

TENTATIVE RULINGS

FOR: May 5, 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.

PROBATE CALENDAR – Hon. Rodney Stone, Dept. C (Historic Courthouse)

Conservatorship of Eric Andersen

26-36271

STATUS UPDATE AS TO CONSERVATORSHIP TRANSFER

APPEARANCE REQUIRED

CIVIL LAW & MOTION CALENDAR – Hon. Rodney Stone, Dept. C (Historic Courthouse)

James Baskett v. Raja Development Company, Inc., et al.

16CV001003

1) CROSS-DEFENDANT JAMES BASKETT'S DEMURRER TO THE THIRD CAUSE OF ACTION (FOR FRAUD) OF THE CROSS-COMPLAINT FILED BY RAJA DEVELOPMENT COMPANY, INC., JACKSON STREET WINE WAREHOUSE, LLC, AND CARTER RANDALL CALLAHAN

TENTATIVE RULING: Cross-Defendant's Demurrer is SUSTAINED WITH LEAVE TO AMEND. The requirements for pleading fraud in most cases is well established: fraud must be pled specifically; general and conclusory allegations do not suffice. Thus the policy of liberal construction of the pleadings will not ordinarily be invoked to sustain a pleading defective in any material respect. (*Morgan v. AT&T Wireless Services, Inc.* (2009) 177 Cal.App.4th 1235, 1261-1262 (internal quotations and citations omitted).) This particularity requirement necessitates pleading facts which show how, when, where, to whom, and by what means the representations were tendered. (*Id.* at p. 1262, (internal quotations and citations omitted).) If a fraud claim is based upon failure to disclose, and the duty to disclose arises from the making of representations that were misleading or false, then those allegations should be described. (*Id.* (internal quotations and citations omitted).) The Cross-Complaint fails to allege how, when, where, to whom, and by what means the representations were made that Cross-Complainants relied upon. Cross-Complainants cite to *Comm. on Children's Television, Inc. v. General Foods Corp.* (1983) 35

Cal.3d 197 in opposition, but that case is factually dissimilar, and even the Court in that case stated a trial court could require plaintiff to allege a representative selection of statements upon which the misrepresentation claim was based. Cross-Complainant has not pleaded any specific statements.

Any amended cross-complaint shall be filed and served within 10 days of the date Cross-Defendant serves notice of entry of the court's order. (Code Civ. Proc., § 472b.)

2) CROSS-DEFENDANT JAMES BASKETT'S MOTION TO STRIKE PUNITIVE DAMAGES ALLEGATIONS, AND PUNITIVE DAMAGES PRAYER FOR RELIEF, AS TO THE SECOND CAUSE OF ACTION (FOR BREACH OF FIDUCIARY DUTY) OF THE CROSS-COMPLAINT FILED BY RAJA DEVELOPMENT COMPANY, INC., JACKSON STREET WINE WAREHOUSE, LLC, AND CARTER RANDALL CALLAHAN

TENTATIVE RULING: Cross-Defendant's Motion is GRANTED WITH LEAVE TO AMEND. To seek punitive damages, Cross-Complainants must allege facts supporting a conclusion that Cross-Defendant acted with oppression, fraud or malice. (*Smith v. Superior Court* (1992) 10 Cal.App.4th 1033, 1042. The Cross-Complaint fails to allege such facts.

Any amended Cross-Complaint shall be filed and served within 10 days of the date Cross-Defendant serves notice of entry of the court's order.

3) DEMURRER BY CROSS-DEFENDANTS BRAD BRANAGAN, BRAD BRANAGAN INSURANCE AGENCY, INC., AND WINE COUNTRY INSURANCE SERVICES TO SEVENTH CAUSE OF ACTION OF CROSS-COMPLAINT

TENTATIVE RULING: The Demurrer is SUSTAINED WITH LEAVE TO AMEND. Cross-Complainants have not alleged facts supporting a claim for breach of fiduciary duty. Cross-Complainants have alleged that Cross-Defendants were Cross-Complainants' insurance broker. The California Supreme Court has determined that "[t]he insurer-insured relationship, however, is not a true fiduciary relationship in the same sense as the relationship between trustee and beneficiary, or attorney and client (see *Croskey et al.*, Cal. Practice Guide: Insurance Litigation (The Rutter Group 2000) ¶ 11:150, p. 11-31.)" (*Vu v. Prudential Property & Casualty Insurance Company* (2001) 26 Cal.4th 1142, 1150 (*Vu*)). Subsequently, in *Hydro-Mill Co., Inc. v. Hayward, Tilton & Rolapp Ins. Associates, Inc.* (2004) 115 Cal.App.4th 1145, 1158, the Court of Appeal, in reviewing *Vu* and *Eddy v. Sharp* (1988) 199 Cal.App.3d 858, reasoned that "[i]f an insurer is not a fiduciary, then arguably, neither is a broker." The Court of Appeal noted that while a broker was not a fiduciary, it may have fiduciary duties in connection with particular financial transactions. (*Id.*) Cross-Complainants have not alleged Cross-Defendants breached their fiduciary duties in connection with any particular financial transactions.

Furthermore, Cross-Complainants' Seventh Cause of Action for Breach of Fiduciary Duty relies on the same allegations as Cross-Complainants' Sixth Cause of Action for Professional Negligence. This makes the breach of fiduciary duty claim duplicative, and could provide another basis for demurrer (see *Broadway Victoria, LLC v. Norminton, Wiita & Fuster* (2017 Cal. App. LEXIS 355)), although Cross-Defendants understandably did not raise this issue until their Reply.

Any amended cross-complaint shall be filed and served within 10 days of the date Cross-Defendants serve notice of entry of the court's order. (Code Civ. Proc., § 472b.)