

Judge Benson – Law & Motion – Wednesday, May 14, 2025 @ 9:00 AM
TENTATIVE RULINGS

1-2. 22CV00029 Breidinger, Larry D v. Vollrath, Michael et al.

EVENT: (1) OEX (Defendant Gloria Vollrath)

(2) OEX (Defendant Michael Vollrath)

The Court will swear in the witnesses.

3. 22CV00760 Geiser, Robert v. Enegix LLC

EVENT: OEX (Defendant Enegix LLC)

Pursuant to creditor's request, the hearing is continued to July 2, 2025 at 9:00am.

4. 22CV00761 Geiser, Robert v. Ferucci, Johnathan

EVENT: OEX (Defendant Johnathan Ferucci)

Pursuant to creditor's request, the hearing is continued to July 2, 2025 at 9:00am.

5. 22CV00762 Morris, Emily v. Enegix LLC

EVENT: OEX (Defendant Enegix LLC)

Pursuant to creditor's request, the hearing is continued to July 2, 2025 at 9:00am.

6. 22CV00764 Morris, Emily v. Ferucci, Johnathan

EVENT: OEX (Defendant Johnathan Ferucci)

Pursuant to creditor's request, the hearing is continued to July 2, 2025 at 9:00am.

7-10. 23CV02738 Hawks, Dixianne v. Bidwell Title and Escrow Company herein called Trustee of the Ida Robinson Revocable Trust Dated August 29, 1989 rt al.

EVENT: (1) Defendant Lyle Don Robinson's Motion for Relief from Default (Continued from 3/12/25 and 4/30/25))

(2) Defendant Lyle Don Robinson's Motion for Case Dismissal Due to Unfounded and Incorrect Complaint (Continued from 4/30/25)

(3) Defendant Lyle Don Robinson's Motion for Full Loan Repayment (Continue from 4/30/25)

(4) Case Management Conference

Motion for Relief from Default

The motion is GRANTED. The Court will prepare the order. The proposed answer attached to the moving papers is deemed filed.

Motion for Dismissal

The motion is DENIED. The title of this motion "Dismissal Due to Unfounded and Incorrect Complaint" is not a motion recognized by the Code of Civil Procedure. However, a trial court may disregard the caption of a motion and instead treat it in accordance with the relief it requests. (*Hudson v. Superior Court* (2017) 7 Cal.App.5th 999, 1011)

The Court interprets this motion as an attack on the pleadings, akin to a motion for judgment on the pleadings. A defendant's motion for judgment on the pleadings is equivalent to a belated general demurrer to a plaintiff's complaint and is governed by the same standard of appellate review that applies to such a demurrer. (*Sprague v. County of San Diego* (2003) 106 Cal.App.4th 119, 127)

The problem with this motion is that it asks us to go beyond the pleadings and consider extrinsic evidence. The Court cannot do that in the context of this motion. A demurrer tests the pleadings alone and not the evidence or other extrinsic matters. (*SKF Farms v. Superior Court* (1984) 153 Cal.App.3d 902, 905)

To clarify, the Court is not making any type of final determination on Defendant's arguments. The ruling is simply denying the motion in the context of a challenge to the pleading.

Motion for Full Loan Repayment

The motion is DENIED. There are separate rules and procedures when a Defendant seeks to obtain substantive relief from Plaintiff. A party cannot obtain substantive relief without the existence of a supporting pleading seeking such relief. Defendant is directed to consult the self-help division of the Court.

11-12. 24CV00757 Modern-Sundt, a Joint Venture v. Oroville Hospital

EVENT: (1) Surety Cross-Defendants' Demurrer to the First Amended Cross Complaint of Oroville Hospital

(2) Motion of Modern Sundt to Strike Consequential Damages Claims from Oroville Hospital's First Amended Cross-Complaint

SURETIES' DEMURRER TO THE FIRST AMENDED CROSS COMPLAINT (FACC)

Sureties' request for judicial notice is denied.

The Demurrer to the 13th Cause of Action is OVERRULED.

The FACC Does Not Plead Violations of the Construction Agreement in Isolation

Sureties are technically correct - they cannot be liable based on the construction agreement in isolation, because they are not parties to that agreement. Neither *JMR Construction Corp. v. Environmental Assessment & Remediation Management, Inc.* (2015) 243 Cal.App.4th 571 nor *Cates Construction, Inc. v. Talbot Partners* (1999) 21 Cal.4th 28 stands for the proposition

that Sureties are potentially liable on the underlying contract itself. Rather they simply hold Sureties are potentially liable for obligations of the construction contract via the language of incorporation in the bond.

