

1. ON SKI RUN, LLC v. MOUNTAIN MEN, LLC, ET AL., 24CV1953**(A) Cross-Defendants' Motion to Strike Portions of Second Amended Cross-Complaint****(B) Motion for Leave to File First Amended Complaint****Cross-Defendants' Motion to Strike Portions of Second Amended Cross-Complaint**

Pursuant to Code of Civil Procedure sections 435 and 436, cross-defendants move to strike the claim for punitive damages in Paragraph 54 and the first "Prayer for Relief" in cross-complainants' second amended cross-complaint ("SACC").

Cross-defendants' counsel declares he met and conferred with cross-complainants prior to filing the instant motion, as required under Code of Civil Procedure section 435.5, subdivision (a). (Stephens Decl., ¶¶ 6–8 & Ex. A.)

The hearing was originally scheduled for May 9, 2025. Prior to the scheduled hearing, cross-complainants requested, and the court granted, a continuance to June 20, 2025. The court ordered the parties to submit opposition and reply briefs in accordance with the time requirements under Code of Civil Procedure section 1005, subdivision (b).

1. Relevant Background

Cross-complainant Mountain Men, LLC ("Mountain Men") is a limited liability company that owns the real property commonly known as 1169 Ski Run Boulevard in South Lake Tahoe, California, including Units 6A and 6B located thereon (the "Premises"). (SACC, ¶ 1.) Cross-defendants Thanya Starr ("Starr") and Supaporn Phillips ("Phillips") are commercial tenants at the Premises under a modified lease agreement with Mountain Men. (SACC, ¶ 21 & Ex. D.) Starr and Phillips run a restaurant at the Premises called "Thai on Ski Run" (the "Restaurant"). (SACC, ¶ 22.)

1.1. Underlying Incident

In August 2024, Mountain Men became aware that the Restaurant had been operating without a valid certificate of occupancy. (SACC, ¶ 22.) For this reason,

Mountain Men notified Starr and Phillips that they were in breach of the lease agreement. (SACC, ¶ 22.) Mountain Men further noted that Starr and Phillips had failed to bring the Premises into compliance with the Americans with Disabilities Act. (SACC, ¶ 22.)

In response to the letter, Starr submitted a building permit application (which requires the owner's signature) to the City of South Lake Tahoe (the "City"). (SACC, ¶ 23.) On the application, Starr included Mountain Men's information without Mountain Men's knowledge or consent. (SACC, ¶ 23.)

The City issued a new building permit and new certificate of occupancy to cross-defendants. (SACC, ¶ 24.) Shortly thereafter, Mountain Men became aware that Starr had submitted the aforementioned building permit application. (SACC, ¶ 24.) Mountain Men asked the City why it had issued a permit without owner authorization, as required with all building permits in the City. (SACC, ¶ 25.) Mountain Men claims it did not make any request or demand to the City that the building permit or certificate of occupancy be revoked. (SACC, ¶ 25.) Nonetheless, a City employee acknowledged that "he had made a terrible mistake" and indicated that both permits would be revoked because they had been obtained without owner consent. (SACC, ¶ 25.)

1.2. Alleged Libel

On October 2, 2024, cross-defendants published a written statement on the Restaurant's Facebook social media page stating that cross-defendants' landlord had taken "deliberate action to cause [cross-defendants'] certificate of occupancy to be revoked." (SACC, ¶ 38.) That same day, Starr republished the statement on two separate Facebook pages, "Knuckledraggers of South Lake Tahoe" and "South Lake Tahoe Community Group." (SACC, ¶ 57.) Cross-defendants allegedly published the same or similar comment on another social media site called Nextdoor.com. (SACC, ¶ 56.) Cross-complainants allege that the statement is false, as cross-complainants took no action

whatsoever to cause cross-defendants' temporary certificate of occupancy to be revoked. (SACC, ¶¶ 38, 56–58.)

Further, cross-complainants allege the statement falsely “implied that cross-defendants had been lawfully operating their business under a properly-issued *permanent* certificate of occupancy (not just a recently-obtained *temporary* certificate of occupancy following an extended period of operation without *any* certificate of occupancy) and that Cross-Complainants maliciously undertook wrongful action that was specifically and deliberately intended to cause it to be revoked.” (SACC, ¶ 56.)

2. Request for Judicial Notice

Pursuant to Evidence Code section 452, subdivision (d), the court grants cross-defendants' unopposed request for judicial notice of Exhibit 1 (SACC), Exhibit 2 (Feb. 14, 2025, order granting cross-defendants' motion to strike portions of first amended cross-complaint (“FACC”)), and Exhibit 3 (dismissal of cross-complainant's libel per quod cause of action).

3. Cross-Complainants' Untimely Opposition

Cross-defendants ask the court to strike cross-complainants' untimely opposition, which was filed June 11, 2025. The opposition deadline was June 6, 2025, nine court days before the June 20, 2025, hearing. (Code Civ. Proc., § 1005, subd. (b).)

Cross-defendants did not file a motion to strike the opposition brief or request additional time to prepare its reply brief. Instead, cross-defendants filed a timely reply brief addressing the substantive arguments in the opposition brief. Pursuant to California Rules of Court, rule 3.1300, subdivision (d), the court exercises its discretion to consider the untimely opposition. (Cal. Rules Ct., rule 3.1300, subd. (d).)

