



**SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN FRANCISCO**

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DEBORA SILVERMAN VS. MURPHY SAN FRANCISCO LIMITED PARTNERSHIP
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PARTNERSHIP, MURPHY INVESTMENTS, INC.
and BARTHOLOMEW MURPHY

FILED
San Francisco County Superior Court
JUL 17 2013
CLERK OF THE COURT
BY: *[Signature]*
Deputy Clerk

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN FRANCISCO

DEBORA SILVERMAN,

Plaintiff,

v.

MURPHY SAN FRANCISCO LIMITED
PARTNERSHIP, MURPHY
INVESTMENTS, INC., and DOES 1
through 50, inclusive,

Defendants.

Case No. CGC-12-521405

Action Filed: June 6, 2012

DEFENDANTS MOTION IN LIMINE #19

**MOTION *IN LIMINE* TO PRECLUDE
PLAINTIFF FROM OFFERING
EVIDENCE, LAW OR ARGUMENT THAT
DEFENDANTS HAVE NOT COMPLIED
WITH REGULATIONS OR STATUTES
NOT ASSERTED IN THE COMPLAINT**

Trial Date: July 15, 2013
Time: 9:30 a.m.
Dept: 206

Defendants, MURPHY SAN FRANCISCO LIMITED PARTNERSHIP, MURPHY
INVESTMENTS, INC., and BARTHOLOMEW MURPHY (collectively referred to herein as
"Murphy"), move this Court *in limine* for an Order precluding plaintiff from offering evidence,
law or argument that defendants have not complied with regulations or statutes not asserted in
the complaint.

1 I. FACTUAL BACKGROUND

2 This is a landlord-tenant action in which plaintiff, Debora Silverman contends that
3 Defendants violated common law duties of habitability, breached a rental agreement, and
4 violated San Francisco Administrative Code section 37.10B by failing to perform repairs in a
5 timely manner and failing to adequately address a mouse infestation at 739 Haight Street in San
6 Francisco ("the Subject Property"). The Complaint concerns defendants' response to plaintiff's
7 allegations of uninhabitable conditions at the Subject Property only. The Complaint contains no
8 allegations regarding other properties owned or operated by defendants. The Complaint contains
9 no allegations of fraud and no allegations of alleged violations of OSHA regulations with respect
10 to maintenance workers employed by defendants. This is not a designated class action lawsuit.

11 Defense witness Denis Murphy was deposed on May 30, 2013. (Exhibit A –
12 Video Deposition of Denis Murphy ["D. Murphy Depo."].) At the deposition, Mr.
13 Lifschitz persisted in questioning the witness about claims well beyond the scope of what
14 the plaintiff, Debora Silverman, has alleged in her landlord-tenant Complaint:

15 "Okay. Do you know if there are any written policies that Murphy
16 Investments maintains relating to the management of these over 500 rental
17 properties?" (D. Murphy Depo., pg. 27:19-22.)

18 "Okay. As you sit here today, you have never seen a written policy for
19 employees to review as to how to manage these over 500 rental properties
20 in the course of their employment?" (D. Murphy Depo., pgs. 27:24-28:2.)

21 "What training, if any, does Murphy Investments provide its employees in
22 the use, proper use of pesticides?" (D. Murphy Depo., pg. 33:7-9.)

23 "So it's your understanding that you rely upon Alert Pest Control to train
24 your employees on the proper use of pesticides." (D. Murphy Depo., pg.
25 33:13-15.)

26 "Is it your understanding -- Strike that. Do you have an understanding
27 that your employees at Murphy Investments place pesticides at properties
28 other than 739 Haight Street?" (D. Murphy Depo., pg. 34:17-20.)

"And is – Murphy Investment is permitted to take mouse poison they find
at the corner store, and put it in apartments that you manage correct?" (D.
Murphy Depo., pg. 37:17-20.)

1 "Right. And, but also you have indicated that Murphy Investments'
2 employees lay out bait at the direction of the pest control company." (D.
Murphy Depo., pg. 38:11-14.)

3 ...
4 "Okay. Are you aware of any training provided to employees of Murphy
Investment in the removal or disposal of rodent-infested materials?" (D.
Murphy Depo., pg. 41:15-17.)

5 ...
6 "Okay. And are you aware if Murphy Investments maintains any Material
Safety Data Sheets on its premises?" (D. Murphy Depo., pg.50:11-13.)

