

1. 21CV03075 Hall, Chantelle v. City of Chico et al.

EVENT: Plaintiff's Motion for Summary Adjudication Against Defendant Villa Rita Housing Partners, LP

Plaintiff's Motion for Summary Adjudication Against Defendant Villa Rita Housing Partners, LP is DENIED.

The Court declines ruling on Defendant's evidentiary objections as they are not necessary to the disposition of the matter. As an aside, going forward, Plaintiff and other parties should refrain from incorporating by reference documents that were previously filed with prior motions. While the Court appreciates that may be more efficient, the practice results in the record becoming difficult to follow.

Defendant Villa Rita's Leasing Office Qualifies as a Place of Public Accommodation for Title III Purposes

Preliminarily, Defendant references a 2024 ruling on a previous motion for summary adjudication brought by Plaintiff in which the Court found an apartment complex was not a place of public accommodation. Without rehashing that ruling, it appears Plaintiff attempted to submit new evidence in the reply which was denied.

In any event, Plaintiff has submitted evidence in this motion that Defendant Villa Rita operates a leasing office, a fact that Villa Rita does not dispute. Pursuant to 28 CFR 36.207, a leasing office is a place of public accommodation for Title III purposes.

A Triable Issue of Fact Exists Whether Villa Rita Had Control Over the Sidewalk for Title III Purposes

The previously referenced 2024 ruling also found allegations that both the City and Reed Francis controlled the sidewalk were contradictory. There is an inherent factual question based on the moving papers' position that a land survey identified Reed Francis as owner of the property where the incident occurred; Villa Rita as owner of the tree which allegedly raised the sidewalk at issue; and the City of Chico owned the sidewalk. It is unclear how all (3) of these parties could have control over the same section of sidewalk for Title III purposes. As it pertains to Villa Rita and Reed Francis, Plaintiff appears to allege both had control over the same section of sidewalk for Title III purposes. At a minimum, Plaintiff has failed to meet her initial burden in clarifying this factual issue.

Further, Plaintiff's reliance on the Chico Municipal Code and Streets and Highways Code section 5610 fails. *Williams v. Foster* (1989) 216 Cal.App.3d 510 found section 5610 does not impose a duty on landowners with respect to the general public. The takeaway from *Williams*

is that unless the statute or ordinance explicitly makes the owner liable to the public, the general rule is a landowner is not liable to the general public.

Chico Municipal Code section 14.20.030 fares no better. It contains similar language to Streets and Highways Code section 5610. Thus, Plaintiff's reference to the municipal code and the streets and highway's code fail to meet the initial burden of demonstrating no triable issue of fact exists with respect to Villa Rita's control of the sidewalk.

Additionally, the Court is skeptical as to how a state statute or local ordinance would be relevant on the issue of whether Villa Rita had control of the sidewalk for purposes of Title III – which is Federal law. In the reply Plaintiff appears to almost concede as much by attempting to explain why *Williams, supra*, is not applicable to ADA claims. (“ADA and CDPA claims are not rooted in tort or negligence – it’s a civil right.”) Even if *Williams, supra*, is not relevant to the issue before us, Plaintiff has failed to meet her initial burden on this issue as neither the Municipal Code nor the Streets and Highway Code is dispositive on whether Defendant Villa Rita had control of the sidewalk in the context of an ADA claim.

A Triable Issue of Fact Exists Whether Repair Was Reasonably Feasible

In February the Court found the issue of whether repair was readily achievable to be a triable issue of fact. The Court is again adopting that reasoning here. As an additional note, while we certainly pay close attention to Federal decisions with respect to Federal Law holdings and the ADA in particular, when it comes to application of summary judgment and summary adjudication standards we apply state law.

