Tentative Rulings for August 26, 2025
Department 503

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.

25CECG00794 ***Odira Okereke v. Sunrun Inc*****. is continued to Thursday, September 11, 2025, at 3:30 p.m. in Department 503.**

(Tentative Rulings begin at the next page)

Tentative Rulings for Department 503

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(03)

Tentative Ruling

Re: ***Figueroa v. RCJG Company, L.P.***
Case No. 23CECG03465

Hearing Date: August 26, 2025 (Dept. 503)

Motion: Defendant RCJG Company's Motion for Summary Judgment

If oral argument is timely requested, it will be entertained on Tuesday, September 2, 2025, at 3:30 p.m. in Department 503

Tentative Ruling:

To deny defendant RCJG Company's motion for summary judgment.

Explanation:

Defendant moves for summary judgment of the complaint on the theory that plaintiffs' cannot prevail on their negligence claim because defendant leased the property to another entity, Kelly Paper Company, and the lease provided that Kelly Paper, not RCJG, was solely responsible for maintaining and repairing the property during the term of the lease. (Defendant's Compendium of Evidence, Exhibit B, Lease Agreement §§ 7.1, 7.2.) The lease has been amended four times since the parties originally entered into it in December of 1999, but none of the amendments changed the language stating that the lessee, not the lessor, has the sole responsibility for maintaining and repairing the property. (Defendant's Compendium of Evidence, Exhibits C-F.) Therefore, defendant contends that it owed plaintiff no duty to maintain the property in a safe condition, and plaintiffs cannot prevail on their negligence claim.

In general, "[a] landowner owes a duty to exercise reasonable care to maintain his or her property in such a manner as to avoid exposing others to an unreasonable risk of injury. The failure to fulfill the duty is negligence. The existence of a duty of care is an issue of law for the court." (*Barnes v. Black* (1999) 71 Cal.App.4th 1473, 1478, citations omitted.)

On the other hand, where the landowner leases the property to a tenant, the tenant in possession of the property is generally the person who owes a duty to maintain the property in a reasonably safe condition. "'"[T]he duties owed in connection with the condition of land are not invariably placed on the person [holding title] but, rather, are owed by the person in possession of the land [citations] because [of the possessor's] supervisory control over the activities conducted upon, and the condition of, the land."'" (*Alcaraz v. Vece* (1997) 14 Cal.4th 1149, 1157–1158, citations omitted.)

"'In common law parlance, the possessor of land is the party bearing responsibility for its safe condition. Possession, in turn, is equated with occupancy plus control. Thus, in identifying the party vulnerable to a verdict, control dominates over title. "The crucial element is control."'" (*Id*. at p. 1159, citations omitted.) " 'That is why it is normally the

tenant rather than the landlord who is liable to anyone injured as a result of a dangerous condition on leased land and why this field of tort law is more accurately described as land occupiers' and possessors' liability than as landowners' liability.'" (*Id*. at p.1160, citation omitted.)

"Public policy precludes landlord liability for a dangerous condition on the premises which came into existence after possession has passed to a tenant. This is based on the principle that the landlord has surrendered possession and control of the land to the tenant and has no right even to enter without permission. It would not be reasonable to hold a lessor liable if the lessor did not have the power, opportunity, and ability to eliminate the dangerous condition." (Garcia v. Holt (2015) 242 Cal.App.4th 600, 604, citations omitted.) "Historically, the public policy of this state generally has precluded a landlord's liability for injuries to his tenant or his tenant's invitees from a dangerous condition on the premises which comes into existence after the tenant has taken possession. This is true even though by the exercise of reasonable diligence the landlord might have discovered the condition." (*Uccello v. Laudenslayer* (1975) 44 Cal.App.3d 504, 510, citations omitted.)

However, there are several exceptions to this general rule. "To this general rule of nonliability, the law has developed a number of exceptions, such as where the landlord covenants or volunteers to repair a defective condition on the premises, where the landlord has actual knowledge of defects which are unknown and not apparent to the tenant and he fails to disclose them to the tenant, *where there is a nuisance existing on the property at the time the lease is made or renewed*, when a safety law has been violated, or where the injury occurs on a part of the premises over which the landlord retains control, such as common hallways, stairs, elevators or roof." (*Ibid*, citations omitted, italics added.)

