August 8, 2025 Civil Tentative Rulings

1. CU0000564 Ton Cho Saelee vs. Henry Eddie et al

Defendants' motion for summary judgment is denied.

Request for Judicial Notice

Defendants' Request for Judicial Notice is granted. Cal. Evid. Code § 452(d).

Standard of Review

The function of a motion for summary judgment or adjudication is to allow a determination as to whether an opposing party cannot show evidentiary support for a pleading or claim and to enable an order of summary dismissal without the need for trial. *Aguilar v. Atlantic Richfield Co.* (2001) 25 Cal.4th 826, 843. In analyzing motions for summary judgment, courts must apply a three-step analysis: (1) identify the issues framed by the pleadings to be addressed; (2) determine whether moving party showed facts justifying a judgment in movant's favor; and (3) determine whether the opposing party demonstrated the existence of a triable, material issue of fact. *Sun v. City of Oakland* (2008) 166 Cal.App.4th 1177, 1182-83; *McGarry v. Sax* (2008) 158 Cal.App.4th 983, 994; *Hinesley v. Oakshade Town Center* (2005) 135 Cal. App. 4th 289, 294.

Plaintiff's Procedural Challenge

Plaintiff asserts Defendants' motion is procedurally deficient because it fails to separately identify each cause of action that is the subject of the motion, and each undisputed material fact with respect to the cause of action. Plaintiff's complaint contains two causes of action: 1) motor vehicle and 2) general negligence, but Defendant's motion states, "Plaintiff essentially alleges a single cause of action." "Although two causes of action were pled, this is a negligence case." (Def. Motion 3:25-4:4.)

California Rules of court, Rule 3.1350(d) requires that a separate statement in support of a motion for summary judgment must separately identify each cause of action and each supporting material fact claimed to be without dispute with respect to the cause of action that is the subject of the motion. Cal. Rules of Court, Rule 3.1350(d)(1)(A)-(B). However, the court's power to deny summary judgment on the basis of failure to comply with California Rules of Court, rule 3.1350 is discretionary, not mandatory. *Truong v. Glasser* (2009) 181 Cal.App.4th 102, 118; *see also Cadlo v. Owens–Illinois, Inc.* (2004) 125 Cal.App.4th 513, 523; *cf. San Diego Watercrafts, Inc. v. Wells Fargo Bank* (2002) 102 Cal.App.4th 308, 315–316. At bar, the facts critical to the court's consideration of Defendants' motion are adequately identified, and have not impaired Plaintiff's ability to compile evidence to show that material facts are in dispute.

Analysis

In the present case, Plaintiff sues Defendants Dave Grant Hay, Inc. and Henry Eddie for damages as a result of a motor vehicle accident. Under both the "Motor Vehicle" cause of action and the "General Negligence" cause of action, the Complaint alleges that Defendants were negligent, and

that those acts were the legal cause of injuries to Plaintiff. "The essential elements of a cause of action for negligence are: (1) the defendant's legal duty of care towards the plaintiff; (2) the defendant's breach of duty – the negligent act or omission; (3) injury to the plaintiff as a result of the breach – proximate or legal cause; and (4) damage to the plaintiff." *Leyva v. Garcia* (2018) 20 Cal.App.5th 1095, 1103.

Defendants' motion for summary judgment does not contest whether Plaintiff has a claim for these causes of action, but rather declares there is no question of undisputed material fact that they have a complete defense to the causes of action. Defendants asserts that the "sudden emergency defense" provides a complete defense to Plaintiff's negligence case.[1] The sudden emergency doctrine shields a defendant from liability in a negligence action. *Shiver v. Laramee* (2018) 24 Cal. App. 5th 395, 397.

To obtain summary judgment based on the sudden emergency doctrine, Defendants must show the evidence is undisputed that: (1) there was a sudden and unexpected emergency situation in which someone was in actual or apparent danger of immediate injury; (2) Defendants did not cause the emergency; and (3) Defendant Eddie reacted as a reasonably careful person would have acted in similar circumstances, even if it appears later that a different course of action would have been safer. *Shiver, supra*, 24 Cal.App. 5th at 399; CACI No. 452.

