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

Law and Motion Calendar
HONORABLE DANNY CHOU Y. CHOU
Department 22
1050 Mission Road, South San Francisco
Courtroom SSF-K

Thursday, March 18, 2021

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

1. **EMAIL Dept22@Sanmateocourt.org BEFORE 4:00 P.M. CONTEMPORANEOUSLY COPIED TO ALL PARTIES OR THEIR COUNSEL OF RECORD. IF BY EMAIL, IT MUST INCLUDE THE NAME OF THE CASE, THE CASE NUMBER, AND THE NAME OF THE PARTY CONTESTING THE TENTATIVE RULING**

2. **YOU MUST CALL (650) 261-5122 BEFORE 4:00 P.M. AND FOLLOW THE INSTRUCTIONS ON THE MESSAGE.**

3. **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 or 2 and 3 will result in no oral presentation.

At this time, *all appearances will be by Zoom*. No personal appearances will be allowed.

Zoom Video/Computer Audio Information:

https://zoom.us/join

Meeting ID: 834 5563 8600
Password: AisW6YxBU3

Zoom Phone-Only Information Please note: You must join by dialing in from a telephone; credentials will not work from a tablet or PC

Phone number: 1-669-900-6833

Meeting ID: 834 5563 8600
Password: 7566167045

TO ASSIST THE COURT REPORTER, the parties are ORDERED to: (1) state their name each time they speak and only speak when directed by the Court; (2) not to interrupt the Court or anyone else; (3) speak slowly and clearly; (4) use a dedicated land line if at all possible, rather than a cell phone; (5) if a cell phone is absolutely necessary, the parties must be stationary and not driving or moving; (6) no speaker phones under any circumstances; (7) provide the name and citation of any case cites; and (8) spell all names, even common names.

Case	Title / Nature of Case

2:00

LINE: 1

16-CLJ-01027 PACIFIC CREDIT EXCHANGE VS. FREDERICK FAATAUI, ET AL.

PACIFIC CREDIT EXCHANGE — FRANK G. BLUNDO, JR.
FREDERICK PAPUCADY FAATAUI

HEARING ON CLAIM OF EXEMPTION- JUDGMENT DEBTOR

TENTATIVE RULING:

On the hearing of the opposition by Judgment Creditor Pacific Credit Exchange (Judgment Creditor) to the claim of exemption of Judgment Debtor Angelique Faataui (Judgment Debtor), the Court rules as follows:

The claim of exemption of Judgment Debtor is GRANTED.

With regard to the earnings, if any, currently held by the levying officer, the levying officer is directed to return the earnings or funds to the Judgment Debtor.

The Los Angeles County Sheriff's File No. is 3122009081677. The Claim of Exemption was presented as to a Wage Garnishment.

The clerk shall transmit a certified copy of this order, the terms of which are set forth above, to the levying officer. The levying officer shall release any retained sums as provided in this Order. For Wage Garnishment, the levying officer shall notify the employer of any change in the Earnings Withholding 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.

2:00

LINE: 2

19-CIV-02337 BRIAN MUNNEKE VS. LETICIA CHAVEZ, ET AL.

BRIAN MUNNEKE	UN HUI NAM
LETICIA CHAVEZ	CHRISTOPHER E. DELAPLANE

PLAINTIFF BRIAN MUNNEKE'S MOTION TO COMPEL RESPONSES AND TO PRODUCTION OF DOCUMENTS, SET 1, AND MONETARY SANCTIONS

TENTATIVE RULING:

Local Rule 3.700 states that in all general civil cases, no party may file a motion to compel discovery or file any other discovery motion until the parties have had an informal discovery conference with the Court. This motion was filed on January 4, 2021 *before* the parties have participated in a discovery conference. Consequently, it is continued to **April 22, 2021** at **2:00 p.m.** in Department 22. No later than 7 days after the discovery conference, the moving party shall file an amended notice of motion indicating what issues remain to be resolved or withdrawing the motion if it is no longer necessary.

