1. COSSOUL v. HEAVENLY VALLEY LP, ET AL., SC20180207

(1) Developer Defendants' Motion for Summary Judgment

(2) The Palisades at Kirkwood HOA's Motion for Summary Judgment

Plaintiffs Tanguy Cossoul and Nolann Cossoul, both minors, by and through their guardian ad litem Matthieu Cossoul, and Matthieu Cossoul, individually, commenced this action in October 2018.[1] In 2019, Matthieu and Nolann dismissed their claims to the complaint, with prejudice. As such, the only remaining cause of action is Tanguy's 1st C/A for negligence/premises liability/failure to warn.

Pending are motions for summary judgment from the following defendants: (1) Kirkwood Associates, Inc., KP V, LLC, Kirkwood Mountain Development, LLC, Kirkwood Capital Partners, LLC, and Kirkwood Property Services, LLC ("Developer Defendants"); and (2) The Palisades at Kirkwood Homeowners Association ("HOA").

A. THE COMPLAINT

This action arises from injuries Tanguy sustained while snowboarding with his father Matthieu, his brother Nolann, Xavier Cremoux, and Matthew Cremoux at Kirkwood Mountain Resort ("Resort") on April 16, 2017. Tanguy was 15 years old at the time of the accident. (Compl., ¶ 14.) The Cossouls were staying at the Timber Ridge townhomes located on Palisades Drive. (*Id.*, ¶ 16.) Timber Ridge is part of The Palisades at Kirkwood HOA, which was designed and advertised as a "ski-in/ski-out" area. (*Id.*, ¶¶ 11, 16.) Palisades Drive is a residential road providing access to the homes in the ski-in/ski-out area. (*Id.*,¶ 19.)

At or around 3:00 p.m., the group was traveling on a run named Lower Olympic to the ski-in/ski-out area. (*Id.*, ¶ 17.) On or before April 16, 2017, the route the group took led to an area where the snow pack abruptly terminated, creating a cliff approximately 20 to 25 feet high, down to Palisades Drive. (*Id.*,¶¶ 22–23.) As Tanguy

[1] The court will refer to the Cossouls by their first names. No disrespect is intended.

traveled this course and approached Palisades Drive on his snowboard, he did not see or detect the drop-off from the edge of the snow to the roadway and he fell over the edge. (*Id.*,¶ 23.)

His father called 911, and Kirkwood Ski Patrol personnel and an El Dorado County Emergency Medical Services ambulance arrived on scene to render aid. (*Id.*,¶ 24.) Tanguy was transported by helicopter to a hospital in Reno. (*Ibid.*) He suffered a traumatic brain injury, ruptured diaphragm, compressed left lung, and broken hip in the fall. (*Id.*,¶ 25.) Due to swelling and clotting in his brain, Tanguy fell into a coma for three months. (*Ibid.*)

B. STANDARD OF REVIEW

A defendant moving for summary judgment bears the burden of persuasion that one or more elements of the cause of action at issue cannot be established, or that there is a complete defense to the cause of action. (*Aguilar v. Atl. Richfield Co.* (2001) 25 Cal.4th 826, 850.) The moving party bears the initial burden of making a prima facie showing of the nonexistence of a triable issue of material fact, and only if the moving party carries the initial burden does the burden shift to the opposing party to produce a prima facie showing of the existence of a triable issue of material fact. (*Ibid.*)

"A motion for summary judgment must be decided on admissible evidence in the form of affidavits, declarations, admissions, answers to interrogatories, depositions and matters of which judicial notice may be taken. … [¶] 'Personal knowledge and competency must be shown in the supporting and opposing affidavits and declarations. [Citations.] [¶] The affidavits must cite evidentiary facts, not legal conclusions or "ultimate" facts. [Citation.] [¶] Matters which would be excluded under the rules of evidence if proffered by a witness in a trial as hearsay, conclusions or impermissible opinions, must be disregarded in supporting affidavits. [Citation.]' " (*Guthrey v. State of Cal.* (1998) 63 Cal.App.4th 1108, 1119–1120 [internal quotation marks omitted], quoting *Hayman v. Block* (1986) 176 Cal.App.3d 629, 638–639.)

