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IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF WASHOE

GEORGE STUART YOUNT,
Individually and in his Capacity as
Owner of GEORGE YOUNT IRA,

Case No.: CV16-00767

Dept. No.: 7

Plaintiff,

vs.

CRISWELL RADOVAN, LLC, a
Nevada limited liability company; CR
CAL NEVA, LLC, a Nevada limited
liability company; ROBERT
RADOVAN; WILLIMA CRISWELL;
CAL NEVA LODGE, LLC, a Nevada
limited liability company; POWELL,
COLEMAN and ARNOLD, LLP;
DAVID MARRINER; MARRINER
REAL ESTATE, LLC, a Nevada
limited liability company; and DOES
1-10,

Defendant.

ORDER

Before this Court is Defendants DAVID MARRINER and MARRINER REAL ESTATE, LLC's (hereinafter "Defendants") *Motion to Dismiss, or in the alternative, for a More Definite Statement*, filed June 28, 2016 pursuant to NRCP 12(b)(5), NRCP 12(e), and NRCP 9(b). Plaintiff GEORGE STUART YOUNT (hereinafter "Plaintiff") filed *Plaintiff's Opposition to Defendants David Marriner and Marriner Real Estate, LLC's Motion to Dismiss, or in the alternative, for a More Definite Statement*. On August 3, 2016, Defendants filed *Defendants David Marriner and Marriner Real*

1 *Estate, LLC's Reply Memorandum of Points and Authorities RE Marriner's Motion*
2 *to Dismiss, or in the alternative, for a More Definite Statement.* Defendants
3 submitted this matter to the Court for decision on August 3, 2016.

4 **Summary**

5 The facts alleged in the Complaint are as follows:

6 This matter arises from an agreement between Plaintiff and Defendant CAL
7 NEVA LODGE, LLC, regarding the Plaintiff's purchase of a "Founders Unit" for
8 purposes of investing in the redevelopment of the Cal Neva Lodge, located in Crystal
9 Bay, Lake Tahoe. On February 18, 2014, Plaintiff met with Defendant MARRINER
10 to discuss the proposed plans of Defendants RADOVAN and CRISWELL to acquire,
11 remodel, and reopen the Cal Neva Lodge. Defendant MARRINER represented to
12 Plaintiff that he was acting as an agent and broker of Defendants RADOVAN and
13 CRISWELL and the related legal entities operated therewith. During the next
14 several months, Defendant MARRINER provided Plaintiff information concerning
15 the Cal Neva Lodge redevelopment project ("the Project"), including: marketing and
16 promotional materials, tours of the Cal Neva Lodge, and representations about
17 Defendants RADADOVAN and CRISWELL's previous project development history.

18 On July 25, 2015, Defendant RADOVAN sent Plaintiff an email that included
19 documents and other information regarding the financial information about the
20 Project with the intent to solicit Plaintiff in purchasing a "Founders Unit" in
21 Defendant CAL NEVA LODGE, LLC. Defendant CAL NEVA LODGE, LLC, is the
22 primary development vehicle for the Project. Plaintiff was later provided the
23 "Subscription Booklet" that included: Subscription Instructions, a member signature
24 page, a certificate of non-foreign status, investor to escrow and wire transfer
25 information, and an IRS form W-9. Plaintiff was told that there was still \$1,500,000
26 of Founders Units available for purchase out of the initial \$20,000,000 authorized
27 under the Subscription Agreement. Thereafter, Plaintiff purchased \$1,000,000 in
28 Founders Units as offered by Defendants.

1 During a meeting of members and investors held on December 12, 2015,
2 Plaintiff was informed of several issues that he asserts were not disclosed to him prior
3 to his purchase of the Founders Units. Specifically, Plaintiff was informed that the
4 Project was over-budget and that the Cal Neva Lodge would not be opening as was
5 originally scheduled. In addition, Plaintiff received a Capitalization Table for Cal
6 Neva Lodge, LLC, reflecting his \$1,000,000 purchase of Founders Units was not
7 within CAL NEVA LODGE, LLC but rather within Defendant CR CAL NEVA, LLC.
8 Plaintiff asserts that this did not comport to the terms of the Subscription Agreement
9 and thus he requested the Capitalization Table be corrected per the terms of the
10 Subscription Agreement.

11 Based on the foregoing events, Plaintiff alleges that Defendants failure to
12 disclose that the Project was over-budget and that the Cal Neva Lodge would not be
13 opening as scheduled amounted to fraudulent misrepresentations, and that the
14 Subscription Agreement was erroneously executed. Further, Plaintiff alleges
15 Defendants failed to disclose the financial condition of CAL NEVA LODGE, LLC. On
16 April 4, 2016, Plaintiff brought suit on multiple claims including: Breach of Contract,
17 Breach of Duty, Fraud, Negligence, Conversion, Punitive Damages, and Fraud under
18 NRS 90.570. On June 28, 2016, Defendants MARRINER and MARRINER REAL
19 ESTATE, LLC moved this court to dismiss Plaintiff's action pursuant to NRCP
20 12(b)(5), specifically the claims based on the alleged fraud.

