Tentative Rulings for April 17, 2024
Department 403

For any matter where an oral argument is requested and any party to the hearing desires a remote appearance, such request must be timely submitted to and approved by the hearing judge. In this department, the remote appearance will be conducted through Zoom. If approved, please provide the department's clerk a correct email address. (CRC 3.672, Fresno Sup.C. Local Rule 1.1.19)

There are no tentative rulings for the following cases. The hearing will go forward on these matters. If a person is under a court order to appear, he/she must do so. Otherwise, parties should appear unless they have notified the court that they will submit the matter without an appearance. (See California Rules of Court, rule 3.1304(c).)
The above rule also applies to cases listed in this "must appear" section.

The court has continued the following cases. The deadlines for opposition and reply papers will remain the same as for the original hearing date.

22CECG00344	***Larry Matson v. Reza Mohammadi* is continued to Tuesday, May 21, 2024, at 3:30 p.m in Department 403**
22CECG00624	***Kayhan Aminian v. City of Clovis* is continued to Thursday, May 2, 2024, at 3:30 p.m. in Department 403**
23CECG00449	**Bartolo Ayala v. Mt. Whitney Dairy is continue to Wednesday, June 5, 2024, at 3:30 p.m. in Department 403**
24CECG00337	***City of Fresno v. Reza Mohammadi* is continued to Tuesday, May 21, 2024, at 3:30 p.m. in Department 403**

(Tentative Rulings begin at the next page)

Tentative Rulings for Department 403

Begin at the next page

(34)

Tentative Ruling

Re: ***Perez v. Northwest Truck Lines, Inc., et al.***
Superior Court Case No. 21CECG03040

Hearing Date: April 17, 2024 (Dept. 403)

Motion: by Cypress Insurance Company for Leave to Intervene

Tentative Ruling:

To grant. Within 10 days of service of the order by the clerk, Cypress Insurance Company shall file its proposed Complaint-in-Intervention. (Code Civ. Proc., § 387, subd. (a).)

Pursuant to California Rules of Court, rule 3.1312(a), and Code of Civil Procedure section 1019.5, subdivision (a), no further written order is necessary. The minute order adopting this tentative ruling will serve as the order of the court and service by the clerk will constitute notice of the order.

Tentative Ruling
Issued By: JS on 4/11/2024.
(Judge's initials) (Date)

(03)

Tentative Ruling

Re: ***Jones v. Hiller Aircraft Corp.***
Case No. 18CECG04044

Hearing Date: April 17, 2024 (Dept. 403)

Motion: Defendant City of Firebaugh's Motion to Contest Defendant Hiller Aircraft's Application for Good Faith Settlement

Tentative Ruling:

To grant defendant City of Firebaugh's motion to contest the application for good faith settlement filed by defendant Hiller Aircraft. To deny Hiller's application for an order determining its settlement to be in good faith, as the settlement was entered into after a verdict and judgment were entered.

Explanation:

Under Code of Civil Procedure section 877, "Where a release, dismissal with or without prejudice, or a covenant not to sue or not to enforce judgment is given in good faith *before verdict or judgment* to one or more of a number of tortfeasors claimed to be liable for the same tort, … it shall have the following effect: … It shall discharge the party to whom it is given from all liability for any contribution to any other parties." (Code Civ. Proc., § 877, subd. (b), italics added.)

Also, under Code of Civil Procedure section 877.6, "Any party to an action in which it is alleged that two or more parties are joint tortfeasors or co-obligors on a contract debt shall be entitled to a hearing on the issue of the good faith of a settlement entered into by the plaintiff or other claimant and one or more alleged tortfeasors or co-obligors, upon giving notice in the manner provided in subdivision (b) of Section 1005." (Code Civ. Proc., § 877.6, subd. (a).)

"In the alternative, a settling party may give notice of settlement to all parties and to the court, together with an application for determination of good faith settlement and a proposed order… Within 25 days of the mailing of the notice, application, and proposed order, or within 20 days of personal service, a nonsettling party may file a notice of motion to contest the good faith of the settlement. If none of the nonsettling parties files a motion within 25 days of mailing of the notice, application, and proposed order, or within 20 days of personal service, the court may approve the settlement." (Code Civ. Proc., § 877.6, subd. (a)(2).)

