1. WAGNER v. FIRSTPV, INC., ET AL., 23CV0893

Cross-Complainant Service Finance Company's Motion for Summary Adjudication

Pursuant to Code of Civil Procedure section 437c, defendant / cross-complainant Service Finance Company ("Service Finance") moves for summary adjudication in its favor on the first and third causes of action in its cross-complaint against defendant / cross-defendant FirstPV, Inc. ("FirstPV") for breach of contractual express indemnity and declaratory relief.

1. Preliminary Matter

The court notes that FirstPV filed an untimely opposition on April 1, 2025 (the opposition deadline was March 28, 2025). However, counsel for FirstPV submitted a declaration indicating it timely served its opposition papers on the other parties and encountered technical issues while attempting to electronically file the same on March 28, 2025. Service Finance raises no objection. Pursuant to California Rules of Court, rule 3.1300, subdivision (d), the court exercises its discretion to consider the untimely opposition.

2. Background

This case arises from the installation of a rooftop photovoltaic system ("PVS") with a battery backup system at plaintiff Johnathan Wagner's ("plaintiff") residence. FirstPV sold and installed the PVS to plaintiff, who paid for those products and services via financing through Service Finance. (Service Finance Sep. Stmt. of Undisputed Material Facts ("UMF") Nos. 2, 3, 5, 7.)

The business relationship between Service Finance and FirstPV is set forth in a written contract entitled "SFC Master Dealer Agreement." (Service Finance UMF No. 10.) The Master Dealer Agreement provides in relevant part: "Dealer agrees to defend and indemnify SFC, its parent, subsidiaries and affiliates and their respective officers, directors, employees, representatives and agents from and against (i) all claims, liabilities and obligations of every kind and description, including legal fees and costs by

SFC, arising out of or related to Dealer's failure to comply with applicable laws and regulations, whether brought by the customer, regulatory agency or other person; (ii) all damage or deficiency resulting from any material misrepresentation, breach of warranty or covenant, or non-fulfillment of any agreements on the part of the Dealer under this agreement; and (iii) all actions, suits, claims, proceedings, investigations, audits, demands, assessments, fines, judgments, costs and other expenses (including, without limitation, reasonable audit and attorneys' fees) incident to any of the foregoing." (Service Finance UMF No. 11.)

On June 7, 2023, plaintiff filed suit against FirstPV and Service Finance, alleging causes of action against those defendants for violation of the Consumer Legal Remedies Act, unfair competition, violation of the Song-Beverly Act, breach of the implied warranty of merchantability, and breach of the implied warranty of fitness arising out of the sale and installation of the PVS at plaintiff's residence.

Plaintiff claims in his lawsuit that the battery backup system does not work properly or provide sufficient backup. (Service Finance UMF No. 4.) FirstPV was responsible for the sale, installation, and repair of plaintiff's residential solar panel system. Service Finance was not involved in the sale or installation of plaintiff's solar panel system or battery system and Service Finance did not warrant any of FirstPV's products or services, including plaintiff's solar panel system or battery system. (Service Finance UMF Nos. 4, 8, 9.)

On August 1, 2023, Service Finance cross-complained against FirstPV for (1) express contractual indemnity; (2) equitable indemnity and contribution; and (3) declaratory relief (with respect to Service Finance's alleged indemnity and defense rights).

On April 17, 2024, SFC tendered its defense in this matter to FirstPV and demanded indemnity. (Service Finance UMF No. 17.) FirstPV claims it agreed to defend Service Finance. (FirstPV UMF No. 2.)

On February 13, 2025, FirstPV served its verified response to Service Finance's Request for Admissions (Set One). Among other items, FirstPV admitted it has a duty to defend and indemnify Service Finance in this action pursuant to the parties' Master Dealer Agreement, and admitted that Service Finance tendered its defense of the action to FirstPV.[1] (Bodzin Decl., filed Feb. 20, 2025, Ex. A, Nos. 3–5.)

3. Legal Principles

A party is entitled to summary adjudication only if there is no triable issue of material fact and the party is entitled to judgment as a matter of law. (Code Civ. Proc., § 473c, subd. (c).) A plaintiff (or cross-complainant) moving for summary adjudication "bears the burden of persuasion that 'each element of' the 'cause of action' in question has been 'proved,' and hence that 'there is no defense' thereto." (*Aguilar v. Atlantic Richfield Co.* (2001) 25 Cal.4th 826, 850.) "Once the plaintiff … has met that burden, the burden shifts to the defendant … to show that a triable issue of one or more material facts exists as to the cause of action or a defense thereto. The defendant … shall not rely upon the allegations or denials of its pleadings to show that a triable issue of material fact exists but, instead, shall set forth the specific facts showing that a triable issue of

