

1. **16CV01960 BROWN, GARY LLOYD V. SYCAMORE RANCH ET AL**

EVENT: Defendant Linda Irene Willadsen’s Motion for Judgment on the Pleadings

Defendant’s Request for Judicial Notice and Second Supplemental Request for Judicial Notice are granted. Defendant’s Supplemental Request for Judicial Notice is granted as to the Dismissal of Appeal filed in the matter entitled Brown v. Sycamore Ranch, et al., in the Appellate District, Case No. C097320, on or about December 2, 2022; and granted in part as to the Motion to Dismiss Appeal and Appellant’s Opposition to Motion to Dismiss Appeal, both filed in the matter entitled Gary Brown v. Sycamore Ranch, et al., in the California Third Appellate District, Case No. C097320, on or about October 28, 2022 and November 24, 2022, respectively. As to the latter documents, the Court takes judicial notice of the existence of these filings, but not as to the truth of the facts contained therein or the truth of their contents. Professional Engineers v. Dept. of Transp. (1997) 15 Cal.4th 543, 590; Gong v. City of Rosemead (2014) 226 Cal.App.4th 363, 368. Finally, Plaintiff’s Request for Judicial Notice is granted.

As to the Motion, as an initial matter, although not dispositive in terms of the Court’s ruling on the instant Motion, the Court notes that Plaintiff’s position on this issue in Opposition to this Motion contradicts the position taken by Plaintiff/Appellant in Opposition to Defendant/Respondent’s Motion to Dismiss the matter before the Third District Court of Appeal. [See, Defendant’s Supplemental Request for Judicial Notice filed December 5, 2022 at Exhibit B: Appellant Gary Lloyd Brown’s Opposition to Respondent Linda Willadsen’s Motion to Dismiss Appeal at Pg. 4]. Again, while not dispositive, it is noted by the Court.

California courts routinely recognize, “[i]ssues adjudicated in earlier phases of a bifurcated trial are binding in later phases of that trial and need not be relitigated.” Arntz Contracting Co. v. St. Paul Fire & Marine Ins. Co. (1996) 47 Cal.App.4th 464, 487; Orange Cty. Water Dist. v. Alcoa Global Fasteners, Inc. (2017) 12 Cal.App.5th 252, 359, as modified on denial of reh’g (June 22, 2017).

To state a cause of action for breach of contract, the Plaintiff must prove (1) the existence of a contract, (2) plaintiff’s performance or excuse for nonperformance, (3) the defendant’s breach of a contractual term, and (4) resulting damage. Richman v. Hartley (2014) 224 Cal.App.4th 1182, 1186. Here, the dispute lies as to the third element – Defendant’s breach. Based on the allegations of the Complaint, the breaches alleged are:

1. Defendant breached the Partnership Agreement by executing checks on behalf of the Partnership. [See Complaint ¶¶10 & 16.]

The Court’s Ruling in this regard stated: “Carl Brown generally oversaw the Partnership’s finances from 1979 through approximately 1992. James Brown took over that role from 1992 through 1996. In 1996, all of the partners, including Plaintiff Gary Brown, requested that Defendant Willadsen handle the day-to-day oversight of the Sycamore Ranch checkbook and related tasks associated with the Partnership, including

payment of Sycamore Ranch expenses. Defendant Willadsen has continued in that role to this day. For over 20 years she has handled the payment of partnership expenses by way of the Partnership bank account. Plaintiff Brown is also listed on the Partnership bank account. Defendant Willadsen has never taken any salary or received any other compensation for her work on behalf of the Partnership since she took on this role in 1996.” [Ruling at p. 4.]

Additionally, as recognized in the Ruling, Plaintiff’s complaint regarding Defendant’s payment of partnership expenses was limited to legal expenses paid by the Partnership to defend the Partnership in the actions filed by Plaintiff. The Court’s Ruling stated in this regard:

“Defendant Willadsen actions in retaining counsel on behalf of the Partnership were consistent with her course of conduct on the Partnership's behalf for 20 years. Defendant Willadsen previously engaged counsel to represent the Partnership in various legal matters and was the partner charged with oversight of that representation and her partners including Plaintiff Brown, did not object. Further, Defendant Willadsen had the authority to write checks on behalf of the Partnership for legal expenses. Plaintiff Brown was "on board" with Defendant Willadsen taking over the checkbook in 1996 and has had no issue with her writing checks on the Partnership's behalf for 20 years. Plaintiff Brown's complaints over payment of legal fees is limited to the fees paid to the law firm of Downey Brown in connection with legal services in the litigation before the court. Plaintiff Brown has failed to establish a breach of fiduciary duty by Defendant Willadsen based upon her hiring of the Downey Brown law firm and paying their legal fees to represent the Partnership.” [Ruling at pp. 9:21-10:3.]

2. Defendant breached the Partnership Agreement by retaining legal representation to defend the Partnership. [See Complaint at ¶¶11 & 16.]