4. Legal Principles

A motion to strike is generally used to address defects appearing on the face of a pleading that are not subject to demurrer. (*Pierson v. Sharp Memorial Hospital* (1989) 216 Cal.App.3d 340, 342.) Further, “[t]he court may, upon a motion [to strike] ..., or at

any time in its discretion ... [¶] ... [s]trike out any irrelevant, false, or improper matter inserted in any pleading.” (Code Civ. Proc., § 436, subd. (a).) Like a demurrer, the grounds for a motion to strike must appear on the face of the pleading or from any matter which the court is required to take judicial notice. (Code Civ. Proc., § 437, subd. (a).) On a motion to strike, the trial court must read the complaint as a whole, considering all parts in their context, and must assume the truth of all well-pleaded allegations. (*Courtesy Ambulance Service v. Superior Court* (1992) 8 Cal.App.4th 1504, 1519.)

5. Discussion

Civil Code section 3294 allows a plaintiff to recover exemplary (or “punitive”) damages “[i]n an action for the breach of an obligation not arising from contract, where it is proven by clear and convincing evidence that the defendant has been guilty of oppression, fraud, or malice.” (Civ. Code, § 3294, subd. (a).) For the purpose of awarded exemplary damages, “ ‘[m]alice’ means conduct which is intended by the defendant to cause injury to the plaintiff or despicable conduct which is carried on by the defendant with a willful and conscious disregard of the rights or safety of others.” (Civ. Code, § 3294, subd. (c)(1).) “ ‘Oppression’ means despicable conduct that subjects a person to cruel and unjust hardship in conscious disregard of that person’s rights.” (Civ. Code, § 3294, subd. (c)(2).) “ ‘Fraud’ means an intentional misrepresentation, deceit, or concealment of a material fact known to the defendant with the intention on the part of the defendant of thereby depriving a person of property or legal rights or otherwise causing injury.” (Civ. Code, § 3294, subd. (c)(3).)

Compared to the FACC, the SACC alleges virtually no new facts to support the claim that cross-defendants acted with malice, fraud, or oppression. The FACC alleged that cross-defendants posted the statement on the Restaurant’s Facebook page only. The SACC alleges that cross-defendants also reposted the statement on two “community” Facebook pages, as well as the social media website, Nextdoor.com, and have not taken

down said posts in the approximately four months since cross-complainants filed their initial cross-complaint. (SACC, ¶¶ 56–57, 64.)

The SACC also attempts to make the distinction between a “temporary” and “permanent” certificate of occupancy. According to the SACC, cross-defendants’ statement “falsely implied that Cross-Defendants had been lawfully operating their business under a properly-issued *permanent* certificate of occupancy (not just a recently-obtained *temporary* certificate of occupancy ...)....” (SACC, ¶ 56 [original emphasis].) But this allegation does nothing to further support the claim that cross-defendants acted with malice, fraud, or oppression. The alleged statement at issue is that cross-complainants had taken “deliberate action to cause [cross-defendants’] certificate of occupancy to be revoked.” (SACC, ¶ 38.) This statement does not specify whether cross-defendants were referring to a temporary or permanent certificate of occupancy.

Lastly, the SACC adds allegations that, following cross-defendants’ statements, cross-complainants have (1) had trouble renting several units on the Premises, and (2) suffered damage to their relationship with the City’s Building Department and prospective relationships with local contractors and suppliers. (SACC, ¶ 62.) Cross-complainants do not specifically make the argument here, but in the previous motion to strike, they argued that these types of allegations would support a finding of “oppression” because it shows that cross-defendants subjected cross-complainants to cruel and unjust hardship in conscious disregard for cross-complainants’ rights. The court disagrees. These allegations do not amount to “despicable conduct” that subjected cross-complainants to cruel and unjust hardship.

Overall, the court finds that the allegations in the SACC do not rise to the level of malice, fraud, or oppression, sufficient to support a claim of punitive damages. Because cross-complainants have previously been granted leave to amend, and they have not

shown a reasonable possibility that further amendment will cure the defect, the court denies further leave to amend.

Motion for Leave to File First Amended Complaint

On May 16, 2025, plaintiffs filed the instant motion for leave to file their proposed first amended complaint. On June 11, 2025, defendants filed a notice of non-opposition. On June 12, 2025, plaintiffs filed a reply brief disputing defendants' claim in their notice of non-opposition that plaintiffs failed to meet and confer. Additionally, plaintiffs make the new request to add an additional allegation to their operative complaint, that "Mountain Men has further breached the Lease by failing to return the security deposit to Plaintiffs as required by applicable law." Plaintiffs note they learned about the alleged further breach after filing the instant motion.

The court grants plaintiffs' request to file the proposed first amended complaint. However, the court denies plaintiffs' request for leave (made for the first time in plaintiffs' reply brief) to allege that Mountain Men further breached the Lease by failing to return the security deposit to plaintiffs. Plaintiffs may file a supplemental complaint or a separate motion for leave to amend should they wish to include this additional allegation.

TENTATIVE RULING # 1: CROSS-DEFENDANTS' MOTION TO STRIKE PORTIONS OF THE SECOND AMENDED CROSS-COMPLAINT IS SUSTAINED WITHOUT LEAVE TO AMEND.

PLAINTIFFS' MOTION FOR LEAVE TO FILE THE PROPOSED FIRST AMENDED COMPLAINT IS GRANTED.

NO HEARING ON THIS MATTER WILL BE HELD (*LEWIS v. SUPERIOR COURT* (1999) 19 CAL.4TH 1232, 1247), UNLESS A NOTICE OF INTENT TO APPEAR AND REQUEST FOR ORAL ARGUMENT IS TRANSMITTED ELECTRONICALLY THROUGH THE COURT'S WEBSITE OR BY TELEPHONE TO THE COURT AT (530) 573-3042 BY 4:00 P.M. ON THE

DAY THE TENTATIVE RULING IS ISSUED. NOTICE TO ALL PARTIES OF AN INTENT TO APPEAR MUST BE MADE BY TELEPHONE OR IN PERSON. PROOF OF SERVICE OF SAID NOTICE MUST BE FILED PRIOR TO OR AT THE HEARING.