

**19 CVC 11416      CHA-DOR REALTY, et al. vs. ROBERT DOUGLAS, et al.**

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Defendant/cross-complainant's unopposed motion for leave to file a cross-complaint is GRANTED.

The court will sign the proposed order.

The cross-complaint is not deemed filed as moving party failed to lodge the cross-complaint with the court for filing. Defendant/cross-complainant's cross-complaint must be filed on or before March 18, 2022.

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.

**20 CVC 11694      STEVEN GREGORY HICKMAN vs. PRO TRANSPORT 1, et al.**

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Plaintiff's Motion to Order Plaintiff's successor-in interest is DENIED without prejudice.

Following the death of a party, any legal action by that party may only proceed upon substitution of the decedent's personal representative or successor in interest in her place. (CCP §§ 377.31, 367.) CCP § 377.31 states that, "[o]n motion after the death of a person who commenced an action or proceeding, the court shall allow a pending action or proceeding that does not abate to be continued by the decedent's personal representative or, if none, by the decedent's successor in interest."

The court finds the motion fails to comply CCP § 377.31 as Plaintiff has not provided to the court Letters of Administration confirming David Hickman's appointment as the decedent's personal representative. A review of the companion probate case no. 21 PR 2035 indicates Letters have not issued.

On February 7, 2022, Plaintiff was ordered to file a supplemental declaration, with supporting documentation pursuant to this court's ruling, no later than seven (7) days prior to the next hearing date. Plaintiff has failed to file the required declaration and has not provided the court with any supporting documentation.

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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Defendant's demurrer to Plaintiff's Complaint is OVERRULED.

Defendant requests the court take judicial notice of the following documents pursuant to Ev. Code §§ 451, 452, and 453:

1. LLC Registration – Articles of Organization filed with the Secretary of State, State of California on June 24, 2019. (RJN, Exh. 1.)
2. Plaintiff's Amended Complaint filed on August 18, 2021. (RJN, Exh. 2.)

There is no objection. Defendant's requests are GRANTED.

#### Demurrer

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.)

#### Statute of Limitations:

Defendant argues that the statute of limitation for the first cause of action negligence is two (2) years, pursuant to CCP § 335.1 and three (3) years pursuant to CCP § 338 for the second and third causes of action: violation of Public Utilities Code § 7952 and trespass and that Plaintiff's amended complaint was filed more than three years after the date of loss.

Plaintiff argues that the relation back doctrine applies in this case, as the complaint was amended to add a defendant that Plaintiff did not know at the time of filing. Further, that the applicable statute of limitations is three (3) years under CCP § 338, not two (2) years, because the basis for the claim is damage to personal property.

## 21 CVC 12136 Tentative Ruling Continued:

Relation Back:

In *Hawkins*, the court noted that the plaintiff had sued his former employer as “Basalite Corporation,” when the employer's legal name was actually “ ‘Pacific Coast Building Products, Inc.’ ” (*Hawkins v. Pacific Coast Bldg. Products, Inc.* (2004) 124 Cal.App.4th 1497, 1500–1501, 22 Cal.Rptr.3d 453 (*Hawkins*)). The plaintiff filed an amended complaint substituting the correct name of the defendant after the statute of limitations had expired as to various claims. (*Id.* at 1501.) The trial court sustained the defendant's demurrer on the ground that the statute of limitations barred plaintiff's claims. (*Id.* at 1502.)

On appeal, the *Hawkins* court held that the trial court had erred in concluding that the amended complaint did not relate back to the date on which he filed his original complaint:

“By defectively describing ‘Pacific Coast dba Basalite’ as Basalite Corporation, Hawkins's original complaint merely misnamed the proper defendant.... Allowing Hawkins to substitute the correct name for his original misdescription of the only named defendant neither changes the nature of the action nor represents an ‘entire change of parties.’ [Citation.] Hawkins was at all times attempting to sue a single entity, his former employer of three years, for wrongful termination.” (*Hawkins, supra*, 124 Cal.App.4th at pp. 1504–1505].)

The demurrer is overruled. Defendant is ordered to file an Answer within ten (10) days of the date of this 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.