In this Court's view, under California jurisprudence concerning summary judgment/summary adjudication, whether repair is readily achievable is inherently a factual question. High California courts have routinely found (albeit in other areas of the law) that some issues are not appropriate for summary adjudication as they are “not determinable on paper”. (See *Nazir v. United Airlines, Inc.* (2009) 178 Cal.App.4th 243, 286 [Employment cases present issues not determinable on paper]) It is apparent to this Court that whether repair is readily achievable is not determinable on paper. It involves weighing of evidence and multiple factors. We do not weigh evidence on summary judgment/summary adjudication. (See *Aguilar v. Atlantic Richfield Co.* (2001) 826, 856)

Further, Plaintiff's contention that the 2025 repair still does not comply with ADA standards undermines Plaintiff's contention that repair was readily achievable based on that attempt. It cannot be conclusively said repair was readily achievable based on the 2025 repair when that repair did not comply with the ADA and was thus inadequate.

Additionally, pursuant to *Wilson v. Haria and Gogri Corp* (E.D. 2007) 479 F.Supp.2d 1127, 1133 Plaintiff contends Villa Rita has waived argument as it has failed to plead the affirmative defense. However, the Court's research indicates *Wilson* has received negative treatment on this holding. In *Lopez v. Catalina Channel Express, Inc.* (2020) 974 F.3d 1030,1035, the 9th Circuit established a burden shifting approach:

...

only if the plaintiff first makes a plausible showing that the barrier removal is readily achievable, does the defendant then have to negate that showing and prove that the removal is not readily achievable

...

Here, the moving papers did not make “a plausible showing that removal of the barrier is readily achievable.” Again, this invokes the circular argument of whether (allegedly) non-code compliant repairs demonstrate a specific repair is readily achievable. Logically, the Court fails to see how reference to non-compliant repairs meet Plaintiff’s initial burden.

The Court finds Plaintiff has not met her initial burden under *Lopez*, therefore the issue of waiver of the affirmative defense is moot. A triable issue of fact exists.

Because the Court finds multiple triable issues of fact exists, the Court declines addressing other issues raised in the papers at this time.

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

2. 23CV02654 Feng, Zhu v. Xie, John et al.

EVENT: Plaintiff’s Motion to Vacate Judgment and to Enter Another and Different Judgment (CCP 663 and 663a) and Motion to Correct Clerical Mistakes in the Judgment Entered March 5, 2026

Plaintiff’s Motion to Vacate Judgment and to Enter Another and Different Judgment (CCP 663 and 663a) and Motion to Correct Clerical Mistakes in the Judgment Entered March 5, 2026 is GRANTED in PART.

The motion is granted with respect to the “Judgment is on the merits” language. It is well settled that statute of limitations dispositions are not merit dispositions.

The motion is denied with respect to the alleged clerical errors. Plaintiff states “the Judgment misidentifies counsel by referring to defense counsel as though he were Plaintiff’s counsel.” The Court is not finding that in the judgment. The judgment clearly states Plaintiff was in pro per. “Pro per” is a Latin phrase used to describe a person who is representing themselves in Court.

The March 5, 2026 judgment is vacated. Counsel is directed to submit an amended judgment omitting the judgment on the merits language within 10 days of this order.

3. **25CV00320 Wells Fargo Bank, N A v. Flicker, Michael A**

EVENT: Defendant's Motion to Quash Service of Summons

Defendant's Motion to Quash Service of Summons is GRANTED and is unopposed. When a defendant challenges the court's personal jurisdiction on the ground of improper service of process the burden is on the plaintiff to prove the existence of jurisdiction by proving, inter alia, the facts requisite to an effective service. (*Summers v. McClanahan* (2006) 140 Cal.App.4th 403, 413) As the motion is unopposed, Plaintiff has failed to meet that burden.

Additionally, in light of the representations made by Defendant that he has been a resident of Placer County throughout the duration of this case, a question has arisen whether Butte County is the appropriate venue. As a result, pursuant to CCP 396a(b), the Court hereby issues an Order to Show Cause why this case should not be transferred to the Placer County Superior Court.

The hearing is scheduled for June 17, 2026 at 9:00am. Any briefs shall be filed no later than June 3, 2026 at 9:00am. The Court shall mail notice to the parties.

4. **25CV00484 Garner Built, Inc. v. Paradise Lodge 2227, Loyal Order of Moose Incorporated**

EVENT: Motion to Be Relieved as Counsel (Defense Counsel)

Motion to Be Relieved as Counsel is GRANTED. The Court will sign the proposed order. The order will become effective upon the filing of a proof of service demonstrating the client was served with the order.

