

These are the tentative rulings for civil law and motion matters set for Thursday, October 20, 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 19, 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-0044514 Diehl, Nancy, et al vs. Moore, Jennifer, et al

Defendant's motion to dismiss the action is denied as there is no proof of service in the file that comports to the requirements of CCP§1013.

The court sets the matter for an OSC re dismissal for December 6, 2016 at 11:30 a.m. in Department 40. The clerk is to notify all parties of the OSC hearing.

2. M-CV-0064377 Barry, Brenda B. vs. Gray, Douglas U.

Defendant's motion to pay judgment in installment payments is denied as defendant has failed to make a sufficient showing of good cause to support the request.

**3. M-CV-0065644 Wells Fargo Bank, N.A vs. Tyshkevich, Aleksandr, et al.
S-CV-0038390 Tyshkevich, Aleksandr et al vs. Wells Fargo Bank, N.A. 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:

Defendants' Motion for Consolidation

The motion is denied. The court may consolidate actions that involve common questions of law or fact. (*Code of Civil Procedure section 1048.*) The consolidation of actions pursuant to Section 1048 is permissive. (*Committee for Responsible Planning v.*

City of Indian Wells (1990) 225 Cal.App.3d 191, 196, fn. 5.) As such, consolidation rests within the sound discretion of the trial court. (*Walker v. Walker (1960) 177 Cal.App.2d 89, 91-92.*) The purpose of a consolidation is to promote trial convenience and economy by avoiding duplicative procedures within actions involving common questions of law or fact. (*McClure, on Behalf of Caruthers v. Donovan (1949) 33 Cal.2d 717, 722.*) In this case, the consolidation of the unlawful detainer action and the current action will not promote judicial economy or trial convenience. An unlawful detainer action is a summary proceeding with distinctly shortened timelines to address the right to possession of the property. (*Old Nat'l Fin. Servs., Inc. v. Seibert (1987) 194 Cal.App.3d 460, 465.*) This is compared to a wrongful foreclosure action, which challenges the underlying basis to foreclose on a subject property and seeks damages. (*Munger v. Moore (1970) 11 Cal.App.3d 1, 7.*) These two proceedings may address the same property but do not involve common questions of law. Allowing consolidation would eliminate the summary nature of the unlawful detainer action along with improperly injecting possession issues in a claim for damages related to an alleged wrongful foreclosure. For these reasons, the motion is denied.

Plaintiff's Motion for Summary Judgment

Ruling on Request for Judicial Notice

Plaintiff's request for judicial notice is granted as to Exhibits 2-4 and 6-10 pursuant to Evidence Code section 452. The court takes "judicial notice of the fact of a document's recordation, the date the document was recorded and executed, the parties to the transaction reflected in a recorded document, and the document's legally operative language, assuming there is no genuine dispute regarding the document's authenticity. From this, the court may deduce and rely upon the legal effect of the recorded document, when that effect is clear from its face." (*Fontenot v. Wells Fargo Bank, N.A. (2011) 198 Cal.App.4th 256, 265.*)

Plaintiff's request for judicial notice of Exhibits 1 and 5 are denied.

Ruling on Motion

A motion for summary judgment in an unlawful detainer action may be brought at any time after the answer is filed upon five days notice. (*Code of Civil Procedure section 1170.7.*) A party is entitled to bring a motion for summary judgment where there are no triable issues of fact. (*Code of Civil Procedure section 437c.*) The party seeking summary judgment bears the burden of showing there is no triable issue of material fact and that the party is entitled to judgment as a matter of law. (*Aguilar v. Atlantic Richfield Co. (2001) 25 Cal.4th 826, 850.*) The moving party has the burden of showing, by affidavit, facts establishing every element necessary to sustain a judgment in favor of the party. (*Consumer Cause, Inc. v. Smilecare (2001) 91 Cal.App.4th 454, 468.*) Once a plaintiff proves its prima facie case, the burden of proof shifts to the defendant to prove triable issue of material fact. (*Code of Civil Procedure section 437c(p)(1).*)

To prevail in an action for unlawful detainer following a foreclosure, plaintiff must show that (1) plaintiff purchased the property upon foreclosure and title following the foreclosure sale has been duly perfected, (2) defendant was served with a three-day written notice to quit the property, and (3) defendant continued in possession after expiration of the notice. (*Code of Civil Procedure section 1161a(b)(3)*.) Plaintiff provides evidence that it purchased the property at a trustee's sale and said title was duly perfected. (Plaintiff's SSUMF Nos. 4, 5.) Plaintiff also shows that defendants were served with a notice to quit and vacate the property. (Id at Nos. 6, 7.) Finally, Plaintiff submits evidence that defendants remain on the property after the expiration of the notice. (Id. at No. 8.)

