

ENDORSED FILED
Clerk of the Superior Court

AUG 13 2018

J. WOOD

By _____
DEPUTY CLERK

1 Robert L. Sallander Jr., Esq. (SBN 118352)
2 Chip Cox, Esq. (SBN 159681)
3 **GREENAN, PEPPER, SALLANDER & LALLY LLP**
4 2000 Crow Canyon Place
5 Suite 380
6 San Ramon, California 94583
7 Telephone: (925) 866-1000
8 Facsimile: (925) 830-8787

9 Attorneys for Defendant-in-Intervention,
10 MID VALLEY PLASTERING, INC.

11 SUPERIOR COURT OF THE STATE OF CALIFORNIA

12 FOR THE COUNTY OF SOLANO

13 MARY PEPPERS, et al.,

14 Plaintiffs,

15 v.

16 PULTE HOME CORPORATION; and DOES
17 1 THROUGH 1000, Inclusive,

18 Defendants.

Case No.: FCS040007

**[PROPOSED] ORDER GRANTING IN
PART AND DENYING IN PART
PLAINTIFFS IN INTERVENTION'S
MOTION FOR SUMMARY
ADJUDICATION**

Date: July 6, 2018
Time: 2:00 p.m.
Dept: 8
Judge: The Honorable Wendy Getty

19 PULTE HOME CORPORATION,

20 Cross-Complainant,

21 v.

22 MONSCHEIN INDUSTRIES, et al.,

23 Cross-Defendants.

Trial Date: August 16, 2018
Complaint Filed: November 16, 2017

24 TRAVELERS PROPERTY CASUALTY
25 COMPANY OF AMERICA, et al.,

26 Plaintiffs in Intervention,

27 v.

28 MONSCHEIN INDUSTRIES, et al.,

Defendants in Intervention.

Greenan,
Peffer,
Sallander &
Lally LLP

1 The motion for summary adjudication filed by plaintiffs in intervention Travelers
2 Property Casualty Company of America ("Travelers") and St. Paul Mercury Insurance Company
3 ("St. Paul") against defendant in intervention Mid Valley Plastering, Inc., ("Mid Valley") was
4 scheduled for hearing on July 6, 2018. The Court considered the motion for summary
5 adjudication and supporting papers filed by Travelers and St. Paul and the opposition and
6 supporting papers filed by Mid Valley, and issued a tentative ruling as provided under Rule 3.9
7 of the Local Rules of the Solano County Superior Court. Neither Travelers, St. Paul nor Mid
8 Valley objected to the tentative ruling or appeared at the hearing of the motion, so the tentative
9 ruling becomes the ruling of the Court under Rule 3.9(b) of the Local Rules of the Solano
10 County Superior Court, as set forth below:

11 The motion for summary adjudication filed by TRAVELERS and ST. PAUL is granted in
12 part and denied in part.

13 The motion for summary adjudication of the first cause of action for declaratory relief
14 regarding the duty of Mid Valley to defend Pulte Home Corporation in this construction defect
15 action is granted in part. The court finds, as a matter of law, that Mid Valley has an express
16 contractual duty to defend Pulte Home in this action as to "the matters embraced by the
17 indemnity." (Civil Code, § 2778(4); *Crawford v. Weather Shield Manufacturing, Inc.* (2008) 44
18 Cal.4th 541). The "matters embraced by the indemnity" were intended to cover the scope of
19 work performed by subcontractor Mid Valley on the projects for which Pulte Home was the
20 general contractor.

21 This contractual duty to indemnify does not include a duty to defend the entire action on
22 behalf of Pulte Home. Mid Valley's duty to defend does not arise from an additional insured
23 endorsement, but from an express indemnity agreement related to the scope of work performed
24 by Mid Valley.

25 Notably, the master contract required each subcontractor to provide evidence of an
26 insurance policy naming the general contractor Pulte Home as an additional insured prior to
27 commencing work.

28

1 In this regard, the undisputed facts also indicate that Travelers and St. Paul are actually
2 an insurer of Pulte Home pursuant to additional insured endorsements they issued under the
3 policies of their named insureds. As an insurer, Travelers and St. Paul have a duty to defend the
4 entire action unless otherwise expressly excluded by the policy. (*Presley Homes, Inc. v.*
5 *American States Insurance Co.*, (2001) 90 Cal.App.4th 571).

6 Presumably Mid Valley likewise provided Pulte Home with a policy designating Pulte
7 Home as an additional insured before commencing work. Notably, moving parties do not
8 address whether this did or did not occur and whether Pulte Home sought or received
9 contribution or defense from that underlying insurer.

10 The motion for summary adjudication of the fifth cause of action for equitable
11 subrogation is denied. Travelers and St. Paul have not established, as a matter of law, that all of
12 the essential elements of equitable subrogation, as set out in *Fireman's Fund Insurance Co. v.*
13 *Maryland Casualty Co.* (1998) 65 Cal.App.4th 1279, are present.

14 Travelers and St. Paul have not established that: (1) they were not primarily liable for the
15 \$244,868.40 loss associated with costs of defense; (2) Pulte Home has an existing assignable
16 cause of action against Mid Valley for the \$244,868.40 in defense costs that it could have
17 asserted against Mid Valley if it had not been reimbursed by Travelers and St. Paul; (3) justice
18 requires that the \$244,868.40 loss be entirely shifted from Travelers and St. Paul to Mid Valley;
19 and (4) the damages of Travelers and St. Paul are a liquidated sum. Under the indemnity
20 agreement, Mid Valley has a duty to defend only "the matters embraced in the indemnity," which
21 are only those defense costs attributable to the allegations of defects in the stucco supplied and/or
22 installed by Mid Valley. Additionally, as a claim that sounds in equity, Travelers and St. Paul
23 would not be entitled to shift their responsibilities for defense of Pulte Home under policies
24 issued for the benefit of other subcontractors where the defense additionally related to claims
25 unrelated to the scope of work performed by Mid Valley, thereby securing their own windfall.

26 ///
27 ///

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

The above ruling does not require the court to resolve material issues of disputed fact.
Consequently, the court declines to rule on individual evidentiary objections.

IT IS SO ORDERED

Dated: August 9, 2018

WENDY G. GETTY

HON. WENDY G. GETTY
CALIFORNIA SUPERIOR COURT JUDGE

APPROVED AS TO FORM:

DATED: July 9, 2018

THE AGUILERA LAW GROUP, APLC

excused for failure to
By: timely Respond

Kimberly R. Arhal
Brittney Aquino

(WF)

Counsel for Plaintiffs in Intervention
Travelers Property Casualty Company of America and
St. Paul Mercury Insurance Company