"The issue of the good faith of a settlement may be determined by the court on the basis of affidavits served with the notice of hearing, and any counteraffidavits filed in response, or the court may, in its discretion, receive other evidence at the hearing." (Code Civ. Proc., § 877.6, subd. (b).) "A determination by the court that the settlement was made in good faith shall bar any other joint tortfeasor or co-obligor from any further claims against the settling tortfeasor or co-obligor for equitable comparative contribution, or partial or comparative indemnity, based on comparative negligence or

comparative fault." (Code Civ. Proc., § 877.6, subd. (c).) "The party asserting the lack of good faith shall have the burden of proof on that issue." (Code Civ. Proc., § 877.6, subd. (d).)

In *Tech-Bilt, Inc. v. Woodward-Clyde & Associates* (1985) 38 Cal.3d 488, the California Supreme Court set forth the factors that the court should consider when determining whether a settlement has been entered into in good faith. "[T]he intent and policies underlying section 877.6 require that a number of factors be taken into account including a rough approximation of plaintiffs' total recovery and the settlor's proportionate liability, the amount paid in settlement, the allocation of settlement proceeds among plaintiffs, and a recognition that a settlor should pay less in settlement than he would if he were found liable after a trial. Other relevant considerations include the financial conditions and insurance policy limits of settling defendants, as well as the existence of collusion, fraud, or tortious conduct aimed to injure the interests of nonsettling defendants. Finally, practical considerations obviously require that the evaluation be made on the basis of information available at the time of settlement. '[A] defendant's settlement figure must not be grossly disproportionate to what a reasonable person, at the time of the settlement, would estimate the settling defendant's liability to be.' The party asserting the lack of good faith, who has the burden of proof on that issue (§ 877.6, subd. (d)), should be permitted to demonstrate, if he can, that the settlement is so far 'out of the ballpark' in relation to these factors as to be inconsistent with the equitable objectives of the statute. Such a demonstration would establish that the proposed settlement was not a 'settlement made in good faith' within the terms of section 877.6." (*Id*. at pp. 499–500, citation and footnote omitted.)

In the present case, Hiller Aircraft seeks an order determining that its settlement with plaintiff is in good faith under section 877.6, and thus that any claims against it for indemnity or contribution are barred. Hiller notes that the amount of the settlement is $1.9 million, which is about the same as the total share of Hiller's liability according to the jury verdict and the judgment entered by the court. Therefore, Hiller argues that the amount it is paying to settle the plaintiff's claims is within the reasonable range of its actual proportional share of liability as determined by the jury. Hiller also alleges that the settlement was entered into as a result of arm's length bargaining during a mediation with a professional mediator, retired Judge Simpson, and there is no evidence that the settlement was the result of fraud or collusion. Therefore, Hiller concludes that it is entitled to an order determining that its settlement with plaintiff is in good faith, and that any indemnity or contribution claims are barred.

However, as the City of Firebaugh has pointed out in its motion contesting the good faith settlement application, the express language of section 877 only permits a good faith settlement order barring claims for contribution where the settlement is entered into "before verdict or judgment." (Code Civ. Proc., § 877, subd. (a).) Thus, where the parties entered into a settlement after the judgment or verdict have been rendered, the provisions of section 877 and 877.6 no longer apply, and the settling party is not entitled to an order determining the settlement to be in good faith and barring all indemnity and contribution claims.

In *Southern Cal. White Trucks v. Teresinski* (1987) 190 Cal.App.3d 1393, the Court of Appeal held that the plain language of section 877 bars the court from granting an order determining a settlement to be in good faith under section 877.6 after a judgment or verdict has already been entered against the settling defendant. (*Id*. at pp. 1403-

1408.) "Section 877 itself clearly states it applies where a settlement or other agreement is given 'before verdict or judgment.' The rules of statutory construction indicate these words are to be given their plain meaning." (*Id*. at p. 1403.) "There is nothing uncertain or ambiguous about 'before.' It means earlier than or in advance of. 'Verdict' and 'judgment' would appear to be equally unambiguous in meaning. A verdict is the 'formal ... decision or finding made by a jury, impaneled and sworn for the trial of a cause, and reported to the court (and accepted by it), upon the matters or questions duly submitted to them upon the trial.' A judgment is the 'official and authentic decision of a court of justice upon the respective rights and claims of the parties to an action or suit therein litigated and submitted to its determination.' (*Id.* at pp. 1403–1404, citations omitted.) Thus, the *Teresinski* court held that section 877.6's procedures for obtaining an order determining that a settlement is entered into in good faith are only available where the settlement is entered into before a judgment or verdict has been entered in the case. (*Id*. at pp. 1405-1406.)

