

Tentative Rulings

Law & Motion and Family Law Calendar for May 13, 2013

May 9, 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, May 10th, 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 an official court reporter in unlimited civil, family law or probate, you must pay the \$30.00 court reporter appearance fee as provided by GC§68086(a)(1)(A) before the hearing begins.

Probate – 9:00 a.m.

Case No. PR00-05935– Conservatorship of Schager

Tentative Ruling: **Appearance required.** The court has not received the review report.

Case No. PR3-00016 – Estate of Cortez

Tentative Ruling: **Granted.** Upon receiving proof of publication, the court finds that notice has been given as required by law. The Petition for Letters of Administration is approved. Petitioner is to prepare the Order.

Case No. PR13-000019 – Guardianship of McKinney

Tentative Ruling: **Appearance required.** The court has not received the investigator's report.

Case No. PR13-00020 – Matter of McKinney

Tentative Ruling: **Appearance required.** The court has not received the investigator's report.

Case No. PR09-00005 – Guardianship of Rouse

Tentative Ruling: **No appearance required.** The court has received the confidential guardianship status report, and finds that continued guardianship is in the best interests of the minor. The matter is set for an annual review hearing on May 12, 2014, at 9:00a.m. The clerk of the court is reminded to send notice to the guardian one month prior to this date, informing the guardian of the duty to file a confidential status report prior to the review hearing.

Case No. PR11-00005 – Matter of Groulx

Tentative Ruling: **Appearance required.** The court has not received the investigator's review report.

Case No. PR11-00004 – Matter of Groulx

Tentative Ruling: **No appearance required.** The court has received the confidential guardianship status report, and finds that continued guardianship is in the best interests of the minor. The matter is set for an annual review hearing on May 12, 2014, at 9:00a.m. The clerk of the court is reminded to send notice to the guardian one month prior to this date, informing the guardian of the duty to file a confidential status report prior to the review hearing.

Case No. PR13-00021 – Matter of Kaufman

Tentative Ruling: **Appearance required.** The court has not received the investigator's report.

Case No. PR13-00012 – Matter of the Stone Declaration of Trust

Tentative Ruling: **Approved.** The court finds that notice has been given as required by law. The Petition for Court Order Approving Modification of Irrevocable Trust and Approval of Compromise Distributions is granted.

CV10-00370 – Washoe Fuel, Inc., vs. Grizzly Creek Excavating, Inc.

Tentative Ruling: **Appearance required.** The court will conduct the examination, if a proof of service is filed prior to the hearing.

Civil – 9:30 a.m.

Case No. CV13-00032 - Klein v. Wells Fargo Bank, N.A., et al.

Tentative Ruling: **Sustained in part.** The general demurrers to the first, second, third, fourth, fifth, eighth, ninth, tenth and twelfth causes of action are sustained, with leave to amend; the general demurrers to the sixth and eleventh causes of action are sustained, without leave to amend. The general demurrer to the seventh cause of action is over-ruled.

The first cause of action alleges legally sufficient grounds for wrongful foreclosure. (Complaint, paras. 96, 182 (defect in NOD), paras. 106-107, 170 (failure to provide itemized statement), paras. 184-185 (failure to post NOS); *see, Munger v. Moore* (1970) 11 Cal.App.3d 1, 7 (bases for wrongful foreclosure cause of action); *Angell v. Superior Court* (1999) 73 Cal.App.4th 691, 699 (NOD must accurately state amount due); *Sweatt v. The Foreclosure Company* (1985) 166 Cal.App.3d 273, 278 (same); *Anderson v. Heart Federal Savings and Loan* (1989) 208 Cal.App.3d 202, 216 (beneficiary must provide accurate information on amounts due); *United Bank & Trust Company of California v. Brown* (1928) 203 Cal. 359, 364 (failure to post notice of sale).) The cause of action does not, however, allege how this conduct proximately caused any injury to plaintiff. (4 *Witkin, California Procedure* (5th Ed. 2008), *Pleading, section 576*.) Additionally, the remaining bases for this cause are legally insufficient. (*See, Mabry v. Superior Court* (2010) 185 Cal.App.4th 208,214-215 (no remedy for violation of *Civil Code section 2923.5* after foreclosure concluded); *Cleveland v. Aurora Loan Services, LLC* (N.D.Cal. 2011) 2011 WL 2020565, *4 (no right of action under HAMP); *Civil Code section 2934a(b), (c)* (substitution of trustee to be served prior to, or concurrent with, recordation); *Knapp v. Doherty* (2004) 123 Cal.App.4th 76, 98-99 (immaterial defects in notices not actionable).)

