

JAMS ARBITRATION

1200057248

**Trilogy at La Quinta Maintenance
Association (TLQMA),
Claimant**

and

**CBGM, LLC, et al.,
Respondents**

RULING RE: MOTION TO DETERMINE THRESHOLD ISSUES

As to scheduling, Claimant presently has pending a Motion to Compel Further Discovery. Opposition to the Motion is to be filed and served by May 18, 2021. The Reply is to be filed and served by May 25, 2021. The Hearing is set for June 1, 2021 at 9:30 AM. JAMS will give notice of the Hearing.

Claimant Homeowners Association has filed a Motion to Determine Threshold Factual and Legal Issues. A Hearing was held on May 4, 2021. The Motion is denied.

Background

The Trilogy HOA consists of 1,238 homes; it is surrounded by and/or interspersed within the Coral Mountain Golf Club. Physically separating the homes from the various fairways is the Perimeter Landscape Area. It consists of trees and other plantings. The Perimeter Landscape area is approximately 60 acres. Under the CC&R's established in 2003, the Golf Course Owners were responsible for the maintenance of the Perimeter Landscape Area. Over the years, the Perimeter Landscape Area deteriorated as to its maintenance and appearance. In 2015, the present Respondent purchased the golf course and its other amenities.

On February 9, 2017 the HOA and Respondent entered into a new set of CC&R's. Section 11 deals with the Perimeter Landscape Area. It provides for a Rehabilitation Project of the Perimeter Landscape Area, which in essence would upgrade the landscaping throughout the entire 60 acres. The agreement provides that while the HOA has total control over the Project,

the Golf Course Owners will pay one-half of the costs, not to exceed \$1.25 million. (Of that amount, \$225,000 was to be paid in cash; the remaining portion was to be paid by crediting members of the HOA, with use of the golf course and other amenities.) The Agreement further provided that each entity would be responsible for one-half of the maintenance (including tree trimming) of the Perimeter Landscape Area.

By way of its Claim in Arbitration, the HOA contends that the Golf Course Owners have breached the Agreement in that they are no longer crediting members of the HOA with use of the Golf Course and other amenities. The HOA further alleges that the Golf Course Owners have breached the Agreement by not paying their one-half portion of the maintenance costs.

In response, and by way of their Answer and Cross-Claim, the Golf Course Owners contend that the February 9, 2017 Agreement was procured by “fraud in the inducement.” They assert that at the time the February 9, 2017 Agreement was signed, the actual maintenance contract was not in existence and that the HOA promised the Golf Course Owners that the HOA would work with the Owners in arriving at an agreeable maintenance contract and an agreeable amount of money relative to maintenance. The Owners contend that they had no input into the maintenance contract and did not agree to pay one-half of the maintenance costs to the extent they are being charged. They further contend that the Rehabilitation Project was to occur two holes at a time, that maintenance costs would not exceed a total of \$221,000 per year and that they would not have to pay maintenance fees during the Rehabilitation of the Perimeter Landscape Area.

Claimant’s Motion

By way of its Motion the Homeowner’s Association seeks a determination:

- “1. That Golf Course Owner’s seventeenth affirmative defense (‘Fraudulent Inducement’) and twentieth affirmative defense (‘Concealment’) should be dismissed;
2. That Golf Course Owner’s counterclaims for ‘Intentional Misrepresentation/Concealment’ and ‘Negligent Misrepresentation’ should be dismissed; and
3. That the parties are bound by the 2017 Restated Golf Course CC&Rs, which are valid and enforceable and control the relationship between the parties in this proceeding.”

The Homeowner’s Association filed its Claim in Arbitration on or about May 28, 2020. The Golf Course Owners’ Counterclaim was filed on or about June 26, 2020. The majority, if

not all of the alleged “misrepresentations” and or “promises” supporting the Golf Course Owners’ contention of “fraud in the inducement” were made on February 9, 2017. The Counterclaim was filed in June of 2020. On this basis Claimant contends by way of its Motion that all of the fraud based affirmative claims and defenses posited by the Respondent should be dismissed based on the Statute of Limitations.

