

Tentative Rulings for May 14, 2024
Department 502

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.

(Tentative Rulings begin at the next page)

Tentative Rulings for Department 502

Begin at the next page

(46)

Tentative Ruling

Re: ***In re: Benjamin Prado Quintana***
Superior Court Case No. 24CECG01587

Hearing Date: May 14, 2024 (Dept. 502)

Motion: Petition to Approve Compromise of Disputed Claim of Minor

Tentative Ruling:

To deny without prejudice. In the event that oral argument is requested, the minor is excused from appearing.

Explanation:

Right to Compromise

Pursuant to Probate Code, section 3500(a),"When a minor has a disputed claim for damages, money, or other property and **does not have a guardian of the estate**, the following persons have the right to compromise...the claim, unless the claim is against such person or persons: (1) Either parent if the parents of the minor are not living separate and apart, [or] (2) The parent having the care, custody, or control of the minor if the parents of the minor are living separate and apart." (Emphasis added.) Probate Code section 3610 also anticipates a guardian of the estate being the one empowered to settle if there are no parents to do so. The petition itself specifies guardianship of the estate in section 18(a)(2).

Petitioner was appointed guardian of the person of the minor, not guardian of the estate, and she does not appear to be a parent of the minor. Therefore, it is not within her rights to bring this petition without being appointed guardian of the estate or guardian ad litem. No request or order to be appointed ad litem was filed.

Request for Order to Pay Outstanding Child Support

Petitioner requests that a portion of the minor's settlement amount be paid towards an outstanding child support lien, with payment being made directly to California Child Support Services.

There is insufficient information included in the petition as to the details of this lien and why it should be paid from the minor's settlement. Presuming that the lien exists as a result of non-payments by claimant's mother, then satisfaction of the lien should come from the estate of the deceased parent, not from the minor. Outstanding support obligations survive a noncustodial (obligor) parent's death as a charge against their estate. (*Taylor v. George* (1949) 34 Cal.2d 552, 556.) Lacking important information as to this request, the court cannot issue an order.

(35)

Tentative Ruling

Re: **Raminder S. Bains v. Sran Family Orchards, Inc. et al.**
Superior Court Case No. 24CECG01076

Hearing Date: May 14, 2024 (Dept. 502)

Motion: By Plaintiffs SSD Ag Unlimited, LLC, Hidden Valley, LLC, and
Raminder S. Bains for Preliminary Injunction

Tentative Ruling:

To deny, without prejudice.

Explanation:

Plaintiffs SSD Ag Unlimited, LLC, Hidden Valley, LLC, and Raminder S. Bains (collectively "Plaintiffs") seek an order for preliminary injunction as to defendant Sran Family Orchards, Inc. ("Defendant"). The verified Complaint states four causes of action: (1) breach of contract; (2) foreclose on producer's lien; (3) recovery of statutory late charges; and (4) constructive trust. Plaintiffs seek to enjoin Defendant from: (1) selling or removing from this state or beyond Defendant's control, any 2021 crop almonds or processed product therefrom that were delivered to Defendant by Plaintiffs, unless the proceeds of sales are immediately paid to Plaintiffs in satisfaction of amounts owed; and (2) using any of the proceeds from the sale of such almonds for any purpose other than for payment to Plaintiffs of any amounts owed. Plaintiffs alternatively seek the imposition of a constructive trust to the extent that sales have occurred without payment to Plaintiffs.

A preliminary injunction may be granted at any time before judgment upon a verified complaint, or upon affidavits if they show satisfactorily that sufficient grounds exist therefore. (Code Civ. Proc. § 527, subd. (a).) No preliminary injunction shall be granted without notice to the opposing party. (*Ibid.*) Here, no proof of service of the present motion was attached or filed. Neither was there an opposition filed to suggest any notice. The court cannot conclude whether the motion was duly noticed.

