Superior Court of California
County of San Benito

Tentative Decisions for February 3, 2025

Courtroom #1: Judge J. Omar Rodriguez

CU-22-00233 Trinity Financial Services vs. Gutierrez

Defendant Gutierrez's Motion for Bond Pursuant to California Code of Civil Procedure (CCP) Section 1030 is GRANTED. Plaintiff will provide an undertaking in the amount of $35,000.00 within 30 days from the date of this Order. The accompanying request for judicial notice is also granted.

CCP section 1030 allows a defendant to bring a motion to require an out-of-state plaintiff or foreign corporation to file an undertaking to secure an award of costs and attorney's fees that could be awarded against it in the action. "This motion shall be made on the grounds that the plaintiff resides out of state or is a foreign corporation and that there is a reasonable possibility that the moving defendant will obtain judgment in the action or special proceeding." (Cal. Code Civ. Proc. §1030(b).) "If the court, after hearing, determines that the grounds for the motion have been established, the court shall order that the plaintiff file the undertaking in an amount specified in the court's order as security for costs and attorney's fees." (Cal. Code Civ. Proc. §1030(c).) The purpose of section 1030 is to assist California defendants to "secure costs in light of the difficulty of enforcing a judgment for costs against a person who is not within the court's jurisdiction." (*Shannon v. Sims Service Center, Inc*. (1985) 164 Cal. App. 3d 907, 913.)

It is undisputed that Plaintiff is an entity that is outside of California.

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Here, Defendant has framed out his factual argument that Plaintiff cannot show that the loan funded (i.e. that the HELOC funds were available to him); or that Defendant accessed the funds creating a loan balance which Plaintiff asserts is unpaid, or that the security for the loan in the form of the deed of trust is missing. Additionally, Defendant produced sufficient evidence to warrant the recovery of attorneys' fees and costs through the alleged HELOC agreement as well as Civil Code sections 1717, 1788.30(c) and 1788.2(c)(1). As a result, Defendant has met his burden of showing a reasonable possibility of defeating Plaintiff's claims. While Defendant has engaged in a significant amount of litigation, including an appeal of the court's decision not to expunge the lis pendens in this matter, extensive discovery motion practice, Plaintiff did not seek attorney's fees nor does the underlying Note at the heart of this matter include a fees clause. The court therefore orders that Plaintiff will secure an undertaking in this matter in the amount of $35,000.00.

Defendant Gutierrez's Motion for Judgment on the Pleadings is DENIED.

A motion for judgment on the pleadings has the same purpose and effect as a general demurrer. (*Westly v. Board of Admin*. (2003) 105 Cal. App. 4th 1095, 1114.) Like a demurrer, a motion for judgment on the pleadings addresses defects on the face of the complaint, and admits, for the purposes of the motion, the truth of all material facts that have been pleaded. (*Ventura Coastal LLC v. Occupational Safety & Health Appeals Board* (2020) 58 Cal. App. 5th 1, 14.) Other than as provided in the statute governing motions for judgment on the pleadings, the rules governing demurrers apply to these motions. (*Alameda County Waste Mgmt. Auth. v. Waste Connections US, Inc*. (2021) 67 Cal. App. 5th 1162, 1174.) Facts that are offered to contradict key allegations of the complaint are not properly the subject of judicial notice on a motion for judgment on the pleadings. Nor does a declaration containing this material transform the motion into a contested evidentiary dispute. (*Sykora v. State Dept. of State Hosp*. (2014) 225 Cal.App.4th 1530, 1535.)

Here, Defendant argues that the facts pled cannot sustain the case in light of the arguments against them. In particular Defendant argues that Plaintiff cannot prove that the loan funded, that Defendant accessed and used the HELOC funds, and the authenticity of the document showing a debt of $34,710.16. Moreover, because there is no deed of trust, the

request for an equitable lien and foreclosure of the same must be denied because Code of Civil Procedure section §699.730 does not allow foreclosure of a residential property to repay a consumer debt. Of these arguments, only the last merits discussion since the prior arguments address the sufficiency of the evidence, not whether the facts are adequately pled.