7 ...
8 "Okay. Have you at any time ever reviewed any OSHA guidelines in
relationship to Murphy Investments' obligations to its employees as they
perform their obligations of a property management company?" (D.
9 Murphy Depo., pg. 51:4-8.)

10 In response to defense objections about the scope of questioning, Mr. Lifschitz
11 made the following arguments:

12 "We have a allegation that Murphy Investments is engaged in an unfair,
13 unlawful and fraudulent business practice, as it relates to the management
of over 500 rental units -." (D. Murphy Depo., pg. 29:14-17.)

14 ...
15 "Again, so we have alleged that Murphy Investments is in violation of
Business and Profession Code 17200, and engaged in unfair, unlawful and
16 fraudulent business practice, as it relates to its responsibilities in managing
and maintaining over 500 rental units in San Francisco." (D. Murphy
17 Depo., pg. 30:11-16.)

18 ...
19 "As such, we are entitled to questions relating to Murphy's management
practices, in particular, as it relates to rodent control, but also its General
Business Practices, in terms of complying with State, local and Federal
20 Regulations, in terms of property management, use of pesticides and a
variety of other things in that area." (D. Murphy Depo., pgs. 30:25-31:6.)

21 ...
22 "The reason that we are entitled to understand whether or not your
employees are placing pesticides in other units is, again, in furtherance of
23 our cause of action under 172200, for violation - it's a violation of
Business and Profession Code 7 - 17200 for Unfair and Unlawful and
24 Fraudulent Business Practices." (D. Murphy Depo., pg. 35:16-22.)

25 ...
26 "Okay. And I also will include that, in addition to the Business and
Profession Code, it is also relevant for under our cause of action for
37.10B of the San Francisco Rent Ordinance, which provides us an
27 opportunity to investigate the business practices of Murphy Investments."
(D. Murphy Depo., pg. 36:8-14.)

28 ...

1 "The case is about an unfair, unlawful and harassing business practice.
2 And OSHA does require that employers maintain specific records, so that
3 if their employees use pesticides, or other dangerous – ... They maintain
4 records to ensure their employees are properly protected. So, there are
specific laws which are being violated allegedly by Murphy Investments."
(D. Murphy Depo., pg. 53:7-17.)

5 ...
6 "And we have the right to seek discovery, and ask questions about
7 Murphy Investments' failure to comply with OSHA regulations, as part of
8 their unfair, unlawful business practice. Because they are engaged in this
9 practice and it is alleged in the complaint they are, because they are
engaged in this practice, allegedly, we have the right to discover if they
are putting their employees, as well as other – their tenants, who they are
charged to protect as a management company, at risk of – their personal
risk. Hence, we believe it is fully appropriate to ask these questions." (D.
Murphy Depo., pgs. 53:24-54:12.)

10 Plaintiff's Complaint contains no allegations relating to alleged OSHA violations,
11 employee safety issues, or unfair, unlawful and fraudulent business practices at 500 properties
12 owned and managed by defendants. This lawsuit is about habitability concerns at plaintiff's
13 former residence only, 739 Haight Street, San Francisco, California. (Exhibit B – Complaint.)

14 On June 11, 2013, the Court heard oral argument on a discovery motion regarding the
15 appropriate scope of any continued deposition of Denis Murphy. Plaintiff's counsel offered
16 argument that a host of potential, yet unspecified statutory violations may be explored in
17 discovery to support plaintiff's unfair trade practices claim (B&P Code §17200) and to support
18 plaintiff's harassment claim (SF Admin. Code §37.10B). (Exhibit C – June 11, 2013 Hearing
19 Transcript.) Judge Lynn O'Malley-Taylor issued an Order, dated June 12, 2013. (Exhibit D –
20 Order of June 12, 2013.) The Court limited the scope of any questioning of the witness to "739
21 Haight Street rodent infestation 'resulting in constructive eviction of Plaintiff' (Complain ¶¶20,
22 109), including any internal policies on dealing with vermin and rodent infestation on these
23 premises."

24 I. LEGAL ARGUMENT

25
26 A. Plaintiff Should Not be Permitted To Offer Evidence, Law or Argument about
27 Unspecified Statutory Violations Not Asserted in the Complaint

28 The scope of this litigation has been defined by the pleadings and discovery conducted to

1 date. This case is not complex. This is a landlord-tenant dispute, necessarily involving two
2 principal parties – the landlord and the tenant – and the Subject Property. The Court has already
3 recognized that this litigation does not concern any unspecified statutory violations, such as
4 alleged CAL-OSHA violations, or other matters which are nowhere asserted in plaintiff's
5 Complaint. The parties have not litigated OSHA regulations, or any other alleged statutory
6 violations not asserted in the Complaint. Plaintiff has not raised these issues through a proper
7 amendment of the Complaint, and the Court has not permitted plaintiff to venture into these
8 novel areas. As such, these issues are not relevant.

