

SUPERIOR COURT OF CALIFORNIA, COUNTY OF ALAMEDA

Rene C. Davidson Courthouse

<p>Y [REDACTED] L [REDACTED] et al Plaintiff/Petitioner(s) VS. Truck Insurance Exchange et al Defendant/Respondent (s)</p>	<p>No. 24CV063297 Date: 11/07/2024 Time: 3:00 PM Dept: 17 Judge: Sarah Sandford-Smith ORDER re: Hearing on Motion for Summary Adjudication filed by Y [REDACTED] L [REDACTED] (Minor) + filed by Y [REDACTED] L [REDACTED] (Minor); Y [REDACTED] S [REDACTED] (Guardian Ad Litem); P [REDACTED] A [REDACTED] (Plaintiff) on 10/31/2024</p>
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The Motion for Summary Adjudication filed by Y [REDACTED] L [REDACTED], P [REDACTED] A [REDACTED], Y [REDACTED] S [REDACTED] on 08/23/2024 is Granted.

The Motion of Plaintiffs Y [REDACTED] L [REDACTED], Y [REDACTED] S [REDACTED] and P [REDACTED] A [REDACTED] a (“Plaintiffs”) for Summary Adjudication is GRANTED. (Code Civ. Proc., § 437c.)

REQUEST FOR JUDICIAL NOTICE

Plaintiffs’ Request for Judicial Notice is granted as to Exhibit A, which consists of California court records. (Evid. Code, § 452, subd. (d).) However, the Court does not take judicial notice of the truth of any of the facts asserted in the matters noticed. (See Fogel v. Farmers Group, Inc. (2008) 160 Cal.App.4th 1403, 1413 n. 7; Lockley v. Law Office of Cantrell, Green, Pekich, Cruz & McCort (2001) 91 Cal.App.4th 875, 882.)

Defendant’s Request for Judicial Notice is granted as to items 1 and 2, which consist of California court records. (Evid. Code, § 452, subd. (d).) However, the Court does not take judicial notice of the truth of any of the facts asserted in the matters noticed. (See Fogel v. Farmers Group, Inc. (2008) 160 Cal.App.4th 1403, 1413 n. 7; Lockley v. Law Office of Cantrell, Green, Pekich, Cruz & McCort (2001) 91 Cal.App.4th 875, 882.)

BACKGROUND

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This is the second of two lawsuits that arises out of an underlying personal injury action involving a dog attack that took place in a subdivision owned and operated by Defendant The Cottages. Plaintiff P [REDACTED] A [REDACTED] (“A [REDACTED]”) settled the underlying action by assigning her rights under the policy to co-Plaintiffs L [REDACTED] and S [REDACTED] and permitting an uncontested trial to proceed before this Court, in exchange for a covenant not to execute on the judgment. Following a trial on the merits, which included both documentary evidence and testimony, the Court rendered a significant judgment against A [REDACTED].

The underlying personal injury action (L [REDACTED] lawsuit) involved a dog attack that took place on August 13, 2021 (“the incident”). (FAC ¶ 16.) Following the incident, A [REDACTED], who was both a homeowner in The Cottages’ subdivision and the owner of the dog who caused Plaintiffs’ injuries, tendered her defense to Defendant Truck Insurance Exchange (“Truck”), which was the insurer who issued Policy number 60281-85-62 to The Cottages for the policy period of September 5, 2020 through September 5, 2021. (FAC ¶ 13.)

Truck denied A [REDACTED]’s tender on October 18, 2021, on the basis that A [REDACTED] was not an “insured” under the policy. (FAC ¶ 18.) Truck reiterated its denial of coverage in letters dated July 25, 2022, and August 15, 2022. (FAC ¶ 20.)

On October 4, 2022, L [REDACTED] and S [REDACTED] filed suit against A [REDACTED] for the dog attack. (FAC ¶ 22.) Plaintiffs did not sue The Cottages in the underlying action, however, despite the fact that the incident took place on The Cottages’ property.

A [REDACTED] was not provided with a defense and on October 16, 2023, judgment was entered against A [REDACTED] and in favor of Plaintiffs in the total amount of \$10,000,000 (\$7,500,000 as to L [REDACTED] and \$2,500,000 as to [REDACTED]). (FAC ¶¶ 26-27.) A [REDACTED] assigned all assignable claims that she might have against The Cottages, Truck or the insurance agent (Greg Norris Insurance Agency, Inc.) to L [REDACTED] and S [REDACTED]. (FAC ¶ 28.)

LEGAL STANDARD

Motion for Summary Adjudication

“A motion for summary adjudication . . . shall proceed in all procedural respects as a motion for summary judgment.” (Code Civ. Proc. § 437c, subd. (f)(2).)

In moving for summary judgment, a defendant has met his burden of showing that a cause of action has no merit if he has shown that one or more elements of the cause of action cannot be established, or that there is a complete defense to that cause of action. (Aguilar v. Atlantic Richfield Co. (2001) 25 Cal.4th 826, 849; Code Civ. Proc., § 437c, subd. (p)(2).) Once the defendant has met that burden, the burden shifts to the plaintiff to show that a triable issue of one or more material facts exists as to that cause of action or a defense thereto. (A [REDACTED], supra, 25 Cal.4th at p. 849; Code Civ. Proc., § 437c, subd. (p)(2).)

