

TENTATIVE RULINGS

FOR: April 3, 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.

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

Jackson Street Wine Warehouse LLC v. Sarah Ruggiero, et al.

26-66082

1) ROCKZILLA, LLC's MOTION TO STRIKE THE VERIFIED FIRST AMENDED CROSS-COMPLAINT OF C. RANDALL CALLAHAN AND RAJA DEVELOPMENT INC. vs. SARAH RUGGIERO, RONALD RUGGIERO, CRYRAG, INC. dba CROWN REALTY PROPERTY MANAGEMENT, ROCKZILLA, INC., formerly named as Doe 1, and DOES 2 through 10, inclusive

TENTATIVE RULING: Rockzilla, LLC's Motion is GRANTED WITHOUT LEAVE TO AMEND. "The modern rule with respect to actions involving parties designated by their true names in the original complaint is that, where an amendment is sought after the statute of limitations has run, the amended complaint will be deemed filed as of the date of the original complaint provided recovery is sought in both pleadings on the same general set of facts." (*Austin v. Massachusetts Bonding & Ins. Co.* (1961) 56 Cal.2d 596, 600.) Code of Civil Procedure section 474 allows "for adding defendants after the statute of limitations has expired, but this procedure is available only when the plaintiff is actually ignorant of the facts establishing a cause of action against the party to be substituted for a Doe defendant. [Citation.] "The question is whether [the plaintiff] knew or reasonably should have known that he had a cause of action against [the defendant]." [Citation.]" (*McClatchy v. Coblenz, Patch, Duffy & Bass, LLP* (2016) 247 Cal.App.4th 368, 371-372.)

Here, there are three new causes of action that were added along with the Doe amendment to add Rockzilla: Conversion, Financial Elder Abuse, and Rescission/Restitution. These are not the same set of facts that were in the original Cross-Complaint. Furthermore, the original Cross-Complaint alleged the Doe Cross-Defendants were "acting as the agent, employee and co-venturer of each of the remaining Cross-Defendants and at all time each Cross-Defendant

was acting within the course and scope of such agency, employment and joint venture. (Cross Complaint, para. 9.) The Cross-Complaint focused entirely on the Ruggieros and Crown Realty as property managers and real estate agents for Mr. Callahan and Raja, and their alleged breach of their duties in that capacity and associated fraudulent conduct. Rockzilla is not alleged to be an agent, employee or co-venturer of the Ruggieros and Crown Realty, and as a tenant, would have an entirely different relationship vis-à-vis Mr. Callahan and Raja.

In addition, Rockzilla is alleged to have co-conspired with other parties to enter into a 25 year lease with rent locked in at least 60% below market rate in 2008. (First Amended Cross-Complaint at paras. 10, 25.) It is further alleged that Mr. Callahan, the sole shareholder of Raja, only discovered this three years prior to filing this First Amended Cross-Complaint - the First Amended Cross-Complaint was filed on August 30, 2017. (*Id.* at para. 11.) However, presumably Mr. Callahan was aware of the amount of rent Raja was receiving monthly from Rockzilla for seven years - 2008 thru 2014 - that was allegedly at least 60% below market rate. The FACC claims that lost rents during the lease term will total \$1.9 million, meaning Rockzilla paid \$532,000 less rent than they allegedly should have between 2008 and 2014. (FACC at para. 28.) Mr. Callahan/Raja was not actually ignorant of this fact, which is key to establishing the alleged causes of action against Rockzilla.

As the FACC adds new facts and claims against Rockzilla, and Mr. Callahan/Raja were not actually ignorant of the facts establishing the alleged cause of action against Rockzilla, the relation back doctrine does not apply to Rockzilla as a later-identified Doe defendant. Allowing amendment would be futile as Mr. Callahan/Raja are bound by the facts as alleged in their verified FACC.

The hearing on the Motion to Compel Arbitration of Claims Against Rockzilla, set for April 19, 2018, is vacated.

2) ROCKZILLA, LLC'S SPECIAL DEMURRER TO VERIFIED FIRST AMENDED CROSS-COMPLAINT OF C. RANDALL CALLAHAN AND RAJA DEVELOPMENT INC. vs. SARAH RUGGIERO, RONALD RUGGIERO, CRYRAG, INC. dba CROWN REALTY PROPERTY MANAGEMENT, ROCKZILLA, INC., formerly named as Doe 1, and DOES 2 through 10, inclusive

TENTATIVE RULING: In light of the Court's ruling on Rockzilla, LLC's Motion to Strike above, these Demurrers are MOOT and dropped from calendar.

