

TENTATIVE RULING:

Defendant's demurrer to the Plaintiff's First Amended Complaint is OVERRULED. (CCP § 430.10(e)). Defendants are ordered to file and serve an Answer within five (5) days of the date of this ruling. (CCP §1167.3.)

Defendant's motion to strike is GRANTED in part. "CITY OF SUTTER CREEK, AND" shall be stricken from the Second Cause of Action – Premises Liability, Prem. L-5.

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.) A court may consider judicially noticeable facts in ruling on a demurrer. (CCP §430.30(a); Stormedia Inc., v. Superior Court (1999) 20 Cal.4th 449, 457 n.9.)

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 - Negligence

A negligence cause of action includes four required elements: (1) duty; (2) breach; (3) causation; and (4) damages. (Conroy v. Regents of University of Cal. (2009) 45 Cal.4th 1244, 1250; Hayes v. County of San Diego (2013) 57 Cal.4th 622, 629.) In addition, "[e]xcept as otherwise provided by statute, a public employee is not liable for an injury caused by the act or omission of another person." (Gov. Code § 820.8.) Rather, he is only liable "for injury proximately caused by his own negligent or wrongful act or omission." (Ibid; see also Weaver v. State (1998) 63 Cal.App.4th 188, 197, 202-203.)

Defendants demur to Plaintiff's first cause of action for negligence on the grounds that Govt. Code §815(a) makes it clear that "except as otherwise provided by statute, a public entity is not liable for an injury, whether such injury arises out of an act or omission of the public entity or a public employee or any other person".

Plaintiff identifies Gov. Code §835 as the statute on which the public entity (City of Sutter Creek) is liable for Plaintiff's injury. Gov. Code §835 provides, in relevant part:

...a public entity is liable for injury cause by a dangerous condition of its property if Plaintiff establishes that the property was in a dangerous condition at the time of the injury, that the injury was proximately caused by the dangerous condition at the time of the injury, that dangerous condition created a reasonable foreseeable risk of the kind of injury which was incurred; and either: (a) a negligent or wrongful act or omission of an employee of the public entity within the scope of his employment created the dangerous condition; or (b) The public entity had actual or constructive notice of the dangerous condition under Section 835.2 a sufficient time prior to the injury to have taken measures to protect against the dangerous condition .

Plaintiff pleads sufficient facts to proceed with a cause of action of negligence under Govt. Code §835(a).

Second Cause of Action - Premises Liability/Dangerous Condition of Public Property

Defendants demur to Plaintiff's cause of action for premises liability on the grounds that (1) there exists no cause of action of "premises liability" against a public entity such as the City of Sutter Creek and (2) Plaintiff fails to plead sufficient facts establishing a cause of action for dangerous condition of public property.

A public entity may be liable for injury caused by a dangerous condition of property "if the plaintiff establishes that the property was in a dangerous condition at the time of the injury, that the injury was proximately caused by the dangerous condition, and that the dangerous condition created a reasonably foreseeable risk of the kind of injury which was incurred." (Gov. Code § 835.)

Plaintiff must show in addition that either "(a) A negligent or wrongful act or omission of an employee of the public entity within the scope of his employment created the dangerous condition; or ¶ (b) The public entity had actual or constructive notice of the dangerous condition under Section 835.2 a sufficient time prior to the injury to have taken measures to protect against the dangerous condition." (Id., subsections (a) and (b).)

Gov. Code §830 defines a dangerous condition as "a condition of property that creates a substantial (as distinguished from a minor, trivial or insignificant) risk of injury when such property or adjacent property is used with due care in a manner in which it is reasonably foreseeable that it will be used." "Liability under Government Code section 835 for maintaining public property in a dangerous condition depends, however, upon the existence of some defect in the property itself and the existence of a causal connection between that defect and the plaintiff's injury." (Zelig v. County of Los Angeles (2002) 27 Cal.4th 1112, 1138.)

Here, Plaintiff identifies the property as "walking on Spanish Street near the property located at 140 Spanish Street, City of Sutter Creek". The physical condition of the property is described as "uneven" and "cracked" which "created a dangerous condition on a public street/sidewalk on Spanish Street where the incident occurred." (FAC at Attachment 1) The FAC then cites Defendant for "failing to provide a safe alternative route for Pedestrians using Spanish street at the time of the incident". (FAC at Attachment One.) The Plaintiff "came into contact with a dangerous and hazardous condition which caused Plaintiff to trip and fall , thereby sustaining injuries and damages." (FAC at Attachment PL-1.)

Plaintiff pleads sufficient facts to establish the cause of action for dangerous condition of public property .

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.

MOTION TO QUASH**TENTATIVE RULING:**

Petitioner's Motion to Quash Subpoena Duces Tecum of Objector MEGAN HERRICK propounded to third parties El Dorado Savings, Wells Fargo Bank, NA, and Fidelity Investments is GRANTED.

Petitioner's request for Attorney fees is GRANTED IN PART.

The court finds the subpoenas issued for Lois Herrick's financial records from the three (3) separate financial institutions are irrelevant to the issues in this case, a violation of her privacy and were improperly served to Petitioner's counsel pursuant to CCP §2020.410(c) and CCP §1985.3(g).

The documents requested, on their face, are irrelevant to the conservatorship of the person of Lois Herrick, which involves helping her take care of her daily needs, and does not pertain to her finances. The Objector's subpoenas appear to reference Ms. Herrick's well-being in their stated purpose, but are wide ranging and extensive, invasive of her privacy and bear no relevance as to whether or not Ms. Herrick's daily needs are being met under the conservatorship.

CCP §2020.410(c) requires that the documents requested via subpoena duces tecum shall command compliance on a date that is "...no earlier than 20 days after the issuance, or 15 days after the service of the subpoena...whichever date is later." The notices to Lois Herrick seek to examine records on December 19, 2019, the same date they are dated. Further, the notices give no time for objection, and the proof of service is unsigned. There is a hand written notation on the proof of service stating "Mailed to incorrect address on 12/19/19" and "Mailed to OPC on 12/30/19". (Burton Decl. Exh B)

CCP §1985.3(g) provides that a motion to quash a subpoena duces tecum seeking personal records must be served on opposing counsel at least five (5) days before the date for the production of documents. The subpoenas issued by the Objector appear to be served well beyond that date and command performance by Ms. Herrick on the very date they are signed, and were served by mail a full eleven (11) days beyond the date for the production of documents. (Burton Decl. Exh B)

The court has discretion to award reasonable attorney fees and costs pursuant to CCP § 1987.2(a) which provides, in relevant part, "the court may in its discretion award the amount of the reasonable expenses incurred in making or opposing the motion, including reasonable attorney's fees, if the court finds the motion was made or opposed in bad faith or without substantial justification or that one or more of the requirements of the subpoena was oppressive."

The court finds the hourly rates of Petitioner's attorney and paralegal to be reasonable and grants three (3) hours of attorney time at \$325 per hour, one point eight (1.8) hours of paralegal time at \$145 per hour and \$60 court cost for a total of \$1,180, payable by Objector within thirty (30) days of the hearing date.

The prevailing party is to submit an order to the court consistent with this ruling.

Unless a hearing is requested, this ruling is effective immediately.