The principal place of residence of a judgment debtor is not subject to sale under execution of a judgment lien based on a consumer debt "unless the debt was secured by the debtor's principal place of residence at the time it was incurred." (Cal. Code Civ. Proc. §699.730(a).) Here, the underlying note states that the line of credit is to be secured by Defendant's principal residence, and that a failure to repay the obligation may result in foreclosure of the property and loss of the property. In short, a HELOC is secured by a second mortgage on a property, which may be foreclosed. The issue here is the significance of the admitted lack of a deed of trust. The note, which defined and frames the intention to create a security for the obligation, supports the enforcement through the foreclosure process. An equitable lien, as defined in the opposition, and in the operative complaint presents sufficient facts.

CU-22-00247 Center for Biological Diversity and Protect San Benito County vs. San Benito County

The Motion filed by the People of the State of California ("People") for Leave to Intervene is GRANTED. The standard for intervention as a matter of right is stated in Code of Civil Procedure section 387(d): "The court shall, upon timely application, permit a nonparty to intervene in the action or proceeding if . . . a provision of law confers an unconditional right to intervene." Courts have held that this provision "should be liberally construed in favor of intervention." (*Lindelli v. Town of San Anselmo* (2006) 139 Cal.App.4th 1499, 1505.)

The People, through the Attorney General, have an unconditional right to intervene in the current action pursuant to Government Code section 12606, which provides: "The Attorney General shall be permitted to intervene in any judicial or administrative proceeding in which facts are alleged concerning pollution or adverse environmental effects which could affect the public generally." Government Code section 12606 is to be read in conjunction with

Public Resources Code section 21167.7, which requires service of all CEQA pleadings on the Attorney General, and Code of Civil Procedure section 388, which requires pleadings alleging environmental damage to be served on the Attorney General. CEQA's service requirement "has the effect of informing that office of the action and permits the Attorney General to lend its power, prestige and resources to secure compliance with CEQA and other environmental laws. . . ." (*Schwartz v. City of Rosemead* (1984) 155 Cal.App.3d 547, 561.) "(T)he Attorney General can intervene in an action to enforce compliance with CEQA." (*Id*. at p. 556, fn. 7.) Protecting tribal cultural resources is in the public interest. As described above, the Tribe's Petition alleges that Respondents violated CEQA and that the Project will result in irreparable harm to invaluable tribal cultural resources. (*See* Pub. Resources Code, § 21084.2.)

In looking at the procedural history, the initial motion to intervene was moot when this court dismissed the petition after sustaining the demurrer. Res judicata prevents parties from relitigating the same cause of action in a second suit after there is final judgment on the merits. (*Mycogen Corp. v. Monsanto Co.* (2002) 28 Cal. 4th 888, 896.)

The People's second motion for leave to intervene is timely because the case is at an early stage and no party could be prejudiced by intervention at such an early juncture. When a provision of law confers an unconditional right to intervene, as Government Code section 12606 does here, courts still inquire into whether the motion is timely. (Code of Civ. Proc. § 387, subd. (d); *Mar v. Sakti International Corp*. (1992) 9 Cal.App.4th 1780, 1784.)

The Motion filed by the People of the State of California ("People") to Modify the Sealing Order is GRANTED. Granting the People access to the Confidential Record is appropriate as the Court has granted the motion to intervene because the People will become a party to Case No. CU-22-00249 and the Sealing Order specifies that "parties and their respective attorneys" will have access to the Confidential Record. (Sealing Order, 9:14.)

As "master of its own files," a trial court has significant discretion over its sealing orders. (*In re Marriage of Nicholas* (2010) 186 Cal.App.4th 1566, 1578 [citations omitted].) Sealing orders can be modified upon "changed circumstances." (*Id*. at p. 1575.) And sealing orders can be modified by the "same judge or by his or her predecessor" in the same case. (*Id*. at pp. 1577-1578.)

The People's motion to intervene is granted and the People will become a party to the case. This changed circumstance justifies modifying the Sealing Order to provide the People with access to the Confidential Record, which will ensure that the People can fully participate as a party in the case

The People's Request for Judicial Notice is granted.

CU-24-00110 California Mutual Insurance Company vs. State Farm General Insurance Company

Defendant State Farm General Insurance Company's ("State Farm") Demurrer to the First Amended Complaint's ("FAC") Third Cause of Action for Breach of Implied Covenant of Good Faith and Fair Dealing is OVERRULED.

