

October 3, 2025 Civil Tentative Rulings

1. CU0000128

Douglas J. Schultz v. Marianne L. Stevenson, et al.

Before the court is the partition referee's ("referee") petition for instructions. First, the referee asks whether this action is automatically stayed during the pendency of appellant/defendant Stevenson's appeal. Second, he asks whether the sale should be stayed because the existence of the appeal will make it impossible to sell the property with title insurance, which potentially will impact the sale value of the property. The court answers both questions in the negative based on the current record.

Automatic stay

Code of Civil Procedure section 917.4 requires an undertaking to stay enforcement of a judgment or order that directs the sale of real property in the possession or control of the appellant. It states:

The perfecting of an appeal shall not stay enforcement of the judgment or order in the trial court *if the judgment or order appealed from directs the sale*, conveyance or delivery of possession of real property which is in the possession or control of the appellant or the party ordered to sell, convey or deliver possession of the property, *unless an undertaking in a sum fixed by the trial court is given* that the appellant or party ordered to sell, convey or deliver possession of the property will not commit or suffer to be committed any waste thereon and that if the judgment or order appealed from is affirmed, or the appeal is withdrawn or dismissed, the appellant shall pay the damage suffered by the waste and the value of the use and occupancy of the property, or the part of it as to which the judgment or order is affirmed, from the time of the taking of the appeal until the delivery of the possession of the property. If the judgment or order directs the sale of mortgaged real property and the payment of any deficiency, the undertaking shall also provide for the payment of any deficiency.

Code Civ. Proc. § 917.4 (italics added).

The language of the statute is plain and clear: whenever the court orders the sale of a property in the possession or control of the appellant, as the court did in this matter, an undertaking is required in order to stay enforcement of the order. The perfecting of an appeal does not automatically stay enforcement of the judgment/order.

Defendant and the referee have cited several cases for the proposition that an appeal from an interlocutory judgment of partition automatically stays further proceedings on the judgment and no undertaking is necessary. See, e.g., *Williams v. Wells Fargo Bank* (1941) 17 Cal.2d 104, *Neusted v. Skernswell* (1945) 69 Cal.App.2d 361. Neither *Williams* nor *Neusted* discuss present-day Code of Civil Procedure section 917.4 (the controlling statute for this case) or Code of Civil Procedure section 945, the predecessor to the same. Instead, each of them interpret the discretionary Code of Civil Procedure section 949, the predecessor to present Code of Civil Procedure section 917.9.

Discretionary Stay

The referee is authorized by statute and the court's interlocutory judgment to enter into and execute contracts for services of real estate brokers and others as necessary to effect the sale of the property. *See* Code Civ. Proc. § 873.010. The petition does not indicate whether the referee already consulted with or considered retaining the services of a real estate attorney. Title insurance policy is not required in California for a real estate transaction. Depending upon the circumstances of the sale, it might be possible to complete the sale without the need for title insurance. The referee should consult with a well-regarded real estate attorney to explore the options for completing the sale without the involvement of a title company. In the alternative, plaintiff has indicated title insurance may be possible if someone is willing to execute an indemnification agreement for the benefit of the title insurer. While the referee has made clear he is not willing to sign an indemnification agreement, it might be possible to find a party who would be willing. On the record presented, the court is not persuaded that it is impossible to sell the property. Moreover, on the record presented, the court is not persuaded that any sale of the property without title insurance would have a material impact on the ability to sell the property or its value. The referee is welcome to seek further instructions from the court with respect to these issues as additional information as to title insurance, marketability or sale value becomes available.

In summary, the referee is directed to continue with the execution of his obligations consistent with the instructions herein.

2. CU0001258 Randy Lee Miller vs. Nevada Commons

No appearances are required. On the court's motion, defendant's motion for summary judgment is continued for hearing until October 31, 2025, at 10:00 a.m., in Department 6. The court apologizes for any inconvenience to the parties.

