Litigation Due Diligence Analysis

Northridge Village Owners Association v. Frederick S. Greenwald and Joan B. Greenwald

By

JG

October 10, 2024

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# SUMMARY

TBD

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# PARTIES/SIGNIFICANT FIGURES

|  |  |
| --- | --- |
| **Name of Party / Significant Figure** | **Significance to Underlying Matter/Dispute** |
| Joan Greenwald (“Client”)  DELETE THIS NOTE: If we represent more than one individual/entity, then list all our Clients here—one on each line. Then, make sure to alter the defined “Client” to say: **“(collectively, ‘Client’”)**. The point is to keep “Client” *singular* no matter how many people/entities we represent. If there’s a need to refer to different Clients in the “Statement of Facts/Evidentiary Support” section below, you can put a shortcut (“\*\*\*”) after each individual Client, but still collectively define all of them as “Client.” | N/A |
| Northridge Village Owner’s Association, Inc. | HOA |

The table above may be amended from time to time to reflect revisions to Client’s narrative and/or new information that may become available in the future.

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# STATEMENT OF FACTS / EVIDENTIARY SUPPORT

|  |  |  |
| --- | --- | --- |
| **Date / NA** | **Fact** | **Evidence Supporting That Fact** |
| \* | This section should contain a comprehensive and objective statement of the relevant facts of the case, as well as any relevant dates. When possible, cite to evidence already in our possession that support the facts referenced. | \* |
| 4/19/19 | THIS IS AN EXAMPLE. REPLACE IT WITH ACTUAL DATA.  Client closed escrow on the property. | Client Timeline |
| 6/10/19 | THIS IS AN EXAMPLE. REPLACE IT WITH ACTUAL DATA.  Client notified HOA of sprinkler leak into Client’s unit. | Email from Client to Mgmt. Co. |
| N/A | REMEMBER TO DELETE ANY EXCESS ROWS IN THE TABLE BY DRAGGING YOUR MOUSE OVER THE ROWS TO BE DELETED AND THEN PRESSING **BACKSPACE** and then pressing **DELETE ENTIRE ROW**. | \*\* |
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This table may be amended from time to time as new information/evidence comes in. To the extent that such new information necessitates any significant revisions to Client’s litigation strategy, where applicable, the Firm will work with Client to develop a new strategy.

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# NOTABLE PROVISIONS OF THE GOVERNING DOCUMENTS

|  |  |
| --- | --- |
| **Document Name**  **Article / Section No.** | **Text of the Selected Article/Sections No.**  **(if none, put “N/A”; delete rows that you didn’t use; maintain formatting)** |
| CC&Rs  Article IX, Section 6.01 | THIS IS AN EXAMPLE. REPLACE IT WITH ACTUAL DATA. |
| Purchase Agreement  Section 8.4 | THIS IS AN EXAMPLE. REPLACE IT WITH ACTUAL DATA. |
| N/A | REMEMBER TO DELETE ANY EXCESS ROWS IN THE TABLE. IF YOU DON’T KNOW HOW TO DO THAT, ASK MBK. |
| \* |  |
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| \* | \*\* |
| \* | \*\* |
| \* | \*\* |

The table may or may not contain all the significant provisions of the document(s) at issue. It is simply a place to include one or more provisions of one or more operative agreement/document that we believe could play a role in some aspect of Client’s case (e.g., binding arbitration, attorneys’ fees, and choice of law provisions). The provisions contained in the table, therefore, should neither be viewed as an exhaustive list of key provisions/evidence, nor be used as a measure of what provisions of the operative documents might strengthen (or weaken) Client’s case.

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# ADDITIONAL INFORMATION/CLARIFICATION NEEDED FROM CLIENT

The Firm should follow up with Client regarding the following items/issues:

— TBD

This section of the LADD may be amended from time to time as new information becomes known.

