1. HENRY v. YANG, ET AL., 24CV2422

Application for *Pro Hac Vice* for Phillip D. Dorin

To date, there is no proof of service showing that the application was served upon the State Bar of California at its San Francisco office, or proof of payment of the application fee to the State Bar. (Cal. Rules of Court, Rule 9.40, subdivisions (c)(1), (e).)

TENTATIVE RULING # 1: APPEARANCES ARE REQUIRED AT 1:30 P.M., FRIDAY, FEBRUARY 14, 2025, IN DEPARTMENT FOUR.

2. PEOPLE v. FRAGRANICE INC., 24CV2330

Petition for Order to Abate Substandard Building and Appoint Receiver

TENTATIVE RULING # 2: APPEARANCES ARE REQUIRED AT 1:30 P.M., FRIDAY, FEBRUARY 14, 2025, IN DEPARMENT FOUR.

3. HIRSCHFELD v. AGUILA-SANCHEZ, 24CV2645

Petition to Confirm Arbitration Award

TENTATIVE RULING # 3: ABSENT OBJECTION, PETITION GRANTED AS REQUESTED. PETITIONER IS DIRECTED TO SUBMIT THE PROPOSED ENTRY OF JUDGMENT FOR THE COURT'S APPROVAL. NO HEARING ON THIS MATTER WILL BE HELD (*LEWIS v. SUPERIOR COURT* (1999) 19 CAL.4TH 1232, 1247), UNLESS A NOTICE OF INTENT TO APPEAR AND REQUEST FOR ORAL ARGUMENT IS TRANSMITTED ELECTRONICALLY THROUGH THE COURT'S WEBSITE OR BY TELEPHONE TO THE COURT AT (530) 573-3042 BY 4:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED. NOTICE TO ALL PARTIES OF AN INTENT TO APPEAR MUST BE MADE BY TELEPHONE OR IN PERSON. PROOF OF SERVICE OF SAID NOTICE MUST BE FILED PRIOR TO OR AT THE HEARING.

4. CHEN v. ESTATE OF FONG, ET AL., 24CV0326

Motion for Default Judgment to Quiet Title

Default was entered on December 19, 2024. Now, plaintiff moves for default judgment to quiet title.

Because of the unique nature of a quiet title action–seeking to declare rights "against all the world"–the normal procedural rules for a default judgment set forth in Code of Civil Procedure section 580 do not apply. (See *Harbour Vista, LLC v. HSBC Mortgage Services Inc.* (2011) 201 Cal.App.4th 1496, 1504–1509; *Nickell v. Matlock* (2012) 206 Cal.App.4th 934, 941–947.)

Under Code of Civil Procedure section 580, in a non-quiet-title action where a defendant was served by publication or in a noncontract case, after an entry of default and before a default judgment, the plaintiff must present evidence at a hearing (with witnesses or by documents) to prove up the claimed damages or other relief requested, and the defendant cannot participate in this hearing. (Code Civ. Proc., § 580; see *Sass v. Cohen* (2020) 10 Cal.5th 861, 871, 880; *Harbour Vista*, *supra*, 201 Cal.App.4th at pp. 1502, 1504.) In contrast, in a quiet title action, after a defendant defaults, the plaintiff must prove the merits of its claim and the grounds for the relief sought with admissible evidence at a live hearing in open court and the defendant has a right to participate at this hearing. (Code Civ. Proc., § 764.010; *Harbour Vista*, at pp. 1504–1509; *Nickell*, *supra*, 206 Cal.App.4th at pp. 941–947.)

