Litigation Due Diligence Analysis

Lisherness v. All Service Industries, Inc. et al.

By

SS

October 2, 2023

Table of Contents

[1. SUMMARY 8](#_Toc130368692)

[2. PARTIES/SIGNIFICANT FIGURES 8](#_Toc130368693)

[3. STATEMENT OF FACTS / EVIDENTIARY SUPPORT 11](#_Toc130368694)

[4. yn\_notable\_provisions\_govdocs\_table == "Yes" NOTABLE PROVISIONS OF THE GOVERNING DOCUMENTS###yn\_notable\_provisions\_agreement\_table == "Yes" NOTABLE PROVISIONS OF ONE OR MORE OPERATIVE AGREEMENTS###yn\_notable\_provisions\_govdocs\_table == "No" or yn\_notable\_provisions\_agreement\_table == "No"RESERVED### 13](#_Toc130368695)

[5. ADDITIONAL INFORMATION/CLARIFICATION NEEDED FROM CLIENT 14](#_Toc130368696)

[6. CIVIL CODE § 5200 DOCUMENT DEMAND 15](#_Toc130368697)

[7. ADDITIONAL DOCUMENTS NEEDED FROM CLIENT 16](#_Toc130368698)

[8. THIRD-PARTY DOCUMENTS/INFORMATION KNOWN TO EXIST 17](#_Toc130368699)

[9. MUST NOT USE HOA’S PRIVILEGED DOCUMENTS 19](#_Toc130368700)

[9.1. Can Client Waive the Privilege? 19](#_Toc130368701)

[9.2. Does the CRPC Require the Firm to *Return* the Privileged Documents? 20](#_Toc130368702)

[9.3. Does Providing Privileged Documents to the Firm Constitute a Fiduciary Breach by Client? 21](#_Toc130368703)

[10. radio\_client\_plaintiff\_defendant == "Plaintiff/Petitioner" POTENTIAL CAUSES OF ACTION & THE STRENGTHS/WEAKNESSES OF EACH###radio\_client\_plaintiff\_defendant == "Defendant/Respondent" and yn\_cross\_claims == "Yes" POTENTIAL CROSS-CLAIMS & THE STRENGTHS/WEAKNESSES OF EACH### 21](#_Toc130368704)

[10.1. Breach of CC&Rs / Breach of Equitable Servitudes / Violation of Civ. Code, § 5975 21](#_Toc130368705)

[10.2. Breach of Contract 24](#_Toc130368706)

[10.3. Implied Covenant of Good Faith and Fair Dealing 25](#_Toc130368707)

[10.4. Breach of Other Governing Documents 27](#_Toc130368708)

[10.5. Negligence 29](#_Toc130368709)

[10.6. Breach of Fiduciary Duty 32](#_Toc130368710)

[10.7. Nuisance 35](#_Toc130368711)

[10.8. Trespass 39](#_Toc130368712)

[10.9. Interference with Prospective Business Advantage 42](#_Toc130368713)

[10.10. Interference with Contract 44](#_Toc130368714)

[10.11. Intentional Misrepresentation (Fraud) 45](#_Toc130368715)

[10.12. Negligent Misrepresentation 49](#_Toc130368716)

[10.13. Intentional Infliction of Emotional Distress (“IIED”) 51](#_Toc130368717)

[10.14. Violation of Open Meeting Act 52](#_Toc130368718)

[10.15. Declaratory Relief 54](#_Toc130368719)

[10.16. Violation of Election Laws (Civ. Code, § 5100 et seq.) 58](#_Toc130368720)

[10.17. Assault 62](#_Toc130368721)

[10.18. Battery 63](#_Toc130368722)

[10.19. Defamation 65](#_Toc130368723)

[10.20. Civil Stalking 67](#_Toc130368724)

[10.21. Violation of Statute (Dog Bite) 69](#_Toc130368725)

[10.22. False Imprisonment 71](#_Toc130368726)

[10.23. Invasion of Privacy 72](#_Toc130368727)

[10.24. Express Indemnity 74](#_Toc130368728)

[10.25. Equitable Indemnity 76](#_Toc130368729)

[10.26. Failure to Permit Inspection of Records 77](#_Toc130368730)

[10.27. Quiet Title 78](#_Toc130368731)

[10.28. Slander of Title 80](#_Toc130368732)

[10.29. Cancellation of Instrument 81](#_Toc130368733)

[10.30. Reformation of Instrument 82](#_Toc130368734)

[10.31. Partition 84](#_Toc130368735)

[10.32. Conversion 85](#_Toc130368736)

[10.33. Trespass to Chattels 87](#_Toc130368737)

[10.34. Open Book Account 89](#_Toc130368738)

[10.35. Money Had and Received 90](#_Toc130368739)

[10.36. Account Stated 91](#_Toc130368740)