21 **Legal Standard**

22 A motion to dismiss made under NRCP 12(b)(5) is subject to a rigorous
23 standard with "all alleged facts in the complaint presumed true and all inferences
24 drawn in favor of the complainant." *Torres v. Nev. Direct Ins. Co.*, 131 Nev. Adv. Op.
25 54, 353 P.3d 1203, 1210 (2015). A court should only dismiss a complaint if appears
26 beyond a doubt that a plaintiff would not be able to prove a set of facts, that if true,
27 would entitled the plaintiff to relief. *Id.* at 228. Dismissal should be lightly employed
28 being that policy favors deciding a case on their merits. *State, Dep't of Motor Vehicles*

1 & *Pub. Safety v. Moss*, 106 Nev. 866, 868, 802 P.2d 627, 628 (1990). In addition, if it
2 is possible that a complaint can be amended so as to state a claim for relief, leave to
3 amend is the preferred remedy, rather than dismissal. *Cohen v. Mirage Resorts, Inc.*,
4 119 Nev. 1, 22, 62 P.3d 720, 734 (2003). Leave to amend should be freely given when
5 justice so requires. NRCP 15(a). Under NRCP 12(e), a party may move for a more
6 definite statement if a pleading is so vague or ambiguous that a party cannot
7 reasonably be frame a responsive pleading. The motion must point out the defects
8 that are lacking and what details are desired. NRCP 12(e).

9 When a complaint raises allegations of fraud or mistake, the plaintiff is subject
10 to the pleading requirements of NRCP 9(b). Under FRCP 9(b), a party alleging fraud
11 must state the circumstances constituting fraud with particularity, including the
12 “time, place, and specific content of the false representations as well as the identities
13 of the parties to the misrepresentations.”¹ *Swartz v. KPMG LLP*, 476 F.3d 756, 764
14 (9th Cir. 2007). The complaint shall be specific enough to give the defendants notice
15 of the particular actions that constituted misconduct so they can competently defend
16 against the charge. *Id.* at 764. This requires the plaintiff to differentiate the
17 allegations constituting fraud when there is more than one defendant, instead of
18 “lump[ing] multiple defendants together.” *Id.* at 765. At a minimum, the plaintiff
19 must identify the party’s role in the alleged fraudulent scheme. *Moore v. Kayport*
20 *Package Express, Inc.*, 885 F.2d 531, 541 (9th Cir.1989). In evaluating a motion to
21 dismiss under FRCP 9(b), the equivalent to NRCP 9(b), the court is to treat it as the
22 “functional equivalent of a motion to dismiss under Rule 12(b)(6) [NRCP 12(b)(5)] for
23 failure to state a claim” *Vess v. Ciba-Geigy Corp. USA*, 317 F.3d 1097, 1107 (9th Cir.
24 2003).

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28 ¹ "Federal cases interpreting the Federal Rules of Civil Procedure are strong persuasive authority,
because the Nevada Rules of Civil Procedure are based in large part upon their federal
counterparts." *Rock Bay, LLC v. Dist. Ct.*, 129 Nev. Adv. Op. 21, 298 P.3d 441, 445 (2013)

1 Analysis

2 Defendants argue that that Plaintiff's *Complaint* fails to comport to the
3 requirements set forth in NRCP 9(b) in regard to their allegations of fraud.
4 Specifically, Defendants argue that Plaintiff's Third, Sixth, and Seventh Causes of
5 Action, which are based on the allegations of fraud, do not identify with particularity
6 Defendants' participation in the fraudulent scheme. Plaintiff's Third and Seventh
7 Causes of Action are based on common law fraud and fraud under NRS 90.570,
8 respectively. Plaintiff's Sixth Cause of Action is for punitive damages as a result of
9 the alleged fraudulent misrepresentations.

10 As stated above, the complaint must state with some particularity the role of
11 each party in the alleged fraudulent scheme and not lump together the actions of the
12 whole to constitute an action against an individual. Here, Plaintiff identifies in the
13 *Complaint* Defendants MARRINER and MARRINER REAL ESTATE, LLC as the
14 acting agent and broker on behalf of Defendant RADOVAN and CRISWELL, making
15 material representations regarding the Project. (*Complaint*, ¶ 12). The *Complaint*
16 indicated the representations were in connection with the development of the Cal
17 Neva Lodge and Defendants RADOVAN and CRISWELL prior real estate
18 development history. *Id.* However, the *Complaint* fails to identify what
19 representations were made with respect to the fraud allegations. Specifically, there
20 is no mention to what degree Defendant make representations regarding the opening
21 date of the Cal Neva Lodge or the financial conditions of Defendant CAL NEVA
22 LODGE, LLC.

23 Plaintiff bases his Third and Seventh Cause of Actions on the premise that
24 Defendants made fraudulent representations, however, the *Complaint* fails to
25 identify which party made the statements pertinent to Plaintiff's claims. Under the
26 Nevada Rules of Civil Procedure, a party pursuing a claim is afforded the benefit of
27 the liberal pleadings requirements set in place. *Hay v. Hay*, 100 Nev. 196, 678 P.2d
28 672, (1984). Courts in Nevada are to "liberally construe pleadings to place into issue