Likewise, the Court of Appeal in *Be v. Western Truck Exchange* (1997) 55 Cal.App.4th 1139 followed *Teresinski* in holding that a settlement entered into after a judgment had already been entered could not be subject to a good faith determination under section 877.6. "*Teresinski*'s reading of sections 877 and 877.6 to apply only to settlements reached before verdict or judgment is supported not only by the plain meaning of the words of the statute, as *Teresinski* held, but also by the unfair result in this case… We therefore agree with *Teresinski* that postjudgment settlements are not permitted by section 877." (*Id.* at p. 1144.)

Similarly, the Court of Appeal in *Torres v. Xomox Corp.* (1996) 49 Cal.App.4th 1 stated that, "authorities applicable to good faith settlements do not apply to settlements which occur after damages have been awarded. (See Code Civ. Proc., § 877 [referring to release or dismissal 'before verdict or judgment'; Code Civ. Proc., § 877.6 [referring to hearing on good faith 'before the verdict or judgment'; *Price Pfister, Inc. v. William Lyon Co.* (1993) 14 Cal.App.4th 1643, 1649-1650 [18 Cal.Rptr.2d 437] [holding that good faith settlement statutes extend to settlements 'after a finding of liability but before the assessment of damages'].)" (*Id.* at p. 39.)

In the present case, the trial began on April 12, 2021, and the jury rendered its verdict on May 4, 2021. The court entered judgment pursuant to the jury's verdict on June 22, 2021, although the court reduced the amount of damages. Notice of entry of judgment was filed on June 24, 2021. However, plaintiff and Hiller did not enter into a settlement of plaintiff's claims against Hiller until January 26, 2023, about a year and a half after the jury rendered its verdict and the court entered judgment. Thus, the settlement was entered into long after the judgment and verdict were entered, and the settlement does not qualify for a good faith settlement determination under section 877.6.

Nevertheless, Hiller argues that the judgment was not "final" at the time it entered into the settlement with plaintiff because there were several appeals pending regarding the judgment and the amount of damages. Hiller points out that the Court of Appeal did not issue its decisions on the appeals until June 29, 2023 and the remittiturs for the appeals did not issue until August 29, 2023 and October 19, 2023. The trial court did not enter its order reducing the amount of the judgment pursuant to the Court of Appeal's decision until November 9, 2023. Therefore, Hiller contends that, since there was no final

judgment entered until after it entered into the settlement, it is entitled to an order determining the settlement to be in good faith under section 877.6 and barring any indemnity or contribution claims against it.

However, the Court of Appeal in *Teresinski* rejected the identical argument raised by Hiller here. In *Teresinski*, the respondents had argued that, in light of section 877's policy in favor of settlements, a verdict must be "final" in order for a good faith settlement determination to be barred, and that a judgment is not final while there is an appeal pending. (*Id*. at p. 1404.) However, the Court of Appeal found that "'verdict' must be construed to mean the verdict rendered by the jury establishing the parties' liabilities, not the trial court's subsequent acceptance of that verdict through its own actions." (*Ibid*.) "Establishment of liability is either by verdict or judgment, depending upon whether trial is by jury or by the court; at that point settlement is no longer covered by section 877." (*Id.* at pp. 1404–1405.)

In addition, the Court of Appeal explained that, "[w]hile 'judgment' is defined by section 577 as 'the final determination of the rights of the parties in an action or proceeding,' the term is 'meaningless unless qualified by context, i.e., a judgment may be final, but modifiable at the trial level, or final for the purpose of appeal.' The finality of the judgment is determined by the circumstances present at the time it is entered; it is not determined on the basis of hindsight after further proceedings have established it did or did not provide the proper relief to the parties. Thus, the judgment of the trial court is a 'judgment' within the meaning of section 577; the possibility of further challenge does not render it any less a 'judgment.'" (*Id.* at p. 1405, citations omitted.) "The foregoing construction of 'verdict' and 'judgment' is consistent with *Halpin*'s holding that 'before verdict or judgment' means 'before establishment of liability.' We agree with *Halpin* and hold section 877 applies only to settlements reached before liability is established by jury verdict or by judgment." (*Ibid*, citation omitted.)

