SUPERIOR COURT OF CALIFORNIA,
COUNTY OF ORANGE
CIVIL COMPLEX CENTER

MINUTE ORDER

DATE: 11/16/2018 TIME: 10:00:00 AM DEPT: CX105

JUDICIAL OFFICER PRESIDING: Randall J. Sherman
CLERK: Jason Phu
REPORTER/ERM: Lisa Suzanne Rouly CSR# 9524
BAILIFF/COURT ATTENDANT: Jose F Boc

CASE NO: **30-2018-00982195-CU-MC-CXC** CASE INIT.DATE: 03/23/2018
CASE TITLE: **Carlson vs. Hunt**
CASE CATEGORY: Civil - Unlimited CASE TYPE: Misc Complaints - Other

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EVENT ID/DOCUMENT ID: 72897822

EVENT TYPE: Motion to Strike
MOVING PARTY: Gary H. Hunt, D. Fleet Wallace, Edward A. Johnson, Gary Wescombe, W. Brand Inlow
CAUSAL DOCUMENT/DATE FILED: Motion to Strike, 09/18/2018

EVENT ID/DOCUMENT ID: 72892460

EVENT TYPE: Demurrer to Amended Complaint
MOVING PARTY: GCL, LLC, Etienne Locoh, American Recovery Property Advisors, LLC, GCL Manager, LLC, The American Recovery Property Trust, Inc., Sovereign Capital Management Group, Inc., American Recovery Property, OP, LP, Tom Rini, Daymark Properties Realty, Inc., Sovereign Strategic Mortgage Fund, LLC, Todd A. Mikles, Steven M. Kries
CAUSAL DOCUMENT/DATE FILED: Demurrer to Amended Complaint, 09/19/2018

EVENT ID/DOCUMENT ID: 72893028

EVENT TYPE: Demurrer to Amended Complaint
MOVING PARTY: Gary H. Hunt, D. Fleet Wallace, Edward A. Johnson, Gary Wescombe, W. Brand Inlow
CAUSAL DOCUMENT/DATE FILED: Demurrer to Amended Complaint, 09/18/2018

Additional events listed on last page.

APPEARANCES
Kenneth J. Catanzarite, from Catanzarite Law Corporation, present for Plaintiff(s).
Michael D. Kibler, from Simpson Thacher & Bartlett LLP, present for Defendant(s).
Sean P. Flynn, from Gordon Rees Scully Mansukhani, LLP, present for Defendant(s).
Adam T. Kent, from Adam T. Kent, Esq., present for Defendant(s).

Tentative Ruling posted on the Internet .

"Defendants Gary H. Hunt, W. Brand Inlow, Edward A. Johnson, D. Fleet Wallace and Gary Wescombe's Demurrer to plaintiff's First Amended Complaint is overruled.

EXHIBIT CR-161

Defendants Daymark Properties Realty, Inc., Todd Mikles, Etienne Locoh, Steven Kries, Tom Rini, The American Recovery Property Trust, Inc., American Recovery Property OP, LP, American Recovery Property Advisors, LLC, Sovereign Capital Management Group, Inc., Sovereign Strategy Mortgage Fund, LLC, GCL, LLC and GCL Manager, LLC's Demurrer to plaintiff's First Amended Complaint is sustained with 30 days leave to amend as to the First Cause of Action and overruled as to the Second Cause of Action.

Defendant Northwood Investors, LLC's Demurrer to plaintiff's First Amended Complaint is sustained with 30 days leave to amend.

Defendants Gary H. Hunt, W. Brand Inlow, Edward A. Johnson, D. Fleet Wallace and Gary Wescombe's Motion to Strike plaintiff's jury demand is denied without prejudice as premature. The claims that will ultimately go to trial are unknown at this time.

Plaintiff's Request for Judicial Notice is granted. Defendants' Requests for Judicial Notice are all denied.

When plaintiff files and serves his Second Amended Complaint, he must concurrently lodge and serve a red-lined courtesy copy of his Second Amended Complaint, clearly reflecting all the changes he made to his First Amended Complaint, to facilitate analysis of the amended pleading.

