

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

Wednesday, June 20, 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-02987 MIKE ROSEN, ET AL. VS. XIAO YAN CHEN, ET AL.

MIKE ROSEN
XIAO YAN CHEN

LAWRENCE D. MILLER
BRADLEY KASS

MOTION TO COMPEL

TENTATIVE RULING:

The Motion of Plaintiffs Mike Rosen and Barry Milgrom (“Plaintiffs”) Directing Compliance with Subpoena Duces Tecum is CONTINUED to July 16, 2018 at 9:00 a.m. in the Law and Motion Department. Plaintiffs’ Separate Statement and Exhibits are hereby ORDERED SEALED because they include financial account numbers in violation of California Rules of Court Rule 1.201. The clerk of the court is to seal these documents and have them removed from the public image. Plaintiffs are to re-file and serve these documents with the account numbers properly redacted by July 6, 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: 2

17-CIV-01883 KEVIN KORR VS. KALELE SATELE, ET AL.

KEVIN KORR
KALELE SATELE

BARRY WESTER

MOTION TO BE RELIEVED AS COUNSEL
TENTATIVE RULING:

The unopposed motion to be relieved as counsel 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: 3

17-CIV-03647 MERCEDITA VERADOR, ET AL. VS. SERVIS ONE, INC., ET AL.

MERCEDITA VERADOR
SERVIS ONE, INC.

JESSICA GALLETTA
JARLATH M. CURRAN

HEARING ON DEMURRER

TENTATIVE RULING:

Defendant Fay Servicing, LLC's (Fay) Demurrer to Plaintiffs Mercedita and Wagner Verador's "Third Amended Complaint," filed 5-1-18 (TAC), is SUSTAINED WITHOUT LEAVE TO AMEND, for the following reasons:

First, the Opposition brief, although served on other parties, was not served on Defendant Fay, the demurring party. This lack of service violates Code Civ. Proc. § 1005(b) and is prejudicial.

The Demurrer is also sustained on the merits. The only claim asserted against Fay is the Third Cause of Action, alleging a violation of Civ. Code § 2923.7 (pertaining to a "single point of contact," or "SPOC"). In their briefing, the parties dispute whether § 2923.7 requires that a borrower expressly request the appointment of a SPOC, which is irrelevant here because Plaintiffs' TAC alleges Fay appointed a SPOC who communicated with Plaintiffs. TAC, ¶¶22-26. It also alleges Plaintiffs had communications with the SPOC's supervisor. TAC, ¶¶27-28. Rather, this cause of action is based on Plaintiffs' allegation that after they submitted another loan modification application in August 2017 (Plaintiffs previously obtained a HAMP loan modification), Fay violated § 2923.7 by not initiating any further contact with Plaintiffs. Plaintiffs allege Fay has not informed them whether their most recent application was approved or denied. TAC, ¶¶58-63. As stated in the Court's Order sustaining Fay's Demurrer to this same cause of action in the Second Amended Complaint (SAC), these allegations do not plead a violation of the statute, which does not require that the SPOC convey to a borrower the status of an application within a certain time period. Plaintiffs are reading into the statute a requirement that does not exist. And despite being granted leave to amend this cause of action following Fay's Demurrer to the SAC, Plaintiffs' TAC is nearly identical to the prior version.

Furthermore, Plaintiffs filed this lawsuit in early Aug. 2017, about the same time they allegedly submitted their most recent application. Thus, the allegation that Fay's SPOC has had no further contact with them since that time is unsurprising given that Fay is not permitted to directly contact Plaintiffs during pending litigation.

For the same reason(s) stated in the Order sustaining Fay's Demurrer to the SAC, the TAC again does not allege facts establishing a basis to hold Fay liable for the actions of other Defendants as their purported "agent" or "co-conspirator." See TAC, ¶6 (asserting conclusory allegations that

all named defendants are agents and/or co-conspirators of one another.) These conclusory allegations are insufficient to state a claim for liability, which requires specific factual allegations as to each named Defendant. *Moore v. Regents of Univ. of Cal.* 51 Cal.3d 120, 134.

