Tentative Rulings for October 19, 2021
Department 403

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.

_____

(Tentative Rulings begin at the next page)

Tentative Rulings for Department 403

Begin at the next page

(20) **Tentative Ruling**

Re: ***CGA Property Management, Inc. v. General Motors, LLC***
Superior Court Case No. 20CECG01796

Hearing Date: October 19, 2021 (Dept. 403)

Motion: Plaintiff's Motions to Compel Further Responses to Production Demand and Form Interrogatories

Tentative Ruling:

To deny as untimely, with prejudice.

Explanation:

Plaintiff appears to misunderstand what is intended regarding tolling on the form "Order on Request Pretrial Discovery Conference" (Local form #TCV-72 R10-18). This form of Order was created to work in conjunction with Local Rule 2.1.17, which states:

> Filing a request for a Pretrial Discovery Conference tolls the time for filing a motion to compel discovery on the disputed issues for the number of days between the filing of the request and issuance by the Court of a subsequent order pertaining to the discovery dispute.

(Fresno Superior Court Local Rules, Rule 2.1.17(A)(5).)

Tolling functions merely to "stops the clock" on a statutory timeframe. As the California Supreme Court has explained, "Tolling may be analogized to a clock that is stopped and then restarted. Whatever period of time that remained when the clock is stopped is available when the clock is restarted, that is, when the tolling period has ended." (*Woods v. Young* (1991) 53 Cal.3d 315, 326, *fn* 3.) For example, as explained by the Court in *Woods v. Young*, if a plaintiff serves a pre-filing notice of intent to sue (which "stops the clock") on the last day of the limitations period, then she will only have one day to file her complaint once the tolling period ends and the clock "starts" again. (*Ibid.*)

Applying that here, motions to compel further responses to interrogatories and production demands must be filed within 45 days after the verifications to the responses were served (extended based on the method of service, for instance extended 2 days when responses are e-mailed). If it is not filed within that time period, the right to compel further responses is waived. (Code Civ. Proc., §§ 2030.300, subd. (c), 2031.310, subd. (c).) This time limit is jurisdictional, and a trial court acts in excess of its jurisdiction if it makes an order based on an untimely motion to compel. (*Vidal Sassoon, Inc. v. Superior Court* (1983) 147 Cal.App.3d 681, 685.)

Local Rule 2.1.17, contains a provision which tolls the 45-day time limit from the time the Request for Pretrial Discovery Conference is filed until the time the court issues its order on that Request. (Local Rule 2.1.17(A)(5).) This time is further extended based on the manner in which the Order is served (generally by mail). (Code Civ. Proc., §§ 1010.6, subd. (a)(4), 1013, 1013a, subd. (4) [Statutory extensions for service includes service made

by clerk of the court].) The court's authority to toll this jurisdictional time limit in the context of informal discovery conferences has now been codified in Code of Civil Procedure section 2016.080. This statutory authority does not give the court permission to *extend* the 45-day time limit, or to *set a new deadline,* but to merely allows it to "stop the clock" on it. Of course, if a party waits until close to the end of that 45-day limit before asking for an informal discovery conference, she does so at her own peril: utilizing the example given in *Woods v. Young, supra*, if the Request for Pretrial Discovery Conference is filed on the 45th day, the moving party has only one day (plus the extension applicable under Code Civ. Proc., § 1013) to file the motion to compel. That is exactly what happened here.

The verifications to the discovery responses were served on December 30, 2020. As plaintiff points out in the moving papers, the 45-day time limit to file the motions to compel further responses ended on February 17, 2021 (date of mailing plus 2 court days for email service pursuant to Code Civ. Proc., 1013). Plaintiff "stopped the clock" on February 17, 2021, by filing its Request for Pretrial Discovery Conference, on the last day of the 45-day time limit. Since the 45 days were up at the time the Request for Pretrial Discovery Conference was filed, after the March 5, 2021 order denying the request plaintiff only had an additional 5 days (due to the court's mail service) from the date of the order denying the Request. Thus, the deadline to file motions to compel further responses was March 10, 2021. Plaintiff filed the motions on March 30, 2021. The motions must be denied because they are untimely. (*Vidal Sassoon, supra*, 147 Cal.App.3d at p. 685 [time limit is jurisdictional]; *Woods, supra*, 53 Cal.3d at p. 326, fn 3 [Only the "period of time that remained when the clock is stopped is available when the clock is restarted, that is, when the tolling period has ended."].)

Finally, the court is concerned with the lack of good faith meet and confer efforts by both parties in this case. Merely exchanging letters and e-mails will not be sufficient to satisfy the meet and confer requirement. Before presenting any more Requests for Pretrial Discovery Conferences and/or motions to compel, the parties are ordered to meet either in person or via zoom (or other video conference option) to discuss their differences. No Pretrial Discovery Conference requests will be considered until the parties attest to satisfying this requirement.

