

Judge Benson – Law & Motion – Wednesday, April 10, 2024 @ 9:00 AM
TENTATIVE RULINGS

1. 23CV01873 Valcarenghi, Gerard v. Leyes, Katja et al.

EVENT: Defendant's Motion For Terminating Sanctions and Monetary Sanctions Pursuant to CCP 128.7

Defendant's Motion For Terminating Sanctions and Monetary Sanctions Pursuant to CCP 128.7 is DENIED WITHOUT PREJUDICE. The Court is willing to reconsider the matter after the case has been disposed.

2. 22CV01879 Jones, Daelyn v. Hendry, Michael Jr. et al.

EVENT: Defendants' Motion for Summary Judgment

Defendants' Motion for Summary Judgment and/or Summary Adjudication is DENIED in its entirety.

Preliminarily, the Court acknowledges Defendants' points and authorities exceed the maximum of 20 pages by (2) pages. There is nothing in the language of CRC 3.1113, nor is there any case law the Court is aware of suggesting that the Court does not have discretion to proceed with the motion notwithstanding Defendants' non-compliance.

The Court applies the California Rules of Court, however, in this instance, the Court finds a brief that exceeds the page limit by two pages is not prejudicial to Plaintiff. Further, the interests of judicial economy weigh in favor of proceeding with the motion.

A Triable Issue of Fact Exists Whether Michael Hendry's Conduct Was "Severe"

As Plaintiff notes, in 2019 the Legislature enacted Government Code Section 12923 which, ostensibly, limits the Court's authority to dispose harassment cases on summary judgment predicated on the severe or pervasive element.

Government Code § 12923(e):

Harassment cases are rarely appropriate for disposition on summary judgment. In that regard, the Legislature affirms the decision in *Nazir v. United Airlines, Inc.* (2009) 178 Cal.App.4th 243 and its observation that hostile working environment cases involve issues "not determinable on paper."

In reviewing section 12923(e) and the *Nazir* decision, it is the Court's interpretation that summary judgment should be denied if the allegations are more than trivial. Here, the

evidence is more than trivial. Whether the trier of fact determines the conduct is sufficient to warrant an award of damages is a separate issue beyond the Court's inquiry on summary judgment.

A Triable Issue of Fact Exists Whether Michael Hendry Was a Supervisor for Purposes of Government Code Section 12926(t)

Gov. Code 12926(t)

“Supervisor” means any individual having the authority, in the interest of the employer, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or the responsibility to direct them, or to adjust their grievances, or effectively to recommend that action, if, in connection with the foregoing, the exercise of that authority is not of a merely routine or clerical nature, but requires the use of independent judgment. [Emphasis Added]

Defendant's UMF 3 acknowledges that Michael had the authority to direct employees (“ensuring that employees complied with OSHA guidelines”). It also acknowledges that he was the “safety manager”. Thus, for practical purposes Michael was a safety supervisor at the company. At a minimum a triable issue of fact exists whether he was or was not a “Supervisor” for purposes of Gov. Code § 12926(t).

Defendants seem to suggest that the law requires a direct correlation between the department the supervisor is in and the Plaintiff. Defendants apparently argue that because Plaintiff was not supervised by Michael, Michael was not a supervisor for purposes of the statute. However, Defendants cite no authority for the proposition that an employee who is a supervisor but not a supervisor of plaintiff would not still be a supervisor for purposes of the FEHA statute.

There is nothing in the language of the statute limiting “Supervisor” only to those who are supervisors of a plaintiff. We must construe the provisions of the FEHA broadly, to protect employees' rights to seek and hold employment without discrimination. (*Chapman v. Enos*, (2004)116 Cal. App. 4th 920, 931)

Without authority stating otherwise, and based on the principles of broad interpretation, the Court finds a “Supervisor” for purposes of the statute includes any supervisor within the company, regardless if the supervisor supervised Plaintiff.

A Triable Issue of Fact Exists Whether Defendant Creative Took Adequate Remedial Measures as it Pertains to the Cause of Action For Failure to Prevent Harassment and Discrimination

Once informed of the harassment or discrimination, an employer is required to take adequate remedial measures, including immediate corrective action that is reasonably calculated to end the current harassment or discrimination and to deter future harassment or discrimination. (*Bradley v. Department of Corrections & Rehabilitation* (2008) 158 Cal.App.4th 1612, 1630.)

Plaintiff contends Defendant did not take reasonable steps to insure that she would not have to interact with Michael going forward, see UMF 36 and 42. Whether the company's response was reasonable (whether it was reasonable not to terminate Michael, whether it was

reasonable to not grant her request of not interacting with him going forward) is a question of fact.

