Judge Benson – Law & Motion – Wednesday, September 6, 2023 @ 9:00 AM
TENTATIVE RULINGS

1. 21CV01680 Nickell, Jordan v. Airth, Stewart et al

EVENT: Defendant Julian Garduno's Motion For Summary Judgment

Pursuant to CCP § 437c(h) Defendant Julian Garduno's Motion For Summary Judgment is continued to December 13, 2023 at 9:00am. The briefing schedule is as follows:

Opposing parties' supplemental brief: November 15, 2023

Moving Party's Responsive Brief: November 30, 2023

2-3. 22CV00191 Souza, Earl et al v. California Fair Plan et al.

EVENT: (1) Plaintiff's Motion for Summary Adjudication (Continued from 8/30/23)

(2) Defendant California Fair Plan Association's Motion for Summary Judgment or Summary Adjudication

PLAINTIFF'S MOTION FOR SUMMARY ADJUDICATION

Plaintiff's Motion for Summary Adjudication is DENIED.

Civil Code § 3399. When contract may be revised

> When, through fraud or a mutual mistake of the parties, or a mistake of one party, which the other at the time knew or suspected, a written contract does not truly express the intention of the parties, it may be revised on the application of a party aggrieved, so as to express that intention, so far as it can be done without prejudice to rights acquired by third persons, in good faith and for value.

It is undisputed that the terms of the policy limited Defendants liability to no more than the insured's interest in the property. (Defendant's UMF 19) To obtain the benefit of this statute, it is necessary that the parties shall have had a complete mutual understanding of all the essential terms of their bargain; if no agreement was reached, there would be no standard to which the writing could be reformed. (*Bailard v. Marden*, (1951) 36 Cal. 2d 703, 708) [Emphasis Added]

Plaintiff has failed to introduce any evidence of an agreement or understanding between the parties that is contrary to the clause limiting liability to the insured's interest. As a result, there is no basis to reform the clause in the policy.

Regarding Plaintiffs argument that Defendant had a duty to undertake a reasonable investigation of the ownership status of the properties, the Court disagrees. It is clear that the principle articulated in *Barrera v. State Farm Mutual Auto Ins. Co*. (1969) 71 Cal. 2d 769 was limited to public policy considerations specific to auto insurance. Because Defendant had no obligation to investigate the representations made by Jeff Souza on the application, the contention that Defendant knew or should have known of the mistake necessarily fails.

DEFENDANT'S MOTION FOR SUMMARY JUDGMENT

Defendant California Fair Plan Association's Motion for Summary Judgment is GRANTED.

Breach of Contract

Defendant FAIR PLAN has met its initial burden demonstrating no triable issue of fact exists as to the breach of contract cause of action. First, it is undisputed that Jeff Souza was paid in excess of the amount he was entitled per the terms of the policy. It is undisputed that Jeff had a 25% interest in the property (UMF 2), that the policy limited liability to his interest in the property (UMF 19) and that Defendant sent a check to Jeff Souza in the amount of $145,000 which was 50% of the policy limits.

Defendant FAIR PLAN has also met its initial burden demonstrating no triable issue of fact exists as to Plaintiffs Earl and Marilyn Souza. It is undisputed that neither Earl or Marilyn were named insureds under the policy. (UMF 20) Because neither Earl or Marilyn were contracting parties to the policy, their breach of contract cause of action necessarily fails, see *Republic Indem. Co. v. Schofield*, (1996) 47 Cal. App. 4th 220, 227.

Plaintiff's argument that FAIR PLAN'S conduct demonstrates they intended to insure all three Plaintiffs for 100% of the policy limits is unpersuasive. Plaintiff's arguments are barred by the Parol Evidence rule.

Extrinsic evidence cannot be used to contradict the contract's terms unless the language is "reasonably susceptible" to the proposed interpretation. (*Thrifty Payless, Inc. v. Mariners Mile Gateway, LLC*, (2010) 185 Cal. App. 4th 1050, 1061) Indeed, unless the language is "reasonably susceptible" to the proposed meaning, extrinsic evidence cannot even be considered to explain or otherwise shed light upon the parties' intent. (Id)

Here, pursuant to UMF's 17, 19, and 20, it is undisputed that the policy is unambiguous – it only applies to named insureds, and it only provides coverage to the extent of the named insured's interest in the property. Further, Jeff Souza was the only named insured. As a result, extrinsic evidence regarding the conduct of the parties concerning intent cannot be considered, consequently no triable issue of fact can be established based on evidence of conduct of the parties.

