Tentative Rulings for September 28, 2022
Department 501

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).)

18CECG01427 **Lorenzo *Flores v. Alex Singh* (Dept. 501)**

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

18CECG02798 **Caruthers Raisin Packing v. Friis-Hansen is continued to Wednesday, October 26, 2022 at 3:30 p.m. in Department 501**

(Tentative Rulings begin at the next page)

Tentative Rulings for Department 501

Begin at the next page

(20)

Tentative Ruling

Re: ***Deli Delicious Franchising Inc. v. Kharazi et al.***
Superior Court Case No. 21CECG03757

Hearing Date: September 28, 2022 (Dept. 501)

Motion: Demurrer to Complaint

Tentative Ruling:

To overrule. (Code Civ. Proc., § 430.10, subd. (e).)

Explanation:

Deli Delicious Franchising, Inc., ("plaintiff") sues its former attorney H. Ty Kharazi and his related firms (collectively "defendants") for breach of fiduciary duty, alleging that defendants subsequently represented parties with adverse interests. The Complaint identifies three different legal actions wherein defendants represented parties with adverse interests: the Akoo, Misaghi and Sanchez actions. The Akoo action was filed on 7/15/20, and on 8/3/20 defendants accepted service of the Complaint and thereafter continued to litigate the matter. The Misaghi action was filed on 2/1/21. Defendants represented the defendant in that action, and filed an Answer and Cross-Complaint against plaintiff. The Complaint does not allege when the Sanchez action was initiated or when defendants breached duties to plaintiff.

Defendants demur to the Complaint on the ground that it is barred by the one year statute of limitations. Plaintiff does not dispute that breach of fiduciary duty claims are subject to the Code of Civil Procedure section 340.6 one year limitations period. (See *Prakashashpalan v. Engstrom Lipscomb & Lack* (2014) 223 Cal.App4th 1105, 1121-22.)

"A demurrer on the ground of the bar of the statute of limitations lies where it "appear[s] clearly and affirmatively that, upon the face of the complaint, the right of action is necessarily barred." (*Valvo v. Univ. of Southern California* (1977) 67 Cal.App.3d 887, 895; *Mangini v. Aerojet-General Corp.* (1991) 230 Cal.App.3d 1125, 1155.)

> [I]t may be difficult for a "demurrer[ ] based on the statute of limitations to succeed because (1) trial and appellate courts treat the demurrer as admitting all material facts properly pleaded and (2) resolution of the statute of limitations issue can involve questions of fact. Furthermore, when the relevant facts are not clear such that the cause of action might be, but is not necessarily, time-barred, the demurrer will be overruled."

(*Citizens for a Responsible Caltrans Decision v. Department of Transportation* (2020) 46 Cal.App.5th 1103, 1117, quoting *Coalition for Clean Air v. City of Visalia* (2012) 209 Cal.App.4th 408, 420.)

A general demurrer does not lie to only part of a cause of action. If there are sufficient allegations to entitle plaintiff to relief, other allegations cannot be challenged

by general demurrer. (*Daniels v. Select Portfolio Servicing, Inc.* (2016) 246 Cal.App.4th 1150, 1167.) Substantive defects in a portion of the pleading can be challenged by a motion to strike. (*Id.* at p. 1167.)

In this demurrer, defendants focus solely on the fact that the Complaint was filed (on 12/21/21) more than one year after defendants accepted service (on 8/3/20) on behalf of the franchisees in the Akoo action. The moving papers do not address the Misaghi or Sanchez actions at all. Plaintiff contends that defendants' argument fails because the Complaint alleges that defendants were breaching their duty of loyalty in February 2021 when defendants started representing the parties with adverse interests in the Misaghi action and the Sanchez action.

Plaintiff contends that defendants' breaches only began with accepting service of the Akoo action, but continued throughout the Akoo matter as defendants violated Rule of Professional Conduct, rule 1.9, which states, "A lawyer who has formerly represented a client in a matter shall not thereafter represent another person in the same or substantially related matter in which that person's interest are materially adverse to the interest of the former client unless the former client gives informed written consent." (Complaint ¶ 32.)

