

These are the tentative rulings for civil law and motion matters set for Thursday, October 13, 2016, at 8:30 a.m. in the Placer County Superior Court. The tentative ruling will be the court's final ruling unless notice of appearance and request for oral argument are given to all parties and the court by 4:00 p.m. today, Wednesday, October 12, 2016. Notice of request for oral argument to the court must be made by calling (916) 408-6481. Requests for oral argument made by any other method will not be accepted. Prevailing parties are required to submit orders after hearing to the court within 10 court days of the scheduled hearing date, and after approval as to form by opposing counsel. Court reporters are not provided by the court. Parties may provide a court reporter at their own expense.

NOTE: Effective July 1, 2014, all telephone appearances will be governed by Local Rule 20.8. More information is available at the court's website, www.placer.courts.ca.gov.

EXCEPT AS OTHERWISE NOTED, THESE TENTATIVE RULINGS ARE ISSUED BY COMMISSIONER MICHAEL A. JACQUES AND IF ORAL ARGUMENT IS REQUESTED, ORAL ARGUMENT WILL BE HEARD IN DEPARTMENT 40, LOCATED AT 10820 JUSTICE CENTER DRIVE, ROSEVILLE, CALIFORNIA.

1. M-CV-0065090 Ingram Micro Inc. vs. Atazz Technical Services, Inc.

Plaintiff's Motion to Compel Responses to Form Interrogatories

The motion is granted as to the request to compel responses. Defendant Atazz Technical Services, Inc. shall provide verified responses, without objections, to form interrogatories, set one, on or before October 21, 2016.

Plaintiff's request to strike the answer is denied.

Plaintiff's Motion to Compel Responses to Request for Production of Documents

The motion is granted as to the request to compel responses. Defendant Atazz Technical Services, Inc. shall provide verified responses and responsive documents, without objections, to request for production of documents, set one, on or before October 21, 2016.

Plaintiff's request to strike the answer is denied.

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2. S-CV-0030314 Belisle, David, et al vs. Centex Homes, et al

This tentative ruling is issued by the Honorable Michael W. Jones. If oral argument is requested, it shall be heard at 8:30 a.m. in Department 43:

Cross-Defendant Fletcher Plumbing, Inc.'s Motion for Good Faith Settlement

The unopposed motion is granted. Based on the standards set forth in *Tech-Bilt v. Woodward Clyde & Associates* (1985) 38 Cal.3d 488, the settlement at issue is within the reasonable range of the settling cross-defendant's proportionate shares of liability for plaintiff's injuries and therefore is in good faith within the meaning of CCP§877.6.

Cross-Defendant Sacramento A-1 Door's Motion for Good Faith Settlement

The unopposed motion is granted. Based on the standards set forth in *Tech-Bilt v. Woodward Clyde & Associates* (1985) 38 Cal.3d 488, the settlement at issue is within the reasonable range of the settling cross-defendant's proportionate shares of liability for plaintiff's injuries and therefore is in good faith within the meaning of CCP§877.6.

3. S-CV-0034060 Pourarian, Amitis vs. Natural Tech Landscape, et al

Defendant Tom Knutson's Motion for Summary Judgment/Adjudication

Preliminary Issues

As an initial matter, plaintiff concedes that her second cause of action for negligence per se has been dismissed and the only cause of action left that involves defendant is the first cause of action for negligence.

Objections

Plaintiff's objections are overruled in their entirety.

Defendant's objections nos. 1-6 to the Schoech declaration are overruled. Defendant's objections nos. 1-12 to the Carey declaration are sustained.

Ruling on Motion

Defendant's motion for summary judgment is granted. A party to the action may move for summary judgment if that party contends there is no merit or no defense to the action. (*Code of Civil Procedure section 437c(a).*) The trial court engages in a specific analysis when reviewing a motion for summary judgment. First, it must define the scope of the motion by looking to the operative pleading. The pleadings serve as the "outer measure of materiality" for a motion for summary judgment in addition to determining the scope of the motion. (*Government Employees Ins. Co. v. Superior Court* (2000) 79 Cal.App.4th 95, 98; *Laabs v. City of Victorville* (2008) 163 Cal.App.4th 1242, 1258.)

The pleadings identify the issues raised and the request for summary adjudication must address these issues.

