ROGER CRISWELL et al., Plaintiffs and Appellants,
v.
THE MMR FAMILY LLC et al., Defendants and Respondents.
G044724
Super. Ct. No. 07CC01416
COURT OF APPEAL OF THE STATE OF CALIFORNIA FOURTH APPELLATE DISTRICT DIVISION THREE
Date: January 17, 2012

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

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OPINION

Appeal from an order of the Superior Court of Orange County, David C. Velasquez, Judge. Affirmed.

The Law Offices of Kent G. Mariconda and Kent G. Mariconda for Plaintiffs and Appellants.

Poliquin & DeGrave, Douglas M. DeGrave, Thomas G. Chambers, and April C. Balangue for Defendants and Respondents The MMR Family LLC, The RFR Family LLC, Northwind Management, Inc., and William C. Mecham.

Hart, King & Coldren, Robert S. Coldren, James S. Morse, and Rhonda H. Mehlman for Defendants and Respondents JS Stadium, LLC, Shorecliff LP, Shorecliff Main LP, Huntington BSC Park, LP, and JS Commercial, LLC.

* * *

Plaintiffs Roger Criswell, Arminda Criswell, Sharon Dana, and Golden State Mobile-Home Owners League — Chapter 571 appeal from an order denying their class certification motion. They sought to certify a class of mobilehome park homeowners in an action against the park's current and former owners for claims related to water damage. The court found common issues did not predominate and class treatment was not a superior litigation means. It applied proper criteria and exercised its discretion based on substantial evidence. We affirm.

FACTS

Plaintiffs filed this action individually and on behalf of similarly situated homeowners at the Huntington Shorecliffs Mobilehome Park. They sued the park's current owners (defendants JS Stadium, LLC, Shorecliff LP, Shorecliff Main LP, Huntington BSC Park, LP, and JS Commercial, LLC), former owners (defendants MMR

Family LLC and RFR Family LLC) and managers (defendants Northwind Management, Inc. and William C. Mecham).

Plaintiffs alleged defendants failed to maintain the park. Specifically, plaintiffs alleged defendants knew the "naturally high groundwater" had caused an "'on-going, and potentially worsening shallow groundwater condition on the property,'" leading to "excess moisture in parts of the park." Defendants also knew "the presence of water accumulating within the park could pose a health and safety risk." Defendants exacerbated the problem by changing "the configuration and drainage related to the roadway and the hillside that abuts" the park, "affect[ing] the runoff of rainwater, the irrigation system, and the ability of moisture to find its way to the drainage system." Plaintiffs asserted causes of action for breach of written and implied contracts, negligence, public and private nuisance, violation of the Mobilehome Residency Law (Civ. Code, § 798 et seq.; MRL), and violation of the Unfair Competition Law (Bus. & Prof. Code, § 17200 et seq.).

Plaintiffs moved for class certification. They sought to certify a class of park homeowners between June 2005 and the present, with the following subclasses: "'Any **past** or **current** homeowner during the same time frame who has also experienced: [¶] (1) the **accumulation of mold, fungus, and/or other toxins** in or about his or her home or lot resulting from drainage problems, water seepage, water accumulation, or other moisture build-up; and/or [¶] (2) **property damage** to his/her mobilehome and/or other property resulting from drainage problems, water seepage, water accumulation, moisture build-up, mold, fungus, and/or other toxins; and/or [¶] (3) **emotional distress** resulting from exposure to drainage problems, water seepage, water accumulation, moisture build-up, mold, fungus, and/or other toxins in or around one's home, lot, or common areas of the park; and/or [¶] (4) **health problems** resulting from exposure to drainage problems, water seepage, water accumulation, moisture build-up, mold, fungus, and/or other toxins, in or around one's home, lot, or common areas of the park.'"

Plaintiffs asserted common issues of fact and law predominated over any individual issues among the homeowners. Namely, the same property lease and park rules govern the parties' rights; the same failure to "provide a site which assures health, safety and provides a decent living environment" underlies the nuisance and MRL claims; and the defendants unfairly perpetrated the same denial and "cover up." And all homeowners have identical claims for $2,000 in statutory damages pursuant to the MRL.

The court denied the motion. It conceded class members were reasonably ascertainable and "the named plaintiffs and counsel are adequate representatives for the class."

But the court found other class action elements were unmet. It stated, "[T]he parties are not so numerous that it would be impracticable to bring them all before the Court; the members of the class lack a well-defined community of interest and the common issues of fact do not predominate over individual issues of causality, property damage, personal injury and emotional distress[; and] there is no likelihood the Court or the parties will substantially benefit from class action treatment. Class action treatment

of the present case is not a superior method of litigation over traditional methods of litigation and trial presentation."

