

TENTATIVE RULINGS

FOR: January 4, 2018

The Court may exercise its discretion to **disregard** a late filed paper in law and motion matters. (Cal. Rules of Court, rule 3.1300(d).)

Unlawful Detainer Cases – Pursuant to the restrictions in Code of Civil Procedure section 1161.2, no tentative rulings are posted for unlawful detainer cases and appearances are required.

Court Reporting Services – The Court does not provide official court reporters in proceedings for which such services are not legally mandated. These proceedings include civil law and motion hearings. If counsel want their civil law and motion hearing reported, they must arrange for a private court reporter to be present. Go to <http://napacountybar.org/court-reporting-services/> for information about local private court reporters. Attorneys or parties must confer with each other to avoid having more than one court reporter present for the same hearing.

PROBATE CALENDAR – Hon. Diane Price, Dept. F (Criminal Courts Bldg.-1111 Third St.)

Conservatorship of Richard Wilczak

17PR000240

PETITION FOR APPOINTMENT OF PROBATE CONSERVATOR OF THE PERSON AND ESTATE

APPEARANCE REQUIRED

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Conservatorship of Rowlinda Finley

17PR000246

PETITION FOR APPOINTMENT OF PROBATE CONSERVATOR OF THE PERSON AND ESTATE

APPEARANCE REQUIRED

CIVIL LAW & MOTION CALENDAR – Hon. Diane Price, Dept. F (Criminal Courts Bldg.-1111 Third St.)

Mounir Fahmy, et al. v. Solano Pacific Corp. (dba Coldwell Banker Solano Pacific), et al.

17CV000464

(1) DEFENDANTS COLDWELL AND TAGESON’S DEMURRER TO THE FIRST AMENDED COMPLAINT

TENTATIVE RULING:

Defendants Solano Pacific Corp. (dba Coldwell Banker Solano Pacific) and Elizabeth Tageson’s demurrer to the fifth cause of action for intentional misrepresentation and sixth cause of action for negligent misrepresentation on the ground of uncertainty is OVERRULED. An uncertainty demurrer is strictly construed, even where a complaint is in some respects uncertain, because ambiguities can be clarified under modern discovery procedures. (See *Khoury v. Maly’s of Calif., Inc.* (1993) 14 Cal.App.4th 612, 616.) A demurrer for uncertainty should only be sustained when the complaint is so bad that the defendant cannot reasonably respond. (*Id.*) Here, the pleading is certain enough to allow defendants to understand the nature of the allegations, and the theory of liability in order to fashion an appropriate response.

Defendants’ demurrer to the fifth cause of action for intentional misrepresentation and sixth cause of action for negligent misrepresentation on the ground of failure to state sufficient facts is OVERRULED. The elements of a fraud claim are the following: (1) a misrepresentation (false representation, concealment or nondisclosure); (2) knowledge of falsity (or “scienter”); (3) intent to defraud, i.e., to induce reliance; (4) justifiable reliance; and (5) resulting damage. (*Philipson & Simon v. Gulsvig* (2007) 154 Cal.App.4th 347, 363.) “The same elements comprise a cause of action for negligent misrepresentation, except there is no requirement of intent to induce reliance.” (*Cadlo v. Owens-Illinois, Inc.* (2004) 125 Cal.App.4th 513, 519.) Citing paragraph 83, defendants argue the fifth claim is pled “against the ‘Defendants,’ collectively, but [plaintiffs] only reference a specific representation made by Plaintiffs’ Agent/Broker, not [the moving defendants].” (Dem. at p. 5:1-3.) According to defendants, plaintiffs apparently are relying on the seller’s Transfer Disclosure Statement, but plaintiffs have not “pled actual knowledge of falsity assuming they made any representations to the Plaintiffs, who were not their client, or relief on any representations by Moving Parties.” (*Id.* at p. 5:9-11.) For the negligent misrepresentation claim, defendants proffer plaintiffs “failed to identify any specific statement made to them, which was false and which they relied upon. The only reference is to statement(s) made by their own agent” (*Id.* at p. 6:3-5.)

Defendants’ arguments fail. Plaintiffs allege defendants represented the home was in good condition, and made no mention of water damage or mold. (First Amended Compl., ¶ 82.) Plaintiffs allege that prior to the purchase of the property Tageson made multiple written and oral representations implicitly and explicitly stating the property was suitable as a residence and free of major defects. (*Id.*, ¶ 18.) These representations started with the listing, which described the property as a “charmer” suitable for entertaining guests, without mention of any problems related to the foundation, poor drainage, or mold. (*Id.*, ¶ 19.) These representations continued when

plaintiffs were shown the property and throughout the sales process. (*Id.*, ¶ 20.) Defendants, however, were aware of a previous lawsuit against the builder of the property based on a defect, which caused water damage and led to foundation problems and mold growth. (*Id.*, ¶ 28.) Defendants further had a copy of an inspection report stating the home had water damage, but Tageson listed the property without mention of this problem. (*Id.*, ¶¶ 30-31.) Plaintiffs relied on these representations when they entered into the agreement. (*Id.*, ¶¶ 21, 81, 87.)

Defendants shall file their answer within 10 calendar days of service of notice of entry of order.

