

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

Law and Motion Calendar

Judge: HONORABLE LELAND DAVIS, III
Department 1

400 County Center, Redwood City
Courtroom 4C

Tuesday, February 19, 2019

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-03076 RODNEY RYCE, ET AL. VS. EAST PALO ALTO SANITARY
DISTRICT, ET AL.

RODNEY RYCE
EAST PALO ALTO SANITARY DISTRICT

JON R. PARSONS
STEVEN D. WERTH

EAST PALO ALTO SANITARY DISTRICT, KAREN MAXEY, GLENDA SAVAGE, BETSY
YANEZ, AND JOAN SYKES-MIESSI'S MOTION FOR SUMMARY ADJUDICATION OF
ISSUES

TENTATIVE RULING:

Defendants' motion for summary adjudication is GRANTED, in part, and DENIED, in part, for the reasons set forth below.

As an initial matter, the court notes that Defendants have failed to comply with CRC 3.1350(b), which requires that "[T]he specific cause of action, affirmative defense, claims for damages, or issues of duty must be stated specifically in the notice of motion and be repeated, verbatim, in the separate statement of undisputed material facts." Defendants have not repeated the noticed issues verbatim in their separate statement. Further, Defendants have noticed and briefed issues, relating to Plaintiffs' causes of action for fraud and intentional infliction of emotional distress, which are not addressed in their separate statement of material facts. Nonetheless, the court will exercise its discretion to consider those issues that have been raised in the notice of motion and addressed in Defendants' separate statement. *Truong v. Glasser* (2010) 181 Cal.4th 102, 118.

Issue 1 (Ryce) and Issue 5 (Griffin): Wrongful Termination in Violation of Due Process

Plaintiffs Ryce and Griffin assert causes of action for wrongful termination "in violation of due process" against Defendant EPASD. Neither Ryce nor Griffin, however, has produced any evidence that overcomes the presumption that their employment was "at will." Plaintiffs' claims that they had an expectation of continued employment, and that good cause was required for termination, based solely on the fact of their continued employment and satisfactory performance, are unpersuasive. The court concludes Plaintiffs had no property interest in their employment and, as a result, Plaintiffs could have been terminated for any lawful reason, without notice.

Under the causes of action for "wrongful termination in violation of due process," Plaintiffs also appear to suggest that their termination was wrongful because Defendants violated the law. Plaintiffs, however, have not identified the specific grounds for their claim of unlawful termination under this cause of action. Further, to the extent that Plaintiffs assert a claim of unlawful termination under this cause of action, those claims are redundant of the allegations presented in the claims for retaliatory termination, discrimination, and violation of the Brown Act.

Consequently, Defendants' motion for summary adjudication is GRANTED with respect to Plaintiffs' causes of action for wrongful termination in violation of due process.

Issue 2 (Ryce) and Issue 4 (Griffin): Retaliatory Termination in Violation of Labor Code § 1102.5

With respect to the whistleblower claim asserted by Plaintiff Ryce, Defendants contend that "At no time during his employment did Ryce raise any concerns of illegal or improper conduct with Maxey, during her tenure as EPASD's Interim General Manger, or directly with EPASD's Board of Directors, and they had no knowledge of any such concerns." SSMF 2.5. Similarly, with respect to the claim asserted by Plaintiff Griffin, Defendants assert that "At no time during her employment did Griffin raise any concerns of illegal or improper conduct with Maxey, during her tenure as EPASD's Interim General Manger, or directly with EPASD's Board of Directors, and they had no knowledge of any such concerns." SSMF 4.2.