However, in reviewing the 13th cause of action as a whole and in context, the Court does not interpret the cause of action as alleging liability against Sureties based solely on the construction agreement. Rather, the Court interprets the 13th cause of action as alleging liability against Sureties based on the bonds and based on the language in the bonds which incorporate the terms of the construction agreement. (See ¶ 151 of the FACC as an example)

Although the 13th cause of action is titled as “Breach of Construction Agreement and Bond Obligation”, it is well-established that a court is not bound by the captions or labels of a cause of action in a pleading. (See *Ananda Church of Self-Realization v. Mass. Bay Ins. Co.* (2002) 95 Cal.App.4th 1273, 1281) Because the bonds incorporate the terms of the construction agreement, the construction agreement is part and parcel to the Hospital’s claim under the bond. Thus, the Court finds references in the 13th cause of action to the construction agreement are part of the claim on the bond and not breach of contract allegations independent of the bond.

The 13th Cause of Action Adequately Alleges Breach

Paragraph 18 of the FACC alleges Sureties “bound themselves to the exact terms of the construction agreement.” Paragraph 152 alleges, among other things, that the work was not completed as required by the construction agreement and that the project was abandoned prior to achieving substantial completion.

The 13th Cause of Action is not Uncertain

Demurrers for uncertainty under Code of Civil Procedure section 430.10, subdivision (e) are disfavored. (*Chen v. Berenjian* (2019) 33Cal.App.5th 811, 822) As discussed, the Court’s interpretation of the 13th cause of action is that the construction agreement is referenced because it is part and parcel to Sureties’ potential liability under the bond. It is not alleging liability of the Sureties based on the construction agreement in isolation. Consequently, references to the construction agreement do not render the cause of action uncertain.

The demurrer to the 15th Cause of Action – Breach of Implied Covenant of Good Faith and Fair Dealing - is SUSTAINED WITHOUT LEAVE TO AMEND.

Sureties are correct in that neither Ins. Code § 790.03 nor the regulations arising therefrom (10 CCR 2695.1 et seq.) provide a private right of action. (See *Zhang v. Superior Court* (2013) 57 Cal.4th 364, 369) Thus, the question is whether the cause of action is legally viable based on common law principles.

Pursuant to *Cates Construction, Inc. v. Talbot Partners* (1999) 21 Cal.4th 28, 67, a party cannot recover tort damages for breach of implied covenant of good faith and fair dealing against a surety, but may be able to recover contractual damages. Thus, in theory, the cause of action could survive to the extent it seeks contract damages.

However, in that scenario the cause of action is duplicative of the 13th cause of action for breach of contract.

Careau & Co. v. Security Pacific Business Credit, Inc.(1990) 222 Cal.App.3d 1371, 1395:

If the allegations do not go beyond the statement of a mere contract breach and, relying on the same alleged acts, simply seek the same damages or other relief already claimed in a companion contract cause of action, they may be disregarded as superfluous as no additional claim is actually stated. Thus, absent those limited cases where a breach of a consensual contract term is not claimed or alleged, the only justification for asserting a separate cause of action for breach of the implied covenant is to obtain a tort recovery.

Because neither Ins. Code § 790.03 nor the regulations arising therefrom (10 CCR 2695.1 et seq.) are independent legal grounds supporting this cause of action; and because tort recovery is not permitted, the only remaining allegations supporting the cause of action are contract breach. Thus, because it is duplicative of the 13th cause of action, the demurrer is sustained without leave to amend.

16th Cause of Action – “Unfair Claims Handling”

The demurrer is SUSTAINED WITHOUT LEAVE TO AMEND.

This cause of action is premised solely on the aforementioned Ins. Code § 790.03 and 10 CCR 2695.1 et seq. violations. As discussed, because no private right of action exists under these theories as a matter of law, the demurrer is sustained without leave to amend.

14th Cause of Action – Wrongful Denial of Performance Bond Obligations

The demurrer is SUSTAINED WITHOUT LEAVE TO AMEND.

