

Calaveras Superior Court
Civil Law & Motion Calendar Tentative Rulings
Friday, August 7, 2020, Courtroom #2
Hon. David M. Sanders

9:00 AM	16CV41660	Motion-Summary Judgment / Summary Adjudication	06/01/2016
Ptff/Pet:	David, Gary; Rossi-David, Kristina		Atty: Heritage Law Group
Def/Res:	Bodenmuller, Gloria; Bodenmuller, Siegfried; Foothill Sierra Pest Control Inc		Atty: Terpstra Henderson; Wainwright, Daniel Lawrence

Tentative Ruling: On February 7, 2017, a Second Amended Complaint was filed. On March 13, 2017, defendant Foothill-Sierra Pest Control, Inc. ("Foothill") answered. On March 19, 2020, defendant Foothill filed this motion for summary judgment. On May 26, 2020, plaintiff dismissed Foothill.

In light of the dismissal filed May 26, 2020, the motion for summary judgment is DENIED as moot and is dropped from calendar. The clerk shall provide notice of this ruling to the parties forthwith. No formal Order is required.

9:00 AM	16CV42079	Motion-Summary Judgment / Summary Adjudication filed by Defendant	12/29/2016	09/01/2020 Trial Confirmation Conference; 09/01/2020 Motions in Limine Hearing 09/02/2020 Jury Trial
Ptff/Pet:	Slinger, Scott		Atty:	Foley, Kenneth M.
Def/Res:	Elias, Steven		Atty:	Bates Winter & Associates Llp

Tentative Ruling: On December 29, 2016, plaintiff filed the complaint. On February 23, 2017, defendant filed the answer. On May 11, 2020, defendant filed this motion for summary adjudication as to plaintiff's claim for punitive damages. On July 16, 2020, plaintiff filed an objection. A six-day jury trial is set for September 2, 2020.

Plaintiff alleges that defendant acted with malice and oppression when defendant dug a ditch on plaintiff's road which caused plaintiff to be ejected from the motorcycle he was riding, which caused injuries. Defendant denies acting with malice and oppression when he cleared a swale "ditch" along the road as he has done for thirty years.

Defendant claims plaintiff did not comply with California Rules of Court 3.1350's requirement that a Separate Statement in Opposition contain the nature of the dispute and describe the evidence in support of the position that the fact is controverted. The Court finds plaintiff substantially complied with CRC 3.1350 and will consider the plaintiff's opposition to the statement of undisputed facts.

Plaintiff's request for judicial notice is GRANTED as to Exhibits 1 and 2 pursuant to Evidence Code sections 452 and 453 as they were filed in Calaveras Superior Court case number 15CV41116. Therefore, the exhibits are entered into evidence.

The defendant can move for summary adjudication on a claim for punitive damages brought under Civil Code §3294. Pursuant to Civil Code §3294, to establish that a claim for punitive damages has no merit, the defendant must establish one of the following: (1) the plaintiff cannot establish an element of a cause of action that supports a claim for punitive damages; (2) the defendant's conduct does not constitute oppression, malice or fraud; or (3) the plaintiff cannot produce clear and convincing evidence of oppression, malice or fraud.

Civil Code §3294(c) defines the following terms: "(1) 'Malice' means conduct which is intended by the defendant to cause injury to the plaintiff or despicable conduct which is carried on by the defendant with a willful and conscious disregard of the rights or safety of others. (2) 'Oppression' means despicable conduct that subjects a person to cruel and unjust hardship in conscious disregard of that person's rights."

The clear-and-convincing evidentiary standard does not impose a duty on the plaintiff to prove a case for punitive damages at the summary-adjudication stage. (American Airlines, Inc. v Sheppard, Mullin, Richter & Hampton (2002) 96 Cal.App.4th 1017, 1049.) This higher standard of proof, however, must be considered when ruling on an MSA. (Id.) Under this standard, summary adjudication is proper only when no reasonable jury could find the plaintiff's evidence to be clear and convincing proof of oppression, malice or fraud. Spinks v Equity Residential Briarwood Apts. (2009) 171 Cal.App.4th 1004, 1053.

Defendant has objected to specific sentences in plaintiff's declaration. (Although the objections are labeled "Declaration of Patricia J. Lynn," the Court believes this was a scrivener's in error and the objections are to plaintiff's declaration and proceeds accordingly.) All objections to plaintiff's offered evidence numbers 1, 2, 3, 17, and 18, are overruled. Specifically, the statements are relevant; any prior statements that contradict other statements can be addressed on cross-examination. Pursuant to Evidence Code section 201, relevant evidence is defined as evidence having any tendency in reason to prove or disprove any disputed fact that is of consequence to the determination of the action.

Objection numbers 4 and 24 are sustained for lack of foundation.

Objection numbers 5, 8 through 15, 19 through 21, and as to Exhibit 1 and Exhibit 2, are overruled. Plaintiff's statements are based on his personal knowledge, observations and experiences. Plaintiff is subject to cross-examination as to how he became aware of these assertions.

Objection number 6 is overruled, though the last part of the sentence "to locations where the defendant apparently had his business" is struck as irrelevant.

Objection numbers 7, 16, and 22, are not ruled on as they are not relevant to the Court's ruling.

Defendant's evidentiary objections of hearsay are all overruled. Although the statements are largely hearsay, exceptions apply that allow the entire declaration of statements to be admitted into evidence. For example, Evidence Code §1220 provides that, "evidence of a statement is not made inadmissible by the hearsay rule when offered against the declarant in an action to which he is a party in either his individual or representative capacity, regardless of whether the statement was made in his individual or representative capacity." Another applicable exception is that the statements are offered to show plaintiff's state of mind. All of defendant's objections to hearsay are overruled as exceptions apply.

CCP section 437c(p)(2) provides "[a] defendant . . . has met his or her burden of showing that a cause of action has no merit if the party has shown that one or more elements of the cause of action, even if not separately pleaded, cannot be established, or that there is a complete defense to the cause of action. Once the defendant . . . has met that burden, the burden shifts to the plaintiff . . . to show that a triable issue of one or more material facts exists as to the cause of action or a defense thereto."

Based on the foregoing, a jury could find plaintiff's evidence of defendant's actions to be clear and convincing proof of oppression or malice by defendant. Plaintiff's declaration provides evidence that defendant's actions were beyond mere negligence or recklessness, and subjected plaintiff to "cruel and unjust hardship in conscious disregard of that person's rights." There are triable issues that could lead a jury to find by clear and convincing evidence that plaintiff is entitled to punitive damages. Based on the foregoing, defendant's motion for summary adjudication as to plaintiff's claim for punitive damages is DENIED.

The clerk shall provide notice of this ruling to the parties forthwith. Plaintiff to prepare a formal order pursuant to Rule 3.1312 in conformity with this ruling.