MOSELLE v SADEGI

20CV44668

PLAINTIFF'S MOTION TO COMPEL DISCOVERY

This civil action stems from a dispute over a cannabis business between Plaintiff Parker Moselle ("Plaintiff") and Defendant James Sadegi ("Defendant").

Before the Court is Plaintiff's motion to compel responses to discovery. Plaintiff should have filed a separate motion for each type of discovery and failed to do so here. The Court will consider the substantive merits of the motion, but Plaintiff should be aware of this requirement for any future filings.

Defendant has not filed an opposition.

I. Procedural Background

On September 13, 2024, Plaintiff served discovery via email upon Defendant's counsel. Responses were due on October 15, 2024. No responses were received. Plaintiff's counsel followed up on the requests on October 25, 2024 and on October 28, 2024, Defendant's counsel stated he was still working on the responses. After no responses were provided, Plaintiff's counsel followed up on November 6 and 12, 2024. As of the filing of the motion to compel, the Defendant has not provided any response.

II. Legal Standard and Analysis

Pursuant to Code Civ. Proc. section 2033.280:

> (a) The party to whom the requests for admission are directed waives any objection to the requests, including one based on privilege or on the protection for work product under Chapter 4 (commencing with Section 2018.010). The court, on motion, may relieve that party from this waiver on its determination that both of the following conditions are satisfied:

1) The party has subsequently served a response that is in substantial compliance with Sections 2033.210, 2033.220, and 2033.230.

2) The party's failure to serve a timely response was the result of mistake, inadvertence, or excusable neglect.

Further, the Court shall deem the facts admitted as true, unless it finds that the party to whom the RFAs were directed, “has served, before the hearing on the motion, a proposed response to the requests for admission that is in substantial compliance with Section 2033.220.” (Code Civ. Proc. § 2033.280(c).)

Pursuant to Cal. Code Civ. Proc. § 2030.290, if a party to whom interrogatories are directed fails to serve a timely response then:

(a) The party to whom the interrogatories are directed waives any right to exercise the option to produce writings under Section 2030.230, as well as any objection to the interrogatories, including one based on privilege or on the protection for work product under Chapter 4 (commencing with Section 2018.010). The court, on motion, may relieve that party from this waiver on its determination that both of the following conditions are satisfied:

(1) The party has subsequently served a response that is in substantial compliance with Sections 2030.210, 2030.220, 2030.230, and 2030.240.

(2) The party's failure to serve a timely response was the result of mistake, inadvertence, or excusable neglect.

Pursuant to Code Civ. Proc. section 2031.300, if a party to whom requests for production of documents fails to serve a timely response then:

(a) The party to whom the demand for inspection, copying, testing, or sampling is directed waives any objection to the demand, including one based on privilege or on the protection for work product under Chapter 4 (commencing with Section 2018.010). The court, on motion, may relieve that party from this waiver on its determination that both of the following conditions are satisfied:

(1) The party has subsequently served a response that is in substantial compliance with Sections 2031.210, 2031.220, 2031.230, 2031.240 and 2031.280.

(2) The party's failure to serve a timely response was the result of mistake, inadvertence, or excusable neglect.

A party moving to compel initial responses under these sections is not required to meet and confer. (*Sinaiko Healthcare Consulting, Inc. v. Pacific Healthcare Consultants* (2007) 148 Cal.App.4th 390, 411.)

Defendant has failed to respond to any of Plaintiff's discovery requests. Defendant has also failed to file an opposition. Accordingly, Plaintiff's motion is well taken and **GRANTED**.

Defendant is ordered to provide verified responses, without objection, to all of Plaintiff's discovery requests, including Form Interrogatories, Special Interrogatories, Requests for Production of Documents and Request for Admissions within ten (10) days of this order.

III. Sanctions

Sanctions for failure to timely respond to RFAs are mandatory. (Code Civ. Proc. § 2033.280(c).) Defendant has failed to provide the actual documents requested and accordingly, sanctions are warranted.

