

**Judge Benson – Law & Motion – Wednesday, May 22, 2024 @ 9:00 AM
TENTATIVE RULINGS**

1. 20CV00146 Lopez, Jesus E. Chan v. Save Mart Supermarkets

EVENT: Petition to Compromise Claim of Minor (Continued from April 10)

The Minor's Compromise is approved with attorney's fees reduced to \$1,200. Costs are awarded in the amount of \$1,890.06.

2. 21CV02353 Kowalski, Jessee v. General Motors, LLC

EVENT: General Motors LLC's Motion for Summary Judgment or in the Alternative, Summary Adjudication

(Continued from August 16, 2023 and January 31, 2024)

This motion is continued to September 18, 2024 at 9:00am in consideration of *Rodriguez v. FCA USA* which is pending in the California Supreme Court, case no. S274625. Discovery is stayed in this case pending the continued hearing. Should *Rodriguez* be decided sooner, either party may file a notice with the Court requesting advancement of the hearing.

3-10. 22CV02947 Mateo, Sandee Shannelle v. Deer Creek Surgery Center, LLC

EVENT: (1) Plaintiff's Motion to Compel Defendant Deer Creek Surgery Center, LLC, to Provide Responses to Form Interrogatories, Set One, and for an Award of Monetary Sanctions;

(2) Plaintiff's Motion to Compel Defendant Deer Creek Surgery Center, LLC, Inc. to Provide Responses to Form-Interrogatories-Employment;

(3) Plaintiff's Motion to Compel Defendant Deer Creek Surgery Center, LLC to Provide Responses to Special Interrogatories, Set One, and for an Award of Monetary Sanctions;

(4) Plaintiff's Motion to Compel Defendant Deer Creek Surgery Center, LLC to Provide Responses to Request For Production of Documents, Set One, and for an Award of Monetary Sanctions;

(5) Plaintiff's Motion to Compel Defendant Interventional Pain Physicians, Inc. to Provide Responses to Form-Interrogatories-Employment;

(6) Plaintiff's Motion to Compel Defendant Interventional Pain Physicians, Inc. to Provide Responses to Request For Production of Documents, Set One, and for an Award of Monetary Sanctions;

(7) Plaintiff's Motion to Compel Defendant Interventional Pain Physicians, Inc. to Provide Responses to Special Interrogatories, Set One, and for an Award of Monetary Sanctions;

(8) Plaintiff's Motion to Compel Defendant Interventional Pain Physicians, Inc. to Provide Responses to Form Interrogatories, Set One, and for an Award of Monetary Sanctions;

Plaintiff's (8) discovery motions to compel responses from Defendants Deer Creek Surgery Center, LLC and Interventional Pain Physicians, Inc. are all GRANTED. Sanctions are imposed against Defendant Deer Creek Surgery Center, LLC and Interventional Pain Physicians, Inc. in the total amount of \$1,000 each. (No sanctions imposed against defense counsel)

The Court will sign the proposed orders.

11-12. 23CV01638 Holley, Cindy v. Homecomings Financial Network, Inc. et al.

EVENT: (1) Bank of America, N.A.'s demurrer to Plaintiff's Complaint

(2) Defendants Specialized Loan Servicing, LLC and FirstKey Master funding 2021-A Collateral Trust, U.S. Bank Trust National Association as Collateral Trustee (erroneously sued as U.S. Bank National Association) Demurrer to Plaintiff's Complaint

BANK OF AMERICA DEMURRER

Bank of America, N.A.'s demurrer to Plaintiff's Complaint is SUSTAINED WITHOUT LEAVE TO AMEND and is unopposed.

Bank of America's Request for Judicial Notice is GRANTED.

Breach of Contract

The Complaint does not clearly allege that Bank of America was a party to any contract. The Complaint does not attach a copy of any contract nor does it recite the express terms of the contract so that the scope of any covenants could be understood.

Negligence

The negligence cause of action fails as a matter of law. The Complaint alleges defendants “ ... had a duty of care to ensure her contractual rights would be protected.” This is incompatible with *Sheen v. Wells Fargo Bank, N.A.* (2022) 12 Cal.5th 905, 924 which states the exact opposite – a plaintiff has no tort remedies that arise from contractual obligations.

Bad Faith/Breach of Contract (Count Three)

The complaint does not allege Defendant Bank of America instituted foreclosure proceedings nor does it allege facts describing why foreclosure proceedings were improper.

Wrongful Foreclosure

As Defendant correctly notes, an allegation of tender of the amount of the secured indebtedness is required for a wrongful foreclosure claim, see *Abdallah v. United Savings Bank*, (1996) 43 Cal. App. 4th 1101, 1109. Not only does the Complaint not allege tender, it appears to allege Plaintiff could not make payments due to financial hardships.

NIED

The claim fails for the same reason negligence fails – no tort remedies for obligations arising out of contract.

IIED

The claim fails for the same reason negligence fails – no tort remedies for obligations arising out of contract.

Injunctive Relief

It is well settled that injunctive relief is not a cause of action, see *Ivanoff v. Bank of America, N.A.* (2017) 9 Cal.App.5th 719, 734.