As Plaintiff has made a prima facie showing in support of summary judgment, the burden now shifts to the defendants. In light of the shortened timelines in unlawful detainer proceedings, the defendant may appear at the time of the hearing to provide evidence of a triable issue of material fact in writing or orally at the hearing. (*California Rules of Court, Rule 3.1351(b), (c)*.) The court, however, has discretion to consider a written opposition filed at a later time. (*Ibid.*)

In light of this, the court continues the matter to November 3, 2016 at 8:30 a.m. in Department 43 to afford defendants an opportunity to file a written opposition to the motion. Any opposing papers shall be filed and served, either personally or by facsimile transmission, by October 26, 2016. Plaintiff may file and serve any reply papers, either personally or by facsimile transmission, by October 31, 2016.

4. M-CV-0065648 Ventures Trust 2013-I-H-R vs. Lackey, Joseph H., et al.

Plaintiff's Motion to Strike and/or Tax Costs

The motion is granted in part. As it pertains to the request to strike the cost memo in its entirety, the motion is denied. Claimants received the benefit of a dismissal, which makes them the prevailing parties in this action. (CCP§1032(a)(4).) As to plaintiff's request to tax portions of the cost memo, the request is granted. Specifically, the court taxes the claimants' cost memo, filed on August 24, 2016, in the amount of \$12,190 as claimants have not made a sufficient showing to support an award of attorney's fees in this instance.

Claimant's Motion for Order Taxing and/or Striking Costs

Claimants' requests for judicial notice are granted.

As an initial matter, claimants' current request is somewhat difficult to ascertain. This is especially true with claimants' usage of the terms "tax" and "strike". What claimants appear to be requesting is to have the court make an order for attorney's fees, costs, and for payment of a security deposit in their favor.

To the extent the request seeks attorney's fees, the request is denied as claimants have not sufficiently established a statutory or contractual basis for such an award. Claimants' request for return of the security deposit is also denied as this is a contractual issue involving the defendants, not the named plaintiff in this action.

5. M-CV-0065666 National Colligate Student Loan vs. Crue, Jane, et al.

Defendant's demurrer to the first amended complaint (FAC) is overruled. A party may demur to a complaint where the pleading does not state facts sufficient to constitute a cause of action. (CCP§430.10(e).) 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.) The allegations in the FAC, when read as a whole, are sufficient to allege a cause of action for breach of contract.

The court notes that defendant filed an answer to the FAC on September 16, 2016.

6. S-CV-0033065 Myers, Ronda vs. Larson, Jerry

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:

Respondent's motion for attorneys' fees and costs is granted. Code of Civil Procedure section 527.6(s) states, "[t]he prevailing party in any action brought under this section may be awarded court costs and attorney's fees, if any." The court previously made a finding that respondent was the prevailing party at the August 10, 2016 hearing, entitling him to recover attorneys' fees and costs under Section 527.6(s). The court finds the hourly rates for the attorneys and paralegal staff charged by respondent's counsel are reasonable. The court also finds the number of hours claimed by counsel are also reasonable. Respondent is awarded \$6,563.50 in attorneys' fees and \$81.97 in costs for a total award of \$6,644.87.

7. S-CV-0033258 Ziegler, Deborah, et al vs. Precision Craft, Inc., et al

The motion for summary judgment is dropped from the calendar at the request of the moving party.

8. S-CV-0033635 Walsh, Liliya vs. THR California, LP, et al

The two demurrers and two motions to strike are continued to November 3, 2016 at 8:30 a.m. in Department 43 to be heard in conjunction with the pending motion for consolidation.

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

Defendants' Motion for Summary Judgment, or in the alternative Summary Adjudication

Preliminary Matters

As an initial matter, the court declines to consider the new evidence presented in defendants' reply papers as plaintiffs have not been afforded an opportunity to respond to this new material.

Ruling on Request for Judicial Notice

Defendant's request for judicial notice submitted with their moving papers is granted.

Ruling on Objections

Defendant's objections are overruled in their entirety.

Ruling on Motion

The motion is denied. Initially, the motion was not noticed and served within the 75-day period as required under CCP§437c. The motion may be denied on this basis alone.

