

These are the tentative rulings for civil law and motion matters set for Thursday, November 17, 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, November 16, 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-0063436 CSO Financial, Inc. vs. Law, Leeann

Plaintiff's motion to set aside the settlement is denied. There are several significant deficiencies related to this motion that need to be addressed. Initially, the motion does not include a notice of motion as required under CCP§1005. Second, the court cannot determine whether service has been properly effectuated since the court file does not reflect defendant was ever served with the complaint. Third, the case was dismissed on January 5, 2016 so the court lacks jurisdiction to hear the current motion. (*Hagan Engineering, Inc. v. Mills* (2003) 115 Cal.App.4th 1004.) Even if the court were to interpret the current request as seeking to vacate the dismissal, which it does not, plaintiff does not provide the court with a settlement agreement for enforcement nor was the court ever requested to retain jurisdiction to enforce a settlement under CCP§664.6. For all of these reasons, the motion is denied.

2. S-CV-0022986 Aguirre, Dione vs. Amscan Holding, Inc.

The motion for final approval of class action settlement and motion for attorneys' fees are continued to December 1, 2016 at 8:30 a.m. in Department 43. The court apologizes to the parties for any inconvenience.

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3. 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:

Defendant Centex's Motion for Summary Judgment

Preliminary Matters

As an initial matter, the court notes that Centex submitted additional arguments and evidence in its reply papers. The court declines to consider the newly submitted arguments and evidence, granting plaintiff's motion to strike these filings. (see *Balboa Ins. Co. v. Aguirre* (1983) 149 Cal.App.3d 1002, 1010; *Plenger v. Alza Corp.* (1992) 11 Cal.App.4th 349, 362, fn. 8.)

Joinders Submitted by Defendant Subcontractors

It is also noted that several defendant subcontractors submitted joinders to the current motion. Plaintiff has not opposed any of these joinders. The court has carefully reviewed these notices and supporting papers and shall consider the joinders filed by the following defendants: (1) Fletcher Plumbing; (2) South Placer Roofing; (3) Villara Corporation; and (4) Creative Design Interiors.

Requests for Judicial Notice

Centex's request for judicial notice is granted in its entirety pursuant to Evidence Code section 452.

Fletcher Plumbing's request for judicial notice is granted in its entirety pursuant to Evidence Code section 452.

South Placer Roofing's request for judicial notice is granted in its entirety pursuant to Evidence Code section 452.

Villara Corporation's request for judicial notice is granted in its entirety pursuant to Evidence Code section 452.

Evidentiary Objections

Plaintiff's objections are overruled in their entirety.

Ruling on Motion

A party to the action may move for summary judgment if that party contends there is no merit to one or more of the causes of action. (Code of Civil Procedure section 437c(f)(1).) 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 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. (Code of Civil Procedure section 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. (Code of Civil Procedure section 37c(p)(2).) With these standards established, the court turns to the substance of Centex’s motion.

In the current motion, Centex and the joining defendant subcontractors challenge plaintiff Rosa Ahlberg’s ability to establish damages. Plaintiff’s damages are framed by her second amended complaint, which alleges plaintiff suffered damages for restoration to the subject property; repairs to the subject property; diminution of value; and the retention of expert witnesses. (Centex’s exhibit appendix, Exhibit 2, SAC ¶¶18, 46, 54, 58, 61, 69, and 78.) These are the damages that frame the current motion.

Turning to Centex’s motion, it submits sufficient evidence to meet its initial burden here. The evidence presented shows plaintiff has no interest in the subject property since it has been sold to a third party. (Centex’s SSUMF No. 9.) She also has no interest in the mold related damages attributable to other non-parties, which are subject to a separate proceeding. (*Id.* at Nos. 7, 40, 42.) Plaintiff obtained \$90,000 from the sale of the subject property and has no evidence that the property could have sold for more than \$460,000. (*Id.* at Nos. 30, 33 and evidence cited therein.) Based upon these facts and the supporting evidence, Centex has met its initial burden, shifting the burden to plaintiff to establish a triable issue of material fact.

In this instance, plaintiff has not established a triable issue. First, it is essential to reiterate the allegations in the SAC frame the inquiry. Plaintiff alleges in the SAC that her damages stem from restoration, repairs, diminution of value, and retention of expert witnesses. (Centex’s exhibit appendix, Exhibit 2, SAC ¶¶18, 46, 54, 58, 61, 69, and 78.) Thus, facts that will create a triable issue must be *material* to these allegations. It is undisputed that plaintiff has no interest in any of the mold related claims brought by non-parties in the separate proceeding. (Plaintiff’s Responsive SSUMF Nos. 40, 42.) It is also undisputed plaintiff has no evidence that the subject property could have sold for more than \$460,000. (*Id.* at No. 33.) Plaintiff attempts to create a triable issue by presenting purported disputed facts regarding contracting work for the subject property. (Plaintiff’s SSUMF Nos. 5, 13.) These facts and supporting evidence, however, do not establish a triable issue. Initially, plaintiff’s citation to the deposition excerpts in her

SSUMF No. 13 do not stand for the propositions asserted in this fact and falls well short of demonstrating any remediation costs, let alone an amount of \$109,465.05. As to the alleged \$25,000 stated in SSUMF No. 5, the cited deposition excerpt does not sufficiently show plaintiff paid for remediation or repairs related to this litigation as opposed to damages related to the non-parties separate proceeding. As to the remainder of plaintiff's purported material facts, these either relate to irrelevant claims of damages for mortgage and purchase/sale of property costs outside the scope of the SAC (Plaintiff's SSUMF Nos. 3, 6, 8, 9, 10, 11) or relate to the claims of non-parties (Id. at Nos. 16-32.) Thus, plaintiff fails to present fact material to her claims within the SAC that are sufficient to establish a triable issue. For these reasons, the motion is granted.