The sudden emergency doctrine is properly applied only in cases where an unexpected physical danger is presented so suddenly as to deprive the driver of his power of using reasonable judgment. *Pittman v. Boiven* (1967) 249 Cal.App.2d 207, 216. Whether a defendant has been suddenly confronted with a sudden and unexpected emergency situation is a question of fact to be submitted to the jury. *Id*.; *Leo v. Dunham* (1953) 41 Cal.2d 712, 715; *Warren v. Sullivan* (1961) 188 Cal.App.2d 150, 154. If the evidence presented indicates that a defendant was confronted with a sudden emergency, "he is entitled to an instruction which advises the jury as to the amount of care which he was required to exercise while acting under its stress." *Pittman v. Boiven, supra*, 249 Cal.App.2d at 216; *Groat v. Walkup Drayage & Co., supra*, 14 Cal.App.2d 350, 354, 58 P.2d 200.

While ordinarily the questions of whether a defendant is confronted with a sudden and unexpected emergency situation and whether the defendant reacted in the manner in which a reasonable person might have taken under the circumstances are questions for the jury, in some cases "the evidence establishes as a matter of law" the answers to those questions. *Schultz v. Mathias* (1970) 3 Cal.App.3d 904, 913. Only in such a rare case is summary judgment appropriate. *Shiver v. Laramee, supra*, 24 Cal.App.5th at 397. When a defendant relies on the sudden emergency doctrine as the basis for his motion for summary judgment, he has the burden to produce evidence to support each element of the defense. *Mayes v. La Sierra University* (2022) 73 Cal.App.5th 686, 686-697. If he does so, the burden then shifts to the plaintiff to produce evidence that would allow a reasonable trier of fact to reject the defense. *Id.*

At bar, the court finds that while Defendant has produced evidence sufficient to support each element of the defense; however, the court also finds Plaintiff has satisfied his burden of producing evidence that would allow a reasonable trier of fact to reject the defense. Defendants assert that

[1] As discussed above, while Plaintiff has claimed two causes of action, the court finds that because both are at heart claims for negligence, it can sufficiently analyze Defendants' motion.

Defendant Eddie "***suddenly*** saw a camper roof lying in his lane ahead of him" as an undisputed material fact. SSUMF No. 6 (emphasis added.) Plaintiff responds that the appearance of the camper roof in the road was not "sudden", as it was visible for at least 9 seconds and was more than 600 feet away. Plaintiff's Response to the SSUMF No. 6. Both parties rely on the dashcam video as supporting evidence. SSUMF, Ex. 10. Defendants argue that because Plaintiff admits Defendant Eddie had only seconds to avoid a large stationary hazard in the road, and as such, indisputably faced a sudden and unexpected emergency. The court disagrees.

In *Schultz v. Mathias*, the court found summary judgment appropriate under the sudden emergency doctrine when the facts indicated defendant only saw plaintiff's car, which swerved into the wrong lane because he was unable to negotiate the curve, when the vehicles were 350 to 400 feet apart, closing in on each other at a combined speed of at least 120 miles per hour, and giving the defendant only three to four seconds between seeing the vehicle and impact, and thus defendant as a matter of law had no time for deliberate evasive action. *Schultz, supra*, at 913. The evidence at bar establishes no such undisputed material facts. While both parties agree that Defendant Eddie had mere seconds to react, there is a substantial difference between three to four seconds and nine seconds, as well as a difference between approaching an unmoving object at 55 miles per hour versus 120 miles per hour. Defendant Eddie simply asserting he saw the camper roof "suddenly" does not establish that is an undisputed material fact. Rather, it is a triable issue as to whether there was a sudden and unexpected emergency situation.

