

6-7-24 Civil Law and Motion Tentative Rulings

1. CL0000939 Discover Bank vs. Sharon Deal

Appearances are required. The court is favorably inclined to grant the motion to relieve counsel.

2. CL0000944 U.S. Bank National Association vs. Rocky Stone

Dropped from the calendar. A request for dismissal has been filed.

3. CU0000663 Brian Kelley, et al. vs. Rebecca Aycock, et al.

The motion for leave to file the amended complaint is granted. The motion was filed reasonably soon after the 10 April 2024 depositions wherein plaintiff discovered evidence to support pleading additional theories of liability against new defendants. Any challenges to the sufficiency of claims for punitive damages must be addressed by separate motion. The trial date and associated dates are vacated. A case management conference is set for 1 July 2024 at 9:00 a.m. in Dept. 6. The parties shall file case management statements as required and plaintiff shall have the new defendants served as soon as possible to avoid any further delays. No appearances are required.

4. CU0000795 Mark G. Jones vs. Barbara L. Reamer, et al.

The motion to consolidate and the motion for a stay are denied. The motion for reclassification is denied without prejudice.

In the second amended complaint for the instant case, plaintiff Jones alleges wrongful foreclosure in connection with three properties (the Christie Lane property and the Copenhagen Drive properties) against, among others, three trustee sale purchasers of the properties: Sierra Asset Investors, SPFF, and Veritas Capital (the “trustee sale bidders”). In case CL0001025, Sierra Asset Investors seeks to evict defendant Jones from the Christie Lane property.

As a preliminary matter, plaintiff Jones erroneously filed his motion to consolidate in the unlawful detainer case. Notice should have been given to all parties in both cases, but the motion itself should have been filed in the instant case, which was the first in time and is the low-number case. *See* Rules of Court, Rule 3.350.

Turning to the merits, “Code of Civil Procedure section 1048 grants discretion to the trial courts to consolidate actions involving common questions of law or fact.” *Todd-Stenberg v. Dalkon Shield Claimants Trust* (1996) 48 Cal.App.4th 976, 978. At bar, the trustee sale bidders are named as defendants in counts four (injunction) and thirteen (quiet title), respectively. Other than alleging that the trustee sale bidders purchased the properties at issue, the SAC includes the

following allegation regarding these defendants: “they *may* have also wrongfully and/or unlawfully participated in the wrongful and illegal Trustee’s Sale of Plaintiff’s Property at foreclosure.” SAC para. 95 (italics supplied). All three defendants have been served, a default has been entered as to SPFF, and there presently is no answer or other responsive pleading from Sierra Asset Investors or Veritas Capital.

On this record, the pleadings in the wrongful foreclosure action do not frame any material or significant issue of law or fact in common with the issues in the unlawful detainer action. The unlawful detainer action has one overriding issue: whether Jones has a right to possession of the property. Contrary to the suggestion of Jones, both cases, as presently pled, do not involve complex issues regarding the determination of title. “In unlawful detainer proceedings, ordinarily the only triable issue is the right to possession of the disputed premises, along with incidental damages resulting from the unlawful detention.” *Coyne v. De Leo* (2018) 26 Cal.App.5th 801, 817; *see, e.g., High v. Cavanaugh* (1962) 205 Cal.App.2d 495, 498; *Cheney v. Trauzettel* (1937) 9 Cal.2d 158, 159. More specifically, a plaintiff-purchaser in an unlawful detainer action need prove only that the sale was in compliance with Civil Code section 2924 and that they thereafter duly perfected title. *See Stephens, Partain & Cunningham v Hollis* (1987) 196 Cal.App.3d 948, 952. “Matters affecting the validity of the trust deed or primary obligation itself, or other basic defects in the plaintiff’s title, are neither properly raised in this summary proceeding for possession ..., nor are they concluded by the judgment.” *MCA, Inc. v. Universal Diversified Enterprises Corp.* (1972) 27 Cal.App.3d 170, 176, *quoting, Cheney*, 9 Cal.2d at 160.

The request for a stay is denied for similar reasons. No good cause has been demonstrated why the unlawful detainer proceedings herein must or should be held in abeyance pending resolution of the wrongful foreclosure action. Plaintiff in the unlawful detainer action has a right to invoke use of summary unlawful detainer proceedings. *See Coyne*, 26 Cal.App.5th at 817 (“The purpose of the unlawful detainer statutes is to provide the landlord with a summary, expeditious way of getting back his property when a tenant fails to pay the rent or refuses to vacate the premises at the end of his tenancy.”); *see Vasey v. California Dance Co.* (1977) 70 Cal.App.3d 742, 746. General issues related to the validity of title are not properly part of the unlawful detainer action and, as necessary, can be resolved as part of the wrongful foreclosure action. A stay, under the circumstances presented, is not warranted.

The motion for reclassification of the unlawful detainer case pursuant to Code of Civil Procedure section 403.040 is denied without prejudice. That issue must be presented to and decided by the assigned judge in the unlawful detainer matter.

5. CU0000944 Jaime Lopez vs. Tahoe Preservation Associates LP, et al.

Plaintiff’s motion to compel further responses to interrogatories is granted with the exception of a further response by Care Housing GP LLC as to Interrogatory 3.2. Plaintiff’s motion to compel production of documents is granted. Plaintiff’s motion to deem requests for admissions as admitted is granted (unless responses without objections are produced prior to the hearing).

The objection to a further response to Interrogatory 3.2 as to Care Housing GP LLC is well founded. That interrogatory has been answered.

Defendants' remaining objections to all other discovery requests lack merit. The discovery propounded seeks relevant information and is not overbroad, burdensome or oppressive, especially given the election by defendants to raise 25 different defenses in each answer.