"A common element in these exceptions is that either at or after the time possession is given to the tenant the landlord retains or acquires a recognizable degree of control over the dangerous condition with a concomitant right and power to obviate the condition and prevent the injury. In these situations, the law imposes on the landlord a duty to use ordinary care to eliminate the condition with resulting liability for injuries caused by his failure so to act." (*Ibid*, citation omitted.) " ' "Thus, before liability may be thrust on a landlord for a third party's injury due to a dangerous condition on the land, the plaintiff must show that the landlord had actual knowledge of the dangerous condition in question, plus the right and ability to cure the condition." ' " (*Day v. Lupo Vine Street, L.P*. (2018) 22 Cal.App.5th 62, 69, citations omitted.)

"Because a landlord has the right to enter property (and thus has possession and control over that property) when initiating or renewing a lease, a landlord owes a greater duty to third parties injured by dangerous conditions existing on the property at those moments in time. At these specific moments in time, a landlord has a duty (1) to conduct a reasonable inspection of the property if the landlord has a 'reason to know' there may be a dangerous condition on the property at that time, and (2) to repair, if that inspection reveals a dangerous condition." (*St. John v. Schaeffler* (2025) 109 Cal.App.5th 1146, 1159, citations and paragraph break omitted, italics omitted.)

"Because a landlord at these moments in time sometimes has a duty to conduct a 'reasonable inspection,' such a landlord is accordingly charged not only with what they actually knew but also with what they constructively knew (that is, what they 'should have known' by virtue of the inspection); thus, the landlord's duty of care at these moments in time is more onerous than the duty of care extant during the tenancy itself, which, as noted above, makes a landlord's duty to act contingent upon the landlord's actual knowledge and the power and ability to correct the dangerous condition." (*Id*. at p.1160, citations omitted.)

"[A] commercial landowner [] cannot totally abrogate its landowner responsibilities merely by signing a lease. As the owner of property, a lessor out of possession must exercise due care and must act reasonably toward the tenant as well as to unknown third persons. At the time the lease is executed and upon renewal a landlord has a right to reenter the property, has control of the property, and must inspect the premises to make the premises reasonably safe from dangerous conditions. Even if the commercial landlord executes a contract which requires the tenant to maintain the property in a certain condition, the landlord is obligated at the time the lease is executed to take reasonable precautions to avoid unnecessary danger." (*Mora v. Baker Commodities, Inc*. (1989) 210 Cal.App.3d 771, 781, citations omitted.)

In the present case, while defendant RCJG relies on the language of the lease agreement that provides that the tenant Kelly Paper Company has the duty to maintain and repair the property, defendant has not shown that it ever conducted a reasonable inspection of the premises to ensure that they were in a safe condition, either at the time the lease was originally executed or when the lease was renewed. Nor has it presented evidence showing that the property was in a reasonably safe condition when it executed the lease, or when the lease was renewed. Thus, defendant has not met its burden of showing that plaintiffs will be unable to prevail on their negligence claim.

The defendant's evidence shows that it originally entered into the lease agreement with Kelly Paper on December 9, 1999. (Exhibit B to Defendant's Evidence.) The original lease contained language that Kelly Paper would be solely responsible for maintaining and repairing the property, and the RCJG would not be responsible for maintaining the property. (*Id*. at §§ 7.1, 72.) RCJG and Kelly Paper entered into four separate amendments to the lease on November 24, 2009, December 4, 2014, May 8, 2020, and September 24, 2021. (Exhibits C-F to Defendant's Evidence.) None of the amendments changed the lease language regarding the tenant's responsibility to maintain the property. (*Ibid*.)

However, during the periods when the lease was being renewed, RCJG had a duty to conduct a reasonable inspection of the property and either correct any dangerous condition, or require Kelly Paper to repair the condition. "At the time the lease is executed *and upon renewal* a landlord has a right to reenter the property, has control of the property, and *must inspect the premises to make the premises reasonably safe from dangerous conditions*. Even if the commercial landlord executes a contract which requires the tenant to maintain the property in a certain condition, *the landlord is obligated at the time the lease is executed to take reasonable precautions to avoid unnecessary danger*." (*Mora v. Baker Commodities, Inc., supra*, 210 Cal.App.3d at p. 781, citations omitted, italics added.)

