Tentative Rulings for March 15, 2022
Department 502

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 Rulings begin at the next page)

Tentative Rulings for Department 502

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(24)

Tentative Ruling

Re:	***In Re: Roberto Gil*** Superior Court Case No. 22CECG00533
Hearing Date:	March 15, 2022 (Dept. 502)
Motion:	Petition for Approval of Compromise of Minor's Claim

Tentative Ruling:

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

Explanation:

There are several items of concern regarding this petition. First, the petition indicates, at Item 8, that the minor has not completely recovered from the very serious injuries he sustained in the subject accident, but it states that he "requires follow ups less than 3 times per year to check the surgery sites but the injuries are expected to resolve." However, the court is not clear which of the attached medical records impart this information. While the court agrees that it is not necessary to attach all of the medical records to the petition, the court would like to see something that corroborates the information stated at Item 8. If there are records already attached which speak to this, petitioner should direct the court's attention to the pertinent pages.

Second, despite the serious injuries, this is a very small settlement, ostensibly due to the low limits of the insurance policy owned by Cesar Vidal Venegas Moreira, the person who caused the accident. However, the minor's Guardian ad Litem in this case was not represented by independent counsel, and the attorney who helped her prepare the petition is counsel for Mr. Venegas Moreira's insurer. While the box at Item 9 was checked to indicate petitioner has fully investigated the facts and circumstances of the case, which normally encompasses consideration of other sources of recovery the settling tortfeasor may own beyond the auto insurance policy, the court requires more than this simple (pro forma) box being checked, given the circumstances here. The court notes that Mr. Venegas Moreira's insurance policy Declarations page shows that he owns and has insured at least five cars. This is at least indicative that he may have other assets as well, which could be sources of recovery for the minor. The court cannot determine that this compromise is in the minor's best interest without knowing more information about Mr. Venegas Moreira's assets.

Third, it is not clear that the Guardian ad Litem has investigated whether the minor's mother had under-insured motorist coverage with her auto insurance policy, or if she was even informed this might be an additional source of recovery for the minor.

The amended petition must address these issues.

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: RTM on 3/11/22.
(Judge's initials) (Date)

(03)

Tentative Ruling

Re: ***Griffin v. FPI Management, Inc.***
Superior Court Case No. 21CECG01573

Hearing Date: March 15, 2022 (Dept. 502)

Motion: Defendants' Demurrer to First Amended Complaint and Motion to Strike Portions of First Amended Complaint

Tentative Ruling:

To sustain defendants' demurrer to the entire first amended complaint on the ground of uncertainty. (Code Civ. Proc. § 430.10, subd. (f).) To grant leave to amend to clarify which claims are being asserted against which defendants.

To sustain defendant FPI's demurrer to the first, second, and third causes of action for failure to state facts sufficient to constitute a cause of action. (Code Civ. Proc. § 430.10, subd. (e).) To deny leave to amend.

To grant defendants' motion to strike the prayer for punitive damages from the FAC, without leave to amend. To grant defendant FPI's motion to strike the prayer for attorney's fees against it. To grant leave to amend to clarify that the attorney's fees are only being sought against Hayden. To grant the motion to strike the statements of law and legal arguments in paragraphs 22, 23, 24, 25, 31, 32, 47 of the FAC, without leave to amend. (Code Civ. Proc. §§ 435, 436.)

Plaintiff shall serve and file his second amended complaint within ten days of the date of service of this order. All new allegations shall be in **boldface**.

Explanation:

Demurrer: First, both Hayden and FPI Management have demurred to the entire first amended complaint on the ground of uncertainty, as it fails to allege which causes of action are stated against which defendants. Indeed, the FAC is uncertain, as it is entirely unclear which defendants are being sued under each separate cause of action. Rule of Court 2.112 requires a plaintiff's complaint to affirmatively plead, among other things, the party or parties against whom each cause of action is being brought. (Cal. Rules of Court, Rule 2.112(4).)

