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ELECTRONICALLY FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF ORANGE
CIVIL COMPLEX CENTER
Jul 13 2007
ALAN SLATER, Clerk of the Court
by C. Cepeda

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF ORANGE

PAUL NGUYEN, an individual, on behalf of themselves, on behalf of all persons similarly situated, and on behalf of the general public, Plaintiffs, v. WELLS FARGO HOME MORTGAGE, INC., a California corporation; and DOES 1 to 100, Inclusive, Defendants.	CASE NO. **05 CC 00116** CLASS ACTION NOTICE OF ENTRY OF ORDER GRANTING THE MOTION FOR CLASS CERTIFICATION Date: July 13, 2007 Time: 9:00 a.m. Judge: Hon. Stephen J. Sundvold Dept: CX-105 Action Filed: May 31, 2005

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that a hearing regarding Plaintiff's Motion for Class Certification was held on July 13, 2007, with Norman B. Blumenthal and Aparajit Bhowmik appearing for the Plaintiff and Mark D. Lonergan appearing for the Defendant. After consider the arguments of both parties, the Hon. Stephen J. Sundvold of Department CX-105, in the Superior Court of the State of California for the County of Orange, granted Plaintiffs' Motion for Class Certification in this case and affirmed the tentative ruling. A true and correct copy of the Court's ruling is attached herewith as Exhibit "A."

Dated: July13, 2007

BLUMENTHAL & NORDREHAUG

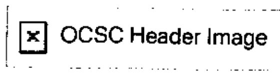
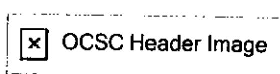
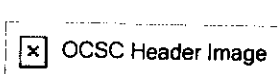
By:

APARAJIT BHOWMIK

Attorneys for Plaintiffs

G:\D\NBB\NGUYEN v. Wells Fargo\Class Certification\p-notice of entry-cert.wpd

Exhibit A

LAW & MOTION

FRIDAY JULY 13, 2007 9:00 A. M.

#1 MATHIS v. MONARCH BAY ASSOCIATION

MOTION: PLAINTIFFS' FOR SUMMARY ADJUDICATION – **DENIED**

The Plaintiffs have failed to meet their burden of proof and the Defendant has raised several triable issues of material fact.

Initially, it must be noted that ACD's prior Motion for Summary Adjudication has no effect on Plaintiffs' ability to relitigate the same issues from the perspective of the plaintiff in this Motion. The fact that the Plaintiffs did not dispute a fact in the prior Motion does not mean that they cannot now dispute that same fact here.

An order denying a motion for summary judgment or adjudication is not an adjudication of any legal or factual matter presented by that motion. It is only a finding that there is a triable issue of material fact which precludes granting the motion.

This Court has not found, as a matter of law, as Plaintiffs assert, that ACD breached the Ground Lease by its assignment to AVCO. That statement, and the other statements as to ACD in the Court's prior ruling, were statements made in a hypothetical context for the purpose of determining the significance of the assignment as it related to Cal Western. Those statements had nothing to do with this Court finding actual liability as to ACD.

Contrary to the assertions of Plaintiffs, this Action is governed by ***Kendall v. Ernest Pestana, Inc.*** and cases of a similar vein. Forfeitures will be barely tolerated and forfeiture clauses must be strictly construed. Contrary to Plaintiffs' assertion, this is a residential and not commercial property and the ***Carma Developers*** case therefore does not apply. The ***Boston Properties***

case stands only for the proposition that where a lease is clear and unequivocal, and drafted with aid of legal counsel on both sides, those clear and unequivocal provisions will be enforced. There is no evidence before the Court as to who drafted the documents at issue and whether the drafters were aided by counsel on both sides.

PLAINTIFFS' BURDEN

In order for a plaintiff to prevail on a motion for summary adjudication on a particular cause of action, that plaintiff must prove all facts necessary to prevail on that cause of action. Plaintiffs have failed to meet that burden here.

Plaintiffs have not established how they have the legal right to sue ACD for breach of the Ground Lease.

Exhibit 3 referred to in Plaintiffs' Separate Statement, a Minute Order denying a previous motion for summary judgment in this Action, does not establish, as a matter of law, or otherwise, any of the statements contained in it. All that ruling does is establish that a triable issue of a material fact remains. The remaining language in the Minute Order is dicta. The Court and the Parties are not bound by those findings and those findings are not evidence. Additionally, ACD was not a party to that Motion and therefore such a ruling could not be binding on it.

The evidence submitted in the Reply cannot be considered in support of the Motion, as such evidence would violate ACD's due process rights. A party's burden must be met in its moving papers. If it does not meet its burden in the moving papers, opposing party does not even need to file an opposition.

There are other issues upon which Plaintiffs have failed to meet their burden; however, since the issue of standing is paramount, those issues need not be addressed at this point.

DEFENDANT'S BURDEN

Although Plaintiffs never shifted the burden to ACD, material issues of fact have been raised by ACD (this list is not exhaustive):

1. Whether the term of the Sublease is through June 30, 2004 - Item 17 of Plaintiffs' Separate Statement and the evidence offered by ACD in response.

