Litigation Due Diligence Analysis

Kent adv. Luthor

4534858

By

MBK

September 29, 2023

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# SUMMARY

Blah blah blah.

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# PARTIES/SIGNIFICANT FIGURES

|  |  |
| --- | --- |
| **Name of Party / Significant Figure** | **Significance to Underlying Matter/Dispute** |
| Clark Kent (“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 |
| Lex Luthor | Plaintiff |

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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# RESERVED

RESERVED.

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# ADDITIONAL INFORMATION/CLARIFICATION NEEDED FROM CLIENT

At this time, the Firm does not need Client to provide any additional information or clarification. This section of the LADD may, however, be amended from time to time as new information/questions arise.

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

# ADDITIONAL DOCUMENTS NEEDED FROM CLIENT

At this time, the Firm does not need Client to provide any additional documents. This section of the LADD, however, 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 CAUSES OF ACTION TO INCLUDE IN A CROSS-COMPLAINT & THE STRENGTHS/WEAKNESSES OF EACH

## Quiet Title

Elements—Quiet Title

— To prevail on a claim for quiet title, a plaintiff must prove that: (i) there is an adverse claim to the at-issue property; and (ii) the plaintiff possesses superior title to the at-issue property. (Code Civ. Proc., § 761.020; *Orcilla v. Big Sur, Inc.* (2016) 244 Cal.App.4th 982, 1010.)

— For all quiet title causes of action, the caption must include not only the named defendants/cross-defendants, but also language along the following lines: ALL PERSONS UNKNOWN, CLAIMING ANY LEGAL OR EQUITABLE RIGHT, TITLE, ESTATE, LIEN, OR INTEREST IN THE PROPERTY DESCRIBED IN THE COMPLAINT ADVERSE TO PLAINTIFF’S TITLE

— The complaint itself must be verified and include: (i) a description of the at-issue property; (ii) the title as to which a determination is sought; (iv) a description of the adverse claim(s); (v) the date of which the determination is sought; and (vi) a prayer for the determination of the title. (Code Civ. Proc., § 761.020.)

— The plaintiff must also record a lis pendens in the county with the county recorder where the at-issue real property is located. (Code Civ. Proc., § 761.010.)

Remedies—

— The primary remedy is a judgment establishing the priority of the plaintiff’s title as against all other interests. (Code Civ. Proc., § 764.010.)

— Compensatory damages are available for withholding property. (Code Civ. Proc., § 740.)

— Equitable relief is available. (Code Civ. Proc., § 760.040(c).)

— Punitive damages may be available if the plaintiff shows that the defendant acted oppressively, fraudulently, or maliciously. (Civ. Code, § 3294.) That being said, punitive damages in quiet title cases are rare.

Applicable Statute of Limitations

— No specific statute of limitations governs quiet title actions. The applicable statute of limitations is based on the theory of relief underlying the basis to quiet title. (*Salazar v. Thomas* (2015) 236 Cal.App.4th 467, 476.) So, for example, the statute of limitations to recover real property by an owner who is not currently in possession (e.g., to eject an unauthorized user or possessor) is five years (Code Civ. Proc., § 318), while the limitations period is three years if the basis for quiet title is fraud or mistake (Code Civ. Proc., § 338(d)). Likewise, if the basis of the claim was an improperly recorded document, the statue would be four years (to cancel the instrument). (Code Civ. Proc., § 343.)

Application—Application of the Law to Client’s Facts

— REPLACE THIS TEXT by restating applicable facts from above that support the elements of a cause of action for *quiet title*.

— \*\*\*

— \*\*\*

Conclusion—Strengths/Pros and Weaknesses/Cons of this Potential Cause of Action

— REPLACE THIS TEXT by drawing a conclusion about the strengths of this particular cause of action given the evidence at our disposal.

— REPLACE THIS TEXT by drawing a conclusion about the weaknesses, if any, of this particular cause of action given the evidence at our disposal. If there are none, say so—e.g., “At this time, this cause of action is supported by the facts and the law.”