9 The fundamental premise of our legal system is that irrelevant evidence is inadmissible.
10 (*Evidence Code* § 350.) To be relevant, evidence must have some tendency in reason to prove or
11 disprove any disputed fact of consequence essential to a determination of the action. (*Evidence*
12 *Code* § 210; see also *People v. Rodriguez* (1999) 20 Cal.4th 1, 9; *People v. Ayala* (2000) 23
13 Cal.4th 225, 280.)

14 This case involves plaintiff's allegations of habitability related to the presence of mice in
15 her apartment located at 739 Haight Street, Unit 203, San Francisco, California. Plaintiff has not
16 alleged any statutory violations outside of those identified in the Complaint. Thus, introduction
17 of evidence, law or argument of CAL-OSHA violations, or other alleged statutory violations not
18 identified in the Complaint, has no tendency to prove or disprove any disputed fact in this case.
19 Any such evidence, law or argument should be excluded.

20 **B. Evidence or Argument about Unspecified Statutory Violations Not Asserted in**
21 **the Complaint will Cause Unfair Prejudice and Undue Consumption of Time**

22 The defense has reason to believe that plaintiff may offer evidence, law or argument
23 regarding irrelevant issues that are not within the scope of this lawsuit. Allowing plaintiff to
24 complicate the issues placed before the jury, by introducing new claims of alleged statutory
25 compliance, licensing requirements, OSHA compliance, or other similar matters, would cause
26 extreme prejudice to the defense. Even if the Court finds such evidence to have some potential
27 relevance, not hearsay, and not inadmissible character evidence, this evidence should be
28 excluded as unduly prejudicial, confusing, and misleading. *Evidence Code* § 352 provides that

1 “the court in its discretion may exclude evidence if its probative value is substantially
2 outweighed by the probability that its admission will (a) necessitate undue consumption of time
3 or (b) create substantial danger of undue prejudice, of confusing the issues, or of misleading the
4 jury.”

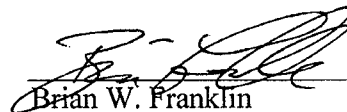
5 The probative value of evidence regarding regulatory or statutory compliance, unrelated
6 to the habitability claims at issue in the case is *zero*. Further, there is a substantial danger of
7 undue prejudice related to these issues. Plaintiff will attempt to paint defendants as operating
8 illegally. That is not what this case is about, and plaintiff has not alleged damages from some
9 feigned non-compliance with regulatory or statutory guidelines. Allowing the jury to hear about
10 such issues of illegality will taint the jury, predisposing them to decide the case not on the merits
11 of the matters in dispute, but based on tangential concerns. This evidence will also cause undue
12 consumption of time, requiring Murphy to call rebuttal witnesses related to each allegation of
13 non-compliance that plaintiff presents to the jury. This can cause numerous mini-trials on
14 matters un-related to plaintiff's allegations. Lastly, introduction of this evidence will mislead the
15 jury, taking their attention off of the facts specific to this case. The plaintiff wants to introduce
16 evidence regarding defendants' alleged non-compliance with unspecified codes and regulations
17 so the jurors will want to punish Murphy for these other issues, while not focusing on the unique
18 facts and defenses in this case. Accordingly, the Court should exclude any evidence, law or
19 argument of CAL-OSHA violations, or other alleged statutory violations not identified in the
20 Complaint.

21 II. CONCLUSION

22 Based on the foregoing arguments and authorities, Defendant Murphy respectfully
23 requests that this Court exclude and prevent plaintiff, her attorney and their witnesses from
24 mentioning, referring to, or attempting to introduce evidence, law or argument of CAL-OSHA
25 violations, or other alleged regulatory or statutory violations not identified in the Complaint
26
27
28

1 Dated: July 16, 2013

ARCHER NORRIS

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3 

4 Brian W. Franklin
5 Attorneys for Defendants
6 MURPHY SAN FRANCISCO LIMITED
7 PARTNERSHIP, MURPHY INVESTMENTS,
8 INC. and BARTHOLOMEW MURPHY
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