FOSTER v IRBC 2 PROPERTIES, LLC

21CV45573

DEFENDANTS' MOTIONS FOR SUMMARY JUDGMENT/SUMMARY ADJUDICATION

The Court notes that plaintiff has filed a Motion for Leave to File a Third Amended complaint, scheduled for 8/14/26 at 9:00 a.m. in Department 2. The Court finds that these MSJs and the motion for leave may impact on each other and therefore the motion for leave needs to be fully responded to for consideration of all motions at the same time.

Accordingly, **all motions for summary judgment are continued to August 14, 2026, at 9:00 a.m. in Department 2.** The Court will be addressing all pending motions in the tentative ruling posted pursuant to Local Rule 3.3.7 for that calendar.

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

FORD v GREENHORN GOLF, LLC

23CV47102

PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT/SUMMARY ADJUDICATION/AND FOR PERMANENT INJUNCTION

On December 6, 2023, Patricia Ford ("Plaintiff") filed a Complaint against Greenhorn Golf, LLC ("Defendant")[1] seeking damages for nuisance and requesting injunctive relief. On September 16, 2024, the Court granted a preliminary injunction in favor of Plaintiff.

Now before the Court is Plaintiff's motion for summary judgment.

I. Factual Background

Plaintiff is the owner of property located at 138 Smith Flat Road, Angels Camp, California ("Property") (UMF 1.) Plaintiff lives and resides on the Property. (UMF 2.) The Property is located within located within the master planned community commonly known as Greenhorn Creek. (UMF 3.) Prior to June 15, 2026, Defendant owned and operated the golf course and certain common areas in the neighborhood. (UMF 4.)

On June 15, 2026, Greenhorn conveyed APN 058-060-006-000 ("Lot M") and other parcels to SGM, Inc. by Grant Deed as part of an asset sale of the Greenhorn Creek Golf Course operation. (Defendant's UMF 1.) Lot M is the parcel on which the 18 trees at issue in this action were formerly located and from which the alleged root encroachment originated. (*Ibid*.) Plaintiff does not dispute the transfer of ownership but asserts that such transfer does not negate her claims against Defendant.

Lot M is an unimproved wooded lot containing a pond and several trees. (UMF 6.) At the start of this lawsuit, there were eighteen trees at issue – Plaintiff alleges that prior the removal of the 18 trees, the roots from Lot M encroached on Plaintiff's property. (UMF 8.) Plaintiff asserts that the encroachment caused damage to her yard, sprinkler system, garden, and concrete. (UMF 9-12.) Defendant disputes this assessment. (UMF 8-12.)

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[1] Plaintiff has also sued Does 1-10.

In 2022 and 2023, Plaintiff complained to Defendant and demanded that Defendant remove the trees and kill the roots. (UMF 13.) The parties dispute whether Defendant's responses were appropriate. However, Defendant did remove the 18 trees. (UMF 14.)

On June 28, 2023, Plaintiff obtained a quote from Lone Oak Tree Service, Inc. for the removal of the trees, grinding of the stumps, and treatment of the roots in the amount of $22,190.00. (UMF 15.) Defendant does not dispute that this quote was obtained but does dispute its accuracy and/or necessity. (UMF 15.) On or about January 18, 2024, Adams Construction, Inc. inspected the concrete damage at Plaintiff's Property and provided Plaintiff a quote in the amount of $20,068.00 for removal and replacement of damaged concrete and related root-removal work. (UMF 16.) Defendant does not dispute that this quote was obtained but does dispute that the damages were created by root intrusion. (UMF 16.) In or around January 2025, The Frog Hollow Green Group, Inc., inspected damage at Plaintiff's Property and provided a quote in the amount of $84,000.00 for landscape, irrigation, drainage, root-removal, and related repair work. (UMF 17.) Defendant does not dispute that this quote was obtained but does dispute that the damages were created by root intrusion. (UMF 17.)