The HOA further contends that to the extent the February 9, 2017 alleged “promises” are relied upon by the Golf Course Owners as the basis for their Breach of Contract claim, the claim is barred by the 2 year statute of limitations.

Other grounds pursued by the HOA are: (1) the Parole Evidence Rule prevents oral promises from altering or contradicting the February written agreement; (2) California law precludes converting what is in essence a Breach of Contract claim into a Tort claim; (3) the Golf Course Owners’ Fraud claims are barred by the doctrines of Waiver and Estoppel; and, (4) that enforcement of the oral “promises” relative to maintenance costs and proceeding with the Rehabilitation Project 2 holes at a time, would violate the Statute of Frauds.

Discussion

First, while the Motion is entitled “Motion to Determine Threshold Factual and Legal Issues,” its import is truly that of a Motion for Summary Adjudication. By way of the Motion, Claimant is seeking a dismissal of various counterclaims and affirmative defenses. It is further asking that I declare as a matter of law, that the parties are bound by the February 9, 2017 Contract. In essence Claimant seeks resolution of the liability portion of the dispute. (This is quite a bit more than “determining a threshold legal issue.”) It is also apparent, that the Golf Course Owners approached the Motion more along the lines of a Motion for Summary Adjudication, as opposed to a determination of some discrete legal issue, which would control or have impact on the litigation as a whole.¹ Given the nature of the relief sought, I am viewing the present Motion as one for Summary Adjudication. Based on the Declarations submitted in opposition to the Motion and the law, there are triable issues of material fact.²

¹ At page 20 of its Opposition, the Golf Course Owners indicate, “The Board’s intentional, deceitful acts should not be rewarded, and the Course Owners respectfully request their affirmative defenses of fraudulent inducement and concealment be allowed to proceed through the presentation of evidence at Arbitration. It is further requested that the Course Owners’ Counter-Claims be allowed to proceed in parallel.” (Emphasis Added.)

² The Declarations of Vincent Whittaker and Thomas Brown allude to numerous representations made by representatives of the HOA at the February 9, 2017 meeting. While objected to on the basis of Hearsay, I don’t

The following discussion is not intended to judge the merits of the respective parties' factual or legal arguments. Nor is it intended to be construed as Law of the Case. The following brief discussion is centered on the Golf Course Owners' Affirmative Defenses premised on "fraud in the inducement" and the relevance of "fraud in the inducement" to the arguments put forth by Claimant, in support of its Motion.³

"Fraud in the inducement is a subset of the tort of fraud. It 'occurs when ' 'the promisor knows what he is signing but his consent is induced by fraud, mutual assent is present and a contract is formed, which by reason of the fraud, is voidable.'" (Citations)" (*Hinsley v. Oakshade Town Center* (2005) 135 Cal. App.4th 289, 294-295.) "[A] contract induced by fraud renders the entire agreement voidable, permitting the aggrieved party to defend a suit on the contract by objecting to its enforcement because [it was] procured or induced by fraud...[A] contract...induced by misrepresentations made with the intent to defraud..., whether divisible or not, [is] voidable. [An] action to collect on it could thus be defended on the ground that the Contract has been procured by fraud." (*Filet Menu, Inc. v. C.C.L. & G.* (2000) 79 Cal. App.4th 852, 861-862)

"Where fraud is relied upon as a defense merely '*neither the limitation of the statute nor the doctrine of laches* will operate to bar the defense of the invalidity of the agreement upon the ground of fraud, for so long as the plaintiff is permitted to come into court seeking to enforce the agreement, the defendant may allege and prove fraud as a defense. In short, it is not incumbent upon one who has thus been defrauded to go into court, and ask relief, but he may abide his time, and when enforcement is sought against him excuse himself from performance by proof of the fraud.' (Citation) 'Where no affirmative relief is sought, it is not necessary for him to have exercised an existing right to rescind.' (Citation) 'There are three methods by which, in cases

believe them to be such. The alleged statements and or promises made, are not being submitted for the truth of the matter stated therein, they are being submitted for the fact that the statements were made, as an alleged inducement to sign the agreement.