3. CU0001395 Eric Butterworth, et al. vs. Mountain Concepts, LLC, et al.

Appearance of all counsel and all clients of the moving attorney is required in connection with counsel for defendants' motion to be relieved.

Pursuant to Code of Civil Procedure section 1005(b), defendants' counsel was required to file and serve their motion at least sixteen court days before the hearing. Moreover the period of notice was extended by two additional court days for opposing counsel because of electronic service, and by five additional calendar days for counsel's clients because of mail service. *See* Code Civ. Proc. §§ 1005, 1010.6(a)(3). Here, notice was insufficient. Defendants' counsel filed her motion on September 9, 2025, with a hearing date of October 3, 2025. Because of the court holiday on September 26, 2025, notice was required to be given by September 8, 2025, to counsel and by September 5, 2025, to counsel's clients.

If all parties and clients wish to waive objection to untimely notice, the court is favorably inclined to grant the requested relief. In the absence of a waiver by *all* parties/clients, counsel will need to re-notice the matter for hearing on another date; the court cannot simply continue the

hearing to another date beyond the minimum, required, notice-period. *See, e.g., Robinson v Woods* (2008) 168 CA4th 1258, 1262–1268.

4. CU0001544 Caitlin Peters vs. Cara Krpalek, et al.

The court, on its own motion, sets aside the default entered on March 6, 2025, against defendant Jiri Krpalek. The default was improvidently entered by the clerk. Plaintiff's November 18, 2024, proof of personal service was not filed under penalty of perjury as required to substantiate proper personal service on defendant. A responsive pleading shall be served and filed within 10 calendar days. Defendant Jiri Krpalek's motion to set aside the default is denied as moot.

The court notes plaintiff's address of record was out of date. The parties are reminded that they *must* always ensure that their current address is known to the court and all parties. Any change of address must be filed and served on all parties.

5. CU0001696 George Watson vs. General Motors, LLC

Defendant General Motors LLC's demurrer is sustained with leave to amend as to the fifth cause of action and otherwise overruled. Defendant's motion to strike the prayer for punitive damages is granted with leave to amend. Plaintiff shall serve and file an amended complaint within ten (10) days of this court's order.

Demurrer

Legal Standard on Demurrer

"A demurrer tests the sufficiency of the complaint as a matter of law." *Berg & Berg Enterprises, LLC v. Boyle* (2009) 178 Cal.App.4th 1020, 1034. "It has been consistently held that 'a plaintiff is required only to set forth the essential facts of his case with reasonable precision and with particularity sufficient to acquaint a defendant with the nature, source and extent of his cause of action.' " *Doheny Park Terrace Homeowners Assn. Inc. v. Truck Ins. Exchange* (2005) 132 Cal.App.4th 1076, 1099, *cited with approval by Doe v. City of Los Angeles* (2007) 42 Cal.4th 531, 550. The pleadings are to be liberally construed with "a view towards substantial justice between the parties[.]" and any specific allegations control the general pleadings. *Gentry v. EBay* (2002) 99 Cal.App.4th 816, 827.

Facts that may be inferred from those alleged are also properly taken as true. *Harvey v. City of Holtville* (1969) 271 Cal.App.2d 816, 819. The complainant's ability to prove the allegations does not concern the court. *Del E. Webb Corp. v. Structural Materials Co.* (1981) 123 Cal.App. 3d 593, 604. Rather, the court must construe the complaint liberally by drawing reasonable inferences from the facts pleaded. *Wilner v. Sunset Life Ins. Co.* (2000) 78 Cal.App.4th 952, 958. Contentions, deductions, and conclusions of law, however, are not presumed as true. *Aubry v. Tri-City Hospital Dist.* (1992) 2 Cal.4th 962, 967.

