

**NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS**

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA  
SECOND APPELLATE DISTRICT  
DIVISION ONE

ARTOUR KOJOKLYAN,

Plaintiff and Appellant,

v.

VERONICA LEE et al.,

Defendants and Respondents.

B285485

(Los Angeles County  
Super. Ct. No. BC647102)

APPEAL from a judgment of the Superior Court of  
Los Angeles County, William D. Stewart, Judge. Affirmed in part  
and reversed in part.

Medvei Law Group and Sebastian M. Medvei for Plaintiff  
and Appellant.

Everett L. Skillman; Bremer, Whyte, Brown & O'Meara,  
Keith G. Bremer, Kyle P. Carroll, and Merritt E. Cosgrove for  
Defendants and Respondents.

---

Plaintiff Kojoklyan appeals from a judgment entered in favor of defendants Veronica Lee (Lee) and FHT, Inc. (FHT) after the trial court sustained defendants' demurrer without leave to amend to all causes of action alleged in plaintiff's complaint. He further complains that the court erred in failing to award him monetary discovery sanctions. We conclude that plaintiff stated a cause of action in negligence for his physical injury and personal property damages, but that his other causes of action fail as a matter of law, and that the court did not err in denying plaintiff's sanctions request. We, therefore, affirm in part and reverse in part.

### **FACTUAL AND PROCEDURAL SUMMARY<sup>1</sup>**

In 2014, Lee purchased a single-family residence in North Hollywood "as-is." Lee never lived in the home; she purchased it intending to renovate and resell it. After that, Lee and her contractors repaired and renovated the home, including installing a new roof and making other structural and cosmetic renovations. After the home was refurbished, Lee transferred ownership to her corporation, FHT.

In June 2015, FHT sold the home to plaintiff's wife, Yevgine Barseghyan (Barseghyan).<sup>2</sup> At some point thereafter, plaintiff

---

<sup>1</sup> The facts described here are taken from the pleadings and from judicially noticeable documents because this is an appeal from an order sustaining a demurrer.

<sup>2</sup> In ruling on the demurrer, the trial court took judicial notice of: (1) the grant deed conveying title from FHT to Barseghyan (recorded on June 1, 2015) which disclosed that the property was deeded "as [Barseghyan's] sole and separate property"; and (2) a grant deed (recorded that same day) and executed by plaintiff which indicated that Barseghyan was plaintiff's spouse, and that she received title to the property as her "sole and separate property." (Capitalization omitted.)

moved into the house with his wife and daughter. Plaintiff alleges that in the spring of 2016, after a rainstorm, a wall in the home collapsed. It was then discovered that “black toxic mold” had developed in the walls allegedly because the new roof Lee installed leaked and because of the other structural renovations Lee made to the property.

In early 2017, plaintiff filed a complaint against Lee, FHT, and the contractors who assisted with the renovations, asserting claims for negligence, strict liability, “intentional conduct” and unfair competition.<sup>3</sup> The complaint contained allegations that the house was damaged. Plaintiff also alleged that the mold caused him to suffer “physical injur[ies]” and damage to his “personal property.” Plaintiff asserted that Lee performed “substandard” renovations with “cheap materials, improper design and planning . . . , and without the proper permits,” and that the renovations were completed with the intent to save cost and “create the outward appearance of a renovated property.” Plaintiff claims that defendants were aware of the defects and attempted to conceal them. He further contends that Lee transferred ownership to FHT in an attempt to “shield” Lee from liability for the substandard renovations. Plaintiff further asserts that defendants “marketed” and falsely advertised the property knowing the renovations were defective.

Defendants filed a demurrer to plaintiff’s complaint for a failure to allege facts to constitute a cause of action, uncertain pleading, and misjoinder of parties. The trial court sustained the demurrer without leave to amend. Plaintiff’s discovery motions,

---

Plaintiff has not alleged any individual or community property ownership interest in the home.

<sup>3</sup> Plaintiff’s wife, Barseghyan, filed a separate complaint containing the same factual allegations and same causes of action; she has never been a party to plaintiff’s complaint.

calendared for the same day as the demurrer hearing, were also all denied, as was plaintiff's related request for monetary sanctions. The court entered a judgment of dismissal and plaintiff filed a timely notice of appeal.