It must be further noted, that to the extent certain factual issues may not be addressed in Respondents' Declarations, the present Motion was not accompanied by a Separate Statement of Undisputed Facts, which has the dual purpose of providing for Due Process and an expeditious review by the trial court. (*United Community Church v. Garcin* (1991) 231 Cal.App.3d 327, 335.)

³ I do not address Respondent's Cross-Complaint and whether the Statute of Limitations has run on the Fraud and Breach of Contract claims. The reason it is not addressed, is that I believe the same basic evidence will be presented on the issue of fraud, whether in support of a defense or in support of an affirmative cause of action. As such, there is no need at this time to make a determination of these issues. (Clearly, there may be issues of tolling, a continuous course of conduct, or some other factor which may be applicable to the present facts.)

like the present, a party defrauded may obtain relief: 1. Cancellation or rescission, etc.; ... 2. Affirmative relief by an action to recover compensation for the injury sustained by the fraud; ... 3. Defensive relief, whereby the fraud is set up by way of defense to defeat an action brought to enforce an apparent obligation or liability.’ (Citations)” (*J.B. Colt Co. v. Freitas* (1926) 76 Cal. App. 278, 287.) (Emphasis Added)

Equally, as to Claimant’s assertion that Golf Course Owners are estopped from asserting fraud in the inducement or have waived their right to assert the defense, *Warfield v. Richey* (1959) 167 Cal. App.2d 93, is instructive.

“ ‘The courts have frequently declared that there is no artificial rule as to the lapse of time which will justify the application of the doctrine of laches. Each case must be determined upon the basis of its facts,...’

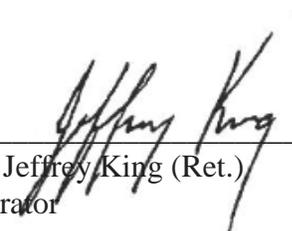
“It must be further noted that before an offended party in a fraud case may be effectively charged with waiver or estoppel, there must be full knowledge on the part of the offended party of all the facts relating to the fraud. It is apparent in the case at bar that the facts in their total effect were coming to the plaintiffs piecemeal, and the full disclosure of defendant's false representation respecting the prior year's income did not actually arrive until the trial of this cause.

“ ‘It is the general rule, within which the case here obviously falls, that there can be no estoppel *in pais* where the party against whom the attempt is made to invoke such estoppel does not know the full truth of the facts to which his conduct, declarations or representations constituting the basis of the alleged estoppel relate.’ (Citation)” (*Id.* at p. 98)

Lastly, California law recognizes exceptions to the Parole Evidence Rule, the Statute of Frauds and the conversion of a Contract claim to a Tort Claim, when the underlying allegations deal with fraud. (*Riverisland Cold Storage, Inc. v. Fresno-Madera Production Credit Assn.* (2013) 55 Cal.4th 1169, 1183)

Claimant’s Motion is denied.

Dated: May 10, 2021



Hon. Jeffrey King (Ret.)
Arbitrator

PROOF OF SERVICE BY E-Mail

Re: Trilogy at La Quinta Maintenance Association (TLQMA) vs. CBGM, LLC, et al.
Reference No. 1200057248

I, Alejandra Cervantes, not a party to the within action, hereby declare that on May 10, 2021, I served the attached Ruling Re: Motion to Determine Threshold Issues on the parties in the within action by electronic mail at Los Angeles, CALIFORNIA, addressed as follows:

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I declare under penalty of perjury the foregoing to be true and correct. Executed at Los Angeles, CALIFORNIA on May 10, 2021.

Alejandra Cervantes
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