

Tentative Rulings

Law & Motion and Family Law Calendar for December 9, 2013

December 5, 2013, 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, December 6, 2013, 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.

Probate – 9:00 a.m.

Case No. PR11-00001 – Estate of Fritsch

Tentative Ruling: **Granted.** The court finds that notice has been given as required by law. Petitioners' Petition for Final Distribution; Waiver of Accounting; and for Compensation for Services by Executor and Attorney is approved.

Case No. PR10-00015 – Estate of Medina

Tentative Ruling: **Appearance required.** The court notes there is no Inventory and Appraisal in the file.

Case No. PR13-00023 – Estate of VanCantfort

Tentative Ruling: **Appearance required.** The court notes the proof of service is inadequate, and there is no Inventory and Appraisal in the file.

Case No. PR97-5757 – Guardianship of Callison

Tentative Ruling: **No appearance required.** The court notes the minor has turned 18, and therefore, guardianship is terminated.

Case No. PR05-6233 – Guardianship of Saari

Tentative Ruling: **Appearance required.** The court will review the investigator's report with the parties.

Case No. PR13-00048 – Matter of Dearing

Tentative Ruling: **Granted, upon proof of publication.** The court grants the Petition to Administer Estate. Petitioner is to prepare the Order.

Civil – 9:30 a.m.

Case No. CV13-00188- Cobelis vs. Scribellito

Tentative Ruling: **No appearance required.** The court notes there is no proof of service in the file on the respondents.

Case No. CV13-00149 – Seneca Gold vs. Preim

Tentative Ruling: **Sustained, in part.** The general demurrers of defendant, **David Preim**, are sustained as to the second, third, eighth, tenth and eleventh causes of action, with leave to amend the second and eleventh, and over-ruled as to the first, fourth through seventh, ninth, and eleventh [*sic*, actually twelfth] causes of action.

The allegations of the first cause of action are sufficient to state a cause of action for declaratory relief. (Complaint, paras. 10, 18-22, 31, 34-36; *Code of Civil Procedure section 1060*; *Bennett v. Hibernia Bank* (1957) 47 Cal.2d 540, 549-550.)

The second cause of action, for quiet title, fails to allege the date as of which title is sought to be quieted. (*Code of Civil Procedure section 761.020(d)*.) Further, plaintiff does not seek to quiet title in its possessory interest in the property, as argued in its opposition; instead, it is alleged that plaintiff is the fee simple owner (Complaint, para. 38). This is contradicted by (1) the contract, requiring payment of \$500,000 to defendant before a fee simple deed was to be delivered and (2) the allegation that plaintiff has paid \$50,000 to defendants. (Complaint, paras. 38, 10 (Exhibit A, paras. 4-5), 57; *see, Boschma v. Home Loan Center, Inc.* (2011) 198 Cal.App.4th 230, 235 (court to accept as true contents of contract attached as exhibit); *Peck v. Martinez* (1941) 46 Cal.App.2d 855, 856 (complaint must allege interest in property existing at time of lawsuit).)

The third cause of action fails, because injunctive relief is a remedy, not a separate cause of action. (*McDowell v. Watson* (1997) 59 Cal.App.4th 1155, 1159.)

The fourth cause of action alleges all facts necessary to state a cause of action for breach of contract. (Complaint, paras. 10-32, 48-61; *McKell v. Washington Mutual, Inc.* (2006) 142 Cal.App.4th 1457, 1489 (elements); *The Money Store Investment Corporation v. Southern California Bank* (2002) 98 Cal.App.4th 722, 728-729 (illusory agreement enforceable where plaintiff has partially performed); *see, Patel v. Liebermensch* (2008) 45 Cal.4th 344, 349-350 (failure to state when payment due under contract not fatal to cause of action for specific performance).) Further, it is properly joined with the first cause of action. (*Code of Civil Procedure section 427.10(a)*); *see, Crouser v. Boice* (1942) 51 Cal.App.2d 198, 200 (joinder of equitable and legal causes).)