This latter rule is contained in Code of Civil Procedure section 764.010, which states that in a quiet title action: "The court shall examine into and determine the plaintiff's title against the claims of all the defendants. The court shall not enter judgment by default but shall in all cases require evidence of plaintiff's title and hear such evidence as may be offered respecting the claims of any of the defendants, other than claims the validity of which is admitted by the plaintiff in the complaint. The court shall render judgment in accordance with the evidence and the law." (*Ibid.*)

In *Harbour Vista*, the trial court entered judgment in a quiet title action against a defaulting defendant after reviewing the plaintiff's prove-up papers in chambers. (*Harbour Vista*, *supra*, 201 Cal.App.4th at pp. 1500–1501.) The Court of Appeal reversed, observing Code of Civil Procedure section 764.010 leaves nothing "to the imagination" (*Harbour Vista*, at p. 1502) and "is about as straightforward as such language ever gets: 'The court shall not enter judgment by default' " (*id.* at p. 1499). Under this plain language, the *Harbour Vista* court held in a quiet title action after a default, the trial court is "obligated" to hold an "open court" evidentiary hearing "before it adjudicate[s] title" at which both plaintiff and the defaulting defendant are entitled to "participate." (*Id.* at p. 1500.) The court explained the Legislature "clearly does not want the court to adjudicate title on prima facie evidence, as would be allowed in an ordinary default prove-up. [¶] If a court holds a properly noticed evidentiary hearing and no defendant turns up, then the court renders judgment '*in accordance with the evidence and the law*,' *based on what it has before it*. This would not be a default judgment …." (*Id.* at p. 1508, some italics added.)

In sum, "the plaintiff [in a quiet title action] is not automatically entitled to judgment in its favor but must prove its case [against the defaulting defendant] in an evidentiary hearing with live witnesses and any other admissible evidence." (*Nickell*, *supra*, 206 Cal.App.4th at p. 947.)

TENTATIVE RULING # 4: APPEARANCES ARE REQUIRED AT 1:30 P.M., FRIDAY, FEBRUARY 14, 2025, IN DEPARTMENT FOUR TO SET AN EVIDENTIARY HEARING.

5. NAME CHANGE OF SCHOENFELDT, 24CV2706

OSC Re: Name Change

TENTATIVE RULING # 5: PETITION GRANTED AS REQUESTED.

6. NATSUM INVESTMENTS, LLC v. O'BRIEN, ET AL., 24CV2561

OSC Re: Preliminary Injunction

TENTATIVE RULING # 6: APPEARANCES ARE REQUIRED AT 1:30 P.M., FRIDAY, FEBRUARY 14, 2025, IN DEPARTMENT FOUR.

7. ON SKI RUN, LLC, ET AL. v. MOUNTAIN MEN, LLC, ET AL., 24CV1953

Motion to Strike

Pursuant to Code of Civil Procedure sections 435 and 436, plaintiffs / cross-defendants move to strike the following portions of defendants / cross-complainants' first-amended cross-complaint ("FACC"): (1) Paragraph 59 (under the third cause of action for libel), which reads: "Cross-Defendants' conduct has been carried out willfully, maliciously, fraudulently, and/or with a wanton disregard of Cross-Complainant's rights, entitling Cross-Complainants to Punitive Damages in an amount to be proven at trial;" and (2) the portion of Prayer for Relief, Number 1, that states, "and/or punitive damages."[1]

Cross-defendants' counsel declares he met and conferred with cross-complainants' counsel on January 6, 2025, via telephone, in compliance with Code of Civil Procedure section 435.5, subdivision (a). (Stephens Decl., ¶¶ 7–8.)

1. Relevant Background

Cross-complainant Mountain Men, LLC ("Mountain Men") is a limited liability company that owns the real property commonly known as 1169 Ski Run Boulevard in South Lake Tahoe, California, including Units 6A and 6B located thereon (the "Premises"). (FACC, ¶ 1.) Cross-defendants Thanya Starr ("Starr") and Supaporn Phillips ("Phillips") are commercial tenants at the Premises under a modified lease agreement with Mountain Men. (FACC, ¶ 20 & Ex. D.) Starr and Phillips run a restaurant at the Premises called "Thai on Ski Run" (the "Restaurant"). (FACC, ¶ 21.)