The reply relies on cases dealing with the discovery rule – when the statute of limitations begins running. (See *Snapp & Associates Ins. Services, Inc. v. Robertson* (2002) 96 Cal.App.4th 884, 891; *Choi v. Sagemark Consulting* (2017) 18 Cal.App.5th 308, 330; *Norgart v. Upjohn Co.* (1999) 21 Cal.4th 383, 397-398.)

However, plaintiff's argument essentially invoked the continuing violation doctrine, an issue on which neither party provides points and authorities.

The "continuing violation" doctrine in certain circumstances effectively extends the limitations period for a claim otherwise time-barred. (*Komarova v. National Credit Acceptance, Inc.* (2009) 175 Cal.App.4th 324, 343.) The doctrine "permits recovery 'for actions that take place outside the limitations period if these actions are sufficiently linked to unlawful conduct within the limitations period[.]' " (*Ibid*.) Under the doctrine, when " 'the conduct complained of constitutes a continuing pattern and course of conduct as opposed to unrelated discrete acts,' "the suit is timely if filed within the limitations period applicable to " ' "the most recent [violation]" [citation], and the entire course of conduct is at issue.' [Citation.]" (*Ibid*., quoting *Joseph v. J.J. Mac Intyre Companies, L.L.C.* (N.D. Cal. 2003) 281 F.Supp.2d 1156, 1161.)

Here, there appear to be both discrete acts (defendants' representation of adverse interests in three separate actions, two of which began within one year of plaintiff filing the Complaint in this matter) and continuing conduct (continued representation of the franchises in the Aboo Action). This is a continuing pattern of conduct with the most recent acts clearly occurring within the one year limitations period.

For the first time in the reply, defendants argue that plaintiff waived any alleged conflict by failing to move to disqualify defendants from any of the three actions, citing *Liberty National Enterprises, L.P. v. Chicago Title Ins. Co.* (2011) 194 Cal.App.4th 839, 845.

Liberty National stands for the proposition that extreme or unreasonable delay in bringing a motion to disqualify can operate as waiver of the right to seek disqualification of an attorney. (See also *River West, Inc. v. Nickel* (1987) 188 Cal.App.3d 1297, 1313 [same].) However, these cases only address disqualification motions. Defendants cite to no authority providing that failure to move to disqualify in the underlying litigation waives any right to later assert a cause of action for breach of fiduciary duty.

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: DTT on 9/26/2022.
(Judge's initials) (Date)

(37)

Tentative Ruling

Re: ***Laura Mendoza v. Smart & Final***
Superior Court Case No. 21CECG01577

Hearing Date: September 28, 2022 (Dept. 501)

Motion: by Defendant Smart & Final for Orders (1) Compelling Plaintiff Laura Mendoza's Responses to Form Interrogatories (Set Two),Special Interrogatories (Set One), Request for Production of Documents (Set Two); (2) Deeming Admissions Admitted, and (3) Imposing Monetary Sanctions

Tentative Ruling:

To grant defendant Smart & Final's motion for an order compelling responses to Form Interrogatories (Set Two), Special Interrogatories (Set One), Request for Production of Documents (Set Two).

To grant defendant Smart & Final's motion for an order deeming Requests for Admissions admitted. The truth of the matters specified in the Requests for Admissions, Set One, are to be deemed admitted unless plaintiff Laura Mendoza serves, before the hearing, a proposed response to the Requests for Admission that is in substantial compliance with Code of Civil Procedure section 2033.220.

To grant monetary sanctions against plaintiff in the total amount of $840. Those sanctions are ordered to be paid within 30 calendar days from the date of service of the minute order by the clerk.