2:00

LINE: 3

19-CIV-02633 HUGH FEHRENBACH VS. LIANNE MCLEAN, ET AL.

HUGH FEHRENBACH	JOHN F. MOUNIER
LIANNE MCLEAN	VALERIE A. KRAML

DEFENDANT LIANNE MCLEAN'S DEMURRER TO FIRST AMENDED COMPLAINT

TENTATIVE RULING:

Defendant's Demurrer to First Amended Complaint (FAC) is SUSTAINED WITH LEAVE TO AMEND.

As to the first cause of action for breach of contract, the FAC does not sufficiently allege the legal effect of the express and implied oral contract between Plaintiff and Defendant. (See *Scolinos v. Kolts* (1995) 37 Cal.App.4th 635, 640.)

As the second cause of action for specific performance, Plaintiff has submitted a declaration stating that "Max has died." (Fehrenbach Decl. ISO FAC, ¶ 9.) Accordingly, specific performance no longer appears possible.

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. **A hard copy of the proposed order MUST be delivered or mailed to the Civil Clerk's Office in REDWOOD CITY. The proposed order MUST also be emailed to the Court at dept22@sanmateocourt.org. The subject heading of the email shall include the case name, case number, and the phrase "Proposed Order."**

2:00

LINE: 4

19-CIV-06356 JAMES PIKE VS. GAURAV PALANDE, ET AL.

JAMES PIKE	BRIAN L. LARSEN
GAURAV PALANDE	REBECCA RICKETT

CROSS DEFENDANT JASON HEISLER'S MOTION FOR DETERMINATION OF GOOD FAITH SETTLEMENT

TENTATIVE RULING:

A notice of settlement of the entire case was filed on March 9, 2021. As a result, Cross-Defendant Jason Heisler's application for good faith settlement determination is moot, and is ordered OFF CALENDAR.

2:00

LINE: 5

19-CLJ-02637 MIDLAND FUNDING LLC VS. JOHN RIVAS, ET AL.

MIDLAND FUNDING LLC — JONATHAN KOM
JOHN RIVAS

PLAINTIFF MIDLAND FUNDING LLC'S MOTION TO SET ASIDE AND VACATE JUDGMENT

TENTATIVE RULING:

Plaintiff's Motion to Set Aside and vacate Judgment is DENIED WITHOUT PREJUDICE for failure to provide proof that the Motion was properly served on Defendant John Rivas. The proof of service indicates that the Motion was served on James Michel, *not* Rivas. In addition, the hearing date and department indicated on the notice of motion were changed at the time of filing. Plaintiff has provided no proof that notice of the correct hearing date and department was provided to Rivas. Finally, the Court notes that the De Guzman declaration states only that counsel was informed that Rivas filed for bankruptcy. To date, Plaintiff has not provided a copy of the bankruptcy filing.

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.

2:00

LINE: 6

20-CIV-01987 SKENDZIC NENAD VS. CORNERSTONE TITLE COMPANY, ET AL.

SKENDZIC NENAD	JOHN F. DOMINGUE
CORNERSTONE TITLE COMPANY, ET AL.	MACEY A. CHAN

DEFENDANTS CORNERSTONE TITLE COMPANY AND REALOGY HOLDING CORP. DEMURRER TO PLAINTIFF'S COMPLAINT

TENTATIVE RULING:

Defendant Realogy Holding Corp.'s (Realogy) Demurrer to Plaintiff's Complaint is SUSTAINED WITH LEAVE TO AMEND.

Defendant Cornerstone Title Company's (Cornerstone) Demurrer to Plaintiff's Complaint is OVERRULED.

