

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

Law and Motion Calendar
Judge: HONORABLE SUSAN GREENBERG
Department 3

400 County Center, Redwood City
Courtroom 2B

Thursday, June 14, 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-CIV-02016 CLARK LEE FORD VS. MERYL YANG, ET AL.

CLARK LEE FORD
MERYL YANG

PRO/PER
CHRISTOPHER W. RIVERA

MOTION TO COMPEL

TENTATIVE RULING:

The unopposed motion is granted. Plaintiff shall provide verified responses, without objection, to the interrogatories and inspection demand within 14 days.

The request for sanctions is also granted pursuant to CCP §§2030.290(c), 2031.300(c). Plaintiff shall pay defendant \$540 within 14 days.

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

16-CIV-03005 AHLAM ALKHATEEB VS. MELANIE M. HILDEBRAND, ET AL.

AHLAM ALKHATEEB
MELANIE M. HILDEBRAND

IKE M. KALUDI
ALISON M. CRANE

MOTION TO COMPEL

TENTATIVE RULING:

The hearing on this motion is continued to July 10, 2018 at 9 am, pursuant to Stipulation.

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-04209 ROGELIO CORTEZ, ET AL. VS. NEW PENN FINANCIAL, LLC, ET AL.

ROGELIO CORTEZ
NEW PENN FINANCIAL, LLC

MARK W. LAPHAM
SHERI GUERAMI

HEARING ON DEMURRER

TENTATIVE RULING:

A. First Cause of Action.

Demurrer to the first cause of action is overruled. A demurrer must dispose of an entire cause of action. The first cause of action alleges four violations of Civil Code section 2923.6. To succeed, therefore, the demurrer must show that the Complaint fails to state a claim as to all four violations.

1. *The Complaint Alleges that the Property Was Owner-Occupied.*

The Complaint alleges that the property is owner-occupied. (SAC ¶¶ 1 & 51.) Defendant argues that it is a rental property, based on Plaintiffs' listing a different address on a Complaint in a previous lawsuit. (Moving RJN Exhibit F). That complaint is from 2011. It does not show that Plaintiffs lived at that different address when the allegedly wrongful acts occurred. Regardless, the court can take judicial notice of the Complaint, but not the truth of Plaintiffs' listed address. Former Section 2924.15 expired January 1, 2018. Current section 2924.15 does not impose the "owner occupied" restriction on section 2923.6. Regardless, former section 2924.15 did not impose a pleading requirement that a complaint must allege that the property was owner occupied.

2. *Plaintiffs Sufficiently Allege a Material Violation.*

A violation is material if it causes a specific harm to the borrower which affects the "borrower's loan obligations or the modification process." (*See Cornejo v. Ocwen Loan Servicing, LLC* (ED. Cal. 2015) 151 F. Supp. 3d 1102, 1113.) Plaintiffs argue that Defendants' violations caused an "inability to modify the terms of their mortgage." (SAC para. 59.) Plaintiffs allege that Defendants failed to inform Plaintiffs about their "appeal rights" after their application was denied. (SAC para. 55.) On its face, the allegation is sufficient to allege a violation of statute that affected Plaintiffs' loan "modification process."

3. *Plaintiffs' Prior Loan Modification Does not Bar Their Present Claim.*

Former section 2923.6(g) precluded a loan modification application if the borrower had already been considered for a loan modification “prior to January 1, 2013.” Defendants argue that Plaintiffs already received a loan modification from Bank of America, which precludes them from a second modification. However, the Bank of America modification occurred in August 2013. (See Defendant’s RJN Exhibit K.) The prohibition of former section 2923.6(g) does not apply since Plaintiff’s loan modification occurred after January 1, 2013.

4. *Plaintiffs Fail To Allege a Violation of Civil Code Section 2923.6(c)(1)*

Plaintiffs allege that on August 3, 2017, while their loan modification appeal was pending, a Notice of Trustee’s Sale was recorded. (SAC para. 57.) Plaintiffs concede that as of that date, they had not submitted a “complete” application. Since the application was not yet complete, the sending of Notice of Trustee’s Sale does not run afoul of section 2923.6(c).

5. *Plaintiffs Fail To Allege A Violation of Civil Code 2923.6(d).*

Former Section 2923.6(d) provided that a borrower has 30 days to appeal a written denial of loan modification application. The complaint is unclear about how a violation of Section 2923.6(d) occurred. The Complaint expressly states that Defendant advised Plaintiffs to appeal and that Plaintiffs did so. (SAC para. 40.) The first cause of action fails to allege any violation of section 2923.6(d)

6. *Civil Code section 2923.6(e)(2) and (f)(1)*

Former section 2923.6(e)(2) and 2923.6(f)(1) set forth requirements pertaining to appeals from loan modification denials and denials of appeals. The demurrer argues that Plaintiffs never appealed any denial, since no denial ever occurred. Defendants cite to SAC Exhibits O, U, & W. Reading those documents broadly in Plaintiff’s favor, however, the Complaint implies that their application was denied and that Plaintiffs appealed. (SAC para. 40.) The demurrer fails to dispose of claims arising from sections 2923.6(e)(2) and (f)(1).

