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NO JS-6

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

NACIMIENTO WATER COMPANY, INC.,)	Case No. CV 13-07959 DDP (MRWx)
)	
Plaintiff,)	ORDER GRANTING CROSS-DEFENDANT OAK
v.)	SHORES SPE, LLC'S MOTION FOR
)	SUMMARY JUDGMENT
INTERNATIONAL FIDELITY)	
INSURANCE CO. A New Jersey)	[Dkt. 78]
Corporation,)	
Defendants.)	[TERM:OAK SHORES II SPE,LLC(ROE1)]
)	
_____)	

Presently before the court is Cross-Defendant Oak Shores SPE, LLC ("Oak Shores")'s Motion for Summary Judgment. Having considered the submissions of the parties and heard oral argument, the court grants the motion and adopts the following order.

I. Background

In 2003, Jonatkim Enterprises, the developer of a residential subdivision in San Luis Obispo County, entered into a contract with Plaintiff Nacimiento Water Company ("the Water Company"). Under the contract (the "Water Contract"), the Water Company agreed to

1 provide water service to the residential lots in exchange for
2 payment of \$5,000 per lot, to be paid within four years of the
3 recordation of the subdivision's final tract map. The contract
4 also required the issuance of a \$500,000 performance bond, which
5 was issued by Cross-Complainant International Fidelity Insurance
6 Company ("IFIC") on the developer's behalf.

7 Developer Jonatkim made a partial payment to the Water
8 Company, but then transferred its interest in the subdivision to
9 John and Carol King ("the Kings"). The Kings also assumed
10 Jonatkim's obligations under the Water Contract, and obtained a
11 surety bond from IFIC similar to that originally issued to
12 Jonatkim. The Kings also agreed to indemnify IFIC for any losses
13 connected to the bond and agreed to assign to IFIC, in the event of
14 a breach, all of their rights under the Water Contract. The Kings
15 financed their purchase of the subdivision with a loan from Oak
16 Shores' predecessor in interest. The Deed of Trust securing the
17 Kings' promissory note was amended several times, with the Kings
18 ultimately borrowing over \$15 million from Oak Shores' predecessor.

19 Oak Shores' predecessor also entered into a subordination
20 agreement with the Kings, which stated that the Deed of Trust was
21 subordinate to "those certain water supply facilities, utilities
22 and water apparatus, easements and water rights to be conveyed" to
23 the Water Company under the Water Contract. (Oak Shores' Request
24 for Judicial Notice, Exhibit M.) The Water Company consented to
25 the assignment under these terms.¹ (Id.)

26 _____
27 ¹ The subordination agreement specified that the rights to be
28 conveyed to the Water Company were set forth in Sections 3.01,
3.02, 3.03. 4.03, 4.04. 4.05, 4.06, and 4.07 of the Water Contract.
(continued...)

1 The Kings later defaulted on their loan. The mortgage lender
2 eventually foreclosed on the subdivision, which Oak Shores then
3 obtained via a Trustee's Sale.²

4 In 2010, the Water Company notified IFIC that Jonatkim and its
5 successors had defaulted on the Water Contract. The Water Company
6 therefore demanded \$305,000 pursuant to the IFIC performance bond.
7 IFIC did not pay the Water Company, which then filed the instant
8 suit to recover under the bond.³

9 IFIC filed a counterclaim and cross claim against the Water
10 Company, Jonatkim, the Kings, and Oak Shores. IFIC's Second
11 Amended Counterclaim and Crossclaim alleges a single claim against
12 Oak Shores for declaratory relief. Essentially, IFIC alleges that
13 if it makes the bond payment to the Water Company, it shall be
14 subrogated to the Water Company's rights to require Oak Shores to
15 pay \$5,000 per subdivision lot, and that that sum should be paid to
16 IFIC as reimbursement, rather than to the Water Company. (Second
17 Amended Counterclaim ¶ 54.) Oak Shores now moves for summary
18 judgment.

19 **II. Legal Standard**

20 Summary judgment is appropriate where the pleadings,
21 depositions, answers to interrogatories, and admissions on file,
22 together with the affidavits, if any, show "that there is no
23 genuine dispute as to any material fact and the movant is entitled

24
25 ¹(...continued)

26 ² Oak Shores did not acquire the property until December 2013,
27 after the filing of the Water Company's Complaint and IFIC's Cross-
Claim.

28 ³ IFIC alleges that the amount at issue is \$310,000.

1 to judgment as a matter of law." Fed. R. Civ. P. 56(a). A party
2 seeking summary judgment bears the initial burden of informing the
3 court of the basis for its motion and of identifying those portions
4 of the pleadings and discovery responses that demonstrate the
5 absence of a genuine issue of material fact. See Celotex Corp. v.
6 Catrett, 477 U.S. 317, 323 (1986). All reasonable inferences from
7 the evidence must be drawn in favor of the nonmoving party. See
8 Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 242 (1986). If the
9 moving party does not bear the burden of proof at trial, it is
10 entitled to summary judgment if it can demonstrate that "there is
11 an absence of evidence to support the nonmoving party's case."
12 Celotex, 477 U.S. at 323.

