



**SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN FRANCISCO**

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Case Number: CGC-12-522648

Filing Date: Jul-22-2014 1:09

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NOTICE OF ENTRY OF ORDER/NOTICE OF RULING FILED

DENNIS RUSH VS. WHITE CORPORATION et al

001C04559366

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1 John D. O'Connor (SBN 54238)
2 Steven J. Garrett (SBN 221021)
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7 San Francisco, CA 94111
8 Telephone: (415) 693-9960
9 Facsimile: (415) 981-0222

10 Attorney for Plaintiffs
11 DAVID FLAHERTY, J. CHRISTOPHER FLEMING, FRANK MCGUYER,
12 MICHAEL DEFELICE and DENNIS M. RUSH

FILED
Superior Court of California
County of San Francisco

JUL 22 2014

CLERK OF THE COURT

BY: Bowman Liu
Deputy Clerk

BOWMAN LIU

9 SUPERIOR COURT OF THE STATE OF CALIFORNIA

10 COUNTY OF SAN FRANCISCO

11 UNLIMITED JURISDICTION

12 DAVID FLAHERTY, et al.,

Case No. CGC-12-522648

13 Plaintiffs,

**NOTICE OF ENTRY OF ORDER
DENYING DEFENDANT TREADWELL
& ROLLO, INC.'S MOTION FOR
SUMMARY JUDGMENT OR IN THE
ALTERNATIVE SUMMARY
ADJUDICATION**

14 vs.

15 JAMES DOLAN, et al.,

16 Defendants.

17
18 Complaint Filed: July 19, 2012
19 Trial Date: October 6, 2014

20
21 TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

22 PLEASE TAKE NOTICE that on July 22, 2014, Judge A. James Roberson, II denied
23 Defendant Treadwell & Rollo, Inc.'s Motion for Summary Judgment or in the Alternative
24 Summary Adjudication.

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NOTICE OF ENTRY OF ORDER DENYING MOTION FOR SUMMARY JUDGMENT

FAXED

1 A true and correct copy of the signed Order is attached hereto as **Exhibit A**.

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Dated: July 22, 2014

By: 
Rupa Nath
Attorney for Plaintiffs
DAVID FLAHERTY,
J. CHRISTOPHER FLEMING,
FRANK MCGUYER, MICHAEL
DEFELICE
and DENNIS M. RUSH

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**PROOF OF SERVICE
STATE OF CALIFORNIA, COUNTY OF SAN FRANCISCO**

9 I, Heather Glaser, declare:

10 I am a resident of the state of California and over the age of eighteen years, and not a party to the within action; my business address is 201 Mission Street, Suite 710, San Francisco, California 94105. On July 22, 2014, I served the forgoing document(s) described as:

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12
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**NOTICE OF ENTRY OF ORDER DENYING DEFENDANT TREADWELL & ROLLO,
INC.'S MOTION FOR SUMMARY JUDGMENT OR IN THE ALTERNATIVE
SUMMARY ADJUDICATION**

16 By placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, in the United States mail at San Francisco, California addressed as set forth below.

17 By causing personal delivery by First Legal Network of the document(s) listed above to the person(s) at the address(es) set forth below.

18 By placing the document(s) listed above in a sealed Federal Express envelope and affixing a pre-paid air bill, and causing the envelope to be delivered to an agent for delivery.

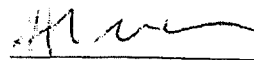
19 By personally delivering the document(s) listed above to the person(s) at the address(es) set forth below.

20 Miles Holden
21 HANSON BRIDGETT LLP
22 425 Market Street, 26th Floor
23 San Francisco, CA 94105

24 Dennis Kelly
25 DILLINGHAM & MURPHY
26 601 California St., Suite 1900
27 San Francisco, CA 94108

28 I am readily familiar with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

I declare under penalty of perjury that the foregoing is true and correct. Executed at San Francisco, California on July 22, 2014.