7. *Conclusion*

Demurrer to the first cause of action is overruled.

B. Second and Third Causes of Action

Demurrer to the second and third causes of action (negligence, negligent infliction of emotional distress) is sustained without leave to amend. Although a split in authority exists, the weight of authority holds that no general duty of care exists from a lender to borrower. (*See Shupe v. Nationstar Mortg. LLC*, (E.D. Cal. 2017) 231 F. Supp. 3d 597, 605.) Ordinarily, “a lender does not owe a borrower or third party any duties beyond those expressed in the loan agreement, except those imposed due to special circumstance.” (*Resolution Trust Corp. v. BVS Dev.* (9th Cir. 1994) 42 F.3d 1206, 1214 (*citing Nymark.*))

Plaintiffs allege no “special circumstances” under which Defendants actively participated in Plaintiffs’ loan, or which otherwise might change the nature of this relationship from that of an arm’s length loan servicing relationship whose duties are prescribed by contract and statute. For failure to allege a duty of care, the Complaint fails to state a cause of action for negligence or negligent infliction of emotional distress.

C. Fourth Cause of Action

Demurrer to the fourth cause of action is sustained without leave to amend. To have standing to bring a claim under the Unfair Competition Law (UCL), a litigant must have suffered injury in fact and “lost money or property” as a result of the unfair competition. Plaintiffs allege various forms of harm. (SAC para. 90.) None of the damage alleged in paragraph 90 constitutes a loss of money or property. Therefore, they fail to allege facts giving them standing to assert a UCL claim.

Defendants shall file and serve their Answer(s) addressing the first cause of action no later than June 29, 2018.

If the tentative ruling is uncontested, it shall become the order of the Court. Thereafter, Defendant MERS 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: 4

17-CIV-04362 BARRY WILLIAM WATCHEL VS. FACEBOOK, INC.

BARRY WILLIAM WATCHEL
FACEBOOK, INC.

PRO/PER
PAVEN MALHOTRA

MOTION TO VACATE

TENTATIVE RULING:

The motion to vacate orders is continued to August 1, 2018 by order of the Presiding Judge.

9:00

LINE: 5

17-CIV-05277 WELLS FARGO BANK, NA VS. KENDRICK YU, ET AL.

WELLS FARGO BANK, NA
KENDRICK YU

STEVEN B. MAINS
ANDREW QUAN

HEARING ON DEMURRER

TENTATIVE RULING:

Defendant Kendrick Yu's Demurrer to Plaintiff Wells Fargo Bank, N.A.'s (Wells Fargo) 11-16-17 Complaint is **OVERRULED**. The Complaint sufficiently states a cause of action for breach of the alleged Guarantee Agreement. The Complaint alleges the material terms of the agreement, which on demurrer are assumed to be true. It is not required that Plaintiff attach the agreement to the Complaint. Further, contrary to suggestion, the attached contract, although in part illegible, supports the Complaint's allegations; it does not undermine or disprove them. The attached document does not demonstrate (or constitute a "judicial admission") that Plaintiff cannot prove the existence of an agreement by Mr. Yu to guarantee the loan.

Wells Fargo's Opposition brief, in the alternative, requests leave to amend the Complaint. As stated, the Demurrer is overruled. To the extent Wells Fargo still seeks leave to amend despite the overruling of the Demurrer, the request is **GRANTED**. Any amended Complaint shall be filed within five days of this Order.

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: 6

17-CIV-05484 FRANK MOODY, III VS. LOOP TRANSPORTATION, INC., ET AL.

FRANK MOODY
LOOP TRANSPORTATION, INC.

WAUKEEN Q. MCCOY
ROBERT L. LOCKWOOD

APPLICATION TO APPEAR AS COUNSEL PRO HAC VICE

TENTATIVE RULING:

The application of Kimberly Jones to appear pro hac vice is granted.

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: 7

CIV537691 AMBER LAUREL BAPTISTE VS. MICHAEL LEWIS GOGUEN

AMBER LAUREL BAPTISTE
MICHAEL LEWIS GOGUEN

RICHARD L. SHERMAN
DIANE M. DOOLITTLE

MOTION FOR SUMMARY ADJUDICATION OF ISSUES

TENTATIVE RULING:

The hearing on this motion is continued to September 7, 2018 at 9 am.

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.

9:01

LINE: 8

16-CIV-02987 MIKE ROSEN VS. XIAO YAN CHEN

MIKE ROSEN
XIAO YAN CHEN

LAWRENCE D. MILLER
BRADLEY KASS

MOTION FOR ORDER

TENTATIVE RULING:

This motion shall be heard on June 20, 2018 at 9 am, pursuant to Stipulation and Order filed 6-6-18.



POSTED: 3:00 PM