Explanation:

Motion to Compel

Plaintiff has had sufficient time to respond to the discovery propounded by defendant, and has not done so. Failing to respond to discovery within the 30-day time limit waives objections to the discovery, including claims of privilege and work product protection. (Code Civ. Proc., § 2030.290, subd. (a) [interrogatories]; Code Civ. Proc., § 2031.300, subd. (a) [production demands]; see *Leach v. Superior Court* (1980) 111 Cal.App.3d 902, 905–906.)

Sanctions are mandatory unless the court finds that the party acted "with substantial justification" or other circumstances that would render sanctions "unjust." (Code Civ. Proc., § 2030.290, subd. (c).) No opposition was filed, so no facts were presented to warrant finding sanctions unjust. The sanction amount awarded disallows the time for responding to the opposition, as this proved unnecessary, and allows $180 in motions fees. The court finds it reasonable to allow only two hours for the preparation for these simple discovery motions at the hourly rate of $200, provided by counsel. Therefore, the amount in sanctions for the motion to compel is $580.

Requests for Admissions

Defendant served Requests for Admissions on plaintiff of May 19, 2022. As of September 16, 2022, no responses had been received. The court has no information that any responses have been received as of the date of this ruling.

Failure to timely respond to requests for admissions results in a waiver of all objections to the requests, and upon proper motion the court *shall* deem them admitted. (Code Civ. Proc., § 2033.280.) The statutory language leaves no room for discretion. (*Tobin v. Oris* (1992) 3 Cal.App.4th 814, 828.) However, the court may relieve the party who fails to file a timely response if, before entry of the order deeming the requested matters admitted, the party in default 1) moves for relief from waiver and shows that the failure to serve a timely response was due to "mistake, inadvertence or excusable neglect; and 2) the party has served a response in "substantial compliance with Code of Civil Procedure Section 2033.220. (Code Civ. Proc., § 2033.280(a)-(c); *see Brigante v. Huang* (1993) 20 Cal.App.4th 1569, 1584.) Here, no responses have been received to date.

Sanctions are mandatory against a party whose failure to respond timely necessitates a motion to have responses deemed admitted. (Code Civ. Proc., § 2033.280, subd. (c).) Pursuant to California Rules of Court, Rule 3.1030(a), this also applies where no opposition to the motion was filed. The sanction amount awarded disallows the time for responding to the opposition, as this proved unnecessary, and allows $60 in motions fees. The court finds it reasonable to allow only one hour for the preparation for the nearly identical motion at the hourly rate of $200, provided by counsel. Therefore, the amount in sanctions for the motion to have admissions deemed admitted is $260.

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: DTT on 9/26/2022.
(Judge's initials) (Date)

(35)

Tentative Ruling

Re: ***Hudson v. Larson et al.***
Superior Court Case No. 21CECG00980

Hearing Date: September 28, 2022 (Dept. 501)

Motions: (1) Defendants' Demurrer to First Amended Complaint
(2) Defendants' Motion to Strike First Amended Complaint

Tentative Rulings:

To sustain defendants' demurrer to the entirety of the First Amended Complaint, with leave to amend. Plaintiff may file and serve a Second Amended Complaint within 10 days of the date of service of this order. All new allegations shall be in **boldface**.

To deny defendants' motion to strike each cause of action of the First Amended Complaint.

Explanation:

On April 7, 2021, plaintiff filed suit against defendants alleging breaches of a lease-option agreement of agricultural property. Plaintiff pled six causes of action: (1) breach of contract of lease of agricultural property; (2) breach of contract of purchase of a residence; (3) breach of implied covenant of good faith and fair dealing; (4) breach of implied contract related to agricultural property; (5) conversion related to sublease of agricultural property; and (6) intentional interference with economic relationships. On January 3, 2022, plaintiff filed a First Amended Complaint ("FAC").

Demurrer

Defendants Craig K. Larson, individually and as trustee of the Craig K. Larson Revocable Trust, (collectively "defendants") generally demur to each of the six causes of action of the FAC for lack of jurisdiction, defect of pleading, and insufficient facts. Defendants further specially demur to each of the six causes of action for uncertainty.

Defendants contend that the court is without jurisdiction, and that the pleading is generally defective because of applicable statutes of limitation, and the statute of frauds.

