

AMADOR SUPERIOR COURT LAW AND MOTION TENTATIVE RULINGS

Monday, June 29, 2020

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.

18-CVC-10777

TOMA, CIRO

VS.

PETERSON, FREDERICK

MOTION FOR SUMMARY JUDGMENT

TENTATIVE RULING:

THE FOLLOWING TENTATIVE RULING IS ISSUED BY JUDITH S. CRADDICK, ASSIGNED JUDGE OF THE SUPERIOR COURT

The Motions for Summary Judgment of both parties set for hearing on 6/29/20 are, of necessity, dropped from the calendar, without prejudice. The Court lacks jurisdiction to hear the Motions. Both Motions for Summary Judgment have been made as to the original Complaint and Amended Answer to the original Complaint, which have been superseded/replaced by the present operative pleadings -- the First Amended Complaint and Answer thereto, which were filed subsequent to the motions presently on calendar for decision. Filing of the First Amended Complaint and Answer has deprived the Court of the jurisdiction/ability to make any ruling relating to the original pleadings, and there are no motions pending relating to the amended pleadings.

In making the preceding determination, the Court has considered and determined that the original complaint was filed on 9/19/18, and after hearing on Defendant's General Demurrer, which was overruled on 12/28/18 with 10 days leave to file his answer, Defendant failed to timely respond to the complaint, and his default was entered. The default was set aside by stipulation and on 2/13/19 Defendant's answer was filed. Thereafter, the following pleadings, orders and hearings occurred on the dates set forth. Of importance to the present Motions for Summary Judgment which were filed as to the original Complaint, a First Amended Complaint was filed on 1/31/20 and the Answer to that First Amended Complaint was filed on 2/22/20:

5/10/19 Motion for Summary Judgment/Summary Adjudication as to the First Cause of Action for breach of contract was filed by Plaintiff, set for hearing on 8/2/19;

6/27/19 Motion for Judgment on Pleadings was filed by Defendant;

6/28/19 Amended Motion for Judgment on Pleadings was filed by Defendant, set for hearing on 8/2/19;

8/1/19 Tentative Rulings were issued by Hon. Douglas C. Phimister (1) granting the Motion for Summary Judgment, (2) ruling that the Motion for Summary Adjudication was thus moot and (3) denying Defendant's Motion for Judgment on the Pleadings as moot;

8/2/19 Oral argument requested by Defendant's new attorney Douglas Roeca, Esq. (who substituted in on that date in place of Attorney Murray) was heard on the tentative ruling, and on Defendant's oral motion for leave to file an Amended Answer to the Complaint. The Court granted Defendant's oral motion and the Amended Answer was submitted to the court for review at that time and it was formally filed on that same date. The Court's minutes reflect that the Court denied the MSJ and MJOP, then vacated the denial of the motions and Plaintiffs' MSJ/MSA and Defendant's MJOP were taken under submission. The minutes of the hearing reflect that the Defendant's Amended Answer to the Complaint was specifically being considered;

9/24/19 Hon. Douglas Phimister issued "Order After Hearing on Motion for Judgment on Pleadings" in which he denied Defendant's Motion for Judgment on the Pleadings noting that Defendant has previously demurred to the complaint on the grounds stated in the MJOP and concluded: "Now, on his motion for judgment on the pleadings on the same grounds -- failure to state facts sufficient to constitute a cause of action -- and the same specific argument of an expired statute of limitations (although now arguing a different statute of limitations applies), defendant seeks relief. The fact that the demurrer was insufficient in its purpose is not a valid basis to bring it again under the guise of the current motion. The exception of CCP §438(g)(2) therefore does not apply. Moving party cites no persuasive authority that he can take another bite at the apple. (CRC3.1113(b)."

9/24/19 Hon. Douglas Phimister issued "Order After Hearing on Motion for Summary Judgment or, in the Alternative, Summary Adjudication" in which he denied the Motion for Summary Adjudication based on failure to comply with CRC 3.1350(b) and denied the Motion for Summary Judgment based on: "However, defendant raises a legal argument regarding its (sic.) affirmative defense of the statute of limitations. In light of defendant's Amended Answer properly placing the affirmative defense of the statute of limitations before the court, there is a remaining issue of law to be determined such that the court cannot grant summary judgment. If the trial court concludes there is no triable issue of material fact and the sole remaining issue is one of law, it is the duty of the trial court to determine the issue. (Citation omitted)" His order further directed the parties to reserve a date for hearing on the issue of the statute of limitations. (Note: Hearing date was reserved for 1/31/20 before Hon. Renee Day and subsequently continued to 3/18/20).

In Meantime --

11/13/19 Plaintiffs filed Motion for Leave to Amend Complaint set for hearing on 12/27/19 and continued to 1/17/20 before Hon. Doris Shockley;

11/14/19 Motion for Summary Judgment (on original Complaint) filed by Defendant based solely on "the undisputed facts establish the four year statute of limitations of California Code of Civil Procedure §337(a) has expired as to each of plaintiffs' four promissory notes sued upon.";

12/20/19 Notice of Subsequent Hearing on Plaintiffs' Motion for Summary Judgment filed by Plaintiffs "on plaintiffs' motion for summary judgment filed on May 10, 2019 at the court's request. Said hearing shall be held pursuant to the court's Order After Hearing filed September 24, 2019. In said order, the court reserved on defendant's statute of limitations defense and requested additional oral argument on same.";

1/16/20 Plaintiffs filed Plaintiffs' Opposition to Defendant's Motion for Summary Judgment and Declaration of Ciro L. Toma in Opposition to Defendant's Motion for Summary Judgment;

1/16/20 Tentative Ruling granted Plaintiffs' Motion to File First Amended Complaint;

1/17/20 Tentative Ruling was affirmed at hearing on Plaintiff's Motion for Leave to file First Amended Complaint was granted;

1/24/20 Defendant filed Memorandum of Points and Authorities in Reply to Opposition to Motion for Summary Judgments;

