

**Judge Benson – Law & Motion – Wednesday, December 7, 2022 @ 9:00 AM
TENTATIVE RULINGS**

1. 21CV02318 Rogers, Nick v. Jason Abel Construction, Inc. et al.

EVENT: Defendants and Cross-Complainants Abel Construction, Inc. and Jason Abel's Motion for Summary Judgment (as to both the Complaint and Cross-Complaint)

Defendants' and Cross-Complainants' Jason Abel and Jason Abel Construction Inc.'s motions for Summary Judgment as to both the Complaint and Cross Complaint are GRANTED. The Court finds Jason Abel and Jason Abel Construction Inc. have met their burdens demonstrating no triable issue of fact exists as to both the complaint and their cross-complaint and the motions are unopposed. The Court will sign the proposed order. The Trial Readiness Conference currently set for February 22, 2023 and the Court Trial set for February 27, 2023 are hereby vacated.

2. 22CV01718 Cavalry SPV I, LLC v. Bundy, Sara

EVENT: Defendant Sara Bundy's Motion for Leave to File Cross-Complaint

Defendant Sara Bundy's Motion for Leave to File Cross-Complaint is DENIED without prejudice for failure to file a proof of service that complies with CCP §§ 1005 and 1013a. The Court will prepare the Order.

3. 21CV02619 Guthrie, Samuel v. D.H. Slater & Son Inc., et al.

EVENT: Plaintiff's Motion For Leave to File Amended Complaint

Plaintiff's Motion for Leave to File Amended Complaint is GRANTED.

Preliminarily, the Court disagrees with Defendant Rental Guys' (hereinafter Defendant) contention that the amended complaint alleges strict liability against it under a design theory. Rather, the amended complaint appears to allege strict liability against Defendant under a theory that Defendant leased the product. As Plaintiff notes, *Price v. Shell Oil Co.* (1970) 2 Cal.3d. 245 provides the strict liability doctrine applies to lessors the same way it applies to sellers.

Regarding Defendant's contention that a lessor of used equipment cannot be strictly liable by simply renting the same, Defendant fails to cite authority to support this proposition. As Plaintiff noted in his reply brief, the cases relied on by Defendant involve the sale of a used product, not the leasing of a used product. The only published opinion directly on point is *McClafin v. Bayshore Equipment Rental Co.*, (1969) 274 Cal.App.2d 446 which involved the lease of a used ladder. The court found the doctrine of strict liability applied.

The First Amended Complaint shall be deemed filed and served as of this date.

Plaintiff shall prepare and submit a form of order consistent with this ruling within 10 days.

4. 22CV02332 In re: Reeves, Curtis Lee

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.

5. 21CV01030 Anguiano, Rogelio v. Bains Properties LP, a California limited partnership

EVENT: Plaintiff's Motion for Leave to File DOE Amendments to Plaintiff's Complaint

Plaintiff's Motion for Leave to File DOE Amendments to Plaintiff's Complaint is GRANTED. The cases reflect that denial of amendments of pleadings have been upheld in the past on two possible bases: the subject matter of the proposed pleading, or the conduct of the parties. (*Hunt v. Smyth*, (1972) 25 Cal. App. 3d 807, 827) If the subject matter raises a disfavored plea, is insufficient to state a cause of action or defense, contradicts an admission in the original pleading without a showing of mistake or excuse, or changes the cause of action, denial is upheld. (*Id*)

As to the first prong, Defendant in its moving papers appears to argue that the pleading fails to state a cause of action as to the proposed Defendants. Without delving into the details of Defendant's arguments, the Court finds the arguments incorporate extrinsic matters for which the Court cannot assess at the pleading stage. For example, the question of whether the proposed Defendants are protected by the Workers Compensation Act is inherently a factual one.

As to the second prong, in light of the evidence presented by Defendant the Court finds Plaintiff's contention that he did not discover information pertaining to the corporate

structure until the filing of the Motion for Summary Adjudication disingenuous. However, the Court finds the delay in filing this motion does not rise to the level of bad faith. At most, Plaintiff has been aware of the information for roughly 8 months. While there is no specific timeframe guidelines in determining whether a motion to amend was unreasonably delayed, in balancing the liberal preferences in permitting amendment, the Court finds under the circumstances presented that the delay is relatively minimal in light of the policy favoring amendment.

Plaintiff shall prepare and submit a form of order consistent with this ruling within 10 days.

6-9. 22UD02372 AMACAL Chico, LLC v. Hernandez, Ruben

EVENT: (1) Defendant's Amended Demurrer to the Complaint

(2) Defendant's Motion to Continue Hearing

(3) Court Trial

(4) Defendant's Motion for Order of Contempt

Defendant's Amended Demurrer to the Complaint is OVERRULED. Defendant's Motion to Continue Hearing is DENIED for failure to comply with the notice requirements of CCP § 1005 and CCP § 1013b(1) . Additionally, Defendant's Motion for Order of Contempt is DENIED. The Court is in receipt of Defendant's demand for a jury trial. On the Court's own motion, the trial is continued to the Court's jury trial calendar on December 19, 2022 at 8:00am, with a Trial Readiness Conference set for December 15, 2022 at 1:30pm.

10. 19CV01153 Chase, Shelby v. Peterson, Jacob

EVENT: Motion to Strike Answer of Jacob Peterson and Enter Default Judgment in Favor of Plaintiff

Motion to Strike Answer of Jacob Peterson and Enter Default Judgment in Favor of Plaintiff is continued to January 4, 2022 at 9:00am to comply with CCP section 1005. Plaintiff to give notice.

11. **19CV01154 Chase, Lida v. Peterson, Jacob**

EVENT: Motion to Strike Answer of Jacob Peterson and Enter Default Judgment

Motion to Strike Answer of Jacob Peterson and Enter Default Judgment in Favor of Plaintiff is continued to January 4, 2022 at 9:00am to comply with CCP section 1005. Plaintiff to give notice.

12. **22CV02818 County of Butte v. Paulo, Marlise et al.**

EVENT: Petition to Determine if Dog is Vicious

The Court is inclined to grant the petition and order the dog be destroyed. The Court will conduct a hearing.

13. **22CV02819 County of Butte v. Brewer, Donald et al.**

EVENT: Petition to Determine if Dog is Potentially Dangerous

The Court is inclined to grant the Petition. The Court will conduct a hearing.

14. **22CV02820 County of Butte v. Brewer, Donald et al.**

EVENT: Petition to Determine if Dog is potentially dangerous

The Court is inclined to grant the Petition. The Court will conduct a hearing.