Even had a proof of service been filed demonstrating timely notice, relief could not be granted. Generally, the complaint must set forth a claim for injunctive relief to support the issuance of a preliminary injunction. (See Code Civ. Proc. § 526, subd. (a)(1)-(2).) However, a preliminary injunction may issue at any stage of the proceedings to maintain the status quo until judgment, regardless of whether the complaint seeks equitable relief. (*Id.*, § 526, subd. (a)(3).) Accordingly, the court evaluates whether a preliminary injunction is appropriate to maintain the status quo.

The overarching concern of injunctions is to avoid injuries from the premature enforcement of a determination which may later be found to have been wrong. (*Daly v. San Bernardino County Bd. of Supervisors* (2021) 11 Cal.5th 1030, 1044.) The status quo runs from the time before the contested conduct began. (*Id.* at p. 1046.) Thus, a preliminary injunction issued to preserve the status quo seeks to maintain the conditions

at the time the injunction would issue. (See *id.* at p. 1048.) Injunctive relief is available to prevent threatened injury and is not a remedy designed to right completed wrongs. (*Gafcon, Inc. v. Ponsor & Associates* (2002) 98 Cal.App.4th 1388, 1403, fn. 6.)

To decide whether to issue a preliminary injunction, the court weighs two factors: (1) the likelihood that the plaintiff will prevail on the merits at trial; and (2) the relative interim harm the plaintiff is likely to sustain if the injunction is denied as compared to the harm the defendant is likely to suffer if the preliminary injunction is issued. (*E.g., SB Liberty, LLC v. Isla Verde Assn., Inc.* (2013) 217 Cal.App.4th 272, 280.) The granting or denying of a preliminary injunction does not constitute an adjudication of the ultimate rights in controversy. (*Cohen v. Bd. of Supervisors* (1985) 40 Cal.3d 277, 286.) The burden of proof is on the plaintiff as moving party. (*O'Connell v. Superior Court* (2006) 141 Cal.App.4th 1452, 1481.)

Here, the verified Complaint indicates that Plaintiffs tendered certain almonds to Defendant in an alleged sales agreement over text. (Complaint, ¶¶ 14-16; Bains Decl., ¶ 7, and Ex. A thereto.) The verified Complaint further alleges that Plaintiffs tendered 2.86 million pounds of almonds produced in 2021. (Complaint, ¶ 19; Bains Decl., ¶ 12.) The verified Complaint alleges that \$2,554,221.48 is the balance outstanding and owed by Defendant on the 2.86 million pounds of almonds delivered. (Complaint, ¶ 20; Bains Decl., ¶ 12.) No information was stated as to whether the delivered almonds remain in Defendant's possession or have otherwise been disposed of. No opposition was filed.

Based on the above, the court finds that, for the purposes of preliminary injunction, there is a likelihood that Plaintiffs will prevail on the merits at trial as to the breach of contract cause of action. Further, the court finds that, for the purposes of preliminary injunction, there is a likelihood that Plaintiffs will prevail on the merits at trial as to foreclose on a producer's lien. (Food & Ag. Code § 55631 *et seq.*) The court turns to the issue of harm.

Plaintiffs do not argue any harm they will suffer if the injunction does not issue, and rather argues that the injunction cannot possibly harm Defendant. As noted above, the test is the relative interim harm that the plaintiff is likely to suffer as compared to the defendant. (*SB Liberty, LLC v. Isla Verde Assn., Inc., supra*, 217 Cal.App.4th at p. 280.) Moreover, as Plaintiffs indicate, the Food and Agricultural Code provides a priority lien that attaches to the crop on the final date of delivery. (Food & Ag. Code §§ 55631, 55632, 55633, 55635, 55636.) The moving papers do not address why, with a priority lien, there will be interim harm to Plaintiffs prior to final adjudication. The moving papers do not address any interim harm that Plaintiffs will suffer absent a preliminary injunction.

For the above reasons, the court finds that Plaintiffs have failed their burden as the moving party. The motion for preliminary injunction is denied in its entirety, but without prejudice.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

¹ The court additionally notes that one of the terms of the injunction sought by Plaintiffs seek more than to preserve the status quo; the first term seeks to compel Defendant to remit payments.