Plaintiff requests sanctions in the amount of $712.50 plus $60 in costs if there is no hearing. If there is a hearing, Plaintiff seeks $1,350 in fees. The Court finds these requested sanctions amounts are reasonable and appropriate and **awards monetary sanctions owed by defendant in the amount of $772.50** to be paid within ten (10) days of this Order. If a hearing is requested by defendant and found to be unwarranted by the Court, the intent is to award a total of $1,410.

The Clerk shall provide notice of this Ruling to the parties forthwith. Plaintiff to submit a formal order pursuant to Rule of Court 3.1312 in conformity with this ruling.

KRPAN, et al v SLIGHT, et al

20CV44854

DEFENDANT JORDAN'S MOTION FOR SUMMARY JUDGMENT

Before the Court is a motion for summary judgment filed by Defendant A L Guy Jordan, Co. ("Defendant") against Plaintiffs Christopher Krpan and Julie Krpan ("Plaintiffs") on the sole cause of action against it for negligence - construction defect.

I. Background

On or about May 22, 2018, Plaintiffs purchased the real property located at 321 Fen Way, Murphys, CA 92547 ("Property") as a new home built by Defendant Yosemite Construction, LLC ("Yosemite") for $1,325,000.00. (UMF 2.) Yosemite hired Defendant to perform certain work on the Property in both 2015 and 2017, before Plaintiffs owned the Property. (UMF 5, 6.)

It is undisputed that Defendant "provided services grading, movement of dirt, movement of boulders, preparation for driveway and access roads, preparation for foundation for pool and other structures." (UMF 8.) It is also undisputed that Defendant did not perform any work within 50 feet of Plaintiff's house or 30 feet of the swimming pool. (UMF 7.) Defendant did not do any work on the front or back porch of the house, or within 50 feet of the house. (UMF 12.) Further, Defendant did not move any boulders or large rocks in the vicinity of any "posts." (UMF 13.) Defendant did not do any work related to the pool pad, or the structure of any building on Plaintiffs' property. (UMF 14.) For all work done on the Property, Defendant was paid a total of $7,838.00. (UMF 19.)

Sometime after the Property was completed and Plaintiffs were residing therein, they began to discover multiple construction defects. Most of the defects were related to the interior and exterior of the residential dwelling ("house.") Plaintiffs also allege that the pool was unlevel which caused a "bond beam to crack" (FAC ¶ 127.)

In responses to Special Interrogatories, Plaintiffs state that Defendant is liable because "soil preparation was not done properly as recommended by engineer reports, boulders and soil were moved without regard to existing work, the location of pipes or soil and land conditions requiring repair work." (UMF 9.) The damages allegedly caused by this purported negligence was the cost of replacing existing posts with new posts on the front and back porches of the house. (UMF 10, 11.)

Evidentiary Rulings

Plaintiffs objected to statements in Mr. Jordan's declaration. However, none of these objections were material to the disposition of the motion, and accordingly the Court does not rule on any of Plaintiffs' evidentiary objections to evidence. (Code Civ. Proc. §437(q).)

II. Legal Standard

Summary judgment is proper when there are no triable issues of material fact, and the moving party is entitled to a judgment as a matter of law. (Code Civ. Proc., § 437c(c).)

Defendant has the initial burden to show Plaintiffs' claims have no merit by showing either (1) that one or more elements of each cause of action cannot be established or (2) there is a complete defense to the claims. (Code Civ. Proc., § 437c(p)(2); see also *Aguilar v. Atlantic Richfield Co.* (2001) 25 Cal.4th 826, 849-850.) If Defendant meets that burden, then the burden shifts to Plaintiffs to show that a triable issue of material fact exists as to the element or defense at issue. (*Ibid.*) In ruling on a motion for summary judgment, the court must view the evidence in the light most favorable to the opposing party. (*Aguilar, supra,* 25 Cal.4th at p. 843.)

III. Analysis

The elements for a cause of action for negligence are: 1) existence of a duty, 2) breach of that duty, 3) injury, and 4) damages. (*Artiglio v. Corning, Inc*. (1998), 18 Cal.4th 604, 614.)

