MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF PACIFIC COAST BUILDING PRODUCTS DBA ANDERSON TRUSS'S MOTION FOR SUMMARY JUDGMENT OR, IN THE ALTERNATIVE, SUMMARY ADJUDICATION AS TO PLAINTIFF'S SECOND AMENDED COMPLAINT

Date: May 13, 2016
Time: 9:00 a.m.
Dept.: 1

Complaint Filed: December 26, 2013
Second Amended Complaint Filed: September 25, 2015
Trial Date: June 13, 2016
Defendant PACIFIC COAST BUILDING PRODUCTS dba ANDERSON TRUSS ("Anderson Truss") submits this Memorandum of Points and Authorities in support of its Motion for Summary Judgment or, in the alternative, Summary Adjudication as to the Second Amended Complaint of Plaintiff CILKER APARTMENTS, LLC ("Plaintiff").

This case stems from construction of apartments in San Jose, California. Anderson Truss was the manufacturer of roof trusses that were delivered to the Project in 2002, and incorporated into the rough framing by separate contractors. Plaintiff filed its Complaint over ten (10) years after Anderson Truss delivered its product to the Project, and over ten (10) years after the framer incorporated the roof trusses into the rough framing for the Project. Plaintiff's Complaint was also filed nine (9) years after Plaintiff had notice of defects related to framing, as evidenced by a 2004 Settlement Agreement and Release. There was no contract for manufacture and delivery of the roof trusses because Anderson Truss provided the roof trusses pursuant to purchase orders with Plaintiff's General Contractor. Additionally, Anderson Truss was a product manufacturer for the Project and did not provide construction services on the Project. Yet, despite the lapse of over a decade since the roof trusses were delivered and incorporated into the Project, Plaintiff seeks damages from Anderson Truss under contractual and tort causes of action. By law, Plaintiff is barred from recovery against Anderson Truss because Plaintiff is not in privity of contract with Anderson Truss and all relevant statutes of limitations have run with regard to Plaintiff's product- and construction-related claims.

I.

OPENING SUMMARY OF ARGUMENT

Despite Anderson Truss being named as a defendant related to construction defects, this case is actually a product liability case as it relates to Anderson Truss because Anderson Truss manufactured and delivered roof truss systems which were incorporated into the rough framing. Regardless, all of Plaintiff's causes of action against Anderson Truss fail under whichever theory of liability Plaintiff attempts to pursue.

All causes of action based in contract or warranty fail because Plaintiff is not in privity of contract with Anderson Truss. Plaintiff's warranty causes of action are barred by the one-year
limitations period under Civil Code Section 1791.1. Plaintiff’s warranty and contract causes of action are also barred under the four-year limitations period under Uniform Commercial Code Section 2725. All of Plaintiff’s causes of action as to Anderson Truss fail because Plaintiff’s claims are barred by the ten-year limitations period under Code of Civil Procedure Section 337.15. And, all of Plaintiff’s causes of action as to Anderson Truss fail because Plaintiff’s claims are barred by the three-year limitations period under Code of Civil Procedure Section 338 and the four-year limitations period under Code of Civil Procedure Section 337.

As there are no triable issue as to any material fact, Anderson Truss is entitled to judgment as a matter of law.

II.

STATEMENT OF FACTS

A. The Project

Plaintiff is the owner of certain real property known as One Pearl Place Apartments located at One Pearl Place in San Jose, California (the “Project”). (UMF1) The Project consists of 182 residential units divided between two buildings. (UMF1) The General Contractor for the Project was Western National Construction (“WNC”). (UMF2) Plaintiff and WNC entered into a contract for construction of the Project on July 1, 2000. (UMF2) The Project was constructed between 2002 and 2004. (UMF3)

B. Anderson Truss’s Work for the Project

Anderson Truss manufactures roof truss systems. (UMF4) Anderson Truss manufactured, delivered, and provided drawing packages for roof trusses for the Project. (UMF5) The majority of truss packages were delivered to the Project by Anderson Truss no later than July of 2002. (UMF6) The roof trusses delivered to the Project by Anderson Truss were incorporated into the rough framing. (UMF7) Installation of roof trusses at the Project was within the scope of work of rough framers. (UMF7)

