

**SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES**

**Civil Division**

Southwest District, Torrance Courthouse, Department B

**21STCV16157**

November 3, 2022

**RANCHO PALOS VERDES ESTATES LLC., A CALIFORNIA  
LIMITED LIABILITY COMPANY vs ROBERT R.  
MAXWELL AND MCNAIR MAXWELL, TRUSTEES OF THE  
MAXWELL TRUST DATED FEBRUARY 23, 1994**

8:30 AM

Judge: Honorable Gary Y. Tanaka  
Judicial Assistant: K. Cuevas  
Courtroom Assistant: M. Fondon

CSR: None  
ERM: None  
Deputy Sheriff: None

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**APPEARANCES:**

For Plaintiff(s): Richard B Jacobs (Telephonic)

For Defendant(s): Dustin Rabi for Michael A. D'Andrea (Telephonic)

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**NATURE OF PROCEEDINGS:** Hearing on Demurrer - with Motion to Strike (CCP 430.10);  
Status Conference

Matters are called for hearing.

The Court issues its tentative ruling as follows:

**\*\*\*TENTATIVE RULING\*\*\***

Robert R. Maxwell, et al.'s Demurrer to Complaint is sustained with 20 days leave to amend.

Robert R. Maxwell, et al.'s Motion to Strike Portions of Complaint is moot, in part, and granted with 20 days leave to amend, in part.

**Background**

Plaintiff filed the Complaint on April 29, 2021. Plaintiff alleges the following facts. Plaintiff and Defendants own adjacent real property in Rancho Palos Verdes Estates. Defendants' real property is encroaching into the property line of Plaintiff's property. Plaintiff alleges the following causes of action: 1. Trespass; 2. Nuisance; 3. Negligence; 4. Indemnification; 5. Apportionment of Rental Income.

**Meet and Confer**

Defendants set forth meet and confer declarations in sufficient compliance with CCP § 430.41 and CCP § 435.5. (Decls., Michael D' Andrea).

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Request for Judicial Notice

Defendants' request for judicial notice is granted pursuant to Evidence Code section 452(d) and (h).

Demurrer

A demurrer tests the sufficiency of a complaint as a matter of law and raises only questions of law. (Schmidt v. Foundation Health (1995) 35 Cal.App.4th 1702, 1706.) In testing the sufficiency of the complaint, the court must assume the truth of (1) the properly pleaded factual allegations; (2) facts that can be reasonably inferred from those expressly pleaded; and (3) judicially noticed matters. (Blank v. Kirwan (1985) 39 Cal.3d 311, 318.) The Court may not consider contentions, deductions, or conclusions of fact or law. (Moore v. Conliffe (1994) 7 Cal.App.4th 634, 638.) Because a demurrer tests the legal sufficiency of a complaint, the plaintiff must show that the complaint alleges facts sufficient to establish every element of each cause of action. (Rakestraw v. California Physicians Service (2000) 81 Cal.App.4th 39, 43.) Where the complaint fails to state facts sufficient to constitute a cause of action, courts should sustain the demurrer. (C.C.P., § 430.10(e); Zelig v. County of Los Angeles (2002) 27 Cal.App.4th 1112, 1126.)

Sufficient facts are the essential facts of the case "with reasonable precision and with particularity sufficiently specific to acquaint the defendant with the nature, source, and extent of his cause of action." (Gressley v. Williams (1961) 193 Cal.App.2d 636, 643-644.) "Whether the plaintiff will be able to prove the pleaded facts is irrelevant to ruling upon the demurrer." (Stevens v. Superior Court (1986) 180 Cal.App.3d 605, 609-610.) Under Code Civil Procedure § 430.10(f), a demurrer may also be sustained if a complaint is "uncertain." Uncertainty exists where a complaint's factual allegations are so confusing they do not sufficiently apprise a defendant of the issues it is being asked to meet. (Williams v. Beechnut Nutrition Corp. (1986) 185 Cal.App.3d 135, 139, fn. 2.)

Defendants demur to the first and fourth causes of action of Plaintiff's Complaint, pursuant to Code of Civil Procedure section 430.10(e), on the ground that the causes of action fail to state facts sufficient to constitute a cause of action.

First Cause of Action for Trespass

Defendants' demurrer to the first cause of action is sustained with 20 days leave to amend.

Plaintiff fails to state facts sufficient to state a cause of action.

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“The elements of trespass are: (1) the plaintiff's ownership or control of the property; (2) the defendant's intentional, reckless, or negligent entry onto the property; (3) lack of permission for the entry or acts in excess of permission; (4) harm; and (5) the defendant's conduct was a substantial factor in causing the harm.” *Ralphs Grocery Co. v. Victory Consultants, Inc.* (2017) 17 Cal.App.5th 245, 262. Plaintiff fails to allege any facts to meet the element of “defendant’s intentional, reckless, or negligent entry onto the property.” Plaintiff has merely pled a conclusion in paragraph 40 without any supporting facts. Plaintiff’s opposition also relies upon facts not stated in the Complaint.