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.)

In resolving 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 University of California* (2008) 44 Cal.4th 876, 883.) The court may also consider matters subject to judicial notice. (*Kalnoki v. First American Trustee Servicing Solutions, LLC* (2017) 8 Cal.App.5th 23, 29.) 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.) The courts of this state have long since departed from holding a plaintiff strictly to the form of the action he has pleaded and instead have adopted the more flexible approach of examining the facts alleged to determine if a demurrer should be sustained. (*Ibid.*) Thus, a plaintiff is not required to plead evidentiary facts supporting the allegation of ultimate fact; the pleading is adequate if it apprises defendant of the factual basis for plaintiff's claim. (*Perkins v. Superior Court* (1981) 117 Cal.App.3d 1, 6.)

When the complaint is defective, great liberality should be exercised in permitting a plaintiff to amend the complaint if there is a reasonable possibility that the defect can be cured by amendment. (*Scott v. City of Indian Wells* (1972) 6 Cal.3d 541, 549.)

Statutes of Limitation

Defendants argue, and plaintiff does not materially contest, that the applicable statutes of limitation are two years for the first through fourth and sixth causes of action, and three years for the fifth cause of action. Defendants argue the applicable statutes of limitation began as early as 2017, rendering the April 7, 2021, original filing of plaintiff's action untimely as to both the two-year and three-year limitations period.

In contract cases, the statute of limitations generally begins to run upon the occurrence of the last fact essential to the cause of action. (*E.g., Saltier v. Pierce Brother Mortuaries* (1978) 81 Cal.App.3d 292, 296.) That a plaintiff is unaware of the cause of action or identity of the wrongdoer does not delay the running of the statute. (*Ibid.*)

Here, the FAC alleges that the parties entered into two separate agreements, one for the lease of agricultural property of approximately 26 acres (the "AP"), and one for the lease-option of a nearby residence (the "Vino House").

The First, Third Fourth, Fifth and Sixth Causes of Action – Regarding the AP

The facts alleged as to the first, third, fourth, fifth and sixth causes of action state that, among other things, in or about November 2017, plaintiff met with defendants to request that defendants reimburse plaintiff pursuant to alleged terms of the AP lease and for rents defendants improperly retained from plaintiff's sublease to a third party. Based on this allegation, the FAC demonstrates that each of the first, third, fourth, fifth and sixth causes of action regarding the AP, as it pertains to defendants' various alleged breaches to plaintiff's leasehold rights to the AP, accrued as early as November 2017 because plaintiff recognized he was being damaged from defendants' actions in breach of the oral lease. Therefore, on the face of the FAC, the April 7, 2021, claims are outside of the two-year window and are therefore untimely.

Plaintiff argues in opposition that defendants are equitably estopped from asserting the statute of limitations defense. A defendant will be estopped to assert a statute of limitations defense if the defendant's conduct, relied on by the plaintiff, has induced the plaintiff to postpone filing the action until the statute has run. (*Mills v. Forestex Co.* (2003) 108 Cal.App.4th 625, 652.) It is not necessary that the defendant acted in bad faith or intended to mislead the plaintiff; it is sufficient that the defendant's conduct in fact induced the plaintiff to refrain from instituting legal proceedings. (*Shaffer v. Debbas* (1993) 17 Cal.App.4th 33, 43.)

Equitable estoppel requires a showing of four elements: (1) the party to be estopped must know the facts; (2) he must intend that his conduct shall be acted upon, or must so act that the party asserting the estoppel had the right to believe that it was so intended; (3) the party asserting the estoppel must be ignorant of the true facts; and (4) he must rely upon the conduct to his injury. (*Ashou v. Liberty Mutual Fire Ins. Co.* (2006) 138 Cal.App.4th 748, 766-767.) Reliance by the party asserting the estoppel on the conduct of the party to be estopped must have been reasonable under the circumstances. (*Mills*, *supra*, 108 Cal.App.4th at p. 655.) If there is still ample time to institute the action within the statutory period after the circumstances inducing delay have ceased to operate, the plaintiff who failed to do so cannot claim an estoppel. (*Ibid.*) To establish estoppel as an element of a suit, the elements of estoppel must be especially pleaded in the complaint with sufficient accuracy to disclose the facts relied upon. (*Sofranek v. County of Merced* (2007) 146 Cal.App.4th 1238, 1250-1251.)

