

Calaveras Superior Court

Civil Law & Motion Calendar with Tentative Rulings

Friday, June 12, 2020 at 9:00 a.m. Courtroom #2

Hon. David M. Sanders

9:00 AM	15CV40978	Motion for Relief from Entry of Order or for Reconsideration and Modification of Prior Order	07/13/2015	07/17/2020 Motion Hearing 11/03/2020 Trial Confirmation Conference 11/04/2020 Jury Trial
Ptff/Pet:	Arch Insurance Company; Rehab Focus Home Health Inc.; Sergent, Lawrence R.		Atty:	Samuelson Gonzalez Valenzuela & Brown; Demas Law Group P.c.
Def/Res:	Ragan, Janna Marie; Suburban Propane		Atty:	Osborn Law Pc

Tentative Ruling: On April 29, 2020, defendants Janna Ragan and Suburban Propane filed an Application for Immediate Court Hearing and Order to vacate the trial date, and all related dates/cutoffs, and set further status conference in light of the COVID-19 pandemic. On the same day, this Court granted the request without a hearing. The Court set the matter for May 13, 2020, at 1:30 p.m. in Dept. 4 for trial setting, and granted relief on the pleadings as no jury trials were being conducted in May 2020 due to COVID-19. On May 11, 2020, plaintiff Larry Sergent filed this motion.

CCP §1008 controls motions for reconsideration, providing, in pertinent part "(a) When an application for an order has been made to a judge, or to a court, and refused in whole or in part, or granted, or granted conditionally, or on terms, any party affected by the order may, within 10 days after service upon the party of written notice of entry of the order and based upon new or different facts, circumstances or law, make application to the same judge or court that made the order, to reconsider the matter and modify, amend or revoke the prior order."

The Court does not find any new or different facts exist that would support a motion for reconsideration. In their Application for Immediate Court Hearing and Order, defendants specifically stated that "counsel for plaintiff Larry Sergent has refused to sign the Stipulation that all other counsel have signed." Based on the application, the Court understood that plaintiff Sergent did not agree to continue the discovery deadline. Due to the pandemic, the Court, in its discretion, found good cause to continue both the trial and the discovery cut-off dates in essence, overruling any objections said plaintiff had to granting the relief. The Court found that no argument could be set forth that would persuade the Court not to grant the continuances and found no basis upon which a formal hearing was necessary.

Furthermore, pursuant to California Rule of Court 3.1207, appearance is not required if there is a stipulation by the parties. The parties stipulated to continue the trial due to the pandemic. As for the deadline for discovery, the Court cannot impose a cutoff that requires the parties to complete discovery more than 30 days before the initial trial date. CCP §2024.020(a). Given the underlying Stipulation, the Court finds CRC 3.1207 provides the basis for ruling without a hearing.

Additionally, the Court notes it remained as one of the few extremely highly functional courts during the height of the pandemic, avoiding the widespread court closures partially by accommodating all requests for continuances and related relief associated with the pandemic.

Secondly, plaintiff's request for relief from the entry of order pursuant to CCP §473(b) is DENIED. The ex-parte order is not the result of plaintiff's Sergent mistake, inadvertence, surprise, or excusable neglect; rather, it reflects this Court's strongly held position on accommodating continuance requests when it finds good counsel. Counsel are advised to review Calaveras Superior Court Local Rule 2.16.

The clerk shall provide notice of this ruling to the parties forthwith. No further formal order pursuant to Rule of Court 3.1312 is required.

9:00 AM 17CV42160 Motion of Angels Gun Club for Leave to file 3rd Amended Cross- 02/02/2017 09/23/2020 Case Management Conference
Complaint

Ptff/Pet: Tryon, Thomas
Def/Res: Angels Gun Club Inc.

Atty: Mooney, Donald Burns
Atty: Wood Smith Henning & Berman Llp

Tentative Ruling: On February 2, 2017, plaintiff/cross-defendant (hereinafter referred to as "Tryon") filed the complaint and filed a first amended complaint on March 14, 2017. On April 28, 2017, defendant/cross-complainant (hereinafter referred to as "Gun Club") answered and filed the amended cross-complaint on January 30, 2019. The second amended cross-complaint was filed on October 20, 2019. Gun Club filed this motion on April 27, 2020, requesting to file a third amended cross-complaint as follows: (1) to delete the quiet title cause of action, (2) to remove reference to Tryon possessing a right of easement in Gun Club property; and (3) to add allegations seeking to terminate Tryon's license to access the same property.