(2) DEFENDANTS WINDERMERE AND NAVARRO'S DEMURRER TO THE FIRST AMENDED COMPLAINT

TENTATIVE RULING:

Defendants' Michael Hulsey & Associates (dba Windermere Hulsey & Associates) and Kristen Navarro's request for judicial notice of a recorded grant deed and an April 16, 2014 email is **GRANTED IN PART AND DENIED IN PART**. The request is granted as to the grant deed. The request is denied as to the email as it is not the proper subject of judicial notice. In addition, the email was not attached as exhibit 2 to the request.

Defendants' demurrer to the first cause of action for breach of fiduciary duty, fourth cause of action for concealment, fifth cause of action for intentional misrepresentation, and sixth cause of action for negligent misrepresentation on the ground of failure to state sufficient facts is **OVERRULED**. Defendants contend these claims are time-barred. Defendants' position, however, is premised on facts in an email that are not the proper subject of judicial notice. Even if the email was the proper subject of judicial notice, defendants did not attach it as an exhibit to their request for judicial notice.

Defendants' demurrer to the second cause of action for breach of contract and third cause of action for breach of the covenant of good faith and fair dealing on the ground of failure to state sufficient facts is **OVERRULED**. Defendants assert these claims are invalid because they were not a party to any contract with plaintiffs, citing exhibit A to the first amended complaint. Defendants are correct they are not parties to the purchase agreement attached as exhibit A because it is between the buyers and sellers. (First Amended Compl., Ex. A at p. 1.) Paragraph 2 details the agency relationship between defendants and plaintiffs. (*Id.*) Indeed, the agreement specifically provides "Real Estate Brokers are not parties to the Agreement between Buyer and Seller." (*Id.*, Ex. 8 at p. 8, ¶ A.) Defendants, however, do not address the allegations in paragraphs 11 and 55 that plaintiffs "entered into contracts" with defendants to "represent them in the purchase of a home." (First Amended Compl., ¶ 55.) Defendants' belief there are no facts with respect to a contract entered into between plaintiffs and defendants is not fully developed.

Defendants' demurrer to the seventh cause of action for unfair business practices on the ground of failure to state sufficient facts is **OVERRULED**. The other causes of action serve as the underlying basis for this claim.

Defendants shall file their answer within 10 calendar days of service of notice of entry of order.

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Lynda Jordan v. Brenda Manzo-Garcia

17CV000202

MOTION TO SET ASIDE JUDGMENT & DEFAULT PURSUANT TO CCP § 473(b)

TENTATIVE RULING: The unopposed Motion is GRANTED.

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LVNV Funding, LLC v. Jolene Reynolds

17CV000702

PLAINTIFF'S MOTION TO DEEM REQUESTS FOR ADMISSIONS ADMITTED (C.C.P. SECTION 2033.280)

TENTATIVE RULING: The unopposed Motion is GRANTED.

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Napa County v. Bank of New York Mellon, et al.

26-68273

CROSS-PLAINTIFFS KIRK R. GEYER AND LISA GEYER'S MOTION TO APPOINT AN ELISOR

APPEARANCE REQUIRED. Defendants/Cross-Complainants should be prepared to address: 1) why the signature page with Mr. Bruckner's signature appears to be from a different document (it is a page 3 instead of a page 5, with different signature blocks), 2) why no notice was given to Mr. Bruckner regarding this motion, and 3) how the Court can appoint an elisor pursuant to Code of Civil Procedure Section 128 when there is not yet any order or judgment compelling Mr. Bruckner to quitclaim his property interest in this case.

PROBATE CALENDAR – Hon. Rodney Stone, Dept. I (Criminal Courts Bldg.-1111 Third St.)

Conservatorship of Carlos Alexis Castro

16PR000185

REVIEW HEARING

TENTATIVE RULING: After a review of the matter, the Court finds the Conservator is acting in the best interest of the Conservatee. Thus, the case is set for a biennial review hearing in two years, on January 7, 2020 at 8:30 a.m. in Dept. 2. The court investigator shall prepare a biennial investigator report for the next hearing date. The clerk is directed to send notice to the parties.

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In the Matter of Joseph J. Wagner 2011 Irrevocable Trust

17PR000245

1) PETITION FOR ORDER ESTABLISHING TITLE TO PROPERTY OF TRUST AND FOR INSTRUCTIONS REGARDING TRUST PROPERTY

TENTATIVE RULING: The Notice of Motion does not provide notice of the Court's tentative ruling system as required by Local Rule 2.9. Petitioner's counsel is directed to contact the other parties forthwith and advise them of Local Rule 2.9 and the Court's tentative ruling procedure. If Petitioner's counsel is unable to contact the other parties prior to the hearing, Petitioner's counsel shall be available at the hearing, in person or by telephone, in the event the other parties appear without following the procedures set forth in Local Rule 2.9.

The Petition is GRANTED as prayed.

2) PETITION FOR APPOINTMENT OF GUARDIAN AD LITEM - PROBATE

TENTATIVE RULING: The Petition is GRANTED.

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Estate of Christopher R Desley

17PR000207

PETITION FOR AUTHORITY TO ADMINISTER DECEDENT'S ESTATE UNDER THE INDEPENDENT ADMINISTRATION OF ESTATES ACT

TENTATIVE RULING: GRANT petition, subject to the continuance of the bond in the amount of \$10,000.

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Estate of John Lund

17PR000261

PETITION FOR LETTERS OF ADMINISTRATION AND AUTHORIZATION TO ADMINISTER UNDER THE INDEPENDENT ADMINISTRATION OF ESTATES ACT

APPEARANCE REQUIRED