

Tentative Rulings for September 27, 2022
Department 503

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

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Tentative Ruling

Re: **Redwood Fire & Casualty Insurance Company v. Gonzalez Trucking, Inc.**
Superior Court Case No. 21CECG00129

Hearing Date: September 27, 2022 (Dept. 503)

Motion: Plaintiff's Motion for Summary Judgment or, in the Alternative, Summary Adjudication

Tentative Ruling:

To deny.

Explanation:

Summary judgment law turns on issue *finding* rather than issue *determination*. (*Diep v California Fair Plan Ass'n* (1993) 15 Cal.App.4th 1205, 1207.) The court does not decide the merits of the issues, but merely discovers, through the medium of affidavits or declarations, whether there are issues to be tried and whether the parties possess evidence that demands the analysis of a trial. (*Melamed v City of Long Beach* (1993) 15 Cal.App.4th 70, 76; *Molko v Holy Spirit Ass'n* (1988) 46 Cal.3d 1092, 1107; *Schworer v Union Oil Co.* (1993) 14 Cal.App.4th 103, 110.) In short, the motion is not a substitute for a bench trial.

A summary judgment motion must show that the "*material facts*" are undisputed. (Code Civ. Proc., § 437c, subd. (b)(1), emphasis added.) 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].)

A party moving for summary judgment or summary adjudication must support the motion with a separate statement that sets forth plainly and concisely all material facts that the moving party contends are undisputed, and each of these material facts must be followed by a reference to the supporting evidence. (Code Civ. Proc., § 437c, subds. (b)(1), (f)(2).) A separate statement is required to afford due process to the opposing party and to permit the judge to expeditiously review the motion for summary judgment or summary adjudication to determine quickly and efficiently whether material facts are disputed. (*Parkview Villas Ass'n, Inc. v State Farm Fire & Cas. Co.* (2005) 133 Cal.App.4th 1197, 1210; *United Community Church v Garcin* (1991) 231 Cal.App.3d 327, 335.) As a result, the separate statement should include only *material facts*—ones that could make a difference to the disposition of the motion. (Cal. Rules of Court, rule 3.1350(f)(3); see also Cal. Rules of Court, rule 3.1350(a)(2) [defining "material facts"].)

As a result, the moving party must go through its own case and the opposing party's case on an issue-by-issue basis. The moving party must identify for the court the matters it contends are "undisputed," and cite the specific evidence (pleadings admissions, discovery, or declarations) showing that there is no controversy as to such matters and that the moving party is entitled to judgment as a matter of law. "This is the Golden Rule of Summary Adjudication: If it is not set forth in the separate statement, *it does not exist.*" (*United Community Church v. Garcin* (1991) 231 Cal.App.3d 327, 337, superseded by statute on other grounds, emphasis in original; see also *Allen v. Smith* (2002) 94 Cal.App.4th 1270, 1282; *Teselle v. McLoughlin* (2009) 173 Cal.App.4th 156, 173 [failure of defendant's separate statement to address material allegation in complaint was "fatal flaw"].)

On a motion for summary adjudication, the statement must also tie each "undisputed material fact" to the particular claim, defense or issue sought to be adjudicated: "(T)he specific cause of action, affirmative defense, claims for damages, or issues of duty must be stated specifically in the notice of motion and be repeated, verbatim, in the separate statement of undisputed material facts." (Cal. Rules of Court, rule 3.1350(b).) When multiple causes of action, issues or defenses are presented for summary adjudication in one motion, each cause of action, issue or defense to which the motion is directed must have a separate section heading indicating the issue number and specifying the issue. (Cal. Rules of Court, rule 3.1350(d).)

In the case at bench, plaintiff brings this motion for summary judgment or, alternatively, summary adjudication, and has set forth three issues in its separate statement: (1) there is no triable issue of material fact as to the first cause of action for breach of contract (Policy GOWC013453); (2) there is no triable issue of material fact as to the second cause of action for breach of contract (Policy GOWC117075); and (3) there are [sic] no merit to any defense based on the classificaiton [sic] of employees on the audit.