1.1. Underlying Incident

In August 2024, Mountain Men became aware that the Restaurant had been operating without a valid certificate of occupancy. (FACC, ¶ 21.) For this reason,

[1] The court notes that cross-defendants' motion does not challenge Paragraph 53 of the FACC, which also asserts a claim for punitive damages under the second cause of action for fraud.

Mountain Men notified Starr and Phillips that they were in breach of the lease agreement. (FACC, ¶ 21.) Mountain Men further noted that Starr and Phillips had failed to bring the Premises into compliance with the Americans with Disabilities Act. (FACC, ¶ 21.)

In response to the letter, Starr submitted a building permit application (which requires the owner's signature) to the City of South Lake Tahoe (the "City"). (FACC, ¶ 22.) On the application, Starr included Mountain Men's information without Mountain Men's knowledge or consent. (FACC, ¶ 22.)

The City issued a new building permit and new certificate of occupancy to cross-defendants. (FACC, ¶ 23.) Shortly thereafter, Mountain Men became aware that Starr had submitted the aforementioned building permit application. (FACC, ¶ 23.) Mountain Men asked the City why it had issued a permit without owner authorization, as required with all building permits in the City. (FACC, ¶ 24.) Mountain Men claims it did not make any request or demand to the City that the building permit or certificate of occupancy be revoked. (FACC, ¶ 24.) Nonetheless, a City employee acknowledged that "he had made a terrible mistake" and indicated that both permits would be revoked because they had been obtained without owner consent. (FACC, ¶ 24.)

1.2. Alleged Libel

On October 2, 2024, cross-defendants published a written statement on the Restaurant's Facebook social media page stating that cross-defendants' landlord had taken "deliberate action to cause [cross-defendants'] certificate of occupancy to be revoked." (FACC, ¶ 37.) Cross-complainants allege that cross-defendants' landlord is known to the general public in the City and the surrounding community to be cross-complainants. (FACC, ¶ 37.)

2. Request for Judicial Notice

Pursuant to Evidence Code section 452, subdivision (d), the court grants cross-defendants' request for judicial notice of Exhibit 7 (FACC).

For purposes of the instant motion, the court denies cross-defendants' request to take judicial notice of factual assertions in Exhibit 1, cross-defendants' complaint. (Code Civ. Proc., § 437, subd. (a) ["The grounds for a motion to strike shall appear on the face of the *challenged pleading* or from any matter of which the court is required to take judicial notice" (emphasis added)]; see *In re Joseph H.* (2015) 237 Cal.App.4th 517, 541–542 ["[w]e can take judicial notice of official acts and public records, but we cannot take judicial notice of the truth of the matters stated therein"]; see also, *City and County of San Francisco v. Strahlendorf* (1992) 7 Cal.App.4th 1911, 1913 [explaining that the court may not determine a motion to strike based on a party's declaration or factual representations made by an attorney in the motion papers].)

The court also denies the following requests for judicial notice because the requests present no issue for which judicial notice of these items is "necessary, helpful, or relevant" (see *Jordache Enterprises, Inc. v. Brobeck, Phleger & Harrison* (1998) 18 Cal.4th 739, 748, fn. 6): (1) Exhibit 2 (cross-defendants' memorandum of points and authorities in support of their motion for preliminary injunction); (2) Exhibit 3 (the court's September 26, 2024, injunction order); (3) Exhibit 4 (original cross-complaint); (4) Exhibit 5 (unlawful detainer complaint in Case No. 24UD0319); and (5) Exhibit 6 (cross-defendants memorandum of points and authorities in support of their motion to strike the unlawful detainer complaint in Case No. 24UD0319).