Plaintiff's First Amended Complaint alleges that Defendant, along with many other co-Defendants, was negligent in the construction of the Property. Plaintiffs allege that Defendant owed a duty of care on the construction of the house and that this duty was breached as a result of the "defects in design, selection of materials, and/or construction of the Property." (FAC ¶ 130.) However, it is unclear what work Plaintiffs believe Defendant performed, nor how that work was negligently performed.

Defendant moves for summary judgment on the grounds that Plaintiffs have failed to produce any evidence that Defendant's work caused any of the alleged defects. Defendant argues that Plaintiffs' entire theory of liability is based on conjecture and speculation about how Defendant's work might have contributed to the defects on the Property. In support of this contention, Defendant produces the declaration of its

principal and general contractor Arnold Jordan. ("Jordan Decl.") Mr. Jordan avers that he performed work at the Property in 2015 and 2017. (Jordan Decl. ¶ 2.) Mr. Jordan avers that in 2015:

> I was hired to dig alongside the garage to create space for parking and to
>
> relocate the driveway to its present location. I also re-sloped the dirt behind the garage because the bank was too steep. I also dug a V-ditch to carry water down the bank of the hill on which the garage stands. At this time the house had not yet been constructed at all. (Jordan Decl. ¶ 3.)

Mr. Jordan further avers that in 2017 he "was hired to spread dirt along the bank of the pumphouse, to create drainage and to place cobbles in the area below the pool pad." (Jordan Decl. ¶ 4.) Mr. Jordan avers that he did not work within fifty feet of the house or thirty feet of the pool (*Id*. ¶ 5), he did not move any boulders or large rocks (*Id*. ¶ 7), he did not work on any posts (*Id*. ¶ 8) and did not work within fifty feet of either the front or back porch. (*Id*. ¶ 9.) Defendant has further submitted evidence that the Plaintiffs do not have personal knowledge of the work performed by Defendants, how it was negligent, or any theory as to how it caused any injury. (Declaration of Randolph Greenwald ("Greenwald Decl.") ¶ ¶ 3, 4, Ex. 2 and Ex. 3.)

Defendant has met its initial burden by demonstrating that Plaintiffs lack any evidence that Defendant's limited work on the Property was done without due care or that the work created or caused any part of the damages alleged by Plaintiffs. Defendant has presented evidence that Plaintiffs believe the actual damage caused by Defendant is the amount of money that they had to expend to replace posts by the front and back porches. (UMF 10, 11.) Defendant avers that their work done in 2015 was before the house was even constructed, and that he never worked on or near the posts or porch. Plaintiffs do not present any evidence to the contrary, nor do they present any evidence to support their supposition that Defendant may have affected the pool.

In opposition, Plaintiffs primarily object to that portion of Mr. Jordan's declaration in which he states: "None of the work I did could have affected the Pool Pad or the structure of any building on the Property." (Jordan Decl. ¶ 10.) Plaintiffs argue that Mr. Jordan is attempting to give an expert opinion on lack of causation but that Mr. Jordan has not established that he is an expert.

Even without this statement, Defendant has shown that Plaintiffs lack evidence (or even allegations) of how Defendant committed any negligence. As such, it is up to Plaintiffs to show that a triable issue of material fact exists. This they have not done. Plaintiffs have produced no admissible evidence to counter Defendant's evidence that his work was limited in scope, predated the construction of the house, and was not located near the pool, house or porch. Plaintiffs provide no evidence of how Defendant's work was related in any way to the alleged defects on the Property. At most, Plaintiffs speculate that Defendant may have performed additional (or lesser) work than was invoiced. (UMF ¶ 5.) This is insufficient to create a triable issue of material fact.

Accordingly, Defendant's motion for summary judgment is **GRANTED**.

The Clerk shall provide notice of this Ruling to the parties forthwith. Defendant Jordan to submit a formal order pursuant to Rule of Court 3.1312 in conformity with this ruling.