[1] FirstPV denied Request for Admission (Set One) Number 6, which states, "Admit that YOU have not accepted Service Finance Company's tender to YOU of its defense of the ACTION." (Bodzin Decl., filed Feb. 20, 2025, Ex. A, No. 6.) In its reply brief, Service Finance claims the court previously granted its motion to deem this matter admitted, citing the court's order issued February 28, 2025. Service Finance's motion to deem matters admitted came on for hearing on February 28, 2025. The court's tentative ruling stated the motion was moot as verified responses from FirstPV were served prior to the hearing; however, the court ordered FirstPV to pay Service Finance $1,650 as a sanction under the Discovery Act. No party requested oral argument regarding the tentative ruling. Therefore, the tentative ruling was adopted as the final ruling of the court. (Local Rules of the El Dorado County Superior Court, Rule 7.10.05.B.1.a.) Subsequently, the court inadvertently signed a proposed order from Service Finance which incorrectly granted the motion to deem matters admitted. On April 29, 2025, the court issued an ex parte minute order vacating the signed February 28, 2025, order, as it does not accurately reflect the court's final ruling.

material fact exists as to the cause of action or a defense thereto." (Code Civ. Proc., § 437c, subd. (p)(1).)

4. Discussion

Service Finance's first cause of action for breach of express contractual indemnity alleges FirstPV breached the Agreement by failing to defend and indemnify Service Finance. (Cross-Compl., ¶ 13.) Service Finance's third cause of action for declaratory relief seeks, among other items,[2] a declaration of its right to be reimbursed for monies incurred in defending itself thus far as a result of FirstPV's failure or refusal to accept Service Finance's tender of defense. (Cross-Compl., ¶¶ 25, 27.)

FirstPV does not dispute it owes a duty to defend Service Finance. Instead, FirstPV asserts that Service Finance must use counsel of FirstPV's choosing.

"[Civil Code] section 2778, unchanged since 1872, sets forth general rules for the interpretation of indemnity contracts, 'unless a contrary intention appears.' If not forbidden by other, more specific, statutes, the obligations set forth in section 2778 thus are deemed included in every indemnity agreement unless the parties indicate otherwise." (*Crawford v. Weather Shield Mfg., Inc.* (2008) 44 Cal.4th 541, 553.)

Civil Code section 2778, subdivision 3 expressly provides: "An indemnity against claims, or demands, or liability, expressly, or in other equivalent terms, embraces the costs of defense against such claims, demands, or liability incurred in good faith, and in the exercise of a reasonable discretion." (*Ibid.*)

[2] Service Finance's third cause of action for declaratory relief also seeks a declaration of its right to be indemnified for the sums which Service Finance may be compelled to pay as a result of damages, judgment, or other award recovered by plaintiff against Service Finance. (Cross-Compl., ¶ 24.) However, the instant motion addresses indemnity for past legal expenses only; Service Finance does not argue it is entitled to summary adjudication on its declaratory relief claim related to indemnity for any potential future recovery by plaintiff against Service Finance. As such, the court treats the point as forfeited and passes it without consideration. (*Martine v. Heavenly Valley Limited Partnership* (2018) 27 Cal.App.5th 715, 728.)

"Of course, an indemnitee is always free to conduct his own defense despite the obligation imposed upon the indemnitor to do so. Subdivision 4 of [Civil Code] section 2778 provides: 'The person indemnifying is bound, on request of the person indemnified, to defend actions or proceedings brought against the latter in respect to the matters embraced by the indemnity, but the person indemnified has the right to conduct such defenses if he chooses to do so.' However, *absent some contractual privilege so to do or some showing of sufficient justification or need therefor*, *an indemnitee ordinarily may not refuse to join in or cooperate with the indemnitor's proffered defense and still recover his separate and redundant attorneys' fees and costs*." (*Buchalter v. Levin* (1967) 252 Cal.App.2d 367, 371 [emphasis added].)

Here, Service Finance has not shown it has a contractual privilege or need for separate counsel. Therefore, Service Finance has not met its initial burden of showing that FirstPV breached its duty to indemnify Service Finance for past attorney fees and costs. Additionally, FirstPV has raised a triable issue of material fact as to whether it accepted Service Finance's tender of its defense (FirstPV claims it agreed to defend Service Finance). As such, the motion for summary adjudication is denied.

TENTATIVE RULING # 1: THE MOTION FOR SUMMARY ADJUDICATION IS DENIED. 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.

2. KUMAR v. KOHS, ET AL., SC20180225

Motion for Sanctions and Dismissal

Pending before the court is defendants Monica Kohs's, Kelly Ramsey's, and Elizabeth Pintar's (collectively, "defendants") joint motion for sanctions against plaintiff Roy Kumar ("plaintiff"), including terminating sanctions, under Code of Civil Procedure sections 128.5 and 128.7.

