

Tentative Rulings

Law & Motion and Family Law Calendar for October 28, 2013

October 24, 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, October 25, 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. PR13-00011 – Conservatorship of Thayer

Tentative Ruling: **Granted.** The court finds that notice has been given as required by law. The Petition to Terminate the Conservatorship pursuant to Probate Code section 1861 and discharging the Conservators is granted. Petitioners are to prepare the Order.

Case No. PR13-00037 – Estate of Germain

Tentative Ruling: **Granted.** The court finds that notice has been given as required by law. Petitioners' Petition for Probate and appointment of administrator is granted.

Case No. PR12-00016– Guardianship of Beltran

Tentative Ruling: **No appearance required.** The court has received the reviewed the confidential guardianship status report, and finds that continued guardianship is in the best interests of the minors. The court schedules the annual review for September 22, 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. PR09-00005– Guardianship of Rouse

Tentative Ruling: **Appearance required.**

Case No. PR06-6341 – Guardianship of Rouse-Pierson

Tentative Ruling: **Appearance required.**

Case No. PR13-00041 – Matter of Papenhausen Family Trust

Tentative Ruling: **Granted.** The court finds that notice has been given as required by law. The Petition for Order Confirming Assets in Trust is granted.

Case No. PR13-00036 – Matter of Bones Trust

Tentative Ruling: **Appearance required.**

Case No. PR13-00045 – Matter of Tyler Trust

Tentative Ruling: **Granted.** The court finds that notice has been properly waived. The Petition for Order Confirming Trust Assets is granted. Petitioners are to prepare the Order.

Case No. PR13-00043 – Matter of Hermo

Tentative Ruling: **Granted.** The court finds that notice has been given as required by law. Petitioner's Petition to Determine Succession to Real Property is granted. Petitioner is to prepare the Order.

Civil – 9:30 a.m.

Case No. CV13-00032 – Klein vs. Wells Fargo Bank

Tentative Ruling: **Over-ruled in part.** The general demurrers by defendant, Wells Fargo, to the first, fourth and eighth causes of action of the Second Amended Complaint (“SAC”) are over-ruled; the general demurrers to all remaining causes of action are sustained, with leave to amend the second, third, fifth, ninth, tenth and eleventh causes.¹ The request for judicial notice is granted as to the existence of the recorded instruments, but denied as to facts recited therein.

As in the original complaint, the allegations of the **first cause of action**, to the effect that the defendants failed to (1) state the correct amount due in the NOD, (2) provide an itemized statement and (3) post the NOS, are legally sufficient grounds upon which a wrongful foreclosure cause of action may be based. (SAC, paras. 95, 149, 150 162-163); *see, Angell v. Superior Court* (1999) 73 Cal.App.4th 691, 699 (NOD must accurately state amount due); *Anderson v. Heart Federal Savings and Loan* (1989) 208 Cal.App.3d 202, 217 (beneficiary must provide accurate information); *United Bank & Trust Company of California v. Brown* (1928) 203 Cal. 359, 364 (must post NOS.) The remaining alleged grounds were previously ruled to be legally insufficient.

Plaintiff has, however, rectified the deficiencies of the first cause of action, as alleged in the original complaint, by adding the allegation that she could have paid the actual amount in default as of the date of the NOD (SAC, paras. 95-96), thereby curing the default and reinstating the loan. (*Civil Code section 2924c(a)(1)*.) Liberally construed, this establishes the proximate causation of damages, *i.e.*, plaintiff’s loss of the equity in her property. (SAC, para. 164; *see, Munger v. Moore* (1970) 11 Cal.App.3d 1, 7 (damages recoverable for wrongful foreclosure); 4 *Witkin, California Procedure* (5th Ed. 2008), *Pleading, section 576* (proximate cause).)

The **second and third causes of action**, to set aside the trustee’s sale and to cancel the trustee’s deed, are based upon the same two grounds as the original complaint, *i.e.*, that the loan is void *ab initio* due to fraudulent inducement and irregularities in the foreclosure proceedings. (SAC, paras. 167-172, 173-181.) As with the original complaint, the plaintiff fails to allege fraud with particularity, tender, or facts establishing an exception from tender. (*See, Perlas v. GMAC Mortgage, LLC* (2010) 187 Cal.App.4th 429, 434 (requisite particularity); *Lona v. Citibank, N.A.*, (2011) 202 Cal.App.4th 89, 104, 112-114 (elements to set aside; exceptions from tender).) Further, the allegation that plaintiff tenders the amount determined to be due (SAC, para. 183) is insufficient. (*See, Stebley v. Litton Loan Servicing, LLP* (2011) 202 Cal.App.4th 522, 526 (full tender must be made, not offered); *see, also, Anderson v. Heart Federal Savings and Loan, supra*, 208 Cal.App.3d at 209 (tender of amount due, as compared with amount demanded, sufficient).)