The second and third causes of action, to set aside the trustee's sale and to cancel the trustee's deed, are based upon two grounds. First is that the loan is void *ab initio*, because plaintiff was fraudulently induced to enter into it (Complaint, paras. 188-193); second is that there were irregularities in the foreclosure proceedings. *Id.*, paras. 194-203.¹ As to the first grounds, the plaintiff fails to allege fraud with particularity. (See, *Perlas v. GMAC Mortgage, LLC* (2010) 187 Cal.App.4th 429, 434 (required facts to establish fraud against corporation).) As to the second grounds, plaintiff must allege an irregularity in the sale, coupled with an inadequate sales price and tender, or an excuse from tender. (See, *Lona v. Citibank, N.A.*, *supra*, 202 Cal.App.4th at 104 (elements of cause of action).) Insofar as it is alleged that plaintiff was in default in the amount of \$1,536.24 at the time the NOD was recorded (Complaint, para. 96), plaintiff was not excused from tender because of offsetting claims. (See, *Hauger v. Gates* (1954) 42 Cal.2d 752, 754-756 (demand of borrowers against lender greater than amount in default); *see, also, Anderson v. Heart Federal Savings and Loan*, *supra*, 208 Cal.App.3d at 208 (plaintiff tendered amount in default prior to auction).)

The fourth cause of action, for promissory estoppel, fails to allege facts establishing that the alleged promise was one “. . . which the promisor should reasonably expect to induce action or forbearance of a definite and substantial character on the part of the promisee . . .” (*Morrison v. Home Savings and Loan Association of Los Angeles* (1959) 175 Cal.App.2d 765, 768-769; *see, Aceves v. U.S. Bank, N.A.* (2011) 192 Cal.App.4th 218, 221 (lender requested plaintiff to forego further bankruptcy proceedings).)

The fifth cause of action, for breach of oral contract, is barred by, and fails to allege sufficient facts to establish estoppel to assert, the statute of frauds. (*Nguyen v. Calhoun* (2003) 105 Cal.App.4th 428, 444); *Morrison v. Home Savings and Loan Association of Los Angeles*, *supra*, 175 Cal.App.2d at 768-769.) Additionally, there is no allegation that the defendants breached the alleged agreement to conclude a HAMP review before proceeding with the sale. (See, *McKell v. Washington Mutual, Inc.* (2006) 142 Cal.App.4th 1457, 1489 (elements of cause of action).)

The sixth cause of action, for violation of *Civil Code section 2923.55* fails, because the statute was effective on January 1, 2013. Insofar as violation of this statute may result in the imposition of actual and statutory damages, *Civil Code section 2924.12(b)*, it is not to be applied retroactively. (See, *Wilke and Holzheiser, Inc. v. Department of Alcoholic Beverage Control* (1966) 65 Cal.2d 349, 370 (presumption of non-retroactivity is of “special force” when Legislature has altered method of enforcement of statute).)

The seventh cause of action alleges all necessary elements to state a cause of action under RESPA. (See, *Padilla v. One West Bank* (N.D. Cal. 2010) 2010 WL 5300900, *5-6 (elements of private right of action).)

The eighth cause of action, for breach of written contract, fails to adequately set forth the terms of the contract. (*McKell v. Washington Mutual, Inc.*, *supra*, 142 Cal.App.4th at 1489.)

¹ The general allegations that the loan was “unconscionable,” Complaint, paras. 48, 130, while incorporated by reference into the second and third causes of action, are insufficient to state a cause of action for equitable relief. (See, *Lona v. Citibank, N.A.* (2011) 202 Cal.App.4th 89, 108-109 (unconscionability).)

The ninth cause of action, for breach of the covenant of good faith and fair dealing, is predicated on the conduct alleged in all preceding, but for the seventh, causes of action. Demurrers have been sustained as to these causes. (See, *Krantz v. BT Visual Images, L.L.C.* (2001) 89 Cal.App.4th 164, 178 (bad faith claim falls with its antecedent substantive causes of action).

There is a split of authority as to whether documents recorded in connection with a nonjudicial foreclosure proceeding are protected by the absolute or qualified privilege. (Compare, *Garretson v. Post* (2007) 156 Cal.App.4th 1508 (absolute) with *Kachlon v. Markowitz* (2008) 168 Cal.App.4th 316 (qualified).) Under either opinion, however, the tenth cause of action, for slander of title, fails to allege facts sufficient to state a cause of action. (See, *Robomatic, Inc. v. Vetco Offshore* (1990) 225 Cal.App.3d 270, 275-276 (must allege detailed facts showing ill will).)