Here, Hiller and plaintiff entered into their settlement over a year after the jury reached its verdict and the court entered a judgment determining the liability of Hiller and the other defendants. While the judgment may not have been "final" in the sense that it was still the subject of appeals by the City, it was final in the sense that the jury had entered a verdict and the court had entered a judgment that set forth the liability of each of the defendants. The fact that the judgment was still on appeal and that it was later reduced after appeal does not render the earlier judgment entered by the court on June 22, 2021 void or a nullity.

Also, it is notable that section 877 does not state that a settlement has to be reached before a "final" judgment. It only states that the settlement must be "before verdict or judgment." (Code Civ. Proc., § 877.) Presumably, if the legislature had intended section 877 to apply to any settlement reached before a final judgment after all appeals have been exhausted, it would have said so. Since it did not, the court intends to find that section 877's plain language means what it says, and that its good faith settlement procedures do not apply to settlements reached after a verdict or judgment has been entered.

Furthermore, the policies underlying section 877 do not apply where the parties reach a settlement after a verdict and entry of judgment, as the primary purpose of section 877 is to promote settlements before trial, not after a trial has been held and a verdict and judgment have been entered. (*Be v. Western Truck Exchange*, *supra*, 55

Cal.App.4th at p. 1146.) In *Be*, the Court of Appeal found that allowing a good faith settlement finding where the parties settled after trial would not promote the purposes of section 877. "A settlement should be permitted to protect the settling tortfeasors from actions by joint tortfeasors for indemnity only if the settlement actually promotes the legislative purpose of avoiding trials. Where the settlement follows trial, that policy is not met. In that situation, there is no reason to override the policy of equitable sharing of costs among the parties at fault." (*Id.* at p. 1146.)

Likewise, here it would not promote the policies underlying section 877 to allow Hiller to obtain a good faith settlement determination and bar all contribution claims against it where it has already gone to trial and a jury verdict and judgment have already been entered against it. Therefore, the court intends to deny Hiller's application for good faith settlement as untimely, and grant the City's motion to contest the good faith settlement.[1]

Pursuant to California Rules of Court, rule 3.1312(a), and Code of Civil Procedure section 1019.5, subdivision (a), no further written order is necessary. The minute order adopting this tentative ruling will serve as the order of the court and service by the clerk will constitute notice of the order.

Tentative Ruling
Issued By: JS on 4/11/2024.
(Judge's initials) (Date)

[1] Hiller contends that denying its application will force it into bankruptcy, as it has no insurance and no way to pay off a full judgment if the City obtains a contribution order against it. However, even though the court intends to deny the good faith settlement application, this does not automatically mean that the City can recover contribution from Hiller. There is a separate motion for contribution calendared in May that will resolve the question of whether the City has the right to obtain contribution from Hiller. In any event, regardless of Hiller's financial problems, the fact remains that Hiller's application is untimely since it did not settle before the verdict and judgment were entered, so it cannot obtain a good faith settlement determination.

(36)

Tentative Ruling

Re: In re Petition of Canyon Lakes Title, LLC
Superior Court Case No. 24CECG00409

Hearing Date: April 17, 2024 (Dept. 403)

Motion: Petition for Approval of Transfer of Payment Rights

Tentative Ruling:

To deny without prejudice. (Ins. Code, § 10139.5.)

Explanation:

The Structured Settlement Protection Act governs transfers of structured settlement payments to factoring companies for immediate cash payments. (See Ins. Code, §§ 10134 et seq.) The Act provides that a transfer of structured settlement payment rights is void unless the following conditions are met:

1) The transfer is fair and reasonable, and in the payee's best interest, taking into account the welfare and support of the payee's dependents (Ins. Code, § 10137, subd. (a));
2) The transfer complies with the requirements of the Act, will not contravene other applicable law, and the judge has reviewed and approved the transfer (Ins. Code, § 10137, subd. (b); Ins. Code, § 10139.5.).

