

TENTATIVE RULINGS

FOR: January 31, 2019

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. Parties are responsible for either making the appropriate request in advance or arranging for their own private court reporter. 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. Victoria Wood, Dept. A (Historic Courthouse) at 8:30 a.m.

Conservatorship of Zerah Carlisle

18PR000278

PETITION FOR APPOINTMENT OF PROBATE CONSERVATOR OF THE PERSON – LIMITED CONSERVATORSHIP

APPEARANCE REQUIRED. The proposed conservatee need not appear.

CIVIL LAW & MOTION CALENDAR – Hon. Diane Price, Dept. B (Historic Courthouse) at 8:30 a.m.

Deborah Ann Ouchie v. Janice P. Wright

18CV001211

(1) DEMURRER OF DEFENDANT JANICE P. WRIGHT TO PLAINTIFF DEBORAH ANN OUCHIE’S FIRST AMENDED COMPLAINT

TENTATIVE RULING: Defendant Janice P. Wright demurs to seven of eight causes of action in Plaintiff Deborah Ann Ouchie’s First Amended Complaint (FAC).¹ Defendant’s demurrer to Plaintiff’s first cause of action for breach of oral contract; second cause of action for declaratory relief (express partnership); third cause of action for declaratory relief (implied partnership); fourth cause of action for breach of contract to make a will; fifth cause of action for promissory estoppel; sixth cause of action for fraudulent misrepresentation; and seventh cause of action for promissory fraud is **OVERRULED**.

¹ The Demurrer does not specify any ground of demurrer to the eighth cause of action. Arguments as to the propriety of such demurrer are therefore not properly before the Court. (Cal. Rules of Court, rule 3.1320, subd. (a).)

A demurrer is treated as “admitting all material facts properly pleaded, but not contentions, deductions or conclusions of fact or law.” (*Blank v. Kirwan* (1985) 39 Cal.3d 311, 318.) “A demurrer tests only the legal sufficiency of the pleading. It admits the truth of all material factual allegations in the complaint; the question of plaintiff’s ability to prove these allegations, or the possible difficulty in making such proof does not concern the reviewing court.” (*Comm. on Children’s Television, Inc. v. Gen. Foods Corp.* (1983) 35 Cal.3d 197, 213-14.)

Demurrer to First Cause of Action for Breach of Contract. The required elements of an action for breach of contract are the existence of the contract, the terms that establish the obligation at issue, any condition precedent to enforcement, and breach of the obligation. (*FPI Development, Inc. v. Nakashima* (1991) 231 Cal.App.3d 367, 383.)

Plaintiff alleges each of these elements in the FAC. Plaintiff specifically alleges breach of three distinct obligations to be performed by Decedent: support Plaintiff during her lifetime, place her name on the title to real property, and provide for Plaintiff in Decedent’s estate plan. (FAC at ¶ 29.)

The first of these is alleged with specificity sufficient to state a cause of action for breach of contract. Defendant argues that Plaintiff admitted, in paragraph 15 of the FAC that Decedent did support her during her lifetime. (Memorandum In Support, at p. 6:21.) The Court does not read such an admission in the language cited. Because Plaintiff states a cause of action for breach of contract based on this allegation, the Court does not need to address the sufficiency of the other alleged obligations. Defendant’s demurrer to Plaintiff’s first cause of action is **OVERRULED**.

Demurrer to Second and Third Causes of Action for Declaratory Relief (Express and Implied Partnership). The required elements of an action for declaratory relief are those set out in Code of Civil Procedure § 1060. Plaintiff has alleged facts with sufficient specificity to state causes of action under that section. Defendant’s demurrer to Plaintiff’s second and third causes of action is **OVERRULED**.

Demurrer to Fourth Cause of Action for Breach of Contract to Make a Will. The required elements of an action for breach of contract to make a will are set out in Probate Code § 21700. Plaintiff has alleged facts with sufficient specificity to state causes of action under that section. Defendant’s demurrer to Plaintiff’s fourth cause of action is **OVERRULED**. Defendant’s argument regarding the standard of proof required to prevail on such a cause of action does not change the analysis of whether Plaintiff has adequately pled such cause of action.