(37)

Tentative Ruling

Re: **Arturo Rodriguez v. Ravdeep Singh**
Superior Court Case No. 23CECG04769

Hearing Date: May 14, 2024 (Dept. 502)

Motion: By Plaintiff Arturo Rodriguez for Judgment on the Pleadings

Tentative Ruling:

To grant plaintiff Arturo Rodriguez's motion for judgment on the pleadings, with leave to amend. Defendants Alex, Alfred, and Rebecca Escamilla are granted 30 days' leave to file an amended answer, which will run from service by the clerk of the minute order.

Explanation:

Verification

Here, defendants have defects in their verifications. Code of Civil Procedure section 2015.5 governs verifications. A verification requires a recitation that 1) it is certified or declared by the person 2) to be true under penalty of perjury, 3) is subscribed by the person, and 4) if executed in California, states the date and place of execution or 5) if executed at any place, within or without this state, states the date of execution and that it is declared under the laws of the state of California. Defendants have not included the "penalty of perjury" language in their verification. As such, the verification for defendants is defective.

Merits

Code of Civil Procedure, section 438 provides the terms for a motion for judgment on the pleadings. Where the moving party is a plaintiff, then judgment on the pleadings may be sought where "the complaint states facts sufficient to constitute a cause of action against the defendant and the answer does not state facts sufficient to constitute a defense to the complaint." (Code of Civ. Proc., § 438 (c)(A). The grounds for such a motion "shall appear on the face of the challenged pleading or from any matter of which the court is required to take judicial notice." (Code of Civ. Proc., § 438 (d).) In a motion for judgment on the pleadings, the court "accept[s] as true all material factual allegations of the challenged pleading, unless contrary to law or to facts of which a court may take judicial notice." (*Tung v. Chicago Title Company* (2021) 63 Cal.App.5th 734, 743-744, quoting *Edwards v. Centex Real Estate Corp.* (1997) 53 Cal.App.4th 15, 27-28.)

The Escamilla defendants' form answer generally denies paragraphs 6 through 41 of the plaintiff's verified complaint. General denials are insufficient to controvert a verified complaint, even where the answer containing a general denial is verified. (Code Civ. Proc., § 431.30, subd. (d).) Here, it has already been determined that the verification

(37)

Tentative Ruling

Re: **Benito Cano-Perez v. Catherine Robles**
Superior Court Case No. 21CECG02250

Hearing Date: May 14, 2024 (Dept. 502)

Motion: By Cross-Defendant Jamie Gallegos for Summary Judgment
or, in the Alternative, Summary Adjudication

Tentative Ruling:

To grant. (Code Civ. Proc., § 437c.)

Explanation:

This motion arises out of an amended cross-complaint filed on March 20, 2023 wherein cross-complainants allege, in relevant part, that cross-defendant Jamie Gallegos was responsible for disclosures regarding a real estate transaction and that she failed to properly disclose information about the property. (First Amended Cross-Complaint, ¶¶ 10-13.) It is undisputed that Casa Robles Realty, and its agent Luis Altamirano, represented plaintiff Benito Cano-Perez in a real estate transaction involving the subject property. (UMF No. 1.) CVI Group, LLC was the seller of the subject property and was represented by All State Homes Fresno and the seller's agent was Jamie Gallegos. (UMF No. 2.) Jamie Gallegos has brought this motion for summary judgment, or in the alternative, adjudication.

It is also undisputed that on August 16, 2018, the buyer and seller signed an addendum that the subject property was to be sold "As-Is". (UMF No. 4.) The parties agree that the seller had represented that the seller obtained the subject property through a foreclosure action and had never lived at the subject property. (UMF No. 7.) Four days after signing the addendum, on August 20, 2018, the title company emailed both the buyer's agent and the seller's agent a copy of the preliminary report. (UMF No. 9.) The preliminary report included information about Notices to Comply by the County of Fresno regarding the subject property, dated March 3, 2015. (UMF No. 10.) On August 21, 2018, the buyer signed off on this preliminary report, indicating he had reviewed it. (UMF No. 11.)

