

Tentative Rulings for March 3, 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).)

20CECG00763 *Palm v. Hiller Aircraft Corp.* (Dept. 502)

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 502

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Tentative Ruling

Re: ***Kelli Ahart v. City of Fresno***
Superior Court Case No. 21CECG00883

Hearing Date: March 3, 2022 (Dept. 502)

Motions: Demurrer to the First Amended Complaint, by Defendant City of Fresno

Tentative Ruling:

To sustain with leave to amend, as to both causes of action. Plaintiff is granted 20 days' leave to amend. The time in which an amended pleading may be filed will run from service by the clerk of the minute order. All new allegations in the amended complaint are to be set in **boldface** type.

Explanation:

Two causes of action are alleged in the First Amended Complaint: (1) general negligence; and (2) damages arising from the operation of a motor vehicle. Defendant now demurs to each cause of action, based upon Code of Civil Procedure sections 430.10, subdivisions (e) and (f).

Government Code section 815.2 provides that a public entity is liable for the injury proximately caused by an act or omission of its employee within the scope of his employment if the act or omission would have given rise to a cause of action against that employee. (Gov't. Code § 815.2.)

In the first cause of action, plaintiff alleges that defendant is liable under a common law negligence theory as well as pursuant to Government Code sections 815.2 and 820. This allegation fails under subdivisions (e) and (f) of Code of Civil Procedure section 430.10. No common law liability may arise as to a public entity. (*Cochran v. Herzog Engraving Co.* (1984) 155 Cal.App.3d 405, 409 ["[S]overeign immunity is the rule in California; governmental liability is limited to exceptions specifically set forth by statute."]; see also *Hilts v. County of Solano* (1968) 265 Cal.App.2d 161, 170 [liability cannot be established against a governmental entity based upon common law negligence].) While plaintiff does cite to Government Code sections 815.2 and 820, the essential facts upon which a determination of the controversy depends should be stated with clearness and precision so that nothing is left to surmise. (*Ankeny v. Lockheed Missiles and Space Co.* (1979) 88 Cal.App.3d 531, 537.) In other words, because of the way in which the allegations are stated, it is unclear whether plaintiff seeks to actually plead liability under Government Code sections 815.2 and 820.

To state a cause of action against a governmental entity "every fact essential to the existence of statutory liability must be pleaded with particularity, including the existence of a statutory duty." (*Searcy v. Hemet Unified School Dist.* (1986) 177 Cal.App.3d 792, 802.) "Since the duty of a governmental agency can only be created

by statute or 'enactment,' the statute or 'enactment' claimed to establish the duty must at the very least be identified." (*Ibid.*) In her second cause of action plaintiff fails to identify any statutory basis for liability, a requirement to state a cause of action against a public entity.

Accordingly, the demurrer to the first and second causes of action are sustained.

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 2/25/2022.
(Judge's initials) (Date)

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Tentative Ruling

Re: **Anguiano-Perez v. Garnica**
Superior Court Case No. 21CECG01673

Hearing Date: March 3, 2022 (Dept. 502)

And

Garnica v. Anguiano-Perez
Court Case No. 21CECL04732

Motion: Motion to Consolidate

Tentative Ruling:

To grant consolidation.

Explanation:

Plaintiff asks that the unlawful detainer action, case number 21CECL04732, be consolidated with the civil action, case number 21CECG01673, since otherwise the unlawful detainer action would proceed to trial quickly, before plaintiff's claim to own title to the property could be decided, and she could be ejected from her own property.

