

**TENTATIVE RULINGS**

**FOR: September 5, 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. 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. Diane Price, Dept. I (Criminal Courts Bldg.-1111 Third St.) at 2:00 p.m.**

**Estate of Sharon M. Simpson**

**17PR000265**

FIRST AND FINAL ACCOUNT, REPORT OF ADMINISTRATOR, PETITION FOR STATUTORY FEES AND FOR DISTRIBUTION OF TESTATE ESTATE

**TENTATIVE RULING:** GRANT petition, including fees as prayed.

.....  
**Conservatorship of Nisa Zamora**

**18MH000059**

PETITION FOR APPOINTMENT OF LPS CONSERVATOR

**APPEARANCE REQUIRED**

**CIVIL LAW & MOTION CALENDAR – Hon. Diane Price, Dept. I (Criminal Courts Bldg.-1111 Third St.) at 2:00 p.m.**

**Penterman Farming Company v. Beckstoffer Vineyards, et al.**

**18CV000687**

(1) DEMURRER TO COMPLAINT

**TENTATIVE RULING:**

Defendants Beckstoffer Vineyards and David Michul’s demurrer to the complaint is SUSTAINED. LEAVE TO AMEND IS GRANTED IN PART.

Plaintiff Penterman Farming Company, Inc. (“plaintiff”) alleges it entered into a written contract with George Altamura (“Altamura”) pursuant to which plaintiff performed management, development and farming services on the vineyard adjacent to Altamura’s home in Napa, California. Plaintiff also alleges defendants David Michul, Beckstoffer Vineyards (erroneously sued as Beckstoffer Vineyard, Inc.), and Guillaume Nursery (erroneously sued as Guillaume Nursery) were contractually obligated through a separate contract with Altamura to select and obtain materials for grafting grapevines, and to graft the plants for Altamura’s vineyard. Subsequent to execution of the separate contracts, Altamura concluded the vineyard failed and the plants were damaged. Through a separate proceeding, Altamura has initiated the requisite alternative dispute resolution process set forth in the written contract between plaintiff and Altamura, alleging plaintiff is responsible for the damage to, and poor performance of the plants. Altamura’s specific allegations have not been set forth in plaintiff’s complaint.

Reacting to the alternative dispute resolution proceedings initiated against it, plaintiff has filed suit against Beckstoffer Vineyards, David Michul (general manager of Beckstoffer), and Guillaume Nursery, alleging any finding of fault against plaintiff is the responsibility of defendants Beckstoffer, Michul, and Guillaume. As noted in the demurrer, the complaint implies but does not state that defendants were negligent in supplying defective vines to Altamura. In pursuit of this theory, plaintiff alleges causes of action for (1) indemnification, (2) apportionment of fault, (3) interference with contractual relations, and (4) tort of another.

Defendants Beckstoffer Vineyards and Michul (“defendants”) demur to each cause of action on the grounds plaintiff has failed to state facts sufficient to constitute any of the asserted claims.

*Indemnity & Contribution:* Defendants contend the first and second causes of action fail because they are premature as a right to equitable indemnity does not arise until an underlying loss is paid (*Boyajian v. Ordoubadi* (2010) 184 Cal.App.4th 1020, 1027), and a right to contribution does not arise until the entry of a judgment against joint tortfeasors (*Coca-Cola Bottling Co. v. Lucky Stores, Inc.* (1992) 11 Cal.App.4th 1372, 1378). Further, one does not co-exist with the other:

Indemnity either imposes the entire loss on one of two or more tortfeasors or apportions it on the basis of comparative fault. Contribution, on the other hand, is a creature of statute and distributes the loss equally among all tortfeasors. The former requires a determination of fault on the part of the alleged indemnitor; the latter requires a showing that one of several joint tortfeasor judgment debtors has paid more than a pro rate share of a judgment. Where a right to indemnity exists there can be no right of contribution. (Code Civ. Proc. § 875, subd. (f).) A right of contribution can come into existence only after rendition of a judgment declaring more than one defendant jointly liable to the plaintiff. (Code Civ. Proc. § 875, subd. (c).)

(*Id.*)

Alternatively, defendants argue neither of these claims can survive without a basis on which to find they are joint tortfeasors with plaintiff, as the dispute between Altamura and plaintiff sounds in contract.

