

**Judge Mosbarger – Law & Motion – Wednesday, November 6, 2024 @ 9:00 AM
TENTATIVE RULINGS**

1. 21CV02330 DECKER, MICHAEL P ET AL V. SIERRA PACIFIC LAND AND TIMBER

EVENT: Motion for Terminating, Evidentiary, and Monetary Sanctions Against Plaintiff and Cross-Defendant Michael P. Decker

Plaintiffs' Request for Judicial Notice is granted. The Motion for Terminating, Evidentiary, and Monetary Sanctions Against Plaintiff and Cross-Defendant Michael P. Decker is denied, the Court finding that Defendants have failed to establish that Plaintiffs or their counsel have participated in actions or tactics, made in bad faith, that are frivolous or solely intended to cause unnecessary delay, to justify an award of sanctions pursuant to CCP §128.5(a). Counsel for the Plaintiffs shall submit a form of order consistent with this ruling within two weeks.

2. 22CV00073 DUBUG NO 7, INC, A CALIFORNIA CORPORATION V. SODERLING, JAY ET AL

EVENT: Defendant and Cross-Complainant Laurie M. Hansen's Motion for Summary Judgment; or in the Alternative, Motion for Summary Adjudication

Request for Judicial Notice

Defendant/Cross-Complainant Laurie M. Hansen's ("Hansen" herein) Request for Judicial Notice is granted, and Defendant/Cross-Defendant Aurora Ridge Homes, Inc.'s ("ARH" herein) Request for Judicial Notice is granted.

Evidentiary Objections

Plaintiff Dubug No. 7, Inc.'s ("Plaintiff" herein) Objections to Evidence set forth in the document entitled "Plaintiff's Response and Supporting Evidence in Opposition to Defendant's Statement of Purported Undisputed Facts" are overruled as they are not in the format required by California Rules of Court Rule 3.1354(b). Hansen's Objections to Plaintiff's Evidence are sustained as to No. 11 (relevance) and overruled as to Nos. 1-10. Hansen's Objections to ARH's Evidence are sustained in part as to No. 2 (improper opinion as to the legal effect of the assignment agreement/joint venture agreement), No. 3 (improper opinion as to whether the contract was "effectively assigned"), No. 4 (hearsay), and No. 7 (improper opinion as to whether the contract was "effectively assigned"), and overruled as to Nos. 1, 5, and 6.

MSJ/MSA as to Hansen's Cross-Complaint

In relation to the Motion for Summary Judgment as to the Cross-Complaint filed by Hansen against ARH, the Court finds that there exists a triable issue of material fact as to whether ARH was or was not a properly licensed contractor at all times during the performance of its contract; specifically, whether there was a valid assignment of the contract and whether ARH performed any work on the property in its capacity as a contractor following the cancellation of its license [See UMF Nos. 3, 9, 23; Additional UMF Nos. 9, 10, 11, 12, 13; Exhibits C, I, K, M; Deposition of Hansen at 30:12-21, 32:14-

17]. The Motion for Summary Judgment as to the Cross-Complaint filed by Hansen against ARH is denied.

In relation to the Motion for Summary Adjudication as to the Cross-Complaint filed by Hansen against ARH, although Hansen moves for summary adjudication “as to cross-complainant's first cause of action in her cross-complaint for breach of contract; cross-complainant's second cause of action for negligence; cross-complainant's third cause of action for declaratory relief; cross-complainant's fourth cause of action for equitable indemnity; and, cross-complainant's fifth cause of action for total equitable indemnity, and for disgorgement of all compensation paid to Aurora Ridge Homes, Inc pursuant to California Business and Professions Code §7031(b), on the grounds there is no viable defense to the allegations in the cross-complaint, that there is no triable issue as to any material fact, and that cross-complainant Laurie Hansen is entitled to summary judgment or summary adjudication in her favor as a matter of law”, the Court finds that none of the causes of action are raised or discussed in Hansen’s moving papers or reply brief. Thus, the Court finds that Hansen has failed to meet her burden to show that each element of each cause of action in question has been proved, and that there is no defense. *Aguilar v. Atlantic Richfield Co.* (2001) 25 Cal.4th 826, 850; CCP §437c(o)(1); See also, *Cucuzza v. City of Santa Clara* (2002) 104 Cal.App.4th 1031, 1037 [“A defendant seeking summary judgment bears the initial burden of proving the cause of action has no merit by showing that one or more of its elements cannot be established or there is a complete defense to it.”] Having failed to do so, the alternatively requested Motion for Summary Adjudication as to the individual causes of action in the Cross-Complaint is denied.