On March 10, 2025, plaintiff filed an opposition wherein he claims defendants' motion is, in substance, a motion for reconsideration of this court's April 12, 2024, ruling on plaintiff's motion for summary judgment, and is made in bad faith. Plaintiff requests his own sanctions under Code of Civil Procedure sections 128.5, subdivision (f)(1)(c) and 1008, subdivision (d).[3] However, such request must be made by a noticed motion and thus, plaintiff's request for sanctions is denied without prejudice. (Code Civ. Proc., § 128.5, subd. (f)(1)(A) ["A motion for sanctions under this section shall be made separately from other motions or requests and shall described the specific alleged action or tactic, made in bad faith, that is frivolous or solely intended to cause unnecessary delay"].)

On April 25, 2025, defendants filed a reply, as well as an "offer of proof" containing over 600 pages of documents.

1. Request for Judicial Notice

In support of its reply brief, defendants filed a request for judicial notice of plaintiff's October 31, 2017, complaint filed in El Dorado County Superior Court Case Number SC20170202 under Evidence Code section 452, subdivision (d). The court

[3] Plaintiff originally requested sanctions in his March 10, 2025, opposition to defendants' instant motion for sanctions. On April 7, 2025, defendants filed their "Opposition to Plaintiff's Request for Sanctions." On April 15, 2025, plaintiff filed his "Reply to Defendants' Opposition to Plaintiff's Request for Sanctions." Although defendants filed an "opposition" and plaintiff filed a "reply," there is no actual motion or notice of motion for sanctions filed by plaintiff.

declines to take judicial notice of said complaint because: (1) it is new evidence filed in support of defendants' reply brief and plaintiff has not had an opportunity to respond (see *Jay v. Mahaffey* (2013) 218 Cal.App.4th 1522, 1537–1538); and (2) it is not necessary, helpful, or relevant to the instant matter (See *Jordache Enterprises, Inc. v. Brobeck Phleger & Harrison* (1998) 18 Cal.4th 739, 748, fn. 6.). Plaintiff voluntarily dismissed the 2017 complaint (which named the Tahoe Regional Planning Agency ("TRPA") as one of the defendants) and defendants make no showing, based on the 2017 complaint, that the operative complaint in the instant action is a sham pleading.

2. Legal Principles

Code of Civil Procedure section 128.5 authorizes sanctions for "actions or tactics, made in bad faith, that are frivolous or solely intended to cause unnecessary delay." (Code Civ. Proc., § 128.5, subd. (a).)

Code of Civil Procedure section 128.7 applies only in limited circumstances. It "authorizes trial courts to impose sanctions to check abuses in the filing of pleadings, petitions, written notices of motions or similar papers." (*Musaelian v. Adams* (2009) 45 Cal.4th 512, 514.) Under that authority, trial courts may issue sanctions, including monetary and terminating sanctions, against a party for filing a complaint that is legally or factually frivolous. (Code Civ. Proc., § 128.7, subds. (b)–(d); *Ponce v. Wells Fargo Bank* (2018) 21 Cal.App.5th 253, 263–264.)

"A claim is factually frivolous if it is 'not well grounded in fact' and is legally frivolous if it is 'not warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law.' [Citation.] In either case, to obtain sanctions, the moving party must show the party's conduct in asserting the claim was objectively unreasonable. [Citation.] A claim is objectively unreasonable if 'any reasonable attorney would agree that [it] is totally and completely without merit.' [Citations.]" (*Bucur v. Ahmad* (2016) 244 Cal.App.4th 175, 189.)

3. Discussion

Defendants claim plaintiff's lawsuit is frivolous under Code of Civil Procedure sections 128.5 and 128.7 because: (1) the suit is time barred under the 60-day deadline to challenge TRPA procedures under the Tahoe Regional Planning Compact;[4] (2) even if the 60-day deadline under the TRPA Compact does not apply, plaintiff's action is still time-barred under the applicable state law statute of limitations; (3) plaintiff's claims are preempted by federal law; (4) defendant Ramsey is not liable because he was a good-faith purchaser; and (5) plaintiff's claim that he owns the coverage rights is frivolous.

