

Judge Mosbarger – Law & Motion – Wednesday, December 14, 2022 @ 9:00 AM
TENTATIVE RULINGS

1. 17CV03432 SIERRA CENTRAL CREDIT UNION V. JAMES, MICHAEL T

EVENT: Plaintiff's Application and Order for Appearance and Examination

The Court will swear in the Debtor for examination.

2. 19CV01700 SIMS, LIZA ET AL V. FOSTER, DAWN ET AL

EVENT: Motion for Reconsideration

The Court finds that the Declaration of Plaintiff Liza Sims does constitute “new circumstances” under *Code of Civil Procedure* §1008 and therefore the Court has considered the merits of Plaintiff's Motion for Reconsideration and has reviewed and considered Plaintiff's Liza Sims' “Corrected Declaration.”

The Defendants' respective Requests for Judicial Notice are granted.

The Court previously found that Plaintiff's Cause of Action for Negligent Misrepresentation failed as a matter of law because Plaintiff failed to prove elements (4) justifiable reliance on the misrepresentation, and (5) resulting damage. The Court found that there is evidence that at the time of the alleged misrepresentations in 2013 and 2014 the policy of insurance that existed was a different policy in existence at the time of the alleged loss in 2018. A policy entitled ‘Landlord Protector's Policy’, was established in August of 2017, and replaced the prior policy. [UMF No. 5.] Thus, Plaintiff could not have reasonably relied on statements that allegedly occurred years prior to Ms. Gleason changing the policy and in relation to a policy of insurance that no longer existed at the time of the loss. There is nothing in Plaintiff's “Corrected Declaration” that raises a triable issue as to this issue.

The Court previously found that Plaintiff's Cause of Action for Professional Negligence failed as a matter of law because Plaintiff failed to establish elements (1) a duty, and (2) breach of that duty, and that to the contrary, the evidence showed Defendant Dawn Foster did *not* owe a professional duty to Plaintiff as Defendant Dawn Foster was not Ms. Gleason's insurance agent, nor was she Plaintiff's insurance agent. [UMF Nos. 7, 8, 9, 16, 17, 18.] Therefore, as a matter of law, Plaintiff could not establish that Defendant Dawn Foster owed Plaintiff a legal duty or that Defendant Dawn Foster breached a duty. As above, there is nothing in Plaintiff's “Corrected Declaration” that raises a triable issue as to this issue.

Plaintiff's Motion for Reconsideration is denied.

3. **22CV02034 IN RE: LONG, BRUCE**

EVENT: Petition for Change of Name

If proper proof of publication is submitted at or before the hearing, the Petition will be granted. If proof of publication has not been submitted and there is no appearance by the Petitioner, this matter will be dismissed without prejudice.

4. **22CV02166 NORTHERN CALIFORNIA COLLECTION SERVICE, INC V. MARK J BOHLANDER, MD**

EVENT: Defendant's Demurrer to Complaint

The Court finds that Plaintiff has not been prejudiced by any of the procedural errors raised in its Opposition and the Court has read and considered the merits of the Demurrer. The Court finds that the application of the Uniform Commercial Code six-year statute of limitations is inappropriate here as the Promissory Note at issue is not a negotiable instrument that includes an unconditional promise to pay, but rather includes an express condition to payment. See UCC §2-105; Complaint at ¶4 and Exhibit A thereto; Commercial Code §§3104, 3106. Thus, the applicable statute of limitations is four years pursuant to Code of Civil Procedure §377(a).

As noted in the Complaint, the principal balance of the promissory note and any accrued interest were due and payable within 90 days from the date of Defendant's termination from the Permanente Medical Group, Inc. [Complaint at ¶5]. However, the Promissory Note further states as follows:

“6. In the event Borrower defaults or no longer satisfies the eligibility requirements, as defined in this Note, (hereinafter collectively the “Acceleration Event”), the whole sum of unforgiven principal and unpaid and accumulated interest shall become immediately due and payable within ninety (90) days of the Acceleration Event at Holder’s option...” (emphasis added).

Although Defendant terminated his employment with the Permanente Medical Group on or about May 16, 2018 [Complaint at ¶6], demand for payment was not made until December 3, 2018 [Complaint at ¶9]. While the Defendant has submitted a letter for the Court’s consideration to establish the initial date of demand for payment and date on which the statute began to run, the Court is limited on Demurrer to consideration of defects that appear on the face of the pleading under attack; or from matters outside the pleading that are judicially noticeable. *Blank v. Kirwan* (1985) 39 Cal.3d 311, 318; *Donabedian v. Mercury Ins. Co.* (2004) 116 Cal.App.4th 968, 994; *Committee for Green Foothills v. Santa Clara County Bd. Of Supervisors* (2010) 48 Cal.4th 32, 42. The letter submitted and attached as Exhibit A to the Declaration of Mark J. Bohlander on December 6, 2022 is extrinsic evidence that is outside of the scope of what is proper for the Court to consider on Demurrer. As such, the Court finds that the four-year statute of limitations runs on December 3, 2023, and because the Complaint was filed on September 22, 2022, it was timely filed within

the applicable statute of limitations. Thus, the Demurrer is overruled. Counsel for the Plaintiff shall submit a form of order consistent with this ruling within two weeks.

5. 22CV02187 C., A. vs. DOE 1

EVENT: Plaintiff's Motion to Seal Certificates of Merit and Certificate of Corroborative Fact; Permit the Filing of the First Amended Complaint Naming DOE 1; Permit Service of Process on Said Defendant; and Permit Plaintiff to Proceed Under a Fictitious Name

The Motion is granted and the Court hereby Orders: 1) The Certificates of Merit executed by Plaintiff's counsel and mental health practitioner and the Certificate of Corroborative Fact are ordered sealed, and shall not be disclosed to any Defendant in this matter or to the public; 2) Plaintiff is granted leave to file a First Amended Complaint naming the Doe 1 ("Doe Defendant") as requested within ten (10) court days of this Order; 3) Plaintiff is permitted to serve process on the Doe Defendant in accordance with California Rule of Court 3.110(b); and 4) Plaintiff is permitted to proceed under a fictitious name in this action. The Court will sign the form of order submitted by counsel.

6-7. 22CV02426 CIT BANK, A DIVISION OF FIRST CITIZENS BANK & TRUST COMPANY V. MERKEL, ANDREW ALLEN ET AL

EVENTS: (1) Application for Writ of Possession as to Defendant Steamboat Ranch Capitol Investments LLC, a California limited liability company

(2) Application for Writ of Possession as to Defendant Andrew Allen Merkel, an individual

The Court will hear from counsel.