

1. BUGAISKI v. SONNY'S BARBEQUE SHACK, ET AL., SC20190161

Final Accounting of Settlement

**TENTATIVE RULING # 1: APPEARANCES ARE REQUIRED AT 1:30 P.M., FRIDAY,
MARCH 22, 2024, IN DEPARTMENT FOUR.**

2. MILLER v. HOME DEPOT USA, INC., ET AL., 23CV1757

Demurrer

On the court's own motion, the matter is continued to April 26, 2024. The court apologizes to the parties for any inconvenience.

**TENTATIVE RULING # 2: MATTER IS CONTINUED TO 1:30 P.M., FRIDAY, APRIL 26, 2024,
IN DEPARTMENT FOUR.**

3. EQUABLE ASCENT v. PRIETO, SCL20130021

Motion to Review Renewal of Judgment Based on Payment

**TENTATIVE RULING # 3: APPEARANCES ARE REQUIRED AT 1:30 P.M., FRIDAY,
MARCH 22, 2024, IN DEPARTMENT FOUR.**

4. SUWAIDAN v. EL DORADO COUNTY, ET AL., 23CV1081**(A) Defendant City of South Lake Tahoe's Demurrer****(B) Defendant El Dorado County's Demurrer**

On November 3, 2023, the court sustained defendant City of South Lake Tahoe's demurrer to plaintiff's original Complaint with leave to amend. Pending before the court are the demurrers of defendants City of South Lake Tahoe (the "City") and El Dorado County (the "County"), respectively, against plaintiff's First Amended Complaint ("FAC").

1. Background

This case arises from an incident that occurred on October 18, 2022, in which plaintiff alleges she tripped and fell on a pothole while walking across a crosswalk.

Plaintiff's original Complaint alleges that she filed a government claim with the City on November 11, 2022.¹ (County's Request for Judicial Notice ("RJN"), Ex. 4, ¶ 7.) Plaintiff subsequently filed a government claim with the County on January 25, 2023. (See County's RJN, Ex. 2.) Both government claim forms state that the location of the subject incident is "Crosswalk – 1001 Lake Tahoe Blvd[.], South Lake Tahoe." (See City's RJN, Ex. A; County's RJN, Ex. 2.)

Plaintiff's FAC, however, alleges that the subject incident actually occurred at or near 1001 Heavenly Village Way, South Lake Tahoe. (FAC, ¶ 1.) This location is approximately 7.3 miles away from the location listed in plaintiff's government claim forms. (See County's RJN, Ex. 3.)

Plaintiff explains that at the time of the incident, "she was unfamiliar with the address and exact location where she was injured." (FAC, ¶ 5.) She allegedly reported the incident to the South Lake Tahoe Police Department a few days later. (FAC, ¶ 6.) During her discussion with the police, plaintiff described the location where the incident occurred. (FAC, ¶ 6.) Based on this discussion, the police allegedly recorded the incident location as

¹ The court notes that plaintiff's FAC does not technically allege she filed any government claim form. (See FAC.)

“1001 Lake Tahoe Ca.” (FAC, ¶ 6.) Plaintiff allegedly relied on the location identified in the police report to establish the location of the subject incident. (FAC, ¶ 7.)

Plaintiff’s FAC alleges two causes of action against both defendants: (1) negligence; and (2) premises liability.

2. Requests for Judicial Notice

Pursuant to Evidence Code section 452, subdivisions (c), (d), and (h), the County’s unopposed request for judicial notice of Exhibit 1 (the FAC), Exhibit 3 (Google Maps directional result printout showing the distance and directions from 1001 Lake Tahoe Boulevard to 1001 Heavenly Village Way), Exhibit 4 (the original Complaint), Exhibit 5 (the court’s tentative ruling issued in this matter on November 2, 2023), and Exhibit 6 (the court’s November 3, 2023, minute order sustaining the City’s demurrer with leave to amend) are granted. The County’s request for judicial notice of Exhibit 2 (liability claim form submitted to the County) is also granted for the purpose of showing what notice plaintiff gave the County related to the content of plaintiff’s government claim.

The County’s request for judicial notice of Exhibit 7 (rejection letter) is denied.

The City requested judicial notice of many of these same documents on August 28, 2023, in connection with its demurrer to the original Complaint. As pertinent here, the court grants the City’s August 28, 2023, request for judicial notice of Exhibit A (liability claim form submitted to the City).

