

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF SAN MATEO

Law and Motion Calendar
HONORABLE SUSAN GREENBERG
Department 3

400 County Center, Redwood City
Courtroom 2B

Friday, July 13, 2018

NOTICE TO ALL COUNSEL

Until further order of the Court, no endorsed-filed "courtesy copy" of pleadings is required to be provided to the Law and Motion Department.

IF YOU **INTEND TO APPEAR** ON ANY CASE ON THIS CALENDAR, YOU MUST DO THE FOLLOWING:

1. YOU MUST CALL (650) 261-5019 BEFORE 4:00 P.M. TO INFORM THE COURT OF YOUR INTENT TO APPEAR.
2. You must give notice before 4:00 P.M. to all parties of your intent to appear pursuant to California Rules of Court 3.1308(a)(1).

Failure to do both items 1 and 2 will result in no oral presentation.

Notifying CourtCall with your intent to appear is not an alternative to notifying the court.

All Counsel are reminded to comply with California Rule of Court 3.1110. The Court will expect all exhibits to be tabbed accordingly.

Case

Title / Nature of Case

9:00

LINE: 1

16-CLJ-02267 CAVALRY SPV I, LLC VS. FELIX JUAMIZ ESMILLA, ET AL.

CAVALRY SPV I, LLC
FELIX JUAMIZ ESMILLA

JASON M. BURROWS

MOTION TO TRANSFER

TENTATIVE RULING:

The motion to change venue is granted. Plaintiff shall pay the costs of the transfer. CCP §399.

If the tentative ruling is uncontested, it shall become the order of the Court, pursuant to Rule 3.1308(a)(1), adopted by Local Rule 3.10, effective immediately, and no formal order pursuant to Rule 3.1312 or any other notice is required as the tentative ruling affords sufficient notice to the parties.

9:00

LINE: 2

17-CIV-00720 SANDRA P. MCIVER VS. TEG PARTNERS, LLC, ET AL.

SANDRA P. MCIVER
TEG PARTNERS, LLC

PETER N. BREWER
PRO/PER

MOTION TO COMPEL

TENTATIVE RULING:

This hearing is dropped from calendar at the request of the parties.

If the tentative ruling is uncontested, it shall become the order of the Court, pursuant to Rule 3.1308(a)(1), adopted by Local Rule 3.10, effective immediately, and no formal order pursuant to Rule 3.1312 or any other notice is required as the tentative ruling affords sufficient notice to the parties.

9:00

LINE: 3

17-CIV-02547 DERRICK BURNS, ET AL. VS. SUNEET SINGAL, ET AL.

DERRICK BURNS
SUNEET SINGAL

ADAM M. FOREST
JOSHUA D. BRINEN

MOTION TO SANCTION

TENTATIVE RULING:

On June 28, 2018, defendants filed a stipulation indicating that their attorney, Joshua Brinen, must withdraw due to a conflict that cannot be waived. As a result, the hearing is continued to August 23, 2018 so that defendants may retain new counsel.

9:00

LINE: 4

17-CIV-02547 DERRICK BURNS, ET AL. VS. SUNEET SINGAL, ET AL.

DERRICK BURNS
SUNEET SINGAL

ADAM M. FOREST
JOSHUA D. BRINEN

MOTION TO SANCTION

TENTATIVE RULING:

On June 28, 2018, defendants filed a stipulation indicating that their attorney, Joshua Brinen, must withdraw due to a conflict that cannot be waived. As a result, the hearing is continued to August 23, 2018 so that defendants may retain new counsel.

9:00

LINE: 5

17-CIV-03501 NAPEAN CAPITAL GROUP, LLC, ET AL. VS. SELECT PORTFOLIO
SERVICING, INC., ET AL.

NAPEAN CAPITAL GROUP, LLC
SELECT PORTFOLIO SERVICING, INC.

CARLOS A. ALVAREZ
THOMAS A. WOODS

MOTION TO COMPEL

TENTATIVE RULING:

Plaintiff's motion to compel further responses is granted as follows.

As noted in the Court's initial ruling, Plaintiff's motion is defective for lack of a Separate Statement of Requests and Responses in Dispute. No later than July 20, 2018, Plaintiff shall file and serve a Separate Statement of Requests and Responses at issue. (See CRC Rule 3.1345.)

No later than 14 calendar days after Plaintiff files and serves the Separate Statement, Defendant Quality shall serve a privilege log in compliance with Code of Civil Procedure section 2031.240, subdivisions (b) and (c), identifying every document withheld under privilege. The log shall set forth sufficient information to disclose the factual and legal basis of the claim of privilege. The log shall identify each document that is withheld from production under each category to which the document would otherwise be responsive.