First through Fourth Causes of Action

Defendant demurs to the first, second, third, and fourth causes of action of plaintiff's First Amended Complaint ("FAC"), arguing they are barred by recent amendments to the Song-Beverly Act contained in Code of Civil Procedure §§ 871.20 *et seq.* The court is not persuaded. As noted by defendant's own demurrer, such amendment was not effective until January 1, 2025. See Code Civ. Proc. § 871.21 ("[A]n action covered by section 871.20 shall not be brought later than six years after the date of original delivery of the motor vehicle.")(Added by Stats. 2024, Ch. 938, Sec. 1. (AB 1755), effective January 1, 2025.) This action was filed on October 31, 2024. Defendant has made no showing that the Legislature intended the statute of repose to be applied retroactively. Therefore, the statute of repose does not apply to this action filed before the effective date of the new law. Defendant's demurrer to the first, second, third, and fourth causes of action is overruled.

Fifth Cause of Action

Three-Year Statute of Limitations

Defendant argues that the fifth cause of action, as alleged, is barred by Code of Civil Procedure section 338(d) which imposes a three-year statute of limitations on fraud actions. The court agrees.

Under Code of Civil Procedure § 430.30(a), when any ground for an objection to a complaint appears on the face of the complaint, including the statute of limitations for a cause of action, it may be raised in a demurrer. *Cavey v. Tualla* (2021) 69 Cal.App.5th 310, 325. Generally, a cause of action accrues at the time all of its elements are complete. *Fox v. Ethicon Endo-Surgery, Inc.* (2005) 35 Cal.4th 797, 806-807 (Fox). An exception to this rule is the "discovery rule," which postpones the accrual of a cause of action until the time a plaintiff has discovered, or has reason to discover, the cause of action. *Id.* In order to plead delayed discovery of the fraudulent concealment sufficient to permit delayed accrual of the cause of action, a plaintiff whose cause of action would be barred without the discovery rule on its face must specifically plead facts to show both the time and manner of discovery, as well as his inability to have made earlier discovery despite his reasonable diligence. *Fox*, 35 Cal.4th at 808.

At bar, the FAC sets forth dates, miles on the subject vehicle, and when the vehicle was taken to defendant's authorized repair facility for warranty repairs. Those dates include: September 15, 2016, November 6, 2018, May 22, 2020, January 9, 2024, February 11, 2025, and April 1, 2025. FAC ¶¶ 21-26. While plaintiff concludes "[d]efendant was under a continuous duty to disclose to plaintiff the true character, quality, and nature of the Vehicles suffering from the defects," he also states he "did not discover...facts that would have caused a reasonable person to suspect that Defendants had concealed information about the defects" until shortly before the filing of the FAC. FAC ¶¶ 34-35. Plaintiff, however, fails to plead any specific facts showing the manner of his discovery and why he was unable to have made earlier discovery. Therefore, he has not pleaded sufficient, specific facts showing why the discovery rule is applicable. The demurrer is sustained. This defect is subject to potential remedy. As such, leave to amend is permitted.

Pleading with Specificity

Defendant also argues the complaint lacks the requisite specificity required for pleading a fraud by concealment cause of action. The court is not persuaded.

“[T]he elements of an action for fraud and deceit based on a concealment are: (1) the defendant must have concealed or suppressed a material fact, (2) the defendant must have been under a duty to disclose the fact to the plaintiff, (3) the defendant must have intentionally concealed or suppressed the fact with the intent to defraud the plaintiff, (4) the plaintiff must have been unaware of the fact and would not have acted as he did if he had known of the concealed or suppressed fact, and (5) as a result of the concealment or suppression of the fact, the plaintiff must have sustained damage.” *Boschma v. Home Loan Center, Inc.* (2011) 198 Cal.App.4th 230, 248. Fraud, including concealment, must be pled with specificity. *Linear Technology Corp. v. Applied Materials, Inc.* (2007) 152 Cal.App.4th 115, 132. General and conclusory allegations do not suffice. *Lazar v. Superior Court* (1996) 12 Cal.4th 631, 645. The policy of liberal construction of pleadings will not ordinarily be invoked to sustain a pleading defective in any material respect for allegations of fraud. *Id.* However, less specificity is required of fraud claims when a defendant must necessarily have more information or knowledge concerning the facts of the controversy than a plaintiff. *Alfaro v. Community Housing System & Planning Assn., Inc.* (2009) 171 Cal.App.4th 1356, 1384.

