TENTATIVE RULING FOR JANUARY 27, 2025
Department R12 - Judge Kory Mathewson
James Walls v. Richard Rees, et al. – CIVSB2118574

Motion: Demurrer and Strike
Movant: Defendant Arrowhead Villas Mutual Services (Doe 5)
Respondent: Plaintiff James Walls
RULING: OVERRULE Defendant Arrowhead Villas Mutual Services' Demurrer;
DENY Defendant Arrowhead Villas Mutual Services' Strike Motion;
Defendant Arrowhead Villas Mutual Services is ORDERED to file and serve its Answer to the FAC within the next 10 days.

Respondent Walls to provide Order(s) and give Notice.

Preliminary Issues

Defense Counsel met and conferred with Plaintiff's Counsel. (Weil Decl. at ¶¶3, 6.) The Court grants judicial notice of the Complaint, FAC, Does 1, 3, & 5 Amendments, and dismissal of Doe 3 per Evidence Code section 452, subdivision (d).

ANALYSIS

Defendant AV Mutual raises 2 arguments to attack the sufficiency of the FAC and/or its naming as Doe 5. First, Defendant argues the long delay in naming it constitutes laches. Second, Defendant AV Mutual argues the FAC should be dismissed under Code of Civil Procedure section 583.420, subdivision (a)(2)(A).

Laches

Laches is an equitable defense designed to prevent unwarranted injustice. (*Brewer v. Simpson* (1960) 53 Cal.2d 567, 594; *In re Marriage of Powers* (1990) 218 Cal.App.3d 626, 643.) The elements for laches are (1) the failure to assert a right, (2) for some appreciable period to amount to unreasonable delay, and (3) which results in prejudice to the adverse party. (*Id.* at p. 642.) Mere delay absent prejudice or acquiescence does not establish this defense. (*Miller v. Eisenhower Medical Center* (1980) 27 Cal.3d 614, 624.) Furthermore, prejudice is never presumed. (*Ibid.*) Laches is a question of fact to be determined by the trial court in light of all the circumstances. (*Ibid.*)

Prejudice is an element to establishing laches, and it is not a matter that can be seen within the FAC despite correct/incorrect naming of the party. From the moving papers, Arrowhead Villas, AV Mutual, and AV Company are essentially the same entity, i.e., the homeowners association of the complex where Walls tripped and fell. Yet that is not clear from the FAC. The FAC only defines Arrowhead Villas. Does 3 and Doe 5 are not defined (¶3).

Accepting AV Mutual's contention that it is the same as Arrowhead Villas, then the court record reflects it was made part of this action almost 3 years ago albeit with no proof it was ever served with the Summons as Arrowhead Villas. Nevertheless, its knowledge of the litigation arose when served as AV Company. Although AV Company was dismissed, AV Mutual was brought into the litigation about 15 months later. These facts may show indecisiveness and/or lack of clarity of who is the proper party but not laches.

Dismissal

Code of Civil Procedure section 583.420, subdivision (a), provides grounds for dismissing an action for delay in prosecution, including when the action is not brought to trial within 3 years of the action commencing against the defendant. Here, Defendant AV Mutual is named in September 2024. Three years have not even expired yet. If AV Mutual and AV Company are the same, 3 years still have not expired from when AV Company was named in April 2023. Lastly, although 3 years are approaching, it still has not passed since Arrowhead Villas was named on February 4, 2022.

This provision is not demonstrated to assist. It is further not demonstrated how it is grounds to Demurrer to the FAC. This provision sits separately from a demurrer for seeking dismissal of an action for delay in prosecution.

For the reasons stated the Demurrer is overruled.

Strike

Defendant AV Mutual seeks to have the Doe 5 Amendment stricken because Plaintiff Walls was aware of its identity since 2023, and it was previously added as Does 1 & 3. Defendant offers no legal analysis or authority for striking the Doe 5 Amendment other than Code of Civil Procedure section 474

Code of Civil Procedure section 474 provides that when a plaintiff is ignorant of the name of a defendant, he must plead that in the complaint, and upon ascertaining the identity of the defendant, he may amend to name that person. This section is to be liberally construed so that even if the plaintiff knows the existence and actual identity of the defendant sued by a fictitious name, the plaintiff is still "ignorant" within the meaning of the statute if he lacks knowledge of that person's connection with the case or his injuries. (*GM Corp. v. Superior Court (Jeffrey)* (1996) 48 Cal.App.4th 580, 593-94.) For section 474 to apply, the plaintiff must be genuinely ignorant of the defendant's identity, existence, or the facts creating liability. (*Balon v. Drost* (1993) 20 Cal.App.4th 483, 488; *Hollister Canning Co. v. Superior Court (Swett)* (1972) 26 Cal.App.3d 186, 198.)

If a plaintiff unreasonably delays in filing a doe amendment after acquiring knowledge of the doe defendant's identity, existence, and facts creating liability, he can be barred from the use of the doe amendment procedures. (*A.N. v. County of Los Angeles* (2009) 171 Cal.App.4th 10568, 1065 ["*A.N.*"].) [But] the doe defendant must have suffered prejudice from the unreasonable delay. (*Id.* at p. 1066.) While Defendant argues it is prejudiced, the sole prejudice referenced is that the trial was 3 months away which has now been vacated. Defendant is free to seek to reopen discovery and proceed with defending itself. Therefore, striking the Doe 5 Amendment is denied.

Dated: January 27, 2025

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Judge Kory Mathewson