No later than 30 calendar days after service of the privilege log, Plaintiffs may move for an in camera inspection of any document it contends does not qualify for a privilege designation. Any motion for in camera inspection shall be accompanied by a meet and confer declaration under Code of Civil Procedure section 2016.040. (See *id.* section 2031.310, subd. (b)(2).) If no motion is timely filed, Plaintiffs waive any right to seek an in camera inspection of the documents at issue.

Code of Civil Procedure section 1013, subdivision (a) shall apply to this ruling as it pertains to extensions of deadlines for performing any act.

The request for sanctions is denied.

If the tentative ruling is uncontested, it shall become the order of the Court. Thereafter, counsel for Plaintiffs shall prepare a written order consistent with the Court's ruling for the Court's signature, pursuant to California Rules of Court, Rule 3.1312, and provide written notice of the ruling to all parties who have appeared in the action, as required by law and the California Rules of Court.

9:00

LINE: 6

17-CIV-04134 NICOLOSI DISTRIBUTING, INC. VS. L&J AUTO WORKS &
TOWING,
INC., ET AL.

NICOLOSI DISTRIBUTING, INC.
L&J AUTO WORKS & TOWING, INC.

ELIZABETH BETOWSKI
DAVID M. SLOAN

MOTION TO STRIKE

TENTATIVE RULING:

The moving party failed to file a declaration, as required by CCP §435.5(a)(3), showing that the parties met and conferred, in person or by telephone, for the purpose of determining whether an agreement could be reached to resolve the objections to be raised in the motion to strike. Consequently, the hearing on the motion is continued to August 20, 2018 at 9:00 a.m. in the Law and Motion Department so that the parties may meet and confer. The moving party is required to file, no later than 7 days prior to the new hearing date, a code-compliant declaration stating either (1) the parties have met and conferred in person or by telephone and (a) the parties have resolved the objections raised in the motion, which shall be taken off calendar or (b) the parties did not reach an agreement resolving the objections raised in the motion or (2) the party who filed the pleading subject to motion failed to respond to the meet and confer request or otherwise failed to meet and confer in good faith. If the moving party fails to file and serve the declaration demonstrating compliance with the requirements of Section 435.5, the motion will be stricken as procedurally improper.

9:00

LINE: 7

17-CIV-04951 YOSELIN YOSEFINA MEDINA VS. CASTANO ELEMENTARY SCHOOL,
ET AL.

YOSELIN YOSEFINA MEDINA
CASTANO ELEMENTARY SCHOOL

PRO/PER
MARK E. DAVIS

HEARING ON DEMURRER

TENTATIVE RULING:

The demurring party failed to file a declaration, as required by CCP §430.41(a)(3), showing that the parties met and conferred, in person or by telephone, for the purpose of determining whether an agreement could be reached to resolve the objections to be raised in the demurrer. The declaration of Patrick Malloy indicates only that def attempted to meet and confer with respect to a prior demurrer. Consequently, the hearing on the demurrer is continued to August 9, 2018 at 9:00 a.m. in the Law and Motion Department so that the parties may meet and confer. The demurring party is required to file, no later than 7 days prior to the new hearing date, a code-compliant declaration stating either (1) the parties have met and conferred and (a) the parties have resolved the objections raised in the demurrer, which shall be taken off calendar or (b) the parties did not reach an agreement resolving the objections raised in the demurrer or (2) the party who filed the pleading subject to demurrer failed to respond to the meet and confer request or otherwise failed to meet and confer in good faith. If the parties fail to file and serve the declaration demonstrating compliance with the requirements of Section 430.41, the demurrer will be stricken as procedurally improper.

9:00

LINE: 8

17-CIV-05003 SHIN LANG PANG VS. BANK OF AMERICA, N.A., ET AL.

SHIN LANG PANG
BANK OF AMERICA, N.A.

STEPHEN R. GOLDEN
JOEL C. SPANN

HEARING ON DEMURRER

TENTATIVE RULING:

As did Defendant Bank of America, N.A.'s (BANA) Notice of Demurrer pertaining to Plaintiff Shin Lang Pang's First Amended Complaint (FAC), BANA's Notice of Demurrer to Plaintiff Pang's Second Amended Complaint (SAC) again states that Pang's Complaint fails to state a cause of action against "MERS." As stated previously (see 4-12-18 Minute Order), MERS is not a party to the case. Because this appears to have been a typographical error in the Notice and was not raised in the Opposition, however, the Court will address BANA's Demurrer to the SAC on the merits.

