

CONNOLLY et al v. GARAMENDI

21CV45154

CROSS-DEFENDANTS' MOTION TO STRIKE PORTIONS OF THE FIRST AMENDED CROSS-COMPLAINT

This is a nuisance action involving neighboring family members and easements between adjoining parcels. Before the Court this day is a motion by cross-defendants to strike from the operative First Amended Cross-Complaint various allegations regarding the scope of said easements. The operative pleading under attack has only two causes of action: declaratory relief and private nuisance.

Pursuant to CCP §§ 435 and 436, a party may move for an order striking from a pleading “any irrelevant, false or improper matter” or “any part of any pleading not drawn in conformity” with laws, rules or orders. A motion to strike is to be used sparingly, and only as is warranted to excise averments that have no basis in the action or which are not recoverable as a matter of law. See *Ferraro v. Camarlinghi* (2008) 161 Cal.App.4th 509, 528; *PH II, Inc. v. Superior Court* (1995) 33 Cal.App.4th 1680, 1683.

Here, cross-defendants wish to strike from the First Amended Cross-Complaint various averments generally described as “declarations of legal rights [cross-complainant] does not have.” According to cross-defendants, the remedies sought by cross-complainant are “not drawn in conformity with law” because they are substantively unavailable to cross-complainant. Cross-defendants do not contend that the relief sought is unavailable as a matter of law (see, e.g., *Commodore Home Systems, Inc. v. Superior Court* (1982) 32 Cal.3d 211, 214-215; *Saberi v. Bakhtiari* (1985) 169 Cal.App.3d 509, 512), but instead ask this Court to analyze the written easements and make a determination at this juncture that the easements do not support the scope of relief requested. This, of course, is a factual question based not only on the language of the easement, but also upon any prescriptive use by custom or practice thereof. While it may be that “the easements convey only a limited right to ingress and egress,” and that cross-complainant does not prevail, that is a matter for resolution at a later phase in the case. There is no basis shown, at this juncture, to start a surgical excision of the operative pleading – at least not on the grounds stated.

As for the emotional distress aspect of the cross-complaint, nuisance can support such a claim. See *Hensley v. San Diego Gas & Electric Co.* (2017) 7 Cal.App.5th 1337, 1358. Cross-defendants do not challenge this, but instead contend that the factual basis for such a remedy is not spelled out clearly enough. A claim for emotional distress damages does not require particularity. To the extent that cross-defendants contend the cause of action for private nuisance is actually an inadequately pled cause of action for intentional infliction of emotional distress, that should have been raised as a demurrer, not a motion to strike.

The Clerk shall provide notice of this Ruling to the parties forthwith. Cross-complainant to prepare a formal Order pursuant to Rule of Court 3.1312 in conformity with this ruling.