[10.37. Goods and Services Rendered 92](#_Toc130368741)

[10.38. Unjust Enrichment 93](#_Toc130368742)

[10.39. Rescission 94](#_Toc130368743)

[10.40. Financial Elder Abuse (Welf. & Inst. Code, § 15610.30) 95](#_Toc130368744)

[10.41. Negligent Hiring 97](#_Toc130368745)

[10.42. Negligent Supervision 99](#_Toc130368746)

[10.43. Unfair Business Practices (Bus. & Prof. Code, § 17200 et seq.) 102](#_Toc130368747)

[10.44. Receipt of Stolen Property (Penal Code § 496) 104](#_Toc130368748)

[10.45. Misrepresentation in Connection with Sale of Security (Corp. Code, § 25401) 105](#_Toc130368749)

[10.46. Recovery Against Contractor’s Bond 108](#_Toc130368750)

[10.47. Breach of Independent Wholesale Representatives Act (Civ. Code, § 1738.10 et seq) 109](#_Toc130368751)

[10.48. Violation of California Uniform Trade Secrets Act (Civ. Code, § 3426 et seq.) 113](#_Toc130368752)

[10.49. Malicious Prosecution 114](#_Toc130368753)

[10.50. Abuse of Process 117](#_Toc130368754)

[10.51. Insurance Bad Faith 120](#_Toc130368755)

[10.52. Medical Malpractice 123](#_Toc130368756)

[10.53. Legal Malpractice 126](#_Toc130368757)

[10.54. Fraudulent Transfer (Uniform Fraudulent Transfer Act—Civil Code, § 3439 et seq.) 131](#_Toc130368758)

[10.55. 134](#_Toc130368759)

[10.56. 135](#_Toc130368760)

[radio\_client\_plaintiff\_defendant == "Defendant/Respondent" 136](#_Toc130368761)

[11. POTENTIAL AFFIRMATIVE DEFENSES 136](#_Toc130368762)

[11.1. BJR (Lamden) 136](#_Toc130368763)

[11.2. Statute of Limitations 138](#_Toc130368764)

[11.3. Equitable Estoppel 144](#_Toc130368765)

[11.4. Unclean Hands 144](#_Toc130368766)

[11.5. Laches 144](#_Toc130368767)

[11.6. Negligence (Comparative Fault) 145](#_Toc130368768)

[11.7. Apportionment 145](#_Toc130368769)

[11.8. Negligence (Sudden Emergency) 146](#_Toc130368770)

[11.9. Assumption of Risk 146](#_Toc130368771)

[11.10. Contract (Force Majeure) 147](#_Toc130368772)

[11.11. Contract (Duress) 147](#_Toc130368773)

[11.12. Contract (Fraud) 148](#_Toc130368774)

[11.13. Contract (Frustration of Purpose) 149](#_Toc130368775)

[11.14. Contract (Lack of Consideration) 149](#_Toc130368776)

[11.15. Contract (Failure of Consideration) 150](#_Toc130368777)

[11.16. Contract (Illegality) 150](#_Toc130368778)

[11.17. Contract (Impossibility) 151](#_Toc130368779)

[11.18. Contract (Impracticability) 151](#_Toc130368780)

[11.19. Contract (Mistake of Law) 152](#_Toc130368781)

[11.20. Contract (Mistake of Fact) 152](#_Toc130368782)

[11.21. Contract (Novation) 153](#_Toc130368783)

[11.22. Contract (Statute of Frauds) 153](#_Toc130368784)

[11.23. Contract (Unconscionability) 154](#_Toc130368785)

[11.24. Contract (Undue Influence) 155](#_Toc130368786)

[11.25. Contract (Accord and Satisfaction) 155](#_Toc130368787)

[11.26. Waiver 156](#_Toc130368788)

[11.27. Failure to Mitigate 156](#_Toc130368789)

[11.28. Lack of Damages 157](#_Toc130368790)

[11.29. Failure to State a Claim 157](#_Toc130368791)

[11.30. No Causation 158](#_Toc130368792)

[11.31. Justification 158](#_Toc130368793)

[11.32. Ratification 159](#_Toc130368794)

[11.33. Litigation Privilege (Civ. Code, § 47) 159](#_Toc130368795)

[11.34. Consent 160](#_Toc130368796)

[11.35. Necessity 160](#_Toc130368797)

[11.36. Private Necessity 161](#_Toc130368798)

[11.37. Equitable Easement 161](#_Toc130368799)

[12. STRATEGIC CONSIDERATIONS 162](#_Toc130368800)

[12.1. Statute of Limitations 162](#_Toc130368801)

[12.2. Applicability of Davis-Stirling Act 162](#_Toc130368802)

[12.3. Jurisdiction 163](#_Toc130368803)

[12.3.1. Arbitration 163](#_Toc130368804)