Fay's unopposed Request for Judicial Notice of the documents in Exhibits 1-10, all of which were recorded with the County Clerk-Recorder's Office, is GRANTED. Evid. Code Sect. 452(c). Judicial notice is taken of their existence and recording dates, but not as to the truth of statements therein.

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: 4

17-CIV-04710 REALTY ALLIANCE INC. VS. DE RITZ, LLC, ET AL.

REALTY ALLIANCE INC.
DE RITZ, LLC

JOSEPH W. CARCIONE
KATHARINE ESSICK

MOTION FOR JUDGMENT ON PLEADINGS

TENTATIVE RULING:

Cross-Defendants' Motion for Judgment on the Pleadings is GRANTED IN PART and DENIED IN PART, as follows:

- DENIED on the ground that Cross-Complainant's claims are barred by the arbitration provision of De Ritz, LLC's Operating Agreement. A motion for judgment on the pleadings is not the appropriate vehicle by which to make this argument. Cross-Defendants are required to bring a petition to compel arbitration pursuant to Code Civ. Proc. § 1281.2.
- DENIED on the ground that Cross-Complainant's claims are insufficiently stated. "A pleading is adequate so long as it apprises the defendant of the factual basis for the plaintiff's claim." *McKell v. Washington Mutual, Inc.* (2006) 142 Cal.App.4th 1457, 1469-70.
- GRANTED WITH LEAVE TO AMEND as to the punitive damages allegations. While objections to punitive damages allegations are more appropriately addressed by a motion to strike pursuant to Code Civ. Proc. § 436, in the interests of efficiency, the Court has considered this portion of the motion, and grants it with leave to amend. Cross-Complainant must plead specific detailed ultimate facts, not conclusory allegations or generalities, establishing that he is entitled to the relief sought. *Clauson v. Superior Court* (1998) 67 Cal.App.4th 1253, 1255. In establishing a claim for punitive damages, Cross-Complainant must show by "clear and convincing" evidence that Cross-Defendants are guilty of oppression, fraud or malice. Civil Code § 3294(a).

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: 5

17-CIV-05553 LINDSEY BRUCE VS. KENDRA NASH, ET AL.

LINDSEY BRUCE
KENDRA NASH

RICHARD PARIS
LANCE BURROW

MOTION FOR LEAVE

TENTATIVE RULING:

The motion is granted. Defendant shall file the cross-complaint no later than June 22, 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: 6

17-CIV-05621 MECHANICS BANK, INC. VS. RAFAEL E PORTER

MECHANICS BANK, INC.
RAFAEL E PORTER

PAUL M. PARVANIAN
FRED W. SCHWINN

MOTION FOR ATTORNEY FEES

TENTATIVE RULING:

The hearing on the motion is continued to July 16, 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.

9:00

LINE: 7

CIV535139 STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY VS.
DEISSI LOPEZ RAMIREZ

STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY RICHARD L. MAHFOUZ
DEISSI LOPEZ RAMIREZ

MOTION TO ENFORCE THE PARTIES SETTLEMENT AGREEMENT

TENTATIVE RULING:

The unopposed motion for entry of judgment is granted. Judgement shall be entered for plaintiff in the amount of \$23,467.05. To the extent plaintiff seeks to include court costs and attorney's fees in the judgment, it has not provided evidence to support the amounts requested. While plaintiff indicates that attorney's fees are based on the fee schedule in Local Rule 6.1.1, it has not shown that this action was on a contract. The complaint alleges a single cause of action that is based on defendants' negligence.

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

17-CIV-05594 ALLAN & HENRY, INC. VS. CEPHAS ENTERPRISES, INC., ET AL.

ALLAN & HENRY, INC.
CEPHAS ENTERPRISES, INC.

CLIFFORD R. HORNER

WRIT OF ATTACHMENT

TENTATIVE RULING:

The Application of Plaintiff Allen & Henry, Inc. ("Plaintiff") for Right to Attach Order and Writ of Attachment to the property of Defendant Disaster Restoration and Recovery ("Defendant") is GRANTED IN PART.