Second, the moving party must meet its initial burden. A moving defendant has the initial burden of showing that a cause of action has no merit or there is a complete defense to the cause of action. (CCP§437c(p)(2).) The trial court must view the supporting evidence, and inferences reasonably drawn from such evidence, in the light most favorable to the opposing party. (*Aguilar v. Atlantic Richfield Company* (2001) 25 Cal.4th 826, 843.) The final part of the analysis is reached if the moving party meets its initial burden. The burden then shifts to the plaintiff to show that a triable issue of material fact exists as to the cause of action or a defense to the cause of action. (CCP§437c(p)(2).) With these standards established, the court turns to the substance of defendant's motion.

Plaintiff alleges defendant failed to exercise ordinary care in the design, construction, installation, and inspection of the pool and yard area for the subject home. (TAC ¶¶17-19.) Specifically, she alleges that defendant Raymond Ranciato knew a contractor had moved the plumbing originally installed by defendant and instructed defendant not to piece the plumbing back together or perform a pressure test on the plumbing. (Id. at ¶8.) Plaintiff also alleges defendant criticized Mr. Ranciato for alterations to defendant's previous work. (Ibid.) These are the allegations that frame the current motion.

Defendant has met his initial burden with the submission of evidence showing he owed no duty to plaintiff nor did he breach any duty to plaintiff. Defendant installed the initial rough-in plumbing and electrical work for the pool and yard area. (Defendant's SSUMF No. 8.) The current pool plumbing, however, is different from the system installed by defendant. (Id. at No. 33.) The rough-in plumbing installation was removed and relocated without defendant's knowledge, consent, or consultation. (Id. at Nos. 31, 32.) Defendant expressed his concerns regarding the modifications to Mr. Ranciato, who instructed defendant to take no actions regarding defendant's voiced concerns. (Id. at No. 46.) Defendant provided services for a leak detection over a year after his original installation and repaired a broken supply line. (Id. at Nos. 48-51.) This evidence is sufficient to eliminate a showing of duty on the part of defendant along with eliminating any showing of breach on his part, shifting the burden to plaintiff to establish a triable issue.

Plaintiff, however, is unable to meet her burden here. The admissible evidence presented by plaintiff tends to support defendant's position rather than create a triable issue. Specifically, Mr. Ranciato's testimony verifies that defendant's original plumbing installation was modified during landscaping of the property. (Ranciato deposition, pp. 145:24-146:14.) Plaintiff submits insufficient admissible evidence to establish a triable issue that defendant's plumbing installation work was related to the defects that caused her damages. Since plaintiff is unable to meet her burden and establish a triable issue, the motion is granted.

4. S-CV-0034746 Dabbagh, D.A., et al vs. Schauer, Gary, et al

The motion for summary judgment, or alternatively summary adjudication, is continued to October 20, 2016 at 8:30 a.m. in Department 40.

5. S-CV-0036217 Alonso, Esmeralda vs. Hinkey, Jill

Defendant California Investor Property Management’s Motion for Summary Judgment

Ruling on Objections

Plaintiff’s objections nos. 1, 2, 3, and 4 are overruled.

Defendant’s objections nos. 1-4 are overruled. Objections nos. 5-20 are sustained.

Ruling on Motion

A party to the action may move for summary judgment if that party contends there is no merit or no defense to the action. (CCP§437c(a).) The trial court engages in a specific analysis when reviewing such a motion. First, it must define the scope of the motion by looking to the operative pleading. The pleadings serve as the “outer measure of materiality” for a motion for summary judgment in addition to determining the scope of the motion. (*Government Employees Ins. Co. v. Superior Court* (2000) 79 Cal.App.4th 95, 98; *Laabs v. City of Victorville* (2008) 163 Cal.App.4th 1242, 1258.) The pleadings identify the issues raised and the request for summary judgment must address these issues.

Second, the moving party must meet its initial burden. A moving defendant has the initial burden of showing that a cause of action has no merit or there is a complete defense to the cause of action. (CCP§437c(p)(2).) The trial court must view the supporting evidence, and inferences reasonably drawn from such evidence, in the light most favorable to the opposing party. (*Aguilar v. Atlantic Richfield Company* (2001) 25 Cal.4th 826, 843.) The final part of the analysis is reached if the moving party meets its initial burden. The burden then shifts to the plaintiff to show that a triable issue of material fact exists as to the cause of action or a defense to the cause of action. (CCP§437c(p)(2).) With these standards established, the court turns to the substance of defendant’s motion.