The court rejects each of defendants' arguments. First, the 60-day deadline to challenge TRPA procedures does not apply. While the TRPA did grant a permit in this case, plaintiff's claims do not arise out of the granting of said permit. Rather, the gravamen of plaintiff's claims concern the real property dispute surrounding the metaphorical "bundle of sticks," in which each stick represents a legally recognized property interest. (See *Dickman v. C.I.R.* (1984) 465 U.S. 330, 336 [" ' "Property" is more than just the physical thing—the land, the bricks, the mortar—it is also the sum of all the rights and powers incident to ownership of the physical thing. It is the tangible and the intangible. Property is composed of constituent elements and of these elements the right to *use* the physical thing to the exclusion of others is the most essential and

[4] In 1968 the states of California and Nevada entered into a compact to create a regional agency with extensive powers to regulate and control development within the Lake Tahoe Basin in order to protect the natural resources and ecological balance of the area. (Cal. Gov. Code, § 66800, et seq.; Nev. Rev. Stat. 277.190, et seq.) In December of 1969 Congress gave its consent to the compact as provided for in Article I, Section 10, Clause 3 of the United States Constitution. (See Pub.L. 91-148, 83 Stat. 360 (1969), amended by Pub.L. 96-551, 94 Stat. 3233.) The TRPA Compact provides, in relevant part, "A legal action arising out of the adoption or amendment of the regional plan or of any ordinance or regulation of the agency, or out of the granting or denial of any permit, shall be commenced within 60 days after final action by the agency." (Cal. Gov. Code, § 66801, Art. VI, subd. (j)(4).)

beneficial. Without this right all other elements would be of little value....' [Citation.]" (Emphasis in original.)]

Second, the court of appeal has already expressly held plaintiff's claim that the four-year statute of limitations under state law (Civ. Code, § 343) did not begin to run at the time plaintiff purchased the property or at the time plaintiff began corresponding about ownership and reserved coverage is not frivolous. (*Kumar v. Ramsey* (2021) 71 Cal.App.5th 1110, 1122.) The statute of limitations issue is the subject of the pending court trial.

Third, the parties previously litigated the preemption issue in federal court, which found that no substantial federal question exists in this case. (See E. Dist. Cal., Case No. 2:18-cv-03277-MCE-CKD, Memorandum and Order, filed Apr. 9, 2019 ["Even assuming that the TRPA ordinances must be examined to determine the merits of Plaintiff's claims, those ordinances are only being raised as a defense, specifically that there was no fraudulent behavior because Kohs's actions were authorized by the TRPA."].)

Fourth, defendant Ramsey's claim that he is a good faith purchaser is a defense to plaintiff's claims and does not have any bearing on whether plaintiff's suit is frivolous.

And finally, plaintiff's claim that he owns the coverage rights is not frivolous. The court has previously ruled that, unless plaintiff's claims are time-barred, he is entitled to judgment as a matter of law on nearly every cause of action.

Additionally, in the alternative, defendants' motion is denied on the basis that it constitutes an untimely motion for reconsideration under Code of Civil Procedure section 1008 that is not based on any new facts, law, or circumstances.

TENTATIVE RULING # 2: DEFENDANTS' MOTION FOR SANCTIONS IS DENIED. 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.

3. URBAN SUNRISE, LLC, ET AL. v. VOGT, ET AL., 22CV0024

Defendant / Cross-Complainant David Vogt's Motion for Attorney Fees

Defendant / cross-complainant David Vogt ("Vogt") moves for an award of attorney fees in the total amount of $340,305.00[5] against plaintiff Urban Sunrise ("plaintiff") as the prevailing party under Civil Code section 1717 and Code of Civil Procedure section 1032, subdivision (b).

Plaintiff opposes the motion and submits that any attorney fee award in this case should not exceed $150,000.00.

The court notes that, on February 20, 2025, plaintiff filed a notice of appeal of judgment issued January 17, 2025, which appeal is currently pending. Pursuant to California Rules of Court, Rule 3.1702, subdivision (d), the court finds good cause to extend the time for filing a motion for attorney fees. Although an award of attorney fees is considered a collateral matter not affected by the judgment, plaintiff's pending appeal is centrally related to the propriety of awarding attorney fees to the prevailing party. In the interest of judicial efficiency, the court concludes that any motion for attorney fees is best adjudicated on the merits following a final resolution of plaintiff's appeal.

TENTATIVE RULING # 3: DEFENDANT / CROSS-COMPLAINANT DAVID VOGT'S MOTION FOR ATTORNEY FEES IS DENIED WITHOUT PREJUDICE TO RENEWAL UPON THE FINAL RESOLUTION OF PLAINTIFF'S PENDING APPEAL. 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 THRCONSIDEROUGH THE COURT'S WESBITE OR BY TELEPHONE TO THE COURT AT (530) 573-3042 BY 4:00 P.M. ON THE DAY THE TENTATIVE RULING IS

[5] Vogt was represented by two different law firms in this action, Samuels Law P.C. and Rollston, Henderson & Johnson, Ltd. Vogt seeks to recover $74,275.00 in attorney fees charged by Samuels Law; and $267,030.00 as reasonable attorney fees under Vogt's contingency fee agreement with Rollston, Henderson & Johnson.

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.