The Court’s Ruling in this regard stated: “In these consolidated matters before the Court, Plaintiff Brown has named Sycamore Ranch, a partnership, as a defendant. Defendant Willadsen hired the law firm of Downey Brand to represent the Partnership in the litigation. Plaintiff Brown testified that when he filed suit against the Partnership, raising certain interests, his interests were no longer aligned with the partnership with respect to those issues. At that point, as a matter of law, Plaintiff no longer had the right to participate in any Partnership decision-making related to his lawsuit Defendant Willadsen was the only partner left that could act on the Partnership's behalf, and her own duties to the Partnership required her to procure representation for the Partnership... “Defendant Willadsen[’s] actions in retaining counsel on behalf of the Partnership were consistent with her course of conduct on the Partnership’s behalf for 20 years. Defendant Willadsen previously engaged counsel to represent the Partnership in various legal matters and was the partner charged with

oversight of that representation and her partners including Plaintiff Brown, did not object. Further, Defendant Willadsen had the authority to write checks on behalf of the Partnership for legal expenses. Plaintiff Brown was 'on board' with Defendant Willadsen taking over the checkbook in 1996 and has had no issue with her writing checks on the Partnership's behalf for 20 years. Plaintiff Brown's complaints over payment of legal fees is limited to the fees paid to the law firm of Downey Brown in connection with legal services in the litigation before the court." [Ruling at pp. 9-10.]

3. Defendant assumed sole possession and control of the Partnership's business, to Plaintiff's exclusion. [See Complaint at ¶¶13 & 16.]

The Court's Ruling in this regard stated: "Plaintiff Brown presented no credible evidence that Defendant Willadsen excluded him from any decisions or control regarding the Partnership. Defendant Willadsen took necessary actions on behalf of the Partnership because none of her partners were willing to do so. Defendant Willadsen's partners consistently told her, 'Linda, just take care of it.' Which she did. By contrast, Plaintiff Brown chose not to be actively involved in the Partnership. He did testify that he and his sister had always been able to talk about issues related to the Partnership. It wasn't until Plaintiff Brown filed his most recent lawsuit that Defendant Willadsen was informed by Plaintiff Brown's counsel that she was not to talk to her brother directly regarding any issues regarding the Partnership." [Ruling at p. 10.]

Thus, each of the issues relating to an alleged breach of the Partnership Agreement are covered by the Court's prior Ruling and no substantive issues remain. Defendant Linda Irene Willadsen's Motion for Judgment on the Pleadings is GRANTED.

The Court vacates the Trial Readiness Conference on February 23, 2023 and the Jury Trial on February 27, 2023 and sets the matter for a Status Review hearing on February 22, 2023 at 10:30 a.m. for status of judgment. The Court will sign the form of order previously submitted by Defendant on October 28, 2022.

2-3. 18CV03051 CANAM MINERALS, INC ET AL V. BCJ SAND AND ROCK, INC ET AL

EVENTS: (2) Plaintiffs Canam Minerals, Inc. dba Kleen Blast, TS Group, LLC, and Industrial Sands, LLC's Motion to Strike the Answer of Defendants BCJ Sand and Rock, Inc. and Valley Silica dba Valley Sand & Rock, Inc. and for Entry of Default

(3) Plaintiffs Canam Minerals, Inc. dba Kleen Blast, TS Group, LLC, and Industrial Sands, LLC's Motion to Enforce Subpoena Against Norcal and to Compel Michael Hickerson to Comply with Pre-Trial and Trial Obligations and for Sanctions

On December 7, 2022, the Court granted David R. Griffith's Motion to be Relieved as Counsel for Defendants BCJ Sand and Rock, Inc. and Valley Silica dba Valley Sand & Rock, Inc., and such Order was to be "effective upon the filing of the proof of service of this signed order upon the client." No such proof of service appears in the

Court's file. Thus, while the Proof of Service of the Plaintiffs' Motion to Strike the Answer of Defendants BCJ Sand and Rock, Inc. and Valley Silica dba Valley Sand & Rock, Inc. and for Entry of Default is technically sufficient in terms of the procedural requirements of notice, the Court finds that due process requires further notice to the individual Defendants, instead of their outgoing counsel of record. Therefore, this matter is continued to February 22, 2023 at 9:00 a.m. to allow sufficient time for the filing by Mr. Griffith of a Proof of Service of the Order Granting Attorney's Motion to be Relieved as Counsel – Civil, and service of Plaintiffs' Motion to Strike and for Entry of Default on Defendants BCJ Sand and Rock, Inc. and Valley Silica dba Valley Sand & Rock, Inc. directly.

Plaintiffs' Motion to Enforce Subpoena Against Norcal and to Compel Michael Hickerson to Comply with Pre-Trial and Trial Obligations and for Sanctions is granted in part and denied in part. As an initial matter, the Court confirms that discovery remains open and all discovery deadlines shall run with any future set trial date. In regard to the Motion to Enforce Subpoena Against Norcal, that request is granted and a formal response to the Subpoena shall be served, without objections, within 30 days' notice of this ruling. In regard to the request that the Court order compliance with pre-trial and trial obligations, the Court finds that Plaintiffs have failed to provide any authority to permit the Court to grant such a request, and that portion of the Motion is denied. As to the request for sanctions, it appears to the Court that the request is based upon anticipated future non-compliance with the discovery and pre-trial/trial procedures and therefore the request for sanctions is denied at this time. However, the Court notes that it would be inclined to consider a future request for sanctions if the issues raised in this Motion persist. Counsel for the Plaintiffs shall submit a revised form of order consistent with ruling within two weeks.