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# 

## Quiet Title

Elements—Quiet Title

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Application—Application of the Law to Client’s Facts

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— \*\*\*

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— REPLACE THIS TEXT by drawing a conclusion about the strengths of this particular cause of action given the evidence at our disposal.

— REPLACE THIS TEXT by drawing a conclusion about the weaknesses, if any, of this particular cause of action given the evidence at our disposal. If there are none, say so—e.g., “At this time, this cause of action is supported by the facts and the law.”

## Slander of Title

Elements—Slander of Title

— To prevail on a claim for slander of title, a plaintiff must prove that defendant: (i) made a publication that casts doubt on plaintiff’s title to property; (ii) without privilege or justification; (iii) that is false; and (iv) causes immediate and direct pecuniary loss. (*Alpha & Omega Development, LP v. Whillock Contracting, Inc.* (2011) 200 Cal.App.4th 656, 664.)

Remedies—

— Plaintiff is entitled to compensatory damages and may be entitled to punitive damages if the defendant acted oppressively, fraudulently, or maliciously. (*Seeley v. Seymour* (1987) 190 Cal.App.3d 844; Civ. Code, § 3294.)

Applicable Statute of Limitations

— A claim for slander of title must be brought within three years. (Code Civ. Proc., § 338(g).)

Application—Application of the Law to Client’s Facts

— REPLACE THIS TEXT by restating applicable facts from above that support the elements of a cause of action for *slander of title*.

— \*\*\*

— \*\*\*

Conclusion—Strengths/Pros and Weaknesses/Cons of this Potential Cause of Action

— REPLACE THIS TEXT by drawing a conclusion about the strengths of this particular cause of action given the evidence at our disposal.

— REPLACE THIS TEXT by drawing a conclusion about the weaknesses, if any, of this particular cause of action given the evidence at our disposal. If there are none, say so—e.g., “At this time, this cause of action is supported by the facts and the law.”

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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:

— For **breach of verbal contracts**, the statute of limitations is two years (Code Civ. Proc., § 339); for breach of most **written contracts**, the statute of limitations is four years (Code Civ. Proc., § 337)—the caveat being that the statute of limitations for breach of **negotiable instruments**, like promissory notes, is six years (Comm. Code, § 3118).

— For claims involving **breach of the implied covenant of good faith and fair dealing**, the statutes of limitations are the same as they are for breach of contract.

— For **IIED**, two years. (Code Civ. Proc., § 335.1.)

— For **assault** arising out of anything *other than* domestic violence, two years. (Code Civ. Proc., § 335.1; *Pugliese v. Superior Court* (2007) 146 Cal.App.4th 1444, 1450.)

• The statute starts running from the time plaintiff anticipated the harm. (*Pugliese v. Superior Court, supra,* 146 Cal.App.4th at 1450.)

— For **battery**, the same as for **assault** (except that the time starts running from the time the “touching” or unwanted contact 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.

## 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.

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

This section is *not* intended to address whether or not the statute of limitations has run on a particular cross-claim that might have otherwise been relevant under the facts. Those specifics can be found in reference to each of the potential cross-claims discussed above.

Rather, this section of the LADD is intended only to highlight the earliest statute of limitations relevant to one of the available above-referenced cross-claims. If, therefore, Client wants to file a cross-complaint containing the applicable the causes of action discussed above, the action must be filed on or before **April 16, 2024**.

## Jurisdiction

### Arbitration

Since Client did not execute any contract containing a binding arbitration provision, Client cannot be compelled to submit to binding arbitration, and any action filed against Client needs to be filed in the superior court of Orange County.

### Venue

Orange County is the correct venue for this lawsuit.

## 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.

Based upon the information/evidence that Client has provided thus far, Client has standing to pursue every cross-claim described above against each of the intended defendants (excluding DOES, of course).

## 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)

The facts of this case do not trigger any pre-filing requirements.

## Attorneys’ Fees and Costs

The prevailing party is entitled to attorneys’ fees and costs under Civil Code section 2345(b).

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

None at this time.

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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