

Tentative Rulings Law & Motion Calendar for May 27, 2014

May 22, 2014, 4:00p.m.

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, May 23, 2014, 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.

If you do appear and want the matter reported by a court reporter in unlimited civil, family law or probate, you must contract with and provide your own court reporter. The Court does not provide an official reporter for these calendars.

Civil – 1:30 p.m.

Case No. CV10-00225 – Quigley vs. Aptol/LaSelva Fire Protection

Tentative Ruling: **DENIED in part.** The motion for summary judgment or adjudication, brought “separately” by defendants Garden Valley Fire Protection District and Chester Fire Protection District (collectively “District Defendants”), Jeff Barnhart, Mike Jellison, Frank DelCarlo and Dave Kirste (collectively “Individual Defendants”), are denied as to all but Dave Kirste (“Kirste”), whose motion for summary judgment is granted.¹ The request for judicial notice is granted.

Employment Status

The moving parties concede that a triable issue exists as to the nature of the Individual Defendants' employment status, be it as an independent contractor, as contended by the

¹ The Court treats the alternative motions as seeking summary judgment or adjudication that each cause of action asserted against the moving defendants fails, on the grounds that (1) because the Individual Defendants were independent contractors, the District Defendants cannot be held vicariously liable; (2) the firefighter's rule bars an action against the Individual Defendants, who acted as independent contractors for the United States Forest Service (“USFS”); (3) plaintiff has alleged common law, not statutory, causes of action, as to which statutory immunities apply; and (4) the District Defendants, having no control over the base camp, did not owe plaintiff a duty of care, and the Individual Defendants' conduct was not the legal cause of plaintiff's injuries. Notice of Defendants' Motion, filed herein February 26, 2014, pp.2:1-3:4.

defendants, as an employee of the District Defendants, as contended by plaintiff, or as an employee shared by the District Defendants with the USFS, as could be inferred from the evidence. (*See, e.g.*, Cooperative Fire Protection Agreement, Amendment A, Plaintiff's Exhibit N.) Additionally, in the shared employee context, the existence of a "special employment relationship" between the shared employee and the borrower employer, and thus whether the sharing or borrower employer is vicariously liable for the employee's conduct, is generally an issue of fact. (*Marsh v. Tilley Steel Company* (1980) 26 Cal.3d 486, 492 (factors establishing special employment relationship); *Caso v. Nimrod Productions, Inc.* (2008) 163 Cal.App.4th 881, 888-889 (existence of special relationship generally issue of fact).)

Firefighter's Rule

The firefighter's rule bars an action, by a public safety officer, against a member of the public whose conduct created the emergency to which the officer responded. (*See, City of Oceanside v. Superior Court* (2000) 81 Cal.App.4th 269, 274-275 (firefighter's rule explained).) The firefighter's rule also bars an action ". . . when an officer is injured by the negligence of an officer from a *different* public safety agency in a joint operation." (*Terry v. Garcia* (2003) 109 Cal.App.4th 245, 253 ("*Terry*"). (Italics added.)) The employment status of the Individual Defendants, which is in dispute, is thus material to the application of the firefighter's rule herein.² Insofar as this Court may not make factual determinations, the motion for summary judgment or adjudication, on the grounds that the firefighter's rule bars plaintiff's claims, must be denied. (*See, Mann v. Cracchiolo* (1985) 38 Cal.3d 18, 36 (court is to find, not determine, factual issues).)

Governmental Immunity

² For example, if the Individual Defendants were found to be independent contractors, they would be private persons, not public employees, and thus potentially liable if their negligent conduct was ". . . *not the cause of plaintiff's presence on the scene.*" (*Donohue v. San Francisco Housing Authority* (1993) 16 Cal.App.4th 658, 663 (Italics in original.); *Civil Code section 1714.9(e)* (independent cause exception to firefighter's rule); *see, also, Government Code section 810.2* (independent contractor not public employee); *Terry, supra*, 109 Cal.App.4th at 253 (firefighter's rule, as applied to joint operations, not applicable where private person's negligence was independent cause of injury).) Further, even if the Individual Defendants were found to be independent contractors affiliated with the USFS, the firefighter's rule remains unavailable, because then both the plaintiff and the Individual Defendants are from the same public safety agency. (*Ibid.* (rule applies when plaintiff and defendant officers are from different safety agencies).) On the other hand, if the Individual Defendants were found to be employees of the District Defendants, the firefighter's rule may apply herein, if the evidence were to establish that the plaintiff was injured while she and the Individual Defendants were ". . . jointly discharging their duties. . ." owed to the public. (*See, McElroy v. State* (2002) 100 Cal.App.4th 546, 548-549 (scope of officer-to-officer immunity).)