Defendant Bank of America shall prepare and submit a form of order consistent with this ruling within two weeks.

FIRSTKEY DEMURRER

Defendants Specialized Loan Servicing, LLC and FirstKey Master funding 2021-A Collateral Trust, U.S. Bank Trust National Association as Collateral Trustee (erroneously sued as U.S. Bank National Association) Demurrer to Plaintiff's Complaint is SUSTAINED WITHOUT LEAVE TO AMEND and is unopposed.

Defendants' request for judicial notice is GRANTED.

Breach of Contract

The Complaint does not clearly allege Defendants were a party to any contract. The Complaint does not attach a copy of any contract nor does it recite the express terms of the contract so that the scope of any covenants could be understood.

Negligence

The negligence cause of action fails as a matter of law. The Complaint alleges defendants " ... had a duty of care to ensure her contractual rights would be protected." This is incompatible with *Sheen v. Wells Fargo Bank, N.A.* (2022) 12 Cal.5th 905, 924 states the exact opposite – a plaintiff has no tort remedies that arise from contractual obligations.

Bad Faith/Breach of Contract (Count Three)

The complaint does not allege Defendants instituted foreclosure proceedings nor does it allege facts describing why foreclosure proceedings were improper.

Wrongful Foreclosure

As Defendants correctly note, an allegation of tender of the amount of the secured indebtedness is required for a wrongful foreclosure claim, see *Abdallah v. United Savings Bank*, (1996) 43 Cal. App. 4th 1101, 1109. Not only does the Complaint not allege tender, it appears to allege Plaintiff could not make payments due to financial hardships.

NIED

The claim fails for the same reason negligence fails – no tort remedies for obligations arising out of contract.

IIED

The claim fails for the same reason negligence fails – no tort remedies for obligations arising out of contract.

Injunctive Relief

It is well settled that injunctive relief is not a cause of action, see *Ivanoff v. Bank of America, N.A.* (2017) 9 Cal.App.5th 719, 734.

Defendants shall prepare and submit a form of order consistent with this ruling within two weeks.

13. 23CV02092 Scott, Nia Nichole et al. v. Forrest, Jarrod Royce

EVENT: Plaintiff's Amended Motion to Compel Defendant Jarrod Royce Forrest to Provide Further Responses to Requests For Admissions

Plaintiff's Amended Motion to Compel Defendant Jarrod Royce Forrest to Provide Further Responses to Requests For Admissions is GRANTED. Further responses are required which comply with CCP § 2033.220(c). The responses shall be provided within 10 days of this order. The Court will sign the proposed order with these notations.

14. 20CV01510 Ortega, Ruben et al. v. Puig-Palomar, Miguel, MD et al.

EVENT: Motion to Advance Date of Exchange of Expert Witness Information

Motion to Advance Date of Exchange of Expert Witness Information is GRANTED in PART. The Court finds good cause to advance the exchange of expert witness information to December 1, 2024. Plaintiffs shall prepare and submit the form of order within 2 weeks.

15. **20CV01884 Tyler Edwards, Inc. v. McCain, Kevin et al.**

EVENT: Motion for an Award of Attorney Fees to Cross-Defendants Tyler J. Edwards and James B. Edwards

The March 6, 2024 Order Tolloed the 60 Day Time Period for Filing This Motion

When a judgment is revised, whether the revised judgment tolls the 60-day period depends on “whether the revised judgment results in a ‘substantial modification’ of the judgment.” (*Ellis v. Ellis*, (2015) 235 Cal. App. 4th 837, 842) There is no substantial modification “if ‘a party can obtain the desired relief from a judgment before it is amended ...’ (*Id*)

Such is not the case here. Tyler and James Edwards could not have filed the instant motion seeking attorney fees until the judgment, which imposed attorney fees against Tyler and James, was corrected. The Court did not make that correction until its March 6, 2024 order. Consequently, the March 6, 2024 order was a substantial modification of the judgment. As a result, the 60-day timeframe for filing this motion did not begin until March 6, 2024. Thus, the motion is timely.

Even if the March 6 Order Was Not a Substantial Modification, Good Cause Exists to Permit the Late Filing of This Motion

In *Lewow v. Surfside III Condominium Owners Assn., Inc.*, (2012) 203 Cal. App. 4th 128, the Court found the question of whether bankruptcy tolled the 60-day time period was “complex and debatable”. The Court noted “Good cause would have been counsel’s mistake of law in believing that the bankruptcy stay tolled the statutory 60-day period.” (*Id* at p. 135)

Here, whether the March 6 order tolled the 60-day period is at least debatable. Thus, the Court finds good cause exists to permit the late filing, which was 3 days late.

The Individual Edwards Defendants Were Prevailing Parties and are Legally Entitled to Attorney Fees

The McCains rely on *Frog Creek Partners, LLC v. Vance Brown, Inc.* (2012) 206 Cal.App.4th 515 for the proposition there can only be one prevailing party in the context of contractual attorney fees. However, *Frog Creek* only concerned two competing parties, i.e. a plaintiff and a defendant. Footnote 1 to *Frog Creek*:

We are not in this case confronted with a contract involving more than two parties and have not considered how that would affect the application of Civil Code section 1717.

