

AMADOR SUPERIOR COURT LAW AND MOTION TENTATIVE RULINGS

Monday, January 3, 2022

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TO REQUEST A HEARING ON ANY MATTER ON THIS CALENDAR, YOU MUST CALL THE COURT AT (209) 257-2692 BY 4:00 P.M. ON THE DAY PRECEDING THE HEARING. NOTICE OF THE INTENTION TO APPEAR MUST ALSO BE GIVEN TO ALL OTHER PARTIES.

IF THE CLERK IS NOT NOTIFIED OF A PARTY'S INTENTION TO APPEAR, THERE WILL BE NO HEARING AND THE TENTATIVE RULING WILL BECOME THE ORDER OF THE COURT. NO FURTHER NOTICE OF THE COURT'S RULING WILL BE PROVIDED.

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20-CVC-11670

KATEN, JODI

VS.

POTTS, DONNA

DEMURRER - DEFENDANT'S

**TENTATIVE RULING:**

Defendants' Demurrer to the Second Amended Complaint is **OVERRULED**.

A demurrer challenges the sufficiency of a complaint based on defects that appear on its face or from matters that are subject to judicial notice. (*Blank v. Kirwan* (1985) 39 Cal.3d 311, 318; CCP §430.10.) To survive a demurrer, a complaint must plead specific facts to establish every element of a cause of action. (*Cantu v. Resolution Trust Corp.* (1992) 4 Cal.App.4th 857, 879.) A court should treat a demurrer as admitting all material facts that are properly pled, but need not accept conclusions, contentions or deductions of law or fact. (*Blank*, 39 Cal.3d at 318.)

Plaintiff is required to plead factual allegations addressing the elements of each cause of action. Although pleadings are to be liberally construed, they must nonetheless set forth essential facts with reasonable precision. (*Semole v. Sansoucie* (1972) 28 Cal.App.3d 714.) Further, a court in examining the sufficiency of a complaint should "treat the demurrer as admitting all material facts properly pleaded, but not contentions, deductions or conclusions of law or fact." (*Blank v. Kirwan* (1985) 39 Cal.3d 311, 318.)

**First Cause of Action for Breach of Contract – Defendants Alisa Johnson, Rodger Steele, Patti Steele, Justine Brooks, Juanita Steele and Charlotte Welch:**

To establish breach of contract, each plaintiff must prove (1) the existence of the contract, (2) the plaintiff's performance or excuse for nonperformance, (3) the defendant's breach, and (4) resulting damages to the plaintiff. (*Maxwell v. Dolezal* (2014) 231 Cal.App.4th 93, 98.)

Plaintiff's SAC attaches, by errata, Exhibit A, a copy of the August 3, 2018 agreement signed by all eight (8) defendants and alleges that Plaintiff performed under the contract by paying each Defendant the sum of \$5,000. Defendants' breached by not tendering title to the mobile home to Plaintiff, resulting in Plaintiff sustaining damages.

Defendant argues Plaintiff did not plead with specificity the nature of the agency between Donna Marie Potts and the three Defendants who were not present at the time of signing the contract, Justine Brooks, Juanita Steele and Charlotte Welch. However, at this stage of the pleadings it is sufficient that Plaintiff alleges Donna Marie Potts had "authorization" to speak and act on the absent Justine Brooks, Juanita Steele and Charlotte Welch. The SAC alleges that each and every Defendant "ratified" the August 3rd agreement by accepting the \$5,000 cashier's checks.

Further, Defendant contends that the second contract dated August 10, 2018 (MPHA) contains a merger clause and therefore prevents bringing any claim under the August 3rd agreement. The MPHA was signed by Donna Marie Potts and James Potts, and not the remainder of the Defendants.

Plaintiff has sufficiently pleaded facts to support the first cause of action for breach of contract.

**Second Cause of Action for Breach of Contract – Defendants Donna Marie Potts and James Potts:**

Plaintiff's SAC attaches, by errata, Exhibit B, a copy of the August 10, 2018, manufactured home purchase agreement (MHPA) and alleges that Plaintiff performed under the contract by paying each Defendant the sum of \$5,000. Defendants' breached by not tendering title to the mobile home, not paying the back taxes of at least \$7,393.55 and the fees for removing waste of at least \$1,613.00 and park fees of \$5,712.58.

Plaintiff has sufficiently pleaded facts to support the second cause of action for breach of contract.

**Third Cause of Action for intentional misrepresentation and Fourth Cause of Action for Negligent Misrepresentation against all Defendants:**

Intentional misrepresentation requires that plaintiff allege (1) a misrepresentation, (2) with knowledge of its falsity, (3) with the intent to induce another's reliance on the misrepresentation, (4) actual and justifiable reliance, and (5) resulting damage.