The party moving for summary judgment bears the burden of persuasion that there is no triable issue of material fact and that he is entitled to judgment as a matter of law. (Aguilar, supra, 25

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Cal.4th at p. 850; Evid. Code, § 500.) A triable issue of material fact exists if the evidence would allow a reasonable trier of fact to find the underlying fact in favor of the nonmoving party. (Aguilar, supra, 25 Cal.4th at p. 850.)

Papers are to be construed strictly against the moving party and liberally in favor of the opposing party; any doubts regarding the propriety of summary judgment are to be resolved in favor of the opposing party. (Kulesa v. Castleberry (1996) 47 Cal.App.4th 103, 112.)

Duty to Defend

The insured bears the burden of showing that a claim falls within the scope of coverage under the policy. (Waller v. Truck Ins. Exchange, Inc. (1995) 11 Cal.4th 1, 16.) An insurer's duty to defend is triggered by the mere possibility of coverage of a claim. (Horace Mann Ins. v. Barbara B. (1993) 4 Cal.4th 1076, 1081 .) In order to properly avoid its duty to defend, the insurer has the burden of showing that the claim cannot come within the coverage of the policy, (Montrose Chem. Corp. v. Sup. Ct., 6 Cal.4th 287 (1993)); that is, show that the policy clearly and unambiguously does not cover the claim. (Giddings v. Industrial Indemnity Co. (1980) 112 Cal.App.3d 213, 218.)

DISCUSSION

Defendant's policy provides, in relevant part, under "Section C - Who is an Insured" that the following persons are insured: "Each other unit-owner of the described condominium, but only with respect to that person's liability arising out of the ownership, maintenance or repair of that portion of the premises which is not owned solely by the unit-owner or out of that person's membership in the Association." (Coleman Decl., ¶ 3, Ex. A, p. 82.) The duty to defend under the policy is triggered only for "suit[s] seeking damages" for bodily injury only for instances in which the insurance applies. (Id. at p. 71.)

Defendant's principal argument is that the A [REDACTED] is not insured under the insurance policy because the underlying facts show that A [REDACTED] was at fault and also do not reflect that the dog bite injury occurred as a result of her ownership of the premises or membership in the Homeowner Association. (Oppo., p. 1:4-7.) However, Defendant also makes some inconsistent arguments – that the insured is the Homeowner Association. (Oppo., p. 7:22.) Yet the language of the policy specifies that the coverage is for individual "unit-owner[s]". (Coleman Decl., ¶ 3, Ex. A, p. 81.) While it is not claimed that A [REDACTED]'s mother is also owner of the premises, she is alleged to reside with A [REDACTED] at the insured premises. (UMF 32.) A [REDACTED] further is the owner of the dog in question and left the dog in the care of her mother at the time of the incident. (Ibid.)

As stated by Plaintiffs, the duty to defend exists where extrinsic facts, both disputed and undisputed, that the insurer knows or becomes aware of from any source at the time of the inception of the third-party lawsuit or at the time of tender, suggest there may be coverage. (Hartford Casualty, supra, 59 Cal.4th at p. 287, 172 Cal.Rptr.3d 653, 326 P.3d 253.) "Thus, '[i]f any facts ... known or discovered by the insurer, suggest a claim potentially covered by the

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policy, the insurer's duty to defend arises and is not extinguished until the insurer negates all facts suggesting potential coverage.’ ” (Ibid.) While not set forth in the underlying Complaint, Aguinaga alleged in several emails to Defendant that her mother would sweep leaves, dirt and dog feces from the sidewalk including on the day of the incident. (UMF 42; Coleman Decl., Ex. B.) As a result, she went in and out of the house and left the door open on one occasion, which led to the dog running out of the house in the first place. (UMF 43.)

“The term ‘[a]rising out of is a broad concept requiring only a ‘slight connection’ or an ‘incidental relationship’ between the injury and the excluded risk.” (Southgate Recreation & Park District v. California Association for Park and Recreation Insurance (2003) 106 Cal.App.4th 293, 301.) “ ‘Arising out of are words of much broader significance than ‘caused by’ They are ordinarily understood to mean ‘originating from’ ‘having its origin in,’ ‘growing out of or ‘flowing from’, or in short, ‘incident to, or having connection with’. ...” (Transport Indemnity Company v. Schnack (1983) 131 Cal.App.3d 149, 152; Acceptance Ins. Co. v. Syufy Enterprises (1999) 69 Cal.App.4th 321, 328.) Contrary to Defendant’s contention, Plaintiffs need not prove more than an incidental relationship between Aguinaga’s liability and connection with A [REDACTED]’s ownership, maintenance or repair of a common area. (Oppo., p. 8:5-7.) Under the broad language of ‘arising out of’ relating to A [REDACTED]’s maintenance of the sidewalk, the Court finds that Defendant owed Aguinaga a duty to defend. Subsequently, the Court GRANTS Plaintiffs’ Motion for Summary Adjudication. (Code Civ. Proc., § 437c.) The Court declines to consider out-of-state cases cited by Defendant.

OBJECTIONS

Olson Deposition Transcript

The Court did not rely on the items of Paul Olson’s deposition transcript objected to in adjudicating this motion (Code Civ. Proc., § 437c, subd. (q).)

Dated : 11/07/2024



Sarah Sandford-Smith / Judge

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