"The court focuses on issue finding; it does not resolve issues of fact. The court seeks to find contradictions in the evidence, or inferences reasonably deducible from the evidence, which raise a triable issue of material fact." (*Raven H. v. Gamette* (2007) 157 Cal.App.4th 1017, 1024.) The evidence of the moving party is strictly construed and the evidence of the opposing party liberally construed. Doubts as to the propriety of granting the motion must be resolved in favor of the party opposing the motion. (*Stationers Corp. v. Dun & Bradstreet, Inc.* (1965) 62 Cal.2d 412, 417.)

C. THE MOTIONS

DEVELOPER DEFENDANTS' MOTION FOR SUMMARY JUDGMENT

Developer Defendants move for judgment on the grounds that (1) they did not owe plaintiff a duty of care as they do not own, maintain, or control any land underlying the incident, and (2) the doctrine of assumption of risk.

1. Preliminary Matters

Plaintiff's Objections to Developer Defendants' Evidence

Objection Nos. 1–5, 8, and 9 are overruled.

Objection Nos. 7 and 11 are sustained.

Objection Nos. 6 and 10 are sustained on the grounds of improper use of discovery responses and hearsay. (Code of Civ. Proc. § 2030.410; *Castaline v. City of Los Angeles* (1975) 47 Cal.App.3d 580, 587–589 [a third-party's interrogatory responses are hearsay as against other parties].) " 'It would be unreasonable and absurd to permit questions and answers respectively propounded and received in an interrogatory proceeding between two parties to be used against a third party when the latter is not given the right to propound cross-interrogatories or to exercise the privilege conferred upon the party initiating the proceeding … to require the adverse party to whom the interrogatories are directed to make a further response.' [Citations and footnote.]" (*Castaline*, *supra*, 47 Cal.App.3d at pp. 587–588, quoting *Assocs.*

Discount Corp. v. Tobb Co. (1966) 241 Cal.App.2d 541, 551–552 [superseded by statute on unrelated issue].)

The case *The Luckman Partnership*, *Inc. v. Superior Court* (2010) 184 Cal.App.4th 30, cited by Developer Defendants, is not on point. In *Luckman*, the defendant moved for summary judgment and filed a declaration from its attorney declaring that he had personal knowledge that the documents attached to his declaration were a co-defendant's verified interrogatory responses and exhibits the co-defendant had attached to the responses. Addressing only the authentication requirement, the Court of Appeal held that this was sufficient to show that the "interrogatory responses in this action were what they purported to be." (*Id.* at pp. 34–35.) The appellate court did not otherwise address the admissibility of the evidence pursuant to Code of Civil Procedure § 2030.410, and the court noted that the plaintiffs themselves relied on the same evidence in opposing summary judgment. (*Id.* at p. 34.) As such, the appellate court found that the trial court erred by not considering the evidence.

Developer Defendants' Objections to Plaintiff's Evidence

The general objections to the deposition testimony of Nate Whaley and Robert John Reiter are sustained on the basis that plaintiff did not provide evidence that either witness was testifying as a current agent of any of the Developer Defendants or that either witness had the authority to make admissions against any of the Developer Defendants regarding respondeat superior liability. " 'The declarations of an agent are admissible only when made in regard to a transaction, in the course of his agency, pending at the very time of the declarations and where the statements or declarations are a part of the *res gestae*.' [Citation.]" (*Taylor v. Socony Mobil Oil Co.* (1966) 242 Cal.App.2d 832, 834; see also *Markley v. Beagle* (1967) 66 Cal.2d 951, 960; *Dillon v. Wallace* (1957) 148 Cal.App.2d 447, 452.)

Because the general objections to Whaley's and Reiter's deposition testimony were sustained, the court will also separately sustain Objection Nos. 1–5, 8, 9, 11, 13, 14, 16, and 21–26.

Objection Nos. 6, 12, 18, and 27–29 are overruled.

Objection Nos. 7, 10, 15, 17, 19, and 20 are sustained.

2. Legal Principles Re: Premises Liability

Civil Code § 1714 sets forth the basic policy of this state that "[e]veryone is responsible ... for an injury occasioned to another by his or her want of ordinary care or skill in the management of his or her property or person ...." (*Id.*, subd. (a).) The elements of a premises liability claim are the same as for a negligence claim: "a legal duty of care, breach of that duty, and proximate cause resulting in injury. [Citations.]" (*Kesner v. Superior Court* (2016) 1 Cal.5th 1132, 1158.)