Here, the FAC sufficiently pleads a count for fraud by concealment. Plaintiff has alleged: (1) concealment, FAC ¶¶ 33, 35, 41-42, 70, 73-74, 77; (2) knowledge of falsity, *id.* ¶¶ 66-67, 70-71; (3) intent to induce reliance, *id.* ¶ 74; (4) justifiable reliance, *id.* ¶¶ 69-70, 74, 77; and (5) damages *Id.* ¶ 77.

Transactional Relationship Between Plaintiffs and Defendant

Defendant also argues the fifth cause of action for fraudulent concealment fails because plaintiff does not allege a transactional relationship between himself and defendant giving rise to a duty to disclose. The court disagrees.

Here, the operative complaint alleges an adequate transactional relationship between plaintiffs and defendant including an allegation that defendant had exclusive knowledge of material facts not known to the plaintiff. *See Dhital v. Nissan North America, Inc.* (2022) 84 Cal.App.5th 828, 844; *Heliotis v. Schuman* (1986) 181 Cal.App.3d 646, 651.

For the reasons discussed above, the demurrer to the fifth cause of action for fraudulent inducement is sustained with leave to amend.

Motion to Strike

Defendant moves to strike the prayer for punitive damages arguing they are unauthorized under the Song-Beverly Consumer Warranty Act (“SBA” or “the Act”), *citing Troensegaard v. Silvercrest Industries, Inc.* (1985) 175 Cal.App.3d 218, 228, and unsupported by sufficient allegations under Civil Code section 3294. The court agrees in part.

“The court may, upon a motion made pursuant to Section 435, or at any time in its discretion, and upon terms it deems proper: (a) Strike out any irrelevant, false, or improper matter inserted

in any pleading.” Code Civ. Proc. § 436. “Irrelevant matter” includes a “demand for judgment requesting relief not supported by the allegations of the complaint.” Code Civ. Proc. § 431.10(b)(3), (c). “The grounds for a motion to strike shall appear on the face of the challenged pleading or from any matter of which the court is required to take judicial notice.” Code Civ. Proc. § 437(a).

“[P]laintiffs are not prohibited from receiving both an award for punitive damages based on presale fraudulent inducement and a postsale Song-Beverly Act penalty based on willful noncompliance” premised on “a pattern and practice of misconduct.” *Anderson v. Ford Motor Co.* (2022) 74 Cal.App.5th 946, 971.

Such is the case here. In the FAC, plaintiff seeks punitive damage based on presale conduct and a civil penalty based on postsale willful noncompliance.

Punitive damages are awardable in an action for a breach of an obligation not arising from contract, where it is proven by clear and convincing evidence that the defendant has been guilty of oppression, fraud or malice. Civ. Code § 3294 (a). If the facts and circumstances are not set out clearly, concisely, and with sufficient particularity to apprise the opposite party of what is called on to answer, the pleading is insufficient to support a claim for punitive damages. *Lehto v. Underground Const. Co.* (1977) 69 Cal.App.3d 933, 944. Moreover, a corporate employer may be liable for punitive damages only if the knowledge, authorization, ratification or act of wrongful conduct was on the part of an officer, director or managing agent of the corporation. *Grieves v. Superior Court* (1984) 157 Cal.App.3d 159, 167.

At bar, the FAC does not sufficiently allege facts to support punitive damages against a corporate entity. This defect can potentially be remedied. Accordingly, the motion to strike the prayer for punitive damage is granted with leave to amend.