

TENTATIVE RULINGS

FOR: October 27, 2017

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. Diane Price, Dept. F (Criminal Courts Bldg.-1111 Third St.)

Stacee Cootes v. Wyman Property Management, et al.

16CV001108

MOTION TO STRIKE (ANTI-SLAPP)

TENTATIVE RULING:

Defendant/cross-complainant Pear Tree Homeowners Association's motion to strike (anti-SLAPP) all causes of action is GRANTED. (See Code Civ. Proc. § 425.16.) The statute requires the Court to engage in a two-step process when determining whether defendant's anti-SLAPP motion should be granted. (*Rusheen v. Cohen* (2006) 37 Cal.4th 1048, 1056.)

Defendant has the initial burden of showing the challenged causes of action arise from an act in furtherance to a person's right to petition or free speech in connection with a public issue. (*Id.*) In determining whether a cause of action arises from protected activity, a court should "examine the principal thrust or gravamen" of the cause of action. (*Wang v. Wal-Mart Real Estate Bus. Trust* (2007) 153 Cal.App.4th 790, 802.) If the cause of action arguably arises out of both protected and unprotected activity, the court should determine whether the unprotected activity is merely incidental or collateral to what is essentially a cause of action based on protected activity.

(*Id.*) If defendant satisfies its initial burden, the burden shifts to plaintiff to show a probability of success on the merits of the challenged cause of action. (*Rusheen, supra*, 37 Cal.4th at p. 1056.) In order to establish the requisite probability of prevailing, plaintiff "must demonstrate that the complaint is both legally sufficient and supported by a sufficient prima facie showing of facts to sustain a favorable judgment if the evidence submitted by the plaintiff is credited."

(*Navellier v. Sletten* (2002) 29 Cal.4th 82, 88-89.) The probability of prevailing is tested by the same standard governing a motion for summary judgment. (*Taus v. Loftus* (2007) 40 Cal.4th 683, 714.)

Based on the arguments and evidence presented, defendant has made a prima facie showing that the lawsuit “arises from” its petition rights. The suit, ultimately, arises from plaintiff’s complaints to defendant, the board’s decision not to act on those complaints with assessment funds, and the board’s interpretation and application of the Declaration of Pear Tree Condominium. Here, like the defendants in *Damon v. Ocean Hills Journalism Club* (2000) 85 Cal.App.4th 468, 479-80, plaintiff/cross-defendant Stacey Cootes spoke out against defendant and its board on matters affecting all members of the association. Specifically, plaintiff complained about mold in the common area (of her unit), mold in the car port, and the excessive electricity charges. Defendant decided not to immediately fix these issues, and that decision impacted all association members, whether or not there was e.g., mold in the common area because the expenses would be borne by all members. Thus, under the rationale of *Damon*, plaintiff’s conduct in criticizing defendant’s actions was a matter of public concern within the meaning of section 425.16.

Turning to the second step, plaintiff argues she likely will prevail on her claims. Plaintiff’s opposition, however, is not helpful. For example, plaintiff states for the negligence and gross negligence causes of action that the evidence in support is contained in paragraphs 1-47 of plaintiff’s declaration. (Opp. at p. 12:27.) Not a single direct citation to the “admissible evidence” is provided. When the Court reviewed these paragraphs, hundreds of pages of exhibits are invoked. Indeed, the declaration contains over 600 pages of evidence. It is plaintiff’s duty to raise and explain the applicable evidence. It is not the Court’s role to cull through the massive amount of evidence presented for plaintiff’s benefit. (See *Okorie v. Los Angeles Unified Sch. Dist.* (2017) 14 Cal.App.5th 574, 600.) Even if the Court relies solely on the verified pleading, the opposition remains deficient. For instance, the Court is referred to paragraphs 47 and 52 for the causation element of the negligence claim. (Opp. at p. 12:23.) But paragraph 47 is perfunctory as it merely alleges “defendants were the proximate cause of damages to plaintiff” while paragraph 52 simply concludes “[a]s a result of all defendants ignoring plaintiff’s requests, she has suffered serious medical, mental, and economic damage.” In light of the woeful inadequacy of the opposition, the Court cannot conclude that plaintiff will likely prevail on her claims.

In light of this ruling, the Court need not reach defendant’s 42 evidentiary objections filed on October 24, 2017.

Defendants Wyman Property Management and Mindy Wyman request for joinder is GRANTED.

Plaintiff’s request for attorney’s fees for opposing is DENIED.