Such a transfer is not effective unless the transfer is approved in advance in a final court order based on express written findings by the judge that:

1) The transfer is in the payee's best interest, taking into account the welfare and support of the payee's dependents (Ins. Code, § 10139.5, subd. (a));
2) The payee has been advised in writing to seek independent professional advice regarding the transfer and either has received that advice or knowingly waived, in writing, the opportunity to seek advice (Ins. Code, § 10139.5, subd. (a)(2));
3) The transferee has complied with the 10-day notice requirements and provided the payee with a disclosure form and the transfer agreement complies with Insurance Code sections 10136 and 10138 (Ins. Code, § 10139.5, subd. (a)(3));
4) The transfer does not contravene any applicable statute or order of any court or other government authority (Ins. Code, § 10139.5, subd. (a)(4);
5) The payee understands the terms of the transfer agreement (Ins. Code, § 10139.5, subd. (a)(5)); and
6) The payee understands and does not wish to exercise the payee's right to cancel the transfer agreement (Ins. Code, § 10139.5, subd. (a)(6)).

Procedural Defects

A petition for approval of a transfer of structured settlement payment rights shall be made by the transferee and notice of the proposed transfer and the petition for its authorization must be filed and served on all interested parties "[n]ot less than 20 days prior to the scheduled hearing…" (Ins. Code, § 10139.5, subd. (f)(2).)

Here, Canyon Lakes Title, LLC ("Canyon Lakes") filed its petition for approval of the transfer on January 31, 2024. A proof of service in support of the petition was filed on February 14, 2024. However, these filings were rampant with procedural defects.

First, the action is not properly prosecuted in the name of the real party in interest. The names of all parties to a civil action must be included in the complaint, or here, the petition. That requirement extends to real parties in interest—anyone with a substantial interest in the subject matter of the action. (Code Civ. Proc., §§ 367, 422.40.) However, the petition fails to name the transferor entirely, and only identifies her as K.P.

"Because of the inherently sensitive nature of some proceedings, statutes specifically allow for keeping certain parties' identities confidential." (*Department of Fair Employment and Housing v. Superior Court of Santa Clara County* (2022) 82 Cal.App.5th 105, 110.) However, in light of the constitutional right of public access to court proceedings, "[o]utside of cases where anonymity is expressly permitted by statute, litigating by pseudonym should occur 'only in the rarest of circumstances.' [Citation.]" (*Id*., at p. 111-112, citations omitted.) Here, the petitioner fails to present any specific authority permitting the real party in interest to proceed anonymously. Nor has any effort been made to show that she should otherwise be allowed to do so. As such, the original petition fails to name any real party in interest.

Second, although copies of the proposed transfer agreement, disclosure forms and affidavits providing information regarding the transferor's dependent(s) were attached to the petition, they were so heavily redacted that it was impossible to determine the transferor's name, the purchase price of the annuity contract, the future payments that were being purchased, and the dependent's name and age. (Ins. Code, § 10139.5, subd. (f)(2)(A)-(f)(2)(D).) Moreover, since neither a copy of the annuity contract, qualified assignment agreement, nor underlying structured settlement agreement were attached to the petition, the terms of the transferor's structured settlement were not known to the court. (Ins. Code, § 10139.5, subd. (f)(2)(E)-(f)(2)(G).) Although an affidavit in lieu of the settlement agreement is attached, it fails to show any effort made to locate and secure a copy of the document, or otherwise provide that the documents contain a confidentiality or nondisclosure provision and cannot be presented. (*Id*., at subd. (f)(2)(H).)

Third, the proof of service filed in support of the petition is defective, as it fails to provide the name and address of the transferor/payee. (Code Civ. Proc., § 1013a.)

Although an amended petition was filed on April 2, 2024 and served to all interest parties on April 1, 2024, the amended petition does not cure the defects of the original petition, as it was untimely filed. (Ins. Code, § 10139.5, subd. (f)(2) [the petition and notice of proposed transfer must be filed and served on all interested parties not less than 20

days prior to the scheduled hearing].) It should also be noted that the transferor, Kylah Pearson's supplemental declaration, labeled as Exhibit H to the amended petition was not served and filed until as late as April 9, 2024. Thus, the petition may be denied on this basis alone.

Best Interest

Notwithstanding the procedural defects of the petition, the court also finds an insufficient showing that the proposed transfer is fair, reasonable, and in the payee's best interest. To determine what is fair and reasonable, and in the payee's best interest, the court is to consider the totality of the circumstances and the factors listed in Insurance Code section 10139.5, subdivision (b), including the purpose of the transfer and the payee's financial and economic situation. (Ins. Code, § 10139.5.)