Northwood objects that plaintiff adding it as a new defendant exceeded the scope of the court's sustaining of the prior demurrers, and cites supporting case authority, but here plaintiff first added Northwood as a Doe defendant, which he had a right to do without leave of court, thereby justifying Northwood's inclusion as a named defendant in the First Amended Complaint.

This court already ruled that plaintiff's First Cause of Action for Breach of Fiduciary Duty states sufficient facts as to the trustees of the trust of which plaintiff was a beneficiary, but the facts are still insufficient as to the other defendants. Plaintiff must allege facts establishing that each defendant owed plaintiff a fiduciary duty. Plaintiff makes specific factual allegations as to defendants NNNRI and DPR, and asserts an alter ego theory for other defendants, but this court will not accept any reverse alter ego theory. Further, instead of spelling out what each defendant did wrong, plaintiff continues to engage in improper group pleading allegations, offering conclusory assertions as to general misconduct on the part of large groups of entities and individuals. Plaintiff uses a lot of vague, conclusory verbs such as defendants aided, abetted and conspired, but the court requires factual allegations of what each defendant did wrong. Allegations that an entity or individual assisted with the closing of a real estate transaction, or that others were buyers in conjunction with a real estate transaction, are not sufficient. Allegations that one entity or individual is affiliated with, related to, or connected with another are not sufficient. The judges of this court are all affiliated with each other, but that does not make them responsible for each other's conduct. Conclusory allegations of control are not sufficient. Someone arguably controls a barista when special-ordering a coffee at Starbucks, but that does not make the customer responsible for an auto accident the barista experiences the following day, or vice versa.

Plaintiff's claims are not time-barred on the face of the complaint, because his allegations of delayed discovery are sufficient to withstand demurrer, just like the court ruled on the previous round of demurrers.

The Second Cause of Action for Fraudulent Transfer now alleges enough facts that could give rise to a proper claim.

This court has not reached any choice-of-law (substantial relationship or reasonable to apply) conclusions at this early pleading stage, and will not make any standing rulings at this time, in the absence of full briefing and the opportunity for an evidentiary showing.

On the court's own motion, the Status Conference set for November 29, 2018 is continued to March 21, 2019 at 1:30 p.m.

Defendants are ordered to give notice of the ruling unless notice is waived."

The Court hears oral argument.

The Court confirms and modifies the tentative ruling as follows:

Defendants Gary H. Hunt, W. Brand Inlow, Edward A. Johnson, D. Fleet Wallace and Gary Wescombe's Demurrer to plaintiff's First Amended Complaint is overruled.

Defendants Daymark Properties Realty, Inc., Todd Mikles, Etienne Locoh, Steven Kries, Tom Rini, The American Recovery Property Trust, Inc., American Recovery Property OP, LP, American Recovery Property Advisors, LLC, Sovereign Capital Management Group, Inc., Sovereign Strategy Mortgage Fund, LLC, GCL, LLC and GCL Manager, LLC's Demurrer to plaintiff's First Amended Complaint is sustained with **60 days leave to amend** as to the First Cause of Action and overruled as to the Second Cause of Action.

Defendant Northwood Investors, LLC's Demurrer to plaintiff's First Amended Complaint is sustained with 30 days leave to amend.

Defendants Gary H. Hunt, W. Brand Inlow, Edward A. Johnson, D. Fleet Wallace and Gary Wescombe's Motion to Strike plaintiff's jury demand is denied without prejudice as premature. The claims that will ultimately go to trial are unknown at this time.

Plaintiff's Request for Judicial Notice is granted. Defendants' Requests for Judicial Notice are all denied.

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**The Court will waive page limits on the next round of Demurrers as set forth on the record.

Court orders attorney Adam Kent to give notice.

CASE TITLE: Carlson vs. Hunt CASE NO: **30-2018-00982195-CU-MC-CXC**

ADDITIONAL EVENTS:

EVENT ID/DOCUMENT ID: 72909645
EVENT TYPE: Demurrer to Amended Complaint
MOVING PARTY: Northwood Investors, LLC
CAUSAL DOCUMENT/DATE FILED: Demurrer to Amended Complaint To First Amended Complaint, 10/04/2018