Summary Judgment/Adjudication Generally

A trial court shall grant summary judgment where there are no triable issues of material fact and the moving party is entitled to judgment as a matter of law. (Code Civ. Proc., § 437c, subd. (c).) In determining a motion for summary judgment, the court views the evidence "in the light most favorable to the plaintiff", liberally construing plaintiff's evidence and strictly scrutinizing the defendant's evidence. (*Nazir v. United Airlines, Inc.* (2009) 178 Cal.App.4th 243, 254.) The court does not weigh evidence or inferences (*Aguilar v. Atlantic Richfield Co.* (2001) 25 Cal.4th 826, 856), nevertheless, the

court shall consider all inferences reasonably deducible from the evidence unless it is controverted by other inferences or evidence. (Code Civ. Proc., § 437c, subd. (c).) Doubts as to whether there is a triable issue of fact are resolved in favor of the opposing party. (*Ingham v. Luxor Cab Co.*, *supra*, 93 Cal.App.4th 1045, 1049.)

Summary adjudication is the proper mechanism for challenging a particular, “cause of action, an affirmative defense, a claim for punitive damages, or an issue of duty.” (*Paramount Petroleum Corp. v. Superior Court* (2014) 227 Cal.App.4th 226, 242.) However, “[a] motion for summary adjudication shall be granted only if it completely disposes of a cause of action, an affirmative defense, a claim for damages, or an issue of duty.” (Code Civ. Proc., § 437c, subd. (f)(1); see also *Catalano v. Superior Court* (2000) 82 Cal.App.4th 91, 97 [piecemeal adjudication prohibited].)

A summary judgment motion must show that the “material facts” are undisputed. (Code Civ. Proc., § 437c, subd. (b)(1).) The pleadings serve as the “outer measure of materiality” in a summary judgment motion, and the motion may not be granted or denied on issues not raised by the pleadings. (*Laabs v. City of Victorville* (2008) 163 Cal.App.4th 1242, 1258; *Nieto v. Blue Shield of Calif. Life & Health Ins. Co.* (2010) 181 Cal.App.4th 60, 74 [pleadings determine the scope of relevant issues on a summary judgment motion].)

Continuance

A party may request a continuance by filing a declaration explaining why further discovery is essential to opposing the motion for summary judgment and why additional time is needed. (Code Civ. Proc., § 437c, subd. (h); *Combs v. Skyriver Communications, Inc.* (2008) 159 Cal.App.4th 1242, 1270.) The declaration must show facts that establish a likelihood that evidence may exist which would create a triable issue of fact, the reasons the evidence cannot be presented now, an estimate of the time to obtain the needed evidence, and the specific steps the party intends to take to obtain the needed evidence. (Code Civ. Proc., § 437c, subd. (h); *Granadino v. Wells Fargo Bank, N.A.* (2015) 236 Cal.App.4th 411, 420.) Where a party submits a declaration which demonstrates that essential facts which would justify opposition may exist, but are not presented because the party has not been diligent in seeking these facts through discovery, the court's discretion to deny a request for a continuance is strictly limited. (*Bahl v. Bank of America* (2001) 89 Cal.App.4th 389, 398.) There is a strong public policy favoring disposition on the merits, over judicial economy. (*Ibid.*)

While the policy favors disposition on the merits, and the court's discretion is strictly limited here, counsel's declaration falls far short of showing facts that establish a likelihood evidence may exist creating a triable issue of material fact. While the individual to be deposed the day after this motion is set to be heard is a party, there is no explanation for how Catherine Robles would provide any testimony to address the finite issues here regarding Gallegos' potential liability. As cross-defendant points out, Robles' testimony cannot change the law or address cross-defendant's knowledge. Additionally, counsel has not provided any information as to why his own client's deposition could not have occurred prior to this motion being heard. A continuance is not warranted under these circumstances.