1. Realogy's Demurrer

Based solely on allegations that Realogy "is the controlling company for" Cornerstone (Compl., ¶ 3) and that Defendants were the "alter egos of their co-defendants" and "were joint venturers with, or co-partners with, . . . their co-defendants" (*id.*, ¶ 11), Plaintiff contends that he has sufficiently pled the first cause of action for negligence and the third cause of action for tort of another against Realogy (see Pl. Opp., at p. 9). But these allegations are "egregious examples of generic boilerplate" that the California Supreme Court has criticized. (*Moore v. Regents of University of Cal.* (1990) 51 Cal.2d 120, 134, fn. 12.) As such, these allegations are not sufficient to establish that Realogy is the alter ego of Cornerstone or that Realogy is a joint venture with or co-partner of Cornerstone. (See *Simmons v. Ware* (2013) 213 Cal.App.4th 1035, 1048-1049.) Realogy's demurrer to the first and third causes of action is therefore sustained with leave to amend.

2. Cornerstone's Demurrer

Cornerstone contends that Plaintiff has failed to allege facts sufficient to establish that it owed a duty of care to Plaintiff or that its breach of that duty caused any damages to Plaintiff. Plaintiff counters that he has sufficiently pled a duty of care and damages under *Biakanja v. Irving* (1958) 49 Cal.2d 647 (*Biankanja*) and *Seeley v. Seymour* (1987) 190 Cal.App.3d 844 (*Seeley*). The Court agrees with Plaintiff.

"Where a special relationship exists between the parties, a plaintiff may recover for loss of expected economic advantage through the negligent performance of a contract although the parties were not in contractual privity." (*J'Aire Corp. v. Gregory* (1979) 24 Cal.3d 799, 804, citing *Biakanja.*) In determining whether a plaintiff may recover in the absence of contractual privity, the Court applies the criteria set forth in *Biakanja*, *supra*, 49 Cal.2d at page 650. "Those criteria are (1) the extent to which the transaction was intended to affect the plaintiff, (2) the foreseeability of harm to the plaintiff, (3) the degree of certainty that plaintiff suffered injury, (4) the closeness of the connection between the defendant's conduct and the injury suffered, (5) the moral blame attached to the defendant's conduct and (6) the policy of preventing future harm." (*J'Aire*, at p. 804.)

Applying these criteria to the facts as pled, the Court finds that Plaintiff has adequately pled that Cornerstone owed a duty to Plaintiff and that Plaintiff suffered damages as a result of Cornerstone's breach of that duty. First,

there can be no doubt that the transaction was intended to affect Plaintiff. As alleged, Cornerstone completed escrow on the sale of Plaintiff's property and recorded a deed transferring Plaintiff's property to the buyer based on forged deed. (Compl., ¶¶ 14-16, 20.) Second, the harm to Plaintiff was foreseeable. As alleged, Cornerstone had serious doubts that the seller actually owned the property. (See *id.*, ¶ 18.) Despite this, Cornerstone failed to locate relevant documents and failed to follow standard procedures that would have uncovered that the seller did not, in fact, hold title to the property and therefore lacked the authority to sell it. (See *id.*, ¶¶ 18-19.) As a result, Plaintiff's property was improperly sold to a third party. Third, there is little doubt that Plaintiff did in fact suffer injury because he was forced to sue to regain his property. Fourth, the closeness of the connection between the act and harm suffered by Plaintiff is clear. By allowing the sale to proceed based on the forged deed and by recording a deed transferring the property to the buyers, Cornerstone's acts caused Plaintiff to lose his property. (See *id.*, ¶¶ 19-20.) Fifth, Cornerstone's conduct is deserving of moral blame. As alleged, Cornerstone ignored red flags about the seller and failed to follow standard procedures that would have uncovered the seller's fraud. (See *id.*, ¶¶ 18-19.) Indeed, this is presumably the very purpose behind title services during a property sale. Finally, imposing liability will serve the public interest. As the Court of Appeal in *Seeley*, *supra*, 190 Cal.App.3d at page 892, explained, "[t]itle companies participate in the vast majority of real estate transactions in this state. As institutions charged with the public trust, it is important that they be held accountable when their negligent acts result in economic harm to individual property interests."