(Gun Club has not complied with Local Rule 3.3.7 enacted January 1, 2018, by failing to include the mandatory language in the notice of motion regarding the Court's tentative ruling system. Pursuant to said local rule, lack of compliance provides a specific ground to deny any such procedurally-deficient motion. Based solely upon Gun Club's failure to comply with Local Rule 3.3.7, the motion would be DENIED without prejudice. However, in the interests of justice and judicial economy, the Court will address the merits of Gun Club's motion.)

CCP section 576 provides "[a]ny judge, at any time before or after commencement of the trial, in the furtherance of justice, and upon such terms as may be proper, may allow the amendment of any pleading . . ." The Court finds Gun Club timely filed this motion as no trial date has been set.

Gun Club's request to delete the cause of action for quiet title is GRANTED. Removing this cause of action does not unduly prejudice Tryon.

Gun Club's requests to amend the cross-complaint to change Tryon's interest from an easement to a license based on the deed and to add an allegation seeking to terminate that license is GRANTED. Either party can argue whether the parties' intent was to form an easement or to grant a license. Both sides can present their arguments at any appropriate procedural forum.

Gun Club cites Martin v Ray (1946) which provides that "before a covenant may give rise to or be enforced as an equitable servitude or easement, the deed or other instrument by which it is created must describe with particularity the dominant tenement which is to be benefited by the restriction placed upon the property of the grantee." Although arguably Gun Club's argument that this case law has "recently been located", reflects a lack of diligence, the Court finds the balance of equities leads to allowing Gun Club to amend the cross-complaint as these amendments do not unduly prejudice Tryon as no trial date has been scheduled and any counter-arguments or defenses can be pled by Tryon in the answer to the third amended cross-complaint.

The clerk shall provide notice of this ruling to the parties forthwith. Gun Club shall file and serve the amended third complaint within fifteen (15) court days.

Ptff/Pet: Ratkovich, Nathaniel
Def/Res: Bret Harte Grad Night Committee

Atty: Dreyer Babich Buccola Wood Campora LLP
Atty:

Tentative Ruling: On January 3, 2020, plaintiff filed a complaint. On May 14, 2020, defendants Bret Harte Union High School and Bret Harte Union High School District demurred.

As plaintiff's opposition to the demurrer accepts defendants' representations that Bret Harte Union High School is not a legal entity separate from Bret Harte Union School District and therefore cannot be sued, on its own motion the Court dismisses Bret Harte Union High School as a defendant, without prejudice to be reinstated if discovery reveals contrary facts.

Defendants' demurrer to the second cause of action for plaintiff's failure to plead a statutory basis for liability is SUSTAINED, with twenty (20) days to amend. The California Supreme Court provided in Lopez v Southern California Rapid Transit Dist. (1985) 40 Cal. 3d 780, 795, that "because under the Tort Claims Act all governmental tort liability is based on statute, the general rule that statutory causes of action must be pleaded with particularity is applicable. Thus, 'to state a case of action against a public entity, every fact material to the existence of its statutory liability must be pleaded with particularity.'" The Court finds as currently pled the second cause of action is overly conclusory under the Lopez standard.

Plaintiff's claim of negligent supervision as detailed in paragraph #20 in the complaint, merely alleges the element of duty and is not pleaded with sufficient specificity to meet the standard in Lopez. The Court believes this paragraph "muddied" the cause of action for products negligence and might be more appropriately placed within the third cause of action for general negligence.

As the third cause of action has been specifically pled, defendants' demurrer is OVERRULED. Plaintiff has alleged enough facts to support a viable cause of action under California's liberal pleading practice (even under the Lopez standard) and sufficiently puts defendant on notice as to the substance of plaintiff's claim.

As to the claim of a primary assumption of risk defense, this is not properly before the Court in the context of a demurrer. The issue may be appropriately addressed at a future hearing in a setting allowing for the introduction of extrinsic evidence. As a prudent measure, the Court confirms defendant has not waived the affirmative defense of primary assumption of risk in any appropriate procedural setting.

The clerk shall provide notice of this ruling to the parties forthwith. Defendant is to prepare a formal Order pursuant to Rule of Court 3.1312 in conformity with this ruling.