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# ADDITIONAL DOCUMENTS NEEDED FROM CLIENT

The Firm needs to ask Client for the following documents:

— TBD

This section of the LADD may be amended from time to time if Client locates additional documents, or if a third party produces additional documents.

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# THIRD-PARTY DOCUMENTS/INFORMATION KNOWN TO EXIST

At this time, Client is unaware of any documents or information that can only be obtained from a third party. This, however, may change as new information comes to light, in which case the LADD may be amended to reflect such new information.

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# POTENTIAL AFFIRMATIVE DEFENSES

Based upon the allegations made against Client thus far, and based upon the facts and evidence provided by Client and/or reflected in the documents the Firm has received and reviewed, the affirmative defenses discussed below appear to be applicable.

## Statute of Limitations

Affirmative Defense—Statute of Limitations

The applicability of a statute of limitations defense depends upon the nature of the claims alleged. Based upon the claims aimed at Client, the following seem relevant:

Application/Conclusion—Application of the Affirmative Defense to Client’s Facts

— REPLACE THIS TEXT by providing a brief (1-3 sentences) statement regarding why this affirmative defense *might* apply to the facts of this case.

## Equitable Estoppel

Affirmative Defense—Equitable Estoppel

— If a party acts or makes statements to intentionally or deliberately lead someone else to believe that a particular thing is true, and the second party acts upon that belief, the first party cannot contradict his or her prior statement or conduct. (*Moncada v. West Coast Quartz Corp.* (2013) 221 Cal.App.4th 768, 782.)

Application/Conclusion—Application of the Affirmative Defense to Client’s Facts

— REPLACE THIS TEXT by providing a brief (1-3 sentences) statement regarding why this affirmative defense *might* apply to the facts of this case.

## Unclean Hands

Affirmative Defense—Unclean Hands

— If the plaintiff’s bad conduct or bad faith causes/is related to his or her own underlying harm, then that plaintiff is barred from obtaining equitable relief—i.e., a plaintiff cannot take advantage of his or her own wrong. (Civ. Code, § 3517; *Lynn v. Duckel* (1956) 46 Cal.2d 845, 850.)

Application/Conclusion—Application of the Affirmative Defense to Client’s Facts

— REPLACE THIS TEXT by providing a brief (1-3 sentences) statement regarding why this affirmative defense *might* apply to the facts of this case.

## Laches

Affirmative Defense—Laches

— A plaintiff’s claim is barred under the doctrine of laches if: (i) the plaintiff delayed in bringing his or her claim; (ii) the delay was unreasonable or inexcusable; and (iii) the defendant is prejudiced because of the delay. (*In re Marriage of Parker* (2017) 14 Cal.App.5th 681, 688.)

Application/Conclusion—Application of the Affirmative Defense to Client’s Facts

— REPLACE THIS TEXT by providing a brief (1-3 sentences) statement regarding why this affirmative defense *might* apply to the facts of this case.

## Negligence (Comparative Fault)

Affirmative Defense—Comparative Fault

— The plaintiff’s own negligence may be used to proportionally reduce the defendant’s fault—i.e., liability is directly proportional to the negligence of each party. (*Burch v. CertainTeed Corp.* (2019) 34 Cal.App.5th 341, 357-58.)

Application/Conclusion—Application of the Affirmative Defense to Client’s Facts

— REPLACE THIS TEXT by providing a brief (1-3 sentences) statement regarding why this affirmative defense *might* apply to the facts of this case.

## Assumption of Risk

Affirmative Defense—Assumption of Risk

— Prior to the harm occurring, the plaintiff expressly agreed to not hold the defendant liable for any harm that might occur, including harm resulting from the defendant’s negligence. (*Sweat v. Big Time Auto Racing, Inc.* (2004) 117 Cal.App.4th 1301, 1304.) This type of “assumption of risk” is *contractual* in nature.

• The doctrine of assumption of risk in the context of a *negligence* claim has been subsumed under the doctrine of comparative fault. (*Li v. Yellow Cab Co.* (1975) 13 Cal.3d 804, 826.)