The eleventh cause of action, for conversion, does not identify a “specific, identifiable” sum of money; instead, it is a generalized claim for money due that is not actionable as conversion. (*Vu v. California Commerce Club, Inc.* (1997) 58 Cal.App.4th 229, 235.)

The twelfth cause of action, for an accounting, fails to allege either a relationship between the parties that requires, or a balance due that can only be ascertained by, an accounting. (*Teselle v. McLoughlin* (2009) 173 Cal.App.4th 156, 179-180.)

Defendants’ request for judicial notice of the deed of trust and filings in the nonjudicial foreclosure proceedings is granted.

Family Law – 10:30 a.m.

Case No. FL10-00061 – Mar. of Brown

Tentative Ruling: **Appearance required.**

Case No. FL06-26643 – Buchanan vs. Alhino

Tentative Ruling: **Appearance required if necessary.** If the parties have agreed to a visitation schedule, this matter may be taken off calendar.

Case No. FL10-00051 – Gifford vs. Thielman

Tentative Ruling: **Appearance required if necessary.** If the parties have agreed to a visitation schedule, this matter may be taken off calendar.

Case No. FL13-00068 – Mar. of Gonzales

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

Case No. FL13-00075 – Holmes vs. Jeskey

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

Case No. FL13-00063 – Mar. of Humphrey

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

Case No. FL13-00097 – Lowrey vs. Castillo

Tentative Ruling: **Appearance required.** The court notes there is no proof of service in the file on the respondent. The court will order the parties to orientation and mediation.

Case No. FL01-22604 – Mar. of Mecum

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

Case No. FL10-00066 – Ramoz vs. Boswell

Tentative Ruling: **Appearance required.** OSC on failure to pay.

Case No. FL07-27628 – Scoville vs. Delgado

Tentative Ruling: **Appearance required.**

Case No. FL13-00055 – Mar. of Smith

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

Case No. FL08-38369 – Mar. of Stewart

Tentative Ruling: **Appearance required of respondent only.** OSC on failure to pay.

Case No. FL09-00244 – Mar. of Tanguay

Tentative Ruling: **Appearance required.** The court has not received the recommendation.

CASE MANAGEMENT CONFERENCE TENTATIVE RULINGS

Case No. CV12-00278 – Citibank vs. Burritt

Tentative Ruling: **No appearance required.** The court notes this is a collections case. This matter is continued to November 13, 2013, 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. PR12-00018 – Estate of Petersen

Tentative Ruling: **Appearance required.** The court notes that neither party has filed a case management conference statement, as ordered on April 4, 2013. The parties should be prepared to discuss ADR options and set a trial date.

Case No. LC12-00158 – FIA Card Services vs. Boyd

Tentative Ruling: **No appearance required.** At the request of plaintiff's counsel, this case management conference is continued to June 24, 2013, at 1:30p.m. If a dismissal or stipulated judgment is filed prior to the conference, this matter may be taken off calendar.

Case No. LC12-00273 – GCFS, Inc. vs. Pearson

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

Case No. CV12-00218 – Mondot vs. Advanced Building

Tentative Ruling: **Appearance required.** The court notes that neither party has filed a case management conference statement, as ordered on March 5, 2013.

Case No. LC12-00081 – Target National Bank vs. Williams

Tentative Ruling: **Appearance required.**

Case No. CV12-00268 – Warner vs. Randy Hill Construction

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

Case No. CV12-00082 – Young vs. Plumas District Hospital

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

Case No. CV09-000656 – Adams vs. Dept. of Fish & Game

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

Case No. CV12-00252 – Bruce vs. P.G.&E.

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

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

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

Case No. LC12-00232 – Denson vs. Gehrman & Forward

Tentative Ruling: **No appearance required.** The court continues this case management conference to June 24, 2013, at 1:30p.m., to allow a responsive pleading to be filed. The court will require new case management conference statements to be filed prior to the conference.

Case No. CV09-00209 – McBride vs. Noland

Tentative Ruling: **Appearance required.**

Case No. CCV12-00230 – Miles vs. State of California

Tentative Ruling: **Appearance required.** The court will discuss ADR options with the parties.

Case No. FL12-00107 – Mar. of Millard

Tentative Ruling: **Appearance required.** The court will discuss the status of the case with the parties. The court notes that petitioner's counsel has failed to prepare the Order after Hearing from February 25, 2013.

Case No. CV09-00243 – Owens vs. Kerns

Tentative Ruling: **Appearance required.** The court will discuss the status of the case, and intends to schedule a mandatory settlement conference following mediation.