Here, the FAC alleges insufficient facts to establish the elements of estoppel. Nowhere in the FAC is there an allegation that defendants knew the facts; that defendants acted in a way such that they intended plaintiff to act upon the conduct accordingly; or that plaintiff was ignorant of the true facts. Without specifying what constituted defendants' acts, aside from that defendants engaged with plaintiff for a possible informal resolution, the FAC does not plead the elements of estoppel with sufficient accuracy to disclose the facts relied upon that dissuaded plaintiff from timely filing. (*Sofranek*, *supra*, 146 Cal.App.4th at pp. 1250-1251.) For these reasons, the estoppel defense to bar a statute of limitations challenge is not well pled, and the demurrer to the first, third, fourth, fifth and sixth causes of action are sustained, with leave to amend.

Second Cause of Action – Regarding the Vino House

In contrast to the claims regarding the AP, the FAC does not facially demonstrate untimeliness. As discussed above, the statute of limitations period does not begin until the occurrence of the last fact essential to the cause of action. The FAC alleges that the breach of the oral lease-option contract occurred in late 2019/early 2020, when defendants signaled that they would refuse to honor the agreement. (FAC, ¶ 32.) The demurrer to the second cause of action on the grounds of statute of limitation is overruled.

Statute of Frauds

Leave to amend as to the first, third, fourth, fifth and sixth causes of action regarding statutes of limitation may be barred if the claims are nevertheless barred by the statute of frauds. Plaintiff does not materially contest that each of his causes of action

are affected by the statute of frauds, nor could he. As alleged, plaintiff's claims are founded on agreements involving real property for a period longer than one year, for which plaintiff alleges were oral agreements. (Civ. Code § 1624, subd. (a)(3).) Plaintiff argues the statute of frauds should not bar his claims due to the doctrine of partial performance. (*E.g.*, *Sutton v. Warner* (1993) 12 Cal.App.4th 415, 422.) Defendant does not contest the doctrine of partial performance as a well-recognized exception to the statute of frauds applied to contracts of sale or lease of real property.

Under the doctrine of partial performance, the oral agreement for the transfer of an interest in real property is enforced when the buyer has taken possession of the property, and either makes a full or partial payment of the purchase price, or makes valuable and substantial improvements on the property, in reliance on the oral agreement. (*Sutton*, *supra*, 12 Cal.App.4th at p. 422.) Thus, two elements found the application of the partial performance exception: (1) the extent to which the evidentiary function of the statutory formalities is fulfilled by the conduct of the parties; and (2) the reliance of the promisee, providing a compelling substantive basis for relief in addition to the expectations created by the promise. (*Ibid.*)

Defendants contend that the exception cannot apply because the FAC fails to plead any acts that would provide a compelling basis for relief. Defendants argue that mere payment of rent, without more, cannot demonstrate partial performance. (*Sutter*, *supra*, 12 Cal.App.4th at p. 422.)

Here, the FAC contends not only paying rent on both the AP and Vino House leases, but making improvements to the respective properties in reliance of the agreements thereof. (FAC, ¶ 23, 33.) Though defendants argue that these allegations are conclusory, plaintiff alleged facts in support. Plaintiff alleges having redeveloped 20 acres of the AP, as well as replacing the remaining acreage with a different type of crop. (FAC, ¶ 10.) Further, plaintiff alleges exercising his right under the terms of the oral lease to sublease the AP to a third party. (FAC, ¶ 14.) Plaintiff alleges performing significant repairs and improvements to the Vino House through the replacing of carpet, painting of the house and repairing of light fixtures in reliance on the lease-option. (FAC, ¶ 13.) These facts support plaintiff's contention that he leased the properties in question.[1] Therefore, the statute of frauds does not preclude granting leave to amend.