Oroville Hospital has not opposed Sureties’ arguments that the cause of action is duplicative of the 13th cause of action. The Court finds it is duplicative of the 13th cause of action.

17th Cause of Action – Declaratory Relief

The demurrer is OVERRULED.

Contrary to Sureties' contentions, the FACC does seek a determination affecting the parties' future conduct. Paragraph 175(c) is an example.

18th Cause of Action – Temporary Restraining Order, Preliminary Injunction and Permanent Injunction

The demurrer is SUSTAINED WITHOUT LEAVE TO AMEND. Setting aside the debate as to whether injunction could or should be plead as a cause of action, the prayer for relief in the FACC clearly seeks injunctive relief. In light of those requests, the Court finds the 18th Cause of Action to be unnecessarily duplicative.

MODERN SUNDT'S MOTION TO STRIKE CONSEQUENTIAL DAMAGES CLAIMS FROM OROVILLE HOSPITAL'S FIRST AMENDED CROSS COMPLAINT

The Motion is DENIED.

Pursuant to Civil Code Section 1668, the waiver of consequential damages would be unenforceable if Oroville Hospital can prove fraud. Although the FACC does not expressly allege a cause of action for fraud, a pleading will not be measured by its title alone. (*Irer v. Gwan* (1929) 99 Cal.App.17, 23) The appropriate allegations which it contains will determine the nature of the document. (*Id*)

The Court finds the FACC adequately alleges facts supporting a claim of fraud. While the FACC does not allege specific facts on the intent and knowledge of falsity elements, less specificity is required if the defendant would likely have greater knowledge of the facts than the plaintiff. (See *Chapman v. Skype Inc.* (2013) 220 Cal.App.4th 217, 231)

Regarding Modern-Sundt's contention that rescission is a pre-requisite to a fraud claim, that rule only applies if the aggrieved party is seeking to "escape from its obligations" (See *Ford v. Shearson Lehman American Express, Inc.* (1986) 180 Cal.App.3d 1011, 1028) Reasonably construed, the FACC is not seeking to avoid obligations as much as it is seeking damages based on Modern Sundt's alleged breaches. Therefore, the rescission requirement is not applicable.

Because the FACC sufficiently alleges fraud, Oroville Hospital's claim for consequential damages remains viable.

Oroville Hospital shall prepare and submit a form of order consistent with these rulings within 2 weeks.

13. 24CV02363 Wheels Financial Group, LLC v. Davis, Jennifer L.

EVENT: Plaintiff's Motion for Summary Judgment

The Court will hear from counsel.

The Court is inclined to grant summary adjudication as to the first and second causes of action. The Court finds Plaintiff has met its initial burden submitting evidence on each element of each cause of action, and the motion is unopposed. However, the Court is inclined to deny the motion to the extent it seeks an adjudication of monetary damages. (The only relief the Court is inclined to award in conjunction with this motion is an award of possession of the vehicle)

Ostensibly, the proposed order seeks damages for the unpaid balance as well as repossession of the vehicle. Under this scenario the principle of equitable setoff applies, see *Grossman v. Lippson* (1978) 81 Cal.App.3d 554, 562. If the seller-creditor wishes to obtain a deficiency judgment on a promissory note given by the buyer-debtor as part of the purchase price, he must sell the collateral on proper notice and credit the debtor with its proceeds. (*Id* at p. 560)

Thus, if Plaintiff seeks repossession in addition to the unpaid balance, the unpaid balance must be offset by the proceeds of the sale of the vehicle. Until this procedure is completed, the Court cannot issue a judgment concerning the amount of damages.

14. 25CV00460 In re: Fleming, Michael Ray

EVENT: Change of name (adult) (Continued from 4/16/25)

There is no proof of publication on file. If there is no proof of publication on file by the hearing, and there are no appearances, the Court will dismiss the Petition without prejudice.

15. 25CV00798 In re: Hernandez, Sandra Mata

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.

16. 25CV00804 In re: Jackson, Ashley

EVENT: Change of name (minor)

The court will conduct a hearing.

17. 25CV00933 In re: Holmes, Ashlee Michele

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. 25CV00942 In re: Stilwell, Jordin Kailyn

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 pending any objection.

19. **25CV01392 City of Chico – Animal Control v. McLain, David**

EVENT: Petition to Determine if Dog is Vicious

The Court will conduct a hearing.