A demurrer tests whether, as a matter of law, the facts plaintiff has alleged in the complaint constitute a cause of action under any legal theory. (*C.W. Johnson & Sons, Inc. v. Carpenter* (2020) 53 Cal. App. 5th 165, 168.) Only the legal sufficiency of the factual allegations is tested, not the truth or accuracy of the facts alleged. The court must assume the truth of all properly pleaded factual allegations. A demurrer is not the proper method to test the merits of the plaintiff's case. (*Tenet Healthsystem Desert, Inc. v. Blue Cross of Cal.* (2016) 245 Cal. App. 4th 821, 834, n. 13.) Since a demurrer challenges defects on the face of the complaint, it can only refer to matters outside of the pleadings that are subject to judicial notice (*Id.* at 831.) The court must treat the demurrer as an admission of all material facts that are properly pleaded in the challenged pleading or that reasonably arise by implication, however improbable those facts may be. (*Collins v. Thurmond* (2019) 41 Cal. App. 5th 879, 894.) A demurrer does not admit contentions, deductions, or conclusions of fact or law alleged in the challenged pleading. A demurrer may address all or party of a complaint, cross complaint, or answer. (Cal. Code Civ. Proc. §§430.10, 430.20. 430.50.) Generally, a party may demur that the complaint fails to state facts sufficient to state a cause of action. (Cal. Code Civ. Proc §430.10(e).) The only issue thus involved in such general demurrer is whether the complaint, as it stands states a cause of action. (*McKenney v. Purepac Pharm. Co.* (2008) 167 Cal. App. 4th 72, 77.)

State Farm contends that the FAC does not allege that California Mutual received an assignment of rights against State Farm, does not allege that California Mutual was a party to the State Farm policy, or a third party beneficiary. (Demurrer 6:5-9.)

Upon paying a loss, an insurer automatically becomes subrogated to the insured's right of action against any person responsible for the loss. (*Rossmoor Sanitation, Inc. v. Pylon, Inc*. (1975) 13 Cal.3d 622, 633.) The insurer's subrogation rights arise by operation of law – no assignment of the insured's cause of action is necessary. (*National Union Fire Ins. Co. of Pittsburgh, PA v. Cambridge Integrated Services Group, Inc*. (2009) 171 Cal.App.4th 35, 55.) An excess insurer, who has defended or paid a loss stands in the shoes of the insured, is permitted to assert all claims against the primary insurer which the insured could have asserted. (*Ace American v. Fireman's Fund Ins. Co.* (2016) 2 Cal.App.5th 159, 167, quoting *Commercial Union Assurance Companies v. Safeway Stores, Inc.* (1980) 26 Cal.3d 912, 917-91.)

The cases that Defendant cites in support of its argument can be distinguished. In *Guenberg v. Aetna Ins. Co*. (1973) 9 Cal. 3rd 566, the decision reversed on demurrer on a bad faith cause of action, confirming that a primary insurer's duty to accept a reasonable settlement offer is part of the covenant of good faith and fair dealing. (*Id*. at 573.) The insurers' argument that it should not be liable for bad faith because the insured breached its own obligations under the policy was rejected. Here the Defendant asks the court to excuse liability for bad faith based on the ground that California Mutual did not breach its policy and stepped into State Farm's shoes after it declined to defend, and protected their mutual insured. Defendant may not immunize itself from bad faith by Plaintiff's good faith actions, and to read Gruenberg as supporting this position overextends the position taken by the Court. *Gulf Ins. Co. v. TIG Ins. Co* (2001) 86 Cal App. 4th 422 is not on all fours, as it addresses a surety bond rather than a liability policy, and the bond was not intended to cover the kinds of damage suffered by the injured party. (*Id.* at 427.) *Public Service Mut. Ins. Co. v. Liberty Surplus Ins. Corp.* (2017, E. D. Calif.) WL 3601381, distinguishes Gulf and denied the insurers' motion for reconsideration of the denial of their summary judgment motion, there was no tort cause of action for bad faith against a surety. However, the nature of insurance policies supports tort liability for breach of the covenant of good faith and fair dealing.