(*Daniels v. Select Portfolio Sveg., Inc.* (2016) 246 Cal.App.4th 1150, 1166 citing *Chapman v. Skype Inc.* (2013) 220 Cal.App.4th 217, 230–231.)

Negligent misrepresentation is a form of deceit, the elements of which consist of (1) a misrepresentation of a past or existing material fact, (2) without reasonable grounds for believing it to be true, (3) with intent to induce another's reliance on the fact misrepresented, (4) ignorance of the truth and justifiable reliance thereon by the party to whom the misrepresentation was directed, and (5) damages. (*Fox v. Pollack* (1986) 181 Cal.App.3d 954, 962.)

Plaintiff's SAC alleges (1) all the Defendants present on August 3, 2018 claimed to Plaintiff that they were joint owners of the mobile home along with Defendants Justine Brooks, Juanita Steele and Charlotte Welch, for whom Donna Marie Potts was authorized to act and speak on behalf of, (2) the Defendants knew or should have known they did not legally hold title to the mobile home, (3) the representation was made with the intent to defraud and induce Plaintiff to purchase the mobile home and pay each of them \$5,000, (4) Plaintiff obtained cashier's checks for each Defendant in the amount of \$5,000 and took up residence in the mobile home, (5) Plaintiff was not given title and has damages for back taxes, waste removal, and park fees. Moving party argues that each element of both allegations for misrepresentation are "sound in fraud and, therefore, each element must be pleaded with specificity". (*Daniels* at 1166.) Also, that because the August 3rd agreement provided that the parties were "the family of Margaret Lemely", Plaintiff fails to have justifiably relied on the misrepresentation.

Even with a heightened pleading standard, Plaintiff has sufficiently pleaded facts to support the third cause of action for intentional misrepresentation and fourth cause of action for negligent misrepresentation.

Defendants are ordered to file an Answer within ten (10) days of the date of the ruling, unless otherwise stipulated by the parties. Unless a hearing is requested, this ruling is effective immediately. Neither further notice of the ruling nor a formal order per CRC 3.1312 is required.

TENTATIVE RULING:

On the court's own motion Defendant's Motion for Separate Trials is continued to January 3, 2022 at 8:30 a.m. in Department 1.

Unless a hearing is requested, this ruling is effective immediately. Neither further notice of the ruling nor a formal order per CRC 3.1312 is required.

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**20-CVC-11702**

ADAMS, JAMES

VS.

FAR HORIZONS TRAILER VILLAGE LLC

**CIVIL MISCELLANEOUS MOTION**

## TENTATIVE RULING:

The court notes Defendant's objection to the court considering Plaintiffs' Opposition, as it was untimely served. The court has read and considered the Opposition and rules as follows:

Defendant's Motion for Separate Trials on Issues of Liability and Damages is GRANTED.

### Summary of Motion

Defendant SUN 49er contends that severance of the liability and damages issues would promote judicial economy, increase potential settlement, and avoid prejudice to Defendant SUN 49er.

Defendant argues that due to Plaintiff ADAMS intoxication at the time of the fall, liability is strongly contested, but will only take 5 days or less to try, including jury selection, while the damages issues are more complex, and due to the number of witnesses and expert witnesses, will take closer to 30 to 35 days to try. (Witzman Decl., ¶ 3, ¶ 9.) Defense counsel's declaration in support of the motion to bifurcate indicates counsel has analyzed the case and anticipates that in addition to Plaintiff's 21 treatment providers, and rebuttal experts, experts such as the following will be called on both sides: toxicologists, life care planners, economists, vocational rehabilitation specialists, family and friends of the Plaintiffs and anyone who can speak to the emotional issues involved with Plaintiffs' alleged injuries, neurologist, neuropsychologist, pain management, life care planner, medical billing expert, and economist. (Witzman Decl. ¶ 9.)

Defendant raises concerns regarding the prejudicial impact to Defendant if liability and damages are not bifurcated. Plaintiff sustained serious life altering injuries. Defendant raises concerns that the risk of jury sympathy to Plaintiff's severe injuries may impact the determination of liability.

Defendant asserts it would be most efficient to determine liability before going forward with the time and expense associated with trial on damages, and would eliminate concerns regarding prejudice.

### Summary of Opposition

Plaintiff indicates bifurcation will result in witness inconvenience and delay justices, result in a significant increase in expense to the parties as well as time burden on a catastrophically injured plaintiff. Further, that finding jurors who will time qualify for a bifurcated trial that could last for more than 1 month will dramatically increase the time spent on voir dire. Plaintiff estimates that the bulk of the trial will be spent on the issue of liability, not on damages. (Tiemann Decl. ¶¶ 7- 15.)