Here, the FAC names two defendants, John Hayden and FPI Management, Inc. (FAC, ¶¶ 5, 6.) However, the separate causes of action purport to allege claims against "all cross-defendants", even though plaintiff has not filed a cross-complaint. Also, the separate causes of action are alleged against "Defendant", without making it clear which of the two defendants are being sued in which claims. It appears that plaintiff may have intended to name Hayden, who is the owner of the property and the only party who entered into the lease agreement with plaintiff, since many of the claims appear to be based on breaches of duties under the lease. However, plaintiff's

opposition seems to take the position that at least some of the causes of action are also being brought against FPI Management. FPI is a wholly separate corporate entity from Hayden, who is an individual, so it is improper for plaintiff to treat them as if they were a single, indivisible defendant. Also, FPI was not a party to the lease agreement, so FPI has no liability for breaching any duties under the lease. Therefore, the FAC is uncertain to the extent that it fails to specify which causes of action are being brought against which defendants. The court intends to sustain the demurrer to the entire FAC on the ground of uncertainty, with leave to amend to clarify which defendants are being sued in each cause of action.

Next, the court also intends to sustain defendant FPI's general demurrer on the ground of failure to state facts sufficient to constitute a cause of action with regard to the first, second, and third causes of action. FPI points out that it cannot be liable for any alleged breach of the lease, since it was not a party to the lease agreement. Indeed, FPI is correct, as the claims for breach of the covenant of quiet enjoyment and breach of the covenant of good faith and fair dealing are both contract-based, as is the claim for breach of the warranty of habitability. (*Stoiber v. Honeychuck* (1980) 101 Cal.App.3d 903, 916-917, 929 [holding that claim for breach of warranty of habitability is essentially contractual in nature, and thus may not be brought against property manager who was agent of the owner]; *Erlach v. Sierra Asset Servicing, LLC* (2014) 226 Cal.App.4th 1281, 1299 [holding covenant of quiet enjoyment is inherent in every lease agreement]; *Habitat Trust for Wildlife, Inc. v. City of Rancho Cucamonga* (2009) 175 Cal.App.4th 1306, 1332 [stating that covenant of good faith and fair dealing is implied in every contract].)

Here, plaintiff has attached and incorporated a copy of the lease agreement into the FAC, which clearly states that the lease is between plaintiff and Hayden, the owner of the property. While FPI signed the lease, it was only as an agent of Hayden. (Exhibit A to FAC.) Therefore, plaintiff has not and cannot state claims for breach of the covenant of quiet enjoyment or breach of the implied covenant of good faith and fair dealing against FPI, which was not a party to the lease agreement with plaintiff. While the claims are properly alleged against Mr. Hayden, plaintiff's claims are not properly stated against FPI. Also, in his opposition, plaintiff concedes that he has not stated and cannot state valid claims against FPI for breach of the covenant of quiet enjoyment or the covenant of good faith and fair dealing. Therefore, the court intends to sustain the demurrer to the second and third causes of action for failure to state facts sufficient to constitute valid claims against FPI, without leave to amend.

On the other hand, plaintiff contends that he has stated a valid cause of action for breach of the covenant of habitability against FPI. He cites to *Stoiber v. Honeychuck, supra*, 101 Cal.App.3d 903 in support of his contention that he can state a valid tort claim against FPI for breach of the covenant of habitability despite the fact that FPI is not a party to the lease agreement.

In *Stoiber*, the Court of Appeal held that a landlord may be sued by a tenant for breach of the warranty of habitability under either contractual or tort theories, or both. "Manifestly, under the reasoning of *Green* and *Rowland* and assuming appropriate pleadings of fact, a tenant may state a cause of action in tort against his landlord for damages resulting from a breach of the implied warranty of habitability." (*Id.* at pp. 918–919.) Furthermore, the court held that the property manager defendants could be held

liable under a tort theory even though they were not parties to the lease agreement and were not liable for breaching the lease agreement itself. "[A]lthough the agent defendants may not be held liable under the implied warranty theory, causes of action may be stated against them in tort." (*Id*. at p. 929.) "Since the suit for breach of the implied warranty is essentially a contractual one, the trial court correctly ruled the agents could not be held liable on the breach of warranty because an agent is ordinarily not liable on the contract when he acts on behalf of a disclosed principal." (*Id*. at p. 929, internal citation omitted.) "However, because the tenant's remedies against the landlord are not limited to breach of the warranty of habitability and he may also plead tort actions, it necessarily follows that the agent may also be held liable on any properly pleaded tort causes of action. For example, since appellant can plead a cause of action in negligence against the landlord, such a cause of action could also be pleaded against the agent defendants. The fact that an agent owes a duty to his principal does not preclude him from also owing a duty to third parties foreseeably injured by his conduct." (*Id*. at pp. 929–930, internal citation omitted.)