A property owner is under a general duty "to exercise ordinary care in the management of such premises in order to avoid exposing persons to an unreasonable risk of harm. A failure to fulfill this duty is negligence. [Citation.]" (*Brooks v. Eugene Burger Mgmt. Corp*. (1989) 215 Cal.App.3d 1611, 1619.) The existence and scope of a defendant's duty are questions of law for a court to decide. (*Delgado v. Trax Bar & Grill* (2005) 36 Cal.4th 224, 237.)

" '[I]n the absence of a statutory provision establishing an exception to the general rule of Civil Code section 1714, courts should create one only where "clearly supported by public policy." ' [Citations.] [¶] In determining whether policy considerations weigh in favor of such an exception, [courts] have looked to 'the foreseeability of harm to the plaintiff, the degree of certainty that the plaintiff suffered injury, the closeness of the connection between the defendant's conduct and the injury suffered, the moral blame attached to the defendant's conduct, the policy of preventing future harm, the extent of the burden to the defendant and consequences to the community of imposing a duty to exercise care with resulting liability for breach, and

the availability, cost, and prevalence of insurance for the risk involved.' [Citation.]" (*Vasilenko v. Grace Family Church* (2017) 3 Cal.5th 1077, 1083.)

3. Legal Principles Re: Assumption of Risk

To establish a cause of action for negligence, plaintiff must prove Developer Defendants owed a duty of care. (*Wattenbarger v. Cincinnati Reds*, *Inc*. (1994) 28 Cal.App.4th 746, 751.) Generally, each person has a duty to use due care to avoid injuring others by their careless conduct. (Civ. Code § 1714.) Any exception to the general rule must be based on statute or clear public policy. (*Knight v. Jewett* (1992) 3 Cal.4th 296, 315.) The doctrine of primary assumption of risk is one such exception. (*Hamilton v. Martinelli & Assocs*. (2003) 110 Cal.App.4th 1012, 1021.)

To determine if a plaintiff assumed the risk of a particular activity, a court must decide if the defendant owed a duty to the plaintiff. (*Knight*, *supra*, 3 Cal.4th at p. 313.) The existence and scope of a defendant's duty of care is a question of law. (*Ibid*.) In the sport or recreational context, determining the existence and scope of a defendant's duty of care is a "legal question which depends on the nature of the sport or activity in question and on the parties' general relationship to the activity," (*ibid*.), rather than "the particular plaintiff's subjective knowledge and awareness[,]" (*Cheong v. Antablin* (1997) 16 Cal.4th 1063, 1068).

Some dangers are inherent and integral to participation in a sport or recreational activity, and a court is to consider these dangers when determining whether there is a duty of care. "As a general rule, persons have a duty to use due care to avoid injury to others, and may be held liable if their careless conduct injures another person. [Citation.] Thus, for example, a property owner ordinarily is required to use due care to eliminate dangerous conditions on his or her property. [Citations.] In the sports setting, however, conditions or conduct that otherwise might be viewed as dangerous often are an integral part of the sport itself. Thus, although moguls on a ski run pose a risk of harm to skiers that might not exist were these configurations

removed, the challenge and risks posed by the moguls are part of the sport of skiing, and a ski resort has no duty to eliminate them. [Citation.] In this respect, the nature of a sport is highly relevant in defining the duty of care owed by the particular defendant.

"In some situations, however, the careless conduct of others is treated as an 'inherent risk' of a sport, thus barring recovery by the plaintiff. For example, numerous cases recognize that in a game of baseball, a player generally cannot recover if he or she is hit and injured by a carelessly thrown ball [citation], and that in a game of basketball, recovery is not permitted for an injury caused by a carelessly extended elbow [citation]. The divergent results of the foregoing cases lead naturally to the question how courts are to determine when careless conduct of another properly should be considered an 'inherent risk' of the sport that (as a matter of law) is assumed by the injured participant.

"Contrary to the implied consent approach to the doctrine of assumption of risk …, the duty approach provides an answer which does not depend on the particular plaintiff's subjective knowledge or appreciation of the potential risk. Even where the plaintiff, who falls while skiing over a mogul, is a total novice and lacks any knowledge of skiing whatsoever, the ski resort would not be liable for his or her injuries. [Citation.] And, on the other hand, even where the plaintiff actually is aware that a particular ski resort on occasion has been negligent in maintaining its towropes, that knowledge would not preclude the skier from recovering if he or she were injured as a result of the resort's repetition of such deficient conduct. In the latter context, although the plaintiff may have acted with knowledge of the potential negligence, he or she did not consent to such negligent conduct or agree to excuse the resort from liability in the event of such negligence." (*Knight*, *supra*, 3 Cal.4th at pp. 315–316.)