The fifth cause of action alleges facts sufficient to state a cause of action for intentional fraud. (Complaint, paras.63-74; *see, Lazar v. Superior Court* (1996) 12 Cal.4th 631, 638 (elements of fraud).)¹ It necessarily follows that the seventh cause of action, for negligent misrepresentation is adequately alleged. (*Apollo Capital Fund, LLC v. Roth Capital Partners, LLC* (2007) 158 Cal.App.4th 226,243-244.) While both the fifth and sixth causes of action are based upon intentional misrepresentations, redundancy “. . . is not a ground upon which a demurrer may be sustained.” (*Blickman Turkus, LP v. MF Downtown Sunnyvale, LLC* (2008) 162 Cal.App.4th 858, 890.)

The eighth cause of action fails, because there is no “stand alone” cause of action for equitable estoppel, which must be plead as part of a cause of action. (*Behnke v. State Farm General Insurance Company* (2011) 196 Cal.App.4th 1443, 1463.)

The ninth cause of action alleges sufficient facts to state a claim for promissory estoppel, which is properly joined with a breach of contract cause of action. (Complaint, paras. 101-106, 22-26; *see, US Ecology, Inc. v. State of California* (2005) 129 Cal.App.4th 887, 901 (elements); *see, e.g., Youngman v. Nevada Irrigation District* (1969) 70 Cal.2d 240 (contract and promissory estoppel causes joined).)

Laches is a defense in equity, and the tenth cause of action, for “estoppel by laches,” thus fails. (*5 Witkin California Procedure* (5th Ed. 2008), *Pleading, section 1125* (laches is defense).)

To state a cause of action for trespass, plaintiff must allege that the defendant, through a tangible, physical invasion, unlawfully interfered with plaintiff’s right to possession. (*5 Witkin, Summary of California Law* (10th Ed. 2005), *Torts, section 693*; *Spinks v. Equity Residential Briarwood Apartments* (2009), 171 Cal.App.4th 1004, 1042-1043.) The eleventh cause of action thus fails, because the only “tangible invasion” alleged in the Complaint was by an “armed man,” who was not alleged to be an agent of the defendant. (Complaint, 18.)

The twelfth cause of action (erroneously designated as the eleventh), for breach of the covenant of good faith and fair dealing, alleges both the existence of the contract and the interference, by defendant, with plaintiff’s rights to the benefits thereunder. (Complaint, paras. 10 (Exhibit A, para. 16 (plaintiff’s right to possession)), 18, 28-32, 119-125; *see, Thrifty Payless, Inc. v. Americana at Brand, LLC* (2013) 218 Cal.App.4th 1230, 1244 (breach of implied covenant).)

¹ As in *Charpentier v. Los Angeles Rams Football Company, Inc.* (1999) 75 Cal.App.4th 301, cited by the defendant, the Court finds that the defendant “cannot persuasively complain [he] misunderstands the fraud claim made here.” (*Id.*, at 312.)

The general demurrers of defendant, **Lorrie Preim**, to the second, third and eleventh causes of action are sustained, with leave to amend all but the third cause of action; the general demurrers to the first, fourth, ninth and eleventh [*sic* - actually twelfth] causes of action are over-ruled.¹

Allegations on the basis of information and belief are appropriate as to facts that are within the knowledge of persons other than the pleading party; further, the nature of the legal relationship between and among defendants is often made on information and belief. (*See, Doe v. City of Los Angeles* (2007) 42 Cal.4th 531, 550 (plaintiff may allege on information and belief any matters not within personal knowledge); *see, e.g., Del E. Webb Corporation v. Structural Materials Company* (1981) 123 Cal.App.3d 593, 601 (allegations on information and belief that each defendant was agent of remaining defendants).)

The Complaint alleges, on information and belief, that David Preim executed the contract, attached as Exhibit A, as an agent of Lorrie Preim. (Complaint, paras. 7 and 13.) These allegations suffice to state causes of action, sounding in contract, against Lorrie Preim. (*Civil Code section 2330*; *see, Del E. Webb Corporation v. Structural Materials Company, supra*, 123 Cal.App.3d at 606 (general allegations of agency legally sufficient to state cause of action for breach of contract against undisclosed principal); *see, Sterling v. Taylor* (2007) 40 Cal.4th 757, 773 (agent can bind undisclosed principal in sale of realty).)