As to the predominance of individual issues, it found "there is no well-defined community of interest among the class members. In the present case the individual issues affecting each mobile home and homeowner will predominate over the common issue of the presence of standing or pooling water in and around the park. Each homeowner will be required to individually litigate the issues of the cause of damage to the particular mobile home, and the issues of property damage and personal injury. As such, proof of the harm, damage and injury suffered by each homeowner will consume the majority of time at trial. [¶] Because the circumstances surrounding the cause and extent of the 'accumulation of mold, fungus and/or other toxins' is unique to each mobile home, proof of the conditions of each mobile home and surrounding conditions must be produced at trial. The degree and manner in which each homeowner suffered emotional distress and bodily injury is unique to each homeowner. . . . Plaintiffs have not proffered any method of proof by common evidence to establish the cause and extent of each of the putative class members' damage and injury."

As to the lack of superiority, it found "the parties are not so numerous that it would be impracticable to bring them all before the Court in one action. In many respects, this action is akin to a complex construction defect action. Management of the litigation and trial may pose issues for the Court, but the cases like the present one are known to the Court and are presented in Court on a frequent basis. Reasonable management techniques for this kind of action have been developed and used before resulting in a fair process for the trial of each of the plaintiff's case[s]."[1]

DISCUSSION

"Class certification is governed by Code of Civil Procedure section 382. Code of Civil Procedure section 382 provides in part, '[W]hen the question is one of a common or general interest, of many persons, or when the parties are numerous, and it is impracticable to bring them all before the court, one or more may sue . . . for the benefit of all.'" (Arenas v. El Torito Restaurants, Inc. (2010),183 Cal.App.4th 723 (Arenas).)

"Class certification requires proof (1) of a sufficiently numerous, ascertainable class, (2) of a well-defined community of interest, and (3) that certification will provide substantial benefits to litigants and the courts, i.e., that proceeding as a class is superior to other methods. [Citations.] In turn, the 'community of interest requirement embodies three factors: (1) predominant common questions of law or fact; (2) class representatives with claims or defenses typical of the class; and (3) class representatives who can adequately represent the class.'" (Fireside Bank v. Superior Court (2007),40 Cal.4th 1069 (Fireside).)

Thus, "the existence of some common issues of law and fact does not dispose of the class certification issue." (Arenas, supra, 183 Cal.App.4th at p. 732.) ""'[E]ach member must not be required to individually litigate numerous and substantial questions to determine his [or her] right to recover following the class judgment; and the issues which may be jointly tried, when compared with those requiring separate adjudication,

must be sufficiently numerous and substantial to make the class action advantageous to the judicial process and to the litigants.'"' (Basurco v. 21st Century Ins. Co. (2003) 108 Cal.App.4th 110, 117-118 (Basurco).) '"[I]f a class action "will splinter into individual trials," common questions do not predominate and litigation of the action in the class format is inappropriate.'" (Arenas, supra, 183 Cal.App.4th at p. 732.)

"The decision to certify a class rests squarely within the discretion of the trial court, and we afford that decision great deference on appeal, reversing only for a manifest abuse of discretion: 'Because trial courts are ideally situated to evaluate the efficiencies and practicalities of permitting group action, they are afforded great discretion in granting or denying certification.' [Citation.] A certification order generally will not be disturbed unless (1) it is unsupported by substantial evidence, (2) it rests on improper criteria, or (3) it rests on erroneous legal assumptions." (Fireside, supra, 40 Cal.4th at p. 1089.)

The court did not abuse its "great discretion" by finding common issues would not predominate. (Arenas, supra, 183 Cal.App.4th at p. 731.) It noted myriad "individual issues affecting each mobile home and homeowner." Each mobilehome had a "unique" '"accumulation of mold, fungus and/or other toxins,'" and so "proof of the conditions of each mobile home and surrounding conditions must be produced at trial." Each homeowner had a unique "degree and manner" of "emotional distress and bodily injury," also requiring individualized proof. These findings follow almost necessarily from the plaintiffs' class definition. Plaintiffs' own evidence supports the findings, too. Their expert submitted a declaration conceding the water condition was not uniform throughout the park. He stated the "shallow groundwater and associated problems remain prevalent through portions of the site" and was "most prevalent in the northerly portion." And in his declaration, plaintiffs' counsel took three pages to describe the various, individualized concerns expressed by dozens of different homeowners.[2]

The court did not act arbitrarily or capriciously by concluding the individual determinations would trump "the common issue of the presence of standing or pooling water in and around the park." Certification is inappropriate '"[i]f a class action "will splinter into individual trials."'" (Arenas, supra, 183 Cal.App.4th at p. 732.) '"Class actions will not be permitted . . . where there are diverse factual issues to be resolved, even though there may be many common questions of law.'" (Basurco, supra, 108 Cal.App.4th at p. 118.)