Merits

Negligence and Negligent Misrepresentation

Cross-complainants have alleged both negligence and negligent misrepresentation based on a failure to disclose. In order to establish negligence, a party must prove 1) a duty of care, 2) breach of said duty, 3) causation, and 4) harm. (*Peredia v. HR Mobile Services, Inc.* (2018) 25 Cal.App.5th 680, 687.) Cross-defendant Gallegos argues that she had no duty here and that, even if she did, she did not breach her duty as the selling agent.

In order to establish negligent misrepresentation, a party must prove 1) an assertion of fact, 2) falsity of that assertion, 3) the tortfeasor's lack of reasonable grounds for believing the assertion to be true, 4) intent to induce reliance, 5) justifiable reliance, and 6) damages. (*SI 59 LLC v. Variel Warner Ventures, LLC* (2018) 29 Cal.App.5th 146, 154.) Gallegos argues that cross-complainants cannot show a false representation of fact, a lack of reasonable grounds for her belief regarding her representations, or justifiable reliance.

Cross-complainants argue, under the same heading, that triable issues of material fact exist as to “whether Casa Robles Realty and Luis Altamirano were the sole cause of negligence and or negligent misrepresentation giving rise to Plaintiff's injuries.” (Memorandum ISO Opposition, p. 9.) They argue that the Real Estate Transfer Disclosure Statement incorrectly marked “No” on boxes on page 2 of the document, even though a Preliminary Title Report indicated the property had been deemed a public nuisance by Fresno County on March 3, 2015. (UMF Nos. 8, 31, 48.) They assert that the buyer did not read or speak English and could not have understood the information in the preliminary report. (UMF Nos. 8, 31, 48.) Also, they assert that Gallegos is more than just the seller's agent here, because she is also the wife of the owner of CVI Group, which is the company that was selling the subject property. (UMF Nos. 6, 29, 53, 77.)

Civil Code section 2079 provides the duties of real estate brokers and salespersons. A selling agent in a real estate transaction has a duty to disclose to the buyer “facts materially affecting the value or desirability of the property.” (Ibid.) However, where a seller's agent's nondisclosure is alleged, summary judgment is appropriate where the failure to disclose is regarding information that the buyer either actually, or by imputation, knew. (*Roche v. Hyde* (2020) 51 Cal.App.5th 757, 821.) Here, it is undisputed that the preliminary report was emailed to both the buyer's and seller's agents on August 20, 2018 and that the report contained the information about the Notice to Comply by Fresno County dated March 3, 2015. (UMF Nos. 9-10.) Additionally, it is undisputed that the buyer signed off on receipt of the preliminary report. (UMF No. 11.) Therefore, the failure to disclose which is relevant here was for information the buyer either actually or impliedly knew because he received the preliminary report.

Cross-complainants assert that *Roche* provides more context for this case, citing “In the absence of a fiduciary duty or active concealment by deceptive obstruction of the buyer's ability to learn the truth, liability for ‘mere nondisclosure’ in a real estate transaction may rest on the breach of a contractual duty of disclosure.” (*Roche v. Hyde, supra*, 51 Cal.App.5th at pp. 820-821, citations omitted.) In such nondisclosure cases, the

complainant has “the burden to show the seller knew the undisclosed information was ‘not known to, or within the reach of the diligent attention and observation of the buyer.’” (*Id.* at p. 821, quoting *Lingsch v. Savage* (1963) 213 Cal.App.2d 729, 735.) Notably, cross-complainants acknowledge they have not alleged fraud or intentional misrepresentation and concede it is their burden to show that the seller knew the buyer was not aware of undisclosed information. They appear to argue that because the buyer was unable to read and speak English, then the seller’s agent bore “at least some” responsibility to ensure that the buyer understood the nuisance information contained in the preliminary report. However, cross-complainants cite **no** authority for their position that a buyer’s language difficulties are reason for the seller’s agent to know that the buyer did not know the information contained in the preliminary report. Nothing presented by cross-complainants disputes that a seller’s agent’s nondisclosure of information known, either actually or by imputation, is a proper subject for summary judgment.