The ninth cause of action, asserted against both David and Lorrie Preim, incorporate by reference the allegations of agency. (Complaint, paras. 7, 13, 100). Because the ninth cause of action alleges facts sufficient to state a cause of action for promissory estoppel, it is sufficient to state such cause of action against both David and Lorrie Preim. (*See, e.g., Aceves v. U.S. Bank, N.A.* (2011) 192 Cal.App.4th 218, 224-225 (agent's representations sufficient to state cause of action for promissory estoppel against principal).)

Lorrie Preim's remaining arguments regarding the legal sufficiency of the first (declaratory relief), fourth (breach of contract), ninth (promissory estoppel) and twelfth (breach of covenant of good faith) causes of action are addressed in the Court's ruling on the demurrers of defendant David Preim. Similarly, the allegations of the second (quiet title), third (injunction) and eleventh (trespass) causes of action are legally insufficient for the reasons set forth in this Court's ruling on the co-defendant's demurrers.

Plaintiff's Request for Preliminary Injunction is granted. The balance of hardships weighs in favor of granting a preliminary injunction, and the status quo will be preserved. Plaintiffs are ordered to submit a nominal undertaking in the amount of \$5,832.00, and prepare the Order.

¹ Lorrie Preim is not named in the fifth through eighth, and tenth, causes of action.

Family Law – 10:30 a.m.

Case No. FL12-00191 – Mar. of Burritt

Tentative Ruling: **Appearance required.** The court notes there is no proof of service in the file on the respondent.

Case No. FL13-00054 – Mar. of Burkhead

Tentative Ruling: **Appearance by the respondent only.**

Case No. FL10-00304 – Champlin vs. Hecker

Tentative Ruling: **No appearance required.** The court will confirm the contested hearing on December 12, 2013, at 1:30p.m.

Case No. FL13-00228 – Mar. of Demele

Tentative Ruling: **Appearance required.** The court notes there is no proof of service on the respondent.

Case No. FL:11-00222 – Mar. of Ell

Tentative Ruling: **Appearance required.** The court will review the custody evaluation recommendations with the parties.

Case No. FL13-00235 – Hodges vs. Berton

Tentative Ruling: **Appearance required.** The court will hear the results of mediation.

Case No. FL13-00147 – Miller vs. Fauls

Tentative Ruling: **Appearance required.** The court will order a recommendation.

Case No. FL12-00172 – Mar. of Molina

Tentative Ruling: **Appearance required.** The court will discuss the visitation schedule with the parties.

Case No. FL13-00217 – Reinert vs. Scoggins

Tentative Ruling: **Appearance required.** The court notes there is no proof of service on the respondent.

Case No. FL13-00243 – Rolon vs. Perez

Tentative Ruling: **Appearance required.** The court will order the parties to mediation.

Case No. FL11-00007 – Rose vs. Lusty

Tentative Ruling: **No appearance required.** The court has signed a temporary amended custody and visitation agreement. This matter is continued for a mediation review on February 24, 2014, at 10:30a.m.

CASE MANAGEMENT CONFERENCE TENTATIVE RULINGS

Case No. CV12-00214 – Rose vs. Guereque

Tentative Ruling: **No appearance required.** The court will confirm the mandatory settlement conference on December 11, 2013, at 1:30p.m.

Case No. CV12-00070 – Hessel vs. Forderhase

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

Case No. CV13-00071 – Cantrell vs. Armisen

Tentative Ruling: **Appearance required.** The parties should be prepared to discuss ADR options and set a mandatory settlement conference.

Case No. CV12-00001 – Lipka vs. Dineen

Tentative Ruling: **Appearance required.** The court will set a prove-up hearing.

Case No. CV09-00243 – Owens vs. Kerns

Tentative Ruling: **Appearance required of counsel for plaintiffs, Suburban and Dig-It Construction only.**

Case No. CV10-00255 – Quigley vs. Aptos/La Selva Fire Protection

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