Re: ***Daniel Cuellar, et al. v. George R. Galgas, et al.*** **16CVP0306**

Hearing: **Galgas' Motion to Compel Responses to Discovery; and RCA Properties' Motion to Compel Further Responses to Discovery**

Date: **October 3, 2017**

Daniel and Celia Cuellar (collectively Cuellar) bring this action against George and Patricia Galgas (collectively Galgas) and others for damages arising from the purchase of unimproved real property in Templeton. Cuellar contends the property is subject to certain restrictive covenants that were never disclosed.

First American Title Insurance Company (First American) issued a policy of title insurance to Cuellar in connection with the purchase. The policy allegedly did not disclose a restrictive covenant. As such, First American was named as defendant in the negligent misrepresentation, breach of covenant and breach of contract causes of action in Cuellar's complaint. Upon the filing of First American's demurrer, Cuellar agreed to dismiss First American from the negligent misrepresentation and breach of covenant causes of action.

First American then cross-complained against Galgas for indemnity, contribution and declaratory relief to recover $35,000 that First American paid to Cuellar. In turn, on August 24, 2017, Galgas filed an amended cross-complaint against First American for breach of contract, breach of fiduciary duty, indemnity, intentional interference with performance of a contract, breach of duties, and tort of another. First American demurs to the first, second, third, fourth and seventh causes of action.

The crux of the demurrer is that First American owed no duty to Galgas because Galgas was not a party to the insurance policy. Likewise, under Insurance Code §12340.11 a title insurer has no liability for negligence when it provides erroneous title information unless the insured purchased an abstract of title. (*Siegel v. Fid. Nat. Title Ins. Co.* (1996) 46 Cal.App.4th 1181, 1192-1193)

In the first cause of action for breach of contract Galgas alleges that at the close of escrow they purchased the policy of title insurance from First American. However, Galgas cannot overcome the fact that the title insurance policy lists Daniel and Cella Cuellar as the insureds.[1] As emphasized by First American, Galgas has no standing for a breach of contract claim as they are not the insureds under the policy. (*Stockton Mortg., Inc. v. Tope* (2104) 233 Cal.App.4th 437, 450) Likewise, Galgas does not have standing as a third party beneficiary to the contract because the purpose of the title insurance policy is to indemnify and benefit the insured. (*Kenny v. Safeco Title Ins. Co.* (1980) 113 Cal.App.3d 557, 561) Additionally, the fact that Galgas allegedly paid for the policy as a consideration of the sale does not establish standing. (*Id*)

[1] The Court grants First American's request for judicial notice of the policy as the breach of contract claim is based on the policy and it appears undisputed that the insureds under the policy were the Cuellars.

The same analysis applies to the second cause of action for breach of fiduciary duty. There is no duty owed, fiduciary or not, between First American and Galgas. (*Siegel v. Fid. Nat. Title Ins. Co., supra* 46 Cal.App.4th 1181, 1192-1193)

Similarly, there can be no claim for indemnity in the third cause of action because First American cannot be considered a joint tortfeasor. Comparative indemnity only applies between tortfeasor and as concluded above First American owed no duty to Galgas or Cuellar. (*Woodward-Gizienski & Assocs. v. Geotechnical Expl., Inc.* (1989) 208 Cal. App. 3d 64, 67; *Siegel v. Fid. Nat. Title Ins. Co., supra* 46 Cal.App.4th 1181, 1192-1193)

The fourth cause of action for interference with performance of a contract alleges that as a result of First American's error Cuellar has now sued Galgas to rescind the purchase agreement. As pointed out by First American, to state a claim for intentional interference with contract based on the allegation that the defendant induced another to undertake litigation, requires allegations that the litigation was brought without probable cause and that the litigation concluded in plaintiff's favor. (*Pac. Gas & Elec. Co. v. Bear Stearns & Co.* (1990) 50 Cal.3d 1118, 1137) Here, that is not the case.

Lastly, First American cannot be liable under a tort of another theory of liability because First American has not committed the necessary underlying tort because it owed no duty of care to Galgas or Cuellar. (*Mega RV Corp. v. HWH Corp.* (2014) 225 Cal.App.4th 1318, 1338-1339)

In opposition, Galgas argues their claims against First American are based on duties owed by First American to Cuellar. Galgas' cross-complaint against First American is based on the theory that "First American breached its duties to the Cuellars, and as a result of that tort, the Galgases were forced to defend themselves in an action by the Cuellars." But, as stated above First American has not been held liable to Cuellar for any tort and as a title insurer does not owe any duty to Cuellar. (*Siegel v. Fid. Nat. Title Ins. Co., supra* 46 Cal.App.4th 1181, 1192-1193) Also, Cuellar's complaint does not allege any torts against First American.

The demurrer to the first, second, third, fourth and seventh causes of action in Galgas' amended cross-complaint is sustained without leave to amend.