3. Legal Principles

A motion to strike is generally used to address defects appearing on the face of a pleading that are not subject to demurrer. (*Pierson v. Sharp Memorial Hospital* (1989) 216 Cal.App.3d 340, 342.) Further, "[t]he court may, upon a motion [to strike] …, or at any time in its discretion … [¶] … [s]trike out any irrelevant, false, or improper matter inserted in any pleading." (Code Civ. Proc., § 436, subd. (a).) Like a demurrer, the grounds for a motion to strike must appear on the face of the challenged pleading or from any matter which the court is required to take judicial notice. (Code Civ. Proc.,

§ 437, subd. (a).) On a motion to strike, the trial court must read the complaint as a whole, considering all parts in their context, and must assume the truth of all well-pleaded allegations. (*Courtesy Ambulance Service v. Superior Court* (1992) 8 Cal.App.4th 1054, 1519.)

4. Discussion

Civil Code section 3294 allows a plaintiff to recover punitive damages "[i]n an action for the breach of an obligation not arising from contract, where it is proven by clear and convincing evidence that the defendant has been guilty of oppression, fraud, or malice." (Civ. Code, § 3294, subd. (a).) For the purposes of awarding punitive damages, " '[m]alice' means conduct which is intended by the defendant to cause injury to the plaintiff or despicable conduct which is carried on by the defendant with a willful and conscious disregard of the rights or safety of others." (Civ. Code, § 3294, subd. (c)(1).) " 'Oppression' means despicable conduct that subjects a person to cruel and unjust hardship in conscious disregard of that person's rights." (Civ. Code, § 3294, subd. (c)(2).) " 'Fraud' means an intentional misrepresentation, deceit, or concealment of a material fact known to the defendant with the intention on the part of the defendant of thereby depriving a person of property or legal rights or otherwise causing injury." (Civ. Code, § 3294, subd. (c)(3).)

Cross-defendants argue the FACC is devoid of any factual assertions supporting a conclusion that they acted with oppression, fraud, or malice. "Rather, the FACC only alleges the Facebook Post was false and then contains boilerplate charging allegations that it was 'carried out willfully, maliciously, fraudulently, and/or with a wanton disregard of Cross-Complainants' rights.' " (Mtn. at 16:27–17:2, citing FACC, ¶¶ 55, 59.)

In opposition, cross-complainants assert that cross-defendants fail to acknowledge the allegations *incorporated by reference* in the third cause of action which, according to cross-complainants, sufficiently allege the existence of malice oppression, and/or fraud. (Opp. at 2:12–17, 4:10–5:19, citing FACC, ¶¶ 15–16, 21–27, 29, 31–37.) Cross-

complainants emphasizes that the FACC alleges cross-defendants made the defamatory statements "with knowledge of or reckless disregard for their falsity." (Opp. at 3:19–4:5, quoting FACC, ¶ 55.)

Further, cross-complainants argue that the facts alleged support a finding of "oppression" because "Cross-Complainants have had difficulty finding new tenants following such [Facebook] post, subjecting them to cruel and unjust hardship." (Opp. at 6:8–10.) However, as cross-defendants point out, this information is not alleged in the FACC and is not subject to judicial notice.

Overall, the court finds that none of the allegations in the FACC rise to the level of oppression, fraud, or malice. The court grants the motion to strike with leave to amend.

Lastly, the court briefly addresses the second argument raised by cross-defendants: accepting the factual allegations of *cross-defendant's complaint* as true, cross-defendants cannot be liable for punitive damages under Civil Code section 3294 where they have alleged a complete defense to the libel cause of action (i.e., that cross-complainants *did* cause the temporary certificate of occupancy to be revoked (Compl., ¶ 37)). (See *Smith v. Maldonado* (1999) 72 Cal.App.4th 637, 646 ["[i]n all cases of alleged defamation, whether libel or slander, the truth of the offensive statements or communication is a complete defense against civil liability, regardless of bad faith or malicious purpose"].) However, as previously discussed, the court denies cross-defendants' request to take judicial notice of the factual allegations in cross-defendants' complaint for the purpose of the instant motion.