The Court notes that following the Court's 4-12-18 Order sustaining BANA's Demurrer to the FAC, Plaintiff filed the present SAC, which differs from the FAC only with respect to two sentences (the last sentence of ¶30, and the first sentence of ¶141). For the reasons set forth below, as to all asserted claims in the SAC, BANA's Demurrer is SUSTAINED WITH LEAVE TO AMEND. The Court notes that it grants leave to amend only in light of the Court's generally liberal stance in this regard, although it appears some of the asserted claims are not capable of amendment.

As to the first, second, and third causes of action for "lack of title and standing (Civ. Code 2924(a)(6)) (wrongful foreclosure)," "cancellation of instruments," and declaratory relief, as stated previously (see 4-12-18 Order), in a pre-foreclosure suit, a Plaintiff lacks standing to contest an assignment. *Jenkins v. JPMorgan Chase Bank, N.A.* (2013) 216 Cal.App.4th 497. *Yvanova v. New Century Mortgage Corp.* (2016) 62 Cal.4th 919, 942-943, cited by Plaintiff, involved a *post-sale* challenge to an assignment, and the Supreme Court there expressly noted that the holding does not apply in a pre-sale context where a Plaintiff seeks to enjoin a sale. The SAC here does not allege that a sale has occurred. Further, unlike the cited case law involving an assignment of a Deed of Trust (DOT) to a trust, here, the DOT was assigned to a bank, not to a trust. (SAC, Ex. D.) Because the second cause of action for "cancellation of instruments" and the third cause of action for declaratory relief appear based on the same arguments relating to the assignment of the DOT, they fail for the same reasons.

As to the fourth cause of action for violation of Civ. Code Sect. 2923.55, the statute was repealed effective 1-1-18.

As to the fifth cause of action for violation of Civ. Code Sect. 2923.7, as stated previously (see 4-12-18 Order), the SAC does not allege Plaintiff ever requested a single point of contact (SPOC). See Sect. 2923.7 (“Upon request from a borrower ... the mortgage servicer shall promptly establish a single point of contact ...”). The statute does not establish an affirmative duty to appoint a SPOC absent a request.

As to the sixth cause of action for violation of Civ. Code Sect. 2924.17, as with the FAC, the SAC again alleges BANA filed false declarations pertaining to the original NOD, which BANA rescinded on 10-7-16. (See OPP. at 14, arguing that a declaration dated April 2014, two years before the original NOD was rescinded, contained false statements). Because the original NOD was rescinded, such declarations cannot form the basis for this claim. Civ. Code Sect. 2924.12(c). The SAC does not appear to allege any false declarations filed with the 2017 NOD or later recorded documents.

As to the seventh cause of action for violation of Civ. Code Sect. 2924.18, the statute was repealed effective 1-1-18.

The eighth cause of action for negligence is based on BANA’s alleged negligent handling of Plaintiff’s loan modification application(s). Providing a loan, and/or modifying an existing loan, are activities that fall squarely within a lender’s/servicer’s role as a lender of money, and thus cannot form the basis of a negligence claim. *Nymark v. Heart Fed. Savings & Loan Assn.* (1991) 231 Cal.App.3d 1089, 1095-96. This is the same basis on which the Court previously sustained BANA’s Demurrer to the FAC, yet the allegations supporting this claim remain unchanged.

The ninth cause of action for quiet title seeks a determination that Plaintiff is the property’s sole owner, that Defendants have no interest in it and can never assert any interest in the property, and requests that the property be “returned” to Plaintiff. The claim is based on the allegedly defective DOT assignment, which fails for the reasons stated above. Further, the SAC appears to concede that Plaintiff defaulted on the loan. There are no alleged facts supporting a request to quiet title in Plaintiff’s favor. Further, no Notice of Trustee’s Sale is pending, no sale has occurred, and Plaintiff remains in the property. Thus, there is no basis for requesting that the property be returned to Plaintiff.

As to the tenth cause of action for an accounting, as stated previously, an accounting is a remedy, not a cause of action. *Batt v. City and County of San Francisco* (2007) 155 Cal.App.4th 65, 82. To the extent Plaintiff seeks an accounting, it should be alleged as a remedy for another viable cause of action.

As to the eleventh cause of action for violation of Bus. & Prof. Code Sect. 17200, *et. seq.*, a Sect. 17200 claim stands or falls depending on the fate of the antecedent substantive causes of action. *Krantz v. BT Visual Images, LLC* (2001) 89 Cal.App.4th 164, 178. Because the underlying claims fail to state a claim, so does the Sect. 17200 claim. Further, the SAC does not allege the requisite loss of money or property caused by Defendant’s actions. Bus. & Prof. Code Sect. 17204. As alleged, Plaintiff remains in the property, which has not been sold.