The cases cited by Cornerstone are distinguishable. Neither *Alereza v. Chicago Title Co.* (2016) 6 Cal.App.5th 551 nor *Summit Financial Holdings, Ltd. v. Continental Lawyers Title Co.* (2002) 27 Cal.4th 705 involve title services. Moreover, in both *Alereza* and *Summit*, the escrow company was not aware of any information that would have led it to believe that the transaction would adversely affect the plaintiff. (See *Alereza*, at p. 560 [holding that the defendant could not have been aware of Plaintiff's damages at the time of the transaction because "[a]t the close of escrow, [the plaintiff] has no personal liability for any . . . losses"]; *Summit*, at 711 [holding that "there is not evidence [that the defendant] was aware of any collusion or fraud in the fund disbursement that would have adversely affected any party to the escrow"].) By contrast, Plaintiff alleges that Cornerstone was aware of serious issues with the deed that purportedly transferred the property from Plaintiff to the seller at the time it closed escrow and recorded the deed transferring the property to the buyer. (See Compl, ¶¶ 18-20.)

Accordingly, Plaintiff has sufficiently pled a cause of action for negligence against Cornerstone. And because Plaintiff has stated that Cornerstone's negligence required that he hire counsel to prosecute an action against the buyer in order to recover his property, he has also stated a cause of action for tort of another. Accordingly, Cornerstone's demurrer is overruled.

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. **A hard copy of the proposed order MUST be delivered or mailed to the Civil Clerk's Office in REDWOOD CITY. The proposed order MUST also be emailed to the Court at dept22@sanmateocourt.org. The subject heading of the email shall include the case name, case number, and the phrase "Proposed Order."**

2:00

LINE: 7

20-CIV-02466 ALUM ROCK UNION ELEMENTARY SCHOOL DISTRICT VS. DEL TERRA REAL ESTATE SERVICES, INC., ET AL.

ALUM ROCK UNION ELEMENTART SCHOOL DISTRICT	PETER M. REHON
DEL TERRA REAL ESTATE SERVICES, INC.	EDWARD F. MORRISON

DEFENDANT TERRA REAL ESTATE SERVICES' DEMURRER TO COMPLAINT

TENTATIVE RULING:

The unopposed Demurrer of Defendant Del Terra Real Estate Services, Inc. (Defendant) to the Complaint of Plaintiff Alum Rock Union Elementary School District (Plaintiff) is OVERRULED IN PART and SUSTAINED IN PART WITH LEAVE TO AMEND.

As a threshold matter, the Court exercises its discretion to consider the Demurrer even though Defendant filed it more than a year after being served with the Summons and Complaint. Plaintiff has not opposed the Demurrer, and therefore has not demonstrated that it will be prejudiced. (*Jackson v. Doe* (2011) 192 Cal. App. 4th 742, 750.)

Defendant's Demurrer to the Sixth, Seventh, and Eighth Causes of Action based on uncertainty is OVERRULED because Defendant failed to specify how or why the pleading is uncertain or where such uncertainty appears. (See *Fenton v. Groveland Comm. Services Dist.* (1982) 135 Cal.App.3d 797, 809, disapproved on other grounds in *Katzberg v. Regents of Univ. of Cal.* (2002) 29 Cal.4th 300, 328, fn.30.)

Defendant's Demurrer to the Sixth Cause of Action for Contractual Indemnity based on the failure to state a claim is OVERRULED. Defendant contends that the change order cannot serve as the basis for this cause of action. But in support of this claim, Plaintiff does not just rely on the change order. (See Compl., ¶ 146.) Plaintiff also alleges that it has incurred losses in responding to the FCMAT Extraordinary Audit and the SEC Investigation. (*Id.* ¶ 147.) Because a general demurrer does not lie to only a part of a cause of action, this demurrer is overruled. (*Daniels v. Select Portfolio Servicing, Inc.* (2016) 246 Cal.App.4th 1150, 1167.)

