

Monday, April 19, 2021

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.

19-CVC-11140

LAFRANK, ERICA

VS.

ATT CORP

MOTION TO AMEND COMPLAINT

TENTATIVE RULING:

Plaintiff's Motion for Filing of First Amended Complaint is DENIED.

CRC 3.1324(b) provides, in relevant part, "A motion to amend a pleading for trial must be accompanied by a separate declaration and that declaration must specify (3) When the facts giving rise to the amended allegation were discovered; and, (4) The reasons why the request for amendment was not made earlier". (CRC 3.1324(b)(3) and (4).)(Emphasis added.)

Plaintiff's supporting declaration indicates Plaintiff completed the deposition of Defendant LEITING on June 16, 2020 and that such deposition was delayed by the Covid-19 crisis. (Decl. Lally ¶ 16.)

Presumably, the June 16, 2020 date is when the facts giving rise to the amended allegation were discovered, but that is not clear from the declaration. Further, Plaintiff gives no explanation as to why the request for amendment was not made sooner, as the instant motion was not filed until April 9, 2021, nearly ten (10) months after LEITING's deposition. In fact, it appears Plaintiff filed the same motion on June 22, 2020 and then dropped it.

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.

19-CVC-11510

GLENN, PATRICK

VS.

PARZYCH, MATT

MOTION TO QUASH

TENTATIVE RULING:

Defendants Motion to Quash Service of Summons and Complaint for Lack of Personal Jurisdiction is GRANTED.

Minimum Contacts to Establish Personal Jurisdiction

California courts may exercise personal jurisdiction on any basis consistent with the Constitution of California and the United States. The primary focus of the personal jurisdiction inquiry is the defendant's relationship with the forum state. (*Bristol-Meyers Squibb Co. v. Sup. Ct. of Calif., San Francisco County* (2017) 137 S. Ct. 1773, 1779.) A California court's ability to exercise personal jurisdiction over a defendant based on contacts with a state depends on the nature and quality of defendant's "contacts" with the state. U.S. Supreme Court decisions recognize two types of jurisdiction: (1) general jurisdiction and (2) specific (or case-linked or limited). (*Bristol-Meyers Squibb Co.*, supra at pp.1779-1780.)

Jurisdiction over a defendant can be either general or specific. Plaintiff here does not argue that the defendants are subject to California's general jurisdiction, but argues for specific jurisdiction based on defendants' asserted purposeful availment of the advantage of doing business in or with California.

Specific Jurisdiction

"When a defendant moves to quash service of process on jurisdictional grounds, the plaintiff has the initial burden of demonstrating facts justifying the exercise of jurisdiction." *Vons Companies, Inc. v. Seabest Foods, Inc.* (1996) 14 Cal.4th 434, 449. "[T]he plaintiff bears the burden of proof by a preponderance of the evidence to demonstrate the defendant has sufficient minimum contacts with the forum state to justify jurisdiction. [Citations.] The plaintiff must 'present facts demonstrating that the conduct of defendants related to the pleaded causes is such as to constitute constitutionally cognizable 'minimum contacts.' [Citation.]" *DVI, Inc. v. Superior Court* (2002) 104 Cal.App.4th 1080, 1090-91.

When determining whether specific jurisdiction exists, courts consider the relationship among the defendant, the forum, and the litigation. (*Bristol-Meyers Squibb Co.*, supra at pp.1780.) A court may exercise specific jurisdiction over a nonresident defendant only if the defendant's suit-related conduct creates a substantial connection with the forum state and the underlying controversy. (*Bristol-Meyers Squibb Co.*, supra at pp.1780-1783.)