FOSTER v IRBC 2 PROPERTIES, LLC

21CV45573

PLAINTIFF'S AMENDED MOTION TO COMPEL FURTHER DISCOVERY RESPONSES

Plaintiff Larry Foster brings a motion to compel further responses to discovery.

The motion does not comply with Local Rule 3.3.7. All matters noticed for the Law & Motion calendar shall Include the following language in the notice:

> 3 3 7 Tentative Rulings (Repealed Eff 7/1/06, As amended 1/1/18) All parties appearing on the Law and Motion calendar shall utilize the tentative ruling system. Tentative Rulings are available by 2:00 p.m. on the court day preceding the scheduled hearing and can be accessed either through the court's website or by telephoning 209-754-6285. The tentative ruling shall become the ruling of the court, unless a party desiring to be heard so advises the Court no later than 4:00 p.m. on the court day preceding the hearing including advising that all other sides have been notified of the intention to appear by calling 209-754-6285. Where appearance has been requested or invited by the Court, all argument and evidence Is limited pursuant to Local Rule 3 3. All matters noticed for the Law & Motion calendar shall Include the following language in the notice:
>
> **Pursuant to Local Rule 3 3 7, the Court will make a tentative ruling on the merits of this matter by 2:00 p.m. the court day before the hearing. The complete text of the tentative ruling may be accessed on the Court's website or by calling 209-754-6285 and listening to the recorded tentative ruling. If you do not call all other parties and the Court by 4:00 p.m. the court day preceding the hearing, no hearing will be held and the tentative ruling shall become the ruling of the court** [emphasis in original.]
>
> Failure to include this language in the notice may be a basis for the Court to deny the motion.

Furthermore, the motion purports to be one compelling multiple types of discovery. However, each set of discovery requires its own motion to compel. Plaintiff is on notice of this requirement.

Based on the foregoing, the motion is **DENIED**, WITHOUT prejudice to refile.

The Clerk shall provide notice of this Ruling to the parties forthwith. No further formal Order is required.

CONNOLY v DE LA CRUZ

23CV46549

PLAINTIFF'S MOTION TO STRIKE AFFIRMATIVE DEFENSES AND DEEM REQUESTS ADMITTED

This civil action stems from a dispute over easement rights between Mark V. Connolly ("Plaintiff") and Francisco de la Cruz ("Defendant"). On July 22, 2024, the Court ordered Defendant to provide detailed and specific verified responses to Plaintiff's Request for Production of Documents, Form Interrogatories, and Special Interrogatories. The Order required a response within thirty (30) days.

Now before the Court is Plaintiff's Motion to 1) Strike Affirmative Defenses, 2) Deem Requests for Admissions Admitted or in the Alternative for Terminating Sanctions.

As to Form Interrogatories 15.1 and 17.1, Plaintiff asserted that the responses were not code compliant because they were not full and complete and refer to other discovery provided elsewhere. The Court agreed, and in its July 22, 2024 Order stated:

> Defendant is ordered within 30 days to provide an individual responsive answer providing the required information as to each of its three subparts of Form Interrogatory 15.1 as to each affirmative defense without reference to other discovery responses or an instruction to search the public record.
>
> Defendant is ordered within 30 days to provide an individual responsive answer providing the required information as to each of its four subparts of Form Interrogatory 17.1 as to each of the 24 denied Requests for Admission without reference to other discovery responses or an instruction to search the public record.

Defendant submitted supplemental responses which Plaintiff continues to deem inadequate and non-compliant.

The Court agrees with Plaintiff that the supplemental responses are in a format that is less than exemplary. However, the Court also agrees with the Defendant that he has provided a substantial amount of information and exhibits. In the interests of justice, substance should be elevated over form and the Court finds that Defendant has substantially complied with the Court's July 22, 2024 Order.

Accordingly, Plaintiff's motion is **DENIED** and sanctions are **DENIED** to each party.

The Clerk shall provide notice of this Ruling to the parties forthwith. No further formal Order is required.