Plaintiffs dispute these claims. Specifically, Plaintiff Ryce contends he raised concerns with Ms. Maxey about maintaining and preserving recordings and minutes for EPASD meetings. SSMF 2.17. Mr. Ryce's declaration states that when he inquired about the records at a management meeting, Ms. Maxey stated "There are minutes and records that nobody will ever see or hear." Ryce Decl., ¶ 11. Mr. Ryce's account is supported by the declaration of Jackey Wilson, who attended the same meeting. According to Wilson, Ms. Maxey "commented at the time that people did not need access to these recordings and she would put them where no one would hear them." Wilson Decl., ¶ 5. Mr. Ryce further claims he was prohibited by Ms. Maxey from raising concerns with the Board. SSMF 2.5.

For her part, Plaintiff Griffin claims that Defendant Maxey specifically forbade her from asking the Board about their use of public funds. SSMF 4.2. She asserts that she raised concerns about the failure to report Ms. Maxey's hiring to CalPERS, excessive spending on meals and catering, and purchasing electronics for personal use with public funds. Id. Ms. Griffin asserts that, when she raised concerns about the purchase of an Amazon Prime membership and an ID printer, Ms. Maxey "screamed vulgarities at Plaintiff Griffin and shouted that she 'would not be going to jail.'" Id.

Based on this evidence, the court finds Plaintiffs have raised a genuine issue as to whether they reported conduct in violation of state or local laws or regulations. Further, considering the evidence indicating Plaintiffs' attempts to report Defendants' conduct, the court determines that the issue of whether Defendants had a legitimate business reason for eliminating Plaintiffs' positions, or whether Defendants' reason was pretextual, is also an issue to be decided by the trier of fact.

As a result, Defendants' motion for summary adjudication is DENIED as to Plaintiffs' causes of action for wrongful termination in violation of Labor Code § 1102.5.

Issue 3 (Ryce) and Issue 6 (Griffin): Violations of Brown Act

The Brown Act requires that legislative bodies of local agencies hold their meetings open to the public except as expressly authorized by the Act, and it prohibits use of “a series of communications of any kind, directly or through intermediaries, to discuss, deliberate, or take action on any item that is within the subject matter jurisdiction of the legislative body.” Govt. Code §§ 54953, 54962, 54952.2(b)(1). Defendants contend that Plaintiffs have failed to provide any evidence that EPASD or the individual Defendants violated the Act.

Plaintiffs, however, assert that Defendants held secret meetings, indicated by the fact that (1) Defendant Yanez joined Defendant Savage and Defendant Sykes-Miessi in voting in favor of the reorganization without asking any questions during the Board’s hearing on the proposed reorganization; and (2) during her deposition, Defendant Yanez was unable to recall any specific Board meetings to support her testimony that the reorganization was discussed at the District’s Board meetings. While Defendants assert that Plaintiffs must speculate as to whether the Defendants participated in closed meetings or “daisy-chain” communications, the court concludes that Plaintiffs have presented circumstantial evidence raising a genuine issue of fact as to whether Defendants engaged in activities prohibited by the Brown Act.

Consequently, Defendants’ motion for summary adjudication with respect to Plaintiffs’ causes of action for violation of the Brown Act is DENIED.

Issue 7: Age Discrimination in Violation of FEHA

With respect to Plaintiff Griffin’s discrimination claim, Defendants contend that Plaintiff has alleged Ms. Maxey merely made “stray remarks” regarding the age of EPASD employees. Plaintiff Griffin, however, has testified that those remarks, including the remark that she wanted “younger people” to do her job, were specifically addressed to Griffin. SSMF 7.10, 7.11. In any case, however, even stray remarks may be probative of discrimination in conjunction with other circumstantial evidence. *Reid v. Google, Inc.* (2010) 50 C4th 512, 541, 113 CR3d 327, 351. Considering that the court finds a genuine issue as to whether the reason provided by Defendants for Plaintiff Griffin’s termination was pretextual, it is for the trier of fact to determine whether Plaintiff’s claim is supported by additional circumstantial evidence. Ultimately, considering that Defendant does not dispute that Plaintiff was over 40 years old at the time of her termination, that she was replaced by a significantly younger person, or that Plaintiff was satisfactorily performing her job, Plaintiff has alleged facts which, if proven, are sufficient to establish a prima facie case for age discrimination in violation of the FEHA. *Hersant v. California Dept. of Social Services* (1997) 57 CA4th 997, 1002-1003, 67 CR2d 483, 486. Further, the court finds Plaintiff has presented sufficient evidence to call Defendants’ innocent motives into question.