Thus, *Stoiber* stands for the proposition that, although the tenant may not bring a contractually based claim for breach of the implied warranty of habitability against a property manager defendant who is not a party to the lease agreement, the tenant may sue the property manager under tort theories for breaching the manager's common law duty of care owed to the tenant. *Stoiber* clearly rejects plaintiff's contention that he may sue a property manager for an alleged breach of the implied warranty of habitability, as such a warranty is part of the lease agreement, and the property manager was not a party to the lease and thus cannot be held liable for breaching the lease. (*Stoiber*, *supra*, at p. 929.)

Therefore, while plaintiff may be able to state other tort claims against FPI for breaching duties it owed to plaintiff under ordinary tort theories, he cannot state a claim for breach of the implied warranty of habitability as to FPI. In fact, plaintiff has already alleged other tort claims against FPI, such as negligence and private nuisance, and FPI has not demurred to those claims. *Stoiber's* holding does permit plaintiff to maintain such tort claims against the property manager, but his breach of warranty of habitability claim does not state a valid cause of action. As a result, the court intends to sustain the demurrer of FPI to the first cause of action, without leave to amend.

Motion to Strike: First, the court intends to strike the prayer for punitive damages from the FAC, since plaintiff has not alleged any facts that would tend to show that defendants acted with malice, fraud, or oppression with regard to plaintiff. (Civil Code § 3294.) "Simple breach of contract, no matter how willful and hence tortious, is not a ground for punitive damages. Such damages are accessible only upon a showing that the defendant 'act[ed] with the intent to vex, injure, or annoy.'" (*Tomaselli v. Transamerica Ins. Co.* (1994) 25 Cal.App.4th 1269, 1286, internal citation omitted.)

"Both 'malice' and 'oppression' are defined in Civil Code section 3294 as involving 'despicable conduct,' which in the case of malice 'is carried on by the defendant with a willful and conscious disregard of the rights or safety of others,' and as to oppression is 'conduct that subjects a person to cruel and unjust hardship in conscious disregard of that person's rights.'" (*Id*. at pp. 1286-1287.)

" 'Despicable conduct' is defined in BAJI No. 14.72.1 (1989 rev.) as 'conduct which is so vile, base, contemptible, miserable, wretched or loathsome that it would be looked down upon and despised by ordinary decent people.' Such conduct has been described as '[having] the character of outrage frequently associated with crime.' As well stated in *Flyer's Body Shop Profit Sharing Plan v. Ticor Title Ins. Co*. [citation]: '[A] breach of a fiduciary duty alone without malice, fraud or oppression does not permit an award of punitive damages. [Citation.] The wrongdoer "'must act with the intent to vex, injure, or annoy, or with a conscious disregard of the plaintiff's rights. [Citations.]'" Punitive damages are appropriate if the defendant's acts are reprehensible, fraudulent or in blatant violation of law or policy. The mere carelessness or ignorance of the defendant does not justify the imposition of punitive damages.... Punitive damages are proper only when the tortious conduct rises to levels of extreme indifference to the plaintiff's rights, a level which decent citizens should not have to tolerate.'" (*Id*. at p.1287, internal citations omitted.)

"The cases interpreting section 3294 make it clear that in order to warrant the allowance of punitive damages the act complained of must not only be wilful in the sense of intentional, but it must also be accompanied by aggravating circumstances, amounting to malice. The malice required implies an act conceived in a spirit of mischief or with criminal indifference towards the obligations owed to others. There must be an intent to vex, annoy or injure. Mere spite or ill will is not sufficient; and mere negligence, *even gross negligence is not sufficient to justify an award of punitive damages.*" (*Ebaugh v. Rabkin* (1972) 22 Cal.App.3d 891, 894, internal citations omitted, italics in original.)