## DISCUSSION

### **I. The Trial Court Properly Sustained the Demurrer as to All of the Claims Except the Cause of Action for Negligence**

This court reviews an order sustaining a demurrer de novo; we assume all facts properly pleaded or reasonably inferred from those allegations are true and must determine whether those facts state a claim under any legal theory. (*Scott v. JPMorgan Chase Bank, N.A.* (2013) 214 Cal.App.4th 743, 751.) "We affirm the judgment if it is correct on any ground stated in the demurrer, regardless of the trial court's stated reasons." (*Wolkowitz v. Redland Ins. Co.* (2003) 112 Cal.App.4th 154, 162.) When the trial court sustains a demurrer without leave to amend, we review that decision for abuse of discretion and will reverse if we determine that there is a reasonable possibility the plaintiff can cure the defect by amending the pleading. (*Glen Oaks Estates Homeowners Assn. v. Re/Max Premier Properties, Inc.* (2012) 203 Cal.App.4th 913, 919.) The burden to show a reasonable possibility of amendment rests with the appellant. (*Blank v. Kirwan* (1985) 39 Cal.3d 311, 318.)

Here the trial court observed that all of the causes of action sought damages to the real property or were based on defendants' efforts to market the property to plaintiff's wife. The court sustained the demurrer without leave to amend, *inter alia*, because plaintiff had not pleaded any ownership interest in the property and, thus, he was not the real party in interest on the claims.

To the extent that plaintiff's causes of action sought to recover damages to the *real property*, the trial court properly concluded that plaintiff could not proceed on his claims. Plaintiff did not allege that he possessed any ownership interest in the property at the time the damages were incurred and in light of the grant deeds executed when plaintiff's wife purchased the property, it is clear that plaintiff cannot amend the complaint to assert any ownership interest in the real property. As the trial court properly concluded, plaintiff's wife is the real party in interest concerning any claim for damage to the residence. And, as we shall explain, although plaintiff can seek physical injuries and personal property damage under a negligence theory of liability, the trial court properly determined that plaintiff's claims seeking those individual damages based on theories of strict liability, intentional misconduct, and unfair competition cannot survive a demurrer.

#### **A. *Strict Liability Claim***

Construction defects give rise to "strict liability" claims in the context of mass-produced homes (and component products placed in homes) and large-scale new residential production and development. (See, e.g., *Kriegler v. Eichler Homes, Inc.* (1969) 269 Cal.App.2d 224, 227-229 [concluding that homeowner was entitled to recover for physical damage sustained as the result of the failure of a radiant heating system in a home on the basis of strict liability, where defendants were engaged in the mass production and sale of homes, and where plaintiff relied on defendants' home-building skills]; *Avner v. Longridge Estates* (1969) 272 Cal.App.2d 607, 610 [holding that developer of residential tracts/lots for building purposes may be held strictly liable for damages suffered by the owner as a proximate result of any defects in the lot development process]; *Jimenez v. Superior Court* (2002) 29 Cal.4th 473 [holding that manufacturers of parts

installed in mass-produced homes can be subject to strict products liability].) Courts have imposed strict liability in the context of mass-produced construction because the builder/manufacturer who created the danger also possesses the expertise and is in the better economic position to bear the loss than the injured party who relied on the builder's skill and implied representation of safety. (*Kriegler v. Eichler Homes, Inc.*, *supra*, 269 Cal.App.2d at p. 228.)

The policy justifications for imposing strict liability do not exist in the situation plaintiff has alleged—the renovation of a single pre-existing home for resale by a real estate speculator—and we have not found any case law supporting the extension of “strict liability” in this context. And although, plaintiff has also generally averred that defendants are “developers” in that “they purchase and renovate homes for sale to the public on a large scale,” he has not pointed to any facts in the complaint that directly or inferentially support that conclusory claim. The court is not required to accept as true allegations that are merely conclusory, unwarranted deductions of fact, or unreasonable inferences. As pled, plaintiff's strict liability claim is not plausible, nor has he suggested that he can amend to allege facts supporting the claim. Consequently, the court properly dismissed the strict liability cause of action.

### **B. *Unfair Competition Claim***

California's unfair competition law (Bus. & Prof. Code, § 17200 et seq.) (UCL) prohibits and provides civil remedies for, unfair competition, which it defines as “any unlawful, unfair or fraudulent business act or practice.” (Bus. & Prof. Code, § 17200.) Private standing under the UCL is limited to a person who has suffered an injury in fact and “has lost money or property” as a result of unfair competition. (*Kwikset Corp. v. Superior Court* (2011) 51 Cal.4th 310, 320-321, quoting Bus. & Prof. Code, § 17204.)