The facts before us are similar to *Burkhalter Kessler Clement & George LLP v. Hamilton*, 19 Cal. App. 5th 38, 44. There the sublessee, which was an LLC, was sued for breach of

the lease with sublessor. The sublessor also name the managing partner of the LLC as a defendant on an alter ego theory. The managing partner obtained a judgment of dismissal and claimed he was entitled to contractual attorney fees.

In finding the managing partner was entitled to attorney fees, the Fourth District Court of Appeal noted the alter ego claim “must be separately examined to determine the “prevailing party” as between those two litigants.” (Id at p. 45) [Emphasis Added] Thus, the fact that the McCains may have, in the large scheme of things, obtained the greater recovery of all the litigants in light of their success against Tyler Edwards Inc. is not relevant.

Rather, the only relevant consideration is who was the prevailing party between the McCains and the individual Edwards defendants. Because the individual Edwards defendants prevailed on alter ego and fraud, the only legal theories asserted against them, they are the prevailing parties for purposes of this motion. As a result, pursuant to *Burkhlater*, the individual Edwards defendants are legally entitled to attorney fees.

Attorney Fee Amount

Tyler and James Edwards are awarded attorney fees as against Kevin and Sarah McCain in the amount of \$72,314.25. The Court notes it has reduced the number of hours allocated to trial prep. The Court finds 243 hours is not reasonable for a court trial that lasted no longer than 28 hours. Further the Court has applied an hourly rate of \$350.00 per hour.

The Edwards parties shall prepare and submit the form of order within 2 weeks.

16. 24CV00857 In re: Das, Pinak

EVENT: Change of name (minor)

The Court is in receipt of the proof of publication and will sign the decree provided.

17. 24CV00928 In re: Mills, Edward Richard

EVENT: Change of name (adult)

There is no proof of publication on file. Upon the filing of the proof of publication, the Court will sign the decree provided.

18. 24CV00953 In re: Skidmore, Tara Florene

EVENT: Change of name (minor)

There is no proof of publication on file. Upon the filing of the proof of publication, the Court will sign the decree provided.

19. 24CV00970 In re: MacNeill, Kaci

EVENT: Change of Name (minor)

There is no proof of publication on file. Upon the filing of the proof of publication, the Court will sign the decree provided.

20. 24CV00134 In re: Spaeth, Mary

EVENT: Change of name (adult) (Continued from 5/8/24)

There is no proof of publication on file. Upon the filing of the proof of publication, the Court will sign the decree provided.

21. 23CV03209 Roles, Danny et al v. Hughes, Joseph B et al.

EVENT: Demurrer to Complaint (Continued from May 8, 2024)

Demurrer to Complaint is OVEERULED. Defendant shall file and serve an answer within 20 days of this order.

Preliminarily, the Court notes the moving papers (as well as the reply) introduce extrinsic matter such as the allegation that decedent lived at defendant's house and that decedent had extensive experience with guns as a hunter. None of those allegations are within the complaint and thus cannot be considered by the Court on demurrer.

As to the merits, the Court finds *Lucas v. City of Long Beach* (1976) 60 Cal.App.3d 341 distinguishable from this case, at least for purposes of demurrer. Lucas involved a suicide as the result of involuntary intoxication and whether the decedents voluntary intoxication was a superseding cause. Whether the suicide was foreseeable from defendant's perspective was not an issue for the Court of Appeal in that case.

This case involves suicide resulting from decedent's alleged psychological condition which was allegedly known to Defendant. As framed, the Complaint raises the question of whether, based on Defendant's alleged knowledge of Plaintiff's psychological condition, decedent's suicide was foreseeable. Generally speaking, such an issue is a question of fact, see *Green v. Healthcare Services, Inc.* (2021) 68 Cal.App.5th 407 (distinguishing *Lucas* from the issue of foreseeability)

Defendant has directed the Court's attention to *Tate v. Canonica* (1960) 180 Cal.App.2d 898. However, the facts in *Tate* are distinguishable. In *Tate*, defendants allegedly engaged in a course of intentional conduct that subsequently drove decedent to take his own life. Importantly, there were no allegations in *Tate* the defendants knew in advance of a psychological condition or that the decedent was suicidal before they committed the acts which allegedly drove the decedent to suicide. It is axiomatic that language in a judicial opinion is to be understood in accordance with the facts and issues before the court. (*Kinsman v. Unocal Corp.* (2005) 37 Cal.4th 659, 680).

Green, supra, stands for the proposition that liability may exist where the defendant knew that the decedent was a suicidal risk. (*Id* at p. 417-418) Unlike *Tate*, *Green* is more on point with the allegations before the Court.

As a result, the defense arguments concerning lack of causation as a basis for demurrer fail. The Court notes that its findings on causation are only within the context of this demurrer.

Further, the Complaint is not uncertain.

Plaintiff shall prepare and submit a form of order consistent with this ruling within 2 weeks.

22. 24CV01489 Butte County Animal Control v. Kavanas, Cortney et al.

EVENT: Petition to Determine if Dog is Vicious

The Court will conduct a hearing.