13 Once the moving party meets its burden, the burden shifts to
14 the nonmoving party opposing the motion, who must "set forth
15 specific facts showing that there is a genuine issue for trial."
16 Anderson, 477 U.S. at 256. Summary judgment is warranted if a party
17 "fails to make a showing sufficient to establish the existence of
18 an element essential to that party's case, and on which that party
19 will bear the burden of proof at trial." Celotex, 477 U.S. at 322.
20 A genuine issue exists if "the evidence is such that a reasonable
21 jury could return a verdict for the nonmoving party," and material
22 facts are those "that might affect the outcome of the suit under
23 the governing law." Anderson, 477 U.S. at 248. There is no genuine
24 issue of fact "[w]here the record taken as a whole could not lead a
25 rational trier of fact to find for the nonmoving party." Matsushita
26 Elec. Indus. Co. v. Zenith Radio Corp., 475 U.S. 574, 587 (1986).
27 It is not the court's task "to scour the record in search of a
28 genuine issue of triable fact." Keenan v. Allan, 91 F.3d 1275, 1278

1 (9th Cir.1996). Counsel has an obligation to lay out their support
2 clearly. Carmen v. San Francisco Sch. Dist., 237 F.3d 1026, 1031
3 (9th Cir.2001). The court "need not examine the entire file for
4 evidence establishing a genuine issue of fact, where the evidence
5 is not set forth in the opposition papers with adequate references
6 so that it could conveniently be found." Id.

7 **III. Discussion**

8 IFIC's position regarding its declaratory judgment claim
9 against Oak Shores is somewhat unclear. IFIC does not dispute that
10 Oak Shores is not a party to the Water Contract. (Opposition at
11 2:4-5.) Nevertheless, IFIC asserts that the Water Contract binds
12 all subdivision owners, presumably including Oak Shores. (Opp. at
13 3:1.) That assertion notwithstanding, IFIC is not seeking to
14 enforce the Water Contract against Oak Shores, but rather "is
15 seeking a declaration that when Oak Shores and/or any other
16 property owners apply for and obtain water from [the Water Company]
17 under the Water [] Contract, and IFIC has paid [the Water Company]
18 the per-lot fee associated with same, Oak Shores and the other
19 property owners must pay IFIC as the rightful and equitable
20 subrogee of [the Water Company]." (Id. at 3:16-19.) IFIC's claim
21 is predicated on the assumption, supported by some evidence, that
22 Oak Shores will at some point obtain water service from the Water
23 Company.

24 As an initial matter, though not addressed at length by the
25 parties' memoranda, this court is not certain that a justiciable
26 controversy exists between IFIC and Oak Shores. This court may not
27 issue advisory opinions or entangle itself in abstract
28 disagreements. See Thomas v. Anchorage Equal Rights Comm'n, 220

1 F.3d 1134, 1138 (9th Cir. 2000). "A claim is not ripe for
2 adjudication if it rests upon contingent future events that may not
3 occur as anticipated, or indeed may not occur at all." Fidelity
4 and Guaranty Insurance Co. v. Centex Homes, No. 14-CV-826-LJO, 2014
5 WL 5823048 at *4 (E.D. Cal. Nov. 10, 2014) (quoting Texas v. United
6 Statesu, 523 U.S. 296, 300 (1998)(internal quotations and citations
7 omitted)).

8 Here, IFIC's position is that if it pays the Water Company out
9 of the IFIC performance bond, and if Oak Shores then comes to some
10 independent agreement with the Water Company and if Oak Shores then
11 pays the Water Company for water hookups, then IFIC should be
12 entitled to those payments "in order to avoid an unfair and
13 inequitable double payment to [the Water Company]." (Opp. at 18:
14 3-4.) While Oak Shores does not dispute that it is engaged in
15 negotiations with the Water Company, there is currently no contract
16 between Oak Shores and the Water Company, and no guarantee that
17 development of the subdivision will proceed or that Oak Shores will
18 ever pay the Water Company anything. In the event that an
19 agreement is eventually reached and infrastructure payments to the
20 Water Company are contemplated or made, and presuming that IFIC
21 actually pays the remainder of the bond funds to the Water Company
22 prior to that point, IFIC may well have an equitable subrogation or
23 indemnification claim against the Water Company and/or Oak Shores.
24 See generally Chubb Custom Ins. Co. v. Space Sys./Loral, Inc., 710
25 F.3d 946, 957 (9th Cir. 2013). Because such a claim would depend
26 on numerous unrealized contingencies, however, declaratory judgment
27 would not be appropriate at this stage.

28

1 Furthermore, even if this dispute were ripe for adjudication,
2 it is unclear to the court how IFIC could recover against Oak
3 Shores at present. As discussed above, IFIC does not dispute that
4 Oak Shores is not a party to the Water Contract. Thus, even if
5 IFIC is subrogated to the Water Company's rights under the Water
6 Contract, it cannot (and apparently does not) seek to enforce the
7 Water Contract against Oak Shores. See Chubb, 710 F.3d at 957 ("An
8 important limit to the right of subrogation is that it is a purely
9 derivative right - meaning that the subrogee succeeds to rights no
10 greater than those of the subrogor."); See also Fireman's Fund Ins.
11 Co. v. Maryland Casualty Co., 65 Cal.App.4th 1279, 1290-1293
12 (1998).

13 **IV. Conclusion**

14 For the reasons stated above, Oak Shores' Motion for Summary
15 Judgment is GRANTED.

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19 IT IS SO ORDERED.

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21 Dated: March 19, 2015



HON. DEAN D. PREGERSON
United States District Judge

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