The phrase “as a result of” in its plain and ordinary sense means “caused by” and requires a showing of causal connection or reliance. (*Id.* at p. 326.) Thus, to pursue a claim under the UCL, a plaintiff must “(1) establish a loss or deprivation of money or property sufficient to qualify as injury in fact, i.e., economic injury, and (2) show that the economic injury was the result of, i.e., caused by, the unfair business practice . . . that is the gravamen of the claim.” (*Id.* at p. 322, italics omitted; accord, *Sarun v. Dignity Health* (2014) 232 Cal.App.4th 1159, 1166.)

In his UCL claim, plaintiff alleges that defendants engaged in false advertising, but he does not claim that defendants marketed the house to him, or that he (or anyone else) relied on false advertising or misrepresentation which caused him to suffer a cognizable economic injury, nor does plaintiff suggest that he could amend to cure the defects in the cause of action. Consequently, the court did not err dismissing the UCL claim with prejudice.

### **C. *Intentional Conduct***

Plaintiff’s cause of action labeled “intentional conduct” fails for the same reason as the UCL claim. The “intentional conduct” claim, like the UCL claim, centers on the allegation that defendants engaged in fraudulent marketing of the home knowing that Lee had made substandard renovations to the property. Similar to the UCL claim, plaintiff has not alleged that the house was marketed to him, that he relied upon or was damaged by that conduct or purchased the home and, thus, any cause of action related to defendants’ conduct in the marketing of the home would belong to plaintiff’s wife. Plaintiff has not demonstrated that he can amend to cure the defect in this claim.

#### **D.     *The Negligence Cause of Action***

In contrast to the other causes of action, based on the factual allegations in the complaint, plaintiff's negligence claim is legally plausible. Defendants assert that as a matter of law plaintiff cannot establish that they owed him a duty of care. We disagree.

As to private property, after the transfer of ownership, control, and possession, courts have adhered to the general rule that a former owner is not liable to the purchaser or her tenants for harm caused by any dangerous condition which existed at the time that the new owner took possession. (See *Preston v. Goldman* (1986) 42 Cal.3d 108, 117-126 [discussing the evolution of the general rule].) Several exceptions to the rule exist, however, which depend on the status (and role) of the former owner in creating the dangerous condition and whether the defect is concealed or the risks are known and obvious. For example, courts have found that builders, designers, and renovators owed a duty of care to third parties in negligence for injuries suffered based on defective construction upon real property even absent contractual privity. (See, e.g., *Burch v. Superior Court* (2014) 223 Cal.App.4th 1411, 1419 [general contractor had a duty in negligence to third-party purchaser of the home for damages resulting from construction defects even though the purchaser was not in privity of contract with the builder], disapproved of on other grounds in *McMillin Albany LLC v. Superior Court* (2018) 4 Cal.5th 241, 257; *Sabella v. Wisler* (1963) 59 Cal.2d 21, 27-31 [same].) Relatedly, in determining whether former homeowners who negligently constructed a property improvement owe a duty of care and are subject to liability for injuries sustained on that property after they have relinquished ownership and control, courts have considered whether the defects are latent and concealed. (See *Lewis v. Chevron U.S.A., Inc.* (2004) 119 Cal.App.4th 690, 692, 695-696



[holding that absent concealment, a prior owner of real property is not liable for injuries caused by a defective condition on the property long after the owner has relinquished ownership and control, even if the prior owner negligently created the condition]; *Preston v. Goldman, supra*, 42 Cal.3d at pp. 125-126 [finding that the alleged defect in the pond was obvious and thus the former owners' liability ended with their transfer of possession and control of the property to new owners, despite the allegation of former owners' negligence in constructing the pond].) In this context, courts have applied the factors the Supreme Court identified in *Rowland v. Christian* (1968) 69 Cal.2d 108, which include "the foreseeability of harm to the plaintiff, the degree of certainty that the plaintiff suffered injury, the closeness of the connection between the defendant's conduct and the injury suffered, the moral blame attached to the defendant's conduct, the policy of preventing future harm, the extent of the burden to the defendant and consequences to the community of imposing a duty to exercise care with resulting liability for breach." (*Id.* at pp. 112-113; cf. *Preston v. Goldman, supra*, 42 Cal.3d at pp. 125-126.)