Furthermore, there exist triable issues of material fact that prevent summary judgment and/or summary adjudication. The trial court shall grant a motion for summary judgment if "all the papers submitted show that there is no triable issue as to any material fact and the moving party is entitled to a judgment as a matter of law." (CCP§437c(c).) A party to the action may also move for summary adjudication if that party contends there is no merit to one or more of the causes of action. (CCP§437c(f)(1).) However, a motion for summary adjudication shall only be granted where it completely disposes of a cause of action. (*Ibid.*) In reviewing a motion for summary judgment, 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 evidence presented establishes a sufficient triable issue of material fact regarding the tolling of the statute of limitations, which prevents summary judgment. (Plaintiffs' Responsive SSUMF Nos. 74-81.) Furthermore, the evidence presented, and reasonable inferences that may be drawn from the evidence, is sufficient to raise a material triable issue regarding the existence of an oral partnership between the parties for the management and collection of rent regarding the income generating commercial property. (*Id.* at Nos. 12, 14, 15, 17, 21, 29, 71-81.) For these reasons, the motion is denied.

10. S-CV-0036182 Hembree, Alisa, et al vs. Worton Markets, Inc.

The motion for coordination of proceedings is dropped from the calendar in light of the settlement entered on October 7, 2016.

An OSC re dismissal is set for January 24, 2017 at 11:30 a.m. in Department 40.

11. S-CV-0036594 Pereira, John David vs. City of Rocklin et al

The demurrer to the third amended complaint is continued to October 27, 2016 at 8:30 a.m. in Department 40. The court apologizes to the parties for any inconvenience.

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

The motion for judgment on the pleadings is dropped from the calendar. A dismissal of the action was entered on October 17, 2016.

13. S-CV-0037256 Schlak, Hillis, et al vs. Sierra Oaks Homeowners Association

Defendant's motion to compel depositions of plaintiffs is granted. Plaintiffs Hillis Schlak and Lorraine Schlak shall appear for their depositions at time, place, and location as noticed by defendant and to be held no later than November 4, 2016.

Defendant's request for sanctions is denied as the motion was unopposed. (CCP§2025.450(g)(1). However, repeated conduct of failing to comply with discovery obligations may lead the court to find an abuse of the discovery process and award sanctions on that basis. (*Laguna Auto Body v. Farmers Ins. Exchange* (1991) 231 Cal.App.3d 481, overruled on other grounds in *Garcia v. McCutchen* (1997) 16 Cal.4th 469, 478, fn. 4.)

14. S-CV-0037893 Rymel, Christopher et al. vs. Save Mart Suprmrkets, Inc.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:

Defendant's motion to sever is granted. Code of Civil Procedure section 379.5 states, "[w]hen parties have been joined under Section 378 or 379, the court may make such orders as may appear just to prevent any party from being embarrassed, delayed, or put to undue expense, and may order separate trial or make such other order as the interests of justice may require." This section allows for severance and/or separate trials to avoid the confusion or prejudice that may result from complex or predominantly dissimilar issues. (see *Westphal v. Westphal* (1943) 61 Cal.App.2d 544, 548; *Anaya v. Superior Court (Dow Chemical)* (1984) 160 Cal.App.3d 228, 233-234.) The circumstances and facts presented in this action present sufficiently dissimilar issues that defendant would be prejudiced if the matter were to proceed as a single action. Severance is necessary to address the prejudice that may result from the distinct issues

raised by the claims presented by the three plaintiffs. For these reasons, the motion is granted and the plaintiffs' claims are severed into separate actions to be filed under separate case numbers.

The clerk of the court shall create a new, separate unlimited civil case file for plaintiff Jose Roble and issue a new case number within 10 court days of this order. The clerk shall also provide notice of this new case number to all parties within 10 court days from the issuance of the new case number. Defendant Save Mart shall be responsible for providing conformed copies of all the documents filed from June 3, 2016 through October 18, 2016 in SCV-37893, with the exception of the complaint and answer, to the court clerk for this new case file.

The clerk of the court shall also create a new, separate unlimited civil case file for plaintiff David Hagins and issue a new case number within 10 court days of this order. The clerk shall also provide notice of this new case number to all parties within 10 court days from the issuance of the new case number. Defendant Save Mart shall be responsible for providing conformed copies of all of the documents filed from June 3, 2016 through October 18, 2016 in SCV-37893, with the exception of the complaint and answer, to the court clerk for this new case file.

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