cederholm, Chloey, et al vs. City of Roseville, et al

The petition to approve compromise of pending action of minor is granted as prayed. If oral argument is requested, appearance of the minor is excused.

12. S-CV-0043579 Cal. State Grange vs. Mt. Vernon Guild

The motions to compel are continued to October 30, 2020, at 8:30 a.m. in Department 3.

13. S-CV-0043593 Anthes, George vs. Carroll, Michael et al

Defendants' objections, set forth in the reply to separate statement, are overruled. The court notes that the objections do not comply with California Rules of Court, rule 3.1345(b).

Defendants Michael and Jamie Carroll move for summary judgment.

The party seeking summary judgment bears the burden of showing there is no triable issue of material fact and that the party is entitled to judgment as a matter of law. *Aguilar v. Atlantic Richfield Co.* (2001) 25 Cal.4th 826, 850. If the moving party carries its initial burden of production to make a prima facie showing that there are no triable issues of material fact, the burden shifts to the opposing party to make a prima facie showing of the existence of a triable issue of material fact. *Aguilar v. Atlantic Richfield Co.*, *supra*, 25 Cal.4th at 850.

Plaintiff is an unlicensed contractor who was injured while working on a job at defendants' home. Plaintiff performed less than 52 hours of work prior to being injured, meaning that workers' compensation exclusivity rules do not apply. Lab. Code § 3352(a)(8)(A). However, defendants may still be liable under ordinary negligence principles. *Zaragoza v. Ibarra* (2009) 174 Cal.App.4th 1012, 1022.

Plaintiff was hired for interior construction work which involved closing off a second floor loft and converting it to a bedroom. (SSUMF 1.) Plaintiff informed defendants that scaffolding would be required for some of the work, and defendants agreed to pay for it. (SSUMF 11.) To perform some of the work, plaintiff created a platform to stand by placement of a wooden plank which rested on top of a 10-foot A-frame ladder on one side, and on top of a crate sitting on an alcove on the other side. (SSUMF 7.) Defendants did not instruct plaintiff to set up the ladder and plank platform, and did not provide the ladder or tools for the work. (SSUMF 16.) Because he needed to instruct defendants on the size of scaffolding required to complete the job, plaintiff went back onto the wooden plank to measure the height of the ceiling. (SSUMF 13.) After performing the measurements, plaintiff lost his balance and fell, seriously injuring his ankle. (SSUMF 14.)

Defendants did not direct plaintiff to set up or use the ladder and plank platform, did not assist in the set up, and did not direct plaintiff to measure the height of the ceiling. Defendants agreed to provide scaffolding as requested by plaintiff, and apparently were awaiting further instruction from plaintiff in that regard. Defendants did not furnish any equipment to plaintiff, and plaintiff does not assert that the ladder was defective. Under these facts, defendants have satisfied their burden as the moving parties, and the burden shifts to plaintiff to establish a triable issue of fact.

In opposition, plaintiff notes that he had requested scaffolding from the outset of the project, and that defendants initially told him that other workers would be bringing scaffolding which he could use, which turned out to be untrue. (SSUMF 11.) Plaintiff asserts that he likely would not have fallen if scaffolding had been available at the outset of the project.

Plaintiff fails to establish a triable issue of fact. Plaintiff admitted at his deposition that although he “asked for scaffolding from day one”, he believed he could get part of the job done without it, and did so. (Deposition of George Anthes, 43:3-8.) Once plaintiff reached the point where he could not continue, and after learning that painters also working at the property would not be providing scaffolding as previously thought, defendants agreed to rent the scaffolding. (Id., 43:19-46:4.) Plaintiff decided to measure the height of the ceiling by climbing back onto the ladder and plank platform, without the knowledge or direction of defendants, and outside of defendants’ presence. (Id., 47:16-48:15.) Plaintiff was the only person involved in setting up the ladder and plank, and in deciding to utilize it to measure the ceiling. The evidence submitted does not support a finding that defendants breached their duty of care to plaintiff.

Based on the foregoing, defendants’ motion for summary judgment is granted.

14. S-CV-0044271 Foster, Teresa vs. Sutter Auburn Faith Hospital Foundation

The motion to be relieved as counsel for plaintiff is continued to October 30, 2020, at 8:30 a.m. in Department 3.

There is no proof of service in the court’s file demonstrating proper and timely service of the motion on plaintiff. Counsel shall file proof of service of the motion no later than five court days prior to the continued hearing date. Counsel shall also lodge an amended proposed order as the proposed order lodged with the court omits required information such as the client’s current address and phone number, and the next scheduled hearing date in the action.

15. S-CV-0044313 Tebbs, Michael vs. Sunbelt Rentals, Inc.

The motion to compel is continued to October 30, 2020, at 8:30 a.m. in Department 3.

16. S-CV-0044635 Helena Agri-Enterprises, LLC vs. Singh, Sumanpreet, et al

The application for right to attach order and writ of attachment was continued by stipulation of the parties to October 16, 2020, at 8:30 a.m. in Department 3.