Application/Conclusion—Application of the Affirmative Defense to Client’s Facts

— REPLACE THIS TEXT by providing a brief (1-3 sentences) statement regarding why this affirmative defense *might* apply to the facts of this case.

## Waiver

Affirmative Defense—Waiver

— As an affirmative defense, waiver is a type of estoppel. It prevents a plaintiff from relying on a right (typically contractual) that the plaintiff would otherwise have no problem being able to enforce. Often, such a waiver exists because the plaintiff did or said something that made the defendant believe that the provision in question was no longer in effect, and defendant relied upon that action/statement. (*Wind Dancer Production Group v. Walt Disney Pictures* (2017) 10 Cal.App.5th 56, 78.)

Application/Conclusion—Application of the Affirmative Defense to Client’s Facts

— REPLACE THIS TEXT by providing a brief (1-3 sentences) statement regarding why this affirmative defense *might* apply to the facts of this case.

## Failure to Mitigate

Affirmative Defense—Failure to Mitigate

— A plaintiff has a duty to take steps to mitigate damages and is therefore not entitled to damages that could have been avoided had the plaintiff taken those steps. (*Agam v. Gavra* (2015) 236 Cal.App.4th 91, 111.)

Application/Conclusion—Application of the Affirmative Defense to Client’s Facts

— REPLACE THIS TEXT by providing a brief (1-3 sentences) statement regarding why this affirmative defense *might* apply to the facts of this case.

## Lack of Damages

Affirmative Defense—Lack of Damages

— Damages is a necessary element in most causes of action. Consequently, if the plaintiff hasn’t been damaged, it’s almost certain that the plaintiff cannot prevail.

Application/Conclusion—Application of the Affirmative Defense to Client’s Facts

— REPLACE THIS TEXT by providing a brief (1-3 sentences) statement regarding why this affirmative defense *might* apply to the facts of this case.

## Failure to State a Claim

Affirmative Defense—Failure to State a Claim

— This affirmative defense applies if the plaintiff fails to state facts sufficient to constitute a cause of action. (Code Civ. Proc., § 430.10(e).)

Application/Conclusion—Application of the Affirmative Defense to Client’s Facts

— REPLACE THIS TEXT by providing a brief (1-3 sentences) statement regarding why this affirmative defense *might* apply to the facts of this case.

## No Causation

Affirmative Defense—No Causation

— The defendant is not liable for the plaintiff’s damages if another’s conduct was the cause of the harm. (*Martinez v. Vintage Petroleum, Inc.* (1998) 68 Cal.App.4th 695, 700 [“intervening negligence cuts off liability (i.e., it becomes a superseding cause) if the intervening cause, and its results, are not reasonably foreseeable].)

Application/Conclusion—Application of the Affirmative Defense to Client’s Facts

— REPLACE THIS TEXT by providing a brief (1-3 sentences) statement regarding why this affirmative defense *might* apply to the facts of this case.

## Justification

Affirmative Defense—Justification

— Because of the defendant’s legally protected interest, the defendant’s appropriate conduct was justified in protecting that interest. (*Richardson v. La Rancherita* (1979) 98 Cal.App.3d 73.) How this affirmative defense is applied, however, depends upon the nature of the claims alleged. For example, in response to an invasion of privacy claim, a defendant may be justified in violating a plaintiff’s privacy interest if the reason for the invasion outweighs the plaintiff’s privacy interest. (*Lewis v. Superior Court* (2017) 3 Cal.5th 561, 573.) In an assault case, however, justification means that the defendant’s force was necessary to protect the defendant or others from wrongful injury. (Civ. Code, § 50.)

Application/Conclusion—Application of the Affirmative Defense to Client’s Facts

— REPLACE THIS TEXT by providing a brief (1-3 sentences) statement regarding why this affirmative defense *might* apply to the facts of this case.

