

AMADOR SUPERIOR COURT LAW AND MOTION TENTATIVE RULINGS

Monday, July 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-11388 JACKSON VIEW OWNERS ASSOCIATION VS. JACKSON VIEW LLC A CALIFORNIA LIMITED LIABILITY CO

DEMURRER - DEFENDANT'S

TENTATIVE RULING:

On the court's own motion, Defendant's Demurrer is continued to August 16, 2021 at 8:30 a.m. in Department 1.

The Case Management Conference and Civil Trial Setting Conference set for August 4, 2021 at 1:30 p.m. in Department 3 are continued to September 1, 2021 at 1:30 p.m. in Department 3.

Updated CMC Statements must be filed and served at least 15 days prior to the CMC.

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-11674 DORN, DEVON VS. CALIFORNIA DEPARTMENT OF PARKS AND RECREATION

MOTION TO STRIKE

TENTATIVE RULING:

Motion to Strike

Any party, within the time allowed to respond to a complaint may serve and file a notice of motion to strike the whole or any part thereof. (CCP §435(a), (b)(1).) A demand for relief not supported by the allegations of the complaint is immaterial and should be stricken as irrelevant. (CCP §§ 431.10(b)(3), (c), and 436(a).)

Defendant seeks to strike paragraphs 23-29 of the SAC. In summary, paragraphs 23-29 of the SAC allege negligence per se is presumed from Defendant's violations of applicable building codes requiring sidewalks and curbs conform to specific standards and that the violation was a direct cause of Plaintiff's injury.

Negligence per se is an evidentiary doctrine codified at Ev. Code § 669. It creates a presumption of negligence if four elements are established: (1) the defendant violated a statute, ordinance, or regulation of a public entity; (2) the violation proximately caused death or injury to person or property; (3) the death or injury resulted from an occurrence the nature of which the statute, ordinance, or regulation was designed to prevent; and (4) the person suffering the death or the injury to his person or property was one of the class of persons for whose protection the statute, ordinance, or regulation was adopted. (Spates v. Dameron Hospital Assn. (2003) 114 Cal.App.4th 208, 218.)

Paragraph 25 of the SAC identifies the specific California Building Code sections and standards addressing curbs and sidewalks. Paragraph 27 alleges Defendant's violation of those codes and standards caused Plaintiff's injury because they created a hazardous condition. Paragraph 28 alleges Plaintiff's trip and fall injuries were of the kind the codes and standards were designed to prevent.

Gov. Code 815.6 provides "Where a public entity is under a mandatory duty imposed by an enactment that is designed to protect against the risk of a particular kind of injury, the public entity is liable for an injury of that kind proximately caused by its failure to discharge the duty unless the public entity establishes that it exercised reasonable diligence to discharge the duty."

"To assert a government entity's liability for injuries resulting from the entity's breach of a mandatory duty, a plaintiff must specifically allege liability in his or her complaint and identify the applicable statute or regulation that imposes the alleged mandatory duty. (Cerna v. City of Oakland (2008) 161 Cal.App.4th 1340.)

Plaintiff has alleged the violation of an underlying statute and the doctrine of negligence per se may apply. However, Defendant's argument that Plaintiff is circumventing Govt. Code § 815.6 by alleging negligence per se without establishing a mandatory duty is persuasive. The motion to strike is granted with leave to amend.

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.)

Premises Liability/Dangerous Condition of Public Property

Defendants demur to Plaintiff's cause of action for premises liability on the grounds that Plaintiff (1) fails to allege the substantial risk, employee negligence and notice elements of a dangerous condition under Gov. Code § 835, (2) fails to state a statutory cause of action for mandatory duty under Govt. Code § 815.6, and (3) is ambiguous, unclear and lacking in the elements to state a cause of action because the first cause of action asserts employee negligence based upon the common law theory of negligence per se, listing several statutory provisions.

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 "unlit hazardous and unmarked section of uneven and severely deteriorated concrete directly in front of the State Park's required kiosk." (SAC ¶¶ 9-14.)

The SAC then cites Defendant for failing to “guard or warn against a dangerous condition” and “negligently failed to maintain, manage control, construct, operate, or inspect the subject premises so as to prevent injury to Plaintiff.” (SAC ¶¶ 15-18.) The SAC goes on to describe how Defendant’s employees were negligent within the scope of their employment by “failing to design and construct an area around the payment kiosk whereby a guest could safely make payment at the kiosk without the reasonably foreseeable hazards associated with the uneven and severely deteriorated surface directly behind a flat smooth surface just wide enough for payment at the kiosk...” (SAC ¶ 21.) Further, that Defendant’s had constructive notice of the condition because the “severely deteriorated and hazardous portion of concrete, as described above, existed for many months prior to Plaintiff’s incident, given the severely deteriorated condition of the concrete at the time of Plaintiff’s incident.” (SAC ¶ 22.)

Plaintiff’s SAC pleads sufficient facts to establish the cause of action for dangerous condition of public property . However, as outlined in the motion to strike portion of this ruling, the SAC falls short in identifying a mandatory duty under Govt. Code § 815.6.

Moving party’s demurrer to Plaintiff’s SAC is sustained with leave to amend for failure to identify a mandatory duty under Govt. Code § 815.6.

Unless the parties otherwise so stipulate, Plaintiff is granted 10 days’ leave to file the Third Amended Complaint, which will run from the date of this ruling. New allegations/language must be set in boldface type.

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-11817 4623 ROADRUNNER DR IONE CA 95640 VS. NONE

CIVIL MISCELLANEOUS MOTION

TENTATIVE RULING:

The court does not issue a tentative ruling.

Claimant Michael Larry Gumm is ordered to appear in person or remotely.