Defendant seeks summary judgment as to both the negligence and premises liability causes of action asserted against it by plaintiff. Defendant was brought into the action through a doe amendment filed on August 10, 2015. Plaintiff alleges in her first cause of action that defendant “maintained, controlled, possessed, repaired, inspected, operated, designed, built, managed and cleaned certain walkway surfaces located at 144 Duranta Street”. (Complaint ¶7.) She goes on to allege that defendant “negligently,

carelessly and recklessly ..., maintained, controlled possessed, repaired, inspected, operated, designed, built, managed and cleaned certain walkway surfaces located at 144 Duranta Street, ..., in a dangerous condition, so as [to] cause plaintiff to fall.” (Id. at ¶8.) Plaintiff further alleges defendant knew of or reasonably should have known of the dangerous condition that caused her injuries. (Id. at ¶¶10-12.) Plaintiff goes on to make similar allegations in her second cause of action for premises liability. (Id. at ¶¶16-21.) These are the allegations that frame the current motion.

The negligence and premises liability claims require a showing that defendant owed a duty to the plaintiff. (*Leslie G. v. Perry & Associates* (1996) 43 Cal.App.4th 472, 480.) Where the dangerous condition of the property is created by the negligence of the owner or a person acting on behalf of the owner, those people are charged with notice of the condition and have a duty to warn or correct it. (*Oldenburg v. Sears, Roebuck & Co.* (1957) 152 Cal.App.2d 733, 742.) Where the dangerous condition is caused by a third person, the owner or person acting on the owner’s behalf only has a duty where they have actual or constructive knowledge of the condition. (*Id.* at pp. 743-744.) Defendant submits sufficient evidence to rebut the dangerous condition here was created by any of the defendants.

The dangerous condition subject to this litigation is the placement of a water hose coiled up on the walkway of the subject property. (Defendant’s SSUMF Nos. 1, 4, 5 and supporting evidence cited therein.) Defendant is a property management company that contracted with defendant Jill Hinkey to provide management related services for the subject property. (Defendant’s SSUMF No. 2 and supporting evidence cited therein.) They entered into a six month management services agreement in June of 2014. (Defendant’s Lodged Evidence, Liston declaration ¶¶3-5; Exhibit G.) The agreement included defendant obtaining prior authorization for any repair or maintenance that was not an emergency. (Id. at Exhibit G.) There were no gardening services at the subject property when defendant entered into the agreement with Ms. Hinkey. (Id. at Becknell declaration ¶7, Liston declaration ¶8.) Nor did defendant hire anyone to provide gardening services for the property. (Ibid.) Other than observing a builder’s work conducted on the property, Ms. Hinkey left its management in the hands of defendant and did not go out to the property. (Defendant’s Lodged Evidence, Exhibit I, pp. 20:24-23:17.) Defendant did not own the water hose plaintiff tripped on and did not have any information as to who owned the hose. (Id. at Becknell declaration ¶5, Liston declaration ¶7.) In light of this evidence, defendant has sufficiently rebutted the placement of the hose was a dangerous condition created on the part of Ms. Hinkey or itself and defendants are not charged with notice of the water hose on the walkway.

This, in turn, means any duty on the part of defendant exists only where it had actual or constructive notice of the water hose on the walkway. Defendant has submitted sufficient evidence to rebut it had any actual or constructive notice of the dangerous condition alleged created by the water hose on the walkway. Defendant received no reports or complaints of a dangerous condition on the walkway prior to plaintiff tripping over the hose. (Defendant’s SSUMF No. 13 and supporting evidence cited therein.) Nor had defendant received any reports or complaints of a water hose left on and/or

obstructing the walkway. (Ibid; Defendant's Lodged Evidence, Becknell declaration ¶¶9, 10; Liston declaration ¶¶11, 12.) Defendant has met its initial burden here by sufficiently refuting owing any duty to plaintiff, shifting the burden to plaintiff to establish a triable issue of material fact.

