

AMADOR SUPERIOR COURT LAW AND MOTION TENTATIVE RULINGS

Monday, August 9, 2021

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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.

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18-CVC-10813

PIERSON, RAYMOND

VS.

RUSHING, PHYLISS

**CIVIL MISCELLANEOUS MOTION**

TENTATIVE RULING:

On the court's own motion, Defendant RUSHING's Motion to Lift Automatic Stay, if any, to Perform Necessary Discovery and Request for Monetary Sanctions is continued to September 13, 2021 at 8:30 a.m. in Department 1.

The court notes that the moving party did not incorporate the legal authority on which the request is based in their moving papers as required by CRC 3.1113. However, given the advanced age of Defendant RUSHING and the length of time since the incident, the court finds that Defendant's motion needs to be addressed and that Plaintiff should have the opportunity to respond to the legal argument in Defendant RUSHING's Reply.

Therefore, the court orders the hearing date is continued to the date above, and that Plaintiff may file further responsive pleadings no later than five (5) calendar days prior to the hearing.

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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19-CVC-11132

ORTEGA, GRACIE

VS.

CITY OF SUTTER CREEK

**MOTION FOR SUMMARY JUDGMENT**

TENTATIVE RULING:

The motion for summary judgment filed by Defendant CITY OF SUTTER CREEK is GRANTED.

Request for Judicial Notice:

Defendant requests the court take judicial notice of:

1. Plaintiff's First Amended Complaint.
2. Stipulation and Order that Plaintiff was abandoning their first cause of action for negligence in their First Amended Complaint.
3. Defendant's Answer to Plaintiff's First Amended Complaint.

There are no objections to Defendant's request(s) for judicial notice. Defendant's request is GRANTED.

Court rules on evidentiary objections as follows:

Opposing party Plaintiff made no evidentiary objections.

Moving party Defendant made the following objections to Plaintiff's Statement of Undisputed Facts and Plaintiff's Response to Defendant's Undisputed Material Facts:

- Objection No. 1 – UMF's Nos. 1, 2, 3, 5, 6, and 8.

Pursuant to CCP § 437c(p)(2), Defendant objects on the grounds that Plaintiff impermissibly relies on allegations in her FAC to support UMF's Nos. 1, 2, 3, 5, 6, and 8. SUSTAINED.

- Objection No. 2 – Exhibit B: Plaintiff's Verified Responses to Defendant's Special Interrogatories, Set One; Exhibit C: Plaintiff's Verified Amended Responses to Defendant's Special Interrogatories, Set One.

Pursuant to CCP § 2030.410, Defendant objects as Plaintiff cannot utilize her own responses to interrogatories to either support her own material facts or dispute any of the City's material facts in support of the Motion for Summary Judgment.

Ev. Code § 403, lack of foundation, lack of personal knowledge, speculation. SUSTAINED.

Motion for Summary Judgment:

To obtain summary judgment, the moving party must demonstrate through admissible evidence that there is no triable issue as to any material fact, and that the moving party is entitled to judgment as a matter of law. ( CCP § 437c(c); *PMC, Inc. v. Saban Entertainment, Inc.* (1996) 45 Cal.App.4th 579, 590 [disapproved on unrelated grounds].) Moving party meets its initial burden of proof.

Courts only consider relevant, admissible evidence when ruling on a motion for summary judgment. ( CCP § 437c(c); *Rochlis v. Walt Disney* (1993) 19 Cal.App.4th 201, 207; Evidence Code §§ 210, 350.) Courts must ignore purported facts that do not comply with these requirements, even if the noncompliance is arguably a technicality. (*Witchell v. Dekorne* (1986) 179 Cal.App.3d 965, 975.)

Courts "liberally construe the evidence in support of the party opposing summary judgment and resolve doubts concerning the evidence in favor of that party." (*Dore v. Arnold Worldwide, Inc.* (2006) 39 Cal.4th 384, 389.)

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, Defendant presented admissible evidence, showing that Plaintiff cannot establish a prima facie case that a dangerous condition of public property existed on Spanish Street on September 16, 2018 and that the City of Sutter Creek had actual or constructive notice of the alleged dangerous condition or that they wrongfully created the alleged dangerous condition prior to Plaintiff's trip and fall.

Burden Shifts to Opposing Party

Once the moving party has met their initial burden, the burden shifts to the plaintiff to show a triable issue of one or more material facts exists as to the cause of action or a defense. "The defendant shall not rely upon the allegations or denials of its pleadings to show that a triable issue of material fact exists but, instead, shall set forth the specific facts showing that a triable

issue of material fact exists as to the cause of action or a defense thereto.” (CCP § 437c(p)(1); emphasis added.) Plaintiff offers no declarations in support of her cause of action. The only witnesses to the incident are Plaintiff and her boyfriend, Billy Ray Hutton, and the incident was the first time either had ever been on Spanish Street. (UMF 58.) The only admissible, additional material fact Plaintiff offers is the statement of foreman, George Allen, indicating that the City had not performed any pavement work on Spanish Street for at least 10 years prior to the incident, showing that the City had not caused the condition with its own road maintenance. (UMF 22, 23.)

Even liberally construed in Plaintiff’s favor, this statement alone is insufficient to show a prima facie case for a cause of action of dangerous condition of public property, premises liability.

The additional undisputed fact is not relevant to the elements of the causes of action alleged by Plaintiff. The objections by the moving party as to relevance are sustained. Therefore, no admissible evidence is provided in support of the additional facts.

The moving party is ordered to prepare a judgment and dismissal conforming to the court’s order within 10 days of the hearing date.

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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**21-CVC-12036**

DILLARD, JACQUELINE

VS.

AMADOR COUNTY OFFICE OF  
EDUCATION

**MOTION TO STRIKE**

**TENTATIVE RULING:**

On the court's own motion, Defendant's Motion to Strike is continued to August 23, 2021 at 8:30 a.m. in Department 1. The court notes that a Notice of Non-Opposition was filed by the moving party on July 29, 2021.

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.