

United States District Court
For the Northern District of California

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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

PATRICK MCERLAIN,

Plaintiff,

v.

PARK PLAZA TOWERS OWNERS
ASSOCIATION, et al.,

Defendants.

No. C-13-3232 MMC

**ORDER VACATING HEARING ON
DEFENDANTS' MOTION FOR
SUMMARY JUDGMENT**

Before the Court are two motions filed by defendants:¹ (1) "Motion for Summary Judgment or Alternatively Summary Adjudication," filed September 24, 2014 and noticed for hearing on October 31, 2014; and (2) "Motion to Dismiss," filed October 6, 2014 and noticed for hearing on November 14, 2014.

In the first of the above-referenced motions, said defendants argue they are entitled to judgment on the merits. In the second of the above-referenced motions, said defendants argue that the Court must abstain from deciding the merits of the instant action in light of a pending state court action, under the doctrine set forth in Younger v. Harris, 401 U.S. 37 (1971).


¹Defendants are Joseph Schreurs, Ladonna Horwitz, Nyla Starr, Sherry Berenstein, Julie Robles, Cynthia Schreurs, Tracy Fallon, Norma Berliner-Saltz, Tim Ho, Dennis Gale, David Behling, and Behling Property Management Corporation.

1 As the Ninth Circuit had held, "if the district court is required to abstain under
2 Younger," the district court "has no authority" to rule on the merits of the claim. See
3 Meredith v Oregon, 321 F.3d 807, 816 (9th Cir. 2003). Consequently, if, as defendants
4 contend, the Court is required to abstain under Younger, then the Court has no authority to
5 determine whether, as defendants also contend, they are entitled to judgment on the
6 merits.

7 Under such circumstances, the Court hereby VACATES the October 31, 2014
8 hearing on defendants' motion for summary judgment. The Court will reset the hearing
9 date, as appropriate, after determining whether the Court is required to abstain under
10 Younger.

11 **IT IS SO ORDERED.**

12
13 Dated: October 29, 2014


MAXINE M. CHESNEY
United States District Judge