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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

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GCUBE INSURANCE SERVICES,
INC., a California
corporation,

NO. CIV. 2:12-1163 WBS CKD

ORDER RE: MOTION TO DISMISS

Plaintiff,

v.

LINDSAY CORPORATION, a
Delaware corporation, and DOES
1 through 10, inclusive,

Defendant.

LINDSAY CORPORATION,

Third-party
Plaintiff,

v.

AREVA SOLAR, INC.; AUSRA CA I,
LLC now known as AREVA SOLAR
CA I, LLC; SPECIAL SERVICES
CONTRACTORS, INC.; LLOYD W.
AUBRY CO., INC.; MATERIAL
INTEGRITY SOLUTIONS, INC.; and
ZOES 1 through 50, inclusive,

Third-party
Defendants.

1
2 Plaintiff GCube Insurance Services, Inc. brought this
3 action against defendant Lindsay Corporation, Inc. ("Lindsay")
4 arising out of Lindsay's provision of A-frame supports for a
5 Solar Steam Generation array ("SSG array"). On March 1, 2013,
6 Lindsay filed a third-party complaint ("TPC") against Areva
7 Solar, Inc.; Ausra CA I, LLC, now known as Areva Solar CA I, LLC
8 ("Areva Solar CA"); Special Services Contractors, Inc.; Lloyd W.
9 Aubry Co., Inc.; Material Integrity Solutions, Inc.; and Zoes one
10 through fifty. (Docket No. 21.) Lindsay brings claims of
11 negligence, equitable indemnity, equitable contribution, and
12 declaratory relief.

13 Third-party defendants Areva Solar, Inc., and Areva
14 Solar CA now move to dismiss the TPC for failure to state a claim
15 upon which relief can be granted pursuant to Federal Rule of
16 Civil Procedure 12(b)(6). (Docket No. 33.) On May 13, 2013,
17 Lindsay voluntarily dismissed Areva Solar, Inc. (Docket No. 37.)

18 To survive a motion to dismiss, a plaintiff must plead
19 "only enough facts to state a claim to relief that is plausible
20 on its face." Bell Atl. Corp. v. Twombly, 550 U.S. 544, 570
21 (2007). This "plausibility standard," however, "asks for more
22 than a sheer possibility that a defendant has acted unlawfully,"
23 Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009), and "[w]here a
24 complaint pleads facts that are 'merely consistent with' a
25 defendant's liability, it 'stops short of the line between
26 possibility and plausibility of entitlement to relief.'" Id.
27 (quoting Twombly, 550 U.S. at 557). In deciding whether a
28 plaintiff has stated a claim, the court must accept the

1 allegations in the complaint as true and draw all reasonable
2 inferences in favor of the plaintiff. Scheuer v. Rhodes, 416
3 U.S. 232, 236 (1974), overruled on other grounds by Davis v.
4 Scherer, 468 U.S. 183 (1984); Cruz v. Beto, 405 U.S. 319, 322
5 (1972).

6 In plaintiff's Complaint for subrogation, plaintiff
7 alleges that it issued an insurance policy to Ausra, Inc.
8 ("Ausra") on or about March 20, 2009, insuring all construction,
9 erection, and operation activities associated with a SSG array
10 located at Ausra's Kimberlina facility in Bakersfield,
11 California. (Compl. ¶ 7 (Docket No. 1).) Plaintiff alleges that
12 Lindsay specially manufactured twenty-five steel A-Frame supports
13 for the array at a plant in Omaha, Nebraska, and then had the
14 supports delivered to the Kimberlina facility. (Id. ¶¶ 8-10.)
15 On or about May 28, 2010, as the SSG array components were raised
16 atop the A-Frame supports, twenty-four of the supports buckled at
17 the joint that Lindsay allegedly cut, welded, and manufactured.
18 (Id. ¶¶ 15-16.)

19 Ausra tendered its claim for all losses and damages
20 resulting from the incident to plaintiff. (Id. ¶ 18.) Plaintiff
21 alleges that an investigation revealed incomplete fusion of the
22 welds performed by Lindsay at the joints of the A-Frame supports.
23 (Id. ¶¶ 19-20.) Plaintiff paid for all losses and damages
24 resulting from the incident and now pursues subrogation rights
25 against Lindsay, (id. ¶ 24), asserting claims for strict products
26 liability and negligence.

27 Areva Solar CA contends that Lindsay has failed to
28 allege sufficient "facts to support a possible scenario under

1 which the subrogor Areva [Solar CA] may be liable for Lindsay's
2 alleged liability to the subrogee [plaintiff]" and facts to
3 support its allegation that plaintiff is not the subrogee of
4 Areva Solar CA. (Mem. in Supp. at 2:10-12 (Docket No. 33).)
5 Although Areva Solar CA does not explicitly argue as much, it
6 must be its contention that Areva Solar CA is the same entity as
7 Ausra or that some other basis exists for finding a subrogation
8 relationship between it and plaintiff. In contrast, it is
9 Lindsay's contention that Areva Solar CA is a different entity
10 from Ausra.¹ Lindsay's TPC treats Areva Solar CA as a wholly
11 separate entity from Ausra. It makes no allegations against
12 Ausra.

13 Areva Solar CA's arguments are not well-taken for the
14 basic reason that there is nothing properly before the court--
15 either allegations or evidence--to suggest that Areva Solar CA is
16 the subrogor of plaintiff and plaintiff is its subrogee.
17 Likewise, there is nothing to suggest that Areva Solar CA is the
18 same entity as Ausra. As the above summary of plaintiff's
19 allegations shows, plaintiff alleges only that it issued a policy
20 of insurance to Ausra. (See id. ¶ 7.) It does not allege that
21 it issued a policy to Areva Solar CA or transferred the Ausra
22 policy Ausra to Areva Solar CA. Nor does it allege that Ausra
23 and Areva Solar CA are actually the same entity.