On September 16, 2024, the Court granted injunctive relief requiring Defendant to remove the eighteen trees and roots on Lot M within thirty (30) days. (UMF 19.) In November 2024, Defendant removed the 18 trees. (UMF 20.) The parties dispute whether the tree removal was sufficient because Plaintiff alleges the failure to kill the underlying root system caused further damage. (UMF 21.) Defendant asserts that Plaintiff's assessment is not based on expert opinion and that Defendant's own certified arborist concluded that the damage in Plaintiff's yard stemmed from her own irrigation practice. (UMF 21.)

Three new trees have sprung up on Plaintiff's property after the 18 trees were removed, which Plaintiff argues shows that the underlying roots were not properly removed. (UMF 27, 28.) Defendant disputes this contention, arguing that no expert has provided any such opinion. (*Ibid.*)

The Court notes that the preliminary injunction ordered the Defendant to remove the roots.

II. Legal Standard

Any party may move for summary judgment in any action or proceeding if it is contended the action has no merit. (Code Civ. Proc., § 437c, subd. (a)(1).) When a plaintiff seeks summary judgment, the plaintiff bears the burden of persuasion that each element of the cause of action, or causes of actions, have been proven and, therefore, there is no defense to the cause of action. (*Aguilar v. Atlantic Richfield Co*. (2001) 25 Cal.4th 826, 850.) The moving party must support their motion with evidence, including affidavits, declarations, admissions, answers to discovery, depositions, and matters judicially noticed. (/d. at 843.) The court must grant a motion where the moving party establishes that there is no triable issue regarding any material fact. (*Aguilar v. Atlantic Richfield Co*., supra, at pg. 843; Code Civ. Proc., § 437c, subd. (c).)

III. Analysis

A. Private nuisance

“The elements of an action for private nuisance are: 1) interference with the use and enjoyment of one’s property, 2) the invasion of the plaintiff's interest in the use and enjoyment of the land [must be] substantial, i.e., that it cause[s] the plaintiff to suffer ‘substantial actual damage, 3) [t]he interference with the protected interest must not only be substantial, but it must also be unreasonable, i.e., it must be of such a nature, duration or amount as to constitute unreasonable interference with the use and enjoyment of the land.” (*Mendez v. Rancho Valencia Resort Partners, LLC* (2016) 3 Cal.App.5th 248, 262-63.).

Plaintiff has produced evidence that the eighteen trees at issue and their root system have interfered with the use and enjoyment of her land – including her garden, concrete, and yard. (UMF 9-12; 22-25.) She has provided evidence in the form of her own personal observations, estimates for repair from various companies, and emails between herself and Rebecca Neilon, P.E. (*Ibid*.) Ms. Neilon’s relationship to the Defendant is unclear, but the Plaintiff’s evidence clearly indicates that Ms. Neilon had some role in assisting Plaintiff with resolving the problems caused by the 18 trees.

In response, Defendant presents evidence from Lisa Smith, a board-certified arborist. (Declaration of Lisa Smith (“Smith Decl.”) ¶ 1.) Ms. Smith disputes Plaintiff’s contention that the poplar trees have caused much of the damage alleged by Plaintiff.

Given the competing evidence presented with regards to the impact of the trees and tree roots on Plaintiff’s property, there are triable issues of material fact which make summary judgment inappropriate.

B. Permanent Injunction

Plaintiff also moves for a permanent injunction which would require Defendant to take active steps to remediate the tree roots on Lot M that are allegedly encroaching into Plaintiff’s property. Defendant argues that because it no longer owns Lot M, it can no longer be enjoined to take any active measures to remediate any problems.

The Court agrees that Defendant cannot be ordered to do work on property which it no longer owns, while noting that Defendant may still be liable for the damages that arose during its ownership of Lot M.

III. Conclusion

Plaintiff's motion for summary judgment/adjudication on the cause of action for private nuisance and for a permanent injunction is **DENIED**.

