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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF MONO – SOUTH COUNTY BRANCH

MAMMOTH FIRESIDE CONDOMINIUM NO. 1 OWNERS' ASSOCIATION, a California unincorporated association,

Plaintiff,

v.

MAMMOTH 8050, LLC, a Delaware limited liability company; SEAN COMBS, an individual; SFI MAMMOTH HOLDINGS, INC., a Delaware corporation; iSTAR FINANCIAL INC., a Maryland corporation; ALL PERSONS OR ENTITIES UNKNOWN, CLAIMING ANY LEGAL OR EQUITABLE RIGHT, TITLE, ESTATE, LIEN, OR INTEREST IN THE PROPERTY DESCRIBED IN THE COMPLAINT ADVERSE TO PLAINTIFF'S TITLE, OR ANY CLOUD UPON PLAINTIFFS TITLE THERETO; and DOES 1 through 100,

Defendants.

SFI MAMMOTH HOLDINGS LLC, a Delaware limited liability company;

Cross-Complainant,

CASE NO. 16452

[Assigned to Hon. Edward Forstenzer, Dept. 1]

CROSS-COMPLAINT FOR BREACH OF CONTRACT AND DECLARATORY RELIEF

Action Filed: May 27, 2008

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v.

MAMMOTH FIRESIDE CONDOMINIUM NO. 1 OWNERS' ASSOCIATION, a California unincorporated association, and ROES 1 through 100,

Cross-Defendants.

SFI Mammoth Holdings LLC ("SFI") alleges for its cross-complaint against Mammoth Fireside Condominium No. 1 Owners' Association ("Fireside") as follows:

Introduction

1. SFI alleges that it is not a successor of Mammoth 8050, LLC ("8050") and therefore is not liable for 8050's obligations, if any, under the terms of any version of that certain Purchase and Sale Agreement, by and between 8050 and Fireside (the "Purchase Agreement"). To the extent SFI is liable or responsible in any way for any contractual or other obligations of 8050, SFI alleges that the Purchase Agreement is not binding and enforceable, and/or Fireside should be estopped from enforcing the terms of the Purchase Agreement against SFI and/or 8050 for the reasons, among other acts, alleged below. To the extent the Purchase Agreement is binding and enforceable upon SFI, SFI alleges that it was breached by Fireside and that SFI (as the successor to 8050) is entitled to recover damages from Fireside and/or, at a minimum, the damages incurred by Fireside should be offset against amounts awarded to Fireside, if any.

The Parties

2. SFI is and at all relevant times mentioned herein was a Delaware limited liability company, with its principal place of business located in San Francisco, California.

3. SFI is informed and believes, and on that basis alleges, that cross-defendant Fireside is, and at all relevant times mentioned herein was, an unincorporated association, with its principal place of business located in Mammoth Lakes, Mono County, California.

4. SFI designates all persons unknown who are responsible, in whole or in part, for the wrongful acts alleged in this cross-complaint, as Roes 1 through 100, inclusive. SFI is ignorant of

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the true names and capacities of the cross-defendants named herein as Roes 1 through 100, inclusive, and therefore sues said Roe defendants by such fictitious names. SFI will seek leave of Court to amend this cross-complaint to allege the true names and capacities of said Roe defendants when they have been ascertained. SFI is informed and believes, and on that basis alleges, that Roes 1 through 100, inclusive, are in some manner responsible for the wrongful acts and/or omissions alleged in this cross-complaint.

5. SFI is informed and believes, and on that basis alleges, that Fireside and each of the cross-defendants named herein as Roes 1 through 100, inclusive, are and at relevant times mentioned herein have been the agents, principals, partners and/or co-venturers of each other, that each of them acted within the course, scope and authority of said relationships and that, as a result, cross-defendants are jointly and severally liable for the acts alleged herein. Hereafter, Fireside and Roes 1 through 100, inclusive, will be referred to, collectively, as "Cross-Defendants".

The Purchase Agreement

6. In or about December 2004, 8050 and certain of Fireside's members reached an agreement in principle whereby Fireside and its members would sell, and 8050 would purchase, an approximately one-acre parcel of land ("One Acre Parcel") between located between 8050's property and Fireside's property. The One Acre Parcel was undeveloped except for an outdoor paved parking lot.

7. Plaintiff Fireside contends that this transaction was memorialized by a written Purchase Agreement. SFI alleges that the written Purchase Agreement was not properly authorized and/or executed by Fireside and is therefore unenforceable in whole or in part.

8. In the Purchase Agreement, "Seller" is defined as "all of [Fireside's] members", each of which owned an undivided interest as a tenant in common in the One Acre Parcel. As a result, a breach by any member of Fireside constitutes a breach by Seller under Purchase Agreement.

9. Recital D of the Purchase Agreement states:

> Through unrecorded Powers of Attorney, many of the members of the Fireside HOA have appointed Steve Webb, the Chairman of the Board of Governors of the Fireside HOA, to act as their attorney-in-fact

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regarding the negotiation and execution of this document and any and all documents related hereto . . .