Thus, a defendant does not have a legal duty to eliminate or protect a plaintiff from risks inherent or integral to a sport or recreational activity. In general, however,

a defendant does "have a duty to use due care not to increase the risks to a participant over and above those inherent in the sport." (*Id.* at p. 315.)

The doctrine of primary assumption of risk operates as a complete bar to a plaintiff's recovery. (*Ibid.*) " '[W]hen the plaintiff claims the defendant's conduct increased the inherent risk of a sport, summary judgment on primary assumption of risk grounds is unavailable unless the defendant disproves the theory or establishes a lack of causation.' " (*Luna v. Vela* (2008) 169 Cal.App.4th 102, 112, quoting *Huff v. Wilkins* (2006) 138 Cal.App.4th 732, 740.)

A court must also consider the relationship between the parties in determining whether or not a defendant owes a legal duty to a plaintiff. A defendant who "is an organizer of the activity or someone who has provided or maintained the facilities and equipment used" will have a duty to participants not to increase the inherent risks of the activity. (*Luna*, *supra*, 169 Cal.App.4th at p. 109, discussing *Morgan v. Fuji Country USA*, *Inc.* (1995) 34 Cal.App.4th 127, 132, 134.)

California courts have identified some of the inherent risks in snow skiing, including, without limitation: variations in terrain; falling into ravines or canyons; surface or subsurface snow or ice conditions; bare spots, rocks, trees, low hanging branches, and other forms of natural growth or debris; collisions with other skiers; collisions with fences, including barb wire fences and other boundary barriers; and collisions with other properly marked or plainly visible objects and equipment, including snowmaking equipment and chairlift towers. (*Lackner v. North* (2006) 135 Cal.App.4th 1188, 1202; *Kane v. Nat'l Ski Patrol Sys.*, *Inc.* (2001) 88 Cal.App.4th 204, 213; *Connelly v. Mammoth Mountain Ski Area* (1995) 39 Cal.App.4th 8, 12; *O'Donoghue v. Bear Mountain Ski Resort* (1994) 30 Cal.App.4th 188, 193–194.) Thus, manmade hazards such as snowmaking equipment and chairlift towers are inherent risks so long as they are obvious, either because they are plainly visible (e.g., because

of their size) or because they are well-marked. (*Connelly*, *supra*, 39 Cal.App.4th at p. 2.)

" 'Safety is important, but so is the freedom to engage in recreation and challenge one's limits. The primary assumption of risk doctrine balances these competing concerns by absolving operators of activities with inherent risks from an obligation to protect their customers from those risks. [¶] What the primary assumption of risk doctrine does not do, however, is absolve operators of any obligation to protect the safety of their customers. [Citation.] As a general rule, where an operator can take a measure that would increase safety and minimize the risk of the activity without also altering the nature of the activity, the operator is required to do so.' [Citation.]" (*Summer J. v. United States Baseball Fed'n* (2020) 45 Cal.App.5th 261, 271–272 [emphasis in original].) "[T]he primary assumption of risk doctrine has never relieved an operator of its duty to take reasonable steps to minimize inherent risks without altering the nature of the activity." (*Grotheer v. Escape Adventures*, *Inc*. (2017) 14 Cal.App.5th 1283, 1301.)

4. Discussion

Developer Defendants assert they did not owe a duty of care to plaintiff as they do not own, possess, maintain, or control the land underlying or adjacent to where the incident with plaintiff occurred. For the following reasons, the court finds that Developer Defendants did not establish as a matter of law that they did not owe a duty of care to plaintiff.

The court sustained plaintiff's Objection Numbers 6, 7, 10, and 11 to Developer Defendants' evidence. That evidence is cited to support the factual assertions made by Developer Defendants in their Amended Separate Statement of Undisputed Facts ("AUMF") ¶¶ 42–45, 47, 50, and 53–58. Accordingly, the court gives no weight to Developer Defendants' assertions made in those paragraphs.