Defendants also argue that there is no question of material fact as to the third element of the sudden emergency affirmative defense, that Defendant Eddie reacted as a reasonably careful person would have acted in similar circumstances. Defendants assert, "Eddie moved the vehicle he was driving partially into the number one lane to avoid the camper roof and braked." SSUMF No. 7. Plaintiff disputes this, stating "Defendant Eddie gradually moved…and was not actively braking the vehicle." Plaintiff's Response to the SSUMF No. 7 Both parties again rely on the dashcam as supporting evidence. SSUMF, Ex. 10. Defendants argue that Plaintiff's assertion that Defendant Eddie could have reacted in a safer manner is "forbidden" under the sudden emergency analysis. While Defendant Eddie's conduct in not choosing a potentially safer alternative cannot be judged by hindsight, the court does not agree that Defendants have established Defendant Eddie's reaction was as a reasonably careful person would have in similar circumstances. Plaintiff has presented evidence showing there is a triable issue of material fact for the jury to decide. The video evidence shows other drivers successfully avoiding a collision with the camper roof, which goes to the argument that a reasonably careful driver could have had a different reaction from Defendant Eddie, and it is also for the jury to determine if Defendant Eddie's reaction was reasonable given the amount of time the camper roof was visible and the timing of his reaction in shifting lanes.

Therefore, the court finds triable issues of material fact as to both whether a sudden and unexpected emergency situation existed, and if defendant reacted as a reasonably careful person would have acted in similar circumstances. Defendants' motion for summary judgement is denied.

2. CU0001386 In the Matter of RISE GRASS VALLEY, INC., a Nevada corporation

The court finds Petitioner has standing to assert its vested rights claim in the First Cause of Action in the Petition in this case.

Request for Judicial Notice

The court judicially notices Respondent Exhibits 1-5 without opposition by petitioner.

Petitioner's Standing to Assert Its Vested Rights Claim

California Code of Civil Procedure § 1086 states that a writ of mandate, "must be issued upon the verified petition of the party beneficially interested." *See Brown v. Crandall* (2011) 198 Cal.App.4th 1, 8. "The requirement that a petitioner be 'beneficially interested' has been generally interpreted to mean that one may obtain the writ only if the petitioner has some special interest to be served or some particular right to be preserved or protected over and above the interest held in common with the public at large." *Carsten v. Psychology Examining Com.* (1980) 27 Cal.3d 793, 796. The beneficial interest must be direct and substantial. *Save the Plastic Bag Coalition v. City of Manhattan Beach* (2011) 52 Cal.4th 155, 165 (*Save the Plastic Bag).* This standard "is equivalent to the federal 'injury in fact' test, which requires a party to prove by a preponderance of the evidence that it has suffered 'an invasion of a legally protected interest that is "(a) concrete and particularized, and (b) actual or imminent, not conjectural or hypothetical." *Associated Builders & Contractors, Inc. v. San Francisco Airports Com.* (1999) 21 Cal.4th 352, 362. A petitioner has no beneficial interest within the meaning of the statute if he or she "will gain no direct benefit from [the writ's] issuance and suffer no direct detriment if it is denied." *Waste Management of Alameda County, Inc. v. County of Alameda* (2000) 79 Cal.App.4th 1223, 1232, disapproved in part on another point in *Save the Plastic Bag, supra*, 52 Cal.4th at 166-171.

Here, Respondent challenges Petitioner's ("Rise") standing in bringing a vested right claim to mine the Idaho-Maryland Mine ("Property"), arguing that Petitioner's sale of certain parcels of land[2] (the "Sawmill Parcells") destroys its beneficial interest in critical portions of the mine, and thus eliminates its standing. Respondent also argues that Petitioner's sale of the Sawmill Parcels severs the "unified theory" underpinning Petitioner's vested rights claim. However, the court finds no need to examine whether the sale of the Sawmill Parcels means Rise abandoned its vested rights to the mine beyond whether the sale has destroyed Petitioner's standing. Any analysis beyond Petitioner's standing is an argument as to the merits of Petitioner's underlying petition for writ of mandate, and thus needs not be addressed at present.

