DEPARTMENT TWO – JUDGE WILLIAM HARRISON
TENTATIVE RULINGS SCHEDULED FOR
FRIDAY, AUGUST 13, 2010

FARMERS INSURANCE EXCHANGE v. WATERSTONE NORTH, LLC, et al
Case No. FCS032386

Motion for Protective Order Precluding Deposition
Filed by Farmers

Motion for Protective Order Precluding Deposition
Filed by Intervenor Bremer White Brown & O'Meara, LLP

TENTATIVE RULING

The motions for protective order filed by Farmers and the Bremer law firm are granted. Waterstone Owners Association is precluded from taking the deposition of attorney Dana Ozols in this case.

Dana Ozols is the former attorney for defendants in the underlying construction defect action filed by Waterstone Owners Action, which is ongoing. In order to take her deposition, Waterstone Owners Association was required to establish that the information sought in the deposition is crucial to its claims in this case and that the information is not available by any other means. (See *California Practice Guide, Civil Procedure Before Trial*, sections 8:467.1, p.8E-18). Waterstone Owners Association has not met this burden.

The objections of Farmers to the declaration of Andersen are sustained in their entirety. Even assuming Andersen's statements were admissible, they are not sufficient to establish that the expected testimony of Ozols is crucial to the claims of Waterstone Owners Association in this case and not available by any other means.

Farmers' request for sanctions is granted in part. The court finds that the position of Waterstone Owners Association in this matter was taken without substantial justification and that Waterstone Owners Association did not respond to Farmers' meet and confer efforts in good faith. Therefore, the court awards Farmers $5,000.00 in sanctions to be paid within twenty (20) days of the date this order is served.

ASHCROFT v. WESTERN PACIFIC HOUSING, et al.
Case No. FCS034324

Demurrer

TENTATIVE RULING

The demurrer to the second amended complaint is overruled with regards to plaintiffs identified in Exhibit "A" to the second amended complaint.

The demurrer to the third, fourth, fifth and seventh causes of action in the second amended complaint is sustained, without leave to amend, with regards to plaintiffs identified in Exhibit "B" to the second amended complaint (the "Exhibit 'B' plaintiffs"), for failure to state facts sufficient to constitute a cause of action. CCP 430.10(e).

The Exhibit "B" plaintiffs are required to comply with the pre-litigation procedures of Civil Code 910 et seq. unless builder has committed certain violations. Exhibit "B" plaintiffs have not alleged facts that demonstrate defendants committed violations. They have not alleged facts that demonstrate defendants violated Civil Code Sections 912(e), 912(f), 912(g) or 914. The exemplar agreement attached as Exhibit "C" specifies the agent information is on file with the Secretary of State, Special Filings Unit, with address and phone number as contact information; and, plaintiffs indicated they were provided the information by initialing that provision. The exemplar agreement specifies that the SB 800 booklet has been provided, that the plaintiffs should read it, and if they have any questions should seek legal advice; plaintiffs and the seller initialed this provision. The admonition to seek legal advice provides notice that the booklet impacts the legal rights of the homeowner. The exemplar agreement, at Section 8.8(a), (b), and (c), provides notice of the SB 800 procedures, and are initialed by plaintiffs and seller. Civil Code 912(f) does not specify how or when the notices are to be recorded on title. The second amended complaint alleges the notices were recorded April 9, 2007, and/or included in the covenants, conditions & restrictions for the property. The CC&Rs attached to the second amended complaint as Exhibit "D" were recorded for Unit 5 on April 9, 2007, and indicate that CC&Rs were recorded for Unit 4 on February 14, 2003, for Unit 6 April 11, 2003, and for Unit 7 April 11, 2003. Non-adversarial procedures are specified at paragraph 8.8(c) of the exemplar agreement attached to the second amended complaint as Exhibit "C", and are also set forth in the recorded CC&Rs, Exhibit "D" to the second amended complaint, paragraph 7.6.

The Exhibit "B" plaintiffs are required to allege facts that demonstrate their compliance with the pre-litigation claims procedures of Civil Code 910-938. *Standard Pacific Corp. v. Superior Court* (2009) 176 Cal. App. 4th 828. They have not done so.

KING v. ROBINSON
Case No. FCS034452

Demurrer; Motion for Change of Venue; Motions to Strike; Motions to Quash Subpoena; Motions for Contempt Sanctions

TENTATIVE RULING

By stipulation of the parties, the hearing on all motions is continued to September 1, 2010 at 8:30 a.m. in Department 2.

TONG v. BMW of N. AM., LLC., ET AL.
Case No. FCS035091

Motion to Compel Further Responses to Discovery

TENTATIVE RULING

Plaintiff's motion to compel further responses to various discovery requests is denied without prejudice.

Plaintiff has failed to make a reasonable and good faith attempt to meet and confer to informally resolve this discovery dispute and avoid a formal order compelling further responses. (*Stewart v. Colonial W. Agency* (2001) 87 Cal.App.4th 1006, 1016; *McElhaney v. Cessna Aircraft Co.* (1982) 134 Cal.App.3d 285, 288-289.) Despite a hefty request of form and special interrogatories, requests for admissions, and a healthy demand for production of documents, Plaintiff's meet and confer attempts consisted of two meet and confer letters, only one of which discussed the substance of the discovery dispute. Despite Defendant's willingness to extend the deadline for filing a discovery motion, Plaintiff elected to file his motion a mere work day after eventually receiving Defendant's substantive response to the points raised in the meet and confer letter. There is no indication that Plaintiff ever actually engaged Defendant in a discussion of the parties respective positions. These efforts do not evince any desire to "talk the matter over, compare their views, consult, and deliberate." (*Townsend v. Superior Court* (1998) 61 Cal.App.4th 1431, 1439.)

Should the parties be unable to resolve their discovery dispute, Plaintiff may file the appropriate motion or motions within 30 days of the date of this order, unless otherwise extended by agreement. The Court notes that Plaintiff's current motion is comprised of four separate motions (a motion to compel further responses to form interrogatories, a motion to compel further responses to special interrogatories, a motion to compel further responses to his request for admissions, and a motion to compel further responses to his request for production of documents) appears to have been combined to avoid payment of

additional filing fees. Though this practice is discouraged, the Court elects to overlook the matter in this instance.