5-6. 25CV01196 Andrew J Morrissey, Attorney & Counselor at Law v. Dan Fitzgerald & Associates, Inc.

EVENT: (1) OEX (Daniel Fitzgerald)

(2) OEX (Chief Financial Officer Nicole McHenry)

The Court will swear in the witnesses.

7. 25CV03474 Wells Fargo Bank, N A v. Thao, Judy

EVENT: Plaintiff's Motion for Summary Judgment

Plaintiff's Motion for Summary Judgment is GRANTED and is unopposed. The Court will sign the proposed order and judgment. The Case Management Conference scheduled for May 27, 2026 is vacated.

8. 26CV00500 In re: Smith, Jordan

EVENT: Change of name (adult)

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

9. **26CV00521 In re: Dore, Nicholas Austin**

EVENT: Change of name (adult)

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

10. **26CV00588 Law, Kaden et al. v. DeMarais, Christian; et al.**

EVENT: Defendants' Demurrer to Verified Complaint for Gross Negligence and Conversion

The Demurrer is OVERRULED.

Defendants' Economic Loss Rule Argument is Not Sufficiently Developed

The reply cites *Aas v. Superior Court* (2000) 24 Cal.4th 627, 636-638 for the proposition that one cannot avoid the existence of the contract because of the implications the contract has on tort duty. *Aas* involved the economic loss rule. Notably, this issue was raised for the first time in the reply, as the Court finds no indication that the economic loss rule was addressed in the moving papers. Further, the reply does not provide any specific analysis as to why the economic loss rule would negate the negligence cause of action.

In any event, *Aas* does not require a Plaintiff to plead breach of contract, nor is the Court aware of any authority requiring a plaintiff to plead breach of contract when it appears plaintiff may be attempting to avoid the consequences of the economic loss rule. At this stage, whether the economic loss rule applies is extrinsic matter. 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)

Of course, Defendants can plead the economic loss rule and the existence of the contract as an affirmative defense, but for demurrer purposes these issues are extrinsic to the Complaint. Although Defendants are correct that a copy of the contract or pleading the key terms of the contract are required, that requirement only applies when the complaint alleges a breach of contract cause of action. Because the Complaint does not allege a breach of contract cause of action, this rule is not applicable at this moment.

The Complaint Sufficiently Alleges Duty

It is well settled that negligence may be alleged in general terms, see *Rannard v. Lockheed Aircraft Corp* (1945) 26 Cal.2d 149, 154. A complaint "is adequate so long as it apprises the defendant of the factual basis for the claim." *Prue v. Brady Co./San Diego, Inc.* (2015) 242 Cal.App.4th 1367, 1375. Here, the Complaint essentially alleges Plaintiffs entrusted their

valuables to Defendants, that Defendants operated a storage facility, and that they had a duty to protect Plaintiffs' property.

Uncertainty

Demurrers for uncertainty are disfavored, and are granted only if the pleading is so incomprehensible that a defendant cannot reasonably respond. (*A.J. Fistes Corp. v. GDL Best Contractors, Inc.*, (2019) 38 Cal. App. 5th 677, 695)

The pleading is not incomprehensible. The demurrer is overruled on this ground.

Conversion

For the first time in the reply, Defendants argue the conversion cause of action is negated by allegations of theft by third parties. New issues raised in the reply brief are not appropriate. (See *Reichardt v. Hoffman* (1997) 52 Cal.App.4th 754, 764) Accordingly, the demurrer is overruled on this ground.

Defendants shall file an answer within 20 days' notice of this order. The Court will prepare the order.

11. 26CV00944 Valdezdealeman, Rosa v. Badovinac, Derek V

EVENT: Motion to Consolidate Cases Pursuant to Code of Civil Procedure 1048(A)

Pursuant to CRC 3.350(a)(2)(A), the Court defers to Hon. Tamara Mosbarger's ruling on the motion to consolidate filed in 23CV02982.

12. 25CV05111 Oline-Hurlow, Maria v. Sterling Jewelers Inc.

EVENT: Defendant Stacy Givens' Demurrer to Complaint

In light of the dismissal filed, the demurrer is moot.