TENTATIVE RULING # 7: THE MOTION IS GRANTED WITH LEAVE TO AMEND. DEFENDANTS / CROSS-COMPLAINANTS SHALL FILE THEIR SECOND-AMENDED CROSS-COMPLAINT WITHIN 10 DAYS AFTER THE DATE OF SERVICE OF THE NOTICE OF ENTRY OF ORDER. NO HEARING ON THIS MATTER WILL BE HELD (*LEWIS v. SUPERIOR COURT* (1999) 19 CAL.4TH 1232, 1247), UNLESS A NOTICE OF INTENT TO APPEAR AND REQUEST

FOR ORAL ARGUMENT IS TRANSMITTED ELECTRONICALLY THROUGH THE COURT'S WEBSITE OR BY TELEPHONE TO THE COURT AT (530) 573-3042 BY 4:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED. NOTICE TO ALL PARTIES OF AN INTENT TO APPEAR MUST BE MADE BY TELEPHONE OR IN PERSON. PROOF OF SERVICE OF SAID NOTICE MUST BE FILED PRIOR TO OR AT THE HEARING.

8. STATE FARM MUT. AUTO. INS. CO. v. MUNOZ, ET AL., 24CV0751

(A) Motion to Deem Facts Admitted as to Defendant Munoz

(B) Motion to Deem Facts Admitted as to Defendant Lake Taxi, LLC

A party served with requests for admission must serve a response within 30 days. (Code Civ. Proc., § 2033.250.) Failure to serve a response entitles the requesting party, on motion, to obtain an order that the genuineness of all documents and the truth of all matters specified in the requests for admission be deemed admitted. (Code Civ. Proc., § 2033.280, subd. (b).) When such a motion is made, the court must grant the motion and deem the requests admitted unless it finds that prior to the hearing, the party to whom the requests for admission were directed has served a proposed response that is in substantial compliance with the provisions governing responses. (Code Civ. Proc., § 2033.280, subd. (c); *St. Mary v. Superior Court* (2014) 223 Cal.App.4th 762, 776, 778; see also *Demyer v. Costa Mesa Mobile Home Estates* (1995) 36 Cal.App.4th 393, 395–396 [“two strikes and you’re out”].)

In this case, plaintiff’s counsel declares that Requests for Admission (Set One) were electronically served upon defendants Munoz and Lake Taxi, LLC, respectively, on August 12, 2024. (Espinosa Decl., ¶ 1.) Defendants each served an unverified response on September 20, 2024. (Espinosa Decl., ¶ 3.) To date, however, neither defendant has served a verified response. (Espinosa Decl., ¶ 5.) “Unsworn responses are tantamount to no responses at all. [Citation.]” (*Appleton v. Superior Court* (1988) 206 Cal.App.3d 632, 636.)

The motions are granted. Having read and considered the declaration from plaintiff’s counsel, the court finds that $460.00 against each defendant is a reasonable sanction under the Civil Discovery Act.

TENTATIVE RULING # 8: BOTH MOTIONS TO DEEM MATTERS ADMITTED ARE GRANTED. DEFENDANT MUNOZ AND DEFENDANT LAKE TAXI, LLC, MUST EACH PAY PLAINTIFF

$460.00 NO LATER THAN 30 DAYS FROM THE FILING OF PROOF OF SERVICE OF THE NOTICE OF ENTRY OF ORDER. NO HEARING ON THIS MATTER WILL BE HELD (*LEWIS v. SUPERIOR COURT* (1999) 19 CAL.4TH 1232, 1247), UNLESS A NOTICE OF INTENT TO APPEAR AND REQUEST FOR ORAL ARGUMENT IS TRANSMITTED ELECTRONICALLY THROUGH THE COURT'S WEBSITE OR BY TELEPHONE TO THE COURT AT (530) 573-3042 BY 4:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED. NOTICE TO ALL PARTIES OF AN INTENT TO APPEAR MUST BE MADE BY TELEPHONE OR IN PERSON. PROOF OF SERVICE OF SAID NOTICE MUST BE FILED PRIOR TO OR AT THE HEARING.