4. 22CV00426 REID, CARL C V. FRANCES, GEORGE M

EVENT: Motion to be Relieved as Counsel

The Motion to be Relieved as Counsel is granted. The Court will sign the form of order submitted by counsel with modification to Paragraph 7 to indicate that the next scheduled hearing is a Case Management Conference on March 1, 2023 at 10:30 a.m.

5. 22CV02546 SAGE, PAMELA V. NEWREZ, LLC ET AL

EVENT: Demurrer by Defendant Newrez LLC DBA Shellpoint Mortgage, to Plaintiff's Verified Complaint

Defendant's Request for Judicial Notice is granted.

The Demurrer to the First Cause of Action for Violation of Civil Code §2923.5 is overruled as to Defendant Federal National Mortgage Association and sustained as to Defendant NewRez, LLC dba Shellpoint Mortgage Servicing on the basis that the Complaint fails to allege facts sufficient to state a cause of action as it fails to

establish that Defendant NewRez, LLC dba Shellpoint Mortgage Servicing was “[a] mortgage servicer, mortgagee, trustee, beneficiary, or authorized agent” at the time the Notice of Default was recorded. Plaintiff is granted leave to amend.

The Demurrer to the Second Cause of Action for Violation of Civil Code §2924(a)(1) is overruled as to Defendant Federal National Mortgage Association and sustained as to Defendant NewRez, LLC dba Shellpoint Mortgage Servicing on the basis that the Complaint fails to allege facts sufficient to state a cause of action as it fails to establish that Defendant NewRez, LLC dba Shellpoint Mortgage Servicing was “[a] trustee, mortgagee, or beneficiary, or any of their authorized agents” at the time the Notice of Default was recorded. Plaintiff is granted leave to amend.

The Demurrer to the Third Cause of Action for Violation of Civil Code §2923.6(c) is sustained on the basis that the allegations of the Complaint fail to establish that Plaintiff “submit[ted] a complete application for a first lien loan modification offered by, or through, the borrower’s mortgage servicer at least five business days before a scheduled foreclosure sale” as required by Civil Code §2923.6(c) [See Complaint at ¶¶42-44]. Plaintiff is granted leave to amend.

The Demurrer to the Fourth Cause of Action for Violation of Civil Code §2923.7 is overruled, the Court finding that Plaintiff has sufficiently plead facts to establish a cause of action for violation of Civil Code §2923.7 and that damages beyond injunctive relief are available under Civil Code §2924.12 for such a violation.

The Demurrer to the Fifth Cause of Action for Violation of Civil Code §2924.9 is overruled as to Defendant Federal National Mortgage Association and sustained as to Defendant NewRez, LLC dba Shellpoint Mortgage Servicing on the basis that the Complaint fails to allege facts sufficient to state a cause of action as it fails to establish that Defendant NewRez, LLC dba Shellpoint Mortgage Servicing was a “mortgage servicer” at the time the Notice of Default was recorded. Plaintiff is granted leave to amend.

The Demurrer to the Sixth Cause of Action for Violation of Civil Code §2924.10 is overruled, the Court finding that Plaintiff has sufficiently plead facts to establish a cause of action for violation of Civil Code §2924.10 and that damages beyond injunctive relief are available under Civil Code §2924.12 for such a violation.

The Demurrer to the Seventh Cause of Action for Negligence is sustained on both grounds raised by the Defendants. First, the Court finds that lenders and/or servicers do not owe a duty of care to borrowers in processing a loan modification application. See, *Sheen v. Wells Fargo Bank, N.A.* (2022) 12 Cal.5th. 905, 921. Thus, with regard to Plaintiff’s allegations that Defendants are negligent in relation to the loan modification application, the Demurrer is sustained without leave to amend. In regard to all other allegations of Defendants’ negligence, the Demurrer is sustained, but with leave to amend.

The Demurrer to the Eighth Cause of Action for Unfair Business Practices is overruled, the Court finding that Plaintiff has sufficiently stated her Fourth Cause of Action for Violation of Civil Code §2923.7 and Sixth Cause of Action for Violation of

Civil Code §2924.10, thus Plaintiff's Unfair Business Practices claim is valid. See, *Turner v. Seterus, Inc.* (2018) 27 Cal. App. 5th 516.

The Demurrer to the Ninth Cause of Action for Cancellation of Instruments is sustained, on the basis that the allegations of the Complaint fail to establish that "serious injury to Plaintiff" as required by Civil Code §3412. Plaintiff is granted leave to amend.

The Demurrer to the Tenth Cause of Action for Quiet Title is overruled, the Court finding an exception to the tender rule based upon the allegations in the Complaint that the trustee's sale was void. [See, e.g., Complaint at ¶38].

As indicated herein, Plaintiff has been granted leave to amend, in part. Any amended pleading shall be filed within 20 days. Plaintiff shall prepare and submit a revised form of order consistent with this ruling within two weeks.