2. Whether Ground Lessor approved the Option - Item 18 of Plaintiffs' Separate Statement and the evidence offered by ACD in response.

3. Whether all assets were transferred to AVCO through the dissolution of ACD and whether AVCO assumed ACD's obligations - Items 28, 29, and 30 of Plaintiffs' Separate Statement and the evidence offered by ACD in response.

4. Whether ACD's interest under the Ground Lease, AI Sublease and Option were assigned upon ACD's dissolution - Item 36 and 37 of Plaintiffs' Separate Statement and the evidence offered by ACD in response.

5. Whether Gerard was acting on behalf of ACD or AVCO - Item 44 of Plaintiffs' Separate Statement and the evidence offered by ACD in response.

MARKS, Linda (Dept W3)
McEACHEN, David (Dept C21)
MILLER, Franz (Dept C4)
MOBERLY, Jamoa A (Dept C7)
MONROE, William (Dept C11)
MOSS, Robert (Dept C23)
MUNOZ, Greg (Dept C56)
MYERS, Jane (Dept C10)
NAKAMURA, Kirk (Dept C64)
NGUYEN, Nho Trong (Dept W17)
PERK, Steven L (Dept C32)
POLOS, Peter J (Dept H2)
SCHULTE, Mary Fingal (Dept W11)
SIEGEL, H. Warren (Dept C13)
SMITH, Clay M (Dept C22)
SUNDVOLD, Stephen (Dept CX105)
THOMPSON, David (Dept C28)
WATSON, John (Dept W1)

Family Panel

NAUGHTON, Michael (Dept C63)
POLLARD, Nancy (Dept L63)
WILSON, Renee E. (Dept L64)

Probate Panel

JOHNSTON, Gerald (Dept L53)

#2 NGUYEN v. WELLS FARGO HOME MORTGAGE, INC.

MOTION: TO CERTIFY CLASS – **GRANTED**

In order for a Plaintiff to be successful in a motion to certify a class, the Plaintiff must provide evidence of the theory of recovery the Plaintiff intends to pursue and must provide evidence of how that theory will be proven on a class-wide basis. The Plaintiff must also provide evidence of a *prima facie* claim against the Defendant ***(Lockheed Martin v. Superior Court (2003) 29 Cal. 4th 1096; Petherbridge v. Altadena Federal Savings and Loan Association (1974) 37 Cal. App. 3rd 193).*** Plaintiff here has adequately done so.

The Second Amended Complaint alleges, and the Motion sets forth evidence 1) that Wells has a practice of charging amounts to the FOBs in excess of the true cost of insurance portion of the premium; 2) that such amounts have imbedded costs of insurance servicing for the entire Wells' portfolio; 3) that the amounts bear no relationship to any risk Wells bears to protect its interest in the properties; 4) that such practices resulted in a small percentage of the borrowers paying virtually 100% of the costs of insurance administration for the entire Wells' loan program; and 5) that the Plaintiff's Deed of Trust and those of the other potential class members contain language that required the charges assessed by Defendant be "reasonable or appropriate to protect lender's interest in the property".

The Second Amended Complaint alleges and the Motion sets forth evidence that Plaintiff Nguyen's Deed of Trust contained language that allows for forced order insurance when "reasonable and appropriate to protect lender's interest in the property" and Plaintiff Nguyen suffered injury from those practices by being charged $1,546 annually for Forced Order Insurance without liability coverage, while the cost of a comparable homeowners' type policy which offered additional liability and contents coverage was $463.

The theory of recovery delineated in the Second Amended Complaint is very broad and is not limited by the particular language in a deed of trust. Whether the claim has merit or not is not an issue to be decided by this Court at this time. If, however, it is proven to be the case that Wells charges the FOBs in excess of the true costs of the insurance portion of the premium and that such practices result in a small percentage of the borrowers paying 100% of the costs of insurance administration for the entire Wells' loan program, and it is proven that such practices are unfair under the ***UCL,*** and none of this is disclosed to the borrowers, then the language of the deed of trust will be irrelevant to recovery, on at least that theory.

The testimony of the Plaintiffs' experts reveals that the practices of Wells can be analyzed on a company-wide basis in these regards.

Defendant has not shown that the true costs of substitute insurance is an individual question. There is no support for that contention.

Defendant's reliance on the decision in ***McAdams*** is misplaced. First of all, Defendant has not shown that the notices sent to borrowers all contained the same language or that the notices were sent to the class members or that they read them. The notices also did not indicate that the costs of CPI and the administration of the CPI program bore no relationship to the actual costs or that they were not excessive. ***McAdams*** notes that an inference of common reliance can include a situation where the fraud is a failure to disclose. Here, Plaintiff alleges a failure to disclose as well as an active misrepresentation. Both can support an inference of common reliance for class certification purposes.

