

19 CVC 11019 BONNER, JAMESON, et al. vs. WAL-MART STORE #2054, et al.

On the court's own motion, Defendant Safe-Strap's Motion for Summary Judgment, Defendant Wal-Mart's Motion for Summary Judgment/Summary Adjudication, and Defendant's Safe-Strap's Motion to Compel Responses are continued to May 23, 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.

19 CVC 11454 TROY MORKAL vs. ADULT PROTECTIVE SERVICES, et al.

Defendant's unopposed demurrer to the complaint is SUSTAINED in its entirety without leave to amend. The court finds the pleading fails to state facts sufficient to constitute a cause of action. (CCP § 430.10(e).)

Request for Judicial Notice

Defendant requests the court take judicial notice of a judgment of marital dissolution between Troy Morkal and Shirley Morkal entered on October 29, 2015 in Amador Case No. 15 FCD 5861, pursuant to Ev. Code §§ 452 and 453.

There is no objection. Defendant's request is granted.

Demurrer

The function of a demurrer is to test the legal sufficiency of a pleading. (*Rakestraw v. Cal. Physicians' Service* (2000) 81 Cal.App.4th 39, 42) In reviewing the sufficiency of a complaint against a general demurrer, the court treats the demurrer as admitting all material facts properly pleaded, as well as matters which may be judicially noticed. (*Blank v. Kirwan* (1985) 39 Cal.3d 311, 318.) However, contentions, deductions or conclusions of fact or law are insufficient to constitute a cause of action. (*Id.*) "A pleading valid on its face may nevertheless be subject to demurrer when matters judicially noticed by the court render the complaint meritless." (*Del E. Webb Corp. v. Structural Materials Co.* (1981) 123 Cal.App.3d 593, 604.)

When a pleading "does not state facts sufficient to constitute a cause of action" a party may object to the pleading. (CCP §430.10(e).)

No Statutory Basis for Liability:

The complaint fails to allege facts demonstrating any statutory duty or other statutory basis for liability on the part of the Defendant. The wrongful death statute provides in pertinent part: “A cause of action for the death of a person caused by the wrongful act or neglect of another may be asserted by any of the following persons . . . [¶] (a) The decedent’s surviving *spouse*, domestic partner, children, and issue of deceased children, or, if there is no surviving issue of the decedent, the persons, including the surviving spouse or domestic partner, who would be entitled to the property of the decedent by intestate succession.” (CCP § 377.60, subd. (a), italics added.) The judicially noticed Judgment of Dissolution entered on October 29, 2015. The complaint does not allege the exact date of death of Shirley Leota Morkal, but establishes it sometime after April of 2017, after the marriage between Troy Morkal and the decedent was dissolved.

Complaint Untimely Filed Under the Government Code:

Suits against a public entity or public employees are governed by the specific statute of limitations provided in the Government Code, not the statute of limitations that applies to private defendants. Government Code section 945.6 requires “any suit brought against a public entity” to be commenced no more than six months after the public entity rejects the claim. (Gov. Code §945.6(a)(1).) A civil action is “commenced” by filing a complaint with the court. (CCP § 411.10.)

“A trial court has broad discretion in ruling on a petition for relief from statutory requirement of presenting public entity with damages claim within six months of claim's accrual, as long as the issue is whether the late claim was presented within a reasonable time not to exceed one year after the accrual of the cause of action; **when an application to file a late claim is itself not timely filed, however, the court is without jurisdiction to grant relief.** (*County of Los Angeles v. Superior Court* (2001) 91 Cal.App.4th 1303.) Emphasis added.

