1. MARTINEZ, ET AL. v. CISCO'S ROOFING & PAINTING, ET AL., 21CV0346

Defendants' Amended Motion to Set Aside Default and Default Judgment

This action arises from a roof replacement project. Default was entered against defendants on February 24, 2022, and default judgment was entered on April 15, 2022. Pending is defendants' amended motion to set aside default and default judgment pursuant to Code of Civil Procedure ("CCP") § 473(d).

Specifically, defendants' motion is made on the basis that plaintiffs failed to allege a specific amount of damages in their complaint as required by CCP § 425.10(a)(2), thereby rendering as void the default and default judgment.

The motion is well taken. CCP § 425.10 requires that the amount of damages be pleaded in causes of action other than for personal injury or wrongful death. This action is not one for personal injury or death. Thus, plaintiffs were required to, but did not, allege the specific amount of damages in their complaint. Further, even if plaintiffs had served a statement of damages prior to entry of default, serving a statement of damages in a case not involving personal injury or wrongful death is insufficient as CCP § 580 does not authorize a statement of damages in such cases. (*Dhawan v. Biring* (2015) 241 Cal.App.4th 963, 972–973.)

Accordingly, plaintiffs were required to file and serve an amended complaint stating their damages prior to entry of default and default judgment. (Am. Mot., Decl. of Counsel, ¶ 2.) Because they did not do so, the default and default judgment taken against defendants are void and must be vacated. (See *Dhawan*, *supra*, 241 Cal.App.4th at pp. 974–975.)

Defendants' motion is granted.

TENTATIVE RULING # 1: DEFENDANTS' AMENDED MOTION TO SET ASIDE DEFAULT AND DEFAULT JUDGMENT 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. PARTIES MAY APPEAR IN PERSON AT THE HEARING. IF ANY PARTY WISHES TO APPEAR REMOTELY THEY MUST APPEAR BY ZOOM.

2. MOORE v. TERPENING, 22CV0395

Motion to Amend Complaint

Defendant did not file an opposition to the motion. The proof of service to the motion declares that the moving papers were served on defendant by regular U.S. mail and electronically on July 14, 2022. Defendant's opposition was due no later than nine court days prior to the hearing. (Code Civ. Proc., § 1005(b).)

The court deems defendant's non-opposition as an admission that the motion is meritorious. (Local Rules of the El Dorado County Superior Court, Rule 7.10.02(C).)

The motion is granted.

TENTATIVE RULING # 2: PLAINTIFF'S MOTION TO AMEND THE COMPLAINT IS GRANTED. PLAINTIFF MUST FILE AND SERVE THE FIRST AMENDED COMPLAINT NO LATER THAN 10 DAYS FROM THE DATE OF SERVICE OF THE NOTICE OF ENTRY OF ORDER. 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. PARTIES MAY APPEAR IN PERSON AT THE HEARING. IF ANY PARTY WISHES TO APPEAR REMOTELY THEY MUST APPEAR BY ZOOM.

3. REYES, ET AL. v. STATE OF CAL. DEPT. OF TRANSP., ET AL., SC20200027

Defendants' Motion to Compel Plaintiffs to Produce Vehicle for Inspection

This is a personal injury and property damage action arising from a motor vehicle collision. Pending is defendants' motion to compel plaintiffs to produce their vehicle for inspection after failing to comply with a noticed inspection demand.

Plaintiffs do not oppose the issuance of an order compelling them to produce the subject vehicle for inspection. But, plaintiffs do oppose the amount of sanctions requested by defendants. Plaintiffs first contend that while there may have been confusion about the initial inspection attempt, plaintiffs did not act with malice or any ill intent. And second, plaintiffs contend the amount requested is excessive, the costs are not properly substantiated, and at least a portion of the requested costs are not out-of-pocket expenses for defendant CalTrans.

"[T]he court shall impose a monetary sanction … against any party, person, or attorney who unsuccessfully makes or opposes a motion to compel compliance with a demand, unless it finds that the one subject to the sanction acted with substantial justification or that other circumstances make the imposition of the sanction unjust." (Code Civ. Proc., § 2031.320(b).)

Here, plaintiffs produced the wrong vehicle for inspection and not the vehicle that was involved in the collision. Because of this, defendants incurred $4,935 in costs and expenses associated with the two experts who went and inspected the wrong vehicle, as well as $1,694 in attorney fees and costs for having to move to compel plaintiffs to produce the vehicle involved in the collision.

Based on that, the court does not find that plaintiffs acted with substantial justification or that other circumstances make the imposition of sanctions unjust. Defendants provided a breakdown of all the costs they incurred—which are supported by declarations—due to plaintiffs' failure to comply with a noticed inspection. Having reviewed and considered defendants' moving papers and documentary evidence, the court finds that $6,629

($4,935 + $1,694) in sanctions is reasonable under the circumstances. The sanction must be paid by plaintiffs at the end of this case, either from a judgment rendered in their favor or from any settlement agreement, or, if defendants prevail, the amount will be included in any judgment in favor of defendants.