Plaintiff's complaint consists of two cause of action for breach of contract. The first is for the breach of the workers' compensation insurance policy GOWC013453 issued to defendant with a policy term of January 17, 2019 to January 17, 2020. The second cause of action is for the breach of workers' compensation insurance policy GOWC117075 issued to defendant with a policy term of January 17, 2020 to January 17, 2021. Plaintiff has met its burden of producing evidence showing that defendant breached the contracts by failing to pay the difference between the actual payments made during the term of the policy and the final audit premium, and that plaintiff was damaged as a result. The elements of a breach of contract claim are (1) the existence of a contract between the parties, (2) the plaintiff's performance or excuse for nonperformance, (3) the defendant's breach, and (4) resulting damage to the plaintiff. (*Oasis West Realty, LLC v. Goldman* (2011) 51 Cal.4th 811, 821.)

If the moving party carries this initial burden of production, the burden of production shifts to the opposing party to show that a triable issue of material fact exists. In determining whether any triable issues of material fact exist, the court must strictly construe the moving papers and liberally construe the declarations of the party opposing summary judgment. Any doubts as to whether a triable issue of material fact exists are to be resolved in favor of the party opposing summary judgment/adjudication. (*Barber*

v. Marina Sailing, Inc. (1995) 36 Cal.App.4th 558, 562; see also *See's Candy Shops, Inc. v. Superior Court* (2012) 210 Cal.App.4th 889, 900 ["Summary adjudication is a drastic remedy and any doubts about the propriety of summary adjudication must be resolved in favor of the party opposing the motion."].)

Defendant challenges plaintiff's characterization of the breach of contract for each of the two insurance policies. Defendant contends that it has paid the full premium owed for its employees and that the final audit amount plaintiff has alleged is owed is based on the work performed by independent contractors, which are not covered as employees under the policies at issue. (UMF Nos. 21, 23, 50, 51.) As evidence that a dispute exists as to whether the workers were correctly included in the calculation of the premium owed on the policy, the owner of defendant, Lioncio Gonzalez, declares that he pays independent contractors with a Form 1099, and he attaches those Form 1099s for the time period covered by the two policy terms. (Gonzalez Decl. ¶¶ 2, 4 & 5, Exs. 1 & 2.)

Plaintiff objects to the Gonzalez declaration and its exhibits as hearsay. The objections are overruled. The court is not considering the Form 1099s or payroll records for the truth of their contents, but as demonstrative of defendant's belief these persons are independent contractors.

Plaintiff asserts that the evidence does not establish that these persons are properly considered independent contractors under the tests established in *S.G. Borello & Sons, Inc. v. Department of Industrial Relations* (1989) 48 Cal.3d 341 (which controlled during the 2019-2020 policy term) or Labor Code section 2775 (which controlled during the 2020-2021 policy term). The opposing party's burden on summary judgment is to establish that a factual dispute exists. The motion is not a bench trial on the issue of whether each of the persons paid through a Form 1099 was classified correctly as an independent contractor. What is apparent to the court from the parties' pleadings is that this fact is disputed and neither the motion for summary judgment nor the motion for summary adjudication of the first and second causes of action can be granted.

The third issue for summary adjudication is plaintiff's assertion that there is no merit to any defense based on classification of employees on the audit. In support of this issue, plaintiff states: "There is nothing in the payroll summaries or any other payroll documents provided by Defendant that shows how these employees should be classified." (UMF No. 62.) In opposition, defendant produces payroll documents for employees with descriptions for pay for "Dispatcher Services" and "Secretary" that demonstrates there is a notation in the payroll records for how an employee should be classified. (Gonzalez Decl., Ex. 3.) This is sufficient to dispute the fact plaintiff has put forth as material to the issue of the merit of defendant's defense based on misclassification. Summary adjudication of Issue 3 is denied.

Plaintiff's moving papers assert that this court does not have subject matter jurisdiction over the issue of the alleged misclassification of defendant's workers due to defendant's failure to exhaust its administrative remedies with the Workers' Compensation Insurance Rating Bureau (WCIRB) or the California Insurance Commissioner. This issue is not set out in the separate statement as required for summary