Plaintiffs fail to show the defendants' alleged failure to maintain the park as required by the MRL would be the predominant issue. Defendants' alleged concealment of excess moisture conditions and their allegedly negligent roadwork and landscaping may be common issues. And that alleged conduct may entitle the homeowners to common statutory damages pursuant to the MRL. (Civ. Code, § 798.86, subd. (a).) So there may indeed be some common issues. But the court reasonably concluded these common issues would be swamped by the swarm of individual determinations of property damage, emotional distress, and personal injury — and did so based on a fair reading of the pleadings and the evidence, including plaintiffs' own declarations. "[T]he proper standard of review is not whether substantial evidence might have supported an order granting the motion for class certification, but whether substantial evidence

supported the trial court's conclusion that common questions of law or fact did not predominate over individual issues." (Knapp v. AT&T Wireless Services, Inc. (2011) 195 Cal.App.4th 932, 940-941.) ""Our task on appeal is not to determine in the first instance whether the requested class is appropriate but rather whether the trial court has abused its discretion . . . (Department of Fish & Game v. Superior Court (2011),197 Cal.App.4th 1323 (Adams).) On this record, we have no ground to second-guess the court.

Indeed, courts often find class treatment inappropriate due to individual variations in the existence and extent of property damage. In Adams, the court wrongly certified a class of property owners and others allegedly harmed when a state agency contaminated a lake because "the impact . . . may be different depending on the particular characteristics and location of each individual parcel." (Adams, supra, 197 Cal.App.4th at p. 1337.) In a similar case, the court permissibly declined to certify a class of persons residing near a quarry that allegedly maintained a nuisance due to "the problem of variations in proof of whether any harm occurred." (Frieman v. San Rafael Rock Quarry, Inc. (2004),116 Cal.App.4th 29 (Frieman).) "For example, the residents of a house built on soil, behind a hill or on the waterfront may be completely unaware of the Quarry's activities and suffer no discomfort or annoyance. Neighboring residents in homes built on rock without barriers might suffer varying degrees of annoyance from vibration, noise, dust or other by-products of the Quarry's business. The former residents cannot establish liability for maintaining a public nuisance. The latter have infinite variations in degree of impact." (Id. at pp. 41-42.) In Basurco, the court permissibly declined to certify a class of homeowners whose insurer allegedly denied their property damage claims because "the existence of damage, the cause of damage, and the extent of damage would have to be determined on a case-by-case basis." (Basurco, supra, 108 Cal.App.4th at p. 119.) And in another case, the court permissibly declined to certify a class of homeowners whose shower pans were allegedly defective because "the costs associated with removing and replacing each individual shower pan could vary widely from one class member to the next." (Evans v. Lasco Bathware, Inc. (2009),178 Cal.App.4th 1417 (Evans).)

Notably, the California Supreme Court reversed the certification of a class of persons residing near an airport that allegedly maintained a nuisance due to the different "facts particular to each prospective plaintiff." (City of San Jose v. Superior Court (1974),12 Cal.3d 447.) It noted, "An approaching or departing aircraft may or may not give rise to actionable nuisance or inverse condemnation depending on a myriad of individualized evidentiary factors. While landing or departure may be a fact common to all, liability can be established only after extensive examination of the circumstances surrounding each party. Development, use, topography, zoning, physical condition, and relative location are among the many important criteria to be considered. No one factor, not even noise level, will be determinative as to all parcels." (Ibid., fn. omitted.)

Similar considerations apply equally here. The defendants' alleged failure to adequately address the shallow groundwater and their allegedly negligent roadwork and landscaping may be common to all park residents. But defendants' liability to the plaintiffs on the bulk of their claims can be established only after examining each lot, each home, and each homeowner. Liability itself — other than for failing to maintain the

park's common areas, perhaps — depends on individual examinations of each allegedly damaged home and each homeowner's alleged physical injury and emotional distress. So contrary to plaintiffs' claim, the individual issues here are not limited to computing individual damages based on common liability.[3] "[A] class action cannot be maintained where each member's right to recover depends on facts peculiar to his case." (City of San Jose v. Superior Court, supra, 12 Cal.3d at p. 459.) "Only in an extraordinary situation would a class action be justified where, subsequent to the class judgment, the members would be required to individually prove not only damages but also liability." (Id. at p. 463.)

This need to prove property damage, personal injury, and emotional distress on an individual basis to establish liability distinguishes plaintiffs' pet case, Hicks v. Kaufman & Broad Home Corp. (2001),89 Cal.App.4th 908 (Hicks). That case held class treatment was appropriate for homeowners' breach of warranty claims against the homebuilder for pouring allegedly defective foundations. (Id. at p. 916.) But the decision turned on the unusual nature of a warranty claim, which "does not require proof the product has malfunctioned but only that it contains an inherent defect . . . ." (Id. at p. 918.) For the warranty claims only, "[i]t is not necessary for each individual homeowner to prove . . . that he has suffered property damage . . . ." (Id. at p. 923.) The opposite is predominantly true here, as the court reasonably found.