## Ratification

Affirmative Defense—Ratification

— The defendant is not liable for the plaintiff’s harm because the plaintiff ratified the defendant’s conduct after the conduct occurred. (Civ. Code, §§ 1588, 2307, 2310, 2311; *Cruz v. HomeBase* (2000) 83 Cal.App.4th 160, 168; *C.R. v. Tenet Healthcare Corp.* (2009) 169 Cal.App.4th 1094, 1111, [“[T]he ratification relates back to the time the tortious act occurred.”].)

Application/Conclusion—Application of the Affirmative Defense to Client’s Facts

— REPLACE THIS TEXT by providing a brief (1-3 sentences) statement regarding why this affirmative defense *might* apply to the facts of this case.

## Consent

Affirmative Defense—Consent

— The defendant is not liable for the plaintiff’s harm if the plaintiff consented to the conduct prior to the harm-producing conduct’s occurrence. (Civ. Code, §§ 3515, 3516; *Austin B. v. Escondido Union School Dist.* (2007) 149 Cal.App.4th 860, 875; *Royer v. Steinberg* (1979) 90 Cal.App.3d 490, 498.)

Application/Conclusion—Application of the Affirmative Defense to Client’s Facts

— REPLACE THIS TEXT by providing a brief (1-3 sentences) statement regarding why this affirmative defense *might* apply to the facts of this case.

This section of the LADD may be amended from time to time if new information/evidence comes to light that supports additional affirmative defenses.

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# STRATEGIC CONSIDERATIONS

## Statute of Limitations

## Applicability of Davis-Stirling Act

The Davis-Stirling Act applies to the facts of this dispute.

## Jurisdiction

### Arbitration

Since there is no binding arbitration provision in the CC&Rs, any litigation related to the dispute must take place in the superior court of Los Angeles County because that is where Client’s property is located.

### Venue

Because the issues related to the current dispute involve Client’s property, which is located in Los Angeles County, that is the appropriate venue for this case.

## Standing

Based upon the information/evidence that Client has provided thus far, it appears that the opposing party has standing to pursue each of the claims alleged against Client.

Client may lack standing to bring a cross-claim for \*\*\*. [*State the reasons for lack of standing. If there is more than one cause of action at issue, adjust the language accordingly.*] The Firm will take a closer look at the standing issue and follow up with Client in the near future.

## Anti-SLAPP Analysis

Anti-SLAPP Overview—

— Strategic Lawsuits Against Public Participation (“SLAPP”) are lawsuits designed to hinder or prevent parties (typically the defendant) from engaging in constitutionally protected activities (e.g., petitioning or free speech). For example, development companies have used SLAPP suits to harass environmental groups standing in the way of large development/construction projects. These companies would file lawsuits against the environmentalists for the express purpose of tying up the smaller (and not as well-funded) environmental groups’ financial resources, effectively preventing them from having their “day in court.” In response, the Legislature passed the anti-SLAPP statute, which was codified in Code of Civil Procedure section 425.16. This statute allows the defending party to file a special motion to strike (called an anti-SLAPP motion) to have the court determine whether the lawsuit can proceed or should instead be thrown out as a meritless attack on the defendant’s acts made in furtherance of his or her right “to petition or free speech under the United States Constitution or the California Constitution in connection with a public issue.” (Code Civ. Proc., § 425.16(b)(1).)

— The granting of an anti-SLAPP motion can have *severe* consequences, not the least of which is the dismissal of the at-issue claim(s)—or even the entire complaint—depending on the circumstances. In addition, a defendant who prevails on an anti-SLAPP motion *must* be awarded his or her attorneys’ fees and costs, which, given the complexity of anti-SLAPP motions, is typically quite significant. (Code Civ. Proc., § 425.16(c)(1).)