Common issues greatly outnumber any individual issues that need to be determined in this Action. Those common issues include 1) whether Plaintiff and other members of the class were "charged more than what was appropriate and reasonable to protect Wells' interest in the collateral" and whether this violates the ***UCL;*** 2) whether 2% of the borrowers are paying for 100% of the cost of insurance servicing for Wells' entire portfolio, and if so, whether this is unfair under the ***UCL;*** 3) whether Wells has a practice of charging amounts to the FOBs in excess of the true cost of the insurance portion of the premium and whether this violates the ***UCL;*** 4) whether such amounts have imbedded costs of insurance servicing for the entire Wells portfolio; 5) whether the amounts bear any relationship to any risk Wells bears to protect its interest in the properties; 6) whether Wells concealed material facts with regard to its Forced Order Insurance policy and whether that is actionable under the ***UCL.***

Plaintiff's claim is typical, for the most part, and particularly on the issues common to all putative class members. While the language in their deeds of trust may be different, Plaintiff has agreed to include in his class only those putative class members who executed a Deed of Trust with the same language as the one he signed.

The resolution of these claims by the Department of Insurance is not a superior method of resolution. This is not a dispute over the amount of the insurance premium, but rather one over the contractual language contained in the Deed of Trust. These are matters within the realm of this Court.

SURREPLY

The Court has considered the evidence presented in Defendant's Surreply as it deals only with evidence presented in Plaintiff's Reply. As an aside, it should be noted that this is of little significance as Plaintiff in its initial papers met its burden.

OBJECTIONS TO EVIDENCE

Defendant's Objections to Evidence Nos. 1, 2, 5, 6, 7, and 8 are SUSTAINED. All other are OVERRULED.

FINAL ORDERS

Plaintiff shall prepare the Order granting the Motion, appropriately describing the class. The Parties are ORDERED to meet and confer on the manner and contents of the Notice and present a stipulation regarding the Notice to the Court for approval. If the Parties are unable to agree, the issue should be

presented to the Court for resolution.

#3 POWER HEADS, INC. v. MANLEY PERFORMANCE PRODUCTS

MOTION: DEMURRER and MOTION TO STRIKE

STATUTE OF LIMITATIONS

The allegations of late discovery are detailed and sufficient against demurrer. However, there is no late discovery in actions under the ***UCL***, so those claims are barred inasmuch as they accrued outside the four-year statute of limitations period.

CLASS ALLEGATIONS

The validity of the Demurrer and Motion to Strike in this matter must be determined only by the allegations found in the operative Complaint. Defendant's arguments that recovery by each class member will necessarily be determined by the type of engine, the age of the engine, the type of oil used, when the piston was purchased, etc., are of no bearing in this Demurrer. There is nothing in the First Amended Complaint which discloses that it matters, for the purpose of recovery by the Plaintiffs and the class as to the type of engine, its age or the type of oil that was used. All of Defendant's arguments may well have more importance at the time of any motion to certify this class.

The ***Osbourne*** case is not controlling here for several reasons. It was a case where certification of a nationwide class was sought, not a California-only class as here. It also was dealing with a class certification motion, not a demurrer as here.

The Demurrer as to the class allegations is OVERRULED.

CAUSE OF ACTION UNDER ***SECTION 17200***

This Cause of Action is still lacking insufficient facts and it is still unclear under which prong of ***Section 17200*** Plaintiffs are proceeding. Plaintiffs' general allegations of wrongdoings are insufficient.

Although it is not entirely clear, it appears that Plaintiffs are attempting to seek recovery for representations made about the pistons. There are no allegations as to who made the representations, by what method they were made and the exact language of the representations. The Demurrer as to these allegations would be SUSTAINED.

CAUSE OF ACTION UNDER ***CRLA***

Although Plaintiffs are not attempting to state a cause of action under the ***CRLA,*** their attempt to use a violation of it as the basis for their ***UCL*** claim requires that they set forth a factual violation of the ***CLRA.*** They have not done so and the Demurrer would be SUSTAINED.

TREBLE DAMAGES AND ATTORNEY FEES

No factual or legal allegations are presented to justify the award of treble damages or attorney fees. The Motion to Strike is GRANTED.

LEAVE TO AMEND

Plaintiff shall have 20 days leave to amend.

#4 QUAIL RUN COMMUNITY ASSOC. v. CENTEX HOMES

MOTION: TO COMPEL FURTHER RESPONSES TO SPECIAL INTERROGS – **GRANTED**

The Interrogatories in question are directed to Plaintiff's contentions, not Defendant's defenses. This matter has been pending for over two years. Either Plaintiff knows or it doesn't the extent of the work done by this Defendant and when that work ceased. Defendant has every right to know the exact facts and documents upon which the Plaintiff relies to support Plaintiff's contentions regarding the substantial completion of work by this defendant.

The discovery responses are improper, nonresponsive and evasive. The Plaintiff is ORDERED to provide further responses to Special Interrogatory Nos. 2, 3, 4 and 5, without objection, within 20 days. Plaintiff is also ORDERED to provide a further response to Request for Production No. 1, without objection and provide copies of any documents in response to that Request, within 20 days.