The extensive involvement of an out-of-state professional in the running of a California business is sufficient to establish jurisdiction. In *Simons v. Steverson* (2001) 88 Cal.App.4th 693, for example, an attorney resided and worked in New York, but was admitted to practice only in California. He performed extensive professional services for California-resident clients; including negotiating and documenting various key contractual relationships for them. That was held to be sufficient to subject him to California jurisdiction. In *T.M. Hylwa, M.D., Inc. v. Palka* (9th Cir. 1987) 823 F.2d 310, an in-house accountant in Kansas provided accounting services for a medical business after it relocated to California. "By contracting to provide personal services after Hylwa reincorporated in California, Palka deliberately 'created "continuing obligations" between himself and residents of the forum ... [and] manifestly has availed himself of the privilege of conducting business there'" 823 F.2d at 314, quoting *Burger King Corp. v. Rudzewicz* (1984) 471 U.S. 462, 476, and *Travelers Health Assn. v. Virginia* (1950) 339 U.S. 643, 648.

Lee – Personal Jurisdiction

In this case, the evidence presented indicates there are insufficient contacts between LEE and California to establish personal jurisdiction through minimum contacts. LEE has never conducted business in her personal capacity in California. (LEE Decl. at ¶ 4.) The involvement GLENN alleges that LEE had with ezOpenPay was securing payment on PARZYCH's behalf for ezOpenPay after PARZYCH had a severe accident, in an email where LEE claimed that "ezOpenPay IS my business". (GLENN Decl. at ¶¶ 13-14.) LEE indicates she has no business with GLENN, other than knowing him as a longtime friend of her husband. (LEE Decl. at ¶ 5.)

It appears that upon PARZYCH's accident in early May 2019, LEE stepped in briefly as a spouse to secure payment on behalf of PARZYCH from GLENN. Such actions alone would not constitute a substantial connection with the forum state and the underlying controversy.

Parzych – Personal Jurisdiction

PARZYCH's contacts with California were more than LEE's, but still do not rise to the level of "purposeful availment". PARZYCH's work for ezOpenPay, was primarily performing software development services, appears to have been done almost exclusively in the state of Florida, where he resided at all times, except for one instance where he traveled to California once in 2016, to meet with GLENN and conduct business on behalf of ezOpenPay. (Glenn Decl. ¶ 5.) EzOpenPay was never incorporated in California, but operated under the umbrella of GLENN's existing business, Golden Ridge Group. The bulk of the business decision making was done by GLENN, including overseeing marketing and sales of ezOpenPay's product. (Glenn Decl. ¶ 7.) PARZYCH provided GLENN with receipts for his incurred expenses and GLENN would

reimburse PARZYCH, either personally or payable to Choice Networks Consulting, LLC, which was PARZYCH's entity.

The Plaintiff has not met their burden in establishing by a preponderance of the evidence that the defendants have sufficient minimum contacts with the state of California to justify jurisdiction.

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-11803

BRENNAN, TAMARA

VS.

RAY PROPERTIES KIT CARSON INC

CIVIL MISCELLANEOUS MOTION - PLAINTIFF

TENTATIVE RULING:

Plaintiff's request to compel the deposition of Debbie LaVielle and production of documents is GRANTED .

Defendant shall be permitted to depose Plaintiff, Tamara Brennan.

Parties are to meet and confer to arrange dates and times for the deposition(s).

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-11892

SIMON BUILDING LLC A CALIFORNIA
LIMITED LIABILITY

VS.

AMADOR COUNTY

DEMURRER - DEFENDANT'S

TENTATIVE RULING:

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

Defendant's Requests for Judicial Notice

The court takes judicial notice of the existence of Exhibits 1, 2, 3 and 4. The truths of the matters asserted in the documents are not subject to judicial notice. (Evid. Code § 452(c)(d). See also Arce v. Kaiser Foundation health Plan, Inc. (2010) 181 Cal.App.4th 471, 482.)

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.)

Defendant's demurrer addresses only the issue of statute of limitations.

Statute of Limitations:

The statute of limitations for inverse condemnation actions is three years for physical damage to private property and five years for a "taking" of private property. (CCP §§ 338(j), 318, 319.)

Defendant argues that even if considered a "taking", the statute of limitations ran years ago, as the guardrail project was completed on February 29, 2008. Plaintiff argues that the matter of when the project was completed is uncertain and discovery needs to be conducted in order to make that determination. Further, that the complaint does not allege dates and that Plaintiff's access to the property was not blocked until the denial of the permit.

