

TENTATIVE RULINGS

FOR: April 18, 2019

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. Monique Langhorne, Dept. B (Historic Courthouse) at 8:30 a.m.

Conservatorship of Sarah Madeline Hight

17PR000255

REVIEW HEARING

TENTATIVE RULING: The matter is continued to May 31, 2019, at 8:30 a.m. in Dept. B to allow the conservator to file: (1) Notice of Conservatee’s Rights (Judicial Council form GC-341) mailed to relatives of the proposed conservatee within the second degree; and (2) Determination of Conservatee’s Appropriate Level of Care (Judicial Council form GC-355).

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Estate of Terrence R. McBride

19PR000067

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

TENTATIVE RULING: GRANT petition. Within 10 calendar days, petitioner shall mail a copy of the petition to Darien Vaught at the address listed in the request for special notice.

**CIVIL LAW & MOTION CALENDAR – Hon. Monique Langhorne, Dept. B
(Historic Courthouse) at 8:30 a.m.**

Jack Daniels, et al. v. Alyssa Samrick, et al.

18CV001467

DEMURRER TO FIRST AMENDED COMPLAINT

TENTATIVE RULING: The demurrer of Defendant Alyssa Samrick (Samrick) to Plaintiff's third cause of action for breach of fiduciary duty, as set forth in the First Amended Complaint, is SUSTAINED with leave to amend. Defendant State Farm General Insurance Company's (State Farm) demurrer to the same cause of action is SUSTAINED with leave to amend.

Plaintiff home owners are suing Defendant insurance agent/broker (Samrick) and Defendant insurer (State Farm) for damages arising out of the destruction of their home by fire. The Complaint sets out causes of action for professional negligence, negligent misrepresentation, and breach of fiduciary duty.

A demurrer is treated as “admitting all material facts properly pleaded, but not contentions, deductions or conclusions of fact or law.” (*Blank v. Kirwan* (1985) 39 Cal.3d 311, 318.) “A demurrer tests only the legal sufficiency of the pleading. It admits the truth of all material factual allegations in the complaint; the question of plaintiff's ability to prove these allegations, or the possible difficulty in making such proof does not concern the reviewing court.” (*Comm. on Children's Television, Inc. v. Gen. Foods Corp.* (1983) 35 Cal.3d 197, 213-14.) In reviewing a demurrer, the court must “construe the allegations of a complaint liberally in favor of the pleader.” (*Skopp v. Weaver* (1976) 16 Cal.3d 432, 438.)

As Plaintiff correctly argues, case law provides that insurance agent/brokers owe certain, specific fiduciary duties to insureds. (*E.g.* “the avoidance of conflict of interest, self-dealing, excessive compensation, etc.” *Mark Tanner Construction v. Hub International Insurance Services* (2014) 224 Cal.App.4th 574, 586, quoting *Croskey et al.*, Cal. Practice Guide: Insurance Litigation (The Rutter Group 2013) ¶ 11:166, p. 11-40 (rev. # 1, 2011).) To state a cause of action for breach of fiduciary duty, “plaintiffs must state facts sufficient to establish that defendants bore a fiduciary duty to plaintiffs and that defendants violated that duty.” (*Skopp v. Weaver* (1976) 16 Cal.3d 432, 436.)

However, the gravamen of Plaintiffs' third cause of action is not simply that Defendants owed, and then breached, specific fiduciary duties. Rather, it is that Defendants *were fiduciaries* of Plaintiffs, suggesting that Defendants owed to Plaintiffs the full spectrum of duties that a fiduciary owes its principal. “As a result of [the alleged circumstances and actions by defendants] a fiduciary relationship arose between Plaintiffs and Defendants.” (First Amended Complaint at 10:5, 11-12.) Plaintiffs third cause of action goes on to allege that the typical duties of a fiduciary flowed from this relationship. “As a result of this fiduciary relationship, Defendants were required to act with the utmost good faith and urgency for the benefit of Plaintiffs and to do so with an undivided duty of loyalty and a duty to fully disclose all material

facts concerning Plaintiffs’ insurance coverages and the transactions performed by Defendants for Plaintiffs that might impact Plaintiffs’ interests and decisions.” (*Id.* at 10:19-22.)

With respect to Defendant Samrick, “other than those circumstances involving the handling [of] an insured’s money, a broker’s duty – whether or not phrased as a fiduciary duty – is no greater than the duty to use reasonable care and diligence in procuring insurance.” (*Mark Tanner Construction v. Hub International Insurance Services* (2014) 224 Cal.App.4th 574, 586.)

Similarly, with respect to State Farm, the Supreme Court has held that while the insurer-insured relationship is one involving heightened duties that are in some ways akin to fiduciary duties, it is not a true fiduciary relationship. (*Vu v. Prudential Property & Casualty Ins. Co.* (2001) 26 Cal.4th 1142, 1151.) The nature of the relationship has “led the courts to impose ‘special and heightened’ duties, but ‘while these ‘special’ duties are akin to, and often resemble, duties which are also owed by fiduciaries, the fiduciary-like duties arise because of the unique nature of the insurance contract, *not* because the insurer *is* a fiduciary.” (*Id.* quoting *Love v. Fire Ins. Exchange* (1990) 221 Cal.App.3d 1136, 1148.)

Pursuant to these holdings, the duties owed by either (a) one acting as an insurance broker/agent, or (b) an insurer, to an insured, are limited. They do not, as Plaintiffs allege, include the full range of duties owed by a fiduciary to a principal.

Moreover, Plaintiffs present no authority providing that either broker/agent or insurer owes an insured a duty of “undivided loyalty,” and/or “a duty to fully disclose all material facts concerning Plaintiffs’ insurance coverage and transactions performed by Defendants for Plaintiffs that might impact Plaintiffs’ interests and decisions.”

Based on the foregoing, the Court finds that the First Amended Complaint fails to allege facts sufficient to sustain a cause of action for breach of fiduciary duty.

The Court must grant leave to amend where there is any reasonable possibility that Plaintiff can state a valid cause of action. (*Goodman v. Kennedy* (1976) 18 Cal.3d 335, 349.) The Court concludes that it remains reasonably possible to state a valid cause of action for breach of specific fiduciary duties against Defendant Samrick, and reasonably possible to allege that State Farm should be vicariously liable for such breach, and therefore grants Plaintiffs 10 days’ leave to amend the Complaint.

The notice of motion does not provide notice of the Court’s tentative ruling system as required by Local Rule 2.9. Defendants’ counsel is directed to contact Plaintiffs’ counsel forthwith and advise Plaintiffs’ counsel of Local Rule 2.9 and the Court’s tentative ruling procedure. If Defendants’ counsel is unable to contact Plaintiffs’ counsel prior to the hearing, Defendants’ counsel shall be available at the hearing, in person or by telephone, in the event Plaintiffs’ counsel appears without following the procedures set forth in Local Rule 2.9.

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**Malina Kindt v. Concesionaria Vuela Compania
de Aviacion S.A.P.I. de C.V., et al**

19CV000373

MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT

TENTATIVE RULING: The motion for preliminary approval of class action settlement is GRANTED. The Court will sign the proposed order and set in paragraph 22 a final approval hearing for September 17, 2019, at 8:30 a.m. in Dept. B.