Liberally construed, the allegations in the **fourth cause of action** establish that Wells Fargo should have reasonably expected that its agent’s promise would induce detrimental reliance by plaintiff and that plaintiff reasonably relied thereon to her detriment. (SAC, paras. 198-206.) This is sufficient to state a cause of action for promissory estoppel. (*See, Garcia v. World Savings, FSB* (2010) 183 Cal.App.4th 1031, 1040-1041 (oral promise to postpone sale); *West v.*

¹ The Court will not reconsider arguments raised, and ruled upon, in the demurrer to the original complaint, including those made with respect to the RESPA (eighth) cause of action.

JPMorgan Chase Bank, N.A. (2013) 214 Cal.App.4th 780, 804-805 (remedies not pursued in reliance on promises.)

The allegations supporting promissory estoppel also support estoppel from asserting the statute of frauds in the **fifth cause of action**, for breach of an oral contract. (*See, Chavez v. Indymack Mortgage Services* (2013) 219 Cal.App.4th 1052, ___ [162 Cal.Rptr.3d 382, 391] (detrimental reliance supports estoppel to assert statute of frauds).) However, detrimental reliance does not constitute consideration, and the SAC thus fails to allege facts sufficient to state a cause of action for breach of contract. (*See, Garcia v. World Savings, FSB, supra*, 183 Cal.App.4th at 1038, 1040-1041 (detrimental reliance not consideration); *Simonian v. Patterson* (1994) 27 Cal.App.4th 773, 780 (consideration required element of enforceable contract).)

The **sixth and seventh causes of action**, for negligent misrepresentation and negligence, respectively, fail, “. . . as a financial institution owes no duty of care to a borrower when the institution’s involvement in the loan transaction does not exceed the scope of its conventional role as a mere lender of money.” (*See, Aspiras v. Wells Fargo Bank* (2013) 219 Cal.App.4th 948, ___ [162 Cal.Rptr.3d 230, 242-243] (lender owes no duty of care in making representations regarding HAMP review or loan servicing); *Das v. Bank of America, N.A.* (2010) 186 Cal.App.4th 727, 740-741 (lender owes no duty of care to borrower).)²

The **ninth and tenth causes of action**, for breach of written contract and breach of the covenant of good faith and fair dealing, fail to adequately set forth the terms of the contract. (*See, McKell v. Washington Mutual, Inc.* (2006) 142 Cal.App.4th 1457, 1489 (must allege terms verbatim or attach contract); *see, also, Racine & Laramie Ltd., Inc. v. Department of Parks and Recreation* (1992) 11 Cal.App.4th 1026, 1031-1032 (covenant “. . . rests upon the existence of some specific contractual obligation.”) .)

A plaintiff must have an ownership interest in the property to state a cause of action for slander of title. (5 *Witkin, California Procedure* (5th Ed. 2008), *section 749*.) Plaintiff admits that she is not on title. SAC, paras. 122, 189. However, an equitable interest, such as the right to regain title in an action for wrongful foreclosure, suffices. (*See, e.g., Chao Fu, Inc. v. Chen* (2012) 206 Cal.App.4th 48, 58 (foreclosed out owner may bring slander of title cause of action).) Insofar as plaintiff has leave to amend the second and third causes of action, which seek such equitable relief, the demurrer to the **eleventh cause of action** is sustained, with leave.³

The **twelfth cause of action**, for an accounting, fails to allege a special relationship or a balance due that can only be ascertained by an accounting. (*See, Teselle v. McLoughlin* (2009) 173 Cal.App.4th 156, 179 (elements); 5 *Witkin, California Procedure, supra, section 820* (same); *Field v. Acres* (1937) 9 Cal.2d 110, 113 (trustee under a deed of trust not fiduciary); *Das v. Bank of America, N.A., supra*, 186 Cal.App.4th 740-741 (no duty of care owed, and thus no special relationship between lender and borrower).)