Moreover, Hicks affirmed denying certification for the homeowners' negligence and strict liability claims. (Hicks, supra, 89 Cal.App.4th at pp. 923-924.) "[T]o recover under these theories of liability each class member would have to come forward and prove specific damage to her home . . . and that such damage was caused by cracks in the foundation, not some other agent. [¶] Given this need for individualized proof, commonality of facts is lost . . . ." (Id. at p. 924.) The same is true here, as it was in other cases rejecting class treatment despite Hicks. (Cf. Evans, supra, 178 Cal.App.4th at p. 1435 [Hicks supported not certifying a "'liability only' class action" because "there would be no liability . . . unless and until each class member individually proved" damage and causation]; Frieman, supra, 116 Cal.App.4th at p. 40 [distinguishing Hicks because liability there "turned on the nature of the product used and not the particular condition of each foundation"].) Hicks simply does not help plaintiffs.

Plaintiffs also misplace their heavy reliance on a non-class action case, Tenants Assn. of Park Santa Anita v. Southers (1990),222 Cal.App.3d 1293. That case held an unincorporated association had standing to assert claims in a representative capacity on behalf of a group of mobilehome park tenants. (Id. at p. 1304.) But importantly, it held the association lacked representative standing "to sue for damages/injuries for anxiety, emotional distress, or personal injuries" that were "too inherently personal to the individual to reasonably constitute a community of interest." (Ibid.) And it resolved any tension in the association's incomplete standing by granting leave "to amend the complaint to add the individual past and present tenant members as plaintiffs for recovery of those categories of damages . . . ." (Ibid.) This case provides no support for certifying the class here.

In addition to permissibly finding common issues did not predominate, the court also permissibly found class treatment would not be superior. It reasonably concluded

the multiplicity of individual determinations on liability and/or damages — even if not predominant — would still render a class action unfeasible. (See Arenas, supra, 183 Cal.App.4th at p. 731 [class action not superior where "resolution of the common issues would require mini-trials"].) Moreover, the court found it perfectly practicable for the plaintiffs to appear before the court. It stated, "[T]he cases like the present one are known to the Court and are presented in Court on a frequent basis. Reasonable management techniques for this kind of action have been developed and used before resulting in a fair process for the trial of each of the plaintiff's case[s]." Plaintiffs fail to show any fatal flaw with this reasoning.[4] And contrary to plaintiffs' claim, the court did not apply an improper criteria or erroneous legal assumption by noting its prior success managing construction defect litigation. The analogy may not be perfect, but it is sufficiently apt to support denying class certification.

DISPOSITION

The order is affirmed. Defendants shall recover their costs on appeal.

IKOLA, J.

WE CONCUR:

BEDSWORTH, ACTING P. J.

O'LEARY, J.

Notes:

[1.] In the written order, this analysis comes under the heading "NUMEROSITY."

[2.] Here is a small sampling. The resident in space 1 complained of "mushrooms; elevated penicillium/aspergillus; insomnia and depression." The resident in space 15 complained of "standing water." The resident in space 24 complained of "throat and respiratory problems." The resident in space 30 complained of "the house sinking." The resident in space 37 complained of "slow or backed up plumbing in bathroom." The resident in space 83 complained of "white powder on items in the closets" and "feel[ing] ill." The resident in space 85 complained of having "fallen due to slippery, uneven pavement; increased utility bills; chronic fatigue; stress; sore throat." The resident in space 131 complained of "several 'soft' spots in floor." The resident in space 179 complained his "dog had extreme rhinitis since early 2008 costing $4,000 in vet bills." The resident in space 185 "hears fans under the house." And the resident in space 290 "has spent $2,500 pouring concrete . . . to create a barrier so water won't go under her home [and] has had 21 piers replaced under home."

[3.] More basically, plaintiffs are wrong to assert individual damage assessments can never preclude class treatment. Certification may be denied when "there is a potentially wide disparity in the amount of damages recoverable by each class member, and the

trial court . . . exercise[s] its discretion to conclude these individual issues predominate[] over common issues." (Evans, supra, 178 Cal.App.4th at pp. 1430-1431, fn. omitted.)

4. Plaintiffs unpersuasively invoke other actions between the homeowners and the park. Class certification in this case is not compelled by class certification in another action raising entirely different claims regarding rental agreements and costs imposed thereunder. And class certification is not somehow warranted by the fact that 40-some homeowners have since filed a separate action against the park for water-related claims.