Defendant's Demurrer to the Seventh Cause of Action for Unjust Enrichment based on the failure to state a claim is SUSTAINED WITH LEAVE TO AMEND. While California courts have disagreed over whether unjust enrichment is a standalone cause of action, more recent California Supreme Court cases have concluded that "unjust enrichment" is not a proper cause of action. (See, e.g., *Huskinson & Brown, LLP v. Wolf* (2004) 32 Cal.4th 453, 457 [no cause of action for unjust enrichment]; see also *Durell v. Sharp Healthcare* (2010) 183 Cal.App.4th 1350, 1369 ["[T]here is no cause of action in California for unjust enrichment …. Unjust enrichment is synonymous with restitution"]; *Meixner v. Wells Fargo Bank, N.A.* (E.D.Cal. 2015) 101 F.Supp.3d 938, 960-961 [citing more recent California Supreme Court cases disapproving of "unjust enrichment" as a cause of action].) Although Plaintiff could have alleged a quasi-contract claim for restitution, it has not sufficiently done so. (See *Klein v. Chevron U.S.A., Inc.* (2012) 202 Cal.App.4th 1342, 1389–90; *California Medical Assn. v. Aetna U.S. Healthcare of Cal.* (2001) 94 Cal.App.4th 151.)

Defendant's Demurrer to the Eighth Cause of Action for Money Had and Received is OVERRULED. Contrary to Defendant's assertion, this claim is not duplicative of Plaintiff's breach of contract claim. "A cause of action for money had and received is stated if it is alleged the defendant 'is indebted to the plaintiff in a certain sum 'for

money had and received by the defendant for the use of the plaintiff.'" (*Farmers Ins. Exch. v. Zerin* (1997) 53 Cal. App. 4th 445, 460.) Plaintiff has sufficiently alleged a claim for money had and received. (See Compl., ¶¶ 46-49, 51, 76-77, 84-85, 153, 155.)

Plaintiff has 10 days from the date of service of written notice of entry of order by Defendant to file and serve a First Amended Complaint.

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. **A hard copy of the proposed order MUST be delivered or mailed to the Civil Clerk's Office in REDWOOD CITY. The proposed order MUST also be emailed to the Court at dept22@sanmateocourt.org. The subject heading of the email shall include the case name, case number, and the phrase "Proposed Order."**

2:00

LINE: 8

20-CIV-04616 PATRICIA A. ROMINE VS. CITY OF SAN MATEO, ET AL.

PATRICIA A. ROMINE	PATRICK T. HALL
CITY OF SAN MATEO	TODD H. MASTER

PLAINTIFF'S MOTION FOR LEAVE TO FILE SECOND AMENDED COMPLAINT TO ADD DOE DEFENDANT

TENTATIVE RULING:

Plaintiff's unopposed Motion for Leave to File Second Amended Complaint to Add Doe Defendant is GRANTED. Plaintiff shall file the Second Amended Complaint no later than **March 22, 2021.**

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. **A hard copy of the proposed order MUST be delivered or mailed to the Civil Clerk's Office in REDWOOD CITY. The proposed order MUST also be emailed to the Court at dept22@sanmateocourt.org. The subject heading of the email shall include the case name, case number, and the phrase "Proposed Order."**

2:00

LINE: 9

CIV-458258 DAVID MELCHER VS. ELIZABETH KARNAZES

DAVID MELCHER	PRO PER
ELIZABETH KARNAZES	PRO PER

CROSS-DEFENDANT JOHN HARTFORD'S MOTION FOR ATTORNEYS FEES

TENTATIVE RULING:

Pursuant to the Court's order dated March 17, 2021, the hearing is continued to **April 29, 2021** at **2:00 p.m.**

2:00

LINE: 10

CIV536118 PEOPLE OF THE STATE, ETAL VS THE ALLERGY, ETAL

AETNA HEALTH MANAGEMENT , LLC	CURTIS S. LEAVITT
THE ALLERGY AND ASTHMA CLINIC	NIALL P. MCCARTHY

DEFENDANTS THE ALLERGY AND ASTHMA CLINIC AND ANDREW ENGLER'S MOTION FOR SUMMARY JUDGMENT/ADJUDICATION OF ISSUES

TENTATIVE RULING:

Pursuant to email discussions with the parties, the hearing is continued to **April 1, 2021** at **2:00 p.m.**

POSTED: 3:15 PM