Breach of the Implied Covenant of Good Faith and Fair Dealing

FAIR PLAN's argument that breach of the covenant of good faith and fair dealing requires a predicate breach of contract is well taken. As Defendant correctly noted, the first element of a bad faith claim is that benefits due under the policy were withheld. (*Century Surety Co. v. Polisso*, (2006) 139 Cal. App. 4th 922, 949) In other words, there must be a predicate breach. As a result, pursuant to the breach of contract discussion, the motion must be granted as to Breach of the Implied Covenant of Good Faith and Fair Dealing.

Reformation

The Court reincorporates its discussion in Plaintiffs' motion concerning reformation.

Defendant has met its initial burden by demonstrating no triable issue of fact exists; i.e., that the failure to include Earl and Marilyn in the policy was the result of mutual mistake, fraud, or a mistake that Defendant knew or suspected at the time the policy was executed. To the contrary, it is undisputed that the broker submitted an application that did not identify Earl Souza or Marilyn Souza as applicants for the FAIR Plan dwelling insurance policy for the property.

Estoppel

Regarding the estoppel argument, there must be a showing that the insurer either intentionally relinquished a known right, or acted in such manner as to cause the insured reasonably to believe the insurer had relinquished such right, and that the insured relied upon such conduct to his detriment. (*Val's Painting & Drywall, Inc. v. Allstate Ins*. Co., (1975) 53 Cal. App. 3d 576, 587)

Here, the was no intentional relinquishment of a known right. Although Defendant wrote a check to all three parties, subsequently Defendants advised Jeff Souza that because he was the only Named Insured on the Policy at the time of loss, the FAIR Plan would only pay for his loss and not the loss of his parents. (UMF 31) As a result there is no triable issue of fact as to whether Defendant relinquished a known right nor is there a triable issue of fact that the insured reasonably believed Defendant relinquished a known right – Defendant clearly reserved their rights pursuant to UMF 31.

Defendant shall prepare and submit a form of order consistent with this ruling within 2 weeks.

4. 22CV02993 OneMain Financial Group v. Bagnaschi, Nicholas A

EVENT: Plaintiff's Motion to Deem Requests for Admission Admitted

Plaintiff's Motion to Deem Requests for Admission Admitted is GRANTED. The Court will sign the Proposed Order.

5-6. 23CV00288 Rossington, Shauna et al. v. Mountain Circle Family Services, Inc. et al.

EVENT: (1) Plaintiffs' Motion to Remand

(2) Status Conference re: Removal to Federal Court

Plaintiffs' Motion to Remand is DENIED for lack of jurisdiction. A further Case Management Conference is hereby set for January 17, 2024 at 10:30am.

7-8. 23CV00520 Bruffett, James v. Felix, Genevieve

EVENT: (1) Motion to Deem the Truth of Matters Specified in Requests For Admissions Admitted;

(2) Motion to Compel Answers Without Objections to Special Interrogatories, Set One

Both motions are Granted. Defendant is ordered to provide code complaint responses without objections no later than September 20, 2023. Sanctions are awarded against defendant in the amount of $1,620.00. The Court will sign the Proposed Orders.

9-11. 20CV01884 Tyler Edwards, Inc. v. McCain, Kevin et al.

EVENT: (1) Application for Right to Attach Order – James Edwards

(2) Application for Right to Attach Order – Tyler Edwards

(3) Application for Right to Attach Order – Tyler Edwards, Inc.

All Applications are DENIED without prejudice. The requests are premature considering the pending matters before the Court.

12-14. 23CV01022 Cockburn, Ivan Edward v. Cockburn, Benedict Peter, et al.

EVENT: (1) Demurrer to Complaint

(2) Plaintiff's Motion to Compel Further Responses (Wood)

(3) Plaintiff's Motion to Compel Further Responses (Benedict)

DEMURRER

Defendants Benedict Peter Cockburn and Elizabeth Jane Wood's Demurrer to the Complaint is SUSTAINED as noted herein. To the extent the demurrer is sustained with leave to amend, Plaintiff shall amend within 20 days of service of the order.

The prior ruling did not give Defendants permission to file a new brief as to the merits – it only provided the opportunity to cure deficiencies in the request for judicial notice. The Court is only considering the supplemental papers as to judicial notice.

Defendants' request for judicial notice is GRANTED.