3. Standard of Review

“[A] demurrer challenges only the legal sufficiency of the complaint, not the truth or the accuracy of its factual allegations or the plaintiff’s ability to prove those allegations.” (*Amarel v. Connell* (1998) 202 Cal.App.3d 137, 140.) A demurrer is directed at the face of the complaint and to matters subject to judicial notice. (Code Civ. Proc., § 430.30, subd. (a).) All properly pleaded allegations of fact in the complaint are accepted as true, however improbable they may be, but not the contentions, deductions, or conclusions of fact or law. (*Blank v. Kirwan* (1985) 39 Cal.3d 311, 318; *Del E. Webb Corp. v. Structural*

Materials Co. (1981) 123 Cal.App.3d 593, 604.) A judge gives “the complaint a reasonable interpretation, reading it as a whole and its parts in their context.” (*Blank, supra*, 39 Cal.3d at p. 318.)

4. Discussion

Pursuant to Code of Civil Procedure section 430.10, subdivision (e), both defendants generally demurrer to plaintiff’s FAC on the ground that the pleading does not state facts sufficient to constitute a cause of action. Specifically, defendants argue that plaintiff failed to comply with the notice requirement under Government Code section 945.4. Additionally, the County argues that plaintiff improperly seeks to hold the County liable for common law negligence even though municipalities are immune from common law causes of action under Government Code section 815, subdivision (a). (County’s Dem. at 5:4–15.)

4.1. The Government Claims Act

The Government Claims Act “requires that ‘all claims for money or damages against local public entities’ be presented to the responsible public entity before a lawsuit is filed.” (*City of Stockton v. Superior Court* (2007) 42 Cal.4th 730, 734 (2007) [quoting Gov. Code, § 905].) If a plaintiff fails to timely present a claim to the public entity, she may not bring a lawsuit against that entity. (See Gov. Code, §§ 945.4, 911.2; *City of Stockton, supra*, 42 Cal.4th at p. 734 [“Failure to present a timely claim bars suit against the entity.”].)

“Where a claimant has attempted to comply with the claim requirements but the claim is deficient in some way, the doctrine of substantial compliance may validate the claim ‘if it substantially complies with all of the statutory requirements ... even though it is technically deficient in one or more particulars.’ ” (*Connelly v. County of Fresno* (2006) 146 Cal.App.4th 29, 38.) “The test for substantial compliance is whether the face of the filed claim discloses sufficient information to enable the public entity to make an

adequate investigation of the claim's merits and settle it without the expense of litigation." (*Id.*)

Plaintiff claims she complied with the notice requirement under Government Code section 945.4 where she listed a location that falls within defendants' geographic boundary, albeit the street address was incorrect. (Opp. at 3:21–4:1.) For the reasons discussed in the court's tentative ruling issued November 2, 2023 (see County's RJN, Ex. 5), however, the court concludes that plaintiff did not comply with the notice requirement.

4.2. Estoppel

Plaintiff alternatively argues that defendants should be estopped from arguing non-compliance where plaintiff relied on the location identified in the City's police report to complete her government claim. (Opp. at 2:24–3:1.)

Both defendants reject plaintiff's estoppel argument. The County further argues that even if plaintiff's new allegations could have an estoppel effect, that effect does not reach the County here because plaintiff alleges no representations, let alone misrepresentations, made by the County regarding where plaintiff was injured. (County's Dem. at 2:11–14.)

"The doctrine of equitable estoppel is founded on concepts of equity and fair dealing." (*Strong v. County of Santa Cruz* (1975) 15 Cal.3d 720, 725.) "The essence of an estoppel is that the party to be estopped has by false language or conduct 'led another to do that which he [or she] would not otherwise have done and as a result thereof that he [or she] has suffered injury.' [Citation.]" (*State Compensation Ins. Fund v. Workers' Comp. Appeals Bd.* (1985) 40 Cal.3d 5, 16.) The doctrine "ordinarily will not apply against a governmental body except in unusual instances when necessary to avoid grave injustice and when the result will not defeat a strong public policy. [Citations.]" (*Hughes v. Bd. Of Architectural Examiners* (1998) 17 Cal.4th 763, 793.)