C. 2002 Truss Installation

There were three (3) separate rough framers that worked on the Project. (UMF7) The first framer on the Project, Multi-Building Structures, Inc. (“MBS”), stopped performing its work on
the Project prior to mid-2002. (UMF8) In mid-2002, Rounds & Buroker, Inc. dba Madera Construction ("Madera Construction") replaced MBS as the framer on the Project. (UMF9) Madera Construction was retained to complete the rough framing on the Project and correct the defective work previously performed by MBS. (UMF10) Madera Construction worked on the Project from approximately mid-2002 until mid-2003. (UMF11) At the time Madera Construction first began work on the Project (2002), roof trusses and roof sheathing were already installed. (UMF12) Defects with the installation of roof trusses were observed. (UMF12)

Anderson Truss delivered additional roof truss packages in October 2002 due to architectural and structural changes to the plans. (UMF13) The October 2002 delivery was Anderson Truss's final truss delivery to the Project. (UMF13)

D. Lack of Written Contract

There were no written contracts between Anderson Truss and, either, WNC or Plaintiff. (UMF14) Anderson Truss delivered roof trusses to the Project pursuant to Purchase Orders with WNC. (UMF14) There were no third-party beneficiary provisions in the Purchase Orders between Anderson Truss and WNC. (UMF15) All roof trusses manufactured and delivered to the Project by Anderson Truss were complete at the time of delivery. (UMF16)

E. Project Completion and Prior Litigation

In August 2003, Madera Framing, Inc. ("Madera Framing") replaced Madera Construction as the framer on the Project. (UMF17) Madera Framing completed the rough framing for the Project on September 11, 2003. (UMF17) As of September 2003, all roof truss systems were installed and all rough framing at the Project was completed. (UMF18)

On December 1, 2003, Madera Framing filed a Complaint in Santa Clara County Superior Court for unpaid work on the Project. (UMF19) Plaintiff and WNC were named defendants in the Complaint. (UMF19) Within the action, WNC claimed that Madera Construction and Madera Framing's work (i.e., rough framing) was deficient and defective. (UMF20)

F. Prior Settlement Agreement and Release

released and discharged Madera Construction and Madera Framing "from any and all claims, demands, arbitrations, actions, or causes of action, that arise out of or related to the claims alleged in the Action, or which could have been alleged in the Action, whether known or unknown, and agree that no further litigation will occur with respect to these disputes except as may be provided in paragraph 3 herein." (UMF22) Within paragraph 3 of the Settlement Agreement, Plaintiff retained claims related to the Project "only to the extent such claims arise out of conditions that were unknown to WNC or Cilker and not apparent by reasonable inspection as of the date this Agreement became fully executed." (UMF23) It was the intention of Plaintiff in executing the Settlement Agreement that the Settlement Agreement "shall be effective as a bar to each and every claim, demand and cause of action, by said parties based upon the above-described matters, except as provided in paragraphs 2 and 3." (UMF23)

Destructive testing is not necessary to inspect roof trusses at the Project. (UMF24) The roof trusses are readily visible within the attic and may be observed by reasonable inspection. (UMF24)

G. Plaintiff’s Complaint

On December 13, 2013, Plaintiff filed its Complaint for Damages related to construction defects at the Project. (UMF25) On September 25, 2015, Plaintiff filed its Second Amended Complaint alleging: 1) breach of contract; 2) breach of implied warranty; 3) breach of express warranty; 4) negligence; 5) strict liability; 6) express contractual indemnity; and, 7) breach of third party beneficiary contract. (UMF26) Anderson Truss was named to the Second Amended Complaint as a defendant to all causes of action alleged therein. (UMF26)

III. CONCISE STATEMENT OF PROCEDURAL LAW

Snatchko v. Westfield LLC (2010) 187 Cal.App.4th 469, 477, sets forth the applicable standard as follows:

[T]he pleadings frame the issues to be resolved. "The purpose of a summary judgment [adjudication] proceeding is to permit a party to show that material factual claims arising from the pleadings need not be tried because they are not in dispute." [Citation.] "The function of the pleadings in a motion for summary
judgment [adjudication] is to delimit the scope of the issues: the function of the affidavits or declarations is to disclose whether there is any triable issue of fact within the issues delimited by the pleadings.' [Citations.]" (FPI Development, Inc. v. Nakashima (1991) 231 Cal.App.3d 367, 381; see Leibert v. Transworld Systems, Inc. (1995) 32 Cal.App.4th 1693, 1699.)

