

TENTATIVE RULINGS

FOR: October 12, 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.

CIVIL LAW & MOTION CALENDAR – Hon. George V. Spanos, Dept. C (Historic Courthouse) at 2:00 p.m.

**Rang Dong Joint Stock Co. dba Rang Dong Winery
v. Angelena Checchi**

18CV000214

(1) DEMURRER TO THE CROSS-COMPLAINT

TENTATIVE RULING: Cross-defendant Rang Dong Winery’s demurrer to the first cause of action for breach of implied-in-fact contract/unjust enrichment on the ground of failure to state sufficient facts is **OVERRULED**. The difference between an express and implied agreement is “the terms of an express contract are stated in words, while those of an implied agreement are manifested by conduct.” (*Youngman v. Nevada Irrigation Dist.* (1969) 70 Cal.2d 240, 246.) “In pleading a cause of action on an agreement implied from conduct, only the facts from which the promise is implied must be alleged.” (*Id.* at pp. 246-47.) Cross-defendant argues cross-complainant Angelena Checchi “fails to allege any conduct whatever [sic] to support an inference” that there was an implied contract. (Dem. at p. 5:22-25.) No so.

On December 1, 2016, Checchi and cross-defendant entered into a remodel agreement.¹ (Cross-Compl., ¶ 9.) Under the remodel agreement, cross-defendant agreed to pay \$15,000 as a flat rate for the tasting room project, which would be completed within three months. (*Id.*, ¶ 10.) The parties agreed that the general contractor, electrician, landscaper, arborist, and others would work with Checchi to complete the project. (*Id.*, ¶ 11.) Checchi performed all duties and obligations under the agreement and strived to provide a tasting room within three months. (*Id.*, ¶ 12.)

¹ The agreement is not attached to the pleading as Exhibit A as represented in paragraph 9.

After the three-month term ended under the agreement, Checchi continued to work on the tasting room project. (*Id.*, ¶ 15.) Checchi provided services for cross-defendant such as: (1) determining competitive wine pricing; (2) designing employee uniforms; (3) marketing (working with magazines, industry events, public relations, and press); (4) developing a wine education program for customers; (5) meeting with sub-contractors and vendors (on the POS system, cheese and bread offerings, AT&T telecommunications, merchandise, and wine glasses); and (6) locating a 200 year-old carved teak front door with wall panels. Checchi specifically alleges cross-defendant, through its project manager, Mailynh Phan, assured Checchi that cross-defendant would compensate her for the additional services. (*Id.*) Phan, however, refused to compensate Checchi. (*Id.*)

The Court must assume these allegations to be true. Consequently, contrary to cross-defendant's argument, these allegations set forth circumstances to establish an implied agreement for Checchi to perform additional services and to pay her for the additional work she provided to cross-defendant. In other words, Checchi has pled an implied-in-fact contract and its breach. She is entitled to her opportunity to prove the allegations. The allegations withstand the demurrer.

Moreover, cross-defendant contends the parties already entered into an express agreement for Checchi to work on the testing room project under the remodeling agreement. According to cross-defendant, there cannot be a valid express contract and an implied contract each embracing the same subject but compelling different results. The allegations noted belie this contention; namely, Checchi continued to work on the tasting room project after the three-month window and provided various services for which she was promised payment. (*Id.*, ¶ 15.) There is no indication from these allegations that the express agreement and the implied agreement completely embraced the same subject.

Cross-defendant's demurrer to the first cause of action for breach of implied-in-fact contract/unjust enrichment on the ground it is impossible to ascertain from the pleading the terms of the contract is OVERRULED. The stated ground is not a statutory basis for demurrer. The statutory basis for demurrer is "[i]n an action founded upon a contract, it cannot be ascertained from the pleading whether the contract is written, is oral, or is implied by conduct." (Code Civ. Proc., § 430.10, subd. (g).) It is apparent from a review of the cross-complaint that Checchi alleges the implied-in-fact contract was implied by conduct. (Cross-Compl., ¶ 15 [alleging after the remodel agreement term ended, Checchi continued her best efforts and diligently worked on the tasting room project].) In addition, cross-defendant's stated ground for demurrer was not identified in the notice.

Cross-defendant shall file its answer within 10 calendar days of service of notice of entry of order.

(2) MOTION TO STRIKE PORTIONS OF THE CROSS-COMPLAINT

TENTATIVE RULING: Cross-defendant Rang Dong Winery's motion to strike paragraphs 24-26 and the prayer for exemplary and punitive damages is GRANTED WITHOUT LEAVE TO AMEND. Punitive damages are inappropriate for a claim based on a breach of contract. (See Civ. Code, § 3294.)

**PROBATE CALENDAR – Hon. Rodney Stone, Dept. E (Criminal Courts Bldg.-
1111 Third St.) at 3:00 p.m.**

Bruce Tucker Construction, Inc. v. The Reliant Group, et al.
The Reliant Group, Inc. v. Bruce Tucker Construction, Inc.

17CV000421
18CV000337

MOTION TO CLARIFY ORDER REGARDING MOTION TO ENFORCE SETTLEMENT AGREEMENT

TENTATIVE RULING: Plaintiff Bruce Tucker Construction, Inc.'s motion to clarify the order regarding the motion to enforce the settlement agreement is DENIED. The Court adopted its ruling on the motion to enforce settlement on May 8, 2018. The Court did not intend for the ruling to be "without prejudice"; hence why the motion was denied outright. Thereafter, plaintiff did not move for reconsideration and has introduced no new facts to alter the ruling.