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: KCK on 10/18/21 .
(Judge's initials) (Date)

(30)

Tentative Ruling

Re: ***Rita Esparza v. Renaissance General Restoration Contracting***
Superior Court Case No. 20CECG02926

Hearing Date: October 19, 2021 (Dept. 403)

Motion: Motion to Compel Response to Defendant's Request for Statement of Damages, by Defendant Renaissance General Restoration Contracting

Tentative Ruling:

To deny.

Explanation:

On February 17, 2021, Renaissance General Restoration Contracting served a request for statement of damages on plaintiff. On March 8, 2021, plaintiff served objections to the request on the grounds that plaintiff's lawsuit is not for personal injury or wrongful death. Renaissance now moves to compel a response pursuant to Code of Civil Procedure section 425.11, subdivision (b).

Code of Civil Procedure section 425.11, subdivision (b) states: "When a complaint is filed in an action to recover damages for personal injury or wrongful death, the defendant may at any time request a statement setting forth the nature and amount of damages being sought. The request shall be served upon the plaintiff, who shall serve a responsive statement as to the damages within 15 days. In the event that a response is not served, the defendant, on notice to the plaintiff, may petition the court in which the action is pending to order the plaintiff to serve a responsive statement." (Code Civ. Proc., § 425.11, subd. (b).)

Renaissance argues that pursuant to Code of Civil Procedure section 425.11, subdivision (b), its request for a statement of damages requires an answer. According to defendant, plaintiff's complaint is an injury complaint because plaintiff prays for general and special damages. Defendant argues that by claiming general damages, plaintiff is alleging damages for pain and suffering and emotional distress. By claiming special damages, plaintiff is alleging damages for medical and related expenses as well as lost income. Defendant cites to *Jones v. Interstate Recovery Service* (1984) 160 Cal.App.3d 925 and *Schwab v. Rondel Homes, Inc.* (1991) 53 Cal.3d 428.

Courts look at "'the nature of the tort rather than the type or extent of the damages' pled" to determine if a complaint is one for personal injury. (*Rodriguez v. Cho* (2015) 236 Cal.App.4th 742, 755.) And cases that seek the recovery of a property right are not considered personal injury actions under the purview of Code of Civil Procedure section 425.11. (*Id.* at. p. 754, analyzing *Gourley v. State Farm Mut. Auto. Ins. Co*. (1991) 53 Cal.3d 121, 127 [noting "the court determined an insurance bad faith action was one seeking recovery of a property right, not personal injury, and emphasized that plaintiffs

brought the action primarily to recover financial damages, while emotional distress damages were only incidental to economic loss."]; see also *Schwab v. Rondel Homes, supra*, 53 Cal.3d at p. 432 ["[W]here an emotional distress claim is 'incidental' to the cause of action, the cause of action will not be considered an action 'to recover damages for personal injury.'"].)

In the case at bar, the nature of the tort involves a property right and is not one for personal injury. Plaintiff's complaint stems from allegations that Renaissance entered plaintiff's property and knowingly spread asbestos containing materials throughout her home, causing damage to the property and its contents. Plaintiff's prayer for general and special damages are incidental to her property damage or economic loss claim.

Neither *Jones* nor *Schwab* require a different conclusion. In *Jones*, the nature of the tort was one for personal injury. The underlying facts involved the repossession of plaintiff's automobile; however the plaintiff, who was pregnant at the time, also alleged that she was "thrown up against the wall of the garage" by the defendant. She asserted causes of action for trespass, assault, conversion and, infliction of emotional distress. (*Jones v. Interstate Recovery Service, supra,* 160 Cal.App.3d at p. 927.) In *Schwab*, though the plaintiffs sued defendants for housing discrimination, they also explicitly prayed for damages resulting from the mental and emotional distress that each plaintiff had suffered. On this basis, the Supreme Court required a statement of damages. (*Schwab v. Rondel Homes, Inc., supra,* 53 Cal.3d at p. 432.) Unlike *Jones* and *Schwab*, plaintiff here has not alleged that Renaissance or any of its employees physically touched or harmed her, nor does her complaint seek damages specifically for mental or emotional distress. The nature of her claim arises from Renaissance's negligence and resulting harm to plaintiff's property and its contents.

Renaissance also argues that it will be deprived of due process if plaintiff does not provide it with a statement of damages, citing several cases that discuss default judgments. Without directly saying so, defendant implies that the rules applicable to defaults are also applicable here. The cases are inapplicable as Plaintiff has not sought a default judgment against Renaissance.

On reply, Renaissance argues that based upon plaintiff's inconsistent discovery responses, it is unclear whether plaintiff seeks damages based upon personal injuries. As such, defendant argues that a statement of damages is necessary. Defendant fails to argue any exceptional circumstances justifying consideration of this new argument or of the evidence submitted in support thereof and therefore the court will not consider it. (See *Jay v. Mahaffey* (2013) 218 Cal.App.4th 1522, 1537-1538.)

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: KCK on 10/18/21 .
(Judge's initials) (Date)