The Insurance Code section 10139.5 subdivision (b) factors are:

1) The reasonable preference and desire of the payee, taking into account the payee's age, mental capacity, legal knowledge, and apparent maturity level;
2) The stated purpose of the transfer;
3) The payee's financial and economic situation;
4) The terms of the transaction;
5) Whether the future periodic payments were intended to pay for future medical care and treatment of the payee;
6) Whether the future periodic payments were intended to provide necessary living expenses;
7) Whether the payee is likely to require future medical care for the injuries connected to the settlement agreement;
8) Whether the payee has other means of income or support sufficient to maintain and support payee's dependents;
9) Whether the financial terms of the transaction, including the discount rate applied, are fair and reasonable;
10) Whether the payee completed previous transactions involving the structured settlement payments;
11) Whether the transferee attempted previous transfers involving the structured settlement payments that were denied;
12) Whether the payee attempted previous transfers involving the structured settlement payments that were denied;
13) Whether the payee is facing a hardship situation;
14) Whether the payee received independent legal or financial advice regarding the transfer; and
15) Any other factors the payee, transferee, or any other interested party calls to the court's attention.

Until Ms. Pearson's supplemental declaration was filed on April 9, 2024, no information was provided to the court to allow for a determination of reasonableness based on the above factors. Additionally, while it is provided that Ms. Pearson (19-years old) is a nanny who works approximately 30 hours per week, the amount of income she earns is not provided for. (Ins. Code, § 10139.5, subd. (c)(4) [the amounts and sources of

the payee's monthly income and financial resources must be included in every petition for approval of a transfer of structured settlement payments].

However, Ms. Pearson avers to a financial hardship, as she indicates that she and her minor dependent (under one-year old) are currently living on a friend's couch. She indicates that she requires the funds to purchase a home, and has found a property she can purchase for the price of $85,000. While it is sufficiently clear that Ms. Pearson is experiencing a financial hardship, the court remains concerned as to why Ms. Pearson has waived independent legal or financial counsel, or at least, has not pursued the hardship program offered by BIFCO, a company affiliated with her annuity issuer, Berkshire Hathaway Life Insurance Company of Nebraska's ("BHLN") and obligor BHG Structured Settlements, Inc. BHLN indicates that if qualified for such program, Ms. Pearson could potentially receive substantially more proceeds from selling the same future payments as in the proposed transfer. (Neville Decl., ¶¶12-18.)

Pursuant to California Rules of Court, rule 3.1312(a), and Code of Civil Procedure section 1019.5, subdivision (a), no further written order is necessary. The minute order adopting this tentative ruling will serve as the order of the court and service by the clerk will constitute notice of the order.

Tentative Ruling
Issued By: JS on 4/15/2024.
(Judge's initials) (Date)

(35)

Tentative Ruling

Re: ***Alqadhi v. Jacquez et al.***
Superior Court Case No. 23CECG02632

Hearing Date: April 17, 2024 (Dept. 403)

Motion: By Defendant American Family Connect Property & Casualty Insurance Company on Demurrer to Complaint

Tentative Ruling:

To overrule the demurrer in its entirety. (Code Civ. Proc. § 430.10, subd. (e), (f).) Defendant American Family Connect Property & Casualty Insurance Company shall file its answer within ten days of service of the minute order by the clerk.

Explanation:

Defendant American Family Connect Property & Casualty Insurance Company ("Defendant") specially demurs the second cause of action for breach of contract of the Complaint by Plaintiffs Rawiah Alqadhi, and Akram Alqadhi, Sarah Alqadhi and Sumpula Alqadhi, by and through their guardian ad litem, Rawiah Alqadhi (collectively "Plaintiffs") on the grounds of uncertainty. Defendant further generally demurs to the second cause of action for failure to state facts sufficient to constitute a cause of action. The Complaint states two causes of action: (1) motor vehicle accident as to other defendants; and (2) breach of contract as to Defendant.[1]

In determining a demurrer, the court assumes the truth of the facts alleged in the complaint and the reasonable inferences that may be drawn from those facts. (*Miklosy v. Regents of Univ. of Cal.* (2008) 44 Cal.4th 876, 883.) On demurrer, the court must determine if the factual allegations of the complaint are adequate to state a cause of action under any legal theory. (*Barquis v. Merchants Collection Assn.* (1972) 7 Cal.3d 94, 103.)