Disposition

Centex's motion for summary judgment is granted as to plaintiff Rosa Ahlberg. Defendants Fletcher Plumbing, South Placer Roofing, Villara Corporation, and Creative Design Interiors' joinders to the motion are granted as to plaintiff Rosa Ahlberg.

Defendant Centex's Motion to Strike Certain Experts from Plaintiff Rosa Ahlberg's Disclosure

In light of the court's ruling on Centex's motion for summary judgment, the motion is dropped as moot.

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 plaintiffs' injuries and therefore is in good faith within the meaning of CCP§877.6.

4. S-CV-0036018 Barrie, Gene, Trustee, et al vs. Percin, Mark David, et al

Cross-Defendant The Hardy Family Trust's Motion for Sanctions

The motion is denied as the moving party has not established it was ever served with the cross-complaint. Nor has the moving party shown the doe amendment to the cross-complaint was totally and completely without merit or motivated solely to harass or cause unnecessary delay.

Cross-Defendant Gene M. Barrie, Inc.'s Motion for Sanctions

The motion is denied as the moving party has not established it was ever served with the cross-complaint. Nor has the moving party shown the doe amendment to the cross-complaint was totally and completely without merit or motivated solely to harass or cause unnecessary delay.

5. S-CV-0036165 Bank of America, N.A. vs. Halden, Edward J., et al

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

6. S-CV-0036542 Smyk, Orest v Rafael, Shaun, et al

Plaintiff's motion to set aside the default judgment is denied. Plaintiff has not made a sufficient showing of mistake, inadvertence, surprise, or excusable neglect under CCP§473(b).

7. S-CV-0036980 Spencer, Samuel R. vs. Sinclair, Robert F., et al

Plaintiff's motion to vacate the attorney's fees order is denied as plaintiff has not sufficiently established the order is void under CCP§473(d). Contrary to plaintiff's repeated arguments, his failure to timely object to a commissioner hearing his law and motion matters was validly deemed a stipulation for all purposes excluding trial under Placer Court Local Rule 20.2.B. (see *Walker v. San Francisco Housing Authority* (2002) 100 Cal.App.4th 685, 691-693.) As plaintiff has failed to sufficiently establish a basis to vacate the order, the motion is denied.

8. S-CV-0036988 Doe, Jane vs. Community Recovery Resources, et al

The motion for summary judgment is continued to December 15, 2016 at 8:30 a.m. in Department 40 at the request of the moving party.

9. S-CV-0037302 Jensen, Kenneth J., et al vs. General Motors LLC

The motion to compel further responses to discovery is continued to December 8, 2016 at 8:30 a.m. in Department 43 to be heard by the Honorable Michael W. Jones.

10. S-CV-0037750 Epting, Carla vs. Sierra College, et al

Plaintiff's motion to set aside the dismissal is denied. There are several deficiencies in the current request that prohibit the court from granting the requested relief. First, a judgment of dismissal was entered on November 4, 2016, so the request sought here will not afford plaintiff the necessary relief as plaintiff must now seek to set aside the judgment. Second, plaintiff has not sufficiently established a basis for discretionary relief under CCP§473(b). The declaration submitted by counsel Michael Traylor is insufficient to establish mistake, inadvertence, surprise, or excusable neglect on the part of plaintiff or plaintiff's counsel. Third, plaintiff has not sufficiently established a basis for mandatory relief under CCP§473(b). Counsel's supporting declaration fails to include any admission on his part that counsel's error resulted in the entry of the dismissal. (see generally Michael Traylor declaration.) Absent such an admission, counsel's declaration is not sufficient to establish a basis for mandatory relief.

(see *State Farm Fire & Casualty Co. v. Pietrak* (2001) 90 Cal.App.4th 600, 609.) Finally, the proposed first amended complaint (FAC) lodged by plaintiff contains substantial pleading deficiencies that fail to remedy the issues raised in the September 1, 2016 demurrer. The proposed FAC is drafted in the same style as the defective original complaint with allegations of such a general nature that it could be used to apply to any FEHA wrongful termination proceeding. In light of the significant deficiencies, the motion is denied.

The clerk is instructed to return the proposed FAC to the plaintiff unprocessed.

11. S-CV-0038594 Hinsberg, Bryan - In Re the Matter of

The appearances of the parties are required for the hearing on the petition to transfer structured settlement payments.

The court is unable to make a finding that the transfer is the best interest of Mr. Hinsberg based upon the information currently presented in the petition. Specifically, the petition does not sufficiently address Mr. Hinsberg's financial and economic situation nor does it sufficiently identify the purpose of the transfer. This, when taken in conjunction with the fact that Mr. Hinsberg has previously made two other transfers within the last 4 years totaling over half a million dollars, prevents the court from making a finding that this additional \$100,000 transfer is in his best interest. The parties may appear at the time of the hearing and supplement the petition with additional information to establish that the current transfer is in Mr. Hinsberg's best interests.

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