

DAY v. GIFFIN

19CV43812

PLAINTIFF'S MOTION TO SPECIALLY SET CASE FOR TRIAL PURSUANT TO CODE OF CIVIL PROCEDURE § 36

A complaint was filed on January 15, 2019 for breach of oral and written contract, common count, negligent and intentional misrepresentation, and false promise.

Following the outbreak of COVID-19 in March 2020, the Judicial Council of California adopted an emergency rule that extended the deadline to bring a civil action to trial under section 583.310. Specifically, emergency rule 10(a), effective April 6, 2020, provides that 'Notwithstanding any other law, including section 583.310, for all civil actions filed on or before April 6, 2020, the time to bring the action to trial is extended by six months for a total time of five years and six months. (*State ex rel. Sills v. Gharib-Danesh* (2023) 88 Cal.App.5th 824, 840, quoting California. Rules of Court (CRC), appen. I, emergency rule 10(a).)

The additional six-month extension extended the Code of Civil Procedure (CCP) § 583.310 deadline for this case to July 15, 2024. Plaintiff now moves for a special trial setting to assure that the matter is determined upon the merits.

The moving papers did not include the required language of Local Rule 3.3.7.

All matters noticed for the Law & Motion calendar shall include the following language in the notice:

3.3.7 Tentative Rulings (Repealed Eff. 7/1/06; As amended 1/1/18) All parties appearing on the Law and Motion calendar shall utilize the tentative ruling system. Tentative Rulings are available by 2:00 p.m. on the court day preceding the scheduled hearing and can be accessed either through the court's website or by telephoning 209-754-6285. The tentative ruling shall become the ruling of the court, unless a party desiring to be heard so advises the Court no later than 4:00 p.m. on the court day preceding the hearing including advising that all other sides have been notified of the intention to appear by calling 209-754-6285.

Where appearance has been requested or invited by the Court, all argument and evidence is limited pursuant to Local Rule 3.3.

All matters noticed for the Law & Motion calendar shall include the following language in the notice:

Pursuant to Local Rule 3.3.7, the Court will make a tentative ruling on the merits of this matter by 2:00 p.m. the court day before the hearing. The complete text of the tentative ruling may be accessed on the Court's website or by calling 209-754-6285 and listening to the

recorded tentative ruling. If you do not call all other parties and the Court by 4:00 p.m. the court day preceding the hearing, no hearing will be held and the tentative ruling shall become the ruling of the court. [Emphasis in original.]

Failure to include this language in the notice may be a basis for the Court to deny the motion.

In the instant matter, the Court finds exigent circumstances. (Plaintiff is cautioned this is a rare instance where the Court does not deny a pending motion for the failure to include the mandated language.)

A motion to specially set to avoid the bar of the five-year statute raises the same issues as a motion for discretionary dismissal for failure to prosecute. (CCP §§ 36, 583.410, 583.420; *Salas v. Sears, Roebuck & Co.* (1986) 42 Cal.3rd 342, 346.) The trial court should consider the criteria listed in California Rules of Court, rule 3.1342 in ruling on a motion to specially set under CCP § 36(e), or in ruling on a discretionary motion to dismiss. (*Salas, supra* at p. 346, fn. 4; *Biondi, Flemming & Gonzalez v. Braham* (1990) 218 Cal. App. 3d 842, 847.)

When a grant of preferential setting is necessary to avoid mandatory dismissal of the case under CCP §§ 583.310, 583.360, and the party seeking the preference has shown reasonable diligence in prosecuting the action, while the opposing party has made no showing of prejudice, the possibility of mandatory dismissal is sufficient consideration to compel granting of relief under CCP § 36(e), and refusal to do so constitutes an abuse of discretion (*Schmitt v. Superior Court* (1989) 216 Cal. App. 3rd 453, 456; *National Secretarial Service, Inc. v. Froehlich* (1989) 210 Cal. App. 3rd 510, 520–521; *Dick v. Superior Court* (1986) 185 Cal. App. 3rd 1159, 1164–1168 (construing former Code Civ. Proc. § 36(d) now see CCP § 36(e),)).