17. S-CV-0044957 Auguscik, Robert D., et al vs. Costco Wholesale Corporation

Defendant Costco Wholesale Corporation (“Costco”) demurs to plaintiffs’ complaint for specific performance and breach of contract.

A party may demur to a complaint where the pleading does not state facts sufficient to constitute a cause of action. Code Civ. Proc. § 430.10(e). A demurrer tests the legal sufficiency of the pleadings, not the truth of the plaintiff’s allegations or the accuracy of the described conduct. *Bader v. Anderson* (2009) 179 Cal.App.4th 775, 787. The court assumes the truth of all facts properly pleaded, and accepts as true all facts that may be implied or reasonably inferred from facts expressly alleged, unless they are contradicted by judicially noticed facts. *Evans v. City of Berkeley* (2006) 38 Cal.4th 1, 6. The court does not assume the truth of contentions, deductions, or conclusions of facts or law. *Id.*

Plaintiffs allege that they entered into a lot line adjustment agreement with Costco on or about May 31, 2019 (“the Agreement”) by which Costco would process a lot line adjustment with respect to the boundary between the parties’ properties. Plaintiffs allege that Costco breached the Agreement when it “submitted a [lot line adjustment] Application that is linked to the Town’s review and consideration of the proposed Costco project.” (Complaint, ¶¶ 26, 34.) Plaintiffs allege that they were damaged due to significant delays in processing the application which would not have occurred had the Application been submitted independently from the proposed development project.

The allegations of the complaint do not sufficiently establish a breach of the Agreement. The Agreement contains no terms which prohibit Costco from submitting the lot line adjustment application in conjunction with the proposed development project. Language in the Agreement noting Costco’s request “to finalize the resolution, if and promptly after Costco acquires the Ryan Property” cannot be interpreted as establishing a contractual obligation requiring Costco to submit a stand-alone application. Nor do the contract terms suggest an ambiguity which should be interpreted against the drafter.

Costco’s demurrer to the complaint is sustained with leave to amend. Any amended complaint shall be filed and served on or before October 31, 2020.

18. S-CV-0044965 Vicara Homeowners Association vs. Chiurlia, Christal

Defendant’s request for judicial notice is granted.

Defendant demurs to plaintiff’s complaint. A party may demur to a complaint where the pleading does not state facts sufficient to constitute a cause of action. Code Civ. Proc. § 430.10(e). A demurrer tests the legal sufficiency of the pleadings, not the truth of the plaintiff’s allegations or the accuracy of the described conduct. *Bader v. Anderson* (2009) 179 Cal.App.4th 775, 787. The court assumes the truth of all facts properly pleaded, and accepts as true all facts that may be implied or reasonably inferred from facts expressly alleged, unless they are contradicted by judicially noticed facts. *Evans v.*

City of Berkeley (2006) 38 Cal.4th 1, 6. The court does not assume the truth of contentions, deductions, or conclusions of facts or law. *Id.*

The complaint alleges that defendant has been or intends to violate the “Rental Restriction Rule”, an operating rule adopted by plaintiff Vicara Homeowners Association in 2011. Defendant asserts that the Rental Restriction Rule is invalid, as it conflicts with the applicable Declaration of Covenants, Conditions and Restrictions (“the Declaration”). The court cannot determine that the Rental Restriction Rule is invalid as a matter of law for the purpose of ruling on this demurrer, as such a determination is subject to defenses that may be raised by plaintiff which are outside of the four corners of the complaint. The court notes that the cases cited by defendant in support of a finding of invalidity do not involve rulings on demurrers, but rather motions for preliminary injunction or judgments after trial. *See MaJor v. Mira Verde Homeowners Ass’n* (1992) 7 Cal.App.4th 618 (preliminary injunction); *Ekstrom v. Marquesa at Monarch Beach Homeowners Ass’n* (2008) 168 Cal.App.4th 1111 (judgment); *Bear Creek Planning Committee v. Ferwerda* (2011) 193 Cal.App.4th 1178 (judgment); *Ticor Title v. Rancho Santa Fe Ass’n* (1986) 177 Cal.App.3d 726 (judgment).

The court finds that the complaint adequately alleges claims for breach of contract, injunctive relief and declaratory relief. Defendant’s demurrer is overruled.

Defendant shall file and serve its answer to the complaint on or before October 23, 2020.

19. S-CV-0045007 Harris, Kevin vs. McKesson Medical-Surgical, Inc.

The demurrer to complaint is continued to October 30, 2020, at 8:30 a.m. in Department 3.

20. S-CV-0045023 Thesman, William vs. Winco Holdings, Inc.

Plaintiff’s motion for trial setting preference is granted. The court finds that plaintiff is over 70 years of age, has a substantial interest in the action as a whole, and that plaintiff’s health is such that preference is necessary to prevent prejudicing his interest in the litigation. Code Civ. Proc. § 36(a).

Appearance is required on October 9, 2020, at 8:30 a.m. in Department 3 for trial setting.

21. S-CV-0045091 Shane Douglas DDS, PC, et al vs. Firegang, Inc.

The demurrer to complaint was dropped by the moving party.