Plaintiff's causes of action, if legally sufficient as against a private person, are sufficient against public employees. (*Government Code section 820(a)*.) The Individual Defendants' employment status is, however, material to the availability of governmental immunities, since an independent contractor is not, under the Tort Claims Act, a "public employee." (*Id.*, *section 810.2*.)

Further, liability of the District Defendants for the conduct of the Individual Defendants (*id.*, *section 815.2*), or for the alleged dangerous condition of the property causing plaintiff's injuries (*id.*, *sections 818.6, 821.4, 835*), depends on whether the individuals are ultimately found to be independent contractors, employees of the District Defendants or shared employees with a "special employment relationship" with the USFS. (*See, e.g., Huffman v. City of Poway* (2000) 84 Cal.App.4th 975, 990-991 (jury could reasonably infer from evidence that public entity retained sufficient control over shared employee to have controlled property for purposes of *Government Code sections 830(c)* and 835).) Because of the disputed material fact regarding the Individual Defendants' employment status, summary judgment on the grounds of governmental immunity is denied.

Lack of Duty/Causation

Again, because the District Defendants' liability to plaintiff depends upon the nature of the employment relationship between them and the Individual Defendants, summary judgment or adjudication in favor of the District Defendants is denied.

Further, plaintiff disputes material facts proffered in support of the Individual Defendants' contention that they were not the "legal cause" of plaintiff's injuries, *i.e.*, (1) the base camp was under the full command and control of the USFS (UMF 4, 39, 74); and (2) they had no notice of the dangerous condition, because the plaintiff chose to sleep in a dark area of the grassy infield which had not been designated for sleeping (UMF 31, 66, 101). A fact-finder could reasonably infer from the evidence produced by plaintiff that (1) control had been delegated to the incident management team of which the Individual Defendants were members (Deposition of Frank DelCarlo, Plaintiff's Exhibit C ("DelCarlo Depo."), p.197:20-25); (2) the Individual Defendants, but for Kirste, took on responsibilities relating to the lay-out and safety of the base camp, including the designation of areas for sleeping (Deposition of Michael Jellison, Plaintiff's Exhibit D, pp.23:12-24:15 (duties as Logistics Section Chief); DelCarlo Depo., pp.60:10-24, 63:9-25, 74:14-22 (duties as Facility Unit Leader); Deposition of Jeff Barnhart, Plaintiff's Exhibit G, pp. 34:8- 36:25 (duties of Safety Officer trainee); and (3) prior to the accident, at least one Individual Defendant was aware that firefighters were sleeping in the grassy infield, but did not sign or rope off the area. (DelCarlo Depo., pp. 130:14-131:12, 140:18-141:2.) Accordingly, summary judgment or adjudication on the grounds of lack of legal causation is denied as to all Individual Defendants but for Kirste.

Plaintiff has not proffered any evidence raising a triable issue as to the material fact that Kirste, nominally on the management team, played no role in the management or operation of the base camp but, instead, fought on the fire-line. (UMF 19-20, 54-55, 89-90); Kirste Declaration, Defendants' Exhibit M, para 15.) Nor does it appear ". . . that

facts essential to justify opposition may exist but cannot . . . be presented . . .” to dispute Kirste’s testimony. (*See, Code of Civil Procedure section 437c(h)* (when continuance may be appropriate).) Accordingly, the Court finds that Kirste did not owe plaintiff any duty of care, and his motion for summary judgment is granted. (*See, Walker v. Sonora Regional Medical Center* (2012) 202 Cal.App.4th 948, 958 (duty to use care necessary element of negligence cause of action).)

Evidentiary Rulings

Plaintiff’s Objections:

Moot: Nos. 1, 2, 5-7, 9,11, 12, 14, 17, 18, 26, 27, 36, 37, 42, 50, 51, 57, 61, 72, 74-76.³

Overruled: Nos. 10, 20, 21, 23, 29, 30, 31, 41, 46, 52, 54, 55, 59, 62-64, 66-70, 78.

Sustained: Nos. 3, 4, 8, 13, 15, 16, 19, 22, 24, 25, 28, 32-35, 38-40, 43-45, 47-49, 53, 56, 58, 60, 65, 71, 73, 77.

Defendants’ Objections:

Moot: Nos. 1, 2.⁴

Overruled: Nos. 3, 4, 5, 6 (as to deposition testimony), 7, 10, 11, 13, 14.

Sustained: Nos. 6 (as to deposition Exhibit 34), 8, 9, 12, 15.

Defendants’ separate Motion to Compel Plaintiff’s Physical Examination is granted.
The court notes that no opposition to the motion has been filed.

³ These objections are directed at evidence regarding the status of the Individual Defendants as independent contractors, as to which fact the moving parties have conceded that a triable issue exists.

⁴ The exhibits relating to the Individual Defendants’ status as employees of the USFS for purposes of federal jurisdiction may be relevant herein, but, for purposes of the motion, are moot.