Regarding the Real Estate Transfer Disclosure Statement incorrectly designating “none” for property defects, *Peake v. Underwood* (2014) 227 Cal.App.4th 428, 446 provides guidance. In *Peake*, the court found that even though a seller had marked that there were no defects on disclosure forms, the seller’s agent had not breached his duty where the buyer had been provided with photographs and reports of defects. (*Id.* at pp. 433, 446.) This is similar to the circumstances here where despite the Disclosure Statement indicating no defects, the preliminary report, provided to both the buyer and seller’s agents simultaneously, disclosed the Notice of Violation deeming the property a public nuisance.

Cross-complainants attempt to distinguish this case from that presented in *Peake* by asserting that *Peake* involved visible defects whereas this case involves a Notice of Violation. However, this does not change the fact that the preliminary report was given to the buyer’s agent. Again, cross-complainants have not presented any authority to challenge that the receipt of the preliminary report obviated the seller’s agent’s duty to disclose.

Cross-complainants also attempt to distinguish this case from *Peake* by asserting that *Peake* did not involve a buyer who had language difficulties. Again, cross-complainants cite no authority for their position that a buyer’s language difficulties are reason for the seller’s agent to know that acknowledgement of receipt of the preliminary report would not have imputed knowledge of the Notice to the buyer.

Lastly, cross-complainants assert that Gallegos is the wife of the owner of the company selling the subject property. First, this does not actually present a disputed fact as Gallegos has not claimed she was not the wife of the company owner. However, cross-complainants have failed to provide any authority for the court to treat Gallegos’ marital status as a material fact in this circumstance. The court fails to see the relevance of Gallegos’ marital status in the context of any duty she may have owed to the buyer here.

As such, the court grants summary adjudication to both the negligence and negligent misrepresentation causes of action.

(34)

Tentative Ruling

Re: **John Doe 1 v. Mitchell Singh, et al.**
Superior Court Case No. 23CECG03615

Hearing Date: May 14, 2024 (Dept. 502)

Motion: Defendant City of Clovis' Demurrer and Motion to Strike the Complaint

Tentative Ruling:

To continue the motion to Tuesday, July 2, 2024 at 3:30 p.m. in Department 502, in order to allow the parties to meet and confer in person or by telephone, as required. If this resolves the issues, cross-defendant shall call the calendar clerk to take the motion off calendar. If it does not resolve the issues, counsel for cross-defendant shall file a declaration, on or before June 18, 2024, stating the efforts made. If no declaration is filed, the motion will be taken off calendar.

Explanation:

Under Code of Civil Procedure section 430.41, “[b]efore filing a demurrer pursuant to this chapter, the demurring party shall meet and confer in person or by telephone with the party who filed the pleading that is subject to demurrer for the purpose of determining whether an agreement can be reached that would resolve the objections to be raised in the demurrer.” (Code Civ. Proc., § 430.41, subd. (a).) “As part of the meet and confer process, the demurring party shall identify all of the specific causes of action that it believes are subject to demurrer and identify with legal support the basis of the deficiencies.” (Code Civ. Proc., § 430.41, subd. (a)(1).)

“The demurring party shall file and serve with the demurrer a declaration stating either of the following: (A) The means by which the demurring party met and conferred with the party who filed the pleading subject to demurrer, and that the parties did not reach an agreement resolving the objections raised in the demurrer. (B) That the party who filed the pleading subject to demurrer failed to respond to the meet and confer request of the demurring party or otherwise failed to meet and confer in good faith.” (Code Civ. Proc., § 430.41m subd. (a)(3)(A), (B), paragraph breaks omitted.) The statute regarding motions to strike contains the same requirements regarding meet and confer efforts. (Code Civ. Proc. § 435.5.)

Here, counsel for defendant has filed a declaration which indicates a letter was sent by email on March 18, 2024 stating the grounds for the demurrer and motion to strike and requesting a response from plaintiff's counsel by March 20, 2024. (Scott Decl., ¶ 3.) After not receiving a response by phone or email the demurrer and motion to strike were filed. (*Id.* at ¶ 3.) The declaration does not show that counsel engaged in good faith meet and confer efforts before filing the demurrer and motion to strike.