The standing requirement for a party bringing a petition for writ of mandate is that the party be beneficially interested, or, in other words, have some particular right to be preserved or protected over and above the interest held in common with the public at large. *Save the Plastic Bag, supra*, 52 Cal.4th at 165. In order to find standing, the petitioner's interest in the outcome of the proceedings must be substantial; a writ will not issue to enforce a technical, abstract, or moot right. *Thomasson v. Jones* (1945) 68 Cal.App.2d 640; *Slater v. City Council of Los Angeles* (1965) 238 Cal.App.2d 864. Rise's Vested Right Petition seeks a writ of mandate compelling Respondents to set aside the decision made with respect to the vested right to mine the Property, including the approval of a resolution denying the vested right, and to take all further action necessary to

[2] The Court notes the parties disagree on what to name the parcels of land sold by Petitioner giving rise to the standing issue. Respondent describes them as the "Mill Site Parcels", but Petitioner describes them as the "Sawmill Parcels" in both its Verified Petition for Peremptory Writ of Mandate, as well as its Opposition. Therefore, the Court will adopt that term in referring to the parcels.

recognize Petitioner's vested right to mine the Property without the need for a conditional use property. Petitioner argues that it has standing to pursue the writ of mandate because it owns the Property and the writ of mandate would allow it to mine the Property without a conditional use property. Respondent asserts that Petitioner's sale of the Sawmill Parcels destroyed its beneficial interest in "critical portions" of the Property, but does not argue that a beneficial interest does not exist as to the Property. Therefore, the Court must determine if Petitioner's sale of the Sawmill Parcels, did, in effect, destroy its beneficial interest and thus deprive it of standing. The Court finds that it did not.

Rise's Petition for Peremptory Writ of Mandate is based on its claim that it has vested mining rights on the Property, and which includes the assertion that any "sale of surface rights did not evidence abandonment of the vested right because the subsurface rights were retained for all properties associated with the Mine, and only surface rights not necessary for mining were sold to generate funds." (Verified Petition, ¶ 121.) Determining whether Petitioner has vested mining rights on the Property will include a determination of whether the sale of various surface rights over time created a loss of those mining rights, but it does not affect the Petitioner's standing to seek a petition for writ of mandate regarding its claim of vested mining rights. Similarly to pre-petition sale of various surface rights, post-petition sale of various surface rights that do not include subsurface rights does not affect Rise's standing to bring the petition.

Here, Petitioner asserts a beneficial interest in the outcome of the writ because it will gain the benefit of a use permit to conduct mining operations on the Property, which interest is different than the interest of the public at large. It would allow Rise to reopen and operate the mine on the properties it owns, something no other member of the public can do. While Respondent argues that Petitioner's standing relies on the repurchase of the Sawmill Parcels, Rise asserts both in its petition and its Opposition that the Sawmill Parcells are not necessary to the mining operation, which is what they are seeking a vested interest in. Whereas Respondent states that the sale of the Sawmill Parcels renders Rise's alleged injury so inchoate or lacking in substantiality that the remedy of mandamus is not warranted, Rise argues that the Sawmill Parcels are not necessary for mining. Thus, because the parcels are not necessary to Petitioner's ability to engage in the activity it is seeking a vested right to conduct, the Court can conclude that it has the necessary standing to proceed with its petition. Whether the sale destroys its vested right argument is something the Court need not decide today.

Rise satisfies the "beneficial interest" standard. It still owns outright the vast majority of the surface estate and all of the mineral estate outright. This gives Rise a beneficial interest in the mine property it owns that is the subject of its vested right petition: if its vested right to mine is recognized, Rise possesses all of the surface and mineral estate necessary to begin mining—something that is not true of any other member of the public.

3. CU0001766 Tessa Hart vs. Hooper & Weaver Mortuary, Inc.

Defendant's motion for leave to file first amended answer is granted. Defendant shall file its amended answer within seven (7) days of the Court's order.