The clerk shall provide notice of this ruling to the parties forthwith. Defendant to submit a formal Order complying with Rule 3.1312 in conformity with this Ruling.

BLAKE, et al v SAN ANDREAS SNF OPERATIONS, LLC, et al

24CV47533

PLAINTIFF'S MOTION TO STRIKE ANSWER

This civil action involves claims for elder abuse, neglect, and wrongful death brought by Linda Cooper, Barry Blake, Arthur Blake, Virginia Blake (as successor in interest to Glenn Blake), as individuals and as successors in interest to their mother, Decedent Thelma Blake ("Decedent") (collectively, "Plaintiffs") against multiple Defendants.

Now before the Court is Plaintiff's motion to strike the Answer filed by Avalon Care Center – San Andreas, LLC, Avalon Care LLC, Avalon Health Care, Inc., Avalon Holding, Inc., Avalon Health Care Management, Inc. and Charles Kirton ("Avalon Defendants.")

I. Factual and Procedural Background

A. Background Facts

At all relevant times, the Decedent was a 96-year-old woman who qualified as an "elder" under Welfare and Institutions Code section 15610.27. (Complaint ¶ 10.) Defendant San Andreas SNF Operations LLC dba Golden San Andreas Care Center ("Care Center") was in the business of providing continuous skilled nursing care as a twenty-four-hour facility as defined in 72103 of Title 22 of the California Code of Regulations and California Health and Safety Code section 1250(c). (*Id*. ¶ 15.) On May 11, 2023, Decedent was admitted to Care Center for daily custodial care. (Declaration of Paige Farris ("Farris Decl.") ¶ 2.) The Complaint alleges that while Decedent was a resident of the Care Center she was neglected, and that Care Center failed to monitor, diagnosis and treat a urinary tract infection ("UTI") which eventually contributed to Decedent's death. (*Id*. ¶ 28.)

Plaintiff alleges that at all relevant times, Care Center was collectively owned by a myriad of businesses, all of which are named as Defendants herein, including CaFive Operations Holdings, LLC; CH CaFive Holdings LLC, IY Evergreen CA Holdings, LLC (collectively "Evergreen Defendants") and the Avalon Defendants. Plaintiff alleges that the Evergreen Defendants and Avalon Defendants were "joint venturers in the enterprise of owning, operating, and managing" the Care Center. (Complaint ¶ 19.) Plaintiff alleges that the Evergreen Defendants and Avalon Defendants "owned, operated, and managed multiple skilled nursing facilities in California and are the alter egos of each other and/or a single enterprise" (*Id*. ¶ 21), that all of these entities and their subsidiaries had the same corporate office and management team and used the same management company to operate each separate care facility (*Ibid*), and that the various Defendants utilized management practices, funding schemes, financial diversions and other tactics to understaff Care Center to the detriment of the patients.

Plaintiff filed the Complaint on August 6, 2024. On September 16, 2024, the GSRM law firm filed an Answer on behalf of the Evergreen Defendants. On October 3, 2024, the GRSM law firm filed an Answer on behalf of the Avalon Defendants. At some point, the GRSM law firm notified Plaintiff's counsel that they did not represent the Avalon Defendants and did not have authority to file an Answer on their behalf. (*Ibid*.) It appears this took place about one year later in September of 2025. (Farris Reply Decl. ¶ 3.) On March 10, 2026, Plaintiffs' counsel emailed counsel at GRSM reiterating the conversation about not representing the Avalon Defendants and asking that the Answer be withdrawn. (Farris Decl. ¶ 5, Ex. B.) For the next few weeks Plaintiffs' counsel continued to correspond with GRSM seeking confirmation that the Answer would be withdrawn as to the Avalon Defendants without results. (*Ibid*.)

