SERNA, et al. v. JEFFCRUM, et al.

19CV44405

DEFENDANT SHERRY CRUM'S MOTION TO SET ASIDE DEFAULT JUDGMENT

This is a personal injury action stemming from an automobile accident occurring on November 14, 2017, in Mountain Ranch, California. Before the Court is a motion by co-defendant Sherry Crum to set aside the default (and default judgment) entered against her in this action. The motion is unopposed, this being now the second time defendant has filed.

The salient facts are as follows:

On 10/31/19, plaintiffs commenced the within action, naming "Sherry Crum" as a co-defendant.

On 09/09/20, plaintiffs effectuated *substituted* service upon "Sherry Crum" by leaving a copy of the summons and complaint with "Thomas Crum (an occupant)".

On 10/27/20, plaintiffs filed and served a Request for Entry of Judgment against "Sherry Jeffcrum" to the same address used for substituted service; Default was entered.

On 07/01/21, this Court – after considering plaintiffs' default prove-up package – entered a judgment "jointly and severally" against the driver (Douglas Jeffcrum) and the putative owner "Sherry Jeffcrum" (as well as Farmers Insurance Co).

For the reasons which follow, both the default judgment and the entry of default must be set aside.

Initially, this Court finds that defendant has adequately drawn into question the validity of the substituted service, noting that she was not home the day service was attempted and there is nobody named "Thomas Crum" at her residence. The summons may be left at the person's home with a competent adult member of the household whose relationship with the person to be served makes it more likely than not that they will deliver process to the named party. (CCP §§ 415.20(b) and 416.90; *Ellard v. Conway* (2001) 94 Cal.App.4th 540, 546.) Since there is no "Thomas," leaving it with someone claiming that name was not good enough.

Secondly, this Court finds that the default itself was improperly entered. The summons and complaint identified "Sherry Crum" as the party, but the Request for Entry sought a default judgment against "Sherry Jeffcrum." This error escaped clerical detection, but renders the default defective.

Thirdly, as to the judgment, a defendant who defaults admits only facts well pleaded in the complaint. Thus, if the complaint fails to state a cause of action, a default judgment is erroneous and will be set aside.(*Grappo v. McMills* (2017) 11 Cal.App.5th 996, 1012-1015; *Kim v. Westmoore Partners, Inc.* (2011) 201 Cal.App.4th 267, 282.) A close review of both the operative pleading and the default prove up materials finds them insufficient to lead a finding that Sherry Crum was responsible for negligent entrustment, and as such the sole basis for liability against her would be as the registered owner of the vehicle. Thus, her liability would be capped by Veh. Code §17151(a) at $30,000 total. The default judgment is void. See *Dhawan v. Biring* (2015) 241 Cal.App.4th 963, 974-975.

Finally, moving party provides a cogent explanation for her failure to appreciate the significance of the paperwork. She had a personal family matter which consumed her attention, causing her to miss the service and request for entry of default. Although this is no excuse for not checking the mail, the absence of opposition suggests plaintiffs agree that defendant is entitled to the requested relief. Moreover, the gap in time between the accident (2017), the filing of the lawsuit (2019) and the service of summons (2020) further explains why this might not have been on her radar: “It is the policy of the law to favor, whenever possible, a hearing on the merits … when a party in default moves promptly to seek relief, *very slight* evidence is required to justify a trial court's order setting aside a default.” (*Shamblin v. Brattain* (1988) 44 Cal.3d 474, 478-479; *Bonzer v. City of Huntington Park* (1993) 20 Cal.App.4th 1474, 1478.)

Based on the foregoing, Defendant Sherry Crum’s Motion To Set Aside Default is GRANTED. Said Defendant must file and serve her answer to the Complaint by the close of business on December 2, 2021.

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

GOLD CREEK ESTATES v. VALLEY SPRINGS GOLD CREEK, et al.

17CV42103

PLAINTIFF'S MOTION FOR LEAVE TO FILE SECOND AMENDED COMPLAINT

This is a complex construction defect action involving allegations of negligent design and implementation of common areas within a condominium complex. Before the Court is plaintiff's opposed motion for leave to file a Second Amended Complaint. At issue is plaintiff's desire to assert news claims (nondisclosure, breach of contract, breach of implied warranty), as well as a desire to specify additional building standards.