The Court finds all of the following: (1) the claim is one upon which an attachment may be issued, (2) Plaintiff has established the probable validity of the claim, (3) the attachment is not sought for any purpose other than to secure recovery on the claim, and (4) the amount to be secured is greater than zero. (See Code Civ. Proc. § 484.090; Callaghan Dec.)

This action is based on contract, the commercial lease agreement. (Callaghan Dec., ¶ 3, Ex. A.) Defendant admits it took over that lease in February 2015. (Devinini Dec., ¶¶ 3 – 6.) The lease required the express prior written consent of the lessor, Plaintiff, for assignment. (Callaghan Dec., Ex. A, § 12.1(a).) Prior written consent was not given by Plaintiff. (*Id.* at ¶ 12.) Accordingly, Defendant is jointly and severally liable with the tenant for breached occurring *after* the unauthorized assignment. (Code Civ. Proc. §§ 1995.320, subd. (a), 1995.330, subd. (a).) See also 12 Witkin, Cal. Summary (11th ed., Jun. 2017 Update) Real Prop § 582; Smith-Chavez, Cal. Civ. Prac. Real Property Litigation (May 2018 Update), Restriction on transfer, § 20:19.) A liability established by statute has the tendency to be treated as quasi-contractual. (3 Witkin, Cal. Proc. (5th ed. 2008) Actions § 143.) "Some statutory obligations are treated as contractual in nature, and attachment is allowed." (6_Witkin, supra, at § 63.)

However, the Callaghan Declaration only supports an attachment in the principal amount of \$ 183,290.00, including \$ 20,000.00 in attorney fees, and not the principal amount of \$ 351,858.17 as stated by in the application. Only the past due base rent, late charges, and attorney fees are readily ascertainable. Thus, a right to attach order shall issue in the total amount of \$ 183,290.00.

An undertaking in the amount of \$10,000.00 is required. (See Code Civ. Proc. § 489.220, subd. (a).)

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: 9

18-UDL-00489 JACK ROBERT KLINGELE VS. RON AJURIA

JACK ROBERT KLINGELE TRUST
RON AJURIA

TIMOTHY S O'HARA
SHIRLEY E. GIBSON

MOTION FOR SUMMARY OF JUDGMENT/ADJUDICATION OF ISSUES

TENTATIVE RULING:

Defendant's motion for summary judgment and, alternatively for summary adjudication, is denied.

Defendant's motion fails to comply with the mandatory requirement that a motion for summary judgment must include a Separate Statement of Undisputed Material Facts. (CRC Rule 3.1350(c), (d), (h).) However, the omission is not the ground for denying this motion.

Defendant's argument pertaining to unlawful rent increases is based on the contention that Plaintiff increased Defendant's rent in violation of the Mobilehome Ordinance, which limits increases to no more than 75 percent of the Percent Change in the Consumer Price Index, or five percent, whichever may be less. (Ordinance sect. 1.30.030.) Defendant offers evidence that Plaintiff increased rent in certain amounts in June 2010, October 2015, and July 2017. (Complaint for Unlawful Detainer, San Mateo Superior Court Case No. 17 UDL 00405, Exhibit B to Defendant's Request for Judicial Notice.) Further, Plaintiff allegedly attempted to reduce rent to \$736.68. (Undated letter from Crystal Klingele to Ron Ajuria, included in Exhibit 2 to original complaint in this action.)

However, Defendant offers no evidence of the percentage change in the Consumer Price Index during the relevant periods. The only evidence in support of this motion are the two documents of which Defendant requests judicial notice, neither of which relates to the CPI. Without evidence of the percentage change in the CPI, it is impossible to determine whether the rent increases in 2010, 2015, and 2017 violated the Mobilehome Ordinance.

The Court finds that Defendant has established a prima facie case that Plaintiff's Three-Day Notice regarding unpaid storage fees was defective. Neither the lease nor any addendum to the lease set forth an obligation to pay storage fees in any specific amount.

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