TENTATIVE RULING # 3: DEFENDANTS' MOTION TO COMPEL PLAINTIFFS TO PRODUCE THEIR VEHICLE FOR INSPECTION IS GRANTED. PLAINTIFFS' COUNSEL MUST BE PERSONALLY PRESENT DURING THE SUBSEQUENT VEHICLE INSPECTION. PLAINTIFFS MUST PAY SANCTIONS IN THE TOTAL AMOUNT OF $6,629, AS SET FORTH IN THE FULL TEXT OF THE TENTATIVE RULING. 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. PARTIES MAY APPEAR IN PERSON AT THE HEARING. IF ANY PARTY WISHES TO APPEAR REMOTELY THEY MUST APPEAR BY ZOOM.

4. SCOTT v. LAKE TAHOE BOAT CO., 21CV0261

Small Claims Trial De Novo

TENTATIVE RULING # 4: APPEARANCES ARE REQUIRED AT 1:30 P.M., FRIDAY, AUGUST 26, 2022, IN DEPARTMENT FOUR.

5. DUO v. VAIL RESORTS, INC., ET AL., 22CV0091

Demurrer to Complaint

Plaintiff's complaint, filed January 12, 2022, asserts causes of action for general negligence and premises liability against defendants Vail Resorts, Inc., dba Vail Resorts Management Co., and Heavenly Mountain Ski Resort. On May 5, 2022, plaintiff filed an amendment to the complaint, identifying Doe 1 as Heavenly Valley, LP ("Heavenly"). On July 13, 2022, plaintiff filed a Request for Dismissal with prejudice only as to Vail Resorts, Inc., Vail Resorts Management Co., and Heavenly Mountain Ski Resort. As such, the only remaining defendant is Heavenly.

Pending is Heavenly's demurrer to the complaint. Heavenly demurs to the 1st Cause of Action ("C/A") for premises liability and 2nd C/A for negligence on the basis that each C/A fails to state a claim against Heavenly and both claims are vague, ambiguous, and uncertain. (Code Civ. Proc., § 430.10(e), (f).)

1. 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* (1988) 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(a).) All properly pleaded allegations of fact in the complaint are accepted as true, regardless of how 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.App.3d at p. 318.)

2. DISCUSSION

Plaintiff's complaint is on Judicial Council form PLD-PI-001. In his opposition brief, plaintiff stipulates to sustaining the demurrer to the 1st C/A for premises liability at Prem.

L-3 (Count Two–Willful Failure to Warn) and at Prem. L-4 (Count Three–Dangerous Condition of Public Property). (Compl., p. 6.) As such, the demurrer to Counts Two and Three to the 1st C/A is sustained without leave to amend.

Heavenly first demurs on the basis that both C/A are barred by the affirmative defense of primary assumption of risk. A pleading that alleges facts amounting to an affirmative defense is subject to a general demurrer. (*McKenney v. Purepac Pharm. Co.* (2008) 167 Cal.App.4th 72, 78.) The court may sustain a demurrer based on an affirmative defense only when the face of the complaint discloses that the action is necessarily barred by the defense. (*Brown v. Crandall* (2011) 198 Cal.App.4th 1, 10.)

There are disputed facts concerning whether plaintiff was still engaged in the recreational activity of skiing when the incident occurred, or whether the activity was concluded. As such, the face of the complaint does not disclose that the action is necessarily barred by the defense. The demurrer on the basis that both C/A fail to state a claim is overruled.

And second, Heavenly demurs on the basis that both C/A are vague, ambiguous, and uncertain. "A demurrer for uncertainty is strictly construed, even where a complaint is in some respects uncertain, because ambiguities can be clarified under modern discovery procedures." (*Khoury v. Maly's of Cal.*, *Inc.* (1993) 14 Cal.App.4th 612, 616.) Viewing the complaint as a whole, the allegations set forth the facts with sufficient precision to put Heavenly on notice about what the plaintiff is complaining and what remedies are being sought. (See *Signal Hill Aviation Co. v. Stroppe* (1979) 96 Cal.App.3d 627, 636.) The demurrer on this basis is overruled.

TENTATIVE RULING # 5: DEFENDANT HEAVENLY'S DEMURRER IS SUSTAINED IN PART WITHOUT LEAVE TO AMEND AND OVERRULED IN PART. HEAVENLY MUST ANSWER THE COMPLAINT NO LATER THAN 10 DAYS FROM THE DATE OF SERVICE OF THE NOTICE OF ENTRY OF ORDER. 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. PARTIES MAY APPEAR IN PERSON AT THE HEARING. IF ANY PARTY WISHES TO APPEAR REMOTELY THEY MUST APPEAR BY ZOOM.