Anti-SLAPP Statute’s Application in HOA-Related Cases—

— SLAPP suits can, and have, arisen in lawsuits by and against HOAs and HOA members. For example, a member might file a lawsuit against a director or committee member to pressure that person to change a critical vote regarding some issue or another. To prevent that type of abuse, and to discourage members from naming individual board members as defendants in litigation, courts have determined that the protections offered under the anti-SLAPP statute apply to various issues that arise in the HOA arena. (*Colyear v. Rolling Hills Community Assn. of Rancho Palos Verdes* (2017) 9 Cal.App.5th 119, 130-36 [tree trimming dispute between adjacent homeowners that involved covenants to all lots in the community satisfied the definition of “public interest”]; *Damon v. Ocean Hills Journalism Club* (2000) 85 Cal.App.4th 468, 476-77 [newsletter published to 3,000 residents of an HOA was a “public forum” even if access to the newsletter was selective and limited]; *Ruiz v. Harbor View Community Assn.* (2005) 134 Cal.App.4th 1456; *Dowling v. Zimmerman* (2001) 85 Cal.App.4th 1400, 1409-10 [letters from attorney to management company and the HOA’s board regarding nuisance caused by an HOA member].)

— Obviously, however, not all HOA-related disputes are covered by the anti-SLAPP statute. (*Talega Maintenance Corp. v. Standard Pac. Corp.* (2014) 225 Cal.App.4th 722, 732 [holding that HOA proceedings must have a strong connection to governmental proceedings to qualify as “official proceedings”]; but see *Lee v. Silveira* (2016) 6 Cal.App.5th 527, 540-46 [holding that HOAs “functioned similar to a quasi-governmental body” to constitute a “public forum”].)

Anti-SLAPP Test—

— The courts use a two-prong test to determine if a claim is protected under the anti-SLAPP statute. First, the defendant must prove that the at-issue claim arises from a constitutionally protected activity. (*Ruiz v. Harbor View Community Assn., supra,* 134 Cal.App.4th at 1466; Code Civ. Proc., § 425.16(b)(1).) If the defendant satisfies his or her burden, the burden shifts to the plaintiff to show that there is a probability that he or she will prevail on the merits of the at-issue claim. (*Ibid*.; *Equilon Enterprises v. Consumer Cause Inc.* (2002) 29 Cal.4th 53, 67; Code Civ. Proc., § 425.16(b)(1).)

— With regard to the first prong, there are four categories that the anti-SLAPP statute is intended to protect:

• Any statement (written or oral) or document generated in connection with (or as part of):

→ Any official proceedings authorized by law—e.g., legislative, executive, or judicial proceedings. (Code Civ. Proc., § 425.16(e)(1).)

→ Any issue under consideration or review by a legislative, executive, or judicial body. (Code Civ. Proc., § 425.16(e)(2).)

• Any statement (written or oral) or document made in a place open to the public (or in a public forum) and made in connection with an issue of public interest. (Code Civ. Proc., § 425.16(e)(3).)

• Any other conduct made in furtherance of the exercise of a constitutional right of petition or free speech and made in connection with an issue of public interest. (Code Civ. Proc., § 425.16(e)(4).)

Application/Analysis/Conclusion—

— Based upon the applicable facts and claims, an anti-SLAPP motion is unlikely because none of the conduct complained of arises from constitutionally protected activities.

## Pre-Filing Requirements (e.g., Notice or Mediation Requirements)

Given the facts of this dispute, the Davis-Stirling Act does *not* require pre-lawsuit ADR.

## Attorneys’ Fees and Costs

The prevailing party is entitled to attorneys’ fees and costs under the Davis-Stirling Act. The prevailing party is also entitled to their attorneys’ fees and costs under TBD of the CC&Rs.

If new information comes to light that affects Client’s right to attorneys’ fees and costs, Client will be notified.

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# FINAL THOUGHTS / ISSUES / CONCERNS / COMMENTS

TBD

This section of the LADD might be amended from time to time to reflect new information, strategies, or concerns that arise during the course of the litigation.

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