Plaintiff filed a claim with the Board of Supervisors dated April 16, 2018. (Complaint, “Exhibit Amador County Citizen Complaint Form”.) The late claim was denied by Amador County Counsel, Greg Gillott, and notice of the denial was mailed to Plaintiff on May 6, 2019 instructing Plaintiff “Your only recourse at this time is to apply without delay to the County of Amador for leave to present a late claim.” (Complaint, “Exhibit Amador County Counsel Letter Dated May 6, 2019”.) On June 11, 2019, the request to present a late claim was denied by Amador County Counsel, Greg Gillott, and the notice of denial was mailed to Plaintiff on June 12, 2019, instructing Plaintiff “If you wish to file a court action in this matter, you must first petition the appropriate court for an order relieving you from the provisions of Government Code Section 946.6. Such petition must be filed with the court within six (6) months from the date your application for leave to present a late claim was denied.” (Complaint, “Exhibit Amador County Counsel Letter Dated June 12, 2019”.)

19 CVC 11454 Tentative Ruling Continued:

Plaintiff thereafter filed his complaint on November 20, 2019, failing to first petition the court for an order relieving Plaintiff from the provisions of Govt. Code § 946.6.

Leave to Amend:

When a demurrer is sustained, leave to amend is usually granted even where substantive defects are apparent. It is generally considered an abuse of discretion to deny leave to amend where there is any reasonable possibility that plaintiff can state a good cause of action. (*McDonald v. Sup.Ct.* (1986) 180 Cal.App.3d 297, 303-304; *City of Stockton v. Sup.Ct.* (2007) 42 Cal.4th 730, 747.) However, the burden is on the plaintiff to show in what manner the complaint can be amended to change the legal effect of the pleading. (*Goodman v. Kennedy* (1976) 18 Cal.3d 335, 349). Albeit, leave to amend can be appropriately denied if the defect is one of law and additional fact will not change the result. (*Lawrence v. Bank of America* (1985) 163 Cal.App.3d 431, 436; *Schonfeldt v. State of Calif.* (1998) 61 Cal.App.4th 1462, 1465.) The demurrer is unopposed.

The court finds that Plaintiff failed to file a petition for relief from the requirements of Govt. Code § 945.4 within six (6) months. No additional facts will change the outcome of that, and the court is without jurisdiction to grant relief. Further, the complaint fails to allege facts demonstrating any statutory duty or other statutory basis for liability on the part of the Defendant pursuant to CCP § 377.60.

Moving party is to prepare and submit a proposed order sustaining the demurrer and a judgment of dismissal.

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.

2021 CVC 12417

XXXXX vs. XXXXX

Defendant's Motion to Set Aside Judgment is GRANTED.

CCP § 473 states that the "court may, upon any terms as may be just, relieve a party...from a judgment, dismissal, order, or other proceeding taken against him or her through his or her mistake, inadvertence, surprise, or excusable neglect."(CCP §473(b).) The party's motion must be made within a reasonable time and be accompanied by the appropriate proposed pleading. *Id.*

Defendant here has filed her motion within a reasonable time after entry of the Judgment. Defendant's motion is timely and complete. Despite the lack of proof of service, Plaintiff was served and able to file a late opposition, which the court has considered, and there is no prejudice to Plaintiff in proceeding.

2021 CVC 12417 Tentative Ruling Continued:

Defendant relies on the allegation that she was not effectively served with the notice of trial and has defenses. The court further notes that the court trial took place on January 19, 2022 at 8:30 a.m. in Department 3 and the court clerk's counter was closed from January 14, 2022 through February 4, 2022 due to Covid-19 staffing shortages.

The purpose of section 473 is to enable trial courts to set aside a proceeding in order to allow the party to proceed on the merits rather than allowing defeat caused by mistake, inadvertence, etc. (*Bowman v. Bowman* (1947) 29 Cal.2d 808.) Section §473 is liberally applied to carry out the policy of permitting trial on the merits. (*Ramsey Trucking Co. v. Mitchell* (1961) 195 Cal.App.2d 621.) "Even in a case where the showing under section 473 is not strong, or where there is any doubt as to setting aside of a default, such doubt should be resolved in favor of the application." (*Rosenthal v. Gardner* (1983) 142 Cal.App.3d 891, 898.)

The Writ of Possession entered on February 4, 2022 is vacated. Clerk to provide notice to the Amador County Sheriff's Department.

A Court Trial shall be scheduled for May 4, 2022 at 8:30 a.m. in Department 3.

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.