The court applies the criteria of California Rule of Court 3.1342 and finds that the plaintiff diligently served the defendants, obtained a default judgment, prepared for defendant's motion to set aside, agreed to set judgment aside, dismissed a defendant, and regularly reported to the court with frequent Case Management statements, all amidst the circumstances of COVID-19. The court also recognizes CCP § 583.130's policy, which favors trial or other disposition of an action on the merits, over the policy that mandates dismissal for failure to proceed.

The Court **GRANTS** Plaintiff's Motion to Specially Set Case for Trial Pursuant to Code of Civil Procedure § 36. The Mandatory Settlement Conference set for June 24, 2024, at 8:30 a.m. in Department 2 is confirmed. Trial is set for July 10, 2024, at 8:30 a.m. in Dept. 3, Trial Confirmation Conference is set for July 9, 2024, at 11:30 a.m. in Dept. 2.

The Clerk shall provide notice of this Ruling to the parties forthwith. The Court will sign the Order submitted by plaintiff.

ZAMORA v. CLAPP

16CV41649

PLAINTIFF'S MOTION TO AMEND JUDGMENT

The Court of Appeal's Remittitur to the trial court was filed October 2, 2023, the plaintiff's motion for attorney's fees was timely filed October 27, 2023, and the order on plaintiff's motion for attorney's fees and defendant's motion to tax costs and strike reply Declarations was entered December 18, 2023.

Plaintiff now moves to amend the August 31, 2021, Judgment to conform to the Court's December 18, 2023, Order.

The moving papers did not include the required language of Local Rule 3.3.7. All matters noticed for the Law & Motion calendar shall include the following language in the notice:

3.3.7 Tentative Rulings (Repealed Eff. 7/1/06; As amended 1/1/18) All parties appearing on the Law and Motion calendar shall utilize the tentative ruling system. Tentative Rulings are available by 2:00 p.m. on the court day preceding the scheduled hearing and can be accessed either through the court's website or by telephoning 209-754-6285. The tentative ruling shall become the ruling of the court, unless a party desiring to be heard so advises the Court no later than 4:00 p.m. on the court day preceding the hearing including advising that all other sides have been notified of the intention to appear by calling 209-754-6285.

Where appearance has been requested or invited by the Court, all argument and evidence is limited pursuant to Local Rule 3.3.

All matters noticed for the Law & Motion calendar shall include the following language in the notice:

Pursuant to Local Rule 3.3.7, the Court will make a tentative ruling on the merits of this matter by 2:00 p.m. the court day before the hearing. The complete text of the tentative ruling may be accessed on the Court's website or by calling 209-754-6285 and listening to the recorded tentative ruling. If you do not call all other parties and the Court by 4:00 p.m. the court day preceding the hearing, no hearing will be held and the tentative ruling shall become the ruling of the court. [Emphasis in original.]

Failure to include this language in the notice may be a basis for the Court to deny the motion.

In the instant matter, the Court finds that the unopposed Motion to Amend Judgment though set on Law and Motion calendar is akin to an administrative, or clerical, matter, and

inclusion of notice in motion is excused. (See California Rules of Court (CRC), rule 3.1700(b)(4) "After the time has passed for a motion to strike or tax costs or for determination of that motion, the clerk must immediately enter the costs on the judgment".)

An amended judgment that merely adds costs, attorney's fees, or interest is not a substantial modification, and the time to appeal is not affected. (*Torres v. City of San Diego* (2007) 154 Cal.App.4th 214, 222; *Amwest Sur. Ins. Co. v. Patriot Homes, Inc.* (2005) 135 Cal.App.4th 82, 84.)

The Court **GRANTS** Plaintiff's Motion to Amend Judgment.