10. In Paragraph 12.1 of the Purchase Agreement, Seller, including Fireside and all of its members, made certain representations and warranties to 8050, which were made as of the April 30, 2005 closing date. In Paragraph 12.1, Fireside and its members represented that, among other things, Webb's execution of the Purchase Agreement on behalf of Fireside members "was duly authorized, and no other authorization or consent is required therefore", as follows:

> 12.1 Representations and Warranties of Seller. Seller hereby makes the following representations and warranties (and to the degree that each member of the Board of the Fireside HOA (the "Board") is a Seller, each such member of the Board makes such representations and warranties on their own behalf as an individual Seller and in his/her role as a member of the Board), regardless of what investigations Buyer shall have made with respect thereto prior to the Close of Escrow, which representations are true in all respects as of the date hereof and shall be true in all respects on the Close of Escrow.
>
> 12.1.1 Due Authorization. The execution, delivery and performance of this Agreement by each of the undersigned (whether in his/her individual capacity, as attorney-in-fact, as trustee or otherwise) has been duly authorized, and no other authorization or consent is required therefore.

11. In Paragraph 15.1 of the Purchase Agreement, Fireside and its members agreed to "indemnify, defend and hold" harmless 8050 from "any inaccuracy of any representation or warranty or the breach of any covenant or agreement made by Seller in this Agreement." Paragraph 15.1 of the Purchase Agreement states:

> 15.1 Indemnity by Seller. In addition to all other legal rights and remedies that Buyer may have against Seller, at law or in equity, as a result of the transaction contemplated by this Agreement, Seller shall indemnify, defend and hold Buyer, its partners, members, managers, directors, officers, employees, agents, contractors and other representatives harmless from all losses, costs, expenses (including reasonable attorneys' fees and costs), liabilities, damages, claims, causes of action and other obligations whatsoever resulting from ... (iii) any inaccuracy of any representation or warrant or the breach of any covenant or agreement made by Seller in this Agreement.

12. Steve Webb, the Chairman of Fireside's Board of Governors, executed the Purchase

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Agreement "as attorney in fact" on behalf of the certain Fireside members, including Robert Hinkle and Rebecca Hinkle (collectively, "Hinkle").

Seller Seeks To Rescind The Purchase Agreement
On The Grounds That Fireside Lacked The Requisite Authority

13. Contrary to the express representations made in the Purchase Agreement, Hinkle claimed that Webb's execution of the Purchase Agreement was not duly authorized and that further authorization was required before Webb was authorized to act as Hinkle's attorney in fact. Hinkle, an owner of an undivided interest in the One Acre Parcel and a "Seller", repudiated the Purchase Agreement.

14. Although 8050 had relied on the executed Purchase Agreement and had committed resources to commencing construction on the One Acre Parcel, Fireside attempted to utilize Hinkle's objections to renegotiate the Purchase Agreement to extract additional concessions from 8050. In the words of one member of Fireside's Board of Governors, "If [Hinkle] has the legal ability to stop the deal long enough to put her attorneys in for a 2nd, outside opinion, and attempt to remove any major flaws or inequities . . . then I'm fully behind her, and believe the board would be acting in the best interests of our members to do so." At least one member of Fireside's Board stated in May 2005 that "I for one do not consider this deal done." Another Fireside Board member wrote "the deal is not yet signed . . . leaving us with the ability to continue any necessary negotiations." Instead of fulfilling its obligation to "indemnify, defend and hold" 8050 harmless from Hinkle's claims, Fireside took the position that the deal was not yet done in an effort to retrade the transaction, claiming that 8050 transferred title to the One Acre Parcel without authority.

15. On July 11, 2005, Hinkle filed a verified complaint ("Hinkle Complaint") against 8050 in the Mono County Superior Court. Hinkle's lawsuit alleged that "Under pressure from the Fireside HOA, the Hickles executed a conditional power of attorney in favor of Webb, but expressly insisted that, inter alia, the terms of the final sale agreement for the Subject Property had to be approved by the Hinkles prior to Webb being authorized to act as their attorney-in-fact." Later, in discovery, 8050 learned of the existence of a document that conditioned Hinkle's power of attorney upon further consent.

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16. The Hinkle Complaint sought, among other things, to quiet title in the One Acre Parcel then owned by 8050, and to rescind the Purchase Agreement on the grounds that Hinkle did not approve of the sale.

17. On July 15, 2005, Hinkle filed a *lis pendens* ("Lis Pendens") in the Mono County Superior Court. The Lis Pendens was recorded in the official records of Mono County, California, as Instrument Number 2005005709. The Lis Pendens clouded title to the entire 8050 project and ultimately caused 8050 substantial monetary harm.

18. On July 25, 2005, 8050's counsel sent a letter requesting that Hinkle withdraw the Lis Pendens and dismiss the Hinkle Complaint. The letter explained that 8050 would incur damages of tens of thousands of dollars per day for every day that the Lis Pendens remained as a cloud on the title to the property. Despite 8050's request, Hinkle refused to withdraw the Lis Pendens or dismiss the Hinkle Complaint. As a result, 8050 spent hundreds of thousands of dollars litigating the Hinkle Complaint and expunging the Lis Pendens.