The twelfth cause of action for violation of TILA, 15 USC 1601, *et. seq.* is barred by the three-year statute of limitations governing TILA claims. 15 USCA 1635(f); *Kelley v. MERS* (N.D. Cal. 2009) 642 F.Supp.2d 1048, 1059; *McOmie-Gray v. Bank of Am. Home Loans*, 667 F.3d 1425, 1329 (9th Cir. 2012).

The thirteenth cause of action for rescission appears based on the TILA claim, which fails for the reason stated above. Also, rescission is a remedy, not a cause of action.

Defendant BANA's Request for Judicial Notice (RJN) is GRANTED as to the recorded Notice of Rescission (Ex. A) and the recorded Deed of Trust (Ex. B). Evid. Code Sect. 452(c); *Evans v. Calif. Trailer Court, Inc.* (1994) 28 Cal.App.4th 540, 549 (the Court may take judicial notice of recorded deeds).

If the tentative ruling is uncontested, it shall become the order of the Court, pursuant to CRC Rule 3.1308(a)(1), adopted by Local Rule 3.10. If the tentative ruling is uncontested, DEMURRING PARTY is directed to prepare, circulate, and submit a written order reflecting this Court's ruling verbatim for the Court's signature, consistent with the requirements of CRC Rule 3.1312. The proposed order is to be submitted directly to Judge Susan L. Greenberg, Department 3.

9:00

LINE: 9

18-CIV-02021 246 ATHERTON JOY, LLC VS. MOHAMMAD MORTAZAVI, ET AL.

246 ATHERTON JOY, LLC
MOHAMMAD MORTAZAVI

CONSTANTINE M. PANAGOTACOS

HEARING ON DEMURRER

TENTATIVE RULING:

The Demurrer of Defendants Mohammad Mortazavi, Pinnacle Group Corp. and Mega International and Construction Corp. (“Defendants”) to the Complaint of Plaintiff 246 Atherton Joy, LLC (“Plaintiff”) is OVERRULED. Defendants have not provided any authority that Plaintiff must specifically allege that Defendants are “builders.” Moreover the facts alleged by Plaintiff support that Defendant Mohammad Mortazavi is liable as a builder. Plaintiff alleges that it provided written notice of the defects to Defendant Mortazavi pursuant to section 895 et seq., and further provided an additional list of defects following additional investigation and testing. (Comp. para. 18.) Also, despite a comprehensive investigation by both Plaintiff and Defendant Mortazavi, Defendant Mortazavi failed to make a timely offer to repair the defects pursuant to Civil Code section 917. (Comp. para. 19.) Plaintiff further alleges that Defendants Pinnacle Group Corp. and Mega International and Construction Corp. are the alter egos of Defendant Mortazavi. (Comp. paras. 14-15.) Thus, Plaintiff alleges facts sufficient to support this claim against Defendants under the Right to Repair Act.

Defendants are to file and serve an Answer by August 3, 2018.

If the tentative ruling is uncontested, it shall become the order of the Court, pursuant to Rule 3.1308(a)(1), adopted by Local Rule 3.10, effective immediately, and no formal order pursuant to Rule 3.1312 or any other notice is required as the tentative ruling affords sufficient notice to the parties.

9:00

LINE: 10

CIV527902 JOHN E. FERRY VS. LAURA J. WONS

JOHN E. FERRY
LAURA J. WONS

PRO/PER
PRO/PER

MOTION TO COMPEL FURTHER
TENTATIVE RULING:

The court will exercise its discretion to consider the late opposition filed on July 3, 2018. Consequently, the motion is continued to August 20, 2018. Plaintiff may file a supplemental reply no later than August 13, 2018.

9:00

LINE: 11

CIV538389 LEONARD DESOMMA VS. PACIFIC GAS AND ELECTRIC

LEONARD B. DESOMMA
PACIFIC GAS AND ELECTRIC COMPANY

GEORGE P. ESHOO
MARK J. HANCOCK

MOTION FOR APPROVAL

TENTATIVE RULING:

The motion for good faith settlement determination is DENIED for failure to serve non-settling defendant Underground Construction Company, Doe Defendant number five.

If the tentative ruling is uncontested, it shall become the order of the Court, pursuant to Rule 3.1308(a)(1), adopted by Local Rule 3.10, effective immediately, and no formal order pursuant to Rule 3.1312 or any other notice is required as the tentative ruling affords sufficient notice to the parties.



POSTED: 3:00 PM