The Clerk shall provide notice of these Rulings to the parties forthwith. Plaintiff to submit a straightforward Amended Judgment.

LENIORS v. PACIFIC GAS & ELECTRIC Co.

22CV46442

PLAINTIFFS' MOTION FOR RECONSIDERATION OF ORDER SUSTAINING DEMURRER WITHOUT LEAVE TO AMEND

This matter was first filed on November 23, 2022, as a Verified Complaint and Ex Parte Application for Temporary Restraining Order (TRO). Plaintiffs sought to enjoin defendant from terminating their electric service. The TRO was granted. Defendant filed its first Demurrer on June 20, 2023. This case involves a dispute between utility customers and the utility company concerning an unpaid bill of \$126,691.66.

In a detailed six-page ruling, the Court sustained the demurrer and identified the aspects it believed were outside the California Public Utility Commission's (CPUC) exclusive jurisdiction, namely slander, intentional infliction of emotional distress, and spoliation. The Court provided details on the elements of these causes of action and the necessary averments for them to proceed. It granted thirty (30) days leave to amend.

On September 1, 2023, the First Amended Complaint was filed. Defendant demurred. The Court focused on the slander, intentional infliction of emotional distress, and spoliation causes of action, noting that the plaintiffs had chosen not to provide the necessary additional factual details on the identified causes of action. The Court sustained the demurrer, granting another 30 days leave to amend.

On January 8, 2024, a Second Amended Complaint ("SAC") was filed. Defendant again demurred. When ruling on this Demurrer the Court stated:

"[T]he court guided plaintiffs regarding the requirements for stating a cause of action that would remove the complaint from the California Public Utilities Commission (CPUC) exclusive authority for adjudication of customer disputes. Plaintiffs contend the causes of action for slander and intentional infliction of emotional distress achieve this goal.

Upon reviewing the SAC, plaintiffs introduced only two arguably substantive additions when compared to the earlier pleadings. In a three-paragraph amendment labeled "JURISDICTION" (set forth as section/paragraph 17) plaintiffs argue that their claims do not contravene "the commission." The additional language concludes "the civil court has jurisdiction." (SAC ¶17, pg. 8.) This is argument, not facts. Further, at ¶21 the amended language adds a damage element assertion - one plaintiff's facial nerve virus flared and was attributed to the stress of the billing dispute.

Plaintiffs' Request for Judicial Notice is GRANTED.

The court addressed the matter of CPUC jurisdiction over customer billing disputes at length in its rulings for three demurrer hearings, outlining the necessary facts to challenge the exclusive jurisdiction established by California Public Utility Code (PUC) §1759(a), to bring the matter within the purview of PUC §2106, and what is necessary to proceed in this civil action for slander and intentional infliction of emotional distress causes of action.

Under Code of Civil Procedure (CCP) § 1008, when a party brings a Motion for Reconsideration this requires new law, facts, or circumstances. A new law or different fact must be one that was not available to the party when the underlying motion was presented to the Court (*New York Times v. Superior Court* (2005) 135 Cal.App.4th 206, 212-213; see e.g., *Shiffer v. CBS Corp.* (2015) 240 Cal.App.4th 246, 255.)

In ruling on the demurrer to the second amended complaint, the Court took into account the argument put forth by the plaintiffs and gave them a chance to present causes of action for slander and intentional infliction of emotional distress. This would enable the civil court proceedings to move forward. The permissibility of a civil court matter is no longer in question - it is confirmed. The current issue is whether the plaintiffs have stated a cause of action for slander or intentional infliction of emotional distress - they have not. The Motion for Reconsideration fails to assert any new facts and merely renews earlier legal arguments.

Plaintiffs' Motion for Reconsideration of Order Sustaining Demurrer Without Leave to Amend is **DENIED**.

The Clerk shall provide notice of this Ruling to the parties forthwith. Defendant to prepare a formal Order pursuant to CRC 3.1312 in conformity with this Ruling.