The party moving for summary judgment bears the burden of persuasion that there is no triable issue of material fact and that it is entitled to a judgment as a matter of law. (Code Civ. Proc., §437c, subd. (c); Aguilar v. Atlantic Richfield Co. (2001) 25 Cal.4th 826, 850.) "There is a triable issue of material fact if, and only if, the evidence would allow a reasonable trier of fact to find the underlying fact in favor of the party opposing the motion in accordance with the applicable standard of proof." (Aguilar, at 850; see Readers Digest Assn. v. Superior Court (1984) 37 Cal.3d 244, 252.) "A motion for summary adjudication may be made by itself or as an alternative to a motion for summary judgment and shall proceed in all procedural respects as a motion for summary judgment." (Code Civ. Proc., §437c, subd. (f)(2); People v. Schlimbach (2011) 193 Cal.App.4th 1132, 1141.) Pursuant to Code of Civil Procedure section 437c, a cross-defendant moving for summary judgment or summary adjudication meets its burden by demonstrating that one or more elements of a cause of action cannot be established or that there is a complete defense to a claim. (Code Civ. Proc., §437c, subd. (o)(2); Aguilar, at 849.)

IV.

EVIDENCE AND ARGUMENTS

In the present matter, Anderson Truss provided manufactured roof trusses which were incorporated into the Project framing by other contractors. It appears all of Plaintiff’s claims against Anderson Truss relate to actual construction performed on the project. However, Anderson Truss was a product manufacturer, not a subcontractor that contributed to construction of the Project. As such, this case is better positioned as a product liability case against Anderson Truss. Regardless, whichever theory of liability Plaintiff attempts to pursue, all of the relevant statutes of limitations which apply to Anderson Truss expired prior to filing of Plaintiff’s original Complaint.
A. Plaintiff's First, Second, Third, Sixth, and Seventh Causes of Action (based on contract or warranty) fail because Plaintiff is not in privity of contract with Anderson Truss.

1. Anderson Truss did not execute a contract with either WNC or Plaintiff.

   Plaintiff alleges causes of action for breach of contract, breach of implied warranty, breach of express warranty, express contractual indemnity, and breach of third party beneficiary contract. Each of these causes of action is based in contract. In the present matter, there is an absence of any executed contract between Anderson Truss and, either, WNC or Plaintiff. All work performed by Anderson Truss related to the Project was completed pursuant to Purchase Order with WNC. There were no third-party beneficiary provisions in the Purchase Orders between Anderson Truss and WNC. In the absence of a written contract, there can be no express obligations to Plaintiff. All of Plaintiff's causes of actions as to Anderson Truss fail because the parties are not in privity of contract and there is no contract under which Plaintiff can claim third-party beneficiary status.

2. Privity of contract is necessary for warranty claims.

   "The general rule is that privity of contract is required in an action for breach of either express or implied warranty..." (Collum v. Pope and Talbot, Inc. (1955) 135 Cal.App.2d 653, 656.) "Privity of contract is a prerequisite in California for recovery on a theory of breach of implied warranties..." (Mills v. Forestex Company (2003) 108 Cal.App.4th 625, 636; Cardinal Health 301, Inc. v. Tyco Electronics Corporation (2008) 169 Cal.App.4th 116, 143.) In the present matter, Anderson Truss never executed a written contract. There were no third-party beneficiary provisions in the Purchase Orders between Anderson Truss and WNC. As such, Plaintiff cannot bring its warranty claims because Plaintiff is not in privity of contract with Anderson Truss.

B. Plaintiff's Second and Third causes of action (respectively, for implied and express warranty) fail because Plaintiff's claims are barred by the one-year limitations period under Civil Code Section 1791.1.