Accordingly, Defendants’ motion for summary adjudication with respect to Plaintiff Griffin’s cause of action for age discrimination is DENIED.

Issue 8: Breach of Covenant of Good Faith and Fair Dealing

Plaintiff Griffin alleges Defendants breached the implied covenant of good faith and fair dealing because she was terminated without good cause. As noted above, however, Plaintiff has failed to set forth evidence rebutting the presumption of at-will employment under Labor Code § 2922. As a result, Plaintiff has no grounds on which to assert a claim for breach of the implied covenant of good faith and fair dealing. The court notes that Plaintiff does not respond to the authority presented by Defendants, *Guz v. Bechtel Nat'l, Inc.*, supra, 24 C4th at 350, 100 CR2d at 375, holding that “in an at-will relationship there is no agreement to terminate only for good cause, the implied covenant standing alone cannot be read to impose such a duty.”

As a result, Defendants’ motion for summary adjudication with respect to Plaintiff Griffin’s cause of action for breach of the covenant of good faith and fair dealing is GRANTED.

Issue 9: Negligent Failure to Prevent

Finally, Defendants contend that Plaintiff fails to establish a cause of action for negligent failure to prevent discrimination, in violation of Cal. Govt. Code § 12940, because Plaintiff Griffin cannot establish a cause of action for age discrimination. As noted above, however, Plaintiff has set forth facts which, if proven, are sufficient to establish a prima facie claim for age discrimination. Because Defendants do not provide any other grounds in opposition to this cause of action, Defendants’ motion is DENIED with respect to Plaintiff’s cause of action for negligent failure to prevent discrimination.

Fraud and Intentional Infliction of Emotional Distress

Defendants also noticed and briefed the issue of summary adjudication with respect to Plaintiffs’ causes of action for fraud and intentional infliction of emotional distress. Defendants, however, did not separately identify or address these issues in their separate statement as required by CCP § 437c(b)(1). As a result, Defendants’ motion for summary adjudication is DENIED with respect to Plaintiffs’ causes of action for fraud and intentional infliction of emotional distress.

If the tentative ruling is uncontested, it shall become the order of the Court. Thereafter, counsel for Defendants 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: 2

17-CIV-04148 HOWARD WOLFE, ET AL. VS. JOHN B. SCULLEY, ET AL.

HOWARD WOLFE
JOHN B. SCULLEY

PATRICK C. KERWIN

DEFENDANTS JOHN B. SCULLEY AND THERESA B. SCULLEY'S MOTION TO VACATE
DEFAULT AND DEFAULT JUDGMENT OR, IN THE ALTERNATIVE, FOR AN ORDER
SHORTENING TIME.

TENTATIVE RULING:

Pursuant to a request from the moving party this matter is ordered OFF CALENDAR.

9:00

LINE: 3

17-CIV-05966 CHUN HO LEE, ET AL. VS. PATRICK FORTUNATE MULLINS, ET AL.

CHUN HO LEE
PATRICK FORTUNATE MULLINS

MONICA BURNEIKIS
ANTHONY F. PINELLI

MOTION TO COMPEL

TENTATIVE RULING:

The motion to compel is GRANTED pursuant to CCP §2032.250. Plaintiff shall appear for a neurological examination no later than March 20, 2019. The examination shall be conducted by Dr. Peter Cassini, M.D. and may include questions about brain functioning relevant to any biological or physical causes of plaintiff's alleged traumatic brain injury and related issues such as memory loss. Plaintiff provides no authority establishing that such questions constitute a mental examination within the meaning of CCP §2032.310.

Defendant's request for sanctions is DENIED.