Here, plaintiff has not alleged any facts that would tend to show that either Hayden or FPI acted with malice, fraud, or oppression toward him. At most, he alleges that FPI and Hayden failed to take adequate and prompt corrective action when he complained to them on several occasions about the nuisance caused by his noisy, unruly upstairs neighbors. He alleges that the neighbors moved into the unit above his apartment, and began making loud noise at all hours of the day and night and throwing trash and fluids onto his patio. (FAC, ¶ 10.) Plaintiff complained to FPI Management on several occasions over the next two years, and they failed to properly address the issue. (*Id*. at ¶¶ 11, 13, 15, 17, 19, 20, 21.) FPI eventually told plaintiff in November of 2020 that they had served a 60-day notice on the upstairs tenants, but that their hands were tied to do anything else. (*Id*. at ¶ 21.) He also alleges that FPI failed to act on the notice and follow through with the eviction. (*Ibid*.)

While these allegations do support plaintiff's negligence and nuisance claims against FPI and Hayden, as well as his other contract based claims against Hayden, they do not show the type of "vile, base, contemptible, miserable, wretched or loathsome" conduct that would warrant punitive damages. (*Tomaselli, supra*, at pp. 1286-1287.) Although defendants' failure to promptly and properly address the nuisance created by the upstairs neighbors was arguably negligent and a breach of Hayden's duties under the lease, it was not the type of despicable conduct that shows an intent to harm plaintiff or an extreme indifference to the likelihood of harm to him. "Mere spite or ill will is not sufficient; and mere negligence, *even gross negligence is not sufficient to justify an award of punitive damages*." (*Ebaugh v. Rabkin*, *supra*, 22 Cal.App.3d at p. 894, internal citations omitted, italics in original.)

Also, since FPI is a corporation, plaintiff must allege facts showing that it employed the employees who committed the wrongful acts with advance knowledge of their unfitness and employed them with conscious disregard for the rights and safety of others. (Civil Code § 3294, subd. (b).) Here, there are no factual allegations that would tend to show that FPI employed any of the employees who allegedly committed the wrongful acts with advance knowledge of their unfitness, or consciously disregarded the rights and safety of others.

Therefore, the court intends to grant the motion to strike the prayer for punitive damages against both defendants. Furthermore, plaintiff has not met his burden of showing how he could amend the complaint to add any new facts that would show he is entitled to punitive damages against either defendants under the circumstances. As a result, the court intends to deny leave to amend to add new allegations regarding the punitive damages claim.

Next, the court intends to grant the motion to strike the prayer for attorney's fees from the FAC to the extent that plaintiff seeks fees from FPI. Under the "American Rule", each party is normally responsible for its own attorney's fees, unless there is a statute or written agreement that provides for an award of fees to the prevailing party. (Code Civ. Proc. § 1021; *Young v. Redman* (1976) 55 Cal.App.3d 827, 834-835.)

Here, plaintiff has attached a copy of the lease agreement, which does have an attorney's fees clause providing that the prevailing party in a dispute over the lease shall be entitled to its reasonable attorney's fees and costs, not to exceed $1,500 in fees and costs. (Exhibit A to FAC, Lease Agreement, ¶ 37.) However, the lease agreement was between plaintiff and Hayden, not plaintiff and FPI. FPI only signed the agreement as the agent on behalf of Hayden. (Lease Agreement, pp. 1, 12.) Therefore, while plaintiff has properly sought attorney's fees against Hayden, he has not shown that he is entitled to attorney's fees against FPI. As a result, the court intends to strike the prayer for attorney's fees to the extent that they are sought against FPI. However, the court will grant leave to amend to allow plaintiff to add allegations clarifying that the attorney's fees are only being sought as to Hayden.

Finally, the court intends to strike the legal argument and statements of law that have been alleged in the FAC. (See FAC, ¶¶ 22, 23, 24, 25, 31, 32, 47.) Such legal argument and citations to law are improper and irrelevant allegations, as they are not factual in nature and do not assist in stating a cause of action. (*Green v. Palmer* (1860) 15 Cal. 411, 414.) Plaintiff has not opposed the motion to strike the legal argument and conclusions from the FAC, and he thus apparently concedes that the allegations are improper. Therefore, the court intends to strike them from the FAC, without 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: RTM on 3/11/2022.

(Judge's initials) (Date)