19. In or about November 2006, 8050 settled its dispute with Hinkle. Pursuant to the terms of the settlement agreement, 8050 paid Hinkle monetary consideration, and Hinkle agreed to waive the claim to rescind the transaction.

20. SFI, and 8050 before it, maintain that Fireside breached its representations and warranties under Paragraph 12.1 of the Purchase Agreement. 8050 was required to defend against, and ultimately settle at considerable cost to itself, a lawsuit filed by Hinkle seeking to (1) quiet title to the One Acre and (2) rescind the sale on the grounds that Fireside was not duly authorized to execute, deliver and perform on the Purchase Agreement. To the contrary, Hinkle asserted that additional authorization or consent was required.

21. SFI, and 8050 before it, also maintain that, pursuant to Paragraph 15.1 of the Purchase Agreement, 8050 is entitled to indemnification for the losses it incurred in defending and settling the Hinkle action, and for the losses it incurred as a result of project delay.

22. On or about December 21, 2007, 8050 and SFI entered into a written deed in lieu of foreclosure agreement ("Deed in Lieu Agreement"). Pursuant to paragraph 1.02 of the Deed in Lieu

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Agreement, 8050 assigned its claims against Fireside to SFI.

FIRST CAUSE OF ACTION

Breach of Contract (Representations and Warranties)

Against All Cross-Defendants

23. SFI re-alleges paragraphs 1 through 22, inclusive, and by this reference incorporates the same as though fully set forth herein.

24. SFI, and 8050 before it, has performed all obligations required on its part to be performed with respect to the closing of the transaction and execution of the Purchase Agreement, except those obligations, if any, that SFI and 8050 before it, was prevented or excused from performing by Fireside's conduct or otherwise.

25. Fireside and Roes 1 through 100 materially breached the Purchase Agreement, and the covenant of good faith and fair dealing, by, among other things, (i) repudiating the Purchase Agreement, (ii) breaching the representations and warranties set forth in Paragraph 12.1 of the Purchase Agreement, (iii) breaching its obligations to "indemnify, defend and hold" 8050 harmless from "any inaccuracy of any representation or warranty" as set forth in Paragraph 15.1 of the Purchase Agreement, and (iv) using its own breaches (i.e., Hinkle's repudiation of the Purchase Agreement as well as the lack of due authority) to retrade the Purchase Agreement.

26. As a direct and proximate result of said material breaches, SFI and 8050 before it, has suffered substantial monetary damages in an amount to be determined at or before the trial of this matter.

SECOND CAUSE OF ACTION

(Declaratory Relief)

27. SFI re-alleges paragraphs 1 through 26, inclusive, and by this reference incorporates the same as though fully set forth herein.

28. An actual controversy has arisen between SFI, on the one hand, and Fireside, on the other hand, with respect to whether the Purchase Agreement was validly executed, and whether the Purchase Agreement creates any enforceable obligations by the parties to this action.

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29. SFI requires a judicial determination of the parties rights and duties under the Purchase Agreement, if any.

30. A judicial declaration is necessary and appropriate under the circumstances, so that SFI can resolve whether the Purchase Agreement is valid and enforceable and, if so, what obligations and rights it has with respect to the Property.

WHEREFORE, SFI prays for judgment as follows:

ON THE FIRST CAUSE OF ACTION

1. For damages in an amount to be proven at or before trial;
2. For attorneys' fees and costs incurred herein;
3. For costs of suit incurred herein; and
4. For such other and further relief as the Court may deem just and proper.

ON THE SECOND CAUSE OF ACTION

1. For a declaration of that the Purchase Agreement was not validly executed, and creates no binding obligations by SFI;
2. For costs of suit incurred herein; and
3. For such other and further relief as the court deems just and proper

Dated: January 21, 2009

KATTEN MUCHIN ROSENMAN LLP

By _____
MELISSA S. GLOUSMAN
Attorneys for Defendant
iSTAR FINANCIAL INC. and SFI
MAMMOTH HOLDINGS LLC

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PROOF OF SERVICE

I declare that I am over the age of eighteen (18) and not a party to this action. My business address is 2029 Century Park East, Suite 2600, Los Angeles, California 90067.

On January 21, 2009, I served the following document: **CROSS-COMPLAINT FOR BREACH OF CONTRACT AND DECLARATORY RELIEF** on the interested parties in this action by placing a true and correct copy of each document thereof, enclosed in a sealed envelope, addressed as follows:

L. Allan Songstad, Jr., Esq.
William D. Coffee, Esq.
Songstad & Randall LLP
2201 Dupont Drive, Suite 100
Irvine, California 92612

Robert J. Odson, Esq.
Robert O. Barton, Esq.
DLA PIPER US LLP
550 Hope Street, Suite 2300
Los Angeles California 90071-2678

(X) (BY OVERNIGHT COURIER) I caused the above-referenced document(s) to be delivered to an overnight courier service (Federal Express), for delivery to the above address(es).

Executed on January 21, 2009 at Los Angeles, California.

(X) (State) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

( ) (Federal) I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

Victoria Boyd
VICTORIA BOYD