Without this, an insurer could arbitrarily deny a claim, wreaking havoc with a policy holder's benefits of their agreements, and if they chose wrong, the insurer would be no worse off than they would be if they honored the claims. (*Pulte Home Corp. v. Amer. Safety Indemnity Co.* (2017) 14 Cal. App. 5th 1086, 1125.)

This case, by contrast, involves allegations that an excess insurer that paid on account of the harm the insured suffered – absence of a defense – when the primary insurer breached its duty to defend. Unlike an excess insurer whose policy might be triggered through satisfaction of an underlying limit that either the insured or a primary insurer could satisfy, California Mutual here was required by its policy to drop down and defend its insured only because State Farm had breached its primary defense obligation. As a result, the demurrer is overruled.

CU-24-00126 Thompson, et al. vs. San Benito Health Care District, et al.

San Benito Health Care District ("SBHCD") (dba Hazel Hawkins Memorial Hospital) Demurrer to the First Amended Complaint ("FAC") is SUSTAINED with leave to amend. Plaintiff is to file the amended complaint within 20 calendar days of the date of this order.

As Defendant notes, when a complaint is made against a public entity, there is a prerequisite that the Plaintiff must comply with the Government Code's requirements to present the claim in a timely manner in accordance with the statute before filing a complaint with the court. (Cal. Govt. §945.4.) Complaints that do not allege facts demonstrating either that a claim was timely presented or that compliance with the claim statute is excused are subject to a general demurrer for failure to state facts consistent to frame a cause of action. (*State of Cal. v. Sup Ct. (Bodde)* (2004) 32 Cal. 4th 1234, 1245.) The failure to properly present a government claim to a public entity may be adjudicated on demurrer. (*Rubenstein v. Doe (*2017) 3 Cal.5th 903 903, 914-15.)

Here, the only fact pertaining to presentation of the claims letter by plaintiffs to SBHCD is that the claims letter was attached as an exhibit to the complaint filed May 29, 2024, and that the summons and complaint were served on or about August 8, 2024. There are no facts alleged in the FAC regarding the identity of the clerk, secretary, auditor or board member of SBHCD who was served with the claims letter. There are no facts alleging the date

that a qualified individual pursuant to Government Code §915 was served, and there are no facts upon which this court can rely in the first amended complaint to reasonably conclude that the November 30, 2023, letter was properly served upon an individual identified in Government Code §915, as a prerequisite to the filing of this claim. The allegations presented in the FAC provide not facts, but rather a conclusion, that the Defendant's clerk, secretary, auditor, and Board of Defendant . . . ." actually received their claim. This is a conclusion that Plaintiff draws from having mailed a claim letter to the principal offices of the Defendant SBHCD . No facts which support this conclusion are framed in the FAC. Here, the assertion that the claim letter was "actually received" is a conclusion as the complaint does not plead facts sufficient to support that it was "actually received" but the Defendant's clerk, secretary, auditor, or Board of Directors.

CU-24-00147 Espinola vs. Van

Defendant Pan's Motion pursuant to Code of Civil Procedure section 473(b) to Set Aside Default as to Defendant Pan is GRANTED. Defendant Pan's Answer will be filed.

Code of Civil Procedure section 473(b) grants broad discretion to courts to set aside a judgment, dismissal, or other proceeding if a party or their legal representative made a mistake, was surprised, or acted with excusable neglect. A court may "upon any terms as may be just relieve a party or his legal representative from a judgment, dismissal, order, or other proceeding taken against him or her through his or her mistake, inadvertence, surprise, or excusable neglect." (Cal. Code Civ. Proc. §473).

The public policy of this state is to interpret this statute with great liberality in granting relief to foster the policy of having matters tried on their merits. (*Rodriguez v. Brill* (2015) 234 Cal.App.4th 715, 725.) Doubts in applying this section must be resolved in favor of the party seeking relief from default because the law favors disposing of cases on their merits. (*Rappleyea v. Campbell*. (1994) 8 Cal.4th 975, 980.) In support of such a motion, the moving party must show good cause for that relief by proving the existence of a satisfactory excuse for the occurrence of that mistake. (*Dill v. Berquist Const. Co*. (1994) 24 Cal.App.4th 1426, 1440.) A mistake of fact is when a person understands facts to be other than they are, and

excusable neglect whether or not the result of mistake, may support setting aside an order under CCP§473. (*In re Marriage of Kerry* (1984) 158 Cal.App.3d 456, 465.)