Sanctions are awarded to plaintiff in the amount of \$3,150.00. Defendants' request for sanctions is denied.

6. CU21-085797 Koslin and Koslin Construction, Inc. vs. GV Development, LLC

The motions for summary adjudication by defendant GV Development Group, LLC (GVD) and defendant Smith are denied.

Standard

A defendant moving for summary judgment based on the affirmative defense of the statute of limitations carries its burden by presenting evidence establishing that the plaintiff's claim is time barred; it then falls to plaintiff to counter with evidence creating a dispute about a fact relevant to that defense, that is, plaintiff must submit evidence that would allow a reasonable trier of fact to find in plaintiff's favor on the statute of limitations issue. *See Genisman v. Carley* (2018) 29 Cal.App.5th 45, 49.

Second Cause of Action for Breach of the Confidential Agreement against Defendants Smith and GVD, Third Cause of Action For Breach of the Construction Agreement against Defendant GVD and Third Cause of Action for Breach of Agreements to Pay Change Orders against Defendant GVD

Defendant GVD argues that both the second and third causes of action are time barred and that it is entitled to judgment as a matter of law. Defendant Smith argues that the second cause of action is time barred. Specifically, they argue the statute of limitations for these claims accrued no later than December 2015--pointing to various emails in the second half of 2015 to suggest that Smith/GVD breached the agreements at that time—and hence the claims were time barred as of December 2019. *See Exhibits C-I to GVD's 1/11/24 Separately Bound Evidence.* The court is not persuaded.

The instant action was filed in September 2021. An action for breach of a written contract must be filed within four years of the breach. *See Code of Civil Procedure section 337(a).* As an initial matter, defendants appear to have failed to meet their burden of establishing a breach or repudiation in 2015 based on the e-mails presented. The emails, standing alone, are subject to various interpretations/inferences and suggest the existence of a material dispute as to whether there was a breach or repudiation in 2015. There is certainly no definitive statement or

indication that defendants had breached or repudiated the agreements. See Exhibits C-I to GVD's 1/11/24 Separately Bound Evidence. Assuming defendants met their burden, there are sufficient disputed facts to defeat summary adjudication as to this issue. The evidence presented by plaintiff, in combination with the e-mails, creates a material dispute as to whether there was a definitive breach or repudiation in 2015. See Koslin Decl. paras. 58-60, 61-73, Exs. 2 and 5. Among other things, Koslin had asked via email in 2015 that unpaid invoices be credited to his capital account, which, per the terms of the confidential agreement, he could do at his sole discretion. See Exhibits H and B to GVD's 1/11/24 Separately Bound Evidence. There is evidence that Koslin received a partial payment in January 2019. See Exhibit 5 to Koslin Decl. "A few months before the action was filed in 2021, Smith [told Koslin] 'We will be paid all of our money back as soon as these three houses sell.' [referring to certain lots that were substantially complete.]" Koslin Decl., para 47. A reasonable juror could conclude, from all of the e-mails as well as the recollections of Koslin, that there was no definitive breach or repudiation in 2015. Lastly, "when there are ongoing contractual obligations the plaintiff may elect to rely on the contract despite a breach, and the statute of limitations does not begin to run until the plaintiff has elected to treat the breach as terminating the contract." *Romano v. Rockwell Internat., Inc.* (1996) 14 Cal.4th 479, 489. A reasonable trier of fact could conclude that this case involved an interrelated operating agreement, confidential agreement and construction contract and that plaintiff did not make an election to treat a breach by defendants as terminating the contract until 2021. See Koslin Decl. paras 45- 46 and Exhibit 2.

Fourth Cause of Action for Fraud against Defendant Smith

Defendants argue that this claim arose in 2011, is now time-barred, and that they are entitled to judgment as a matter of law. The court is not persuaded.

As a preliminary matter, GVD is not named in this cause of action (although the prayer for relief references GVD). GVD lacks standing to seek summary adjudication of this claim and its motion is denied on that basis alone.

Turning to the merits, in cases of fraud, the three year statute of limitations commences when the plaintiff discovers the injury. See Code of Civil Procedure section 338(d). (In an action "on the ground of fraud", "The cause of action in that case is not deemed to have accrued until the discovery, by the aggrieved party, of the facts constituting the fraud").

At bar, the court assumes *arguendo* that both defendants have standing to seek summary adjudication of this claim and that both defendants met their burden of presenting evidence that plaintiff's claim is time-barred by pointing to plaintiff's complaint which alleges that Smith's actions took place in 2011, ten years before the complaint was filed. See Exhibit A, para 61 to 1/11/24 GVD's Separately Bound Evidence. That said, plaintiff has met his burden of presenting evidence that would allow a trier of fact to find that the claim is not time-barred. Koslin declares: "It was not until Smith wrote a letter on August 12, 2021, that I discovered that he had in fact reduced my capital account by \$150,000 and that distributions were being calculated since 2011 based on that reduction in my capital account." Koslin Decl., para 48. This statement in

Koslin's declaration is sufficient to raise a triable issue of fact that that fraud was undiscovered until 2021 and that the action did not accrue until that date.

The motions are denied in their entirety.

7. CU0001159 Jon Landon vs. Harmony Ridge Resorts, et al.

The hearing on the demurrer is continued to 6/28/24.

8. CU0001178 Gregory Ludlum vs. Joshua Terranova, et al.

The hearing on the demurrer is continued to 6/28/24.

9. CU0000836 Leanne Price vs. James Kitchen, et al.

Appearances are required for a hearing with Judge Picquet.