The court overrules plaintiff's estoppel argument as a matter of law. Plaintiff alleges she described the incident location to police and based on such information, the police recorded the incident location as "1001 Lake Tahoe Ca." (FAC, ¶ 6.) This is not an unusual instance where estoppel is necessary to avoid grave injustice. The alleged representation by the City – that the incident location was "1001 Lake Tahoe Ca" [sic] – was solely based on plaintiff's reporting. Therefore, the doctrine of estoppel does not apply.

4.3. Common Law Negligence

The County also demurs to the First Cause of Action for common law negligence on the ground that a public entity is not liable for any injury, including common law torts, except as otherwise provided by statute. (Gov't Code, § 815, subd. (a); *Milosky v. Regents of the Univ. of Cal.* (2008) 44 Cal.4th 876, 900–901.) The court agrees and sustains the demurrer on this separate ground.

5. Conclusion

The court sustains both defendants' demurrers to plaintiff's FAC. Because plaintiff has previously had an opportunity to amend her pleading, and there does not appear to be any reasonable possibility that plaintiff can cure its defect, the court denies further leave to amend. (See *Roman v. County of Los Angeles* (2000) 85 Cal.App.4th 316, 322.)

TENTATIVE RULING # 4: BOTH DEFENDANTS' DEMURRERS ARE SUSTAINED WITHOUT LEAVE TO AMEND. NO HEARING ON THIS MATTER WILL BE HELD (*LEWIS v. SUPERIOR COURT* (1999) 19 CAL.4TH 1232, 1247), UNLESS A NOTICE OF INTENT TO APPEAR AND REQUEST FOR ORAL ARGUMENT IS TRANSMITTED ELECTRONICALLY THROUGH THE COURT'S WEBSITE OR BY TELEPHONE TO THE COURT AT (530) 573-3042 BY 4:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED. NOTICE TO ALL PARTIES OF AN INTENT TO APPEAR MUST BE MADE BY TELEPHONE OR IN PERSON. PROOF OF SERVICE OF SAID NOTICE MUST BE FILED PRIOR TO OR AT THE HEARING.

5. IN THE MATTER OF DH TAHOE, LLC, 24CV0306

Petition for Declaration of Abandonment of a Mobile Home

TENTATIVE RULING # 5: ABSENT OBJECTION, PETITION IS GRANTED. NO HEARING ON THIS MATTER WILL BE HELD (*LEWIS v. SUPERIOR COURT* (1999) 19 CAL.4TH 1232, 1247), UNLESS A NOTICE OF INTENT TO APPEAR AND REQUEST FOR ORAL ARGUMENT IS TRANSMITTED ELECTRONICALLY THROUGH THE COURT'S WEBSITE OR BY TELEPHONE TO THE COURT AT (530) 573-3042 BY 4:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED. NOTICE TO ALL PARTIES OF AN INTENT TO APPEAR MUST BE MADE BY TELEPHONE OR IN PERSON. PROOF OF SERVICE OF SAID NOTICE MUST BE FILED PRIOR TO OR AT THE HEARING.

6. KUSHNER v. RIGTHPATH SERVICING, LLC, ET AL., 23CV1329

Demurrer

On the court's own motion, the matter is continued to April 26, 2024. The court apologizes to the parties for any inconvenience.

**TENTATIVE RULING # 6: MATTER IS CONTINUED TO 1:30 P.M., FRIDAY, APRIL 26, 2024,
IN DEPARTMENT FOUR.**

7. KOVACH, ET AL. v. FAUMUINA, ET AL., PC20210367

Motion for Reconsideration

On the court's own motion, the matter is continued to March 29, 2024. The court apologizes to the parties for any inconvenience.

TENTATIVE RULING # 7: MATTER IS CONTINUED TO 1:30 P.M., FRIDAY, MARCH 29, 2024, IN DEPARTMENT FOUR.

8. STATE FARM GEN. INS. CO. v. HOME APPLIANCES CORP., ET AL., SC20210006

Motion for Determination of Good Faith Settlement

On the court's own motion, the matter is continued to April 19, 2024. The court apologizes to the parties for any inconvenience.

**TENTATIVE RULING # 8: MATTER IS CONTINUED TO 1:30 P.M., FRIDAY, APRIL 19, 2024,
IN DEPARTMENT FOUR.**