Insufficient Facts

To state a cause of action for a breach of contract, a plaintiff must plead: (1) a contract; (2) plaintiff's performance of the contract or excuse for nonperformance; (3) defendant's breach; and (4) resulting damages. (*Richman v. Hartley* (2014) 224 Cal.App.4th 1182, 1186.) To plead the existence of a contract, there should be (1) parties

[1] Defendants further contend that the allegations of the FAC do not clearly support that either of the alleged oral leases were for a longer period than one year. To take defendants' argument for consideration however would necessarily require a parallel finding that the statute of frauds does not apply because the leases were not for a longer period than one year. (Civ. Code § 1624, subd. (a)(3).) If the statute of frauds does not apply, there would be no requirement on the part of plaintiff to allege partial performance as an exception to the statute of frauds. (*Aaker v. Smith* (1948) 87 Cal.App.2d 36, 43 ["[A]n oral one-year lease is not within the statute."])

capable of contracting; (2) consent; (3) a lawful object; and (4) a sufficient cause or consideration. (Civ. Code § 1550.)

Here, the first cause of action is sufficiently stated. The FAC alleges that the parties entered into a lease agreement for the rental of the AP for the purpose of growing and harvesting of crops for sale, in exchange for $15,000 per year in rent. (FAC, ¶ 8.) The FAC alleges that plaintiff performed under the contract. (FAC, ¶¶ 23, 24.) The FAC alleges that defendants breached the contract through interference with plaintiff's leasehold rights. (FAC, ¶¶ 14-18, 23.) The FAC alleges resulting damages. (FAC, ¶¶ 25-26.)

In contrast, the second cause of action is insufficiently stated. Though the FAC alleges that plaintiff performed his obligations under the alleged contract (FAC, ¶ 33), the FAC alleges that defendants breached the contract specifically as it pertains to the option portion to purchase the Vino House (FAC, ¶ 34). An option is a right acquired by contract to accept or reject a present offer within a limited time in the future. (*County of San Diego v. Miller* (1975) 13 Cal.3d 684, 688.) The length of time within which an option may be exercised is an essential term to an option contract. (*Allen v. Smith* (2002) 94 Cal.App.4th 1270, 1280.) The FAC contains no allegations as to the length of time in which the option was to be exercised. Therefore, the FAC fails to state facts sufficient to support the existence of a lease-option contract. The demurrer to the second cause of action on the failure to state facts sufficient to state a cause of action is sustained, with leave to amend.

The third cause of action for breach of implied covenant of good faith and fair dealing, relies on the first and second causes of action for breaches of contract. As the first cause of action sufficiently states facts, but the second cause of action states insufficient facts, the demurrer to the third cause of action for the failure to state facts sufficient to state a cause of action is again sustained, with leave to amend.

As to the fourth, fifth and sixth causes of action, though defendants noticed the demurrer to these causes of action for failure to state sufficient facts, no argument was made as to these causes of action. The demurrer to the fourth, fifth and sixth causes of action on these grounds are overruled.[2]

Motion to Strike

Defendants seek to strike each cause of action on the grounds that each cause of action, in their entirety, must be struck as irrelevant, false or an improper matter inserted into a pleading. (Code Civ. Proc. § 436.) However, as evidenced by the parties submitting the same arguments as on demurrer on the present motion to strike, where a whole cause of action is the proper subject of a pleading challenge, the proper procedure is a demurrer. (*Quiroz v. Seventh Ave. Center* (2006) 140 Cal.App.4th 1256, 1281.) The motion to strike each of the six causes of action in their entireties is denied.

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

[2] In light of the sustaining of demurrer to the entirety of the FAC, the court does not address the special demurrer to the FAC for uncertainty.