   State law applies to express and implied warranties. (Atkinson v. Elk Corporation of Texas 2006) 142 Cal.App.4th 212, 228.) In the present matter, there are no express warranties. As there are no express warranties at issue, Civil Code Section 1791.1 controls the length of the implied
warranty. (Id, at 231.) The Song-Beverly Consumer Warranty Act regulates warranty terms on manufacturers. (Mills, at 636.) Under Section 1791.1, the duration of the implied warranty shall be no more than one year following the sale of goods to a buyer. (Civ. Code §1791.1(c); Atkinson, at 231.) Anderson Truss delivered all its roof truss packages to the project in 2002. Therefore, the implied warranty for the roof truss systems expired in 2003. As Plaintiff’s Complaint was filed in 2013, Plaintiff’s cause of action is untimely and necessarily fails.

C. Plaintiff’s First, Second, Third, Sixth, and Seventh Causes of Action (based on contract or warranty) fail because Plaintiff’s claims are barred by the four-year limitations period under Uniform Commercial Code Section 2725.

1. Plaintiff’s breach of contract claims for sale of the roof trusses fails under the Uniform Commercial Code.

Plaintiff’s warranty and contractual claims also fail under the Uniform Commercial Code to the extent Plaintiff’s claims are based in contract (assuming there was a contract under which Plaintiff could bring a claim). California has adopted the Uniform Commercial Code statute of limitations rule for breach of warranty causes of action. (Cal. U. Com. Code §2725; Cardinal, at 129.) Section 2725 provides in relevant part that an action for breach of any contract for sale must be commenced within four years after the cause of action has accrued. (Cal. U. Com. Code §2725(1); Cardinal, at 129.) A cause of action accrues when the breach occurs, regardless of the aggrieved party’s lack of knowledge of the breach. (Cal. U. Com. Code §2725(2); Cardinal, at 129.) The courts have consistently held that an implied warranty is not a warranty that explicitly extends to the future because an implied warranty is one that arises by operation of law rather than by an express agreement of the parties. (Cardinal, at 134.) In the absence of an express warranty, a breach of warranty occurs when tender of delivery is made. (Cardinal, at 129.) Under these principles, a breach of contract claim based solely under a breach of warranty is governed by Section 2725 because Section 2725 prevails over more general statutes. (Cardinal, at 134-135.)

In the present matter, there are no written contracts for work performed by Anderson Truss. However, it is apparent from Plaintiff’s Complaint that its causes of action rooted in contract are actually the result of alleged warranty breaches. (Second Amended Complaint,}
Exhibit M, ¶¶50, 59, 62, and 66.) Anderson Truss delivered all of its roof truss packages in 2002. The four-year statute of limitations under Section 2725 began to run at that time. Plaintiff did not file the instant action until 2013. As a result, Plaintiff is barred from bringing causes of action related to contractual / warranty claim against Anderson Truss.

2. The statute of limitations period under Section 2725 expired even if the four-year period is not applied until Plaintiff had notice of potential defects.

Under the discovery rule, breach of warranty claims begin to run when Plaintiff suspects or should suspect that a product was not performing properly. (Mills, at 642.) This rule only applies when a warranty regarding future performance (prospective warranty) has been made.¹ (Id.) The statute of limitations begins to run once Plaintiff has notice or information to put a reasonable person on inquiry. (Mills, at 643.) In the present matter, Plaintiff entered into a 2004 Settlement Agreement with WNC, Madera Construction, and Madera Framing. In that action, WNC claimed that Madera Construction and Madera Framing’s work (i.e., rough framing) was deficient and defective. The fact that WNC claimed Madera Construction and Madera Framing performed Project work in an “untimely, deficient and defective manner” was identified in the 2004 Settlement Agreement. (Settlement Agreement, Exhibit K, p. 1.) Anderson Truss’s roof truss systems were incorporated into the rough framing when they were installed by the framers. Destructive testing is not necessary to inspect roof trusses because they are readily visible within the attic. As such, Plaintiff was on notice no later than 2004 that there were potential defects in the roof trusses which could have been observed through reasonable inspection. Plaintiff did not file its original Complaint until 2013. Therefore, Plaintiff’s claims against Anderson Truss fail based on the four-year statute of limitations under Section 2725.

D. All of Plaintiff’s causes of action against Anderson Truss fail because Plaintiff’s claims are barred by the ten-year limitations period under Code of Civil Procedure Section 337.15.