24 Nor has Areva Solar CA presented any evidence outside
25 of the Complaint that the court may properly consider on a motion

26
27 ¹ Lindsay alleges that Areva Solar CA was formerly known
28 as Ausra CA I, LLC. (Third-Party Compl. ¶ 7.) There is no
evidence or allegation, however, indicating that Ausra CA I, LLC
is the same entity as Ausra, Inc.

1 to dismiss to show a subrogation relationship or to show that it
2 is the same entity as Ausra. See United States v. Ritchie, 342
3 F.3d 903, 908 (9th Cir. 2003) (noting that on a motion to
4 dismiss, the court usually may not consider evidence outside the
5 pleadings without converting the motion into one for summary
6 judgment).

7 In the absence of any allegations or evidence of a
8 subrogation relationship between Areva Solar CA and plaintiff,
9 Lindsay has alleged sufficient facts to support a "possible
10 scenario under which" Areva Solar CA could be liable to Lindsay
11 for its alleged liability to plaintiff. (Mem. in Supp. at 5:2-
12 6.) To prove a cause of action for negligence, plaintiff must
13 show "(1) a legal duty to use reasonable care, (2) breach of that
14 duty, and (3) proximate cause between the breach and (4) the
15 plaintiff's injury." Mendoza v. City of Los Angeles, 66 Cal.
16 App. 4th 1333, 1339 (2d Dist. 1998).

17 In the TPC, Lindsay alleges that Areva Solar CA not
18 only owned and operated the SSG array, but also that it
19 negligently "supervised the construction, installation and
20 erection" of the SSG array and its component parts, including the
21 A-Frame supports. (Third-Party Compl. ("TPC") ¶¶ 17, 23 (Docket
22 No. 21).) It further alleges that Areva Solar CA knew or should
23 have known that the inadequately designed components of the SSG
24 array would place stress loads on the A-Frame supports during the
25 erection process that resulted in damage to the SSG array, the A-
26 Frame support towers, and related components. (Id. ¶ 21.)
27 Likewise, it alleges that Areva Solar CA knew or should have
28 known that the A-Frame supports were constructed and installed

1 without adequate guying or cabling, resulting in the damage
2 claimed by plaintiff. (Id. ¶ 22.)

3 Lindsay then alleges that Areva Solar CA owed it a duty
4 to “use ordinary and reasonable care to design, inspect, analyze,
5 construct, erect, manage, supervise, operate and/or control” the
6 SSG array and its component parts, including the A-Frame
7 supports, without causing damage to those parts. (Id. ¶¶ 24,
8 35.) It further alleges breach, causation, and damages. (See
9 id. ¶¶ 25-30, 36.) Thus, Lindsay has set forth a claim for
10 negligence against Areva Solar CA.² This claim is a plausible
11 means of holding Areva Solar CA liable for Lindsay’s alleged
12 liability to plaintiff.

13 Assuming that Lindsay would need to allege facts to
14 show the absence of a subrogation relationship had plaintiff
15 alleged such a relationship, no such relationship is alleged in
16 the Complaint. As explained above, the Complaint is bereft of
17 any allegations against Areva Solar CA. That corporation is
18 actually never mentioned. Further, there are no allegations or
19 evidence before the court indicating that Areva Solar CA is the
20 same entity as Ausra, such that the subrogation relationship
21 between plaintiff and Ausra alleged in the Complaint would show
22 Areva Solar CA to be in a subrogation relationship with plaintiff
23 as well.

24 Lindsay alleges in the TPC that Areva Solar CA did not
25 receive any payments from plaintiff for any claimed and disputed
26

27 ² Areva Solar CA did not specifically challenge the
28 sufficiency of Lindsay’s allegations for its claims for
indemnity, comparative contribution, and declaratory relief.

1 damages incurred by plaintiff, that plaintiff is not the subrogee
2 of Areva Solar CA, and that Areva Solar CA is not the subrogor of
3 plaintiff. (Id. ¶¶ 31-32). Areva Solar CA is correct in its
4 contention that the court need not accept as true a complaint's
5 legal conclusions. See Iqbal, 556 U.S. at 678. But even if the
6 court does not consider Lindsay's allegations that plaintiff and
7 Areva Solar CA do not have a subrogation relationship, as already
8 explained, Lindsay has properly alleged a claim against Areva
9 Solar CA. There is no requirement that a third-party plaintiff
10 first establish the absence of a subrogation relationship between
11 the third-party defendants and the plaintiff to bring its third-
12 party claims.

13 Because plaintiff neither alleged that Ausra and Areva
14 Solar CA are one in the same or that it has a subrogation
15 relationship with Areva Solar CA, nor provided the court with any
16 evidence that it may properly consider on a motion to dismiss of
17 either, Lindsay need not aver additional allegations to plead
18 around the abstract possibility that plaintiff is also the
19 subrogee of Areva Solar CA. Accordingly, Areva Solar CA's motion
20 to dismiss Lindsay's claims against it must be denied.

21 IT IS THEREFORE ORDERED that Areva Solar CA's motion to
22 dismiss the third-party complaint be, and the same hereby, is
23 DENIED.

24 DATED: June 4, 2013

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26 

27 WILLIAM B. SHUBB
28 UNITED STATES DISTRICT JUDGE