Here, applying the *Rowland* factors, the factual allegations in plaintiff's complaint are sufficient to establish a duty of care. Although plaintiff was not a party to the sales contract for the purchase of the home, as a member of the buyer's immediate family, plaintiff is a foreseeable occupant of the home and, thus, is likely to be affected by the real estate transaction between defendants and his wife. It is also foreseeable that as an occupant of the home, plaintiff might suffer personal injuries as the result of the alleged defective construction. Also, plaintiff alleged a close connection between his injuries and Lee's defective renovations to the property; he contends that the substandard construction resulted in the development of toxic mold in the walls and caused water to leak into the house which damaged plaintiff's personal property. Even

though plaintiff does not assert that defendants had possession, ownership or control over the house at the time plaintiff's damages occurred, he has alleged that defendants purposely concealed the defective and substandard renovations with the intent to create the outward appearance of a properly refurbished property. And, thus, the new owner— plaintiff's wife—would not have known that she needed to take precautions to prevent the damages. Indeed, the allegation that the defects were latent and purposely concealed distinguishes this case from others such as *Preston* and *Lewis* where the prior homeowner's negligent construction posed obvious risks of harm. As to moral blame and policy to prevent future harm, under the circumstances, the "blame" should be placed on defendants who purportedly negligently renovated the home and then hid the defects rather than plaintiff or his wife, who purchased the house unaware of the quality of the renovations or the risks they posed. Similarly, as to the burden to the defendants and consequences to the community, this factor also favors imposing a duty upon defendants because of the alleged concealment.

Moreover, contrary to the trial court's conclusion, plaintiff was not required to join his wife as a party in the action claim in order to proceed on his negligence claim for his personal property and physical injuries—those damages belong solely to plaintiff, and they do not depend on his wife's participation (or status) as a party in the lawsuit. As pleaded, his negligence allegations are sufficient to survive a demurrer, and therefore the court erred in dismissing the negligence cause of action.

## **II. The Court Did Not Err in Denying Plaintiff's Requests for Monetary Discovery Sanctions**

The court denied plaintiff's discovery motions, including the request to impose monetary sanctions. The court found that defendants' counsel had offered a valid justification for the brief delay in responding to the discovery requests—counsel explained that she had lost two weeks at work because her grandmother had just died—and that under those circumstances, imposing sanctions would be unjust.

Here plaintiff does not assail defendants' counsel's justification for the delay in responding to the discovery request; instead plaintiff argues that because defendants did not serve their responses before he filed the discovery motion, the court lacked the discretion to deny the request for monetary sanctions. We disagree.

Plaintiff sought monetary discovery sanctions under several sections of the Code of Civil Procedure, including section 2033.280, subdivision (c), which provides in pertinent part: "If a party to whom requests for admission are directed fails to serve a timely response, the following rules apply: [¶] . . . [¶] . . . It is mandatory that the court impose a monetary sanction under Chapter 7 (commencing with [Code of Civil Procedure] Section 2023.010) on the party or attorney, or both, whose failure to serve a timely response to requests for admission necessitated this motion." Code of Civil Procedure section 2033.280's mandatory sanctions language, however, is qualified by section 2023.030: "(a) . . . If a monetary sanction is authorized by any provision of this title, the court shall impose that sanction unless it finds that the one subject to the sanction acted with substantial justification or that other circumstances make the imposition of the sanction unjust." (Code Civ. Proc., § 2023.030.) Thus, the award of sanctions is mandatory under Code of Civil Procedure section 2033.280, subdivision (c),

unless defendants met their burden to prove that there was either “substantial justification” for the failure to respond to the requests for admission, or “other circumstances mak[ing] the imposition of the sanction unjust.” (Code Civ. Proc., § 2023.030; see also *Doe v. United States Swimming, Inc.* (2011) 200 Cal.App.4th 1424, 1434.)

Here defendants’ counsel offered a substantial justification for the untimely discovery response which the trial court accepted and plaintiff does not challenge. The court’s exercise of discretion in denying sanctions was irrational or arbitrary. (See *Doe v. United States Swimming, Inc.*, *supra*, 200 Cal.App.4th at p. 1435 [holding the decision to impose a particular sanction is “ ‘ “subject to reversal only for manifest abuse exceeding the bounds of reason” ’ ”]; see also *In re Marriage of Chakko* (2004) 115 Cal.App.4th 104, 108 [same].) Consequently, we affirm the order.

### **DISPOSITION**

The judgment of dismissal upon the order sustaining the demurrer is reversed as to the plaintiff's cause of action for negligence based on his allegations that he suffered personal property damages and personal injuries. The judgment is affirmed in all other respects. The parties are to bear their own costs on appeal.

NOT TO BE PUBLISHED.

ROTHSCHILD, P. J.

We concur.

CHANEY, J.

JOHNSON, J.