Plaintiff, however, has failed to meet her burden here. To reiterate, the allegations within the complaint frame the issues raised in the motion. (*Government Employees Ins. Co. v. Superior Court* (2000) 79 Cal.App.4th 95, 98; *Laabs v. City of Victorville* (2008) 163 Cal.App.4th 1242, 1258.) As pleaded in her complaint, plaintiff alleges the negligence and premises liability stems from a dangerous condition. (Complaint ¶¶7, 8, 10-12, 16-21.) Plaintiff's admissible evidence goes outside the scope of the allegations within the complaint, attempting to frame the issue as one of negligent maintenance rather than that involving a dangerous condition. (Plaintiff's SSUMF Nos. 10-13 and admissible evidence cited therein.) This focus to change the legal theory does not equate to admissible evidence that establishes a triable issue of material fact. As presented in her complaint, plaintiff fails to present sufficient evidence of negligent acts or actions on the part of the defendant involving the dangerous condition of the property and, specifically, the placement of the water hose on the walkway. For these reasons, the motion is granted.

6. S-CV-0036650 Cantrell, Mark vs. WCG Properties, et al

Plaintiff's motion for order deeming admitted truth of facts is granted. The matters encompassed in Plaintiff's Requests for Admissions, Set One, propounded on defendant Timothy Cosetti, Jr. are deemed admitted. Sanctions in the amount of \$60.00 are imposed on defendant Timothy Cosetti, Jr. pursuant to CCP§2033.280(c).

7. S-CV-0037002 Kim, Kyu S. vs. Ham, Young Suk , et al

This tentative ruling is issued by the Honorable Michael W. Jones. If oral argument is requested, it shall be heard at 8:30 a.m. in Department 43:

Cross-Defendants' Demurrer to the Second Amended Cross-Complaint (SACC)

Ruling on Request for Judicial Notice

Cross-defendants' request for judicial notice is denied.

Ruling on Demurrer

Cross-defendants' demurrer is sustained without leave to amend. The cross-defendants demur to the first cause of action for indemnity and second cause of action for unpaid wages. A demurrer tests the legal sufficiency of the pleadings, not the truth of the plaintiff's allegations or accuracy of the described conduct. (*Bader v. Anderson* (2009) 179 Cal.App.4th 775, 787.) As such, the allegations in the pleadings are deemed to be true no matter how improbable the allegations may seem. (*Del E. Webb Corp. v. Structural Materials Co.* (1981) 123 Cal.App.3d 593, 604.) A review of the two causes of action in the SACC show they are both deficient.

As to the first cause of action, the right to indemnity generally flows from paying of a joint legal obligation on another's behalf. (*GEM Developers v. Hallcraft Homes of San Diego, Inc.* (1989) 213 Cal.App.3d 419, 426.) "The elements of a cause of action for indemnity are (1) a showing of fault on the part of the indemnitor and (2) resulting damages to the indemnitee for which the indemnitor is ... equitably responsible. [Citation.]" (*Expressions at Rancho Niguel Assn. v. Ahmanson Developments, Inc.* (2001) 86 Cal.App.4th 1135, 1139.) As currently pleaded, the allegations in the SACC fail to sufficiently identify an indemnitor/indemnitee relationship that would support this cause of action.

The second cause of action seeks a claim for unpaid wages. However, there are insufficient allegations to support claims against all of the cross-defendants or to sufficiently identify the applicable statutory framework under the Labor Code that supports this claim.

This is cross-complainant's third attempt to plead claims for indemnity and unpaid wages against the cross-defendants. Despite being afforded the ability to amend his cross-complaint on multiple occasions, cross-complainant is still unable to allege the facts necessary to assert viable causes of action. As cross-complainant has failed to make the necessary showing that the deficiencies may be cured with an amendment, the demurrer is sustained without leave to amend.

Cross-Defendants' Demurrer to the Second Amended Cross-Complaint (SACC)

In light of the court's ruling on the demurrer, the motion is dropped as moot.

8. S-CV-0037502 Villa, Jenifer vs. Bains, Raman, et al

The two pending demurrers are continued to November 10, 2016 at 8:30 a.m. in Department 40 to afford defendants time to resolve the nonsufficient funds issue related to their first appearance fees in bringing these motions.

9. S-CV-0037760 Fayard, Gregory vs Milstein Adelman, LLP et al.

The demurrer is dropped from the calendar. A first amended complaint was filed on October 4, 2016.

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10. S-PR-0008238 Berardo, Jr. Mathew William - In Re The Estate Of:

The motion for judgment on the pleadings is continued to October 18, 2016 at 8:30 a.m. in Department 40.

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