In support of this, Plaintiff indicates that although Defendant claims that the Plaintiffs had "spent dozens of days at the resort" prior to the incident, Defendant has failed to produce any documentation supporting that claim, and it remains an issue that will take up the bulk of trial time. (Tiemann Decl. ¶¶ 7- 15.) In reply, Defendant indicates Plaintiff's own deposition testimony indicates they have been to the resort dozens of times and that is a discovery issue, not a trial issue.

### Law & Analysis

"The court, in furtherance of convenience or to avoid prejudice, or when separate trials will be conducive to expedition and economy, may order a separate trial of any cause of action ...." (CCP § 1048(b).) For example, when trial of one issue will dispose of the rest of the action judicially, or create a high probability of settlement, or when one claim or issue can be quickly resolved where the other issues require extensive discovery, bifurcation is appropriate. (Foreman & Clark Corp. v. Fallon (1971) 3 Cal.3d 875, 888.) Additionally, "[t]he court may, when the convenience of witnesses, the ends of justice, or the economy and efficiency of handling the litigation would be promoted thereby, on motion of a party, after notice and hearing, make an order ... that the trial of any issue or any part thereof shall precede the trial of any other issue or any part thereof in the case ...." (CCP § 598.)

The opposition indicates that Defendant's motion should be denied because liability and damages are so intertwined as to make it improper, as the nature and severity of the injury tends to inform the mechanism of the fall. The issues are inextricably interwoven by virtue of the parties' dispute by virtue of the parties' dispute over fault, including any comparative fault.

Plaintiff's argument that bifurcation is inappropriate because the issues of liability and the injuries sustained are "inextricably intertwined and cannot be separated" is inappropriate. (Opposition at 2:25.) Defendant's liability for premises liability and the injuries sustained by Plaintiff are separate issues and do not appear to have intertwined evidence.

Here, bifurcation is appropriate for several reasons. It will promote judicial efficiency. It will likely result in greater convenience to the witnesses, there is no indication that prejudice will result to Plaintiff and some indication that denying the motion to bifurcate will prejudice Defendant. Lastly, there is an inadequate showing of overlapping issues.

First, bifurcation will promote judicial efficiency. If the liability phase is bifurcated from damages, about 8-10 witnesses for each side will likely testify as to liability, as opposed to at least 21-40 witnesses if the issue of damages is included. (If the jury finds in favor of Defendant on the issue of liability, it is likely the case will settle or otherwise not proceed.) If the jury finds against Defendant on the issue of liability, bifurcation is still likely to reduce the overall length of trial because Defendant may be more likely to settle.

Next, for the same reasons outlined above, bifurcation will result in greater convenience to the witnesses. According to Plaintiff's counsel, bifurcation would result in duplication of crossover witnesses who will provide testimony regarding both liability and damages. However, counsel identifies these witnesses as only the Plaintiffs, one eyewitness, and a neurosurgeon. (Opposition at 6:6-8.)

Finally, there is little evidence that Plaintiff will suffer any prejudice as a result of bifurcation. Any amount of prejudice that Plaintiff will suffer is outweighed by the prejudice that may be avoided by bifurcation. The damages in this case are extensive, so it is likely that bifurcation will actually help to avoid the possibility of Defendant being prejudiced; bifurcation will prevent the jury from improperly considering Plaintiff's injuries during the liability phase.

As to Plaintiff's argument that bifurcation is premature, the case is currently set for trial on July 12, 2022.

Granting or denying a motion for bifurcation lies within the discretion of the trial court. (Grappo v. Coventry Financial Corp. (1991) 235 Cal.App.3d 496.) Courts may sever causes of action or issues for trial. (CCP § 1048, Comments, ¶ 1.)

The court finds that bifurcation will promote judicial efficiency.

Unless a hearing is requested, this ruling is effective immediately. Neither further notice of the ruling nor a formal order per CRC 3.1312 is required.

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**20-CVC-11960**

W 2500 MARINER LLC

VS.

ARROWOOD INDEMNITY COMPANY

**PLAINTIFF'S MOTION TO VACATE OR SET ASIDE JUDGMENT**

TENTATIVE RULING:

Petitioner's unopposed Motion to Vacate Order Approving Transfer of Structured Settlement Payment Rights is GRANTED.

The court shall sign the proposed order lodged in the file.

Unless a hearing is requested, this ruling is effective immediately. Neither further notice of the ruling nor a formal order per CRC 3.1312 is required.