A Triable Issue of Fact Exists Whether Plaintiff Was Constructively Terminated

When Plaintiff reported the incident, she requested not to have to work with Michael. (UMF 36) No accommodation was made concerning that request. (Id) The fact that Plaintiff had to continue interacting with Michael made her not want to go to work. (UMF 42) Based on this evidence, a triable issue of fact exists whether Defendants knowingly permitted intolerable working conditions.

Nazir v. United Airlines, Inc., (2009) 178 Cal. App. 4th 243, 286:

...

many employment cases present issues of intent, and motive, and hostile working environment, issues not determinable on paper. Such cases, we caution, are rarely appropriate for disposition on summary judgment, however liberalized it be.

Whether a trier of fact is persuaded by Plaintiff's testimony that her continued interaction with Michael was an intolerable working condition, and whether a trier of fact believes it was in fact intolerable under the reasonable person standard, are questions for trial. These issues go to the weight of the evidence and cannot be adjudicated as a matter of law.

Because Plaintiff's constructive termination theory is an alternative to establishing an adverse employment action under a retaliation cause of action, (see CACI 2505) the motion is necessarily denied as to both the fourth and fifth causes of action for retaliation and constructive discharge.

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

3. 23CV00310 Jones, Jonathan v. Highway Motors, Inc.

EVENT: Defendant's Motion For Leave to File Cross-Complaint

Defendant's Motion For Leave to File Cross-Complaint is GRANTED. The Court will sign the proposed order.

4. **23CV01381 Kravica, James v. Novak, Larissa**

EVENT: Plaintiff's Motion for Reconsideration

Plaintiff's Motion for Reconsideration is DENIED. The Court will prepare the form of order.

5. **24CV00411 In re: Dugger, Anna Daneen**

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.

6. **23CV00369 Yates, Chad v. Ellenberger, Jared**

EVENT: Motion for: 1) Approval to Retain Lachona Law as Counsel For Receiver Nunc Pro Tunc; Approval to Retain Consultant Nunc Pro Tunc; (3) Approval of Receiver's Plan for Sale and Liquidation of all Receiver's Plan For Sale and Liquidation of All Receivership Assets; and Approval to Record

Motion for: 1) Approval to Retain Lachona Law as Counsel For Receiver Nunc Pro Tunc; Approval to Retain Consultant Nunc Pro Tunc; (3) Approval of Receiver's Plan for Sale and Liquidation of all Receiver's Plan For Sale and Liquidation of All Receivership Assets; and Approval to Record is GRANTED and is unopposed. The Court will sign the Proposed Order.

7. 20CV00146 Lopez, Jesus E Chan v. save Mart Supermarkets

EVENT: Petition to Compromise Claim of Minor

Plaintiff's former counsel is ordered to appear and explain why they have not provided a response concerning Defense counsel's multiple requests regarding the final Medi-Cal lien.

8. 23CV03127 Wilson, Daedalys et al v. Park, Lisa et al

EVENT: Defendants Lisa Park, William Park and Butte Psychological Services Demurrer to Plaintiff's Complaint

Defendants Lisa Park, William Park and Butte Psychological Services Demurrer to Plaintiff's Complaint is SUSTAINED in PART and OVERRULED in PART. To the extent the demurrer is sustained, it is sustained without leave to amend as the demurrer is unopposed.

The demurrer is sustained as to the first and fourth causes of action. Concerning the first cause of action for declaratory relief, as Defendants note non-compete clauses are enforceable within the context of partnership agreements. Regarding the fourth cause of action for misappropriation of likeness, Defendants' argument that Plaintiff has the ability to remove his name from County records is well taken.

The demurrer is overruled as to the second, third, and fifth causes of action. Defendants arguments here are extrinsic to the Complaint.

Weil & Brown Civil Procedure Before Trial (Rutter Group) [7:44] No Matter How Unlikely: The sole issue raised by a general demurrer is whether the facts pleaded state a valid cause of action – not whether they are true. Thus now matter how unlikely or improbable, plaintiff's allegations must be accepted as true for the purpose of ruling on demurrer. [Del E. Webb Corp. v. Structural Materials Co. (1981) 123 CA3d 593, 604

Here, essentially Plaintiffs contend Defendants have wrongfully withheld checks and have violated Labor Code Section 202, and Defendants simply deny those allegations. Defendants' denials are extrinsic matters and we must assume the truth of the allegations in the complaint for purposes of the Complaint.

Defendants shall file their answer within 20 days. Defendants shall prepare and submit a form of order within 2 weeks.

9. 24CV00264 In re: Woodward, Andrew Morgan

EVENT: Change of name (Adult) (Continued from 3/20/27)

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