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[1] Plaintiffs vehemently oppose the representation by Defendant regarding sufficient meet and confer efforts. Plaintiffs acknowledge that counsel conferred over the phone on October 20, 2023. Plaintiffs consider the effort as unrelated to the filing of a demurrer. However, by counsel for Plaintiffs' declaration, Plaintiffs were apprised that Defendant "might not be filing an answer but might instead try to get rid of the complaint." (Leichty Decl., ¶ 6.) It is unclear what counsel for Plaintiffs expected from this proposition besides a demurrer, which is the only challenge to a complaint that may be filed before a general appearance and answer. (*Compare* Code Civ. Proc. § 437c, subd. (a)(1) [precluding a motion for summary judgment from being filed until after 60 days after a general appearance], § 438, subd. (f)(2) [precluding a motion for judgment on the pleadings until after the defendant has filed his or her answer and the time to demur has expired].) Counsel for Plaintiffs continue to explain the conversation, which included questions as to Defendant's participation in the action, and the reasons that Plaintiffs included Defendant. (Leicty Decl., ¶ 6.) Thereafter, Defendant stated that the parties disagree. (*Ibid.*) These statements are consistent with counsel for Defendant's declaration. (Gray Decl., ¶¶ 2-4.) The court finds that the parties have sufficiently met and conferred, and proceeds.

On a demurrer a court's function is limited to testing the legal sufficiency of the complaint. A demurrer is simply not the appropriate procedure for determining the truth of disputed facts. (*Fremont Indemnity Co. v. Fremont General Corp*. (2007) 148 Cal.App.4th 97, 113-114.) It is error to sustain a demurrer where plaintiff "has stated a cause of action under any possible legal theory. In assessing the sufficiency of a demurrer, all material facts pleaded in the complaint and those which arise by reasonable implication are deemed true." (*Bush v. California Conservation Corps* (1982) 136 Cal.App.3d 194, 200.)

Uncertainty

As to the second cause of action, Defendant demurs on the grounds that the complaint is uncertain and ambiguous. Defendant makes no specific arguments and does not identify what portions of the Complaint are uncertain or ambiguous.

Demurrers for uncertainty are disfavored. (*Chen v. Berenjian* (2019) 33 Cal.App.5th 811, 822.) Demurrers for uncertainty are strictly construed, even where a complaint is in some respects uncertain, because ambiguities can be clarified under modern discovery procedures. (*Khoury v. Maly's of Cal., Inc.* (1993) 14 Cal.App.4th 612, 616.) A demurrer for uncertainty is granted only when the pleading is so incomprehensible that a defendant cannot reasonably respond. (*Lickiss v. Financial Industry Reg. Authority* (2012) 208 Cal.App.4th 1125, 1135.) A special demurrer for uncertainty must distinctly specify exactly how or why the pleading is uncertain, and where such uncertainty appears by reference to page and line numbers of the complaint. (*See Fenton v. Groveland Community Svcs. Dist.* (1982) 135 Cal.App.3d 797, 809.)

Here, Defendant makes no reference to page and line numbers of the Complaint that it argues are uncertain. Rather, none of the moving papers specifically address uncertainty. The special demurrer of uncertainty as to the second cause of action is overruled. (Code Civ. Proc. § 430.10, subd. (f).)

Sufficient Facts

Defendant submits that the second cause of action for breach of contract fails to state sufficient facts to constitute a cause of action because the only allegations are legal conclusions.

To prevail on a cause of action for breach of contract, a plaintiff must prove (1) the contract; (2) the plaintiff's performance or excuse for nonperformance; (3) the defendant's breach; and (4) the resulting damages to the plaintiff. (*Richman v. Hartley* (2014) 224 Cal.App.4th 1182, 1186.)

Here, the form Complaint fails to clearly allege Defendant's breach. The contract is stated by reference, attached to the Complaint as Exhibit A. On review, the contract does not appear to create duties or obligations as stated in the Complaint, namely failing to properly advise of certain rights and options; failing to investigate the motor vehicle accident or advising Plaintiffs to do so; failing to safeguard and preserver property necessary for the claim; and failing to advise regarding underinsured coverage. Rather, as the final line, as Defendant suggests, and as Plaintiffs argue in opposition, these

allegations tend more towards a breach of the implied covenant of good faith and fair dealing.