In *Mora*, the Court of Appeal held that the landlord had not met its burden on summary judgment of showing that it had conducted a reasonable inspection of the premises at the time the lease was executed. (*Ibid*.) Thus, the trial court erred in granting summary judgment in favor of the landlord on plaintiff's personal injury cause of action, which was based on a dangerous condition of the premises. (*Ibid*.)

Likewise, here RCJG has not presented any evidence that states that it conducted an inspection of the property when the lease was originally executed or when the lease was renewed. Nor does it state that the property was in a reasonably safe condition at the time the lease was executed or when the lease was renewed in September of 2021. In fact, RCJG has not presented any evidence that addresses the condition of the property at any time, or that shows when the dangerous condition first occurred. Thus, RCJG has not met its burden of showing that it conducted a reasonable inspection of the property before leasing it to Kelly Paper, or that the property was in a reasonably safe condition when the lease was renewed in September of 2021.

According to Kelly's facilities director, Josh Hellon, as far as he knew RCJG had not done any inspections of the property since the lease was originally entered into in 1999. (Hellon depo., pp. 34:1-4; 36:16-19.) He also testified that the concrete walkway to the left of the entrance had to be repaired in April of May of 2021, a few months before the September 24, 2021 lease renewal. (*Id*. at pp. 52:17 - 53:10.) The repair was near the area of the property where plaintiff later fell in September of 2022. (*Ibid*.) Hellon did not recall there being any previous problems with the concrete walkway in front of the door before 2021. (*Id*. at pp. 53:18-25 – 54:1.)

Thus, the evidence indicates that defendant did not conduct any inspections of the property after executing the lease in 1999 and before the incident. Nor is there any evidence that the property was in a reasonably safe condition when the lease was renewed in September of 2021, which would have been the last time that defendant had a duty to conduct an inspection of the property. It is possible that the pothole that constituted the alleged dangerous condition already existed when the lease was renewed in September of 2021. If so, then defendant arguably should have been on notice of the dangerous condition when it renewed the lease in September of 2021, since the pothole was in a prominent location near the front door to the business, and it should have taken steps to repair the condition or have Kelly repair it.

Defendant points out in its reply that the lease was first executed in December of 1999, and the last renewal was on September 24, 2021. Defendant also points out that the incident did not occur until September 29, 2022, more than a year after the last lease renewal. Therefore, defendant concludes that it was not in possession at the time of the accident and it had no duty to remedy the dangerous condition, as Kelly Paper had possession and control of the premises when the accident occurred.

Again, however, there is no evidence before the court showing when the dangerous condition first arose, or that defendant conducted a reasonable inspection of the property before renewing the lease in September of 2021. It is possible that the dangerous condition existed when defendant renewed the lease in September of 2021. At the time of the renewal, defendant had a duty to conduct a reasonable inspection

of the property and to repair any dangerous conditions that it discovered in the inspection. Without evidence showing that defendant conducted a reasonable inspection of the property when the lease was renewed and that no dangerous conditions existed at that time, defendant has not shown that it is entitled to summary judgment. As a result, the court intends to deny the motion for summary judgment.

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 8/19/2025.
(Judge's initials) (Date)

(03)

Tentative Ruling

Re: ***Pa Nou Lee v. Kayasit Ly***
Case No. 22CECG02744

Hearing Date: August 26, 2025 (Dept. 503)

Motion: Plaintiff's Motion for Leave to File a Corrected Fifth Amended Complaint

If oral argument is timely requested, it will be entertained on Tuesday, September 2, 2025, at 3:30 p.m. in Department 503

Tentative Ruling:

To grant plaintiff's motion for leave to file a corrected fifth amended complaint. Plaintiff shall file and serve her corrected fifth amended complaint within 10 days of the date of service of this order. All new allegations shall be in **boldface**.