If the tentative ruling is uncontested, it shall become the order of the Court. Thereafter, counsel for Defendant 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-CLJ-04510 CITIBANK, N.A. VS. ANNEMARIE CRUZ

CITIBANK, N.A.
ANNEMARIE CRUZ

JAIME RITTON
KATHERINE A. SANDOVAL

MOTION FOR JUDGMENT ON THE PLEADINGS

TENTATIVE RULING:

The motion for judgment on the pleadings is DENIED. Plaintiff has not established that the answer fails to state facts to constitute a defense. While plaintiff contends defendant has been deemed to have admitted the essential elements of its claims, plaintiff does not address the affirmative defenses alleged in the answer nor why any of the facts deemed admitted would render those defenses ineffective.

If the tentative ruling is uncontested, it shall become the order of the Court. Thereafter, counsel for Plaintiff 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: 5

18-CIV-02308 GREGORY W. YOUNG VS. CITY VENTURES HOMEBUILDING, LLC, ET AL.

GREGORY W. YOUNG
CITY VENTURES HOMEBUILDING, LLC,

MICHELLE LEU ZACCONE
RICHARD HOWELL

PLAINTIFF GREGORY YOUNG'S MOTION FOR PROTECTIVE ORDER
TENTATIVE RULING:

Plaintiff GREGORY YOUNG's Motion for Protective Order is GRANTED pursuant to Code Civ. Proc. §§ 2030.090(b) and 2031.060(b). Plaintiff shall not be required to respond to Defendant CITY VENTURES HOMEBUILDING, LLC's Special Interrogatories (Set One), Interrogatory Nos. 1-271, or Requests for Production of Documents (Set One), Request Nos. 1-104.

Defendant's counsel shall engage in good faith, substantive meet-and-confer with Plaintiff's counsel to narrow its scope of discovery no later than March 1, 2019. Thereafter, if desired, Defendant may re-serve a new set of discovery not exceeding 35 Special Interrogatories and 35 Requests for Production.

Plaintiff's request for monetary sanctions is GRANTED in the amount of \$7,515.00. Defendant is ordered to pay this amount no later than March 1, 2019.

If the tentative ruling is uncontested, it shall become the order of the Court. Thereafter, counsel for Plaintiff 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

18-CIV-05244 DAIHO SANGYO, INC. VS. AW DISTRIBUTING, INC., ET AL.

DAIHO SANGYO, INC.
AW DISTRIBUTING, INC.

NATHANIEL R. SMITH
STEVEN C. FINLEY

DEFENDANT'S DEMURRER TO THE SIXTH CAUSE OF ACTION FOR UNJUST
ENRICHMENT IN PLAINTIFF'S COMPLAINT

TENTATIVE RULING:

Defendant's Demurrer to the Sixth Cause of Action for Unjust Enrichment in Plaintiff's complaint is SUSTAINED with leave to amend pursuant to Code of Civ. Proc. Section 430.10(e). Defendant's Demurrer to the Fourth and Fifth causes of Action in Plaintiff's complaint are OVERRULED. Plaintiff's complaint properly asserts accounting as an alternative theory to his cause of action for breach of contract. California recognizes a cause of action for constructive trust. *Michaelian v. State Comp. Ins. Fund*, 50 Cal.App.4th 1093, 1114. Plaintiff is granted leave to amend the complaint within ten days of this order.

If the tentative ruling is uncontested, it shall become the order of the Court. Thereafter, counsel for Defendant 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: 7

18-CIV-05876 THREE CAPTAINS SEA PRODUCTS, INC. VS. SAN MATEO COUNTY
HARBOR DISTRICT, ET AL.

SAN MATEO COUNTY HARBOR DISTRICT
THREE CAPTAIN SEA PRODUCTS, INC.

W. GEORGE WAILES

PETITIONER THREE CAPTAINS SEA PRODUCTS, INC.'S PETITION TO CONFIRM
ARBITRATION AWARD

TENTATIVE RULING:

Petitioner THREE CAPTAINS SEA PRODUCTS, INC.'s Petition to Confirm Arbitration Award is DENIED.