To amend a pleading already at issue, the sponsoring party is required first to seek leave of court by way of noticed motion. (CCP §473(a)(1).) Motions for leave are to follow the regular notice requirements contained in CCP §1005(b). Pursuant to California Rules of Court, Rule 3.1324, the moving party must:

a) Specify in the moving papers by page, paragraph, and line number the allegations proposed to be added and/or deleted; and

b) Include with the moving papers:

- a copy of the proposed amended pleading; and
- a declaration specifying:

(1) the effect of the amendment(s);

(2) why the amendment is necessary and proper;

(3) when the facts giving rise to the amended allegations were discovered; and

(4) the reasons why the request was not made earlier.

The first two factors have been adequately covered. As to the third and fourth factors, counsel provides a declaration explaining the basis/timing for the requested leave, summarized as: counsel made a legal error in not recognizing that common law claims might survive outside the overarching reach of the Right to Repair Act, and only came to this conclusion after learning that of a planned summary judgment motion on statute of limitations grounds against the asserted cause of action. This is not the result of a new change in law, or new facts coming to light, but rather counsel realizing his *existing* claim may fail.

That being said, this Court disagrees with defense counsel's contention that "this is not an instance wherein the proposed amendment simply builds upon previously articulated claims." Quite the contrary, this is supplementing existing claims with theories that may

(or may not) fall outside the 10-year statute of limitations. While the amendment might require defendants to reevaluate a possible MSJ, it does not – as defendants contend – force them to restart all discovery. In fact, it seems little unique discovery will be required by the new causes of action as the existing pleading contains breach and misrepresentation claims, largely similar for discovery purposes to the proffered new claims.

Motions for leave to amend a pleading are directed to the sound discretion of the court. (CCP §§ 473(a)(1) and 576.) This discretion, however, is to be exercised liberally in favor of allowing amendments. (*Howard v. County of San Diego* (2010) 184 Cal.App.4th 1422, 1428; *Central Concrete Supply Co v. Bursak* (2010) 182 Cal.App.4th 1092, 1101-1102.) Courts may permit amendments at any stage in the proceedings, up to and including trial, so long there is no prejudice to the adverse party. (*Atkinson v. Elk Corp.* (2003) 109 Cal.App.4th 739, 761.) Prejudice exists where amendment would require delaying the trial, resulting in loss of critical evidence, or significant added litigation burden/costs. (*Magpali v. Farmers Group* (1996) 48 Cal.App.4th 471, 486-488.) While unexcused delays in bringing the motion may also be considered, mere proximity to trial is generally not sufficient grounds upon which to deny leave to amend. (See *Melican v. Regents of University of California* (2007) 151 Cal.App.4th 168, 175; *Leader v. Health Industries of America, Inc.* (2001) 89 Cal.App.4th 603, 613; *Honig v. Financial Corp. of America* (1992) 6 Cal.App.4th 960, 967.)

The published authorities affirming a trial court's decision to deny leave to amend are few and far between. (See, *e.g.*, *Melican v. Regents of University of California* (2007) 151 Cal.App.4th 168, 175-176 [leave to add breach of contract claim five years later, and on the eve of MSJ, denied]; *Huff v. Wilkins* (2006) 138 Cal.App.4th 732, 746 [leave to add allegations of recklessness brought three days before hearing on MSJ denied]; *Emerald Bay Community Assn v. Golden Eagle Ins Co.* (2005) 130 Cal.App.4th 1078, 1097 [leave to amend to add assignment/ contribution claim brought post-trial denied].)

While this Court avoids delays in moving cases forward whenever possible, as noted there is a strong preference in the law for deciding actions on their merits. To that end, a court will not consider the validity of the proposed amendment in deciding whether to grant leave to amend (that can normally be dealt with via demurrer),and may not condition leave upon the submission of evidence substantiating the new claim(s). (*Sanai v. Saltz* (2009) 170 Cal.App.4th 746, 769-770; *Edwards v. Superior Court* (2001) 93 Cal.App.4th 172, 180; *Yee v. Mobilehome Park Rental Review Board* (1998) 62 Cal.App.4th 1409, 1429.) These issues can be addressed by a variety of pleading and evidentiary motions.

Based on the foregoing, Plaintiff's Motion for Leave to File a Second Amended Complaint is GRANTED. Plaintiff shall file and serve the SAC by the close of business on December 3, 2021.

The Clerk shall provide notice of this Ruling to the parties forthwith. Plaintiff to prepare a formal Order pursuant to Rule of Court 3.1312 in conformity with this ruling.