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

Estate of Salud D. Santos

18PR000066

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

TENTATIVE RULING: There is no proof of publication or proof of service on file. If a proper proof of publication and proof of service are filed prior to the hearing, the petition will be GRANTED. Otherwise, the petition will be DENIED without prejudice.

CIVIL LAW & MOTION CALENDAR – Hon. Rodney Stone, Dept. I (Criminal Courts Bldg.-1111 Third St.)

American Express Centurion Bank v. Timothy A Wilkens

16CV000098

MOTION FOR ORDER ENTERING JUDGMENT AGAINST DEFENDANT PURSUANT TO CODE OF CIVIL PROCEDURE SECTION 664.6

TENTATIVE RULING: Plaintiff American Express Centurion Bank's motion for an order entering judgment against defendant Timothy A. Wilkens pursuant to Code of Civil Procedure section 664.9 is DENIED WITHOUT PREJUDICE. Defendant was served with the motion at a mailing address in Napa while the demand letter informing him of the default was served to an email address (Exhibit B) listed in the stipulated agreement. If plaintiff elects to refile its motion, it shall first reserve the demand letter to defendant's Napa address and email. Following the cure period provided for in the stipulated agreement, plaintiff may then refile its motion. The motion shall be served on defendant at the mailing address in Napa and to the email address listed in the stipulated agreement.

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Jose Luis Alejandro v. Ceja & Weisberg, LLC, et al.

17CV000385

DEMURRER AND MOTION TO STRIKE COMPLAINT

TENTATIVE RULING: The Demurrer is OVERRULED and the Motion is DENIED. Code of Civil Procedure section 337 provides that the statute of limitations for filing a claim for breach of contract is four years from the date of breach. Plaintiff has now alleged sufficient details regarding the oral extensions for payment at Attachment BC-1, beginning at page 1, line 24, and continuing through page 3 of the Third Amended Complaint. These allegations also support Plaintiff's claim that equitable estoppel should apply to preclude Defendant from using the statute of limitations as a defense. (*Lantzy v. Centex Homes* (2003) 31 Cal.4th 363, 3846385 [a defendant may be equitably estopped from asserting a statute of limitations defense if the defendant's act or omission caused the plaintiff to refrain from filing a timely suit and the plaintiff's reliance on the defendant's conduct was reasonable.])

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Von Strasser Winery v. Executive Wines, Inc.

17CV001004

APPLICATION TO APPEAR PRO HAC VICE

TENTATIVE RULING: The application is DENIED WITHOUT PREJUDICE. There is no proof of service on the California State Bar. (See Cal. Rules of Court, rule 9.40 [a person

desiring to appear as counsel *pro hac vice* in a superior court must file with the court a verified application together with proof of service by mail in accordance with Code of Civil Procedure section 1013a of a copy of the application and of the notice of hearing of the application . . . on the State Bar of California at its San Francisco office.ö].)

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Perfecto Bauer Garcia v. Darrel Joseph Hanson, et al.

17CV000624

(1) DEFENDANT RICHARD PAUL ELDRIDGE'S DEMURRER TO THE THIRD AMENDED COMPLAINT

TENTATIVE RULING: Defendant Richard Paul Eldridge's demurrer to the third amended complaint on the ground of failure to state sufficient facts and uncertain is SUSTAINED WITHOUT LEAVE TO AMEND. The demurrer is unopposed, and there is no cognizable claim alleged against Eldridge. Plaintiff Perfecto Bauer Garcia has had multiple opportunities to allege any cause of action. The Court (Hon. Price) indicated on January 10, 2018, that Garcia could file one last pleading, which he did when he filed his third amended complaint on January 31, 2018. Based on the history of this action, there is no reasonable possibility that Garcia can cure the defective pleading.

(2) DEFENDANT DARREL HANSON'S DEMURRER TO THE THIRD AMENDED COMPLAINT

TENTATIVE RULING: There is no proof of service on file. If defendant Darrel Hanson fails to file a proper proof of service before or at the hearing, the demurrer will be overruled and he shall file an answer by April 13, 2018. If a proper proof of service is filed, the demurrer will be sustained without leave to amend for the same reasons noted in the ruling on defendant Richard Paul Eldridge's demurrer.

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In the Matter of Francisco Aguilar

18CV000204

PETITION FOR CHANGE OF NAME

TENTATIVE RULING: Notice has been properly published and no written objections have been filed. The petition for name change is GRANTED without need for appearance.