1 Plaintiff does not claim a prospective warranty exists. However, we make the argument to demonstrate that Plaintiff’s claims fail even if there was a claim of warranty of future performance.
Section 337.15 applies to actions for damages against persons involved in the construction of improvements to real property. (Mills, at 643.) Section 337.15 is a 10-year statute of limitations for latent defects. (Id.) “No action may be brought to recover damages from any person” more than 10 years after substantial completion of an improvement to real property. (Code Civ. Proc. §337.15(a); emphasis added.) To the extent Plaintiff claims defects in Anderson’s limited design work at the Project, or Plaintiff claims that Anderson Truss performed construction work on at the Project, Plaintiff’s claims fail because all work / design / deliveries performed by Anderson Truss were completed prior to December 2013. In fact, all rough framing was completed in September 2003. As the original Complaint was not filed until December 2013, Plaintiff’s claims as to Anderson Truss fail because they are barred by the 10-year statute of limitations.

E. All of Plaintiff’s causes of action against Anderson Truss fail because Plaintiff’s claims are barred by the three-year limitations period under Code of Civil Procedure Section 338 and the four-year limitations period under Code of Civil Procedure Section 337.

A suit for recovery for a construction defect generally is subject to limitations period of three years for tortious injury (i.e., negligence and strict liability) to property (Section 338) or four years for breach of warranty or contract (Section 337). (Lantzy v. Centex Homes (2003) 31 Cal.4th 363, 369-370; Mills, at 647.) These periods begin to run when the defect would be discoverable by reasonable inspection. (Lantzy, at 369.) As noted above, Plaintiff entered into a 2004 Settlement Agreement with WNC, Madera Construction, and Madera Framing. In that action, WNC claimed that Madera Construction and Madera Framing’s work (i.e., rough framing) was deficient and defective. The fact that WNC claimed Madera Construction and Madera Framing performed Project work in an “untimely, deficient and defective manner” was identified in the 2004 Settlement Agreement. (Settlement Agreement, Exhibit K, p. 1.) Anderson Truss’s roof truss systems were incorporated into the rough framing when they were installed by the framers. Destructive testing is not necessary to inspect roof trusses because they are readily visible within the attic. As such, Plaintiff was on notice no later than 2004 that there were potential defects in the roof trusses which could have been observed through reasonable...
inspection. Plaintiff did not file its original Complaint until 2013. Therefore, Plaintiff's claims against Anderson Truss fail based on the three- and four-year statutes of limitations under Sections 337 and 338.

V. CONCLUSION

Anderson Truss respectfully requests its Motion for Summary Judgment or, in the alternative, Summary Adjudication as to Plaintiff's Second Amended Complaint be granted because there is no triable issue as to any material fact and Anderson Truss is entitled to judgment as a matter of law.

Dated: February 24, 2016

PORTER SCOTT
A PROFESSIONAL CORPORATION

By

Chad S. Tapp
Cruz Rocha
Attorneys for Defendant/Cross-Defendant
PACIFIC COAST BUILDING PRODUCTS dba ANDERSON TRUSS
PROOF OF SERVICE

I am a citizen of the United States and a resident of Sacramento County, California. I am over the age of eighteen years and not a party to the within above-entitled action. My business address is 350 University Avenue, Suite 200, Sacramento, California.

On February 25, 2016, I served a copy of the following document(s):

MEMORANDUM OF POINTS IN AUTHORITIES IN SUPPORT OF PACIFIC COAST BUILDING PRODUCTS DBA ANDERSON TRUSS’S MOTION FOR SUMMARY JUDGMENT OR, IN THE ALTERNATIVE, SUMMARY ADJUDICATION AS TO PLAINTIFF’S SECOND AMENDED COMPLAINT

in the following manner:

X SANTA CLARA E-FILE/SERVE: I caused to be served the above-listed document(s) on designated recipients through electronic transmission via the Santa Clara E-File/Serve system. Upon completion of said transmission of said documents, a certified receipt is issued to filing party acknowledging receipt by SC E-File/Serve’s system. Once SC E-File/Serve has served all designated recipients, proof of electronic service is returned to the filing party. The documents will then be available for download on the Santa Clara E-File/Serve website.

I declare under penalty of perjury that the foregoing is true and correct, and that this Declaration was signed at Sacramento, California on February 25, 2016.

Ruth Johnson