Additionally, Developer Defendants' factual assertions stated in AUMF ¶¶ 49 and 52 are not supported by the evidence cited. In support of AUMF ¶¶ 49 and 52, Developer Defendants cite to the deposition testimony of Robert John Reiter, who was a general manager for Kirkwood Property Services ("KPS"), and David Aaronson, who is one of three owners of Lot 10, which is purportedly the property from which plaintiff fell.

At his deposition, Reiter testified that on a weekly basis he would drive along Palisades Drive to check on snow removal and to make sure there were no broken, frozen pipes causing damage to the residences. (*Id.*, 29:25–30:7.) To opposing counsel's questions about skier safety consulting, inspections of common areas for snow safety, or snow removal, Reiter repeatedly responded that he did not recall or did not know the answer.

Those non-substantive responses do not mean that KPS had no involvement in the activities or inspections asked about by opposing counsel. In fact, Reiter's statement that he drove along Palisades Drive on a weekly basis to check on snow removal and to make sure there were not broken, frozen pipes causing property damage raises an inference that Developer Defendants arguably had some control over Palisades Drive and the property of the development, both common areas and private property.

With regard to AUMF ¶ 52, Developer Defendants assert they did not have any obligations to maintain, control, possess, inspect, or install signage on Lot 10. David Aaronson's testimony says nothing of the sort. He simply states that KPS was not hired or retained by the owners of Lot 10 to perform any work on that property.

The court did consider Developer Defendants' evidence that the HOA contracted with Kirkwood Meadows Public Utility District for the removal of snow during the winter of 2016–2017. (AUMF, ¶ 46.) The court also considered Developer Defendants' evidence that KPS was paid $2,900 per year to provide financial management services

to the HOA, and the HOA paid KPS $2,600 per year to provide physical management services. (AUMF, ¶ 48.) This evidence, however, is not sufficient to establish as a matter of law that Developer Defendants did not owe a duty to plaintiff.

In conclusion, Developer Defendants did not provide sufficient, admissible evidence establishing as a matter of law that they did not owe a duty of care to plaintiff. Accordingly, the burden of production does not shift to plaintiff. Because Developer Defendants' motion fails under both legal theories asserted, their motion for summary judgment is denied.

HOA'S MOTION FOR SUMMARY JUDGMENT

The HOA moves for judgment based on (1) California's recreational use statute, Civil Code § 846,[2] and (2) primary assumption of risk.

1. Preliminary Matters

Plaintiff's Objections to HOA's Evidence

Objection Nos. 1–5, and 8–15 are overruled.

Objection Nos. 6, and 7 are sustained on the basis of improper use of discovery responses, as explained in Section 1, pages 3–4, regarding the Developer Defendants' motion.

HOA's Objections to Plaintiff's Evidence

Objection Nos. 1–8 are overruled.

2. Legal Principles Re: Recreational Use Statute

Section 846 provides in part: "An owner of any estate or any other interest in real property, whether possessory or nonpossessory, owes no duty of care to keep the premises safe for entry or use by others for any recreational purpose or to give any warning of hazardous conditions, uses of, structures, or activities on those premises to persons entering for a recreational purpose, except as provided in this section." (*Id.*,

[2] All undesignated statutory references are to the Civil Code.

subd. (a).) "There are 'two elements as a precondition to immunity: (1) the defendant must be the owner of an "estate or any other interest in real property, whether possessory or nonpossessory"; and (2) the plaintiff's injury must result from the "entry or use [of the 'premises'] for any recreational purpose." ' [Citation.]" (*Gordon v. Havasu Palms*, *Inc.* (2001) 93 Cal.App.4th 244, 255.)

Thus, when an uninvited, nonpaying recreational user becomes injured on private land, section 846 bars recovery. (*Ornelas v. Randolph* (1993) 4 Cal.4th 1095, 1100.) The statute defines the phrase "recreational purpose" by means of a nonexhaustive list of activities that "range from risky activities enjoyed by the hardy few ... to more sedentary pursuits amenable to almost anyone...." (*Id.* at p. 1101.) The list includes "winter sports." (§ 846(b).)

There are three exceptions to the immunity conferred by section 846: "This section does not limit the liability which otherwise exists for any of the following: [¶] (1) Willful or malicious failure to guard or warn against a dangerous condition, use, structure or activity. [¶] (2) Injury suffered in any case where permission to enter for the above purpose was granted for a consideration other than the consideration, if any, paid to said landowner by the state, or where consideration has been received from others for the same purpose. [¶] (3) Any persons who are expressly invited rather than merely permitted to come upon the premises by the landowner." (*Id.*, subd. (d).)