Considering plaintiff has neither alleged a judgment was entered against it in the Altamura proceeding in order to adequately allege contribution, nor has it alleged it has paid damages to Altamura and defendants should equitably share a portion of those damages in order to adequately allege equitable indemnity, the Court agrees with defendants' primary argument. In opposition, plaintiff challenges defendants' reliance on *Boyahjian v. Ordoubadi* (2010) 184 Cal.App.4th 1027 for the premise that plaintiff's equitable claims do not arise until after plaintiff has paid damages to Altamura. Plaintiff interprets *Boyahjian* as a rule by which the statute of limitations is measured. Plaintiff overstates *Boyahjian's* application.

In *Boyahjian*, as correctly explained by defendants, the court addressed whether a claim for indemnity could be discharged in *bankruptcy* even though a cause of action had not yet accrued because bankruptcy law provides for the discharge of contingent and unmatured claims. This analysis is inapplicable here. Referring to well-established law, the court in *Boyahjian* notes that "a cause of action for equitable indemnity arises only when the indemnitee actually incurs a loss by payment of the underlying claim or judgment..." (*Id.* at 1027, quoting *U.S. Cold Storage v. Matson Navigation Co.* (1984) 162 Cal.App.3d 1228, 1231.)

Plaintiff lodges an additional argument in opposition that the Court finds unpersuasive. plaintiff argues its equitable indemnity and contribution claims, if found insufficient, could be reframed as a claim for declaratory relief. Plaintiff argues, "[t]o the extent [it] seeks to resolve allocation of liability between the parties for those potential damages, its complaint effectively seeks declaratory relief [and] [s]uch claims are routinely brought before a judgment is entered or a settlement made." Without a conclusion to the Altamura matter, the Court disagrees that an actual controversy exists under Code of Civil Procedure § 1060.

Whether viewed as causes of action for equitable indemnity and contribution or declaratory relief, the Court concludes plaintiff has failed to state facts to adequately support the first and second causes of action. Accordingly, the Court SUSTAINS defendants' demurrers to the first and second causes of action WITHOUT LEAVE TO AMEND.

*Intentional Interference*: To allege interference with contractual relations, plaintiff must allege facts supporting (1) a valid contract between plaintiff and a third party, (2) defendant's knowledge of the contract, (3) defendant's intentional acts designed to induce a breach or disruption of the contractual relationship, (4) actual breach or disruption of the contractual relationship, and (5) resulting damage. (*Quellmane Co. v. Stewart Title Guaranty Co.* (1998) 19 Cal.4th 26, 55.) Defendants contend the plaintiff's complaint fails to adequately plead the third, fourth, and fifth elements.

Plaintiff alleges that "Altamura and Penterman entered into a contract pursuant to which Penterman performed management, development and farming services on the vineyard adjacent to Altamura's home. Defendants knew of that contract," "Altamura has withheld payment from Penterman under that contract," and "[t]o the extent that Altamura was justified in withholding payment from Penterman, defendants' conduct prevented performance or made performance more expensive or difficult."

Contrary to plaintiff's belief that these allegations support the claim, they do not. The only conduct addressed in the complaint is defendants' agreement to supply grafting materials to

Altamura and to graft the plants plaintiff agreed to care for. There is no allegation defendants *did not* supply grafting materials or graft the plants. Plaintiff simply alleges defendants' unspecified conduct got in the way of plaintiff's contractual obligations. Without specific facts to support the third element, it cannot be determined if plaintiff has adequately alleged the fourth element – actual breach or disruption. The facts alleged indicate defendants did indeed provide grafting materials and subsequently grafted the plants. Defendants' compliance with their contractual obligations cannot logically support plaintiff's claim without more. As drafted, the complaint fails to adequately support a cause of action for contractual relations.

The demurrer to the third cause of action is SUSTAINED WITH LEAVE TO AMEND.

*Tort of Another*: In its fourth cause of action, plaintiff alleges “tort of another,” which is nothing more than a theory of recovery as opposed to a separate tort. Plaintiff implicitly concedes this point in citing to *Prentice v. North American Title Guaranty Corp.* (1963) 59 Cal.2d 618, which explains the doctrine's relevance to payment of attorney's fees:

General rule: In the absence of some special agreement, statutory provision, or exceptional circumstances, attorney's fees are to be paid by the party employing the attorney. (Code Civ. Proc., § 1021; [case citations omitted].)

Exception: A person who through the tort of another has been required to act in the protection of his interests by bringing or defending an action against a third person is entitled to recover compensation for the reasonably necessary loss of time, attorney's fees, and other expenditures thereby suffered or incurred. [Citations omitted.]

