

Tentative Rulings for August 30, 2023
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.

22CECG04022 Adventure Church, Inc. v. Terance Frazier is continued to Thursday, August 31, 2023 at 3:30 p.m. in Department 503

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Tentative Ruling

Re:

Vera v. The Mortgage Store Financial Inc., et al.

Superior Court Case No. 23CECG00771

Hearing Date:

August 30, 2023 (Dept. 503)

Motion:

Demurrer to Complaint by Specialized Loan Servicing, LLC and Mortgage Electronic Registration Systems, Inc.

Tentative Ruling:

To sustain the demurrer to the Complaint as to Mortgage Electronic Registration Systems, Inc. ("MERS"), without leave to amend. As to Specialized Loan Servicing, LLC, to sustain the demurrer to the second cause of action, without leave to amend. To overrule Specialized Loan Servicing LLC's ("SLS") demurrer to the first cause of action. Within 10 days of service of the order by the clerk, SLS shall file its answer to the Complaint.

Explanation:

In the first cause of action for wrongful foreclosure, plaintiff alleges that the foreclosure sale was wrongful because defendant "SL" (presumably this refers to SLS) did not comply with Civil Code section 2924(f) because the sale was conducted without providing him notice. SLS offered plaintiff a loan modification and then rescinded it. Plaintiff alleges that the failure to give him notice prevented him from taking steps to stop the foreclosure sale. Plaintiff also alleges that SLS failed to assign him a single point of contact in violation of Civil Code section 2923.7. (Complaint, ¶¶ 49-59.)

The second cause of action for promissory estoppel is also based on SLS' failure to modify the loan as promised. Plaintiff alleges that he relied on representations by SLS that he could refinance the home and secure the amount required by the modification offer from SLS from Guardian Mortgage and took steps to pursue such financing. Plaintiff alleges that he entered into an agreement with SLS to modify the loan. (Complaint, ¶¶ 66-8.)

As the moving papers point out, the Complaint contains no allegations of any wrongdoing by MERS. Accordingly, the demurrer will be sustained as to all causes of action against MERS.

As to the alleged violation of section 2924f, the Complaint alleges that the sale was conducted without giving notice to plaintiff. Demurring defendants contend that the Complaint alleges compliance with section 2924f because the Complaint alleges that "[f]ollowing the recording of the NOS, Mr. Vera sought a mortgage loan modification from SLS." (Complaint, ¶ 34.) However, this was in October of 2022, before plaintiff applied for and was approved for a loan modification. The moving papers do not show that notice of the sale was provided after SLS offered and then subsequently rescinded the "short payoff." (See Complaint, ¶¶ 33-35.) Despite the contentions in the moving papers, the Complaint does not allege compliance with section 2924f.

The first cause of action is also premised on the allegation that defendants failed to assign a single point of contact in violation of Civil Code section 2923.7. Per Civil Code section 2924.15, section 2923.7 only applies to first lien mortgages or deeds of trust that are secured by owner-occupied residential real property containing no more than four dwelling units. (Civ. Code, §2924.15.) The loan at issue here is a second deed of trust that was not a first position lien. Section 2923.7 does not apply. As a result, the wrongful foreclosure claim cannot be based on violation of section 2923.7. However, a demurrer cannot be sustained to only part of a cause of action. (See *Daniels v. Select Portfolio Servicing, Inc.* (2016) 246 Cal.App.4th 1150, 1167.) Accordingly, as to SLS, the court intends to overrule the demurrer to the first cause of action.

The second cause of action for promissory estoppel is based on SLS' rescission of the short payoff offer.

Promissory estoppel cause of action elements are (1) a promise clear and unambiguous in its terms; (2) reliance by the party to whom the promise is made; (3) [the] reliance must be both reasonable and foreseeable; and (4) the party asserting the estoppel must be injured by his reliance. (*Advanced Choices, Inc. v. State Dept. of Health Services* (2010) 182 Cal.App.4th 1661, 1672.)

As a general matter of contract law, an offer can be rescinded before acceptance. (Civ. Code, § 1586.) The allegations of the Complaint show that plaintiff was not able to obtain financing to make the short payoff. (Complaint, ¶¶ 36-38.) As result, SLS rescinded the short payoff offer before it was accepted. (Complaint, ¶ 39.) Plaintiff could no longer reasonably rely on the short payoff after it had been rescinded. The court intends to sustain the demurrer to the second cause of action.

Normally, even if a demurrer is sustained, leave to amend is routinely granted, where a fair opportunity to correct any defect has not been given. (*Angie M. v. Superior Court* (1995) 37 Cal.App.4th 1217, 1227.) Absent a request for leave to amend, no abuse of discretion will be found unless a potentially effective amendment is both apparent and consistent with plaintiff's theory of the case. (*Camsi IV v. Hunter Technology Corp.* (1991) 230 Cal.App.3d 1525, 1542.) But the burden is on the plaintiff to show in what manner he or she can amend the complaint, and how that amendment will change the legal effect of the pleading. (*Hendy v. Losse* (1991) 54 Cal.3d 723, 742.) Here, plaintiff has not opposed the demurrer, requested leave to amend, or shown how the deficiencies in the Complaint could be cured by amendment. Accordingly, the court does not intend to grant leave to amend.

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: jyh **on** 8/29/23.
(Judge's initials) (Date)

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Tentative Ruling

Re:

Julie Andrews v. Cary Chleborad
Superior Court Case No. 21CECG02909

Hearing Date:

August 30, 2023 (Dept. 503)

Motion:

By Plaintiffs to Quash Deposition Subpoena of Counsel

Tentative Ruling:

To deny without prejudice based on defective proof of service.

Explanation:

The proofs of service as to this motion are all defective. Defendant's address for service purposes is 1135 Meredith Way in Folsom, California. The proofs of service all state that defendant was served by mail at 1135 Meridith Way, which is a typographical error of defendant's address. As service of the motion on defendant appears to be defective, the court is denying the motion without prejudice.

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: jyh **on** 8/29/23.
(Judge's initials) (Date)

(29)

Tentative Ruling

Re: ***Parra v. General Motors, LLC***
Superior Court Case No. 23CECG00441

Hearing Date: August 30, 2023 (Dept. 503)

Motions: Demurrer; strike

Tentative Ruling:

To find moot and take off calendar.

Explanation:

The filing of a first amended complaint renders a pending demurrer moot as the “amendatory pleading supersedes the original one, which ceases to perform any function as a pleading.” (*People ex rel. Strathmann v. Acacia Research Corp.* (2012) 210 Cal.App.4th 487, 506, internal citation and quotation marks omitted; see also Code Civ. Proc. §472(a).) Here, plaintiff has filed a first amended complaint, rendering defendant's demurrer and motion to strike moot. The court therefore takes the motions off calendar.

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: jyh **on** 8/29/23
(Judge's initials) (Date)