² Plaintiff cites no authority in support of her contention that a duty of care arises under *Civil Code section 2924c*; nor did the Court find any.

³ Liberally construed, the SAC alleges facts sufficient to establish malice and overcome the qualified privilege at the pleadings stage. (SAC, paras. 63, 91, 292(f); *see, Kachlon v. Markowitz* (2008) 168 Cal.App.4th 316, 336 (no reasonable grounds for belief in truth); *see, also, MacLeod v. Tribune Publishing Co.* (1959) 52 Cal.2d 536, 552 (knowledge of falsity).)

Plaintiffs have 15 days to file an amended complaint. Defendant shall have 30 days to file responsive pleadings thereto.

Case No. CV13-00144 – Matter of Clark

Tentative Ruling: **Granted.** The court finds that notice has been given as required by law. Petitioner's Petition for Change of Name is granted.

Case No. CV13-00179 – Walters vs. Grizzly Lake Community Services District

Tentative Ruling: **Granted.** Plaintiff's Motion for Attorney's Fees is granted. The court notes there is no Opposition to the motion in the file.

Case No. LC13-Q0053 – Wehrman vs. Tanguay

Tentative Ruling: **Appearance required.**

Family Law – 10:30 a.m.

Case No. FL13-00011 – Mar. of Burkhart

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

Case No. FL10-00304 – Champlin vs. Hecker

Tentative Ruling: **Appearance required.**

Case No. PR13-00034 – Guardianship of Bresnyan

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

Case No. FL13-00117 – Mar. of Hardgrave

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

Case No. FL11-00222 – Mar. of Ell

Tentative Ruling: **No appearance required.** The court has received a proposed Order from respondent's counsel, referring the case for a brief focused assessment and suggested parenting plan. If there is no appearance on this family law calendar, the court will sign the Order, and continue the matter to December 9, 2013 at 10:30a.m.

Case No. FL13-00202 – Mar. of Lopez

Tentative Ruling: **Appearance required.** The court will hear the results of mediation and rule on temporary support. The petitioner is ordered to go to Family Court Services or the Department of Child Support Services to prepare the appropriate calculations on support.

Case No. FL13-00172 – Mar. of Molina

Tentative Ruling: **Appearance required.**

Case No. FL05-25955 – Mar. of Renouf

Tentative Ruling: **Appearance required.** The court will review the recommendation with the parties.

Case No. FL11-00205 – Mar. of Stroud

Tentative Ruling: **No appearance required.** At the request of counsel, this matter is continued to November 25, 2013, at 10:30a.m.

Case No. FL13-00159 – Mar. of Vickrey

Tentative Ruling: **Appearance required.** The court disqualifies itself, pursuant to CCP 170.1. This matter is continued to October 30, 2013, at 10:00a.m., to be heard by Commissioner Jeri Hamlin.

CASE MANAGEMENT CONFERENCE TENTATIVE RULINGS

Case No. LC13-00073 – AMEX vs. Castaneda

Tentative Ruling: **No appearance required.** The court has received notice of settlement of entire case. This matter is taken off calendar.

Case No. LC13-00077 – Barclays Bank Delaware vs. Lance

Tentative Ruling: **No appearance required.** The court notes this is a collections case. This matter is continued to April 14, 2014, 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. LC08-28396 – First Resolution Investment Corp. vs. Houston

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

Case No. LC13-00058 – Midland Funding vs. Kirkby

Tentative Ruling: **Appearance required.** The court notes there is no proof of service on the defendant. The court will issue and order to show cause why service or an application for an order for publication of the summons has not been made, pursuant to Rule 3.740(d).

Case No. CV13-00063 – People vs. McCoy

Tentative Ruling: **Appearance required.** If there is no appearance, the court will issue an OSC why this court should not impose terminating sanctions.

Case No. CV13-00032 – Klein vs. Wells Fargo Bank

Tentative Ruling: **No appearance required.** As this case is not yet at issue, this case management conference is continued to January 13, 2014, at 1:30p.m.

Case No. CV12-00230 – Miles vs. State of California

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

Case No. CV12-00214 – Rose vs. Guereque

Tentative Ruling: **No appearance required.** At the request of counsel, this case management conference is continued to November 13, 2013, at 1:30p.m.