[12.3.2. Personal Jurisdiction 163](#_Toc130368805)

[12.3.3. Subject Matter Jurisdiction 164](#_Toc130368806)

[12.4. Standing 164](#_Toc130368807)

[12.5. Anti-SLAPP Analysis 166](#_Toc130368808)

[12.6. Pre-Filing Requirements 175](#_Toc130368809)

[12.7. Attorneys’ Fees and Costs 176](#_Toc130368810)

[13. FINAL THOUGHTS / ISSUES / CONCERNS / COMMENTS 177](#_Toc130368811)

# SUMMARY

Client Michael Mamelli a/k/a Mike Mamelli owns All Service Industries, Inc. (ASI), a licensed contractor to engage in property improvement business in California. Plaintiff Lisa Lisherness is the owner of real property located at 1832 Sandalwood Lane, Newport Beach, California 92663. She is ASI’s long-term client, and ASI and Mamelli has performed numerous jobs for Plaintiff, including some personal matters. Plaintiff filed this instant action for an oral contract that she entered with ASI, alleging that Client’s negligent and defective performance on her property, as well as issued duplicative invoices, and fraudulent invoices for which Client billed to Plaintiff but failed to perform.

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# PARTIES/SIGNIFICANT FIGURES

|  |  |
| --- | --- |
| **Name of Party / Significant Figure** | **Significance to Underlying Matter/Dispute** |
| Michael Mamelli (“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 |
| Lisa Lisherness | Plaintiff  |
| All Service Industries, Inc. | Defendant/Client’s company  |

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

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# ADDITIONAL INFORMATION/CLARIFICATION NEEDED FROM CLIENT

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

— \*\*\*

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

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

# ADDITIONAL DOCUMENTS NEEDED FROM CLIENT

The Firm needs to ask Client for the following documents:

— Client’s accounting record of work performed for Plaintiff

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

Client believes that one or more third parties has possession, custody, control, and/or knowledge of the following documents/information.

|  |  |  |
| --- | --- | --- |
| **Document/Information** | **Significance of the Document/Information** | **Identity of Third Party** |
| Minutes from the executive session dated 3/5/20 re Client’s disciplinary hearing. | These minutes, which are not available to non-directors outside the context of litigation, will show that the Board acted arbitrarily and capriciously in disciplining Client. | PMC Management |
| \* | \*\* | \* |
| \* | \*\* | \* |
| \* | \*\* | \* |
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| \* | \*\* | \* |
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The table above may be amended from time to time as new information comes to light.

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# STRATEGIC CONSIDERATIONS

## Statute of Limitations

## Jurisdiction

### Arbitration

### Venue

Orange County is the correct venue for this lawsuit.

## Standing

## 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)

## Attorneys’ Fees and Costs

Because the causes of action discussed above are not subject to a statute that awards the prevailing party its attorneys’ fees, and because there is likewise no applicable contract containing such a provision, Client is not currently entitled to reimbursement of attorneys’ fees upon prevailing.

That does not, however, mean that Client won’t be entitled to seek some or all such fees under another legal theory (e.g., Code of Civ. Proc., § 2033.420; *Doe v. Los Angeles County Dept. of Children & Family Services* (2019) 37 Cal.App.5th 675; *Barnett v. Penske Truck Leasing Co., L.P.* (2001) 90 Cal.App.4th 494, 497-99 [holding that if a party unreasonably denies a request for admission and the propounding party later proves the denied matter, the court, upon the propounding party’s motion, must order the responding party to pay the fees and costs that the propounding party incurred in proving the denied matter].)

— The order is mandatory unless the court finds that (i) an objection to the request was sustained or a response to the request was waived under Code of Civil Procedure section 2033.290, (ii) the admission sought was not of substantial importance, (iii) the responding party had reasonable grounds to believe that he or she would prevail on the matter, or (iv) there was other good reason for failing to make the admission. (Code Civ. Proc., § 2033.420(b).)

• An issue of “substantial importance” is one that, if not proven, would have changed the results of the case. (*Bloxham v. Saldinger* (2014) 228 Cal.App.4th 729, 752, fn. 20, citing *Wimberly v. Derby Cycle Corp.* (1997) 56 Cal.App.4th 618, 634–35).)

— This type of motion may be granted if the responding party denied the request for admission for lack of information but actually had sources of information available and failed to make a reasonable investigation. (*Doe v. Los Angeles County Dept. of Children & Family Services, supra,* 37 Cal.App.5th at 691.)

— If the responding party merely objected to the at-issue request or gave an incomplete response, the propounding party must first move to compel a further response to the request. Failing to do so waives the propounding party’s ability to move under Code of Civil Procedure section 2033.420(a). (*American Federation of State, County, & Municipal Employees v. Metropolitan Water District of Southern California* (2005) 126 Cal.App.4th 247, 268.)

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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