Demurrer to Fifth Cause of Action for Promissory Estoppel. The required elements of an action for promissory estoppel are a promise reasonably expected to be relied upon, reliance by the promisee, detriment, and damages. (*Moncada v. West Coast Quartz Corp.* (2013) 221 Cal.App.4th 768, 802.) The party claiming estoppel must specifically plead all facts required to establish these elements. (*Smith v. City and County of San Francisco* (1990) 225 Cal.App.3d 38,

48.) Finally, the promise alleged must be clear and unambiguous. (*Cotta v. City and County of San Francisco* (2007) 157 Cal.App.4th 1550, 1556.)

Plaintiff has alleged facts with sufficient specificity to state causes of action for promissory estoppel. Plaintiff specifically alleges, among other things, that Decedent promised to provide for her during her lifetime, and to provide for Plaintiff in Decedent's estate plan. These allegations are clear and unambiguous. Defendant's demurrer to Plaintiff's fifth cause of action is **OVERRULED**.

Demurrer to Sixth and Seventh Causes of Action for Fraudulent Misrepresentation and Promissory Fraud. Claims based in fraud must be specifically pleaded, with facts constituting each element of the cause of action alleged. (*Hall v. Dept. of Adoptions* (1975) 47 Cal.App. 898, 904.) The required elements of an action for fraudulent misrepresentation are willful deceit of another with intention to induce him to alter his position, injury or risk and damages. (Civil Code § 1709.) The elements of promissory fraud are similar: a misrepresentation by one who knows it is false, made with the intent to induce reliance, justifiable reliance on the misrepresentation, and resulting damages. (*Rutherford Holdings, LLC v. Plaza Del Rey* (2014) 223 Cal.App.4th 221, 234.)

Plaintiff has alleged facts with sufficient specificity to state causes of action for fraudulent misrepresentation and for promissory fraud. Defendant's demurrer to Plaintiff's sixth and seventh cause of action is **OVERRULED**.

(2) MOTION TO STRIKE

TENTATIVE RULING: Defendant Janice P. Wright's Motion to Strike paragraph 9 of the Prayer section of the First Amended Complaint is **DENIED**. Defendant's Motion to Strike paragraph 10 of the Prayer section of the First Amended Complaint is **GRANTED WITHOUT LEAVE TO AMEND**.

Pursuant to Code of Civil Procedure § 435, a party may move the Court to strike any irrelevant matter inserted into a complaint. (Code Civ. Proc. § 436, subd. (a).) The phrase "irrelevant matter" is defined to include, "a demand for judgment requesting relief not supported by the allegations of the complaint . . ." (Code Civ. Proc. § 431.10, subd. (c) and (b)(3).) In considering a motion to strike, the Court construes the pleadings "liberally . . . with a view to substantial justice." (Code Civ. Proc. § 452.) Allegations set forth in a complaint are considered in context and are presumed to be true. (*Clauson v. Super. Ct.* (1998) 67 Cal.App.4th 1253, 1255.)

Paragraph 9 of the Prayer section of the FAC prays the Court for the following relief, "[t]hat the Court impose a constructive trust on the assets of Decedent's estate to the extent of Plaintiff's interest therein, according to proof, that the Defendant be made the involuntary trustee of such assets, and that Defendant be ordered to convey such assets, as well as the rents, issues, and profits therefrom, Plaintiff forthwith; [*sic*]." (FAC at p. 17:8-11.)

Defendant contends that authority cited in her moving papers requires a Plaintiff to specifically allege the identity of the property over which a constructive trust is sought, and that Plaintiff has failed to so specify such property in the FAC.

The Court disagrees. The FAC contains specific allegations of the identity of such property including Plaintiff's earnings (FAC at p. 5:15) and a Jeep Wrangler (FAC at p.12:23-27), as well as allegations that Plaintiff enjoys interests in Decedent's estate.

Paragraph 10 of the Prayer section of the FAC prays the Court, "[f]or attorney's fees and costs" (FAC at p. 17:12.)

Defendant argues that none of the causes of action set out in the FAC provide for an award of attorneys' fees.

The Court agrees. Plaintiff's contention that attorneys' fees are available as "out-of-pocket" damages in fraud causes of action is unsupported.

If a defect is correctible, the Court will generally allow an amended pleading. (*Grieves v. Super Ct.* (1984) 157 Cal.App.3d 159, 168) The burden is on the plaintiff to show how the complaint might be amended in a manner that would change the legal effect of the pleading. (*Goodman v. Kennedy* (1976) 18 Cal.3d 335, 349, discussing leave to amend following demurrer.)

Because the defect is a prayer for relief which is not available under the causes of action in the FAC, the Court does not envision an amendment that would cure the defect. Moreover, Plaintiff has not argued that any such amendment is possible.