Counsel for the Defendants/Cross-Defendants Aurora Ridge Homes, Inc. and Jay Soderling are ordered to prepare and submit a form of order consistent with this ruling within two weeks.

MSJ/MSA as to Plaintiff’s Complaint

In relation to the Motion for Summary Judgment as to the Complaint filed by Plaintiff against Hansen, the Court finds that for the same reasons discussed above, there exists a triable issue of material fact as to whether ARH was or was not a properly licensed contractor at all times during the performance of its contract; specifically, whether there was a valid assignment of the contract and whether ARH performed any work on the property in its capacity as a contractor following the cancellation of its license [See UMF Nos. 3, 9, 23; Additional UMF Nos. 9, 10, 11, 12, 13; Exhibits C, I, K, M; Deposition of Hansen at 30:12-21, 32:14-17]. The Motion for Summary Judgment as to Plaintiff’s Complaint is denied.

In relation to the Motion for Summary Adjudication as to Plaintiff’s Complaint, the Court finds there is a triable issue of material fact as to whether Plaintiff included materials not used or consumed in the work of improvement in the total amount of the Mechanic’s Lien [See UMF Nos. 6, 8, 10, 16, 18, 19, 20]. Therefore, the alternatively requested Motion for Summary Adjudication as to the Third Cause of Action for Foreclosure of Mechanic’s Lien in the Complaint is denied.

Counsel for Plaintiff Dubug No. 7, Inc. is ordered to prepare and submit a form of order consistent with this ruling within two weeks.

3. 24CV00418 NELSON, HARWOOD ET AL V. WARNER ENTERPRISES, INC ET AL

EVENT: Motion to Compel Initial Discovery Responses

The Proof of Service shows that the Motion was served by mail and e-mail on October 14, 2024, which is only 17 Court days. Code of Civil Procedure §§1005 and 1010.6(a)(3)(B) requires one additional Court-day for electronic service and/or 4 additional calendar days for service by mail. Notice is therefore insufficient, and the Motion is continued to December 4, 2024 at 9:00 a.m. to allow for proper notice.

4. 24CV01881 DUTRO, MARK V. DUTRO, LAWRENCE ET AL

EVENT: Defendant Lawrence Dutro's Motion Pursuant to CCP 425.16

Plaintiff's Request for Judicial Notice is granted.

Procedural Issues

In its discretion, the Court will permit the filing of this special motion to strike beyond the 60-day deadline found in *Code of Civil Procedure* §422.10, not on the basis of finding that it is a "pleading" under *Code of Civil Procedure* §422.10(f), but the Court has carefully considered and found that to allow such a filing here would be consistent with this purpose of the anti-SLAPP statute. See *Platypus Wear, Inc. v. Goldberg* (2008) 166 Cal.App.4th 772, 775.

The Court is in receipt of the First Amended Notice that was filed by Defendants on October 29, 2024, which it deems to be an acknowledgment by Defendants' counsel of the deficiencies raised by Plaintiff in the Opposition (e.g., violation of CCP §1010, California Rules of Court Rules 3.1110(a), 3.1112(d)(1), and CRC 3.1110(b), and *Code of Civil Procedure* §128.7(a)-(b)). It is clear that the Defendant was aware of the grounds for the Motion (e.g, Anti-SLAPP pursuant to *Code of Civil Procedure* §425.16) given the substantive Opposition filed, the Court finds no due process violation in relation to the subsequently remedied procedural deficiencies in the Notice and declines to deny the Motion on these grounds.

Footnote 1 of the Moving Brief makes reference to "AgAlert", but there is no foundation for the Court to consider this news article and there has been no request for judicial notice in regard thereto. This Footnote (and linked article) have therefore not been considered by the Court. The Court further notes Plaintiff's objections to various portions of the Defendants' Moving Brief as unsupported by admissible material. Such objections are noted and have been given consideration in the Court's review of the Motion, but the Court declines to deny the Motion on that basis.

