

Calaveras Superior Court
Civil Law & Motion Calendar Tentative Rulings
Friday, April 23, 2021, Courtroom #2
Hon. David M. Sanders

9:00 17CV42160 Demurrer by Angels Gun Club to 4th Cause of Action in 3rd 02/02/2017 05/12/2021 Case Management Conference
Amended Complaint

Ptff/Pet: Tryon, Thomas

Atty: Mooney, Donald Burns

Def/Res: Angels Gun Club Inc.

Atty: Wood Smith Henning & Berman Llp

Tentative Ruling: On September 29, 2020, a filed stipulation and order allowed plaintiff leave of court to file the third amended complaint, which was filed on October 8, 2020. On February 19, 2021, defendant filed a demurrer that was overruled for failure to comply with Local Rule 3.3.7. On March 29, 2021, defendant refiled the general and special demurrer to the fourth cause of action on the grounds that plaintiff failed to state facts sufficient to constitute a viable cause of action.

Defendant's request for judicial notice as to plaintiff's original Complaint, plaintiff's First Amended Complaint, and plaintiff's Second Amended Complaint, pursuant to Evidence Code sections 452 and 453, is GRANTED.

Plaintiff's request for judicial notice as to the Second Amended Cross-Complaint, the Third Amended Cross-Complaint, and the Court's March 26, 2021, ruling on defendant's demurrer, pursuant to Evidence Code sections 452 and 453 is GRANTED.

Plaintiff contends this demurrer is untimely as the parties agreed defendant could file the demurrer by February 22, 2021. The original demurrer was filed on February 19, 2021; however, that demurrer was overruled on March 26, 2021, based upon defendant's failure to comply with Local Rule 3.3.7, "without prejudice to refile, to the extent it otherwise is timely and appropriate pursuant to relevant statutes". Plaintiff now argues this demurrer was filed late and should be overruled on this procedural basis; Defendant contends it was timely based on CRC 3.1320(j) which provides in pertinent part, that "[u]nless otherwise ordered, defendant has 10 days to answer or otherwise plead . . . following: (1) The overruling of the demurrer . . ." Based on the foregoing, defendant timely filed this demurrer on March 29, 2021, within 10 days of the procedural overrule.

An agreement, referred to as Exhibit A in many of the pleadings, allows both parties to perform certain activities on these parcels. Although the parties may disagree whether the agreement equals a license or an easement, plaintiff had permission to be on the property. Based on this agreement, plaintiff's argument that he meets all of the elements of a prescriptive easement fails, as a matter of law, because he cannot meet one of the main elements of open and hostile use because he had permission to use the land. Therefore, based on the foregoing, defendant's general demurrer to the fourth cause of action is SUSTAINED WITHOUT leave to amend.

Defendant's special demurrer to the fourth cause of action to the Third Amended Complaint is a misnomer and is not supported by any legal argument and additionally is moot in light of the foregoing ruling. Therefore, the special demurrer is OVERRULED.

The clerk shall provide notice of this ruling to the parties forthwith. The Court will sign the Order prepared by defendant.

9:00 AM 18CV43114 Motion to Compel Responses to Request for Production of Documents, Set One 03/14/2018 08/11/2021 Case Management Conference

Ptff/Pet: Ove, Marcia K

Atty: Salazar, Anthony T

Def/Res: Ames, Kathy; Ames, Paul

Atty: Sacino Bertolino & Hallissy

Tentative Ruling: On November 12, 2020, defendants propounded Request for Production of Documents and Things on plaintiff. On December 23, 2020, after not receiving any documents, defendants' counsel sent a meet and confer letter requesting plaintiff provide verified responses within seven days of the correspondence. On January 26, 2021, defendants granted another extension until February 10, 2021. Having received no documents, defendants filed this motion.

On April 1, 2021, plaintiff's counsel filed a non-opposition stating "[p]laintiff was unable to complete her discovery response due to her illness and that of her attorney." Plaintiff offered to provide a complete verified response and documents on or before April 19, 2021. Based on that pleading, the Court, on its own motion, continued the motion to compel, to April 23, 2021. However, the Court has no information that plaintiff provided a verified response and all documents by April 19, 2021.

Based upon plaintiff's failure to provide a verified response including all responsive documents defendants' motion is GRANTED. Plaintiff is ordered to provide a verified response including all responsive documents in plaintiff's care, custody, or control, without objections, to defendants' Request for Production of Documents, Set One, no later than the close of business on May 3, 2021.

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

9:00 AM 18CV43114 Motion Hearing to Compel Responses to Form Interrogatories 03/14/2018 08/11/2021 Case Management Conference

Ptff/Pet: Ove, Marcia K

Atty: Salazar, Anthony T

Def/Res: Ames, Kathy; Ames, Paul

Atty: Sacino Bertolino & Hallissy

Tentative Ruling: On November 12, 2020, defendants propounded Form Interrogatories on plaintiff. On December 23, 2020, after not receiving any responses, defendants' counsel sent a meet and confer letter requesting plaintiff provide verified responses within seven days of the correspondence. On January 26, 2021, defendants granted another extension until February 10, 2021. Having received no responses, on March 17, 2021, defendants filed this motion.

On April 1, 2021, plaintiff's counsel filed a non-opposition stating "[p]laintiff was unable to complete her discovery responses due to her illness and that of her attorney." Plaintiff offered to provide complete verified answers on or before April 19, 2021. Based on that pleading, the Court, on its own motion, continued the motion to compel to April 23, 2021. However, the Court has no information that plaintiff provided complete verified answers by April 19, 2021.

Based upon plaintiff's failure to provide complete verified answers, defendants' motion is GRANTED. Plaintiff is ordered to provide the verified answers, without objections, to defendants' Form Interrogatories, Set One, no later than the close of business on May 3, 2021.

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

Ptff/Pet: Turpin, Joyce

Atty:

Def/Res: People of The State of California

Atty: District Attorney

Tentative Ruling: On October 29, 2019, Joyce Turpin's, currency in the amount of \$1060 was seized, and she was personally served with a notice and receipt of seizure of property and a blank claim form that same day. On December 9, 2019, Ms. Turpin filed a claim opposing forfeiture. The People seek to strike her claims as untimely.

Health & Safety Code §11488.5(a)(1), provides, in pertinent part, that "[a]ny person claiming an interest in the property seized pursuant to Section 11488 may, unless for good cause shown the court extends the time for filing, at any time within 30 days . . . after receipt of action notice, file with the superior court of the county in which the defendant has been charged with the underlying or related criminal offense or in which the property was seized . . . a claim, verified in accordance with Section 446 of the Code of Civil Procedure, stating his or her interest in the property. An endorsed copy of the claim shall be served by the claimant on the Attorney General or district attorney, as appropriate, within 30 days of the filing of the claim."

The currency was seized on October 29, 2019. Ms. Turpin was personally served with receipt of seizure on the same day. However, she did not file her claim until December 9, 2019, beyond the statutory thirty-day time limit (which had expired on November 28, 2019). Based on the foregoing, Petitioner People's motion is GRANTED, and the claim is stricken.

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