The demurrer to the Second Cause of Action is SUSTAINED WITHOUT LEAVE TO AMEND.

The demurrer to the Fourth Cause of Action is SUSTAINED WITH LEAVE TO AMEND. Although the Complaint clearly alleges Plaintiff has an interest in the LLC, the Complaint does not clearly allege whether the LLC was distributed from the trust.

The demurrer to the Fifth Cause of Action is SUSTAINED WITH LEAVE TO AMEND. Again, the Complaint does not clearly state whether the LLC was distributed from the trust. Further clarification is needed as to paragraph 62 and whether "these documents" includes trust and will documents.

Defendants shall prepare and submit a form of order consistent with this ruling within 2 weeks.

DISCOVERY MOTIONS

Special Interrogatories (Benedict Cockburn & Elizabeth Wood)

With the exception of several interrogatories identified below, the vast majority of responses contain substantive responses, therefore the motion is denied accordingly.

Denied: 1, 3-17, 19,20, 23-25

Granted: 18, 21, and 36 (non-responsive as the requests seek identification of documents, not persons); 22 (seeks information concerning improvements, not ownership interests.)

Requests for Admissions (Benedict Cockburn)

Nos. 5-9: Denied.

Nos. 10-13: Granted. The response appears to indicate responding party lacks sufficient information or belief as to "whether or not there has been any refusal to make distributions", however, the response does not provide that a reasonable inquiry has been made pursuant to CCP § 2033.220(c). Also, the response includes meritless and unsubstantiated objections.

Nos. 14 – 37: Denied.

Form Interrogatories (Benedict Cockburn)

Nos. 2.3 and 2.4 – Granted.

Nos. 2.11, 2.12, and 15.1 – Denied.

No. 17.1 – Denied.

Production of Documents (Benedict Cockburn)

The Motion is DENIED in its entirety.

Requests for Admissions (Elizabeth Wood)

The motion is DENIED with the exception of nos. 20,22,23, and 52 which are deficient for the reason that they do not state that a reasonable inquiry has been made pursuant to CCP § 2033.220(c).

Form Interrogatories (Elizabeth Wood)

Nos. 2.3 and 2.4 – Granted.

Nos. 2.11, 2.12, and 15.1 – Denied.

No. 17.1 – Denied.

Production of Documents (Elizabeth Wood)

The Motion is Denied in its entirety.

Regarding sanctions, both parties request for sanctions is DENIED. To the extent these motions are granted, Defendants shall provide amended responses within 20 days.

Plaintiff shall prepare and submit a form of order consistent with this ruling within 2 weeks.

15. <u>22CV02119 Terstegge, Heather v. Kia America, Inc.</u>

EVENT: Plaintiff's Motion to Compel the Deposition of the Person Most Qualified and Production of Documents (Continued from 8/9/23)

Plaintiff's Motion to Compel the Deposition of the Person Most Qualified and Production of Documents is GRANTED as set forth herein. In light of the fact that it has been roughly 9 months since the notice of deposition, the Court orders the depositions take place no later than November 1, 2023.

The parties are ordered to meet and confer regarding a protective order. If the parties cannot agree on the form of a protective order, each party shall submit a protective order to the Court within 2 weeks and the Court will select one.

Preliminarily, to the extent Defendant objects on privilege grounds, Defendant shall provide a privilege log. The Court issues the following rulings:

The motion is GRANTED as to category nos. 1,2,3,4,5 and 6. Regarding category no. 2, the category is limited to the subject vehicle. As to category no. 4, the category is limited to the timeframe of 2021 – present.

The motion is GRANTED as to production of document request nos. 1-4. As to request no. 4, the request is limited in time to 2021-present.

Sanctions are denied.

Plaintiff shall prepare and submit a form of order consistent with this ruling within 2 weeks.

16-17. 20CV01510 Ortega, Ruben et al v. Puig Palomar, Miguel, MD et al.

EVENT: (1) Motion to Amend Complaint

(2) Motion to continue trial

The Motion to Amend Complaint is DENIED as untimely pursuant to CCP § 425.13 which requires a motion to be filed within 2 years of the complaint. It is undisputed that this motion was filed roughly 3 years after the complaint was filed. The Court finds no authority exists establishing an exception to the two-year rule.

The Motion to Continue Trial is GRANTED. The trial and related dates are vacated. A Case Management Conference is hereby set for November 8, 2023 at 10:30am. The parties shall submit CMC statements and be prepared to select a new trial date.