II. Legal Standard and Discussion

A motion to strike lies either to strike: (1) any "irrelevant, false or improper matter inserted in any pleading"; or (2) any pleading or part thereof "not drawn or filed in conformity with the laws of this state, a court rule or order of court." (CCP § 436.) A motion to strike may also be used to strike allegations related to an improper request for relief. (*Saberi v. Bakhtiari* (1985) 169 Cal.App.3d 509, 517.) A motion to strike can be used to attack the entire pleading, or any part thereof—i.e., even single words or phrases. (*Warren v. Atchison, Topeka & Santa Fe Ry. Co.* (1971) 19 Cal.App.3d 24, 40.)

"There is a presumption that an attorney has authority to appear for any person for whom he professes to act [citation], but this presumption is disputable [citation]." (*Wilson v. Barry* (1951) 102 Cal.App.2d 778, 780.) Here there is ample evidence that the law firm of GRSM did not represent the Avalon Defendants at the time they filed an Answer on their behalf. First, attorney Lindsay Romano with GRSM avers "At the time of the filing of the Answer on behalf of the Avalon Defendants, GRSM had not yet formally been retained to act on behalf of the Avalon Defendants or Avalon Care Center—San Andreas, LLC." (Declaration of Lindsay Romano ("Romano Decl.") ¶ 12.) Nonetheless, they filed an Answer on behalf of the Avalon Defendants in October and December of 2024. (*Id*., ¶ ¶ 8-11, Exs. C and D.)

On March 10, 2026, Plaintiffs' counsel sent email correspondence specifically asking if the Answer filed by Avalon would be withdrawn since GRSM did not represent them. (Farris Decl. ¶ 5, Ex. B.) To that very specific email, GRSM attorney Romano responded, "Yes, we can do that." (*Ibid*.) Thus, even two years after filing an Answer on behalf of the Avalon Defendants – which represented to the Court the authority to represent those defendants – GRSM continued to appear to agree that it did not have authority to file that Answer in 2024.

While the issue of representation is somewhat convoluted, including payment by the GSRM law firm for first appearance fees on behalf of all defendants. However, the key for the Court is paragraph 17 of the Declaration of Lindsey Romano where she expresses "On April 14, 2026, via email, I advised Counsel for Plaintiffs that GRSM **now** represents the Avalon Defendants". [Emphasis added.] This makes clear that GRSM did *not* have authority to file an Answer on behalf of the Avalon Defendants in 2024, continued to express to Plaintiffs' counsel in September of 2025 that they were not representing the Avalon Defendants (Farris Reply Decl. ¶ 3), and continued to represent to Plaintiff's counsel that this was true as late as March of 2026. Plaintiff's counsel avers that she relied – to her client's detriment – on GRSM's representation that it represented and spoke for the Avalon Defendants. (Farris Reply Decl. ¶ 2). Had Plaintiff's counsel been aware that the Avalon Defendants' Answer was filed without authority, she would have moved for default against those defendants. (*Ibid.*) Plaintiffs' counsel was reasonably operating under the belief that the Avalon Defendants were *not* represented by GRSM when she provided the settlement demand on behalf of her clients only as to the Evergreen defendants.

The Court is somewhat baffled that GRSM would file an Answer and proffer first appearance fees on behalf of entities that they were not retained to represent. (Cal. Bus. & Prof. Code §6104.) It is further concerned that GRSM allowed Plaintiff's counsel to believe it did not represent the Avalon Defendants throughout the course of this litigation and only purported to have an attorney-client relationship once a settlement demand had been made and purportedly accepted.

The motion to strike the answers filed by the Avalon Defendants is **GRANTED**.

The clerk shall provide notice of this ruling to the parties forthwith. The Court intends to sign the proposed Order submitted by Plaintiff.

JEFFERSON CAPITAL SYSTEMS, LLC v SCOTT

25CF15410

PLAINTIFF'S MOTION
FOR JUDGMENT ON THE PLEADINGS

This is a common counts action brought by Jefferson Capital Systems, LLC ("Plaintiff") against Steven Scott and Does 1-5 ("Defendant.")

Now before the Court is Plaintiff's motion for judgment on the pleadings.

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.

Accordingly, 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.