Explanation:

"'Code of Civil Procedure section 473, which gives the courts power to permit amendments in furtherance of justice, has received a very liberal interpretation by the courts of this state.... In spite of this policy of liberality, a court may deny a good amendment in proper form where there is unwarranted delay in presenting it.... On the other hand, where there is no prejudice to the adverse party, it may be an abuse of discretion to deny leave to amend.' 'In the furtherance of justice, trial courts may allow amendments to pleadings and if necessary, postpone trial.... Motions to amend are appropriately granted as late as the first day of trial ... or even during trial ... if the defendant is alerted to the charges by the factual allegations, no matter how framed ... and the defendant will not be prejudiced.'" (*Rickley v. Goodfriend* (2013) 212 Cal.App.4th 1136, 1159, citations omitted.)

Here, plaintiff seeks leave to file a corrected fifth amended complaint, which will state claims against the remaining four defendants, Tonnah Her, Mai Chang, Der Chang, and Steve Xiong for libel, false light, negligence, and intentional infliction of emotional distress. Plaintiff claims that the new amendment is necessary to delete references to other defendants who have now been dismissed, to add a claim for false light that was previously stricken by the court for procedural reasons, and to add facts to clarify some of her claims. Plaintiff does not appear to have unduly delayed in seeking leave to amend her complaint, and there is no reason to believe that the remaining defendants will be prejudiced if leave to amend is granted. Also, while plaintiff has not served the remaining defendants with her motion, they have not yet appeared in the action, so they do not necessarily have a right to be served at this time. Therefore, the court intends to grant plaintiff leave to file her corrected fifth amended complaint.

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 8/19/2025.
(Judge's initials) (Date)

(47)

Tentative Ruling

Re: ***Rosaura Miramontes v Harbans Singh***
Superior Court Case No. 23CECG03443

Hearing Date: August 26, 2025 (Dept. 503)

Motion: by Defendant for Leave to File Cross-Complaint

If oral argument is timely requested, it will be entertained on Tuesday, September 2, 2025, at 3:30 p.m. in Department 503

Tentative Ruling:

To grant defendant Schreiber Foods, Inc. motion for leave to file a cross-complaint against codefendants Sue Colvin DBA Sioux Transportation Inc. and J&C Truck Lines, Inc. The Cross-complaint shall be filed and served within 10 days of the clerk's service of this minute order.

Explanation:

Leave to file a cross-complaint is liberally granted. (*Silver Organizations Ltd. v. Frank* (1990) 217 Cal.App.3d 94, 98–99). No opposition has been filed.

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 8/21/2025.
(Judge's initials) (Date)

(34)

Tentative Ruling

Re: ***Breazeale v. Miller-Phelen, Inc., et al.***
Superior Court Case No. 24CECG01093

Hearing Date: August 26, 2025 (Dept. 503)

Motion: by Nominal Defendant Brittany Fayter to Realign as Plaintiff

If oral argument is timely requested, it will be entertained on Tuesday, September 2, 2025, at 3:30 p.m. in Department 503

Tentative Ruling:

To grant nominal defendant Brittany Fayter's motion to realign herself as a plaintiff in the action.

Explanation:

Nominal defendant Brittany Fayter, erroneously named as Brittany Fayler, is entitled to the relief she seeks, since she is properly a plaintiff in the action due to being a surviving her of the decedent; she was only named as a defendant because she was not aware of the case when it was first filed. "If the consent of any one who should have been joined as plaintiff cannot be obtained, he may be made a defendant, the reason thereof being stated in the complaint…" (Code Civ. Proc., § 382.) "[H]eirs who file a wrongful death action 'have a mandatory duty to join all known omitted heirs in the "single action" for wrongful death. If an heir refuses to participate in the suit as a plaintiff, he or she may be named as a [nominal] defendant so that all heirs are before the court in the same action. An heir named as a defendant in a wrongful [death] action is, in reality, a plaintiff.'" (*Hall v. Superior Court* (2003) 108 Cal.App.4th 706, 715, footnotes and citations omitted.)

Here, Brittany Fayter was identified as a potential heir of decedent Jerry Breazeale II but apparently could not be contacted to be advised of the action even though she would have been a proper plaintiff in the action as a surviving heir of the decedent. Thus, she was named as a nominal defendant instead. Now, she wishes to be designated as a plaintiff to reflect her actual status in the action. Such relief is proper, as Ms. Fayter is properly a plaintiff. Therefore, the court intends to grant the motion to re-designate defendant as a plaintiff in the action.

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: J S on 8/22/2025.
(Judge's initials) (Date)