Calaveras Superior Court Civil Law & Motion Tentative Rulings Friday, July 30, 2021 Hon. David M. Sanders, Courtroom 2

9:00 14CV40119 Motion for Leave to amend the First Amended Complaint 05/21/2014 08/02/2021 Settlement Conference

Ptff/Pet: Sarkis, Lawrence J. Atty: Berliner Cohen
Def/Res: Angels Gun Club; Verhalen, Dave Atty: Porter Scott

TENTATIVE RULING: Plaintiff Lawrence J. Sarkis moves, pursuant to Code of Civil Procedure sections 473 (a) and 576, for leave to file a Second Amended Complaint (Proposed SAC).

"The court may, in furtherance of justice, and on any terms as may be proper, allow a party to amend any pleading or proceeding by adding or striking out the name of any party, or by correcting a mistake in the name of a party, or a mistake in any other respect; and may, upon like terms, enlarge the time for answer or demurrer. The court may likewise, in its discretion, after notice to the adverse party, allow, upon any terms as may be just, an amendment to any pleading or proceeding in other particulars; and may upon like terms allow an answer to be made after the time limited by this code." (CCP § 473 (a).) Similarly, "[a]ny judge, at any time before or after commencement of trial, in the furtherance of justice, and upon such terms as may be proper, may allow the amendment of any pleading or pretrial conference order." (CCP § 576.)

Typically, a court will exercise its discretion liberally in favor of allowing amendment of the pleadings in order that litigation may be tried on its merits. (See Kauffman v. Bobo & Wood (1950) 99 Cal.App.2d 322, 323.) However, in exercising its discretion, the trial court may properly consider "the conduct of the moving party and the belated presentation of the amendment [citation]." (Bedolla v. Logan & Frazer (1975) 52 Cal.App.3d 118, 136.) "There is a platoon of authority to the effect that a long unexcused delay is sufficient to uphold a trial judge's decision to deny the opportunity to amend pleadings, particularly where the new amendment would interject a new issue which requires further discovery." (Green v. Rancho Santa Margarita Mortgage Company (1994) 28 Cal.App.4th 686, 692.)

Plaintiff filed the First Amended Complaint June 4, 2014. The Notice of the present motion was filed more than 7 years later. (See Notice of Motion.) The Court finds no explanation for the delay in Plaintiff's moving papers.

Plaintiff's counsel declares that "[u]pon examining the FAC, which was drafted by Plaintiff Sarkis' original counsel, I concluded that while the FAC alleged additional claims and relief beyond the Corporations Code, there was a danger that the FAC could be misconstrued as limiting Plaintiff Sarkis' claims, which could substantially prejudice Plaintiff Sarkis." (Declaration of Michael Ijams at ¶ 6 (Ijams Decl.).) Plaintiff need not fear any such prejudice. "Even though the plaintiffs labeled their causes of action, that does not mean they are bound by those labels. It is an elementary principle of modern pleading that the nature and character of a pleading is to be determined from its allegations, regardless of what it may be called, and that the subject matter of an action and issues involved are determined from the facts alleged rather than from the title of the pleadings or the character of the damage recovery suggested in connection with the prayer for relief. (Citation omitted.)" (Jaffe v. Carroll (1973) 35 Cal.App.3d 53, 57.) To the extent that the factual allegations of the First Amended Complaint support the causes of action and prayers for relief set forth in the Proposed SAC, no prejudice is avoided by amendment aimed at "reorganizing three existing causes of action into four causes of action for clarity." (Support Memo at 1:22-23.)

Moreover, Plaintiff concedes that the new cause of action for writ of mandate he seeks to add by the filing of the Proposed SAC "could (and probably should) have been pled in the original complaint...." (Support Memo at 4:17-20.) The Court concludes that the proposed inclusion of such cause of action after more than 7 years and without explanation for the delay, is sufficient grounds for denying the motion. This is particularly true in light of the potential prejudice, created by the passage of such significant time, in the form of the loss of witness memory and documentary evidence.

Based on the foregoing, the motion is DENIED.

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

Additionally, the Court's review of this file and the somewhat associated derivative action (14CV40365) in preparation of this ruling included reviewing the parties' recently filed settlement conference statements. The Court is familiar with private mediator Dan Quinn, and feels that in light of his unsuccessful efforts, the significant divide in settlement postures reflected in the statements, and the adversarial nature of courtroom proceedings to date, the prospects of a successful court settlement conference appear minimal at best. Therefore, the Mandatory Settlement Conferences in both cases scheduled for August 2, 2021, are vacated. The matters are instead both scheduled for a Trial Setting Conference on the Case Management Conference calendar on August 25, 2021, at 1:30 p.m. in Department 4. All parties are directed to appear with trial length estimates, proposed time frame for scheduling trial(s), and conflict calendars. All parties are encouraged to engage in further settlement efforts with mediator Dan Quinn.