

Tentative Rulings

Law & Motion and Family Law Calendar for April 9, 2012

April 5, 2012, 4:00p.m.

Judge Janet Hilde
Department Two

To request a hearing on any matter on this calendar, you must call the Court at 530/283-6305 by 12:00 noon, April 6, 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 becomes the order of the court.

Probate – 9:00 a.m.

Case No. PR11-00048 – Conservatorship of Cozart

Tentative Ruling: **Appearance required.**

Case No. PR12-00001 – Conservatorship of Rios

Tentative Ruling: **Appearance required.** The court intends to grant the petition, and will appoint counsel to represent the proposed conservatee.

Case No. PR11-00024 – Ost Special Needs Trust

Tentative Ruling: **Appearance required.** The court notes that no objection has been filed to the accounting, and therefore, approves the accounting of both trusts.

Case No. PR11-00009 – Matter of Bone

Tentative Ruling: **No appearance required.** The court finds that notice has been given as required by law. The court has received and reviewed the confidential report of the LPS investigator, and grants the petition.

Civil – 9:30a.m.

Case No. CV09-00093 – Bauer vs. Almanor Mfg.

Tentative Ruling: **No appearance required.** The court grants the motion to continue the trial and will reset the settlement conference, and trial at the case management conference on this date at 2:00p.m. Counsel may appear by CourtCall.

Case No. LC08-28290 – California Service Bureau vs. Ball

Tentative Ruling: **Appearance required.** The court has not received a proof of service on the debtor. If present, the court will conduct the examination.

Case No. LC11-00275 – Fia Card Services vs. Boydkantoff

Tentative Ruling: **Appearance required.**

Case No. CV11-00119 – Griffith vs. Bank of America

Tentative Ruling: **Sustained, with leave to amend as stated herein.** The general demurrers of all defendants to the Second Amended Complaint (“SAC”) are sustained, with leave to amend the first and second causes of action granted as against defendant Bank of America, N.A. (“Bank”) only.

In the absence of special circumstances, there is no fiduciary relationship between a lender and borrower. (*Perlas v. GMAC Mortgage, LLC* (2010) 187 Cal.App.4th 429, 436.) Where, however, special circumstances are alleged, a confidential relationship may exist, imposing fiduciary duties. (*See, e.g., Brown v. Wells Fargo Bank* (2008) 168 Cal.App.4th 938, 959-960 (confidential relationship between bank and customers).) The existence of a confidential relationship is an issue of fact. (*Kudokas v. Balkus* (1972) 26 Cal.App.3d 744, 750.)

Liberally construed, the SAC alleges facts from which one could infer the creation of a confidential relationship between the plaintiffs and the Bank, through its officers at the Portola branch; however, the SAC remains insufficiently specific to state a cause of action for fraud. (*Tarmann v. State Farm Mutual Automobile Insurance Company* (1991) 2 Cal.App.4th 153, 157; *Schauer v. Mandarin Gems of California* (2005) 125 Cal.App.4th 949, 961.) Accordingly, the Bank’s general demurrers to the first and second causes of action are sustained, with leave to amend.

The SAC is devoid of any allegations suggesting the existence of a confidential relationship between plaintiffs and any named defendant other than the Bank. It similarly fails to allege any facts suggesting that the other defendants made any representations to plaintiffs outside the context of the nonjudicial foreclosure proceedings against the Claireville Road property, which this Court has previously ruled was conducted in accordance with the foreclosure statutes. The demurrers to the first and second causes of action by defendants BAC Home Loans Servicing, Recontrust Company and Federal National Mortgage Association are thus sustained, without leave to amend.

The third cause of action seeks to enjoin the defendants from taking any action, after the concluded foreclosure proceedings, with respect to the Claireville Road property. There being no irregularities in the conduct of those proceedings, the demurrer to the third cause of action by all defendants is sustained without leave. (*Code of Civil Procedure section 526(a)(4); Civil Code section 1709.*)

Counsel is admonished to frame any future amended pleading in accordance with this Court's rulings on the defendants' demurrers to the first and second amended complaints.

Case No. CV10-00258 – Jackson vs. CHP

Tentative Ruling: **No appearance required.** Plaintiff's Pitchess motion is rescheduled for April 17, 2012, at 1:00p.m., to be heard concurrently with the mandatory settlement conference before Judge Peter Twede.

Case No. LC11-00301 – National Business Factors vs. Recasens

Tentative Ruling: **Granted.** Plaintiff's Ex Parte Application to Vacate and Set Aside Judgment is granted. The court will confirm the case management conference on May 30, 2012 at 1:30p.m.