Section 846 "was enacted to encourage property owners to allow the general public to engage in recreational activities free of charge on privately owned property." (*Hubbard v. Brown* (1990) 50 Cal.3d 189, 193.) "The statutory goal was to constrain the growing tendency of private landowners to bar public access to their land for recreational uses out of fear of incurring tort liability." (*Ibid.*) It expresses "a strong policy that land should be open to recreational use." (*Id.* at p. 192.)

The statute accomplishes this goal "by immunizing persons with interests in property from tort liability to recreational users, thus making recreational users

responsible for their own safety and eliminating the financial risk that had kept land closed." (*Ibid.*) It further "immunize[s] owners of any interest in real property, regardless of whether the interest includes the right of exclusive possession." (*Hubbard*, *supra*, 50 Cal.3d at p. 197.)

3. Legal Principles Re: Primary Assumption of Risk

See Section 3 regarding Developer Defendants' motion.

4. Discussion

The parties do not dispute that Palisades Drive is a common area of the HOA. (HOA Separate Stmt. of Undisputed Facts ("UMF"), ¶ 3.) Thus, the first of two elements as a precondition to immunity is satisfied. However, the court finds there is a triable issue of material fact as to whether the second element is satisfied; that is, whether plaintiff entered Palisades Drive for a recreational purpose.

The HOA does not assert that it owns or possesses Lots 10 and 11, which plaintiff purportedly skied through and fell from before landing on Palisades Drive. (UMF, ¶¶ 20, 31, 34.) In contrast, plaintiff provides evidence that the group intended to enter onto Palisades Drive to return to their rental apartment, not to snowboard. (Pl. Additional Facts ("PAF"), ¶ 81.) Stated another way, plaintiff intended to stop snowboarding prior to entering Palisades Drive.

Alternatively, assuming for argument's sake that the HOA made a prima facie showing that the preconditions to immunity apply, the court must then consider whether an exception applies. In this regard, there is no dispute as to two of the three potential exceptions. Specifically, the parties do not dispute that plaintiff was not expressly invited to enter onto or use any of the HOA's property. (UMF, ¶ 11.) The parties also do not dispute that plaintiff provided no compensation or direct benefit to the HOA for use of Palisades Drive, or the skier easement. (UMF, ¶¶ 6–8.)

However, plaintiff argues there are triable issues of fact as to whether the HOA willfully or maliciously failed to guard or warn against a dangerous condition. The court agrees.

"A landowner's conduct becomes willful or malicious only if three elements are present: ' "(1) actual or constructive knowledge of the peril to be apprehended, (2) actual or constructive knowledge that injury is a probable, as opposed to a possible, result of the danger, and (3) conscious failure to act to avoid the peril." ' [Citations.]" (*Bacon v. S. Cal. Edison Co.* (1997) 53 Cal.App.4th 854, 859.)

Plaintiff presented evidence that a similar incident occurred at the Resort in February 2017—about two months prior to plaintiff's incident—which result in serious injuries to the skier and was witnessed by Resort executives; that HOA members expressed concerns about skiers injuring themselves on their property; that the HOA is responsible for maintaining common areas in good condition; there was record snowfall that winter and the snowbank along Palisades Drive was about 20' high; there were many ski and snowboard tracks in the area near where the incident occurred; and that the area appeared groomed, was used by other skiers, and was not roped off or marked. (PAF, ¶¶ 64–66, 72–80.)

Viewed in the light most favorable to plaintiff, this evidence could lead a reasonable trier of fact to infer that the HOA willfully failed to guard or warn against a dangerous condition. Based on this same evidence, the court also finds there is a triable issue of fact as to whether the HOA increased the inherent risks of snowboarding. (PAF ¶¶ 72–80.)

Because the HOA's motion fails under both legal theories asserted, its motion for summary judgment is denied.

TENTATIVE RULING # 1: THE DEVELOPER DEFENDANTS' MOTION FOR SUMMARY JUDGMENT IS DENIED. THE PALISADES AT KIRKWOOD

HOA'S MOTION FOR SUMMARY JUDGMENT 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.