Heather Glaser

Exhibit
A

1 John D. O'Connor (SBN 54238)
2 Steven J. Garrett (SBN 221021)
3 Rupa Nath Cook (SBN 296130)
4 O'CONNOR AND ASSOCIATES
5 One Embarcadero Center
6 Tenth Floor, Suite 1020
7 San Francisco, CA 94111
8 Telephone: (415) 693-9960
9 Facsimile: (415) 981-0222

10 Attorney for Plaintiffs
11 DAVID FLAHERTY, J. CHRISTOPHER FLEMING, FRANK MCGUYER,
12 MICHAEL DEFELICE and DENNIS M. RUSH

**ENDORSED
FILED**
Superior Court of California
County of San Francisco

JUL 22 2014

CLERK OF THE COURT
BY: LINDA FONG
Deputy Clerk

13 SUPERIOR COURT OF THE STATE OF CALIFORNIA
14 COUNTY OF SAN FRANCISCO
15 UNLIMITED JURISDICTION

16 DAVID FLAHERTY, et al.,

17 Plaintiffs,

18 vs.

19 JAMES DOLAN, et al.,

20 Defendants.

Case No. CGC-12-522648

**~~PROPOSED~~ ORDER DENYING
DEFENDANT TREADWELL & ROLLO,
INC.'S MOTION FOR SUMMARY
JUDGMENT OR IN THE ALTERNATIVE
SUMMARY ADJUDICATION**

Date: July 22, 2014

Time: 9:30 a.m.

Dept.: 302

Complaint Filed: July 19, 2012

Trial Date: October 6, 2014

21 Defendant Treadwell & Rollo, Inc.'s Motion for Summary Judgment or in the Alternative
22 Summary Adjudication came on regularly for hearing on July 22, 2014 at 9:30 a.m. in
23 Department 302 of San Francisco Superior Court. John D. O'Connor of O'Connor and
24 Associates appeared on behalf of Plaintiffs David Flaherty, J. Christopher Fleming, Frank
25 McGuyer and Michael DeFelice and Dennis M. Rush, and Miles Holden of Hanson Bridgett LLP
26 appeared on behalf of Defendant Treadwell & Rollo, Inc.

27 Having read and considered Defendant's Motion for Summary Judgment or in the
28 Alternative Summary Adjudication, as well as other documents and evidence supporting and

~~PROPOSED~~ ORDER DENYING TREADWELL & ROLLO, INC.'S MOTION FOR SUMMARY JUDGMENT

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opposing the motion, having heard the arguments of counsel, and good cause appearing therefor,
IT IS HEREBY ORDERED THAT the motion for summary judgment and adjudication is denied. Defendant owed plaintiff a duty of care as a matter of law. Plaintiff's evidence demonstrates that defendant had a key role in the development of the project which brings this case under the *Beacon Res. Comm. Ass'n v. Skidmore, Owings & Merrill LLP* line of authority. Defendant drafted a memorandum regarding the disclosures. (O'Conner dec., Ex.17). Defendant issued a memo stating: "The purpose of our services is to (1) work with the design team and contractor and (2) observe the construction/installation of the geotechnical related elements of the project to check they are constructed in accordance with the intent of our recommendation." (O'Conner dec., Ex.8). One of defendant's emails states that defendant is "currently providing ongoing recommendations for the 13 cabins, as they are being constructed." (O'Conner dec., Ex.5). Defendant states that it "intend[s] to address several issues key to developing the site." (O'Conner dec., Ex.2). Defendant was performing ongoing consultation during the construction. (O'Conner dec., Ex.11). Defendant and the developer (Dolan) worked together to determine what disclosures were made. (O'Conner dec., Ex. 9). In one e-mail, the developer wrote defendant and said don't tell us the bad news, I'm not sure we can handle the truth. (O'Conner dec., Ex.16). The developer also paid defendant several hundreds of thousands of dollar for defendant's services. (O'Conner dec., Exs. 21-26). In sum, defendant's extensive role with the development and substantial payment distinguishes this case from *Weseloh Family Ltd. Partnership v. K.L. Wessel Constr. Co. , Inc.* (2004) 125 Cal.App.4th 152, and *Beacon* is controlling.

IT IS SO ORDERED.

Dated: JUL 22 2014

By: A. JAMES ROBERTSON, II
JUDGE OF THE SUPERIOR COURT
A. JAMES ROBERTSON, II