As to the first request, that judgment be entered requiring Respondents to issue a formal Resolution by October 17, 2018, confirming that Petitioner may install and use a second hoist at the south side location originally approved by the Harbor Master on March 28, 2014, this issue is DENIED AS MOOT. Petitioner acknowledges in its moving papers that at their October 17, 2018 Board meeting, "Respondents voted on a resolution authorizing Three Captains to install its second hoist and directing their General Manager to take all actions necessary to give effect to the resolution. The resolution carried by vote of three to one, with Respondent Brennan voting against the Resolution." (Petition at p. 7:28 – 8:3.)

As to the second request, that Respondents "shall use their best efforts to support Three Captains' efforts to obtain all necessary permits on an expedited basis, including but not limited to any Coastal Development Permit", this request is DENIED. The arbitrator's order for specific performance may be unenforceable because it is too vague in requiring "best efforts to support Three Captains' efforts to obtain all necessary permits on an expedited basis." It is not clear what efforts are required. Further, the arbitrator's order for specific performance may be unenforceable because it requires the Commissioners to do something they have no power to do; i.e. influence the permitting decision of the Coastal Commission.

In addition, Petitioner does not demonstrate that the Commissioners' actions violated the arbitrator's order for specific performance, considering that they appear to have performed no official acts that delayed Petitioner's efforts to obtain a permit from the Coastal Commission. Finally, to the extent the order for specific performance can be violated by the Commissioners' expression of individual opposition, the order may violate the Commissioners' right to free speech. Accordingly, the petition is DENIED.

Petitioner's request for attorney's fees and costs is DENIED.

If the tentative ruling is uncontested, it shall become the order of the Court. Thereafter, counsel for Respondent 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: 8

18-CIV-06581 PHUONG NGUYEN, ET AL. VS. WELLS FARGO, N.A., ET AL.

PHUONG NGUYEN
WELLS FARGO, N.A.

MATTHEW MELLEN

PHUONG NGUYEN ET. AL.'S MOTION TO CONSOLIDATE CASE NO. 18UDL01216 WITH CASE NO. 18CIV06581, OR ALTERNATIVELY, TO STAY CASE NO. 18UDL01216 PENDING RESOLUTION OF 18CIV06581

TENTATIVE RULING:

Phuong Nguyen et. al.'s Motion to Consolidate Case No. 18UDL01216 with Case No. 18CIV06581, or Alternatively, to Stay Case No. 18UDL01216 pending resolution of 18CIV06581, is DENIED. Code Civ. Proc. § 1048(a). The moving parties have not met their burden of demonstrating grounds for consolidation of the unlawful detainer (UD) case, which is intended to be a summary proceeding, with the unlimited, wrongful foreclosure case.

A.J.E. Investment Group, Inc.'s 2-4-19 Request for Judicial Notice of documents recorded with the County Recorder's Office is GRANTED. Evid. Code § 452(c).

If the tentative ruling is uncontested, it shall become the order of the Court. Thereafter, counsel for Defendant 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: 9

18-CIV-06865 COUNTY OF SAN MATEO SHERIFF CARLOS BOLANOS VS. THOMAS
GEHMAN

COUNTY OF SAN MATEO SHERIFF CARLOS BOLANOS
THOMAS GEHMAN

JOHN C. BEIERS

MOTION TO SEAL

TENTATIVE RULING:

The motion is GRANTED. The information contained in Ex. A is private in nature and this privacy interest constitutes an overriding interest that overcomes the public right of access and supports sealing. The proposed sealing is narrowly tailored and there is no less restrictive means to protect the privacy interest. Absent sealing, the private information would be publicly available.

If the tentative ruling is uncontested, it shall become the order of the Court. Thereafter, counsel for Petitioner 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.

POSTED: 3:00 PM