Plaintiff’s reliance on *Joannou v. City of Rancho Palos Verdes* (2013) 219 Cal.App.4th 746 is unavailing. *Joannou* affirmed the trial court’s decision granting a motion for summary judgment and stated that the Cullen Earthquake Act did not apply to gradual earth movements. *Id.* at 762. *Joannou* did not alter the pleading elements for a cause of action for Trespass, nor did it alter the requirement that one must plead facts to state a cause of action rather than conclusions. It appears Plaintiff believes that *Joannou* and other cases may be beneficial to Plaintiff when the case is resolved by the trier of fact. However, this belief has no bearing on whether the demurrer should be sustained based on failure to plead facts to meet the elements of a cause of action for Trespass.

Defendants’ demurrer to the first cause of action is sustained with 20 days leave to amend.

Fourth Cause of Action for Indemnification

Defendants’ demurrer to the fourth cause of action is sustained with 20 days leave to amend.

“[T]he elements of a cause of action for indemnity are (1) a showing of fault on the part of the indemnitor and (2) resulting damages to the indemnitee for which the indemnitor is ... equally responsible.” *Stockton Mortgage, Inc. v. Tope* (2014) 233 Cal.App.4th 437, 459. Plaintiff has failed to plead facts to allege fault on the part of Defendant. Plaintiff has failed to plead facts to support damages suffered by Plaintiff. Instead, the cause of action is based on the potential for future harm and thus it does not appear that the cause of action is ripe. Similar to the opposition to the first cause of action, Plaintiff’s opposition also includes statements and allegations that are not included in the Complaint.

Defendants’ demurrer is sustained with 20 days leave to amend.

Motion to Strike

The court may, upon a motion, or at any time in its discretion, and upon terms it deems proper, strike any irrelevant, false, or improper matter inserted in any pleading. CCP § 436(a). The court may also strike all or any part of any pleading not drawn or filed in conformity with the laws of this state, a court rule, or an order of the court. CCP § 436(b). The grounds for a motion to strike are that the pleading has irrelevant, false or improper matter, or has not been drawn or filed in

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conformity with laws. CCP § 436. The grounds for moving to strike must appear on the face of the pleading or by way of judicial notice. CCP § 437.

Defendants move to strike the following:

“1. Page 7, paragraph 40, indicating: “Defendants intentionally, recklessly, or negligently entered Plaintiff’s property.”

2. Page 9, paragraph 69, indicating: “Plaintiff is informed and believes, and thereon alleges, Defendants acted in a despicable manner, intending to vex, injury and annoy Plaintiff while enriching themselves and have been guilty of oppression, fraud, and malice, thus warranting an award of punitive damages, in an amount according to proof at trial.”

3. Page 9, “Prayer for Relief” number 4, indicating for “exemplary damages.””

As to Item 1, the motion to strike is moot upon the sustaining of the demurrer to the first cause of action. As to Items 2 and 3, the motion to strike is granted with 20 days leave to amend.

Civ. Code, § 3294 states, in relevant part:

“(a) In an action for the breach of an obligation not arising from contract, where it is proven by clear and convincing evidence that the defendant has been guilty of oppression, fraud, or malice, the plaintiff, in addition to the actual damages, may recover damages for the sake of example and by way of punishing the defendant.

(b) An employer shall not be liable for damages pursuant to subdivision (a), based upon acts of an employee of the employer, unless the employer had advance knowledge of the unfitness of the employee and employed him or her with a conscious disregard of the rights or safety of others or authorized or ratified the wrongful conduct for which the damages are awarded or was personally guilty of oppression, fraud, or malice. With respect to a corporate employer, the advance knowledge and conscious disregard, authorization, ratification or act of oppression, fraud, or malice must be on the part of an officer, director, or managing agent of the corporation.

(c) As used in this section, the following definitions shall apply:

(1) “Malice” means conduct which is intended by the defendant to cause injury to the plaintiff or despicable conduct which is carried on by the defendant with a willful and conscious disregard of the rights or safety of others.

(2) “Oppression” means despicable conduct that subjects a person to cruel and unjust hardship in conscious disregard of that person's rights.

(3) “Fraud” means an intentional misrepresentation, deceit, or concealment of a material fact known to the defendant with the intention on the part of the defendant of thereby depriving a person of property or legal rights or otherwise causing injury.”

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To state a claim for punitive damages, Plaintiffs must allege specific facts rather than conclusions that Defendant's conduct constitutes oppression, fraud, or malice. *Brousseau v. Jarrett* (1977) 73 Cal.App.3d 864, 872. Plaintiff has set forth conclusory allegations that Defendants acted willfully, maliciously, intentionally, and/or recklessly in an attempt to support Plaintiff's allegations and prayer for punitive damages. A Complaint's "conclusory characterization of defendant's conduct as intentional, willful and fraudulent is a patently insufficient statement of oppression, fraud, or malice, express or implied, within the meaning of section 3294." *Id.*

Therefore, the motion to strike is moot, in part, and granted, in part, with 20 days leave to amend.

Defendants are ordered to give notice of this ruling.

\*\*\*END OF TENTATIVE RULING\*\*\*

The parties submit on the tentative with Defendant's counsel requesting 45 days leave to amend instead of 20.

The Court adopts the tentative as the ruling of the Court with the following modification:

The Court grants 45 days leave to amend.

Case Management Conference is scheduled for 03/06/2023 at 08:30 AM in Department B at Torrance Courthouse.

Notice is waived.