Case No. CV12-00074 – Sandfur vs. Allstate Indemnity Co.

Tentative Ruling: **Approved.** The court has reviewed the Petition to Approve Disposition of Proceeds of Judgment, and approves the disposition.

Family Law – 10:30 a.m.

Case No. FL09-00202 – Cravens vs. Meza

Tentative Ruling: **No appearance required.** The court has received and signed the custody and visitation agreement.

Case No. FL09-00203 – Dewey vs. Jay

Tentative Ruling: **Appearance required.** The court will set the matter for a contested hearing.

Case No. FL12-00016 – Elston vs. Castillo

Tentative Ruling: **No appearance required.** The court has received and signed the custody and visitation agreement.

Case No. FL02-22927 – Mar. of Kovich

Tentative Ruling: **Appearance required.**

Case No. FL04-24343 – Mar. of Pence

Tentative Ruling: **Appearance required.**

Case No. FL03-24282 – Scoppwer vs. Wood

Tentative Ruling: **Appearance required.**

Case No. FL04-25051 – Snyder vs. Martin

Tentative Ruling: **Appearance required.**

Case No. FL09-00244 – Mar. of Stokes

Tentative Ruling: **Appearance required.** The court will arraign the respondent on the contempt citation.

Case No. FL12-00017 – Transue vs. Ashley

Tentative Ruling: **Appearance required.** The court has not received the mediated agreement. If the agreement is received prior to the court date, this matter may be taken off calendar.

Case No. FL03-23974 – Mar. of Wirtz

Tentative Ruling: **No appearance required.** Pursuant to the stipulation of the parties, this matter is continued to May 1, 2012, at 1:30p.m.

CASE MANAGEMENT CONFERENCE TENTATIVE RULINGS

Case No. CV11-00170 – Anderson vs. Anderson

Tentative Ruling: **Appearance required.** The court will set the matter for trial.

Case No. CV11-00175 – Barron vs. Borrego

Tentative Ruling: **Appearance required.** The court will set the matter for a court trial or default hearing.

Case No. CV11-00236 – City of Portola vs. Dept. of Fish & Game

Tentative Ruling: **Appearance required.** The court will discuss the status of the case with the parties.

Case No. CV11-00246 – Feather River Community College vs. Wallace-Kuhl & Assoc

Tentative Ruling: **Appearance required.** The court will discuss the status of the case with the parties.

Case No. CV11-00235 – Grizzly Ranch HOA vs. Krauss

Tentative Ruling: **No appearance required.** A default has been entered by the clerk.

Case No. LC11-00250 – Independent Electric Supply vs. McCarley Electric

Tentative Ruling: **Appearance required.** The parties should be prepared to discuss ADR options and set a trial date.

Case No. CV11-00177- Kingdon vs. Kingdon

Tentative Ruling: **Appearance required.**

Case No. CV11-00242 – Leiss vs. Leiss

Tentative Ruling: **Appearance required.**

Case No. CV11-00130 – Palmer vs. Evergreen Market

Tentative Ruling: **Appearance required.** The court will discuss the status of the case with the parties.

Case No. LC11-00253 – Target National Bank vs. Leal

Tentative Ruling: **No appearance required.** The court notes this is a collections case. This matter is continued to October 10, 2012, at 1:30p.m., pursuant to Rule 3.740(f). If the plaintiff

has not obtained a default judgment by said date, this matter will be set for an order to show cause and sanctions may be imposed.

Case No. CV11-00144 – AAA Insurance Exchange vs. Sunbeam Products, Inc.

Tentative Ruling: **No appearance required.** The court has received a notice of settlement. The court will vacate the mandatory settlement conference on May 3, the readiness conference on May 22, and jury trial on June 5, 2012.

Case No. CV10-00263 – Barlow vs. Union Pacific Railroad

Tentative Ruling: **Appearance required.** The parties should be prepared to set a new trial date.

Case No. PR11-00024 – Ost Special Needs Trust

Tentative Ruling: **Appearance required.** If there is no objection to the accounting, this matter may be taken off calendar.

Case No. CV10-00311- Jarrett vs. Nedwin

Tentative Ruling: **Appearance required.** If the court receives the stipulated judgment, this matter may be taken off calendar.

Case No. CV11-00062 – Peerless Insurance Co. vs. Watts Water Technologies

Tentative Ruling: **Appearance required.** The court will confirm the mediator and the date for mediation.

Case No. CV11-00189 – Plumas Bank vs. Lopez

Tentative Ruling: **Appearance required.** The parties should be prepared to discuss ADR options, confirm mediation, and set a trial date.