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: DTT on 9/26/2022.
(Judge's initials) (Date)

(35)

Tentative Ruling

Re: ***Miller v. Fisher et al.***
Superior Court Case No. 18CECG00487

Hearing Date: September 28, 2022 (Dept. 501)

Motion: by Cross-Complainant Catrina Owens for Leave to File an Amended Second Cross-Complaint

Tentative Ruling:

To deny.

Explanation:

The court may, in furtherance of justice, and on such terms as may be proper, allow a party to amend any pleading. (Code Civ. Proc. § 473, subd. (a)(1).) Judicial policy favors resolution of all disputed matters between the parties in the same lawsuit. Thus, the court's discretion will usually be exercised liberally to permit amendment of the pleadings. (*Nestle v. Santa Monica (1972)* 6 Cal.3d 920, 939; *Mabie v. Hyatt* (1998) 61 Cal.App.4th 581, 596.) Courts are bound to apply a policy of great liberality in permitting amendments to the complaint "at any stage of the proceedings, up to and including trial." (*Atkinson v. Elk Corp.* (2003) 109 Cal.App.4th 739, 761.) If plaintiff is the party seeking leave to amend (knowing the trial will be delayed), proximity to the trial date is not ground for denial. (*Mesler v. Bragg Mgmt. Co.* (1985) 39 Cal.3d 290, 297.) However, unfair surprise to the opposing party is also to be considered. (*Ibid.*) Moreover, even if a good amendment is proposed in proper form, unwarranted delay in presenting it may, of itself, be a valid reason for denial. (*Huff v. Wilkins* (2006) 138 Cal.App.4th 732, 746.)

Unwarranted Delay

Cross-complainant Catrina Owens ("Owens") seeks leave to amend her Second Cross-Complaint to clarify a mistake of pleading, limiting the bases upon which Owens states a claim under Government Code section 12940. Owens argues that she did not intend to limit the classifications of relationships to cross-defendant Pearson Properties, Inc. ("PPI") to just that of an employee or alternatively an independent contractor.

Though Owens argues that there would be no prejudice to PPI, against whom the amendment would affect, Owens submits no valid reason for the delay. Owens argues that she was unaware of the discrepancy prior to this court's denial of PPI's motion for summary adjudication of the cause of action. However, over the course of this litigation, including the filing of the motion for summary adjudication, Owens made no attempt to clarify the grounds upon which she stated the Government Code section 12940 claim. Where the amendment arises from the same conduct as that of the original complaint, a party who has had knowledge from the onset of the circumstances upon which she bases a proposed amendment sought at or after summary judgment has made an unwarranted delay. (*See Record v. Reason* (1999) 73 Cal.App.4th 472, 486-487; *see also*

Miles v. City of Los Angeles (2020) 56 Cal.App.5th 728, 739; *P&D Consultants, Inc. v. City of Carlsbad* (2010) 190 Cal.App.4th 1332, 1345; *Huff v. Wilkins*, *supra*, 138 Cal.App.4th at p. 765.)

Prejudice

Prejudice exists where the proposed amendment would require delaying the trial, resulting in added costs of preparation and increased discovery burdens. (*Miles v. City of Los Angeles*, *supra*, 56 Cal.App.5th at p. 739; *see also Melican v. Regents of the University of California* (2007) 151 Cal.App.4th 168, 175-176.)

PPI argues that the delay has been prejudicial. As noted above, PPI sought summary adjudication of Owens' Government Code section 12940 claim. At no point in response to the moving papers did Owens attempt to clarify her position. Only after the court rendered a ruling did Owens seek the present relief. Having submitted evidence and argument on the matter in which Owens seeks leave to amend, to grant leave to amend would, as PPI contends, require delaying the trial in order to explore the expansion of Owens' claims, increasing discovery burdens.[3]

For the above reasons, the motion for leave to amend is denied.

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: DTT on 9/27/2022.
(Judge's initials) (Date)

[3] Though Owens argues that no new facts need be ascertained, counsel for PPI declares that he personally never examined or propounded discovery based on the theories that Owen seeks to amend to her cross-complaint.