Motions for leave to amend to file an answer are governed by Code of Civil Procedure section 473(a)(1), which provides that the same may be permitted "in furtherance of justice, and on any

terms as may be [deemed] proper [by the court].” The policy favoring amendment is so strong that denial of leave to amend can rarely be justified, and it is not only error to refuse permission to amend where the refusal would result in a party being deprived of the right to assert a meritorious defense, but an abuse of discretion. *Morgan v. Superior Court* (1959) 172 Cal.App.2d 527, 530. The general policy is to permit liberal amendment to pleadings where no prejudice is demonstrated. *Nestle v. City of Santa Monica* (1972) 6 Cal.3d 920, 939 (affirming the general rule allowing for liberal amendment of pleadings); *Simons v. County of Kern* (1965) 234 Cal.App.2d 362-367-368.

Cal. Rules of Court, rule 3.1324, provides that a motion to amend must: (1) include a copy of the proposed amendment, (2) state what allegations in the previous pleading are proposed to be deleted, if any, and where, by page, paragraph, and line number, the deleted allegations are located, and (3) state what allegations are proposed to be added to the previous pleading, if any, and where, by page, paragraph, and line number, the additional allegations are located. Cal. Rules of Court, rule 3.1324(a). A copy of the amended pleading has been provided, and the motion clearly describes all amendments to the answer. (Ebert Decl., ¶¶ 7-9, Ex. A)

In moving to amend a pleading, the moving party must file a declaration that specifies: (1) the effect of the amendment, (2) why the amendment is necessary and proper, (3) when the facts giving rise to the amended allegations were discovered, and (4) the reasons why the request for amendment was not made earlier. Cal. Rules of Court, rule 3.1324(b). Defendant’s counsel has submitted a declaration detailing the effect of the proposed amendment (to add immunity under Civil Code § 846 as an affirmative defense), indicated when the new information was acquired (facts were always known but overlooked by counsel), and attached a copy of the proposed amendments to counsel’s declaration. While Plaintiff contends that because the facts were always known to Defendant leave to amend should be denied, the court finds counsel’s explanation sufficient and rule 3.1324 satisfied in light of the liberality with which amendments are allowed.

“[I]t is an abuse of discretion to deny leave to amend where the opposing party was not misled or prejudiced by the amendment.” *Kittredge Sports Co. v. Superior Court* (1989) 213 Cal.App.3d 1047, 1048. Furthermore, “it is irrelevant that new legal theories are introduced as long as the proposed amendments 'relate to the same general set of facts.'” (Kittredge, supra, 213 Cal.App.3d at p. 1048, citing *Hirsa v. Superior Court* (1981) 118 Cal.App.3d 486, 489.

Plaintiff asserts that she will be prejudiced because of added costs of preparation, including briefing, possible motions practice, and potential expert testimony as to the nature and purpose of Plaintiff’s visit to the cemetery. However, Plaintiff has not demonstrated how those costs would exceed those that would have been undertaken if the affirmative defense had been initially pled. No prejudice is shown in expending costs on motions practice and expert testimony that would be required if the affirmative defense had been initially pled. Moreover, no trial date has been set, so counsel has not shown they have insufficient time before trial to adequately conduct any motions practice or expert witness discovery. Thus, the court finds no indication that any party will suffer prejudice by allowing this amendment.

Given the foregoing facts and authorities, the Court finds good cause to grant Defendant’s motion.

4. CU0001850 Davey, Raymond v. Close Associates

Defendant's motion to dismiss is granted without prejudice. Therefore, Defendant's motion to transfer and request for attorney's fees and costs are dropped as moot.

Plaintiff's amended complaint asserts it is subject to Civil Code § 1812.10. Pursuant to Civil Code § 1812.10(c), "[i]n any action subject to this section, concurrently with the filing of the complaint, the plaintiff ***shall*** file an affidavit," which states facts showing venue is proper. (emphasis added.) "If a plaintiff fails to file the affidavit or state facts in a verified complaint required by this section, no further proceedings may occur, but the court ***shall***, upon its own motion or upon motion of any party, dismiss the action without prejudice." *Id*. (emphasis added.)

Plaintiff's complaint is unverified, and he failed to file an affidavit which facts show venue is proper. Thus, the court must dismiss the action without prejudice.