Given the summary nature of unlawful detainer proceedings, it is a rule of long standing that questions of title cannot be raised and litigated by cross-complaint or affirmative defense in an unlawful detainer case. (*Cheney v. Trauzettel* (1937) 9 Cal.2d 158, 159; *Martin-Bragg v. Moore* ("Martin-Bragg") (2013) 219 Cal.App.4th 367, 385 ["Ordinarily, issues respecting the title to the property cannot be adjudicated in an unlawful detainer action."].) However, where a civil action makes a claim of ownership concerning the property that is the subject of an unlawful detainer action, the additional issue is one of prejudice to the party making the ownership claim. In *Martin-Bragg*, the court held that in such situations the Civil Unlimited court has the power "to consolidate an unlawful detainer proceeding with a simultaneously pending action in which title to the property is in issue," because a "successful claim of title by the tenant would defeat the landlord's right to possession." (*Id.* at 385.) Here, an unlawful detainer proceeding and an unlimited civil action concerning (among other things) title to the subject property are simultaneously pending. As was clearly established in *Martin-Bragg*, in such instances, "the trial court in which the unlimited action is pending may stay the unlawful detainer action until the issue of title is resolved in the unlimited action, or it may consolidate the actions." (*Ibid.*) Thus, plaintiff asks via this motion that the court consolidate the civil and unlawful detainer actions.

Defendants Magdalena and Diana Garnica have filed opposition to the motion. While they agree that *Martin-Bragg* is controlling and that the unlawful detainer action cannot proceed until title to the subject property is determined, they argue that instead

of consolidating the actions, the court should instead simply order the unlawful detainer action to be stayed. They argue that this will have three beneficial effects: (1) it will preserve the summary nature of the unlawful detainer proceeding; (2) it will avoid undue expense to the defendants; and (3) this will result in no prejudice to the parties. Each of these points is discussed in turn.

- *Preserving the summary nature of the unlawful detainer proceeding*

Defendants argue that staying the unlawful detainer action will preserve the summary nature of the unlawful detainer proceeding, while consolidation will not. This is not a convincing point. It is true that the court in *Martin-Bragg* found that the court had a choice of either staying or consolidating. (*Martin-Bragg*, *supra*, 219 Cal.App.4th at p. 385.) But the point of the holding was that the civil plaintiff claiming title to the subject property has a right to full due process in the civil action, and this consideration outweighs the unlawful detainer plaintiff's right to a summary proceeding. (*Id.* at p. 391 ["[W]hen complex issues of title are involved, the parties' constitutional rights to due process in the litigation of those issues cannot be subordinated to the summary procedures of unlawful detainer."]; see also *Berry v. Society of St. Pius X* (1999) 69 Cal.App.4th 354, 364, *fn* 7; *Wilson v. Gentile* (1992) 8 Cal.App.4th 759, 761; *Mehr v. Superior Court* (1983) 139 Cal.App.3d 1044, 1049; *Asuncion v. Superior Court* (1980) 108 Cal.App.3d 141, 146.) Thus, whether the court chooses to stay or consolidate, the unlawful detainer plaintiff's right to a summary proceeding must give way, so defendants' premise that a stay will preserve the summary nature of the unlawful detainer proceeding is not accurate.

Further, their argument appears to be premised on assuming that the "title issue" regarding the subject property is a discrete issue within the civil complaint, separate and apart from "claims unrelated to title including emotional distress and damages." Thus, defendants seem to assume that they might be able to get a ruling on the issue of title to the Hughes Street property in the civil case (the example they use is via summary adjudication) and they could then proceed in the unlawful detainer action, but if the cases are instead consolidated they would have to wait until all the other issues were tried to judgment before they could proceed with the unlawful detainer or have any rights to appeal (in the event they were unsuccessful).

But this reasoning is also flawed. Plaintiff's claim to title to the Hughes Street property is part of her overall claim to the decedent's property acquired or earned while they were together. There is not a single cause of action that deals only plaintiff's claim to equitable title to the Hughes Street property, so that issue could not be reached by a motion for summary adjudication because it would not completely dispose of a cause of action. (Code Civ. Proc., § 437c, subd. (f)(1), last sentence ["A motion for summary adjudication shall be granted only if it completely disposes of a cause of action, an affirmative defense, a claim for damages, or an issue of duty."].) The only way the court could summarily adjudicate the issue of title only as to the Clovis property would be if plaintiff stipulated to a motion under subdivision (t) of the Code of Civil Procedure section 437c. It is reasonable to assume, for purposes of analyzing this argument, that plaintiff would not stipulate to this. Thus, it is difficult to see how ordering a stay as opposed to consolidation lends any economy to the situation.