A breach of the implied covenant of good faith and fair dealing involves something beyond breach of the contractual duties itself. (*Congleton v. National Union Fire Ins. Co.* (1987) 189 Cal.App.3d 51, 59.) An insurer's responsibility to act fairly and in good faith with respect to the handling of the insured's claim is not the requirement mandated by the policy itself. (*California Shoppers, Inc. v. Royal Globe Ins. Co.* (1985) 175 Cal.App.3d 1, 54.) Allegations to assert such a claim must show how the conduct of the defendant demonstrates a failure or refusal to discharge contractual responsibilities, prompted not by honest mistake, bad judgment or negligence, but by a conscious and deliberate act, which unfairly frustrates the agreed common purposes and disappoints the reasonable expectations of the other party thereby depriving that party of the benefits of the agreement. (*Careau & Co. v. Security Pacific Business Credit, Inc.* (1990) 220 Cal.App.3d 1371, 1395.)

Defendant argues that the Complaint alleges only conclusions, and not facts. However, a plaintiff is not required to plead evidentiary facts supporting the allegation of an ultimate fact. (*Perkins v. Superior Court* (1981) 117 Cal.App.3d 1, 6.) In other words, allegations which obviously include conclusions of law that are conclusions of fact are permitted. (*Ibid.*) What is important is that the complaint as a whole contains sufficient facts to apprise the defendant of the factual basis for plaintiff's claim. (*Ibid.*)

Here, as listed above, the ultimate facts are that Defendant failed to inform or perform certain tasks that frustrated the purpose of the incorporated contract. These are conclusions of fact that otherwise could have been simply restated as Defendant did not do those things. The court finds that the second cause of action contains sufficient facts to apprise Defendant of the factual bases of the claim.

For the above reasons, the general demurrer to the second cause of action for breach of contract is overruled.

Pursuant to California Rules of Court, rule 3.1312(a), and Code of Civil Procedure section 1019.5, subdivision (a), no further written order is necessary. The minute order adopting this tentative ruling will serve as the order of the court and service by the clerk will constitute notice of the order.

Tentative Ruling
Issued By: JS on 4/15/2024.
(Judge's initials) (Date)

(46)

Tentative Ruling

Re: ***Curtis Taylor v. Rowe Environmental Construction, LLC, et al.***
Superior Court Case No. 23CECG05083

Hearing Date: April 17, 2024 (Dept. 403)

Motion: Default Prove-Up

Tentative Ruling:

To grant judgment for plaintiff Curtis Taylor against defendants Rowe Environmental Construction, LLC and Nicolas Rowe, with money damages in the amount of $50,000.00; and rescission granted, as prayed for in the complaint. The court will also award costs in the amount of $667.66 and prejudgment interest in the amount of $8,137.80. The court will award attorney's fees in the amount of $4,750.00. Total judgment awarded in the amount of $63,555.46.

Plaintiff is to provide the court with an updated proposed judgment within twenty (20) days of the minute order issued by the clerk, whereby the court will sign the form of judgment submitted.

Explanation:

The court has revised the award of attorney's fees to comply with local rule Appendix A, which is to be used when calculating attorneys' fees in "actions on promissory notes, contracts, and foreclosures which provide for attorneys' fees." This action predominately involves a contract. The court has calculated plaintiff's attorney's fees as follows:

20% of $5,000 = $1,000
15% of $10,000 = $1,500
10% of $10,000 = $1,000
5% of $25,000 = $1,250
Total: $1,000 + $1,500 + $1,000 + $1,250 = $4,750

Plaintiff also filed an amended declaration regarding accrual of interest after filing the proposed judgment. Plaintiff must submit a new proposed judgment and update the interest amount, the attorney's fees, and a recalculated judgment amount.

Pursuant to California Rules of Court, rule 3.1312(a), and Code of Civil Procedure section 1019.5, subdivision (a), no further written order is necessary. The minute order adopting this tentative ruling will serve as the order of the court and service by the clerk will constitute notice of the order.

Tentative Ruling
Issued By: JS on 4/15/2024.
(Judge's initials) (Date)