Here, after having been served with the First Amended Complaint, the evidence supports the contention that Mr. Pan received, what he believed was, sound legal advice from Ms. Chen. He believed she was someone knowledgeable in the law and was indeed an attorney working on the case and she did nothing to disabuse Mr. Chen of his error. He was mistaken in his belief of the facts. Relying on Ms. Chen's advice and assurances, Defendant Pan followed her instructions and chose to ignore the First Amended Complaint. Defendant Pan's actions were based on the misunderstanding created by Defendant Van's representations and Ms. Chen's advice, which he reasonably believed to be legally sound. This misunderstanding ultimately led to Defendant Pan's failure to respond, resulting in the default at issue.

Plaintiff's Request for Judicial Notice is granted.

CU-24-00150 Mosqueda, et al. vs. K. Hovnanian at Ladd Lane Rach, LLC, et al

The court has read and considered Plaintiffs' case management conference statement. The case management conference is continued to May 5, 2025 at 10:30 a. m. Plaintiffs to provide notice of the hearing.

CU-24-00192 Infinity Staffing Services, Inc. vs. ICU Eyewear, Inc. et al

The unopposed Motions to be Relieved as Counsel for ICU Eyewear Holdings Inc and ICU Eyewear, Inc are GRANTED as requested.

An attorney may be permitted to withdraw without offending the rule against corporate self representation. (*Ferrazzo v. Sup. Ct.* (1980) 104 Cal. App. 3rd 501, 504.) Pursuant to Business and Professions Code section 6068(e), an attorney has a duty to maintain the confidentiality of their client. However, they may plead in general terms, in support of a motion to be relieved, as is done here: that there has been a breakdown of the attorney- client relationship such that it has become unreasonably difficult to carry out representation. (Cal. Rule of Court Rule 3.700(C)(1)(d).)

Here, Counsel has followed all necessary procedural requirements for this motion, and framed to the satisfaction of the court that the attorney-client relationship has broken down in that there is no longer any officer or director of the corporation with whom he may communicate rendering it unreasonably difficult to carry out representation.

CU-24-00265 Petition of Christopher Tyler

The Petition is APPROVED as requested.

PR-23-00051 Estate of Floyd L. Jordan, Jr.

The matter is continued to allow Petitioner to provide notice of the new hearing date. Notice was previously given by Petitioner regarding a January 15, 2025 hearing. However the hearing was continued to February 3, 2025 by the court and the court only notified Petitioner and Petitioner's counsel of the new hearing date. The hearing is continued to March 3, 2025 at 10:30 a.m.

PR-24-00104 Conservatorship of Gabriel Gutierrez Pinon

The hearing is continued to February 24, 2025 at 10:30 a.m. to allow for the completion of the investigation.

PR-24-00124 Estate of Ted L. Stephens

The Petition is APPROVED as requested. Bond is waived. Lucia Areias is appointed as referee. Full authority is granted to administer the estate under the Independent Administration of Estates Act. Petitioner is to file an Inventory and Appraisal within four months of issuance of letters (Prob. Code section 8800(b)) and either a petition for an order for final distribution of the estate or a report of status of administration within the timeframe set out in Probate Code section 12200.

The matter is set for hearing on August 4, 2025 at 10:30 a.m. for status of estate or final account and distribution. No appearances at the hearing will be required if the court determines that administration of the estate is timely proceeding, or good cause is shown why more time is required.

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PR-24-00125 In Re: In the Matter of The Toni J. Caputo Renz Trust

The Petition to Terminate the Trust is APPROVED as requested.

PR-24-00126 In The Matter of The Terri L Caputo Beam Trust

The Petition to Terminate the Trust is APPROVED as requested.

PR-24-00127 In Re: In the Matter of the Sandra J. Caputo Williams Trust

The Petition to Terminate the Trust is APPROVED as requested.

PR-24-00128 In Re: In the Matter of Perter A. Caputo Trust

The Petition to Terminate the Trust is APPROVED as requested.

PR-24-00129 In Re: In The Matter of the Caputo Children's Trust dated November 12, 1992

The Petition to Terminate the Trust is APPROVED as requested.

END OF TENTATIVE DECISIONS

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