A demurrer based on the statute of limitations is only permissible where the dates alleged in the complaint show that the action is barred by the statute of limitations. The running of the statute must appear 'clearly and affirmatively' from the dates alleged. It is not sufficient that the complaint might be barred. (Roman v. Cty. of Los Angeles, (2000) 85 Cal. App. 4th 316, 324-25 (internal citations omitted).)

It has also been repeatedly held that where a complaint, challenged for failure to comply with the applicable statute of limitations, does not on its face disclose that the action was necessarily barred, courts should overrule the demurrer and permit the defense to be raised by answer... A demurrer on the ground of the bar of the statute of limitations does not lie where the complaint merely shows that the action may have been barred. It must appear affirmatively that, upon the facts stated, the right of action is necessarily barred. (Childs v. State of California, (1983)144 Cal. App.3d 155, 160-61 internal quotations and citations omitted.)

To determine the statute of limitations which applies to a cause of action it is necessary to identify the nature of the cause of action, i.e., the "gravamen" of the cause of action. The nature of the right sued upon and neither the form of action nor the relief demanded determines the applicability of the statute of limitations under our code. (Hensler v. City of Glendale, (1994) 8 Cal. 4th 1, 22-23, as modified on denial of reh'g (Sept. 22, 1994).)

A complaint that shows on its face or by matters subject to judicial notice that the cause of action alleged is barred by the applicable statute of limitations is subject to a general demurrer for failure to state a cause of action. (Guardian N. Bay, Inc. v. Superior Court (2001) 94 Cal.App.4th 963, 917-972).

In this case the complaint does not show on its face that the cause of action is barred by the applicable statute of limitations as the complaint does not list any dates, other than the date that encroachment permit was filed on April 9, 2020, and denied on July 21, 2020.

The moving party's requests for judicial notice are not so persuasive as to cause the complaint to fall under CCP § 430.10(e) for failure to state facts sufficient to constitute a cause of action.

Defendant is ordered to file an Answer within ten (10) days of the date of the ruling.

Unless the parties stipulate otherwise, Plaintiff's First Amended Complaint filed March 5, 2021 is hereby stricken as untimely pursuant to CCP § 472(a).

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-FCD-07534

OCONNOR, MARK

VS.

VIERRA, JULIE

FAMILY LAW CASE MANAGEMENT CONFERENCE

TENTATIVE RULING: The parties, or counsel if represented, are ordered to appear personally or by Zoom (both Zoom phone/audio only and Zoom video are available) to discuss the status of the case. Parties wishing to appear by Zoom are required to complete and submit a Zoom request form on the court website at www.amadorcourt.org at least 24 hours prior to court. The Petition for Dissolution was filed October 5, 2020. Petitioner has not filed a Proof of Service (FL- 115) of the Summons and Petition. Respondent has not filed a Response to the Petition. The parties are not divorced. The parties will be referred to the Court's Family Law Facilitator.

20-FCD-07536

BARKLEY, JERMAINE

VS.

BARKLEY, HEATHER

FAMILY LAW CASE MANAGEMENT CONFERENCE

TENTATIVE RULING: No appearances necessary. The Petition for Dissolution was filed October 5, 2020. A valid proof of service is filed. More than 30 days have passed since service and no Response is filed. Petitioner must file the form FL-165 and request entry of default and proceed to default judgment. Petitioner is referred to the court's Family Law Facilitator for assistance in proceeding with default. Further case management is scheduled on the inmate case management conference calendar on September 29, 2021 at 10:30 a.m. in Dept 3. A Family Law CMC Statement must be filed at least 15 days prior to the CMC.

20-FCD-07555

KING, WILLIAM

VS.

KING, SAMMANtha

FAMILY LAW CASE MANAGEMENT CONFERENCE

TENTATIVE RULING: No appearances necessary. The Petition for Dissolution was filed October 30, 2020. Petitioner has not filed a Proof of Service (FL-115) of the Summons and Petition. The court cannot proceed with any orders until a valid Proof of Service is filed. Petitioner is ordered to file a valid proof of service (form FL- 115) prior to the next court appearance. The matter is continued for further Case Management Conference to October 15, 2021 at 8:30 a.m. in Dept. 3.