(*Id.* at 620.)

While fees may ultimately be available to plaintiff if it succeeds in establishing its third cause of action, “tort of another” is not viable as a separate tort. Accordingly, the demurrer to the fourth cause of action is SUSTAINED WITHOUT LEAVE TO AMEND.

Based on the foregoing, the demurrer is sustained. The Court grants leave to amend as to the third cause of action, but denies leave to amend as to the remainder of the causes of action on the ground plaintiff has failed to show it can reasonably amend the complaint to satisfy pleading requirements. (*Silva v. Block* (1996) 49 Cal.App.4th 345, 349, citing, *Kennedy v. Baxter Healthcare Corp.* (1996) 43 Cal.App.4th 799, 808 [the burden of proving a reasonable possibility that the defect can be cured by amendment is on the plaintiff].)

(2) MOTION TO STAY

**TENTATIVE RULING:**

Defendants Beckstoffer Vineyards and David Michul's motion to stay proceedings is DENIED WITHOUT PREJUDICE.

Defendants move to stay this action pursuant to Code of Civil Procedure §§ 128(a), 1281.4, and the Court's constitutional power to control litigation before it.

Preliminarily, the Court considers Code of Civil Procedure § 1281.4 inapplicable as there is no evidence establishing the underlying Altamura-Penterman matter is in arbitration. The issue is whether a stay of this action is appropriate under Code of Civil Procedure § 128.

Defendants urge the Court to stay this action pursuant to Section 128(a)(3) and (8), which provide courts with the power “[t]o provide for the orderly conduct of proceedings before it, or its officers[,] and “[t]o amend and control its process and orders so as to make them conform to law and justice.”

They argue this action is premature not only for the reasons discussed in defendants’ demurrer, but also because ADR between Altamura and plaintiff has not yet begun. Thus, not only do they believe there is no legal basis on which plaintiff can pursue equitable indemnity or contribution at this time, there is no finding that plaintiff’s contract with Altamura has been disrupted as plaintiff alleges in its third cause of action.

As addressed in the Court’s ruling on defendants Beckstoffer Vineyards and Michul’s demurrer to the complaint, plaintiff’s causes of action for equitable indemnity and contribution are premature, arguably supporting a stay of the action. However, the Court has granted plaintiff leave to amend its cause of action for interference with contractual relations. In light of the ruling on the demurrer, the Court DENIES the motion to stay. This ruling is made without prejudice to reasserting this motion after a determination as to the viability of any amendment to the complaint.

**CIVIL LAW & MOTION CALENDAR – Hon. Victoria Wood, Dept. C (Historic Courthouse) at 2:00 p.m.**

**In the Matter of Flordeliz Morales**

**18CV000900**

PETITION FOR CHANGE OF NAME

**TENTATIVE RULING:** Pursuant to Code of Civil Procedure section 1277, the non-petitioning parent must be personally served with the petition and given 30 days’ notice of the hearing. The court file contains no proof of service on the minor’s father. Moreover, there is no proof of publication in the court file. If a proper proof of service and proof of publication are filed before the hearing, the petition will be granted. If no proof of service and proof of publication are filed, the matter will be continued to October 16, 2018, at 2:00 p.m. in Dept. C to allow time for proper service and publication.

.....  
**In the Matter of Maria Alvarado**

**18CV000914**

PETITION FOR CHANGE OF NAME

**TENTATIVE RULING:** The Court finds personal notice to the father cannot be reasonably accomplished based on the facts presented in the petition. The service by mail was

reasonably calculated to give notice to the father. Thus, notice has been properly published and no written objections have been filed. The petition is GRANTED without need for appearance.

.....  
**In the Matter of Guadalupe Lilibeth Loyola Rendon**

**18CV001022**

PETITION FOR CHANGE OF NAME AND GENDER

**TENTATIVE RULING:** The petition for change of name and gender is GRANTED without need for appearance. Petitioner shall file a certified copy of the Court's decree within 30 calendar days with the California Secretary of State. (Health & Safety Code, § 103435.)

The request to change petitioner's birth certificate is DENIED. Petitioner was born in Mexico, which means he likely has a Mexican birth certificate. The Court does not have the authority to order Mexico to issue a new birth certificate. If petitioner has a birth certificate issued by the State of California, he needs to appear and present it to the Court.