The Court declines to consider the holdings of the two unpublished Superior Court opinions cited by Defendants: *Glines v. States* 2023 Cal. Super LEXIS 6292 at Page 12, and *Carter v. Close* 2018 Cal. Super LEXIS 34129 at Page 16.

Finally, the Court finds that no further “Index of Exhibits” is required pursuant to CRC 3.1110(f)(1) as these are no exhibits attached to the Moving Papers other than those documents identified in the Declarations of Lawrence Dutro and Patricia Savage, which are sufficiently identified.

As it relates to Plaintiff’s argument that the instant motion violates *Code of Civil Procedure* §1008, the Court finds that while the Motion Under California Corporations Code Section 800(c) did reference an Anti-SLAPP motion, that reference was made by Defendants only to argue that the Plaintiff had no reasonable possibility of prevailing. The Court, in ruling on the Motion Under California Corporations Code Section 800(c) did not consider any argument in relation to an Anti-SLAPP motion. Thus, *Code of Civil Procedure* §1008 is inapplicable here.

Anti-SLAPP Motion

Code of Civil Procedure §425.16 provides a two-step process for determining whether an action is a SLAPP. *Navellier v. Sletten* (2002) 29 Cal.4th 82, 88. First, the Court decides whether the defendant has made a threshold showing that the challenged cause of action is one arising from protected activity. *Ibid.* If the Court finds that such a showing has been made, it must then determine whether the plaintiff has demonstrated a probability of prevailing on the claim. *Ibid.* It is only a cause of action that satisfies both prongs of the anti-SLAPP statute – i.e., that arises from protected speech or petitioning and lacks even minimal merit – that is a SLAPP, subject to being stricken under the statute. *Id.* at 89. Here, the Court has considered the pleadings, declarations, and matters which have been judicially noticed and finds that Defendants have satisfied their burden of showing that the Complaint is one arising from protected activity. The Court is not persuaded by Plaintiff’s argument that derivative actions are not subject to anti-SLAPP motions and finds that the case cited *Panakosta, Partners, LP v. Hammer Lane Management, LLC* (2011) 199 Cal.App.4th 612, is factually distinguishable here. The Court concludes that the first prong has been satisfied and the alleged conduct of Defendants is protected by *Code of Civil Procedure* §425.16(e). In regard to whether Plaintiff has demonstrated a probability of prevailing on her claim, the Court finds that because the claims are barred by the litigation privilege, Plaintiff has failed to satisfy his burden of demonstrating a probably of prevailing. Defendant Lawrence Dutro’s Motion Pursuant to CCP 425.16 is granted. Counsel for Defendant shall submit a form of order within two weeks.

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5. 24CV02342 LOZADA, RACHEL ROMERO V. KEPLEY, DON ET AL

EVENT: Motion for Judgment on the Pleadings

Plaintiff's Request for Judicial Notice is granted.

The Court finds that notice is proper pursuant to *Code of Civil Procedure* §1005(b), which requires 16 Court days' notice, plus an additional two calendar days when service is by overnight mail.

Before a motion for judgment on the pleadings may be filed, the moving party must meet and confer with the party who filed the objectionable pleading to determine whether an agreement can be reached that would resolve the objections to the pleading. *Code of Civil Procedure* §439(a). Here, it does appear that the meet and confer requirement has been satisfied. [See Declaration of Steven J. Chamberlin, filed October 11, 2024 at ¶¶9-10.]

The Court finds that Plaintiff has sufficiently pled each of the elements for a Prescriptive Easement based on the allegations in the Complaint [See Complaint at ¶¶12-14]; However, the Defendants' Answers also sufficiently raise a defense thereto, specifically as it relates to the elements of open and notorious and continuous and uninterrupted [See Answer at ¶¶12-15]. The Motion is denied. Defendant shall submit a form of order consistent with this ruling within two weeks.

6. 24CV03397 CITY OF GRIDLEY V. YOUNG, KELLY ET AL

EVENT: Petition for Order to Abate Substandard Building and Appointment of Receiver

The Petition is granted and Richard C. Griswald is appointed as Receiver. The matter will remain on calendar on March 26, 2025 at 10:30 a.m. for a Status Review hearing. The Court will sign the form of order submitted by counsel.